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27 July 2020

South Cambridgeshire District Council  
FAO 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sirs

**Judicial Review Pre-action Protocol Letter: 20/02453/S73**

- (1) The South Cambridgeshire District Council (the “**Council**”) is the prospective defendant in a claim for judicial review. A copy of this letter has been sent to the Council by first class post at the address written above.
- (2) The prospective claimant is the Fews Lane Consortium Ltd (the “**Consortium**”), The Elms, Fews Lane, Longstanton, CB24 3DP. The Consortium is a community action group that represents the interests of local residents in issues of planning and development.
- (3) The claim concerns the Council's consideration of planning application 20/02453/S73 for the demolition of the existing bungalow and the erection of two dwellings with parking at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP.
- (4) The decision to be challenged is the Council's decision to entertain planning application 20/02453/S73 contrary to the provisions of section 327A of the Town and Country Planning Act 1990 (the “**1990 Act**”) and article 7(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the “**DMPO 2015**”).
- (5) The prospective claimant considers the applicant to be an interested party. A copy of this letter has been sent to the applicant, Landbrook Homes Ltd, at 36a Church Street, Willingham, Cambridge CB24 5HT.
- (6) Article 7(1) of the DMPO 2015 states that an application for planning permission must “include the particulars specified or referred to in the form”.
- (7) The application form states that:

“The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”
- (8) The land outlined in red on the location plan submitted for the extant permission (S/0277/19/FL) fails to include all the land necessary to carry out the proposed development as it does not include

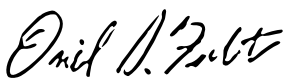
all of the land required for visibility splays, and no updated location plan was submitted as part of application 20/02453/S73.

(9) Section 327A of the 1990 Act states that:

“(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—(a) the form or manner in which the application must be made; (b) the form or content of any document or other matter which accompanies the application. (2) The local planning authority must not entertain such an application if it fails to comply with the requirement.”

- (10) The question of whether or not visibility splays are required in order for the proposed development to be acceptable in planning terms is a matter of planning judgment that is within the purview of the decision maker. However, pursuant to section 327A of the 1990 Act, the Council does not have the discretion to decide that it will entertain an application that fails to comply with a requirement as to the form or content of any document which accompanies the application.
- (11) Accordingly, it would be unlawful for the Council to proceed with the consideration of this application unless or until the relevant requirements have been fulfilled.
- (12) Should the Council proceed with its unlawful consideration of the application, the prospective claimant will seek a court order to quash the Council's decision to validate and subsequently entertain the application, a declaration that Council has erred in law, and an order that the Council pay the prospective claimant's costs in the claim.
- (13) The Consortium would prefer to resolve this dispute without the need for legal proceedings to be issued and would agree to participate in an appropriate form of ADR.
- (14) The Consortium intends to issue proceedings as an Aarhus Convention claim pursuant to Parts 45.41 – 45.45 of the Civil Procedure Rules because the claim challenges the legality of a decision of a body exercising a public function which is within the scope of Article 9(2) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters agreed at Aarhus, Denmark on 25 June 1998 (the Aarhus Convention).
- (15) Although funding has not yet been arranged for the claim, the Consortium does not envisage that it will be necessary to propose any variation of the standard limits on recoverable costs as stated in Parts 45.43(2)(b) and 45.43(3) of the Civil Procedure Rules.
- (16) In the event that a claim does become necessary, a statement of the prospective claimant's financial resources and a statement of financial support received will be provided to the prospective defendant at the earliest opportunity and no later than the time the claim is issued.
- (17) The Consortium's address for the response and service of documents is: Few's Lane Consortium Ltd, The Elms, Few's Lane, Longstanton, Cambridge CB24 3DP. Please note that the Few's Lane Consortium Ltd does NOT accept service by email.
- (18) The Consortium would like to propose a reply date of 10 August 2020, which is 14 days from the date of this letter.

Kind regards



Daniel Fulton  
Director

**From:** Stephen Reid  
**Sent:** 27 July 2020 14:16  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Nigel Blazeby <[Nigel.Blazeby@greatercambridgeplanning.org](mailto:Nigel.Blazeby@greatercambridgeplanning.org)>; Smith Jemma <[Jemma.Smith@scambs.gov.uk](mailto:Jemma.Smith@scambs.gov.uk)>; Sexton Michael <[Michael.Sexton@greatercambridgeplanning.org](mailto:Michael.Sexton@greatercambridgeplanning.org)>  
**Subject:** 95 Bannold \ | road waterbeach 20/01138/OI

Dear Mr Fulton,

In the light of your letter of 1<sup>st</sup> July in relation to the site at 95 Bannold Road, Waterbeach and being mindful that when a new application is received you might once again raise the issue of visibility splays ( if the red line location plan does not show these within the red line where they form part of the existing adopted highway) a copy of your letter was sent to Counsel ,Mr Charles Streeten of Francis Taylor Building , to advise .

I was also mindful that you have raised matters as to the nature of visibility splays on at least one other occasion previously and where I was unable to persuade you as to the validity of an application where visibility splays were not included in the relevant red line location plan

A copy of Mr Streeten's advice is attached and we would ask for your early comments if it is was your intention to again issue a letter before action in relation to visibility splays. Preferably we would like to have a substantive response within the next 8 working days unless you say that for some reason that would cause you a difficulty in which case please explain why.

May we also invite you to consider taking your own advice from Counsel instructed at your end as to the attached so that if there are any contrary views we can put these to Mr Streeten at the earliest opportunity.

In the event that you do not provide substantive comments as to the attached but you issue a Pre-Action protocol letter as to any new application in relation to 95 Bannold Road, Waterbeach, we reserve the right to refer to the attached advice .

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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- *We will agree key deadlines/operational requirements with clients within 5 working days.*
- *We will regularly update our clients on progress (weekly unless no movement on a particular matter)*

**From:** Stephen Reid

**Sent:** 20 July 2020 14:12

**To:** Nigel Blazeby <[Nigel.Blazeby@greatercambridgeplanning.org](mailto:Nigel.Blazeby@greatercambridgeplanning.org)>

**Cc:** Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Carter Chris

<[Chris.Carter@greatercambridgeplanning.org](mailto:Chris.Carter@greatercambridgeplanning.org)>; Sexton Michael

<[Michael.Sexton@greatercambridgeplanning.org](mailto:Michael.Sexton@greatercambridgeplanning.org)>; Smith Jemma <[Jemma.Smith@scambbs.gov.uk](mailto:Jemma.Smith@scambbs.gov.uk)>

**Subject:** SOUTH CAMBS ADVICE July 20th

Dear Nigel,

If you or colleagues have any comments please let me know.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

**APPLICATION REFERENCE 20/01138/OUT  
95 BANNOLD ROAD, WATERBEACH, CAMBRIDGE, CB25 9LQ**

**APPLICATION OF ARTICLE 7 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT  
MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015**

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**ADVICE**

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**Introduction**

1. I am asked to advise South Cambridgeshire District Council (“the **Council**”) regarding what purports to be a letter sent pursuant to the pre-action protocol for judicial review sent by ‘Fews Lane Consortium Limited (“the **Consortium**”) on 1 July 2020. The Consortium proposes to challenge a decision, if taken, to grant planning permission for development under application reference 20/01138/OUT (“the **Application**”) described as “outline planning permission with all matters reserved except for access for the demolition of the existing house and the erection of five dwellings” (“the **Development**”) at 95 Bannold Road, Waterbeach, Cambridge, CB25 9LQ (“the **Site**”).
2. The basis of the Consortium’s proposed claim is an allegation that any decision to grant planning permission for the Development would not accord with the requirements imposed by the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the **2015 Order**”) and thus would also be in breach of section 327A of the Town and Country Planning Act 1990 (“the **1990 Act**”). Specifically, it is alleged that the land outlined in red on the location plan for the Application does not include all of the land necessary to carry out the proposed development as it does not include all of the land required for visibility splays.

**Summary of Advice**

3. For the reasons set out further below I am of the opinion that:

- a. The Council granting planning permission for development which relies on adopted highway land outside the red line site boundary as part of the visibility splays is not, in my view, in breach of the requirements of the 2015 Order.
- b. At present, it would appear that there is land falling outside the red line Site boundary which will be developed. The red line should therefore be amended to include this land. However, it is not necessary to include in that amended boundary all of the land required as visibility splay. Provided the land on which operational development will take place is within the red line boundary, and the remaining land is adopted highway, I am of the view that the requirements of the 2015 Order will be complied with.
- c. Even if I am wrong in relation to the above, the prospect of a claim for judicial review succeeding is low.

## **Law**

### The Statutory Scheme

4. The 2015 Order is made, inter alia, pursuant to section 59 of the 1990 Act. It dictates the procedure by which planning applications must be determined.
5. Section 327A of the 1990 Act states:
 

“(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—(a) the form or manner in which the application must be made; (b) the form or content of any document or other matter which accompanies the application.(2)The local planning authority must not entertain such an application if it fails to comply with the requirement.”
6. Thus a local planning authority should not entertain an application for planning permission unless it complies with the requirements of the 2015 Order.

### Non-Compliance with the DMOP



7. It should, however, be noted that notwithstanding the apparently strict wording of section 327A, the High Court has made clear that a breach of the requirements in the 2015 Order does not, necessarily, mean that a grant of planning permission will be quashed (see *R (Bishop) v Westminster CC* [2017] EWHC 3102 (Admin) at para. 23). Rather, the court retains its discretion regarding whether or not to quash a planning permission granted in breach of the 2015 Order. Indeed, in a case where it is ‘highly likely’ that the outcome would not have been substantially different absent the error, the court is under a duty pursuant to section 31 of the Senior Courts Act 1981 (as amended) to refuse both permission for judicial review and relief.
8. Thus, whilst local planning authorities should always seek to ensure that the requirements of the 2015 Order are properly followed, it may be that an inadvertent failure to follow the procedural requirements set down is not fatal to a grant of planning permission.

#### Article 7 of the 2015 Order

9. Article 7 of the 2015 Order is entitled “General requirements: applications for planning permission including outline planning permission”. Article 7(1)(b) requires that an application for planning permission must “include the particulars specified or referred to in the form”. It should also be noted that Article 7(1)(c) requires the application be accompanied *inter alia* by (i) a plan which identifies the land to which the application relates; (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application.
10. The section of the application form to which the Consortium refers reads:

“The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”
11. This is also reflected in the Government’s Planning Practice Guidance (“PPG”) which says at reference ID 14-024-20140306:

“The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping,

car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.”

12. In interpreting these words it is important not to lose sight of their context. They have not been drafted as would a policy, still less with the care given to the drafting of legislation. In both cases are intended as practical guidance to those completing an application for planning permission. They should therefore be read with a considerable degree of common sense and not subjected to exegetical legal analysis. If authority is required for this proposition, it is to be found in *R (Solo Retail Limited) v Torridge DC* [2019] EWHC 489 (Admin) at para. 33.

### **Analysis**

13. The particular issue upon which I am asked to advise relates to the location of the visibility splays required by the Highway Authority to ensure the access to the Development is safe. Essentially, the visibility splays required for the proposed access extend beyond the red line boundary. I am instructed, however, that all the land outside the red line boundary covered by those visibility splays is within the existing adopted highway.
14. The issue, therefore, is whether planning permission for the Development can be granted, notwithstanding that an area included within the visibility splay is on adopted highway outside the red line boundary. My view is that it can:
- a. Firstly, the text of both the application form and the guidance refers to “all land necessary to carry out the proposed development”. In my view, the word development is of central importance. If land is not being developed, it does not need to be included within the red line boundary. Thus, although land that is not adopted highway such that its use needs to be changed to be used as a visibility splay, it may need to be shown within the red line boundary, where the land used for the visibility splay is already adopted highway, and no operational development is required, it does not need to be included within the red line.
  - b. Secondly, an over literal reading of the application form and PPG would create absurd results. As those instructing rightly point out, both refer to car parking and open areas around buildings. However, if the development proposed does not include any car parking it plainly would not be invalid if the red line on the location plan did not show land for car parking. Similarly, if the application was such that

the footprint of a proposed building meant there were to be no open areas around it, the effect of the application form is clearly not intended to be that the application is invalid because it fails to show any open areas. On the contrary, as both the form and the PPG make clear, the references given are mere examples, and are not intended to be prescriptive or exhaustive. Ultimately, what land is necessary to carry out the proposed development will be a matter of judgement for the local planning authority to determine on the facts of any given case.

15. I should add, as a caveat to the above (and leaving aside the questions which arise where works are carried out pursuant to an agreement under section 278 of the Highways Act 1980), that if operational development such as engineering works are required to provide or alter an access, this may amount to development and should, therefore, be included within the red line boundary.

16. Applying these principles, in my opinion:

- a. Provided that all of the relevant land upon which works to create the access for the Development fall within the red line boundary, the Council would be entitled to conclude that the land necessary to carry out the proposed development does not include land falling within the visibility splays but outwith the red line boundary, which is adopted highway.
- b. Looking at the plans, it would appear that there is land outside the red line boundary which will need to be developed to provide the access to the proposed development. The red line boundary should be amended to include this land.
- c. Provided that the red line boundary is amended to include the land upon which operational development is required to provide the access, it is not necessary to include within the red line boundary other land which is adopted highway and forms part of the relevant visibility splay.

17. I do not, therefore, agree with the Consortium's reasons for asserting that it would be a breach of the 2015 Order or unlawful to grant planning permission for the Development. However, in my view the red line boundary will need to be amended to include land on which operational development is proposed.

18. Moreover, even if I am wrong about that, I am of the view that the prospects of bringing a successful claim for judicial review would be low. I cannot see what prejudice could be said to result from not including adopted highway land forming part of the visibility splay within the red line boundary for the development and, in any event, a claim for judicial review would be likely to be refused permission and/or relief pursuant to section 31 of the Senior Courts Act 1981 on the basis that it is highly likely the outcome would not have been substantially different absent any error of law identified.

### **Conclusion**

3. My conclusions are set out further in the summary of advice above. If I can be of any further assistance, those instructing should not hesitate to contact me.

**Charles Streeten**  
**Francis Taylor Building**

20 July 2020

4 August 2020

Mr Stephen Reid  
3C Shared Services Legal Practice  
c/o South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

VIA EMAIL ONLY

Dear Mr Reid

**Response to legal advice concerning visibility splays at 95 Bannold Road, Waterbeach**

- (1) The Consortium agrees with Mr Streeten's advice that the instructions in the application form must be applied in a common sense manner to the development proposed by any particular application. For example, if a development in a city centre envisages pedestrian access only, it would be absurd to require visibility splays for a nonexistent vehicular access.
- (2) The Consortium concurs that any land on, in, over, or under which operational development is required for a visibility splay must be included within the red line boundaries of the application site.
- (3) We also concur that any land requiring a material change of use must be included within the red line boundaries of the application site.
- (4) We do not necessarily concur that land that is within the adopted public highway on which no operational development is required and which requires no material change of use may be excluded from within the red line boundaries of the application site. For example, where trees interfering with a visibility splay are located within the boundaries of the adopted public highway, we would argue that it would be appropriate to include that land in the red line boundaries of the application site. Although the felling of trees is not operational development, the use of the land upon which the trees are growing is clearly material to the decision and therefore forms part of the land to which the application relates.
- (5) It is acknowledged that the usual practice of the local highway authority is to request that any visibility splays be located within the red line boundaries of the application site or within the boundaries of the adopted public highway. However, we are unsure of what the local highway authority's rationale is for this practice.
- (6) If the local highway authority wishes to agree to maintain a visibility splay within the boundaries of the adopted public highway, it is free to enter into a legal agreement to do so, but it is by no means obliged to facilitate private development of other land by agreeing to maintain a visibility splay on public land at public expense in every case.

- (7) In regards to the site at 95 Bannold Road specifically, Mr Streeten's advice appears to be predicated upon the supposition that the land between the current southernmost red line boundary of the application site and the northernmost edge of the carriageway of Bannold Road is entirely within the adopted public highway. Whilst this may well be the case, we are unable to rely on this supposition without having seen any evidence to support it.
- (8) We will note that we agree with the Council's trees officer's assessment that the existing hedgerow along the application site's frontage on Bannold Road makes an important contribution to the street scene and should be retained in any approved development. Although no operational development or change of use appears to be required for the land on which the hedge is situated, we feel that following a common sense approach would warrant including this land within the red line boundaries of the application site.
- (9) It is difficult to see how anyone's interests could be prejudiced by the Council insisting that the entire 43 metre x 2.4 metre visibility splays are included within the red line boundaries of the application site, the appropriate notices being served upon the owners of land within the application site, and the appropriate ownership certificate being filed by the applicant.
- (10) I would also note that section 327A of the Town and Country Planning Act 1990 prohibits local authorities from even entertaining applications that fail to comply with the requirements as to the form or manner in which an application must be made. As such, I would submit that the local planning authority's validation decision itself is subject to judicial review, not merely the final decision on the application. As the planning history for The Retreat, Fews Lane, Longstanton, illustrates, entertaining invalid planning applications can be an extraordinarily wasteful use of public resources.
- (11) Lastly, there have been numerous instances of planning applications in South Cambridgeshire over the past two years where the local highway authority has based its advice on highway safety conditions at least in part on the position of the red line boundaries of the application site. Accordingly, if the local highway authority is to continue taking the red line boundaries of the application site into consideration in deciding what planning conditions are reasonable or necessary in planning terms, then it is necessary that the requirements governing the positioning of the red line boundaries are applied in a manner that is both consistent and logically coherent.
- (12) If the local highway authority is to take into account the position of the red line boundaries of the application site in determining which planning conditions are reasonable and/or necessary, an arbitrary decision on the positioning of the red line boundaries would render the local highways authority's advice arbitrary as well, and I would submit that a statutory consultee offering advice on an arbitrary basis could potentially be unlawful.
- (13) I hope this response will prove useful in elucidating the Consortium's reasons for issuing a pre-action letter in regards to the planning application in question.

Kind regards,



Daniel Fulton  
Director

FAO Daniel Fulton, Director  
Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

Practice Ref: SR  
Your Ref:

Date: 18 August 2020

Dear Sir

**Proposed Claim for Judicial Review in Relation to Prospective Planning Permission  
20/02453/S73**

We write in relation to your pre-action protocol letter dated 27th July 2020 in which you indicate your intention to challenge by way of judicial review the Council's decision to entertain a planning application ref 20/02453/s73.

**The Prospective Claimant**

[REDACTED]

The Prospective Claimant would be Fews Lane Consortium Ltd.

**The Prospective Defendant**

[REDACTED]

3C Shared Services – The Legal Practice

[REDACTED]

[REDACTED]

**Response to the claim**

3. Subject to the applicant submitting a red line location plan identical to that submitted under planning reference S/0277/19/FL and/or the applicant confirming the s.73 application is in relation to the same red line location plan submitted under planning reference S/0277/19/FL any claim challenging a planning permission because the red line location plan does not show vehicular visibility splays will be considered to be without merit and will be resisted.
4. Your claim challenges a section 73 application under planning reference 20/02453/s73 (the "Application") in relation to the grant of planning permission for the erection of 2 dwellings with parking.
5. The principles on which a claim for judicial review of a decision to grant planning permission may be brought have been shortly stated by Lord Justice Lindblom in *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 at paragraph 42. We do not set out these fundamental principles out in full in this letter but they are referred to where appropriate below.
6. While your letter of 27th July 2020 makes various assertions by way of complaint about the omission of visibility splays it is felt the Consortium has failed to substantiate how an alleged error of law will arise .
7. The Council has noted earlier complaints on a similar matter in relation to a planning application for development in Waterbeach. In response to that complaint, the Council sought advice from Counsel and responded to the Consortium. The Councils advice from Charles Streeten of Counsel on that matter was provided to the Consortium.
8. Turning to the points made at paragraph 10 of your letter, and which is set out below for ease of reference.  
  
*"..(10) The question of whether or not visibility splays are required in order for the proposed development to be acceptable in planning terms is a matter of planning judgment that is within the purview of the decision maker. However, pursuant to section 327A of the 1990 Act, the Council does not have the discretion to decide that it will entertain an application that fails to comply with a requirement as to the form or content of any document which accompanies the application..."*
9. The basis of the Consortium's proposed claim is an allegation that any decision to grant planning permission for the Development pursuant to the Application would not accord with the requirements imposed by the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("the 2015 Order") and thus would also be in breach of section 327A of the Town and Country Planning Act 1990 ("the 1990 Act"). It appears alleged that the land outlined in red on the location plan for S/0277/19/FL does not include all of the land necessary to carry out the proposed development as it does not include all of the land required for visibility splays.
10. In relation to the similar point raised by the Consortium albeit on a completely different site and in a completely different location Charles Streeten of FTB has advised that for the reasons set out further below he is of the opinion that:



- a. The Council granting planning permission for development which relies on adopted highway land outside the red line site boundary as part of the visibility splays is not in breach of the requirements of the 2015 Order.
- b. Provided land on which any operational development will take place is within the red line boundary, and the remaining land is adopted highway, Mr Streeten is of the view that the requirements of the 2015 Order will be complied with and it is not necessary to include in the red line boundary all of the land required as visibility splay where such land is part of the adopted highway
- c. Even if he is wrong in relation to the above, the prospect of a claim for judicial review succeeding in the case where he was asked to advise was low. Given the similarities of that matter and the current complaint, the Council is of a similar opinion in relation to the Application provided that a red line boundary plan is submitted in a form identical to that submitted under S/0277/19/FL and/or the applicant confirming the s.73 application is in relation to the same red line location plan submitted under planning reference S/0277/19/FL.

## 11. Law

### The Statutory Scheme

- 11.1 The 2015 Order is made, inter alia, pursuant to section 59 of the 1990 Act. It dictates the procedure by which planning applications must be determined.

- 11.2 Section 327A of the 1990 Act states:

*“(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—(a) the form or manner in which the application must be made; (b) the form or content of any document or other matter which accompanies the application.*

*(2) The local planning authority must not entertain such an application if it fails to comply with the requirement.”*

- 11.3 A local planning authority should not entertain an application for planning permission unless it complies with the requirements of the 2015 Order but please note the comments under paragraphs numbered 12 and 22 below.

## 12. Non-Compliance with the DMOP

- 12.1 It should, however, be noted that notwithstanding the apparently strict wording of section 327A, the High Court has made clear that a breach of the requirements in the 2015 Order does not, necessarily, mean that a grant of planning permission will be quashed (see *R (Bishop) v Westminster CC* [2017] EWHC 3102 (Admin) at para. 23). Rather, the court retains its discretion regarding whether or not to quash a planning permission granted in breach of the 2015 Order. Indeed, in a case where it is ‘highly likely’ that the outcome would not have been substantially different absent the error, the court is under a duty pursuant to section 31 of the Senior Courts Act 1981 (as amended) to refuse both permission for judicial review and relief.

**13. Article 7 of the 2015 Order**

13.1 Article 7 of the 2015 Order is entitled “General requirements: applications for planning permission including outline planning permission”. Article 7(1)(b) requires that an application for planning permission must “include the particulars specified or referred to in the form”. It should also be noted that Article 7(1)(c) requires the application be accompanied inter alia by (i) a plan which identifies the land to which the application relates; (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application.

13.2 The section of the application form to which the Consortium refers reads:

*“The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”*

14. This is also reflected in the Government’s Planning Practice Guidance (“PPG”) which says at reference ID 14-024-20140306:

*“The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.”*

15. In interpreting these words Mr Streeten has advised that it is important not to lose sight of their context. They have not been drafted as would a policy, still less with the care given to the drafting of legislation. In both cases are intended as practical guidance to those completing an application for planning permission. They should therefore be read with a considerable degree of common sense and not subjected to exegetical legal analysis. If authority is required for this proposition, it is to be found in R (Solo Retail Limited) v Torridge DC [2019] EWHC 489 (Admin) at para. 33.

**Analysis**

16. The particular point at issue is the location of the visibility splays required by the Highway Authority to ensure the access to the Development is safe. In relation to the visibility splays for the junction of Fews Lane and High Street Longstanton all the land outside the red line boundary covered by those visibility splays is within the existing adopted highway. The Highway Authority officers have confirmed their view that no other land is required to secure the necessary visibility for this development.

17. The issue, therefore, is whether ,subject to a location plan for the section 73 Application being submitted in a form identical to that submitted under S//0277/19/FL and/or the applicant confirming the s.73 application is in relation to the same red line location plan submitted under planning reference S/0277/19/FL, planning permission pursuant to the s.73 application for the Development pursuant to the s.73 Application can be granted, notwithstanding that an area included within the visibility splay is on adopted highway outside the red line boundary. The view of the Council is that it can:

- 18.1 Firstly, the text of both the application form and the guidance refers to “all land necessary to carry out the proposed development”. Mr Streeten’s has expressed a view that the word “development” is of central importance. If land is not being developed, it does not need to be included within the red line boundary. Thus, although land that is not adopted highway such that its use needs to be changed to be used as a visibility splay may need to be shown within the red line boundary. Where, however, the land used for the visibility splay is already adopted highway, and no operational development is required, it does not need to be included within the red line.
- 18.2 Secondly, Mr Streeten has advised that an over literal reading of the application form and PPG would create absurd results. As I have pointed out to you in the past, both refer to car parking and open areas around buildings. If, however, the development proposed does not include any car parking it plainly would not be invalid if the red line on the location plan did not show land for car parking which is not being provided or required . Similarly, if the application was such that the footprint of a proposed building meant there were to be no open areas around it, the effect of the application form is clearly not intended to be that the application is invalid because it fails to show any open areas. On the contrary, as both the form and the PPG make clear, the references given are mere examples, and are not intended to be prescriptive or exhaustive. Ultimately, what land is necessary to carry out the proposed development will be a matter of judgement for the local planning authority to determine on the facts of any given case.
19. Mr Streeten, as a caveat to the above (and leaving aside the questions which arise where works are carried out pursuant to an agreement under section 278 of the Highways Act 1980), advised in relation to the other matter that if operational development such as engineering works are required to provide or alter an access, this may amount to development and should, therefore, be included within the red line boundary.
20. Applying these principles, Mr Streeten expressed an opinion as set out below (in the case where he was asked to advise):
- 20.1 *Provided that all of the relevant land upon which works to create the access for the Development fall within the red line boundary, the Council would be entitled to conclude that the land necessary to carry out the proposed development does not include land falling within the visibility splays but outwith the red line boundary, which is adopted highway.*
- 20.2 Provided that the red line boundary includes the land upon which operational development is required to provide the access, it is not necessary to include within the red line boundary other land which is adopted highway and forms part of the relevant visibility splay.
21. In the other case, Mr Streeten advised that even if he is wrong, he is of the view that the prospects of bringing a successful claim for judicial review in that case would be low and he cannot see what prejudice could be said to result from not including adopted highway land forming part of the visibility splay within the red line boundary for the development. His view was that he felt a claim for judicial review would be likely to be refused permission and/or relief pursuant to section 31 of the Senior Courts Act 1981 on the basis that it is highly likely the outcome would not have been substantially different absent any error of law identified. The same point is considered by the Council to apply here.

110 In any event, even if (which is denied) there was some error in the validation process, the Court has a discretion whether or not to quash a grant of planning permission, depending on a variety of factors, including:

- the consequences of non-compliance,
- the nature of the failure,
- the identity of the applicant for relief,
- the lapse of time ,and
- the effect on other parties

23. The Consortium have (in the other case where Mr Streeten has advised) suggested that :

*“... It is difficult to see how anyone’s interests could be prejudiced by the Council insisting that the entire 43 metre x 2.4 metre visibility splays are included within the red line boundaries of the application site, the appropriate notices being served upon the owners of land within the application site, and the appropriate ownership certificate being filed by the applicant....”*

It is the Council’s view that this suggestion is not the relevant legal test as to whether an application is valid.

24. For all of the reasons set out or referred to above , the Council will resist any application for judicial review.

25. The Council has noted that the Consortium would prefer to resolve the dispute without the need for legal proceedings and that the Consortium would agree to participate in an appropriate form of ADR. In the other case referred to above, the Consortium were sent a copy of the advice from Mr Streeten and the Consortium were invited to take their own advice from counsel so that any points in such an advice could be put to Mr Streeten for him to review. It appears that such advice has not been sought by the Consortium, notwithstanding the Council’s invitation and in these circumstances the Council would like further details of what sort of appropriate form of ADR the Consortium has in mind and what the Consortium feels it could achieve.

26. Finally, we agree that the applicant for planning permission, Landbrook Homes Ltd , would be an interested party in respect of any claim.

Yours faithfully



**Stephen Reid**  
Senior Planning Lawyer  
**acting for South Cambridgeshire District Council**

Tel: 01223 457094  
Email: [Stephen.reid@3csharedservices.org](mailto:Stephen.reid@3csharedservices.org)

Fews  
Lane  
Consortium  
Ltd

Daniel Fulton  
DIRECTOR  
T: 01954 789237  
E: dgf@fewslane.co.uk

The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

20 August 2020

South Cambridgeshire District Council  
FAO Mr Stephen Reid / 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Sirs

**Re: 20/02453/S73 – The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP**

(I) Thank you for the Council's judicial review pre-action protocol response dated 18 August 2020.

[REDACTED]

[REDACTED]

[REDACTED]

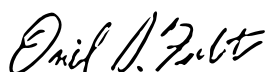
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[REDACTED]

[REDACTED]

[REDACTED]

Kind regards



Daniel Fulton  
Director

**From:** Stephen Reid  
**Sent:** 21 August 2020 14:38  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Subject:** FW: Your scanned files  
**Importance:** High

Dear Mr Fulton

1. I acknowledge your letter dated 20th August

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





Kind regards  
Daniel Fulton  
Director

Stephen Reid  
Senior Planning Lawyer  
3C Shared Services – Legal Practice

Telephone: 0781 7730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

3C Shared Services is a strategic partnership between Cambridge City Council, Huntingdonshire District Council and South Cambridgeshire District Council

3C Legal Practice – Our Commitment to our Clients:-

- We will endeavour to return telephone calls within 24hrs.
  - We will acknowledge correspondence (including Emails) within 2 working days of receipt.
  - We will make sure our clients are aware of the Practice's complaints procedure.
  - We will agree key deadlines/operational requirements with clients within 5 working days.
  - We will regularly update our clients on progress (weekly unless no movement on a particular matter)
- .



The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

3 December 2018

Ms Victoria Keppey  
South and City Highways  
Cambridgeshire County Council  
Station Road  
Whittlesford  
Cambridge  
CB22 4NL

Dear Ms Keppey

**Re: SCDC Planning Application S/2439/18/FL**

Thank you for the information you provided recently concerning the statutory consultation for the planning application referenced above.

- (1) As a statutory consultee, the County Council has a legal obligation to issue a substantive response in regards to the consultation pursuant to article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595).
- (2) As defined by the Government's Planning Practice Guidance, a statutory consultee's substantive response "should include reasons for the consultee's views so that where these views have informed a subsequent decision made by a local planning authority the decision is transparent".<sup>1</sup>
- (3) At present, the only substantive response received by the South Cambridgeshire District Council in regards to the above referenced application is dated 17 July 2018 and requests that the application be refused.
- (4) I am aware that other informal communications have been ongoing between the County Council and at least one officer employed by the South Cambridgeshire District Council ("SCDC"). Although these informal communications may have discussed changes in regards to the consultation response, no updated substantive response has been received by the District Council in regards to the statutory consultation.
- (5) It is my understanding that the role the Local Highway Authority in the statutory consultation process is to evaluate the application and make recommendations to ensure satisfactory access arrangements are included within the proposed development and to ensure that the proposed development does not adversely affect the safety of highway users.

<sup>1</sup> Ministry of Housing, Communities & Local Government. *Planning practice guidance: Consultation and pre-decision matters*. Paragraph: 015. Reference ID: 15-015-20140306. Revision date: 06 03 2014. Published on GOV.UK [<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees>]. Accessed 1 Dec 2018.

- (6) It is also my understanding that the Local Highway Authority performs this role by evaluating each application in light of the national highways policies that apply to the particular application.
- (7) In regards to application S/2439/18/FL, the principal relevant national policies will be included in the *Manual for Streets* ("MfS"), *Manual for Streets 2* ("MfS2"), and the National Planning Policy Framework ("NPPF").
- (8) There are a number of specific highway safety concerns that the County Council has a duty to address. These issues are summarised in paragraphs 9 through 19.
- (9) Fews Lane is both a private vehicular track and well-used public footpath. The width of the carriageway at present is insufficient for a vehicle and a pedestrian travelling in opposite directions to pass without the pedestrian or the vehicle departing from the carriageway and stepping or driving onto adjoining private property.
- (10) Fews Lane was originally intended to serve 3 dwellings. Approval of this application would double the number of dwellings served to 6. Each dwelling has garage or parking space for 3 vehicles, and the proposed dwelling adds another 2 parking spaces. In addition to the total daily vehicular movements of the residents, approximately an equal number of vehicular movements along Fews Lane occur each day due to service vehicles, for example for Royal Mail or parcel delivery services.
- (11) The width of Fews Lane is insufficient to allow two vehicles travelling in opposite directions to pass each other along the length of Fews Lane without one vehicle either trespassing by driving onto private property or by one vehicle reversing out of Fews Lane to allow the other vehicle to proceed.
- (12) During heavy rain, water and sediment is washed from Fews Lane into the public highway.
- (13) The surface of Fews Lane is composed of dirt and gravel, and these unbound materials tend to spread into the public highway, which will only be exacerbated by increased vehicular traffic.
- (14) When vehicles are exiting Fews Lane onto High Street, there is ZERO visibility of pedestrians walking along the footway to the south of the junction.
- (15) In order to see any pedestrians on the footway, a vehicle must pull forward so that the front of the vehicle not only enters the footway, but it must entirely cross the footway and enter the carriageway. It is not until this point where the front of the vehicle has already entered the public highway that there is sufficient visibility for a driver of oncoming vehicular traffic or of pedestrians on the footway.
- (16) The bus stop used by the schoolchildren from the northern half of the village is located only a few meters away from the junction of Fews Lane and High Street. Not only are children shorter and more difficult for drivers to see, but they also have a natural tendency to run along the pavement. The ZERO visibility factor combined with the proximity of the school bus stop is a recipe for disaster. I will retain this letter together with proof of delivery to prove that the County Council has been advised of this serious and dangerous existing defect.

- (17) The spatial layout and width of the proposed vehicular access fails to comply with section 6.7.2 of the *Manual for Streets*, which sets the minimum vehicular access requirements for emergency vehicles, including fire appliances. Specifically, there is to be sufficient emergency vehicular access for a fire alliance to reach every point within 45 meters of a dwelling. In cul-de-sacs, this requires sufficient turning radii at any turns and turning heads sufficient for fire department vehicles at the end of a cul-de-sac or where a tight turning radius would require a fire appliance to turn around.
- (18) With no sufficient turning head provided, the closest vehicular access to the site of the proposed development is located on High Street at the intersection with Fews Lane. This is a distance of approximately 140 meters by foot from the further point of the dwelling, far in excess of the 45 meters stated in the *Manual of Streets* and other regulatory documents.
- (19) The Cambridgeshire Fire and Rescue Service has confirmed that the application does not meet their minimum requirements for vehicular access. Specifically, the minimum carriageway width between kerbs for the service's fire appliances is 3.7 meters. The vehicular access space available at the application site is limited to 3.5 meters, and this is restricted on one side by a fence erected directly over the kerb and by private property including a brick chimney and house on the other side.
- (20) In light of the issues above, the County Council has a duty and obligation to request that the application in its present form be refused.
- (21) The County Council should also request that the following conditions be attached to any permission granted despite the Local Highway Authority's request for refusal.
1. That the first 5 meters of Fews Lane should be constructed of a bound material so as not to adversely affect the public highway.
  2. That the width of Fews Lane be increased to a minimum width of at least 5 meters for the 5 meters measured from the back of the footway along High Street. This would allow two vehicles travelling in opposite directions to pass each other without either vehicle having to reverse, which would represent an unacceptable danger to other highway users.
  3. That pedestrian visibility splays of at least 2.0 x 2.0 meters shall be constructed at the intersection of High Street and Fews Lane.
  4. That a pedestrian visibility splay of at least 2.0 x 2.0 meters shall be constructed at the junction of the parking and turning area for the proposed development with the unnamed private drive that extends to Fews Lane.
  5. A condition requiring that surface water not run from the application site into the public highway.
  6. Conditions necessary for the safety of highway users during the construction of the proposed development to include limits on hours of access, parking, and unobstructed emergency access.
  7. Any such other conditions as are warranted by the particulars of the proposal in light of the national highway safety policy documents.

(22) I would urge the County Council to review its substantive response dated 17 July 2018 to ensure that it addresses the points raised in this letter.

(23) The actions and performance of the County Council will be subject to legal scrutiny to ensure that the County Council has adequately fulfilled its legal duties and that the County Council's substantive response complies with all relevant provisions of public law.

(24) Lastly, I would note that the appeal decision recently issued regarding another application at this site contains many factual errors. Whilst it can be material consideration in the planning process, I would caution the County Council against intending to rely on any part of the appeal decision in the performance of its duties in regards to this new application. The South Cambridgeshire District Council has been made aware of these defects in the appeal decision and has been informed that a claim for judicial review will be brought should they rely on these known errors of fact in determining this application.

I can be reached most days at 01954 789237 or on my mobile at 07944 908340. I would be happy to speak with you or anyone from the County Council if I can provide any further information regarding this matter.

Kind regards



Daniel Fulton

copy by email to Dr Jon Finney, Cambridgeshire County Council

My ref:  
Your ref:  
Date: 12<sup>th</sup> December 2018  
Contact:  
Telephone: 0345 045 5212  
E Mail: Victoria.keppey@cambridgeshire.gov.uk



The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

Whittlesford Depot  
Box No. ET1030  
Station Road  
Whittlesford  
CB22 4NL

Dear Mr Fulton ,

**Re: Planning Application S/2439/18/FL**

Thank you for your letter of 3<sup>rd</sup> December, I have reviewed the same and have the following comments:

1,2, 3 and 4. From discussions with the Local Planning Authority the Local Highway Authority have provided a substantive response. However for clarity in this case the case officer has requested that the comments made by the Local Highway Authority via email dated 14<sup>th</sup> September 2018 will be formally submitted, prior to the determination of the application.

5. The Local Highway concurs with this statement.

6 and 7. Manual for Streets Volume I and II are guidance not policy and are written in such a manor to enable the Highway Authority to consider sites on a contextually based premises.

9. The situation that you describe in relationship to the width of the footpath and its use by motor vehicular traffic is not uncommon in a rural district such as South Cambridgeshire and there is no evidence that this conflict is significant in highway safety terms while you state that the public footpath is well used no empirical data is supplied to support this assertion.

10. According to SCDC planning website Few's Lane has a planning history dating back to 1961 and these applications include for the provision of residential dwellings which will have resulted in low level incremental increase in motor vehicular traffic over this timeframe, therefore the planning application approving two dwellings (S/1498/15/FL) including the one that you now occupy is only one in a reasonably long line of such applications. In terms of traffic generation on average each new dwelling will generate 4.5 motor vehicle movements per 12 hour period, which cannot

be considered sever as required under paragraph 109 of the NPPF to warrant a recommendation of refusal by the Local Highway Authority to the Local Planning Authority.

11. As stated previous above within the response to point 9 the situation that you describe in relationship to the width of the footpath and its use by motor vehicular traffic is not uncommon in a rural district such as South Cambridgeshire and there is no evidence that this conflict is significant in highway safety terms.

12. As Few's Lane is a public highway the water draining from Few's Lane to High Street is draining from one highway to another if the deposition of silt etc from Few's Lane is considered to be significant the Highway Authority may take any action that it deems necessary.

13. The Local Highway Authority believes that there is a slight possibility that this will occur, the Local highway Authority can request that the 2m width of the Public Right of Way be constructed in a bound material.

14, 15. The Local Highway Authority believes this statement to be incorrect and that the pedestrian visibility splays as required within Design Manual for Roads and Bridges of 1.5m x 1.5m could be achieved to the back of the footway when exiting Few's Lane.

16. All accesses are a point of conflict the existing bus stop and existing access are considered to be within the normal range of risks and hazards that a user of the highway should expect to meet and that any vehicle exiting onto the High Street should take into consideration.

17, 18 and 19 Cambridgeshire Fire and Rescue Service are statutory consultees and therefore if this consultee had concerns with regards to the access these should/would have been raised with the Local Planning Authority during the consultation period.

20. Following the lack of substantive empirical evidence and only relying on subjective information the Local Highway Authority has no reason to recommend a refusal of this application to the Local Planning Authority.

21. The Local Highway Authority can only request works within land that is within the ownership of the applicant or within the public highway.

1,2. as confirmed previously the applicant does not own the access and the public right of way is only approximately 2m in width in this location therefore the access cannot be widened to 5 metres in width, however it could be constructed in a bound material for 5m from the rear of the footway and the Local Highway Authority will seek a condition to reflect this.

3. as stated above within points 14,15 the Local Highway Authority believes that pedestrian visibility splays of 1.5m x 1.5m as per Design Manual for Roads and Bridges can be achieved at the junction of Few's Lane and the High Street.



4. As the access to the approved properties under planning application S/1498/15 shows radil kerbs it would be impractical to provide the requested pedestrian visibility splays.

5. This could be encompassed within the Local Planning Authority's normal requirement for a condition relating to surface water drainage.

6. This condition is being dealt with in the form of a traffic management plan which has been submitted as a part of application number S/2439/18, the Local Highway Authority request that the application be refused as the Traffic Management Plan is not satisfactory still stands.

7. The Local Highway Authority will request any conditions that it deems fit with regards to the submitted application as long as these comply with the community infrastructure levy requirements and this is a matter for the Local Planning Authority to review.

22. Comments made by the Local Highway Authority have been reviewed and highway comments will be formally submitted, prior to the determination of the application.

23. It is my understanding that this is true of all planning applications.

24. The Local Highway Authority only considers the application submitted before them and can confirm that no information from any previous applications has been considered.

I have forward a copy of your representation to the Local Planning Authority for their consideration.

Yours sincerely

Vikki Keppey  
Development Management Engineer

23 August 2020

South Cambridgeshire District Council  
FAO Mr Stephen Reid / 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

VIA EMAIL ONLY

WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Mr Reid

# Planning application 20/02453/S73

[illegible]



[REDACTED]

[REDACTED]

[REDACTED]

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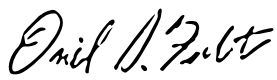
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[REDACTED]

[REDACTED]

[REDACTED]

Kind regards



Daniel Fulton  
Director

c. Mr Stephen Kelly

Dear Fews Lane Consortium Ltd

**Planning application 20/02453/S73**

Please see comments in red and blue below in response to your letter of 23 rd August and the body of which letter is set out below (in black) for ease of reference

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Yours faithfully

**Stephen Reid**  
Senior Planning Lawyer  
*acting for South Cambridgeshire District Council*

Tel: 01223 457094/07817 730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)



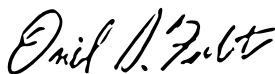
3 September 2020

South Cambridgeshire District Council  
FAO 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sirs

- (1) Under Part 1 of the Civil Procedure Rules, parties are required to help the court see that disputes are resolved in a manner that saves expense, that ensures claims are dealt with expeditiously and fairly, and that takes into account the need of the court to allot resources to other cases.
- (2) Accordingly, it would be extraordinarily helpful if the South Cambridgeshire District Council could please clarify the following issues.
- (3) Is it the Council's position that the provisions of sections 65 and 327A of the Town and Country Planning Act 1990 (the "**1990 Act**") do not apply when land to which a planning application relates is owned by a public authority?
- (4) If this is the Council's position, is the Council aware of any authorities that support this position?
- (5) If this is not the Council's position, could the Council please explain how it reconciles sections 65 and 327A of the 1990 Act with its recent decision in regards to planning application S/4191/19/FL, which concerns parcel COM4, Neal Drive, Orchard Park, Cambridge, its recent pre-action correspondence in regards to planning application 20/02453/S73, which concerns The Retreat, Fews Lane, Longstanton, and the legal advice recently shared with the Consortium in regards to the proposed development at 95 Bannold Road, Waterbeach?
- (6) I very much appreciate the Council's assistance in clarifying these matters.

Kind regards



Daniel Fulton  
Director

Practice Ref: SR

FAO Daniel Fulton, Director  
Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

Date: 4<sup>th</sup> September 2020

Dear Sir

**Planning Permission under S/4191/19/FL**

We write in relation to your letter dated 3<sup>rd</sup> September 2020 and comment as set out below by reference to the numbered paragraphs within your letter which require a response from the District Council:

(3) It is not the District Council's position that the provisions of sections 65 and 327A of the Town and Country Planning Act 1990 ("the 1990 Act") do not apply when land to which a planning application relates is owned by a public authority

(4) Not applicable

(5) The District Council sees no conflict and/or inconsistency for the purposes of sections 65 and 327A of the 1990 Act with regards to the following:

- (a) the decision in relation to S/4191/19/FL
- (b) the recent pre -action correspondence in relation to 20/02453/S73
- (c ) the proposed development at 95 Bannold Road, Waterbeach

The recent pre action correspondence from you in relation to 20/02453/S73 and the proposed development at 95 Bannold Road ,Waterbeach both relate primarily to

whether the “red line” location plans in each case included all land necessary to delivery of the relevant visibility splays .

In the case of S/4191/19/FL the District Council is satisfied that all land required for relevant visibility splays is either within the red line of the application site or is within land which is already adopted public highway . Moreover, the Council is satisfied that the (revised) red line location plan accompanying application S/4191/19/FL is entirely in order and in particular no conflict has arisen with the statutory provisions to which you refer . To the extent that your concerns relate to land owned by the Orchard Park Community Council, the District Council is satisfied that no such land lies within the red line as shown on the location plan accompanying application S/4191/19/FL and, as such, there was no requirement for formal notification pursuant to be given to the Community Council pursuant to article 13 of the Town and Country Planning (Development Management Procedure) Order 2015. The Council is also satisfied that it was not necessary for any land held by the Community Council to have been included within the red line on that location plan .

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stephen Reid', with a horizontal line underneath.

**Stephen Reid**  
Senior Planning Lawyer  
**acting for South Cambridgeshire District Council**

Tel: 0781 7730893  
Email: [Stephen.reid@3csharedservices.org](mailto:Stephen.reid@3csharedservices.org)

**From:** Stephen Reid  
**Sent:** 08 September 2020 10:17  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Fiona Bradley <[Fiona.Bradley@greatercambridgeplanning.org](mailto:Fiona.Bradley@greatercambridgeplanning.org)>; Simpson Luke <[Luke.Simpson@greatercambridgeplanning.org](mailto:Luke.Simpson@greatercambridgeplanning.org)>  
**Subject:** FW: Response to email from 4 September

Dear Fews Lane Consortium Ltd

1. I acknowledge receipt of your email sent at 08:35 this morning which refers to an "...attached letter in response to ( my )email from 4<sup>th</sup> September..."
2. The attachment to my email of 4<sup>th</sup> September includes a heading as follows:

"Planning Permission under S/4191/19/FL"

3. I raise this in the context that I note the attached does not have at the start any heading but later on it includes what I might describe as 3 sub-headings as follows

"Ramifications for planning application 20/02453/S73 (Fews Lane, Longstanton)

.....

Ramifications for planning application 20/03370/OUT (95 Bannold Road, Waterbeach)

.....

Update concerning proposed development at 17 Mill Lane, Arrington

....."

4. I cannot immediately see in the attached response any heading or sub-heading which directly refers to the planning application/planning permission under S/4191/19/FL so may I

invite you to clarify that the attached response (other than in relation to the 3 sub-headings as referred to and the text under those sub-headings ) is the Consortium's position is as to Planning Permission under S/4191/19/FL and whether the Consortium are willing to comment as to what they see as the next steps in such regard.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

3C Shared Services is a strategic partnership between Cambridge City Council, Huntingdonshire District Council and South Cambridgeshire District Council

**3C Legal Practice – Our Commitment to our Clients:-**

- We will endeavour to return telephone calls within 24hrs.
- We will acknowledge correspondence (including Emails) within 2 working days of receipt.
- We will make sure our clients are aware of the Practice's complaints procedure.
- We will agree key deadlines/operational requirements with clients within 5 working days.
- We will regularly update our clients on progress (weekly unless no movement on a particular matter)

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 08 September 2020 08:35

**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Response to email from 4 September

Dear Mr Reid,

Please see the attached letter in response to your email from 4 September.

Kind regards,

Daniel Fulton

Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

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The Fews Lane Consortium Ltd is registered in England and Wales. Company No. 11688336

8 September 2020

South Cambridgeshire District Council  
FAO 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sirs

- (1) Thank you for your letter dated 4 September 2020 clarifying the Council's position on a number of key issues.
- (2) In light of these clarifications, the Consortium would like to call the Council's attention to the following relevant provisions of law.

#### Legal Framework

- (3) Section 55(1) of the Town and Country Planning Act 1990 (the "**1990 Act**") provides that:

"Subject to the following provisions of this section, in this Act, except where the context otherwise requires, 'development,' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

- (4) Section 336(1) of the 1990 Act provides that:

"'engineering operations' includes the formation or laying out of means of access to highways".

- (5) Section 55(2) of the 1990 Act provides that (emphasis added):

"The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land — [...]

(b) the carrying out on land **within the boundaries of a road by a highway authority** of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment"

- (6) Section 65 of the 1990 Act provides that:

"(1) A development order may make provision requiring—

(a) notice to be given of any application for planning permission or permission in principle, and

(b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used, and provide for publicising such applications and for the form, content and service of such notices and certificates.

(2) Provision shall be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person (other than the applicant) who on such date as may be prescribed by the order is an owner of the land to which the application relates, or an agricultural tenant of that land, is given notice of the application in such manner as may be required by the order.

(3) A development order may require an applicant for planning permission or permission in principle to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied.

(3A) In subsections (1) and (3) references to any application for planning permission or any applicant for such permission include references to any application for approval under section 61L(2) or any applicant for such approval.

(4) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.

(5) A local planning authority shall not entertain an application for planning permission or permission in principle unless any requirements imposed by virtue of this section have been satisfied."

(7) Section 327A of the 1990 Act provides that:

"(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—

- (a) the form or manner in which the application must be made;
- (b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement."

(8) Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "**2015 Order**") provides that (emphasis added):

"(1) Subject to paragraphs (3) to (5), **an application for planning permission must—**

- (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);
- (b) **include the particulars specified or referred to in the form;**
- (c) except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A(2)(c) (planning permission for development already carried out) of the 1990 Act or is an application of a kind referred to in article 20(1)(b) or (c), be accompanied, whether electronically or otherwise, by—
  - (i) **a plan which identifies the land to which the application relates;**
  - (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application".

(9) Article 13(1) of the 2015 Order provides that (emphasis added):

"Except where paragraph (2) applies, an applicant for planning permission **must give requisite notice** of the application to any person (other than the applicant) who on the prescribed date is an owner of **the land to which the application relates**, or a tenant—

- (a) by serving the notice on every such person whose name and address is known to the applicant; and
- (b) where the applicant has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated."

(10) Article 14 of the 2015 Order provides that:

“(1) Where an application for planning permission is made, the applicant must certify, in a form published by the Secretary of State or in a form substantially to the same effect, that the relevant requirements of article 13 have been satisfied.”

(11) Delegated legislation made under an act is capable of being a persuasive authority on the meaning of the act's provisions. (*Hales v Bolton Leathers Ltd* [1951] A.C. 531, per Lord Simonds at 539, per Lord Normand at 544, and per Lord Oaksey at 548)

(12) When the government department administering an act publishes official statements in regards to the act, those statements may be taken into account as a persuasive authority on the meanings of the act's provisions. (*Oram (Inspector of Taxes) v Johnson* [1980] 2 All E.R. 1 at 6)

(13) The meaning of a provision of an act may be elucidated by reference to contemporary statements indicating how the provisions were understood at the time they were enacted, particularly in esoteric areas of law where cases rarely come before the courts and there is a long established practice. (*Isle of Anglesey County Council v Welsh Ministers* [2009] EWCA Civ 94, [2009] 3 All E.R. 1110)

(14) A breach of a provision of delegated legislation is no different than a breach of the primary act itself. (*National Telephone Company v Baker* [1892 N. 2.], [1893] 2 Ch. 186 at 203)

#### Factual background

(15) Four forms of the certificate referred to in article 14(1) have been published by the Secretary of State.

(16) These forms are referred to as ownership certificates A, B, C, and D.

(17) The form of the certificate referred to as ownership certificate A states:

“[I certify]/[The applicant certifies] that on the day 21 days before the date of this application nobody except [myself]/[the applicant] was the owner of any part of the land or building to which the application relates, and that none of the land to which the application relates is, or is part of, an agricultural holding.”

(18) The form of the certificate referred to as ownership certificate B states:

“[I certify]/[The applicant certifies] that [I have]/[the applicant has] given the requisite notice to everyone else (as listed below) who, on the day 21 days before the date of this application, was the owner and/or agricultural tenant of any part of the land or building to which this application relates.”

(19) The form of the certificate referred to as ownership certificate C states:

“[I certify]/[The applicant certifies] that:

- Neither Certificate A or B can be issued for this application
- All reasonable steps have been taken to find out the names and addresses of the other owners and/or agricultural tenants of the land or building, or of a part of it, but [I have]/[the applicant has] been unable to do so.”

(20) The form of the certificate referred to as ownership certificate D states:



“[I certify]/[The applicant certifies] that:

- Certificate A cannot be issued for this application
- All reasonable steps have been taken to find out the names and addresses of everyone else who, on the day 21 days before the date of this application, was the owner and/or agricultural tenant of any part of the land to which this application relates, but [I have]/[the applicant has] been unable to do so.”

(21) The application form provides that:

“The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”

### Ownership certificates

- (22) Article 7(1)(c)(i) of the 2015 Order provides that a plan that identifies “the land to which the application relates” must be included with applications for planning permission. Article 13(1) of the 2015 Order requires that an applicant for planning permission must notify the owners “the land to which the application relates”. Article 14 of the 2015 Order provides that applicants must certify, in a form published by the Secretary of State or in a form substantially to the same effect that the relevant requirements of article 13 have been satisfied. The forms published by the Secretary of State, referred to as ownership certificates, also refer to the land to which the application relates.
- (23) The meaning of the phrase “the land to which the application relates” is a question of statutory interpretation. It is not a matter of planning judgment, as the Council has sometimes asserted.
- (24) When the government department administering an act publishes official statements in regards to the act, those statements may be taken into account as a persuasive authority on the meanings of the act’s provisions. (*Oram (Inspector of Taxes) v Johnson* [1980] 2 All E.R. 1 at 6)
- (25) The application instructions published by the Ministry of Housing, Communities and Local Government stipulate that the land to which an application relates includes “all land necessary to carry out the proposed development”.
- (26) “All land necessary to carry out the proposed development” is not the same as any land proposed to undergo operational development or a material change of use, which is how the Council has misinterpreted the provisions of the 2015 Order.

### Position of red line on location plan

- (27) Moving the red line shown on the location plan does not change the land to the application relates.
- (28) However, moving the red line shown on the location plan such that it excludes land to which the application relates can invalidate the application if the application would no longer comply with the provisions of article 7(1)(b) and article 7(1)(c)(ii) of the 2015 Order.
- (29) Whilst moving the position red line shown on the location plan An applicant can not change the land to which a planning application relates by simply moving the position of the red line shown on the location plan, and likewise, moving the red line shown on the location plan does not change the land to which the ownership certificate pertains.

Land to which application relates vs. land proposed to undergo operational development/change of use

- (30) The application form instructions published by the Ministry of Housing, Communities and Local Government clarify that the land to which a planning application relates is the land necessary to carry out the proposed development, not the land proposed to undergo operational development or a material change of use, as the Council has posited.
- (31) Again, when the government department administering an act publishes official statements in regards to the act, those statements may be taken into account as a persuasive authority on the meanings of the act's provisions. (*Oram (Inspector of Taxes) v Johnson* [1980] 2 All E.R. 1 at 6)
- (32) Even if the court were not to agree with our approach to the interpretation of the phrase "land to which the application relates", the Council's position that land owned by the local highway authority can be excluded from land to which an application relates is doomed to fail on the basis of section 55 of the 1990 Act.
- (33) Under the provisions of subsections 55(1) and 55(2) of the 1990 Act, any building, engineering, or other operations carried out in, on, over, or under land will be considered to be development unless all of the following apply:
- 1) the work is being carried out within the boundaries of a "road",
  - 2) the work is being carried out "by" a highway authority,
  - 3) the work constitutes the maintenance or improvement of the "road", and
  - 4) if the work is not exclusively for maintenance, it does not or will not "have significant adverse effects on the environment".
- (34) Accordingly, it appears to be immaterial whether the land in question is:
- 1) owned by a highway authority,
  - 2) within a highway,
  - 3) within a public highway,
  - 4) within a private highway, or
  - 5) within an adopted highway.
- (35) The local highway authority for the district of South Cambridgeshire is the Cambridgeshire County Council.
- (36) To the best of the Consortium's knowledge, the Cambridgeshire County Council does not offer a service whereby it undertakes building, engineering, or other operations to carry out works associated with private developments.

Ramifications for planning application 20/02453/S73 (Fews Lane, Longstanton)

- (37) No location plan has been submitted for this application. Accordingly, the application relies on the location plan comprised within the application for the extant planning permission (S/0277/19/FL). That location plan fails to identify the land to which the application relates as is required under article 7(1)(c)(i) of the 2015 Order. Application 20/02453/S73 is therefore invalid and can not be determined pursuant to sections 65 and 327A of the 1990 Act.

Ramifications for planning application 20/03370/OUT (95 Bannold Road, Waterbeach)

- (38) The location plan fails to identify the land to which the application relates as is required under article 7(1)(c)(i) of the 2015 Order. Application 20/03370/OUT is therefore invalid and can not be determined pursuant to sections 65 and 327A of the 1990 Act.

Update concerning proposed development at 17 Mill Lane, Arrington

- (39) The Consortium has decided not to pursue a prohibiting order in regards to this section 73 application. The reason for this is because we feel that it is likely that the Council will make additional errors of law when determining the application and that the court will be more likely to grant relief at that time. The Consortium will be providing further representations on this application in due course, but you may consider the Consortium's pre-action letter in regards to this application to be withdrawn.

- (40) I hope this letter will be helpful in explaining the Consortium's positions on the issues discussed. If I can provide further clarification, please do let me know.

Kind regards

A handwritten signature in black ink, appearing to read 'Daniel A. Fulton'.

Daniel Fulton  
Director

28 September 2020

South Cambridgeshire District Council  
FAO 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sirs

**Judicial review pre-action protocol: 20/02453/S73 - The Retreat, Fews Lane, Longstanton**

- (1) The South Cambridgeshire District Council (the “**Council**”) is the prospective defendant in a claim for judicial review. A copy of this letter has been sent to the Council by first class post at the address written above.
- (2) The prospective claimant is the Fews Lane Consortium Ltd (the “**Consortium**”), The Elms, Fews Lane, Longstanton, CB24 3DP. The Consortium is a community action group that represents the interests of local residents in issues of planning and development.
- (3) The prospective claim concerns the Council's decision to consider planning application 20/02453/S73, which concerns development proposed at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP.
- (4) The prospective claimant considers the applicant, Landbrook Homes Ltd (“**Landbrook**”) to be an interested party. A copy of this letter has been sent to Landbrook by first class post at 36a Church Street, Willingham, Cambridge CB24 5HT.
- (5) The Council's consideration of planning application 20/02453/S73 is unlawful pursuant to section 327A of the Town and Country Planning Act 1990 (the “**1990 Act**”) because the application for the existing planning permission to which the current application relates does not comply with the requirements of article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the “**2015 Order**”).
- (6) Although often referred to in common parlance as an application to “vary” or “remove” planning conditions, an application submitted under section 73 of the 1990 Act, if approved, creates a new planning permission that runs alongside the extant planning permission. (*Lambeth LBC v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33, [2019] 1 W.L.R. 4317 at [10]-[11])
- (7) In considering an application submitted under section 73 of the 1990 Act, a local planning authority must consider the entire scheme being applied for in accordance with the relevant policy tests, not merely consider the applicant's proposed changes to the extant planning permission. (*R (Stefanou) v Westminster City Council* [2017] EWHC 908 (Admin) at [88]-[89])

(8) The planning permission granted in regards to application S/0277/19/FL incorporates the application form and the plans, drawings, and documents accompanying the application form into the terms of the planning permission by including a statement to that effect in the operational part of the planning permission.

(9) Section 327A of the 1990 Act provides that:

“(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—

- (a) the form or manner in which the application must be made;
- (b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement.”

(10) Article 7 of the 2015 Order provides that (emphasis added):

“(1) Subject to paragraphs (3) to (5), **an application for planning permission must—**

- (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);
- (b) **include the particulars specified or referred to in the form;**
- (c) except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A(2)(c) (planning permission for development already carried out) of the 1990 Act or is an application of a kind referred to in article 20(1)(b) or (c), be accompanied, whether electronically or otherwise, by—
  - (i) **a plan which identifies the land to which the application relates;**
  - (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application”.

(11) The application form, published by the Ministry of Housing, Communities and Local Government, states that:

“The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”

(12) The Consortium intends to submit that the reason that article 7(1)(c) does not apply to applications submitted pursuant to section 73 of the 1990 Act is because it is presumed that the original application on which the existing planning permission was granted included “a plan which identifies the land to which the application relates”.

(13) However, in this case, the Council granted planning permission despite the fact that the land to which the planning application relates was not correctly identified at the time the application for the existing planning permission was made.

(14) As the plans submitted with the application for the existing planning permission failed to correctly identify the land to which the application relates and no new plans that correctly identify the land to which the application relates have been submitted with this section 73 application, the requirements of article 7 of the 2015 have not been satisfied, and accordingly, the application can not be entertained by the Council pursuant to the provisions of section 327A of the 1990 Act.

### Interpretation of Article 7(1) of the 2015 Order

- (15) Article 7(1) of the 2015 Order provides that “an application for planning permission must— [...] be accompanied [...] by a plan which identifies the land to which the application relates”.
- (16) When the government department administering an act publishes official statements in regards to the act, those statements may be taken into account as a persuasive authority on the meanings of the act’s provisions. (*Oram (Inspector of Taxes) v Johnson* [1980] 2 All E.R. 1 at 6)
- (17) The application form, published by the Ministry of Housing, Communities and Local Government<sup>1</sup>, which is the government department responsible for administering the 1990 Act, provides that:
- “The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”
- (18) The meaning of a provision of an act may be elucidated by reference to contemporary statements indicating how the provisions were understood at the time they were enacted, particularly in esoteric areas of law where cases rarely come before the courts and there is a long established practice. (*Isle of Anglesey County Council v Welsh Ministers* [2009] EWCA Civ 94, [2009] 3 All E.R. 1110)
- (19) At the time the 2015 Order was made, the planning application form instructions published by the Ministry of Communities and Local Government provided that:
- “The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”
- (20) Pursuant to the principles of statutory interpretation employed by the courts in *Oram* and *Isle of Anglesey*, the statements contained in the official forms and instructions published by the Ministry of Housing, Communities and Local Government, both at the time the 2015 Order was made and subsequent to the time the 2015 Order was made, are both capable of being persuasive authorities as to the proper interpretation of the relevant provisions of article 7 of the 2015 Order.
- (21) Article 7 of the 2015 Order requires that applications for planning permission include “a plan which identifies the land to which the application relates” and also that applications for planning permission must “include the particulars specified or referred to in the form”. The particulars specified in the application form require that:
- “The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings).”
- (22) It is acknowledged that not every planning application will require visibility splays. For example, if an application were submitted for a city centre development where no vehicular access to the site was possible, visibility splays would obviously not be required. However, the Consortium intends to submit that where an application creates a new vehicular access or proposes the intensified use of

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<sup>1</sup> Prior to 8 January 2018, the Ministry of Housing, Communities and Local Government was referred to as the Ministry for Communities and Local Government.

an existing vehicular access, the land necessary for visibility splays must be included within the area defined by the red line on the location plan.

- (23) The requirements of article 7 of the 2015 Order are statutory requirements, and neither local planning authorities nor the Secretary of State have the power to ignore the statutory requirements in any case. Any dispute as to whether the statutory requirements have been met is a question within the jurisdiction of the courts. This question can be contrasted with the question of whether visibility splays are necessary to make a proposed development or change of use acceptable in planning terms, which is a question of judgment purely within the purview of the decision maker, subject to the usual legal tests on unreasonableness.
- (24) The Council has previously obtained legal advice advancing the position that the land required to carry out a proposed development includes only the land that must undergo operational development or is subject to a change of use. No authorities have been provided in support of this position, and indeed, the Council's position is at odds with the approved principles of statutory interpretation outlined above.
- (25) A visibility splay will not be maintained free of vegetation without some sort of intervention. This intervention can either take the form of regular and ongoing maintenance to remove vegetation or the installation of hardstanding such as asphalt or concrete, which would prevent the growth of vegetation.
- (26) The ongoing maintenance of land necessary to remove vegetation and maintain a functional visibility splay requires a positive planning condition to be attached to any permission granted, and a positive planning conditions may only be applied to land that is within the application site or within the control of the applicant. In *Mouchell Superannuation Fund Trustees v Oxfordshire County Council* [1992] 1 P.L.R. 97 at 105, Glidewell LJ states that:
- “a condition requiring the carrying out of works may validly be imposed only if the works are to be carried out on land either within the application site or on other land 'under the control of the applicant'. Thus, a condition purporting to require the carrying out of works on land neither within the application site nor within the control of the applicant is outside the powers of the Act”.
- (27) If the interpretation of article 7 as advanced in the Council's legal advice were to be accepted, it would be impossible to attach positive conditions requiring the maintenance of visibility splays in cases where the land in question did not require a change of use or operational development. This interpretation of article 7 would create the very kind of mischief that article 7 and the instructions in the application form were apparently designed to prevent.
- (28) In installation of paving such as asphalt or concrete to prevent the growth of visibility splays constitutes operation development under sections 55(1) and 55(2) of the 1990 Act unless all of the following criteria apply:
- 1) the work is being carried out within the boundaries of a “road”,
  - 2) the work is being carried out “by” a highway authority,
  - 3) the work constitutes the maintenance or improvement of the “road”, and
  - 4) if the work is not exclusively for maintenance, it does not or will not “have significant adverse effects on the environment”.
- (29) There may be many ways to achieve functional visibility splays for any given application, for example, by a positive condition, a Grampian condition, or through a planning obligation. However, the Consortium would intend to submit that the question of how best to achieve the functional visibility splay is a matter of planning judgment for the decision maker.

- (30) For a local planning authority to accept as valid and to proceed to consider a planning application that plainly fails to comply with the requirements of article 7 and the requirements stated in the application form, would in effect remove the option of the positive planning condition from the decision maker's choices. This effectively constitutes predetermination of the application, at least in regards to a positive condition for the maintenance of visibility splays, and where the issue of visibility splays goes to the root of the decision as to whether to grant planning permission, this predetermination may be sufficient for the court to decide to quash a planning permission granted in such circumstances.
- (31) The failure to properly identify the land to which the application relates is also extraordinarily prejudicial to the ability of statutory consultees and members of the public to give intelligent consideration and response to planning proposals during periods of consultations.
- (32) Officers of local highway authorities should be able to rely on the fact that application documents that have been validated by the local planning authority and published for consultation correctly depict the land to which the application relates by outlining that land in red on the location plan, as is required under article 7. Whilst in an ideal world, local highway authority officers might be well versed in the nuances of planning law, this is usually not the case, and both statutory consultees and members of the public rely on the validation opinion of the local planning authority to establish that the land to which the planning application relates has been correctly identified on the location plan in accordance with the relevant legal standards. A local planning authority that consults on an application with an invalid location plan not only violates section 327A of the 1990 Act, but also potentially renders the consultation on the application unlawful on grounds of procedural impropriety. (See *R v North and East Devon Health Authority ex p Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213 at [112].)

#### Pre-action protocol

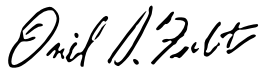
- (33) For these reasons, the Consortium will be seeking an order to prohibit the Council from considering planning application 20/02453/OUT, unless a decision to grant planning permission is issued by the Council, in which case a quashing order will be sought. The Consortium will also seek a declaration that the Council has erred in law and an order that the Council pays the Consortium's costs in the claim.
- (34) The Consortium may also decide to seek interim relief in the event that the Council proceeds with the unlawful consideration of the application. If interim relief is to be sought, the Consortium will endeavour, insofar as is possible, to give the Council 7 days notice before any such interim relief is sought from the court.
- (35) The Consortium would prefer to resolve this matter as quickly and efficiently as possible. To that end, the Consortium would ask the Council to inform the applicant as soon as possible that insufficient information has been submitted with the application and to state to the applicant that a location plan should be submitted showing the land necessary for visibility splays included within the land outlined in red. Once such a plan is received, the Council could then proceed with the lawful consideration of the application.
- (36) The Consortium would be pleased to consider any form of alternate dispute resolution that might be proposed by the Council.
- (37) The Consortium intends to issue proceedings as an Aarhus Convention claim pursuant to Parts 45.41 – 45.45 of the Civil Procedure Rules because the claim challenges the legality of a decision of a body exercising a public function which is within the scope of Article 9(2) of the UNECE



Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters agreed at Aarhus, Denmark on 25 June 1998 (the Aarhus Convention).

- (38) Although funding has not yet been arranged for the claim, the Consortium does not envisage that it will be necessary to propose any variation of the standard limits on recoverable costs as stated in Parts 45.43(2)(b) and 45.43(3) of the Civil Procedure Rules.
- (39) In the event that a claim does become necessary, a statement of the prospective claimant's financial resources and a statement of financial support received will be provided to the prospective defendant at the earliest opportunity and no later than the time the claim is issued.
- (40) The Consortium's address for the response and service of documents is: Few's Lane Consortium Ltd, The Elms, Few's Lane, Longstanton, Cambridge CB24 3DP. Please note that the Few's Lane Consortium Ltd does NOT accept service by email.
- (41) The Consortium would like to propose a reply date of 12 October 2020, which is 14 days from the date of this letter.

Kind regards



Daniel Fulton  
Director

**From:** Stephen Reid  
**Sent:** 16 October 2020 15:18  
**To:** 'Daniel Fulton' <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Subject:** Fews LaneOct16th  
**Importance:** High

Dear Fews Lane consortium Ltd

Please see attached letter dated 16<sup>th</sup> October which I am instructed to send to you .

I am not in the office today and therefore will need to advise you separately when a copy is put in the post to you.

Apologies that the letter was not emailed to you earlier in the week.

Any queries please let me know.

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice  
The logo for 3C Shared Services, featuring a large blue '3' and a green 'C' followed by the text 'Shared Services' in blue.  
Telephone: 0781 7730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

Practice Ref: SR  
Your Ref:

Date: 16th October 2020

Dear Sirs

**Re: Judicial review pre-action protocol: 20/02453/S73 - The Retreat, Fews Lane, Longstanton**

We write in relation to your pre-action protocol letter dated 28<sup>th</sup> September 2020 in which you indicate your intention to challenge by way of judicial review the Council's decision to consider the planning permission under ref 20/02453/S73

**The Prospective Claimant**

1 The Prospective Claimant would be Fews Lane Consortium Ltd.

**The Prospective Defendant**

2 The Prospective Defendant is South Cambridgeshire District Council.

Correspondence should be addressed to 3C Shared Services – The Legal Practice, South

**Relevance to the claim**

3 The prospective claim concerns the Council's decision to consider planning application

4 The Prospective Claimant considers the applicant, Landbrook Homes Ltd ("Landbrook") to be an interested party and that a copy of your letter has been sent to

5 Para (5) of your letter

5.1 The Council has noted your comment that you view its consideration of planning application 20/02453/S73 is unlawful pursuant to section 327A of the Town and Country Planning Act 1990 (the "1990 Act") because you suggest "...the application for the existing planning permission to

which the current application relates does not comply with the requirements of article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the “2015 Order”) .

- 5.2 The Council does not accept (i) its consideration of planning application 20/02453/S73 is unlawful pursuant to section 327A of the 1990 Act or (ii) that the application for the existing planning permission to which the current application relates does not comply with the requirements of article 7 of the 2015 Order.

6 Para (6) of your letter

The Council agrees that an application submitted under section 73 of the 1990 Act, if approved, will create a new planning permission that runs alongside the extant planning permission

7 Para (7) of your letter

- 7.1 Your reference to section 73 of the 1990 Act is noted but it is thought that it would also have been helpful if you had specifically quoted that part of section 73 (2) of the 1990 Act which provides as highlighted in yellow below

73 Determination of applications to develop land without compliance with conditions previously attached.

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

- 7.2 Whilst your comments as to Stefanou are noted to my mind a critical point is the following reference in Stefanou

“.. a local authority considering an application submitted under section 73 the 1990 act must consider the entire scheme being applied for ..”

- 7.3 The Council's position is that this is exactly what the Council intends to do in relation to the s.73 application

- 7.4 The facts in the case of Stefanou are materially different to those in this case and it is the Council's position that no material considerations have been, or will be, overlooked in this case.

8 Para (10) of your letter

- 8.1 You quote Article 7 of the 2015 Order and you add emphasis in bold print as to parts of Article 7 but such emphasis does not include the following :

“...( c) except where the application is made pursuant to section 73.. of the 1990 Act

- 8.2 The Council considers Article 7(1) ( c) is particularly material in this case because the effect of Article 7(1) ( c) is that no new location plan needs to accompany a section 73 application

9 Para (12) of your letter

9.1 In your para numbered (12) you say as follows:

“...The Consortium intends to submit that the reason that article 7(1)(c) does not apply to applications submitted pursuant to section 73 of the 1990 Act is because it is presumed that the original application on which the existing planning permission was granted included “a plan which identifies the land to which the application relates”.....”

9.2 May I remind you that when I emailed you on 26<sup>th</sup> August I included at para 17 of that email the following:

“17 I note your comment “..that judicial review proceedings will be issued if this matter is not resolved by Thursday, 27 August 2020..” but I note you do not state what from your perspective would achieve a resolution of this matter and may I add that when I wrote to you on 18<sup>th</sup> August I included the following :

“....3 .Subject to the applicant submitting a red line location plan identical to that submitted under planning reference S/0277/19/FL and/or the applicant confirming the s.73 application is in relation to the same red line location plan submitted under planning reference S/0277/19/FL any claim challenging a planning permission because the red line location plan does not show vehicular visibility splays will be considered to be without merit and will be resisted...”

I raise the above again as I can also now add that on 21<sup>st</sup> August Mr Caddoo emailed the planning case officer and said:

“..In response to your recent email, I would ask the Council to please accept this email as confirmation on behalf of the applicant, Landbrook Homes Ltd , that the S.73 application under 20/02453/s73 is in relation to the same red line location plan submitted under planning reference S/0277/19/FL...”

10 Para (13) of your letter

It is not accepted that the Council granted planning permission despite the fact that the land to which the planning application relates was not correctly identified at the time the application for the existing planning permission was made.

11 Para (14) of your letter

It is not accepted by the Council (i) that the plans submitted with the application for the existing planning permission failed to correctly identify the land to which the application relates or (ii) that the requirements of article 7 of the 2015 have not been satisfied, and accordingly, the Council does not accept that the s.73 application cannot be entertained by the Council pursuant to the provisions of section 327A of the 1990Act.

12 Para (22) of your letter

12.1 The Council was pleased to see that you acknowledge that not every planning application will require visibility splays and that you give as an example that if an application were submitted for a city centre development where no vehicular access to the site was possible, visibility splays would obviously not be required.

12.2 The Council has also noted however that the Consortium intends to submit that where an application creates a new vehicular access or proposes the intensified use of an existing vehicular access, the land necessary for visibility splays must be included within the area defined by the red line on the location plan.

12.3 The Council will strenuously resist any submission that a red line is not correct where it omits to include required visibility splays where such visibility splays are with the existing adopted highway

13 Para (23) of your letter

13.1 At para (23) of your letter you say:

"The requirements of article 7 of the 2015 Order are statutory requirements, and neither local planning authorities nor the Secretary of State have the power to ignore the statutory requirements in any case. Any dispute as to whether the statutory requirements have been met is a question within the jurisdiction of the courts. This question can be contrasted with the question of whether visibility splays are necessary to make a proposed development or change of use acceptable in planning terms, which is a question of judgment purely within the purview of the decision maker, subject to the usual legal tests on unreasonableness."

- 13.2 The Council's position is that such a proposition is correct then literally thousands of planning applications up and down the country should be re-visited and be held to be invalid because they do not show within the red line relevant visibility splays which are within the existing adopted highway. The same point should likewise apply to a whole host of current appeals where again the applications which are the subject of those appeals do not show within the red line on the location plan relevant visibility splays which are within the existing adopted highway. The reference to appeal cases is also pertinent in the context of your comments under your para 23 where, in effect, you suggest the Secretary of State does not have the power to ignore the statutory requirements in any case.

14. Para 24 of your letter

- 14.1 At para (24) of your letter you acknowledge that the Council has previously obtained legal advice. You state that no authorities have been provided in support of the Council's position but you omit to acknowledge that the full written advice of Mr Streeten (albeit in relation to a different site) was shared with you and/or that you take issue with the following numbered paragraphs of that Advice (see section 27 of this letter as below)

Paras numbered 7,8,10,11,12,14,16 and 18

- 14.2 Rather you argue that the Council's position is at odds with the approved principles of statutory interpretation as outlined earlier in your letter.
- 14.3 The Council does not accept that the position it supports is at odds with the approved principles of statutory interpretation as outlined earlier in your letter

15 Para 25 of your letter

At para (25) of your letter you suggest that "a visibility splay will not be maintained free of vegetation without some sort of intervention..." and you suggest that this "...intervention can either take the form of regular and ongoing maintenance to remove vegetation or the installation of hardstanding such as asphalt or concrete, which would prevent the growth of vegetation.." which then leads on to your comments under your para 26

16 Para 26 of your letter

- 16.1 At para (26) of your letter you suggest that "...the ongoing maintenance of land necessary to remove vegetation and maintain a functional visibility splay requires a positive planning condition to be attached to any permission granted..." and you continue by suggesting "... a positive planning conditions may only be applied to land that is within the application site or within the control of the applicant..."
- 16.2 The Council does not accept that a positive planning condition is required in relation to relevant visibility splays which are wholly within the existing adopted highway
- 16.3 The Council does not accept that the decision in *Mouchell Superannuation Fund Trustees v Oxfordshire County Council* supports a proposition that a positive condition is required for visibility splays which are wholly within the existing adopted highway

17 Para 27 of your letter

- 17.1 It is not accepted that the Council's interpretation of Article 7 would "...create the very kind of mischief.." that you suggest "article 7 and the instructions in the application form were apparently designed to prevent..."

- 17.2 If that were the case then I would invite to explain why the Council's interpretation is consistent not only with other LPAs but also countless decisions of Planning Inspectors in countless Appeal decisions
- 17.3 You also suggest that
- “...If the interpretation of article 7 as advanced in the Council's legal advice were to be accepted, it would be impossible to attach positive conditions requiring the maintenance of visibility splays in cases where the land in question did not require a change of use or operational development...” but I would ask you to provide a single example of where a condition has been imposed in relation to relevant visibility splays within the existing adopted highway.
- 18 Para 29 of your letter
- You comment at para (23) of your letter that
- “..there may be many ways to achieve functional visibility splays for any given application, for example, by a positive condition, a Grampian condition, or through a planning obligation...”
- but you omit to also include the highway authority using their powers to achieve functional visibility splays where such are within the existing adopted highway and I do not think it unreasonable to ask why the highway authority are not more concerned about the point at issue if you are right that their powers are not sufficient in relation to visibility splays within the existing adopted highway.
- 19 Para 30 of your letter
- 19.1 At para (30) of your letter you suggest that:
- “...For a local planning authority to accept as valid and to proceed to consider a planning application that plainly fails to comply with the requirements of article 7 and the requirements stated in the application form, would in effect remove the option of the positive planning condition from the decision maker's choices. This effectively constitutes predetermination of the application, at least in regards to a positive condition for the maintenance of visibility splays, and where the issue of visibility splays goes to the root of the decision as to whether to grant planning permission, this predetermination may be sufficient for the court to decide to quash a planning permission granted in such circumstances....”
- 19.2 I would submit your reasoning is quite simply flawed
- 20 Para 31 of your letter
- 20.1 At para (31) of your letter you suggest that:
- “...The failure to properly identify the land to which the application relates is also extraordinarily prejudicial to the ability of statutory consultees and members of the public to give intelligent consideration and response to planning proposals during periods of consultations....”
- 20.2 You have however recognized elsewhere that there are no reported cases which support your proposition that a planning application will be invalid if the red line location plan omits to include relevant visibility splays which are part of the existing adopted highway.
- 21 Para 32 of your letter
- 21.1 The highway authority does not share your view that a planning application is invalid if the red line on the location plan does not include visibility splays which are within the existing adopted highway
- 21.2 It is the Council's case that there has not been any procedural impropriety in relation to the consultation arising from the red line shown on the location plan.
- 22 Para 33 of your letter

Noted, but the Council will strenuously resist any order to prohibit the Council from considering the Application or any application for a quashing order of a planning permission resulting from the Application.

23 Para 34 of your letter.

Noted, but again the Council will seek to resist any application for interim relief if such an avenue were pursued

24 Para 35 of your letter

The Council does not accept that insufficient information in relation to the red line has been submitted and accordingly that it has no intention of advising the applicant to that effect

25 Para 36 of your letter

The Council would likewise be willing to consider any form of alternative dispute resolution if it is felt by the Consortium that matters are capable of resolution but the Council is currently of the view that the Consortium is wholly misguided in the approach set out in the pre-action protocol letter

26 Paras 37-40 of your letter

Noted

27. May I also remind you of a number of paragraphs in the Advice from Charles Streeten of 20 July 2020 (albeit in relation to a different site ) which Advice was copied to you in full and where a number of paragraphs from that Advice are set out below for ease of reference as it is believed they have not been addressed in the pre-action letter dated 28<sup>th</sup> September

27.1 Paragraph numbered 7

"It should, however, be noted that notwithstanding the apparently strict wording of section 327A, the High Court has made clear that a breach of the requirements in the 2015 Order does not, necessarily, mean that a grant of planning permission will be quashed (see *R (Bishop) v Westminster CC* [2017] EWHC 3102 (Admin) at para. 23). Rather, the court retains its discretion regarding whether or not to quash a planning permission granted in breach of the 2015 Order. Indeed, in a case where it is 'highly likely' that the outcome would not have been substantially different absent the error, the court is under a duty pursuant to section 31 of the Senior Courts Act 1981 (as amended) to refuse both permission for judicial review and relief."

27.2 Paragraph numbered 8

"Thus, whilst local planning authorities should always seek to ensure that the requirements of the 2015 Order are properly followed, it may be that an inadvertent failure to follow the procedural requirements set down is not fatal to a grant of planning permission."

27.3 Paragraph numbered 10

"The section of the application form to which the Consortium refers reads:

"The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings)."

27.4 Paragraph numbered 11

"This is also reflected in the Government's Planning Practice Guidance ("**PPG**") which says at reference ID 14-024-20140306:

"The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around



buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.”

27.5 Paragraph numbered 12

“In interpreting these words it is important not to lose sight of their context. They have not been drafted as would a policy, still less with the care given to the drafting of legislation. In both cases are intended as practical guidance to those completing an application for planning permission. They should therefore be read with a considerable degree of common sense and not subjected to exegetical legal analysis. If authority is required for this proposition, it is to be found in *R (Solo Retail Limited) v Torridge DC* [2019] EWHC 489 (Admin) at para. 33.”

27.6 Paragraph numbered 14

“The issue, therefore, is whether planning permission for the Development can be granted, notwithstanding that an area included within the visibility splay is on adopted highway outside the red line boundary. My view is that it can:

- a. Firstly, the text of both the application form and the guidance refers to “all land necessary to carry out the proposed development”. In my view, the word development is of central importance. If land is not being developed, it does not need to be included within the red line boundary. Thus, although land that is not adopted highway such that its use needs to be changed to be used as a visibility splay, it may need to be shown within the red line boundary, where the land used for the visibility splay is already adopted highway, and no operational development is required, it does not need to be included within the red line.
- b. Secondly, an over literal reading of the application form and PPG would create absurd results. As those instructing rightly point out, both refer to car parking and open areas around buildings. However, if the development proposed does not include any car parking it plainly would not be invalid if the red line on the location plan did not show land for car parking. Similarly, if the application was such that the footprint of a proposed building meant there were to be no open areas around it, the effect of the application form is clearly not intended to be that the application is invalid because it fails to show any open areas. On the contrary, as both the form and the PPG make clear, the references given are mere examples, and are not intended to be prescriptive or exhaustive. Ultimately, what land is necessary to carry out the proposed development will be a matter of judgement for the local planning authority to determine on the facts of any given case.

27.7 Paragraph numbered 16

“Applying these principles, in my opinion:

Provided that all of the relevant land upon which works to create the access for the Development fall within the red line boundary, the Council would be entitled to conclude that the land necessary to carry out the proposed development does not include land falling within the visibility splays but outwith the red line boundary, which is adopted highway.”

27.8 Paragraph numbered 18

“Moreover, even if I am wrong about that, I am of the view that the prospects of bringing a successful claim for judicial review would be low. I cannot see what prejudice could be said to result from not including adopted highway land forming part of the visibility splay within the red line boundary for the development and, in any event, a claim for judicial review would be likely to be refused permission and/or relief pursuant to section 31 of the Senior Courts Act 1981 on the basis that it is highly likely the outcome would not have been substantially different absent any error of law identified.”

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stephen Reid', with a horizontal line drawn underneath.

**Stephen Reid**  
Senior Planning Lawyer  
acting for South Cambridgeshire District Council

Tel: 01223 457094 / 07817 730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 26 October 2020 08:15

**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** 20/02453/S73 (The Retreat, Fews Lane, Longstanton) & 20/03370/OUT (95 Bannold Road, Waterbeach)

Dear Mr Reid,

I am in the process of drafting further pre-action correspondence in regards to application 20/02453/S73 (The Retreat, Fews Lane, Longstanton), which will also apply, to some extent, to the issues concerning application 20/03370/OUT at 95 Bannold Road, Waterbeach.

I'm waiting to hear back from counsel on a couple of points prior to finalising the letter, but I should have it to you sometime tomorrow.

Kind regards,

Daniel Fulton  
Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

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**From:** Stephen Reid  
**Sent:** 26 October 2020 08:22  
**To:** 'Daniel Fulton' <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Subject:** FW: Fews LaneOct16th  
**Importance:** High

Dear Fews Lane Consortium Ltd

1. I am conscious that you have emailed me this morning and said you are "...in the process of drafting further pre-action correspondence in regards to application 20/02453/S73 (The Retreat, Fews Lane, Longstanton), which will also apply, to some extent, to the issues concerning application 20/03370/OUT at 95 Bannold Road, Waterbeach.

I'm waiting to hear back from counsel on a couple of points prior to finalising the letter, but I should have it to you sometime tomorrow...."

2. I emailed you on 20<sup>th</sup> October and said:

"....Please confirm you have received in the post the original of the attached letter...."

I await your response.

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice  
  
Telephone: 0781 7730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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- We will agree key deadlines/operational requirements with clients within 5 working days.
- We will regularly update our clients on progress (weekly unless no movement on a particular matter)

**From:** Stephen Reid  
**Sent:** 20 October 2020 09:32  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Subject:** FW: Fews LaneOct16th

**Importance:** High

Dear Fews Lane consortium Ltd

Please confirm you have received in the post the original of the attached letter.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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**From:** Stephen Reid

**Sent:** 16 October 2020 15:18

**To:** 'Daniel Fulton' <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Subject:** Fews LaneOct16th

**Importance:** High

Dear Fews Lane consortium Ltd

Please see attached letter dated 16<sup>th</sup> October which I am instructed to send to you .

I am not in the office today and therefore will need to advise you separately when a copy is put in the post to you.

Apologies that the letter was not emailed to you earlier in the week.

Any queries please let me know.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

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29 October 2020

South Cambridgeshire District Council  
FAO 3C Shared Services Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sirs

**Re: Planning application 20/02453/S73 – The Retreat, Fews Lane, Longstanton**

- (1) Thank you for your letter dated 16 October 2020.
- (2) Based on the planning history of the site, we feel it is likely that numerous legal errors are likely to be made by the Council in the decision making process for application 20/02453/S73. We would like to bring a number of these historical issues to the Council's attention in hopes that the same mistakes will not be repeated in regards to planning application 20/02453/S73.
- (3) Planning application 20/02453/S73 concerns a proposal for the erection of one additional dwelling in Fews Lane, Longstanton.
- (4) Planning application S/2439/18/FL also sought permission for the erection of one additional dwelling in Fews Lane, Longstanton.
- (5) Planning application S/2439/18/FL application was considered by the Council's planning committee on 13 February 2019. A transcript of the committee meeting has previously been provided to the Council.
- (6) I would draw the Council's attention to the following exchange, which appears on page 12 of the transcript. Dr Jon Finney, highway development engineer, was speaking on behalf of Cambridgeshire County Council, the local highway authority, and Mr John Koch was senior planning officer for the Council.

Cllr H. Williams: *On page 52, I note that it says one of the things that has been raised obviously is the visibility splays—on the third paragraph down. I realise that's the original comments. Is that something that is feasible to condition? Is that something that's still feasible? Obviously things have moved on since the original comments.*

Dr Jon Finney: *My understanding is it's not. Obviously, I'll defer to Mr Koch on this particular issue, but my understanding is, no, it is not, which is why, briefly, I just want to check on the red line drawing. The area, although there is sufficient width within Fews Lane to do the work, it is not under the control of the applicant, so it's not feasible to request that, because obviously, they don't actually control the land. Obviously, Mr Koch will be able to confirm that in planning terms, but I'm not a planning officer.*

Mr John Koch: *Chair, through you, it's absolutely right.*

- (7) I would also draw the Council's attention to the following remark made by the chairman of the committee on page 14:

Cllr J. Batchelor: *Members, we have to be mindful of the fact that any conditioning has to be deliverable by the applicant, he has no control over this piece of road.*

- (8) These two passages can be distilled down into the following four suppositions.

**Supposition A:** It is not possible to attach conditions pertaining to land that is not in the control of the applicant.

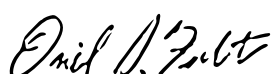
**Supposition B:** Conditions can only be attached to land within the red line boundaries on the location plan.

**Supposition C:** Any conditioning has to be deliverable by the applicant.

**Supposition D:** The applicant has no control over the piece of road required for access to the site.

- (9) Supposition A is taken from direction given to the committee by Dr Jon Finney and confirmed on behalf of the Council by Mr John Koch. Could the Council please confirm if it stands by the legality of this supposition?
- (10) Supposition B is implied by Dr Jon Finney's remark that he needed to consult the "red line drawing". Could the Council please confirm if it stands by the legality of this supposition?
- (11) Supposition C is taken directly from the remarks made to the committee by its chairman, Cllr John Batchelor. Could the Council please confirm if it stands by the legality of these remarks or if these remarks were unlawful misdirection?
- (12) Supposition D is also taken directly from the remarks to the committee by Dr Jon Finney, which were confirmed on behalf of the Council by Mr John Koch, and which were later repeated by the committee's chairman, Cllr John Batchelor. This information was not contained in the application before the committee, so it is unclear as to how this information came to the attention of officers and members. It is also unclear what basis officers or members had for introducing this purported fact into the decision making process. Could the Council please confirm if the statement made by Dr Jon Finney and confirmed by Mr John Koch on behalf of the Council and later repeated by the chairman of the committee was in fact true, and if so, could the Council please say how the officers and/or member came to know this information? Could the Council please confirm if it was a proper use of officers' and the member's positions to introduce this fact into the decision making process during the committee's deliberations? Could the Council also please confirm if the information summarised in supposition D was material or immaterial to the decision in question?

Kind regards



Daniel Fulton  
Director



**AUDIO TRANSCRIPTION 13 02 2019 11:38:32**

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**  
**PLANNING COMMITTEE MEETING**

[Start of recorded material at 11:38:32]

Cllr John Batchelor:                   - agenda, we're at Longstanton, so the erection of a three-bedroom bungalow with parking for the application, the land is at the rear of The Retreat, Few's Lane, Longstanton. The applicant is Mr and Mrs Caddoo, the recommendation is approval. The committee visited the site yesterday as another departure and the presenting officer is Alison Twyford ... Alison has now turned into Mr John Koch. So, over to you then, John, thank you.

Mr John Koch:                        Thank you, Chair. Just a few pointers really in respect of the application. First of all members should have already received an additional letter of objection from Mr Fulton, an adjoining occupier, which I think has been sent to you electronically earlier in the week. Also, some concerns have been raised that some of the representations received have not all been viewable on the website and that point has been checked and no issues have been identified in terms of what can be seen and what can't.

Members, it's worth noting the history of this application and, in particular, the inspector's appeal decision of 27<sup>th</sup> September last year. While the application before you today is identical in most respects, members are still required to consider the application on its merits, and it's very important that you do so. Nonetheless, due regard should be paid to the appeal decision as a material consideration. Clearly, the weight that you give to that is a matter for you, as members, but nonetheless, it is a material consideration.

If members are minded to vote against the proposal and refuse the application, they will need to give a clear reasoning for doing so, particularly in the light of the appeal decision. While not explicitly set out in the report before you, officers do confirm that, in their opinion, the residual cumulative impact of vehicle movements arising from the demands of an additional dwelling, when taken alongside the five other dwellings which already benefit from vehicular access off Few's Lane, is not sufficient to warrant a refusal on highway safety grounds.

Similarly, officers consider that access for emergency vehicles does not warrant a refusal, either on grounds of highway safety or, indeed, general public safety. In the event the application is approved, the environmental health officer has requested an informative through the burning of waste or other materials on the site and the need to minimise noise and dust during the construction of the dwelling. Likewise, the local highway authority has requested informatives about works within or affecting the public highway. They're not included in the list of informatives attached to the recommendation, but for the sake of completeness, can be added to the decision notice should the application be approved.

I think, finally for members, it's worth noting that in the right-hand margins to the report, there are some comments. Just to confirm that there's no change in the report, the report is final, it has effectively taken onboard those earlier comments when the report was checked, so they have no materiality on the report itself. Apart from that, I think that's it, thank you.

Cllr John Batchelor: Thank you very much. Sorry, just to go back a bit, I should have mentioned that the vice-chair has had to leave, so I've asked Councillor Milnes to step in. Are we all happy with that?

Yes [All].

Cllr John Batchelor: No objections? Fine. So, any points of clarification, please? No? Then we'll move on. I have a number of speakers, the other thing we should say, I've had a note, and you should all have a copy of it, from County Councillor Peter Hudson, also giving his views on this, so you should all have that before you. I have some speakers on this one. So, would Mr Fulton come forward, please? Good morning, welcome.

Mr Daniel Fulton: I have two points of clarification before I get to my comments. The first is with the legal officer ...

Male Voice: I don't think the speaker is allowed to ask a question about clarification.

Mr Daniel Fulton: That's fine.

Cllr John Batchelor: I'm sorry, you're apparently not allowed to. I would press on, because you've only got the three minutes here.

Mr Daniel Fulton:

The council has been informed that the ownership certificate is incorrect. Section 65 of the Town and Country Planning Act 1990 says that if all owners of the land within the application site have not been notified of the application that the local planning authority 'shall not consider the application'. I don't know if my letter was received, but that's Section 65 from the Town and Country Planning Act. I would thank the planning officer for his comment, for his summary of the application today, but I would note that his comments are [absolutely] different than the officer's report in almost every regard and that my comments today were based on the officer's report.

I'll simply say that we've attempted to engage with planning officers and the local highway authority in regards to this application for a year now and there's been no meaningful engagement at all. We've basically just been ignored. I have no objection to the principle of the development of the site and any development scheme would be fine with me as long as it complies with the policies of the local plan and the national planning policies. As the officer said, the weight for any material consideration is to be determined solely by the decision-maker.

The decision-maker is this planning committee. Contrary to what the officer has stated at the meeting just now, the officer's report gives heavy weight to the appeal decision. However, it doesn't present the full facts in regards to the appeal decision. All I'll briefly say is that the inspector was unaware that Fews Lane was a public footpath. The inspector failed to take account of his own decision from 1989 which found exactly the opposite conclusions on highway safety in exactly the same site. The inspector ignored the fact that the application site boundaries did not comply with the national information requirements and weren't valid.

The planning inspector ignored Policy DP5 of the Local Development Framework that was in-place at the time. Since the appeal was issued, a new policy, H16, on the development of residential gardens, has been approved by this council and the adopted local plan. When outline planning was initially granted for this application in 2013, the local highway authority requested conditions on widening Fews Lane and putting into place pedestrian visibility displays. Those conditions were not attached to subsequent decisions because they were outside the boundaries of the application site.

But the boundaries of the application site did not comply with the national information requirements and were, therefore, invalid. As for access for emergency vehicles, I will only say that the officer's report argues that past failures to follow the policy mean that it would be unreasonable to then start following the policy after previous failures. I find that argument to be completely inexplicable. Thank you for the opportunity to [comment]. I sincerely thank you for hearing me.

Cllr John Batchelor: Just stay there for a moment, they might want some clarification, so if you just stay with us for a bit there. Just to say that we have all had your more detailed notes on this and I'm sure everybody has studied them at length. So, members, any points of clarification you would like? They're perfectly happy, to thank you very much.

Mr Daniel Fulton: Thank you.

Cllr John Batchelor: So, is Mr Caddoo with us this morning? If you would like to come forward, please? Sorry, there's some confusion, you do want to speak, I take it, do you?

Mr Caddoo: Not necessarily, no, but I would appreciate the opportunity.

Cllr John Batchelor: The opportunity is there, if you wish to. That's fine. Thank you, so when you're ready, just push the large button in the middle and you're underway. Thank you.

Mr Caddoo: Okay, thank you very much for this opportunity to speak in front of the committee. It is, indeed, unfortunate that this application finds itself in front of the committee today. It was a duplicate planning application, approved, obviously, upon appeal by the inspectorate back in September 2018. I feel, in my opinion, the only reason this application is here today is the result of the actions of a third party who, throughout this planning process, has continued to raise concerns without any substance.

When all else fails, resorting to making threats of legal action against the district council and even judicial reviews, if things don't go his way. This is a very straightforward application for a three-bedroom bungalow and, as I said before, it should not be here today in front of the committee. I trust the chair and the committee will not be intimidated or feel threatened by the behaviour and actions of this individual. Thank you.

Cllr John Batchelor: Thank you very much. Any points of clarification? Councillor Williams.

Cllr Heather Williams: Thank you. One of the things that is, potentially, a condition is working hours, obviously aware of the history. If ... and this is not saying what will happen, but if the committee was minded to approve, would you be okay or would you challenge if working hour constraints were placed?

Mr Caddoo: I have no objections to that. [Unintelligible 00:11:47] that the local highways authority have obviously had input into this application and previous applications, and there appears to be what's best described as typographical errors in their report. In the application that was approved, the restriction on the vehicle movements was only before 9:30am because of the local school traffic. In the latest report from the local highways, they state that there are no deliveries on the site between the hours and 9:00am and 4:00pm, which is ridiculous, obviously. That means no deliveries during working time, but I have no objections to any reasonable limitation on construction traffic.

Cllr John Batchelor: Okay, thank you very much, I don't think there are any other questions on it? No. Okay, thank you. Is the parish clerk for Longstanton with us?

Ms Libby White: Yes.

Cllr John Batchelor: Come forward and just as a matter of process, I have to ask that you have permission of your parish council to speak on their behalf. Yes? Okay. I didn't get your name, sorry.

Ms Libby White: Yes, it's Libby White.

Cllr John Batchelor: Thank you very much, when you're ready then.

Ms Libby White: I'm the parish clerk to Longstanton Parish Council and I've been asked by council members to convey their reasons for objecting to this planning application. They basically said that the application and a previous application for a similar, almost identical development, their main reasons were, the density and layout of the site, not only due to perceived over-development, but also the effect that these piecemeal applications are having on highway safety, especially of pedestrian users of the public footpath running through Fewes Lane.

I understand you have all the comments that have been made by the council previously. Their comments come from comments made by residents and are based on the [little] planning knowledge that they do have. When considering highway safety, councillors are mainly concerned about pedestrians using Fews Lane, which serves nearly 500 homes on the Home Farm development along with dwellings located, here, on Fews Lane. The pedestrian usage for this footpath is considerable, ranging from children walking to school, dog walkers, ramblers, families with small children, commuters going to catch the bus or the guided bus, and those simply walking to the shops.

It's a primary access point from Home Farm to the High Street. The footpath is suitable for one vehicle to travel, and if you're walking on the path at the same time when a vehicle is also moving, the pedestrian has no option but to stand on the verge. This quiet lane, prior to development, had two bungalows on it with access to the garage and the house adjacent to the entrance of the lane. Through various applications, there are now four homes positioned at the end of the lane, along with their garages. This development will make it five. With an average of two vehicles per dwelling, we have increased traffic from four cars to ten, ignoring deliveries and visitors. A comment has been made that the High Street is slow and relatively quiet. This is not the feeling by residents.

Longstanton has a very active speed watch team and a number of residents, both from the High Street and from Mitchcroft Road, and the surrounding streets, expressed concerns about vehicle speed and pedestrian and cycle safety. As a result, approval was granted by the police to operate in four locations relatively close to Fews Lane. I'm unable to confirm too many details, but having spoken to the coordinator, also a parish councillor, he assured me there are regular high volumes of traffic with, typically, 120 to 150 cars per hour in each direction at the locations around Fews Lane with bursts of 170-plus at peak times.

He stated that people trying to get in and out of Fews Lane have created a major issue or have sat down and waited patiently to get out and waited a while to find a break in traffic. He also commented that, in a relatively close proximity, you have a bus stop that stops to collect village college students and the pupils using Fews Lane to get to the bus stop. At school time, there's a lot of pedestrian access for children and,

additionally, many parents in the Willingham end of the village and from the Home Farm development, walk their children to school in the village using both the footpaths across the end of Fews Lane on the High Street and the footpath through Fews Lane itself.

An increase in vehicular traffic in Fews Lane will create a noticeable impact, likely to be at peak times when there's the highest concentrations of vehicles using the High Street, exiting Mitchcroft Road, and the maximum potential of foot traffic on the pavements.

Cllr John Batchelor: Thank you very much. Any points of clarification? Yes? Councillor Handley.

Cllr Bill Handley: Just for clarification, you said something about the increase in traffic, I think you said four to ten, was it, or six to ten? And can you just explain why that's the increase that we would see.

Ms Libby White: I think what I'm trying to say is that there were two bungalows originally down Fews Lane, it's now increased to four, so if you average two vehicles per house, you've increased it to eight, and with this one, you're potentially looking at ten cars for this lane that was only originally for two properties.

Cllr Bill Handley: I understand.

Cllr John Batchelor: Alright, thanks very much, anybody else? Councillor Topping?

Cllr Peter Topping: Just very quickly, is there any other footpath from the large estate for the schoolchildren? I mean is there another footpath that they could use other than this one?

Ms Libby White: They would have to walk on the main roads. It's almost a shortcut and it's, obviously, slightly nicer to walk on a green footpath than next to the traffic.

Cllr John Batchelor: Thank you, anybody else? No? Right, thank you very much. Local member, Councillor Johnson. Good morning.

Cllr Sarah Cheung Johnson: Thank you chair. I'm speaking on behalf of Councillor Alex Malyon who is a fellow member for Longstanton ward and our comments represent both the views of residents who have contacted us, as well as our views on behalf of the residents of Longstanton. Our concerns are primarily on road safety, as highlighted by our parish clerk. For the benefit of the

committee who've not visited the site, Few's Lane is a narrow lane, heavily used by pedestrians, as highlighted, especially children who use it as a cut-through to access the High Street.

The Home Farm development is 500 homes of mainly family homes and they use both Few's Lane itself and the pavement across the top of Few's Lane to access the High Street to catch the school bus to Swavesey Village College as well as our village primary school further down the High Street and to access the closest shop to the estate, which is the Co-op. As a car pulls out of Few's Lane, you need to take your car fully out of the lane, fully onto the pavement and basically onto the High Street itself to get the visibility you need to see around the tall hedges and shrubberies on either side of Few's Lane.

Crossing this footpath, the vehicle can prove dangerous, and we saw this just morning because I accompanied Councillor Heylings on a site visit because she was unable to join the minibus group yesterday. We were there at 8:30am, so many children were going past on scooters, many parents were there with their babies in buggies. And as a parent myself with pre-schoolers, I would just to remind members of the committee that children on scooters go at quite a rate and not always with the due care and attention that we, as parents, would like them to. We're also concerned with the Fire Service access to the site and understand that, because of the restrictive nature of Few's Lane, any fire engine attending an emergency, would only be able to do so by stopping at the High Street and dragging the hose down Few's Lane.

As far as we're aware, the Fire Service was not approached to lodge these concerns for two existing bungalows that were built in 2016 or for this one. And whilst it may be seen that one additional dwelling in, and of itself, can't cause overriding major concerns of road safety and fire safety, we're concerned about the cumulative impact. So, we would like to request that if the committee be minded to approve this, that if they are able to, in any way, attach any conditions to ensure our residents' road safety, that they please do so. Thank you.

Cllr John Batchelor: Thank you very much. Any questions? Yes, Councillor Wright, please.

Cllr Nick Wright: What sort of condition are you looking for?

Cllr Sarah Cheung Johnson: I think you have, in your pack that you've got from Mr Fulton,



some suggestions on things that he would ... but I think our major concerns are with that visibility at the top of the lane. The inspector's appeal says that two cars can pass on Few's Lane, and I really can't see how they can do so safely without going onto that verge and practically into the ditch. So, in order to pass, you do have to reverse into someone's private driveway or someone has to reverse all the way to the top of Few's Lane where that turning point is.

I don't know what's possible to be able to do that safely and to ensure that any verge, which is private land, is not then fenced, because if it were, then that would make the lane basically impossible for two cars to pass. But our main concern is on that visibility of that footpath where Few's Lane meets High Street.

Cllr John Batchelor: Alright, Councillor Williams?

Cllr Heather Williams: Yes, just on the condition that you're touching on, so you would like to see a condition about deliveries for construction? Could you just clarify what it is that you think the residents really would like?

Cllr Sarah Cheung Johnson: Sure. It's around the vehicular access to Few's Lane for vehicles coming in and out of that. If there are ways that the applicant can provide to ensure ... I don't know if there's extra, that you can request this, but mirrors or things to allow vehicles coming in that lane can do so more safely than they currently are, because of the tall hedges and shrubs on either side, which are private land.

Cllr John Batchelor: Thank you. Anyone else? Councillor Cahn, please.

Cllr Martin Cahn: During the site visit, one of the issues that struck us was that there was a considerable problem of parking on the High Street which restricted visibility when you're coming out. I just wondered whether there had been any proposals to control parking on High Street?

Cllr Sarah Cheung Johnson: You touch, obviously, quite a thorny subject, but the parking on the High Street, especially with the Co-op, has increased. We have put yellow lines further down the lane, but unfortunately, they often get ignored. We've obviously got a lot of construction vehicles, both on the A14 and from Northstowe, that are using the Co-op to pick up lunch. So, we are constantly getting very large vehicles parking on the High

Street, just stopping for five minutes to get a sandwich, but obviously, then, causing an impact. So, sometimes when you go there, like we went at quite a quiet time, it can seem like a quiet street, but it doesn't take many vehicles to be there for it to be quite busy.

Cllr John Batchelor: Alright, thank you, and I think that's it. Thank you very much. Mr Finney, I believe, would like to clarify an issue on timing of deliveries, and Mr Finney is the officer from the county council, responsible for everything, isn't it, in transport matters?

Dr Jon Finney Not quite, chair. Firstly, may I apologise to the committee, I'm recovering from a slight chest infection, so I'm slightly short of breath, so I have to occasionally take a deep breath in, so I do apologise for that. In terms of the timings, there is a typo in the report, the timings should be that the only times we permit deliveries are between 9:30am and 3:30pm, we're not trying to restrict them. They are the hours that we would allow deliveries, not outside those hours, so all the deliveries are missing the peak time movements, particularly in [unintelligible 00:24:50] to the children, we recognise that.

So, that is a typo, whether that came from the Highway Authority, if it did, I apologise, but that's it. And if you've got other points of clarification, obviously, there's a lot discussion here about highway safety in relationship to the [turn], do you wish me to talk about that now or do you want to debate?

Cllr John Batchelor: Yes please, because unlike me, you have to understand that you're still maintaining a request for a refusal from the highways. Perhaps you can clarify that position then, please.

Dr Jon Finney: I still start the debate at premise, the Highways Authority dislike incremental development, it's very, very difficult for us to deal with. The main reason is that it's just another house, and I'm not going to deny, that makes it very awkward. On average, across South Cambs, each house generates four and a half vehicle movements per day, where the 'half' comes from, I'm not absolutely certain, but that's the average. In Longstanton, that's probably about where we sit, and that's in a 12-hour period, so you're talking relatively low numbers of increase in motor vehicle movements in and out of Few's Lane.

Under the NPPF, paragraph 109, we are now permitted, or this is now clarified that we can request and refuse on the grounds

of highway safety if that highway safety impact is significant. It is very difficult for the Highway Authority to argue that an increase in 4.5 vehicle movements in a 12-hour period is a significant impact on highway safety. I accept that Few's Lane is used relatively heavily by pedestrians, and particularly as the councillors have pointed out, and so has the objector that you've got 500 houses to the north, however, there are [other] footway connections, so not all 500 houses are going to be using Few's Lane.

It is a much more attractive route, I'm not going to deny that, but again, it comes down to the fact that if we have that average, 4.5, where is the level of significant conflict? There is an increase in conflict, and I'm not going to deny that. As you know, any vehicle in movement can be a conflict. In terms of the access itself, whereas you cannot achieve what we would call a 2-metre x 2-metre pedestrian visibility display, you can achieve a 1.5-metre x 1.5-metre visibility display, which is what is required when you're designing many of the roads and bridges.

So, if we went to appeal on that, that is precisely what any application would say, we can comply with the more onerous guidance, which is the design for roads and bridges, it's more onerous in terms of its design criteria than [unintelligible 00:27:37] streets. I can't comment on the fire and rescue, because obviously, they are a separate body, but I would just briefly say that one of my oldest friends who was actually a fireman until he recently retired, and if you've got 3.7 metres clearance, they will take the vehicle down it. If somebody's life is at risk, they will take the vehicle down it, they will bump a car out of the way to get their vehicle down there. They don't like and they, obviously, try and avoid it, but they will do so if necessary.

As I say, in terms of the application, the Highway Authority has no material reasons to request a refusal, it's that awful situation where the impact is not significant enough for us to do so. I am not denying that the councillors and the objector is correct, there will be an impact, but we cannot justify that as being significant. So, if anybody else has any further questions, please do ask and I will do my best to answer them to enable you, as the committee, to make their decision with as much information available to you as possible. Thank you very much.

Cllr John Batchelor: Thank you very much. I think Councillor Williams has a question for you.

Cllr Heather Williams: Thank you. On page 52, I note that it says one of the things that has been raised obviously is the visibility splays—on the third paragraph down. I realise that’s the original comments. Is that something that is feasible to condition? Is that something that’s still feasible? Obviously things have moved on since the original comments.

Dr Jon Finney: My understanding is it’s not. Obviously, i’ll defer to Mr Koch on this particular issue, but my understanding is, no, it is not, which is why, briefly, I just want to check on the red line drawing. The area, although there is sufficient width within Fewes Lane to do the work, it is not under the control of the applicant, so it’s not feasible to request that, because obviously, [them], they don’t actually control the land. Obviously, Mr Koch will be able to confirm that in planning terms, but I’m not a planning officer.

Mr John Koch: Chair, through you, it’s absolutely right.

Cllr John Batchelor: Thank you. Councillor Milnes.

Cllr Brian Milnes: Yes, just to confirm the restrictive hours on page 52 on the second paragraph, can you confirm that you seek to restrict vehicle movements deliveries between 07:30 and 09:30 and 15:30 and 18:00?

Dr Jon Finney?: That is correct, yes.

Cllr John Batchelor: Thank you very much, and Councillor Topping, please.

Cllr Peter Topping: Thank you Mr Chair. Jon, originally, I was trying to work out how many conditions you were seeking as the local Highways Authority to ask this committee to impose, but I think there’s a bit of duplication. So, can I clarify that there are four conditions, which are, [using] about the material for the first ten metres, that they’ve got to get separate permission from the Highways Authority for work and access to Fewes Lane should be widened to a minimum width and there’s stuff about private water. Those are the four ones, just for clarity?

Dr Jon Finney: Just for clarity, yes. The first condition is bound material for the full width of the public right of way for a depth of ten metres to prevent material dragging onto the carriageway and

footway. The second point is actually an informative, some developers have read the planning permission, granting permission to work in the adopted public highway, that is not correct. You need our permission, as the Highways Authority, to carry out ... you cannot unreasonably withhold that, we will not do so, but the developers, basically, still need to seek our permission to work in the highway.

In terms of the five metres, Councillor Williams has just asked that question and no, we can't impose that and Mr Koch has agreed, and the fourth one was about private water. Yes, we would like the water to be shed so it doesn't actually drain onto the what we would call the ['metalled'] highway, which is the High Street itself.

Cllr Peter Topping:

So, are there any other conditions that could be imposed with regard particularly to the access from the main road to Fews Lane? Because it seems to me that this rests on the concerns about the safety between pedestrians and vehicles. I was at a meeting last night, a parish council meeting, where the stated aims of the local authorities was that there is a sort of hierarchy where pedestrians and cyclists came first and then public transport and, eventually, motorists.

Now, whatever one thinks of that hierarchy, that is the stated aim of the local authorities and I just wonder whether there's anything that we can do to preserve that hierarchy with regard to protecting pedestrians in this respect. Sorry, that was a bit long, but you know what I mean.

Dr Jon Finney?:

In terms of what we call the 'user hierarchy', you are quite correct - pedestrians, cyclists, public service vehicles and finally, private motor vehicle. Clearly, that needs to be balanced, the world couldn't be designed, regretfully, just for pedestrians, much as I like the idea because I am a pedestrian. So, we have to balance that, and, as I say, it's the risks and hazards that we balance here and the relatively low number of motor vehicles using this access as opposed to the relatively high number of pedestrians, yes, there will be a certain level of conflict.

It's a slow-speed environment, even with a ten-metre length of bound material at the access, it's not going to significantly increase motor vehicular speeds. Yes, as a pedestrian, I want to get out of the way of a motor vehicle, I'll be quite honest with you, but again, how often does that occur and is that a

significant inconvenience for a pedestrian? And we have to consider the word ‘significant’, and unfortunately, I don’t believe it is, whereas I am a full supporter of the user hierarchy and in most developments, as you know, we will drive that forward as much as we can.

As I say, it’s this incremental development which is always difficult for us.

Cllr John Batchelor: Thank you very much for that. Members, we have to be mindful of the fact that any conditioning has to be deliverable by the applicant, he has no control over this piece of road. Councillor Fane, please.

Cllr Peter Fane: Chairman, my question has just been dealt with, thank you.

Cllr John Batchelor: Councillor Handley, please.

Cllr Bill Handley: My main question has actually just been answered as well, but I would like to ask one thing. A comment that Councillor Cheung Johnson mentioned about the possibility of mirrors might help improve the visibility for both pedestrians and vehicles.

Dr Jon Finny: The Highway Authority will not permit the installation of mirrors upon land under its control, they are far too risky for us because if it ever got broken or damaged, whose responsibility is it? If, however, the applicant wishes to install mirrors on private ground to improve that visibility, that is a matter for them to consider, not the Highway Authority. We have to look at the visibility to the junction without any artificial aids.

Cllr Bill Handley: I assume that, in this case, that’s not going to be possible then?

Dr Jon Finney: Correct, yes.

Cllr John Batchelor: Okay, thank you very much Mr Finney. Alright, the debate is over, anyone wish to comment? Yes, Councillor Williams, please.

Cllr Heather Williams: Just reading the conditions on page 58, I think we’ve heard a lot about the pedestrians and I’m wondering whether ... and I’m looking at the planning officers here, if there’s a possibility that we change the no deliveries [within] outside of the hours of 9:30am to 3:30pm. And whether it would be possible to create, during the construction phase, some sort of management plan

with the pedestrians such as somebody there stopping traffic, but simply for the construction phase.

I think it's regrettable, my view is that one extra dwelling is not significant harm and it's regrettable for many reasons. I can't see a material planning consideration for refusal, but I would like to see a bit more robustness in the conditions in relation to delivery and the control during the construction process.

Cllr John Batchelor:

Thank you very much.

Mr John Koch?:

Chair, I think it's a matter for members, at the end of the day, if you wish to, as I say, go with a condition in respect of delivery times. I think the applicant has muted that's not necessarily unreasonable, I think that's within your gift to do so, if you so desire that that's necessary. Obviously, bearing in mind that the inspector did not consider it necessary, but that's still within your gift, absolutely. In terms of a construction management plan, again, the inspector dismissed that a condition put forward by this council previously.

We did actually have a costs application on the appeal in respect of that particular ... the reason for refusal previously, actually, rather than a proposed condition. But it is within your gift and if you feel it can be justified, then it's a matter for you, as members, to take that view. The inspector's view, it's always difficult with a single dwelling because the construction times, the construction process, is often quite limited.

However, Mr Finney has advised you that whilst the Highway Authority don't object, there clearly will be some conflicts and there will obviously be conflicts during the construction phase. So, if you feel that it is justified, then I don't think [unintelligible 00:38:53] to say that you shouldn't impose such a condition.

Cllr John Batchelor:

Thank you. Councillor Milnes.

Cllr Brian Milnes:

I would just like to refer to [both] that issue, I'm not sure such a condition would be practical or implementable. I absolutely hear the concern of the mixture of pedestrians, cyclists and then construction traffic on top. Clearly, the restrictions that already are in-place, they're going to remove that when the majority of children are walking there. And the other thing that I note is that, despite reservations about the accuracy of these 4.5 vehicle movements out onto the High Street, when the parish

council have counted something like 160, it is a very small, additional number. Those are the figures on which we have to base our decision.

Cllr John Batchelor: Thank you very much for that. Councillor Handley, please.

Cllr Bill Handley: Dr [Finney] said earlier that an incremental increase, a small increase, is going to make a difference, a tiny difference, such that we can't attach significance to the increased risk. I feel the same kind of frustration. Am I right though in saying, and I'm asking the question of Mr Koch here, that we can't make any allowance for that. We might make a different decision, if we're increasing from two to six, we might say that's a significant increase, but the fact that we're going from five to six is a completely different thing.

What I'm asking, Mr Koch is, we can't take any consideration about decisions that have been taken before, the applicants made reference to mistakes that were made before. We can't make any reference to that or take that into consideration, we just look at this as a standalone application, correct?

Mr John Koch: I'm not quite sure what the question there was, chairman.

Cllr Bill Handley: I didn't put it well, would you like me to re-phrase it?

Cllr John Batchelor: Yes, re-phrase it.

Cllr Bill Handley: I'm just asking, the applicant said that there were mistakes made in previous applications, such that the thing about the increased risk, in his opinion, was not taken properly into account. The point I'm making is that we can't take any consideration of any decisions taken previously. We are looking at this as a standalone application and we only look at the increase of the one property, the risk of the extra volume of traffic from one property.

Mr John Koch: Yes, I think that's generally correct. First of all, you look at the application in its merits, you look at it fresh today, we've mentioned earlier about what's known as 'residual cumulative traffic impacts'. And the view has been made, well, it isn't, it isn't necessarily one additional one because, over time, a number of additional dwellings have been added to the traffic flows up and down Fews Lane as they've been built.

The situation you have today is that you have, I think, five



dwellings which are accessed off the lane, this will be an additional one. It's the view of officers, whichever way you look at it, that, whilst, yes, there will be some conflict, because an additional level of traffic must create something, it's not significant enough to warrant a refusal, and that's our position as officers.

Cllr John Batchelor: Councillor Williams.

Cllr Heather Williams: Thank you. I just want to clarify for certain this condition, because I appreciate what Councillor Milnes was saying, I think we're all agreed on the hours, but the actual wording in the condition on page 58, I believe, is 'no power-operated machinery shall operate on-site before 8:00am'. And apologies if I've missed it, but I can't see the deliveries as a condition at a moment.

Male Voice: Page 52.

Cllr Heather Williams: 52?

Male Voice: Yes, the second paragraph.

Cllr Heather Williams: And, as members, can we please choose for that to be added in?

Cllr John Batchelor: Alright, well, members, let's decide whether or not we want to do that then, so what timings are we suggesting?

Cllr Heather Williams: My suggestion, that there are no deliveries outside the hours of 09:30 to 15:30.

Cllr John Batchelor: Okay, so you're suggesting a condition which is the same as the one on page 52, Highways would require no deliveries between 07:30am and 09:30am, 3:30pm and 6:00pm.

Female Voice: Good.

Cllr John Batchelor: Do you want to speak to that, Councillor Rippeth?

Cllr Judith Rippeth: I don't know if I can come in at this point? But, the 3:30pm seems like it would coincide with schoolchildren walking back, would we not want to make it a shorter time? 3:00pm? Because we're trying to avoid conflict with pedestrians, aren't we? Just out of interest.

Cllr John Batchelor: This was the original Highways Authority request, so it has

some standing. I'm not sure what time the schools actually turn out, do you?

Cllr Judith Rippeth: Well, my son's school is 3:20pm, 3:15pm/3:20pm, but that's not in Longstanton.

Cllr John Batchelor: Councillor Williams.

Cllr Heather Williams: I would be supportive of reducing them and I don't believe we can ask it from the Highways point of view, whether they would be comfortable if the hours were reduced to 2:30pm or 3:00pm.

Cllr John Batchelor: Mr Finney.

Dr Jon Finney: I think as the councillor has pointed out, I think the key issue is, what time does the primary school at Longstanton actually finish, because obviously that's the key issue, because it did vary across the county. We'd normally take 3:30pm as being average, but if it is at 3:00pm, then I think maybe we should be reducing that time, because it is that primary conflict. So I think perhaps we could define that and then put that in as part of the condition, this way forward.

Cllr John Batchelor: Okay, let's do that then. So, members, is this a condition that you want? So, would you please vote, those in favour of this condition. Anyone against? Abstentions? Right, well I'll be an abstention as well, so that's a condition then, 7:30am to 9:30am and 3:00pm to 6:00pm, no delivery times, yes? Okay, we've done that. Now we have to decide on the application itself, so the recommendation before you is approval, can I have all those in favour of approval, please?

Male Voice: Sorry, subject to the amended condition.

Cllr John Batchelor: Yes, subject to the amended condition. Right, all vote please. That's unanimous. Okay, thank you very much, with the condition, so that's an approval with the additional condition. Thank you very much.

[End of recorded material at 12:25:15]

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Sent:** 13 November 2020 08:25  
**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>  
**Subject:** Update on status of judicial review claims

Dear Mr Reid,

In regards to the prospective judicial review claim concerning the Council's planning decision at Parcel COM4 Orchard Park, the Consortium would like to thank the Council for its pre-action protocol response and to inform the Council that the Consortium has decided not to issue proceedings in this instance.

In regards to the prospective judicial review claim concerning the Council's planning decision pertaining to 1 Horseheath Road, Linton, the Consortium would like to thank the Council for its pre-action protocol response and for deciding to undertake a review of the manner in which it considers application submitted under section 73 of the 1990 Act. The Consortium's view is that the Council would have only the most remote chance of successfully defending its decision in this case. However, as the Council's pre-action protocol response acknowledges that serious legal errors were made by the Council in its consideration of this planning application and as the Council has agreed to undertake a review in order to improve its decision making process in the future, the Consortium has decided not to issue proceedings in this instance. The Consortium hopes that the Council will recognise the decision not to bring proceedings in this instance as a gesture of good will. We hope that we can depend on the Council in the future to endeavour to meet the high standards of public administration expressed in recent statements by the leader and deputy leader of the Council and by the portfolio holder for planning.

In regards to pending development management decisions in Linton more generally, we would like to bring the Council's attention to the outstanding discharge of conditions applications affecting the site at Bartlow Road. In the view of the Consortium, it is essential that the conditions attached to the extant planning permissions are only discharged if the details set forth by the applicant comply with the relevant planning conditions. As the Council is aware, the interpretation of planning conditions is, generally speaking, a matter of law within the jurisdiction of the courts. The planning conditions relating to flooding at this site (S/1963/15/COND10 and S/1963/15/COND11) are extraordinarily clear. Should any part of planning conditions 10 or 11 be discharged on the basis of details that do not comply with the conditions in question, the Consortium will be extremely likely to issue judicial review proceedings against the Council. The Bartlow Road site is in a sensitive location, and inappropriate development at this site could pose a serious risk of flooding to a significant number of dwellings within the village.

In regards to the prospective judicial review claims concerning the proposed developments at 95 Bannold Road, Waterbeach, and The Retreat, Fews Lane, Longstanton, the Consortium would like to thank the Council for its pre-action protocol responses. The Consortium disagrees with the positions asserted in the Council's pre-action protocol responses and continues to maintain that the Council has no lawful authority to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015. The Consortium is likely to issue proceedings in regards to both applications as the pre-action protocol has now been completed.

Yesterday you will have received a letter in regards to a prospective judicial review claim concerning trees within the Knapwell Conservation Area. Given the immediate threat to the trees in question in light of the Council's unlawful decision, the Consortium does not consider the judicial review pre-action protocol to be applicable in this case. Furthermore, any applications in these proceedings are

likely to be issued on a without notice basis. The factual issues in regards to the prospective claim have been set forth by the Knapwell Parish Meeting in its letter to the Council dated 11 November. The relevant law concerning legitimate expectations, minimum lawful consultation procedures, and pre-determination has been extensively set forth by the Consortium in pre-action correspondence and in statements of case from disputes with the Council in the last 12 months. The Consortium considers that the Council will be likely to argue that its decision was in fact taken on 3 November despite the fact that the Council's website states that the decision was taken on 27 October. The Consortium will call the court's attention to this argument, which we assume the Council would make if the application were made with notice. We will also call the court's attention to the date on the decision letter issued. If the Council provides the Consortium with any other grounds of defence of its decision or any evidence supporting any defence, the Consortium will make all of this information known to the court.

The application for pre-action disclosure in regards to the Council's decision to instruct Stantec Ltd will be sent to the Council at the time the application is filed with the court. This will now most likely be on Monday.

The Consortium remains keen to settle all of the outstanding disputes with the Council without the need for further legal proceedings, and we hope that the Council will continue to keep its prospects for success in each case under review.

Kind regards,

Daniel Fulton  
Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
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CB24 3DP

tel. 01954 789237

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**From:** Stephen Reid  
**Sent:** 16 November 2020 07:39  
**To:** 'Daniel Fulton' <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Subject:** FW: Update on status of judicial review claims

Dear Fews Lane Consortium Ltd

1. I note that in your email sent to me on 13<sup>th</sup> November you have included the following:

“...In regards to the prospective judicial review claims concerning the proposed developments at 95 Bannold Road, Waterbeach, and The Retreat, Fews Lane, Longstanton, the Consortium would like to thank the Council for its pre-action protocol responses. The Consortium disagrees with the positions asserted in the Council’s pre-action protocol responses and continues to maintain that the Council has no lawful authority to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015. The Consortium is likely to issue proceedings in regards to both applications as the pre-action protocol has now been completed...”

2. May I remind you ,however ,that you have not addressed the following included in the Council’s response on Bannold Road dated 13<sup>th</sup> October

#### 17 Para 17 of your letter

17.1 Here you acknowledge that not every planning application will require visibility splays and you give as example, an application submitted for a city centre development where no vehicular access to the site was possible, and where you recognize that visibility splays would obviously not be required.

17.2 However, you then continue

“....the Consortium intends to submit that where an application creates a new vehicular access or proposes the intensified use of an existing vehicular access, the land necessary for visibility splays must be included within the area defined by the red line on the location plan...”

17.3 If that proposition is correct then literally thousands of planning applications up and down the country should be re-visited and be held to be invalid because they do not show within the red line relevant visibility splays which are within the existing adopted highway. The same point should likewise apply to a whole host of current appeals where again the applications which are the subject of those appeals do not show within the red line on the location plan relevant visibility splays which are within the existing adopted highway. The reference to appeal cases is also pertinent in the context of your comments under your para 18 where, in effect, you suggest the Secretary of State does not have the power to ignore the statutory requirements in any case.

3. Can I ask you to address this point either before you issue proceedings or as part of your proceedings as you seem to think that it would be appropriate that literally thousands of planning applications up and down the country could, or should, be brought to a standstill.

PS I hope to email you today with extensive disclosure of various emails etc as to the engagement of Stantec

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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- We will regularly update our clients on progress (weekly unless no movement on a particular matter)

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 13 November 2020 08:25

**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Update on status of judicial review claims

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The Consortium remains keen to settle all of the outstanding disputes with the Council without the need for further legal proceedings, and we hope that the Council will continue to keep its prospects for success in each case under review.

Kind regards,

Daniel Fulton  
Director

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The Elms  
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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 02 December 2020 10:11

**To:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>

**Cc:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Re: Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

Dear Mr Kelly,

Thank you for your email.

A bit of background on application 20/02453/S73...

The application is invalid and is being considered by the Council unlawfully in violation of s. 327A of the 1990 Act and article 7 of the 2015 Order.

The Council's lawyers have done their best in the pre-action correspondence to defend the Council's decision to entertain the application, but they are in a very difficult position as officers have failed to correctly ascertain the factual circumstances of the application. I'm afraid that the Council has no hope of success in this judicial review.

Given that a considerable amount of public resources would be consumed in judicial review proceedings, we would be willing to allow the planning committee to make a determination of this application, but given that officers have apparently not grappled with any of the substantive issues raised by this application, there is no reason for the Consortium to allow this application to remain under consideration if it is destined for a delegated decision by officers.

This application raises considerable questions of law and planning judgment, and it would not be appropriate for it to be determined by officers under delegated powers.

If the Council can not agree to put this application before the committee, I see little hope for agreement in other areas, and it may be best to let events play out through the legal process.

Kind regards,

Daniel Fulton  
Director

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On 1 Dec 2020, at 4:29pm, Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)> wrote:

Dear Mr Fulton,

Thank you for your email. I am just checking back with the case officer and will advise you on this matter shortly.

Yours sincerely

**Stephen Kelly** | Joint Director of Planning and Economic Development

<image001.jpg>

t: 07711 918993 | e: [stephen.kelly@scambs.gov.uk](mailto:stephen.kelly@scambs.gov.uk)  
<https://www.scambs.gov.uk/planning/>  
<https://www.cambridge.gov.uk/planning>

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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 30 November 2020 13:38

**To:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>

**Cc:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

Dear Mr Kelly,

Could I please ask you to confirm if planning application 20/02453/S73, which concerns development at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP, will be determined by a planning officer or by the Council's planning committee?

Kind regards,

Daniel Fulton  
Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

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**From:** Stephen Reid  
**Sent:** 23 December 2020 11:28  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Rory McKenna <[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>  
**Subject:** planning application 20/02453/S73 - The Retreat, Fewes Lane, Longstanton  
**Importance:** High

Dear Fewes Lane Consortium Ltd

I write further to your email of 2<sup>nd</sup> December to Mr Kelly in connection with the above. In your email you make a number of statements upon which I seek clarification.

1. Can you clarify your reasons for stating that “..the application is invalid and is being considered by the Council unlawfully in violation of s. 327A of the 1990 Act and article 7 of the 2015 Order...” not least in the context of earlier correspondence on the point.
2. You state that “...officers have failed to correctly ascertain the factual circumstances of the application...” but do not elaborate on which facts you feel officers have not considered.
3. I note your statement that you are prepared for the planning committee to determine the application despite your argument that the application is invalid and is being considered unlawfully.
4. Can you indicate what exactly you consider to be “....the considerable questions of law and planning judgment ...” that you say are raised by this application.

I am also conscious that when you emailed me on 2th October you said, “...I am in the process of drafting further pre-action correspondence in regards to application 20/02453/S73 (The Retreat, Fewes Lane, Longstanton), which will also apply, to some extent, to the issues concerning application 20/03370/OUT at 95 Bannold Road, Waterbeach.

I'm waiting to hear back from counsel on a couple of points prior to finalising the letter, but I should have it to you sometime tomorrow...."

I have emailed you previously for an update as to the above position but do not appear to have heard back. Given your earlier statement, are you therefore able to indicate your intentions in respect of application 20/02453/S73?

Yours sincerely

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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- We will agree key deadlines/operational requirements with clients within 5 working days.
- We will regularly update our clients on progress (weekly unless no movement on a particular matter)

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 02 December 2020 10:11

**To:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>

**Cc:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Re: Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

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Given that a considerable amount of public resources would be consumed in judicial review proceedings, we would be willing to allow the planning committee to make a determination of this application, but given that officers have apparently not grappled with any of the substantive issues raised by this application, there is no reason for the Consortium to allow this application to remain under consideration if it is destined for a delegated decision by officers.

This application raises considerable questions of law and planning judgment, and it would not be appropriate for it to be determined by officers under delegated powers.

If the Council can not agree to put this application before the committee, I see little hope for agreement in other areas, and it may be best to let events play out through the legal process.

Kind regards,

Daniel Fulton  
Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

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On 1 Dec 2020, at 4:29pm, Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)> wrote:

Dear Mr Fulton,

Thank you for your email. I am just checking back with the case officer and will advise you on this matter shortly.

Yours sincerely

**Stephen Kelly** | Joint Director of Planning and Economic Development

<image001.jpg>

t: 07711 918993 | e: [stephen.kelly@scambs.gov.uk](mailto:stephen.kelly@scambs.gov.uk)  
<https://www.scambs.gov.uk/planning/>  
<https://www.cambridge.gov.uk/planning>

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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 30 November 2020 13:38

**To:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>

**Cc:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

Dear Mr Kelly,

Could I please ask you to confirm if planning application 20/02453/S73, which concerns development at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP, will be determined by a planning officer or by the Council's planning committee?

Kind regards,

Daniel Fulton  
Director

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**From:** Stephen Reid  
**Sent:** 29 December 2020 11:46  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Glenda Hansen <[Glenda.Hansen@greatercambridgeplanning.org](mailto:Glenda.Hansen@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>  
**Subject:** FW: planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton  
**Importance:** High

Dear Fews Lane Consortium Ltd

1. I refer to the email sent on 23<sup>rd</sup> December .It would be helpful to hear from you if you intend to provide a substantive response to that email and ,if so, any likely timescale as to when I may expect to receive something in such regard.
2. I am conscious that when you emailed on 13 November 2020 you included the following

“...In regards to the prospective judicial review claims concerning the proposed developments at 95 Bannold Road, Waterbeach, and The Retreat, Fews Lane, Longstanton, the Consortium would like to thank the Council for its pre-action protocol responses. The Consortium disagrees with the positions asserted in the Council’s pre-action protocol responses and continues to maintain that the Council has no lawful authority to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015. The Consortium is likely to issue proceedings in regards to both applications as the pre-action protocol has now been completed....”

“...The Consortium remains keen to settle all of the outstanding disputes with the Council without the need for further legal proceedings, and we hope that the Council will continue to keep its prospects for success in each case under review....”

3.The Council continues to review its various applications etc and in this context it would be helpful, as indicated above, to hear from you if you intend to provide a substantive response to the email sent on 23<sup>rd</sup> December



4.1 I am also conscious that in an earlier email sent on 23rd August you said:

“....(1) I can confirm that if the Council continues to consider application 20/02453/S73 in its present form without a location plan that complies with the requirements stated in the application form the Consortium will issue judicial review proceedings before a decision is made .

(3) It is an extraordinarily wasteful use of limited public resources for the Council to continue to unlawfully consider invalid planning applications

(4)The Consortium is likely to seek a prohibiting order rather than a quashing order as stated in the consortium's initial pre- action protocol letter...”

4.2 I raise the above (including the bits where I have added the bold and underlining by way of emphasis ) in the context ,at least in part, as to point 3 of my email of 23 rd December where I said :

“....3. I note your statement that you are prepared for the planning committee to determine the application despite your argument that the application is invalid and is being considered unlawfully.....”

5. As to your comment as to “...It is an extraordinarily\_wasteful use of limited public resources..” I am also mindful that whilst you have said “...the Consortium will issue judicial review proceedings before a decision is made...” you have also said in a letter dated 3rd September the following :

“...Under Part 1 of the Civil Procedure Rules, parties are required to help the Court see that disputes are resolved in a manner that saves

expense, that ensures claims are dealt with expeditiously and fairly, and that takes into account the need for the Court to allow to allocate resources to other cases ,,, ”

6. In the light of the above are you able to indicate your intentions in respect of application 20/02453/S73?

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

3C Shared Services is a strategic partnership between Cambridge City Council, Huntingdonshire District Council and South Cambridgeshire District Council

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- We will endeavour to return telephone calls within 24hrs.
- We will acknowledge correspondence (including Emails) within 2 working days of receipt.
- We will make sure our clients are aware of the Practice's complaints procedure.
- We will agree key deadlines/operational requirements with clients within 5 working days.
- We will regularly update our clients on progress (weekly unless no movement on a particular matter)

**From:** Stephen Reid

**Sent:** 23 December 2020 11:28

**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Lewis Tomlinson

<[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>; Sharon Brown

<[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Rory McKenna

<[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>; Toby Williams

<[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>

**Subject:** planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

**Importance:** High

.

Dear Fews Lane Consortium Ltd

I write further to your email of 2<sup>nd</sup> December to Mr Kelly in connection with the above. In your email you make a number of statements upon which I seek clarification.

1. Can you clarify your reasons for stating that “..the application is invalid and is being considered by the Council unlawfully in violation of s. 327A of the 1990 Act and article 7 of the 2015 Order...” not least in the context of earlier correspondence on the point.
2. You state that “...officers have failed to correctly ascertain the factual circumstances of the application...” but do not elaborate on which facts you feel officers have not considered.
3. I note your statement that you are prepared for the planning committee to determine the application despite your argument that the application is invalid and is being considered unlawfully.
4. Can you indicate what exactly you consider to be “....the considerable questions of law and planning judgment ...” that you say are raised by this application.

I am also conscious that when you emailed me on 2th October you said, “...I am in the process of drafting further pre-action correspondence in regards to application 20/02453/S73 (The Retreat, Fews Lane, Longstanton), which will also apply, to some extent, to the issues concerning application 20/03370/OUT at 95 Bannold Road, Waterbeach.

I’m waiting to hear back from counsel on a couple of points prior to finalising the letter, but I should have it to you sometime tomorrow....”

I have emailed you previously for an update as to the above position but do not appear to have heard back . Given your earlier statement, are you therefore able to indicate your intentions in respect of application 20/02453/S73?

Yours sincerely

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice



Telephone: 0781 7730893

Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>

**Sent:** 02 December 2020 10:11

**To:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>

**Cc:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Re: Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

Dear Mr Kelly,

Thank you for your email.

A bit of background on application 20/02453/S73...

The application is invalid and is being considered by the Council unlawfully in violation of s. 327A of the 1990 Act and article 7 of the 2015 Order.

The Council's lawyers have done their best in the pre-action correspondence to defend the Council's decision to entertain the application, but they are in a very difficult position as officers have failed to correctly ascertain the factual circumstances of the application. I'm afraid that the Council has no hope of success in this judicial review.

Given that a considerable amount of public resources would be consumed in judicial review proceedings, we would be willing to allow the planning committee to make a determination of this application, but given that officers have apparently not grappled with any of the substantive issues raised by this application, there is no reason for the Consortium to allow this application to remain under consideration if it is destined for a delegated decision by officers.

This application raises considerable questions of law and planning judgment, and it would not be appropriate for it to be determined by officers under delegated powers.

If the Council can not agree to put this application before the committee, I see little hope for agreement in other areas, and it may be best to let events play out through the legal process.

Kind regards,

Daniel Fulton  
Director

Fews Lane Consortium Ltd  
The Elms  
Fews Lane  
Longstanton  
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CB24 3DP

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Dear Mr Fulton,

Thank you for your email. I am just checking back with the case officer and will advise you on this matter shortly.

Yours sincerely

**Stephen Kelly** | Joint Director of Planning and Economic Development

<image001.jpg>

t: 07711 918993 | e: [stephen.kelly@scambs.gov.uk](mailto:stephen.kelly@scambs.gov.uk)  
<https://www.scambs.gov.uk/planning/>  
<https://www.cambridge.gov.uk/planning>

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**Sent:** 30 November 2020 13:38

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**Subject:** Delegation of planning application 20/02453/S73 - The Retreat, Fews Lane, Longstanton

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18<sup>th</sup> Dec 2020

**Report to:** South Cambridgeshire District  
Council Planning Committee

**Lead Officer:** Joint Director of Planning and Economic Development

---

## **20/02453/S73– The Retreat, Fews Lane, Longstanton, CB24 3DP**

**Proposal:** Variation of condition 7 (Traffic Management plan) pursuant to planning permission S/0277/19/FL to reflect the proposals in the Traffic Management Plan to substitute the current wording in Condition 7 with "The development hereby permitted shall be carried out in accordance with the Traffic Management Plan prepared by SLR Consulting, Version Final\_1 and dated December 2019" (Re-submission of 20/01547/S73)

**Applicant:** Mr Gerry Caddoo, Landbrook Homes Ltd

**Key material considerations:** Highway Safety including the safety of all users of the adopted and unadopted highways in the vicinity of the site.

**Date of Member site visit:** None

**Is it a Departure Application?:** No

**Decision due by:** 16<sup>th</sup> July 2020

**Application brought to Committee because:** This application has been referred to the Committee at the request of the Parish Council. .

**Presenting officer:** Lewis Tomlinson

### **1.0 Executive Summary**

- 1.1 Planning permission was granted at planning committee in May 2019 for the erection of 2 dwellings and ancillary parking. This application has been submitted to amend the proposed wording of condition 7 to respond to the specific circumstances on the site and the implications for the traffic management plan with respect to parking. .

## 2.0 Relevant planning history

Applications relating to the adjacent application site:

S/2439/18/FL – The erection of a 3-bedroom bungalow with parking - Approved

S/2937/16/FL – Proposed erection of a 3-bedroomed bungalow and parking – Allowed on appeal

S/0999/14/FL – Extension and alteration to existing bungalow to provide a house with ground, first and second floors (second floor attic rooms) – Approved

S/2561/12/FL – Erection of two bungalows - Approved

### 7. Applications relating to the application site:

S/0277/19/COND9 – Condition 9 – foul and surface water drainage – pending consideration

S/0277/19/CONDA – Submission of details required by condition 11 (scheme that demonstrates a minimum of 10% carbon emissions) and 12 (water conservation strategy) of planning permission S/0277/19/FL – Discharged in full

S/4471/19/DC – Discharge of condition 7 (traffic management plan) pursuant to planning permission S/0277/19/FL – pending consideration. This application will replace the need for this.

S/3875/19/DC – Discharge of conditions 4 (hard and soft landscaping), 6 (boundary treatment), 9 (foul and surface water drainage), 11 (renewable energy) and 12 (water conservation) pursuant to planning permission S/0277/19/FL - Refused

S/2508/19/DC – Discharge of condition 7 (traffic management plan) pursuant to planning permission S/0277/19/FL - Refused

S/0277/19/FL – Demolition of the existing bungalow and construction of two dwellings including car parking and landscaping - Approved

S/1059/16/DC – Discharge of condition 3 (materials), 4 (boundary treatment), 5 (hard and soft landscaping), 7 (surface water drainage), 8 (finished floor levels), 13 (traffic management plan) and 14 (archaeology) of S/1498/15/FL - Approved

S/1498/15/FL – Erection of two dwellings – Approved

## 3.0 Planning policies

### 3.1 National Guidance

National Planning Policy Framework 2019 (NPPF)

Planning Practice Guidance

National Design Guide 2019

### 3.2 South Cambridgeshire Local Plan 2018

S/1 Vision

S/2 Objectives of the Local Plan

S/3 Presumption in Favour of Sustainable Development

S/7 Development Framework

S/10 Group Villages

CC/3 Renewable and Low Carbon Energy

CC/6 Construction Methods

CC/8 Sustainable Drainage Systems

CC/9 Managing Flood Risk

HQ/1 Design Principles

NH/4 Biodiversity



H/8 Housing Density  
H/12 Residential space Standards  
SC/11 Land Contamination  
TI/2 Planning for Sustainable Travel  
TI/3 Parking Provision  
TI/10 Broadband

### 3.3 **South Cambridgeshire Supplementary Planning Documents (SPD)**

Trees & Development Sites SPD - Adopted January 2009  
District Design Guide SPD - Adopted March 2010  
Sustainable Design and Construction SPD 2020

## 4.0 **Consultation**

### **Cambridgeshire County Council (Highways Development Control)**

- 4.1 From the perspective of the Highway Authority the proposed wording of condition 7 is acceptable. (Original comments received 11<sup>th</sup> June 2020)

"The development hereby permitted shall be carried out in accordance with the Traffic Management Plan prepared by SLR Consulting, Version Final\_1 and dated December 2019"... please accept this Email as confirmation that the contents of the Traffic Management Plan prepared by SLR Consulting, Version Final\_1 and dated December 2019 are acceptable to the Highway Authority. (Further comments received 13<sup>th</sup> July 2020)

The submission of revised wording for condition 7 of planning application S/0277/19/FL makes no material changes to the scheme as approved. Therefore, the Highway Authority's original assessment of the proposals impact on the operation of the adopted public highway is consistent with the application that has now been made and no additional conditions are required. From the perspective of the Highway Authority the proposed changes to the wording of Condition 7 are acceptable and will negate the need for a further condition requesting a Traffic Management Plan, as this will be complied with via the reworded Condition 7. Within the original consultation response, the Highway Authority sought the following: Please add a condition to any permission that the Planning Authority is minded to issue in regard to this proposal requiring that the existing Public Right of Way be constructed using a bound material, for the first ten metres from the back of the footway along High Street. Reason: in the interests of highway safety. This request is reiterated to the Planning Authority. (Revised comments received 6<sup>th</sup> August 2020)

### **Contaminated Land Officer**

- 4.2 This variation application does not relate to contaminated land and therefore I have no comments to make.

### **Drainage**

- 4.3 Drainage has no comments to this variation

#### **Environmental Health Officer**

- 4.4 I can confirm that I have no objections from an environmental health standpoint in respect of the above condition variation. (13<sup>th</sup> June 2020)

Previous comments of 13.06.20 did refer to the substitution of wording and also the content of the Traffic Management Plan (TMP) itself. It is apparent that there is a proposal for a wheel wash system, and I acknowledge that the TMP states all vehicles leaving the site will be inspected and any mud or debris will be cleaned off. The content of the report itself satisfies the requirements of this particular service. I should however add that the granting of planning consent and submission of a suitable and sufficient TMP wouldn't indemnify against statutory nuisance action being taken should this service receive a substantiated dust complaint subsequent to works commencing. Concerning vehicle movement times, I have observed from the decision notice for S/0277/19/FL that restrictions are in place and therefore fully expect this to be complied with as part of the TMP. (23<sup>rd</sup> June 2020)

#### **Longstanton Parish Council**

- 4.5 Having considered this application at their meeting on 13th July 2020, Longstanton Parish Council request that the application be put to Planning Committee and Longstanton Parish Council reiterate their objection to the development. Longstanton Parish Council have expressed concerns at every point of this planning application on the grounds of Highway Safety. It is noted that with this specific application, the applicant proposes to reverse construction lorries down a single lane track which leads to the development site and other dwellings, which also forms part of the public footpath. Longstanton Parish Council have already detailed in previous comments that pedestrians have to stand in the undergrowth for a small vehicle to pass.
- 4.5 The above responses are a summary of the comments that have been received. Full details of the consultation responses can be inspected on the application file.

### **5.0 Representations from members of the public**

- 5.1 Representations have been received from The Elms, Fewes Lane (The Fewes Lane Consortium Ltd) dated 10<sup>th</sup> July 2020, 27<sup>th</sup> July 2020, 20<sup>th</sup> August 2020, 23<sup>rd</sup> August 2020, 3<sup>rd</sup> September 2020, 8<sup>th</sup> September 2020 and the 28<sup>th</sup> September 2020 in relation to the application. The following concerns have been raised (as summarised):
- The CCC's response to the statutory consultation only addressed the changes to the existing planning permission sought by the applicant. This approach commits a straightforward error of law because in considering an application submitted under section 73 of the 1990 Act, the whole scheme now applied for must be considered in accordance with the relevant policy tests.

- Where the CCC has published highways development policies, members of the public may legitimately expect that the CCC will apply those relevant policies in regard to matters of highways development. In the case of this application, the CCC acted unlawfully by responding to the statutory consultation in a manner that failed to apply its published highways development policies in breach of the prospective claimant's legitimate expectation that it would do so.
- No location plan has been submitted for this application. Accordingly, the application relies on the location plan comprised within the application for the extant planning permission (S/0277/19/FL). That location plan fails to identify the land to which the application relates as is required under article 7(1)(c)(i) of the 2015 Order. Application 20/02453/S73 is therefore invalid and can not be determined pursuant to sections 65 and 327A of the 1990 Act.
- The land outlined in red on the location plan submitted for the extant permission (S/0277/19/FL) fails to include all the land necessary to carry out the proposed development as it does not include all of the land required for visibility splays, and no updated location plan was submitted as part of application 20/02453/S73.
- The land required for pedestrian visibility splays is not situated within the adopted public highway and is not included within the red line boundaries of the application site as show on the location plan.
- The location plan, which misidentifies the land to which the application relates, can not, in this instance, serve as the basis of a lawful public consultation as it fails to provide sufficient information to consultees as to the extent of the land to which the application, and therefore the consultation, relates. This information is essential in order to allow statutory consultees and members of the public to intelligently consider and respond to the consultation.
- There is no evidence that the required notices have been sent to the owners of the land to which the application relates as is required under article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- Officers of local highway authorities should be able to rely on the fact that application documents that have been validated by the local planning authority and published for consultation correctly depict the land to which the application relates by outlining that land in red on the location plan, as is required under article 7. Whilst in an ideal world, local highway authority officers might be well versed in the nuances of planning law, this is usually not the case, and both statutory consultees and members of the public rely on the validation opinion of the local planning authority to establish that the land to which the planning application relates has been correctly identified on the location plan in accordance with the relevant legal standards. A local planning authority that consults on an application with an invalid location plan not only violates section 327A of the 1990 Act, but also potentially renders the consultation on the application unlawful on grounds of procedural impropriety. (See *R v North and East Devon Health Authority ex p Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213 at [112].)

## 6.0 The site and its surroundings

- 6.1 The property known as The Retreat comprises a single-storey dwelling off an unadopted road known as Fews Lane. The single storey dwelling is to be demolished and replaced with 2 two storey dwellings. Parking for these 2 new houses will take place from the site frontage onto Fews Lane. A further single storey dwelling is permitted to be erected in the former garden area to the rear of the two new properties and would complete the “build out of the site which began with the two existing new homes constructed to the west and north west of The Retreat.. Fews Lane is not an adopted highway and currently serves as an access for the two other recently constructed dwellings in addition to the site. A footpath (Public Right of Way) linking the Home Farm residential development to the south and west of Fews Lane with High Street also passes down Fews Lane. The site lies within the designated village framework and is otherwise unconstrained.

## 7.0 The proposal

- 7.1 The application seeks consent for the variation of condition 7 (traffic management plan) of planning permission S/0277/19/FL to amend the wording of the condition from a pre-commencement submission to a compliance through the approval of a traffic management plan.

- 7.2 The current wording of condition 7 of planning permission S/0277/19/FL is:

*No demolition or construction works shall commence on site until a traffic management plan has been agreed with the Local Planning Authority in consultation with the Highway Authority. The principle areas of concern that should be addressed are:*

- (i) Movements and control of muck away lorries (all loading and unloading shall be undertaken off the adopted highway)*
- (ii) Contractor parking shall be within the curtilage of the site and not on the street.*
- (iii) Movements and control of all deliveries (all loading and unloading shall be undertaken off the adopted public highway.*
- (iv) Control of dust, mud and debris, in relationship to the functioning of the adopted public highway.*

*The reason given for the imposition of this condition was “In the interests of highway safety.”*

- 7.3 The application seeks to amend the wording of condition 7 to:

*The development hereby permitted shall be carried out in accordance with the Traffic Management Plan prepared by SLR Consulting, Version Final\_1 and dated December 2019*

- 7.4 The application is accompanied by the following supporting information:

- Traffic Management Plan prepared SLR dated December 2019

- 7.5 The applicant claims that the submitted Traffic Management Plan arises from lessons learnt during the construction in 2018 of the two existing new homes on the site. The TPM includes details of the arrangements for the delivery of materials, turning movements, enclosure of the site and contractor parking during the construction phase, as well as detailing areas for materials storage (keeping the on-site turning area clear) and the site office. The site circumstances in this case, notably the size of the development plot itself, mean that space for parking within the site is limited. . Accordingly,, the Traffic Management Plan indicates provision has been made for contractor parking at Digital Park in Station Road, Longstanton (noting that Fews Lane itself is of inadequate width to accommodate parking adjacent to the site). The Plan also proposes arrangements for addressing condition 15 (control of hours) in respect of vehicles arriving early. The provision of off-site contractor parking has meant however that means that the terms of part ii of the original planning condition cannot be met and it is this departure from the original condition that has prompted this application.

## **8.0 Planning assessment**

- 8.1 The application is for the variation of a planning condition and is made under S73 of the Town and Country Planning Act 1990. National Planning Practice Guidance in respect of such applications states:

*“In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.”*  
[Paragraph: 031 Reference ID: 21a-031-20180615]

- 8.2 The principle of development of a dwelling on the site has already been established through the granting of the original application (S/0277/19/FL). Officers are satisfied that there has been no material change in policy or the surrounding context that requires a re-assessment of the any other conditions attached to the approved development . The assessment for this application focuses on the proposed variation of condition 7, including consideration of the reasons for the condition and the acceptability of the proposed changes to the condition that are being sought. This centres upon the assessment of the acceptability of the submitted Traffic Management Plan having regard to highway safety.
- 8.3 Having regard to the representations received, officers have interpreted “highway safety” in this context to mean the safety of all users of the highway, including the PROW alongside the unadopted Fews Lane and the users of the unadopted road that comprises Fews Lane.

### **Highway Safety – Traffic Management Plan**

#### Traffic Management Plan Assessment

- 8.4 The construction of any development gives rise to additional movements – including contractor vans and larger delivery vehicles (HGV) such as building suppliers delivery vehicles and concrete trucks etc. During the construction phase therefore, existing residents of Few Lane and users of the public right of way, together with those passing by the access may experience an increase in the number of vehicles, including delivery vehicles attending the site. The TMP estimates construction traffic trips each month to be in the order of approximately 40 van movements, 6 concrete lorries (in month 1 plus 4 more trips in total over the following 5 months), 3 X 8 wheelers, 2 low loaders and 6 lorry movements. The TMP provides details of the sites layout, including an indication of the swept path and a turning area within the site – reflecting its restricted size.
- 8.5 The Council has consulted the Local Highway Authority as the consultee for matters regarding highway safety. The Local Highway Authority, having expressed concerns that resulted in the refusal of the earlier application S/2508/19/DC, for the following reasons:
- 1. The title page states that the document is a Transport Management Plan this should be amended to read Traffic Management Plan.*
  - 2. Page 2. Para. 2.2: Fews Lane is a public footpath and as such is adopted public highway, this means that the public at large have the right to pass and repass. This should be made explicit.*
  - 3. Page 3 Para. 3.3: the purpose of the TMP is to control the operation and use of construction traffic accessing a construction site in relationship to the operation of the adopted public highway.*
  - 4. Page 3 Para. 3.2.1: details of any gates must be supplied within the TMP to ensure that they do not interfere with the use of the adopted public highway.*
  - 5. Page 4 para. 3.2.2.:*
    - i. Justification for the level of proposed contractor parking must be provided.*
    - ii. A swept path diagram showing how the bays as shown on Dwg. 11 must be provided as the bays seem to be impractical at present.*
  - 6 Page 5 para 3.2.3.:*
    - i. The restriction on times of operation must also apply to any muck away vehicles and not just deliveries.*
    - ii. Please request the applicant to provide details of how the proposed ban on parking in the surrounding residential streets will be enforced.*
    - iii. The table showing the forecast of commercial vehicles that will visits the site, demonstrates that the swept path diagram on Drawing 11 is inadequate to show that all delivery/muck away lorries can enter and leave in a forward gear. A swept path analysis for the largest commercial vehicle to visit the site must be provided.*
    - iv. Details of how commercial vehicles exiting and entering Fews Lane will be controlled must be provided.*
  - 7. Page 6 para 3.2.5 this should not form part of the TMP.*
- 8.6 Officers have noted and agree with this advice from the Local Highway Authority, having specific regard to the relatively short length of Fews Lane, vehicle movements along it are considered likely to take place with care- so that both drivers of vehicles and pedestrians would be able to appreciate and

address any potential for conflict. For larger vehicle movements (where the turning area is insufficient - because of the size of the site itself – the TMP proposes that vehicles would reverse into the site with the assistance of a “banksman” to maintain safety along Fews Lane during these manouvers. The TMP commits to keep clear access to the two existing homes along Fews Lane throughout the construction phase and to maintain the right of way clear of obstructions for pedestrians.

- 8.7 The third-party representations suggest that alongside concerns about the validity of the application the TMP does not properly address the matter of visibility at the site entrance onto High Street and that delivery vehicles may need to reverse down Fews Lane. Insofar as any TMP can address these issues when the application site is of this size, officers are satisfied with the Highway Authority conclusions that the measures outlined in the TMP are appropriate. Moreover, vehicle speeds along Fews Lane itself are in officers view likely to be low (a 5mph limit is proposed in the TMP) and subject to normal care and consideration, the risk to pedestrians and vehicle drivers is accordingly considered to be satisfactorily addressed by the TMP. The Local Highway Authority officers are familiar with this site and have made it clear that they now find the TMP to be acceptable as it overcomes the concerns raised in S/2508/19/DC.

#### Bound material condition

- 8.8 The Local Highway Authority has recommended an additional condition regarding the existing Public Right of Way to be constructed using bound material. Paragraph 48 of the officer committee report for S/0277/19/FL states that ‘the requested works requiring the surface of Fews Lane to be constructed using a bound material’ will be within the public highway (PROW) and therefore can be carried out under a Short Form Section 278 Agreement between the applicant and Cambridge shire County Council. Therefore, no condition is imposed in line with S/0277/19/FL.

#### Pedestrian visibility splays

- 8.9 There have been substantial third-party representations in respect of the application concerning its validity, the details provided and the application by the County Council of its Highway Policies. Officers have considered these matters and remain satisfied that the application is valid, notwithstanding the representations submitted, and can therefore be determined by the Committee. The assessment of the proposals by County Highway officers is considered to be satisfactory – noting that the application of County Council policies are matters of judgment based upon the specific site circumstances. Officers have no reason to disagree with the conclusions of the County Highway officers in this matter, including on the matter of the need for an explicit visibility splay to be shown for pedestrians at the site entrance. It is considered that the pedestrian visibility splays of 1.5m x 1.5m could be achieved to the back of the footway when existing Few’s Lane.

- 8.10 In relation to the point raised by the third party that there is no evidence that the required notices have been sent to the owners of the land to which the application relates as is required under article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The applicant has signed certificate D and supplied the necessary documentation to evidence this.

#### Pre-action protocol letters

- 8.11 Over at least the last six months or more there has been an amount of letters and emails between the Council and Few's Lane Consortium Limited ("FLCL") as to the red line shown on the Location Plan for planning reference S/0277/19/FL .
- 8.12 On 13th November 2020 FLCL sent an email to the Council's legal officer which included the following:  
"...In regards to the prospective judicial review claims concerning the proposed developments at [separate site identified], and The Retreat, Few's Lane, Longstanton, the Consortium would like to thank the Council pre-action protocol responses. The Consortium disagrees with the positions asserted in the Council's pre-action protocol responses and continues to maintain that the Council has no lawful authority to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015. The Consortium is likely to issue proceedings in regards to both applications as the pre-action protocol has now been completed...."
- 8.13 Proceedings have not been issued and the Council is waiting to hear from FLCL as to its intentions as to any proceedings. The Council does not accept that it has no lawful authority to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015.
- 8.14 An extensive bundle of correspondence between FLCL and the Council (together with an index ) is attached to this report
- 8.15 An update will be provided when this item is presented to the Planning Committee in January .

## **9.0 Planning balance and conclusion**

Taking into consideration the above points, including the site history, third party representations and the advice from the Local Highway Authority, Planning Officers consider that the proposed rewording of condition 7 which has the effect of agreeing the measures in the submitted Traffic Management Plan is acceptable. It is therefore recommended that planning permission is granted subject to conditions (with the revised wording to condition 7) imposed on planning permission S/0277/19/FL



## **10.0 Recommendation**

Officers recommend that the Planning Committee Approve the application subject to the following conditions and informative: