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20 September 2021

To: Chair – Councillor Pippa Heylings  
Vice-Chair – Councillor Henry Batchelor  
All Members of the Planning Committee - Councillors Dr. Martin Cahn,  
Peter Fane, Geoff Harvey, Dr. Tumi Hawkins, Judith Rippeth,  
Deborah Roberts, Heather Williams, Dr. Richard Williams and  
Eileen Wilson

Quorum: 3

Substitutes Councillors Nick Wright, Sue Ellington, Grenville Chamberlain,  
if needed: Mark Howell, Dr. Shrobona Bhattacharya, Graham Cone,  
Dr. Claire Daunton, Anna Bradnam, Brian Milnes and Jose Hales

Dear Councillor

You are invited to attend the next meeting of **Planning Committee**, which will be held in the **Council Chamber, First Floor** on **Wednesday, 29 September 2021** at **10.00 a.m.**.. **A weblink to enable members of the press and public to listen to the proceedings will be published on the relevant page of the Council's website , normally, at least 24 hours before the meeting.**

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

Yours faithfully  
**Liz Watts**  
Chief Executive

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## Agenda

- |   | Pages |
|---|-------|
| 1. <b>Chair's announcements</b>   |       |
| 2. <b>Apologies</b><br>To receive apologies for absence from committee members. |       |

- 3. Declarations of Interest**
- 1. Disclosable pecuniary interests (“DPI”)**  
A DPI is where a committee member or his/her spouse or partner has any kind of beneficial interest in the land under consideration at the meeting.
  - 2. Non-disclosable pecuniary interests**  
These are interests that are pecuniary involving a personal financial benefit or detriment but do not come within the definition of a DPI. An example would be where a member of their family/close friend (who is not their spouse or partner) has such an interest.
  - 3. Non-pecuniary interests**  
Where the interest is not one which involves any personal financial benefit or detriment to the Councillor but arises out of a close connection with someone or some body /association. An example would be membership of a sports committee/ membership of another council which is involved in the matter under consideration.
- 4. Minutes of Previous Meetings** **1 - 2**  
To authorise the Chairman to sign the Minutes of the meetings held on 11 August 2021 (to follow) and 8 September 2021 as correct records.
- 5. 20/05101/FUL - Longstanton (Land at The Retreat, Fewes Lane)** **3 - 384**  
Erection of a chalet bungalow with garage and associated infrastructure  
  
The section called ‘Appendices’ consists of appendices 1-6, 8 and 9. Appendix 7 is a separate document and large computer file (over 17 Mb).
- 6. S/1963/15/CONDG - Linton (Land North and South of Bartlow Road)** **385 - 446**  
Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL
- 7. 21/00629/S73 - Linton (Land to the North and South of Bartlow Road)** **447 - 526**  
S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design.
- 8. S/2553/16/CONDH - Linton (Land off Horseheath Road)** **527 - 558**  
Submission of details required by condition 12 (Foul water

Drainage) of planning permission S/2553/16/OL

- |            |  |                  |
|------------|--|------------------|
| <b>9.</b>  | <b>Bourn Airfield Strategic Site: Section 106 Update Report</b>                | <b>559 - 586</b> |
| <b>10.</b> | <b>Waterbeach New Town East Strategic Site: Section 106 Update Report</b>      | <b>587 - 618</b> |
| <b>11.</b> | <b>Tree Preservation Order: To Revoke a TPO at 10 Burton End, West Wickham</b> | <b>619 - 620</b> |
| <b>12.</b> | <b>Enforcement Report</b>  | <b>621 - 628</b> |
| <b>13.</b> | <b>Appeals against Planning Decisions and Enforcement Action</b>               | <b>629 - 636</b> |

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**Plans and Drawings pack**

**637 - 652**

**Public speaking protocol**

**653 - 658**

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

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

### **Notes**

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

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# Agenda Item 4

## South Cambridgeshire District Council

Minutes of a meeting of the Planning Committee held on  
Wednesday, 8 September 2021 at 10.00 a.m.

PRESENT: Councillor Henry Batchelor – Vice-Chair in the Chair

Councillors:	Dr. Claire Daunton (substitute)	Sue Ellington (substitute)
	Peter Fane	Geoff Harvey
	Dr. Tumi Hawkins	Judith Rippeth
	Deborah Roberts	Dr. Richard Williams
	Eileen Wilson	

Officers in attendance for all or part of the meeting:

Christopher Carter (Delivery Manager - Strategic Sites), Dr Jon Finney (Development Control Engineer City and South, Cambridgeshire County Council), Stephen Reid (Senior Planning Lawyer), Ian Senior (Democratic Services), Lewis Tomlinson (Senior Planning Officer) and Toby Williams (Area Development Manager)

Councillor Cllr Martin Cahn (a Planning Committee member) was in attendance remotely. As such, he could not vote on any item although he could take part in debates.

### 1. Chair's announcements

Councillor Henry Batchelor introduced himself as Vice-Chair of the Committee but explained that he would be chairing this meeting in the absence of the Committee Chair, Councillor Pippa Heylings. By affirmation, the Committee appointed Councillor Peter Fane as Vice-Chair of the meeting. Councillor Batchelor would absent himself from the Chamber due to a pecuniary interest in minute 6 (S/1963/15/CONDG - Linton (Land North and South of Bartlow Road)) and minute 7 (21/00629/S73 - Linton (Land to the North and South of Bartlow Road)). For those two items, Councillor Fane would take the Chair and, by affirmation, the Committee appointed Councillor Eileen Wilson as his Vice-Chair.

The Chair made several brief housekeeping announcements.

### 2. Apologies

Councillors Pippa Heylings and Heather Williams sent Apologies for Absence. Their respective substitutes were Councillors Dr. Claire Daunton and Sue Ellington.

### 3. Declarations of Interest

Councillor Henry Batchelor declared a pecuniary interest in minute 6 (S/1963/15/CONDG - Linton (Land North and South of Bartlow Road)) and minute 7 (21/00629/S73 - Linton (Land to the North and South of Bartlow Road)) because his employer had an ongoing business relationship with the applicant. Councillor Henry Batchelor would withdraw from the Chamber for the duration of those two items, take no part in the debate, and would not vote.

### 4. Minutes of a Previous Meeting

The Committee authorised the Chair to sign, as a correct record, the minutes of the meeting held on 27 July 2021, subject as follows:

**Minute 4(a) – Minutes of a previous meeting**

14 August 2021 should be 14 July 2021

**Minute 4(c) - Access to documents and information**

This should be Minute 4(b) and Minute 4(b) as printed, without any further text, should be deleted.

**5. 20/05101/FUL - Longstanton (Land at The Retreat, Fews Lane)**

The case officer reminded Members that, following an appeal against non-determination, the jurisdiction for determining this application lay now with a planning inspector rather than with South Cambridgeshire District Council. However, the Council was required to submit a Statement of Case and so the Planning Committee needed to agree on what decision it would have made given the opportunity. He referred Members to the update report and to various representations received subsequently which were in the public domain. He also referred orally to submissions that had been received on the morning of the committee meeting in relation to hedgerow and tree loss pertaining to visibility splays. The Local Highway Authority had responded to a Highways Report commissioned by Fews Lane Consortium by saying it could not identify any reason for refusing the application on highways grounds.

In response to an intervention by Councillor Deborah Roberts, the Senior Planning Lawyer said that, as the Council no longer had jurisdiction to determine the application, it was his view that it was not necessary or appropriate to advise on any external advice in relation to the application.

The Chair invited Daniel Fulton (Fews Lane Consortium) to address the meeting. Mr. Fulton asked to speak after Dr. Jon Finney (Local Highways Authority) had spoken. Officers stated that Dr. Finney was present only to answer Members' questions and advised the Chair to follow the Committee's established process. Councillor Dr. Tumi Hawkins endorsed this advice but Councillor Dr. Richard Williams, seconded by Councillor Deborah Roberts, proposed that, given the circumstances of the matter before the Committee, a more flexible approach be adopted. Upon an electronic vote being taken, and by seven votes to three, the motion was defeated. Councillors Ellington, Roberts and Williams voted in favour of the motion and Councillor Cahn did not vote.

Mr. Fulton then started to address the meeting as objector.

Shortly afterwards, a technical problem with the audio aspect of the webcast led to a lengthy adjournment while engineers tried to resolve the problem. Once it was clear that audio could not be restored, the meeting was abandoned.

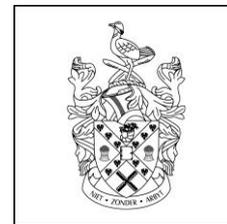
Agenda items 5 (Longstanton), 6, 7 and 8 (Linton), 9 (Bourn Airfield), 10 (Waterbeach), 11 (Tree Preservation Order in West Wickham, 12 (Enforcement) and 13 (Appeals) would be considered at a Planning Committee meeting on a date to be arranged.

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**The Meeting was abandoned at 11.30  
a.m.**

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# Agenda Item 5



**South  
Cambridgeshire**  
District Council

Reference: 20/05101/FUL

Site Address: The Retreat, Fews Lane, Longstanton CB24 3DP

29 Sep 2021

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

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

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## **20/05101/FUL– Land at the Retreat, Fews Lane, Longstanton, CB24 3DP**

Proposal: Erection of a chalet bungalow with garage and associated infrastructure

Applicant: Mr Gerry Caddoo, Landbrook Homes Ltd

Key material considerations:

- Principle of development
- Impact on the character of the area
- Impact on residential amenity
- Highways matters
- Other matters

Date of Member site visit: None

Is it a Departure Application?: No

Decision due by: 05.02.2021

Application brought to Committee because: The proposal raises significant concerns locally and it is considered to be in the public interest for the application to be referred to the Planning Committee.

Presenting officer: Lewis Tomlinson

## **Executive Summary**

1. The applicant has submitted an appeal to the Planning Inspectorate on the grounds of non-determination. As a result, the Local Planning Authority (LPA) no longer has the authority to determine the application. The LPA is required, however, to prepare a Statement of Case (SoC), as part of the appeals process, setting out its evaluation of the planning merits of the proposal. Given the history of the site, the application would have been referred to the Planning Committee for its determination had the appeal against non-determination not been made. Officers are therefore bringing the application to Planning Committee in order that Members can express the Committee's 'minded-to' decision that will form part of the SoC.
2. The application seeks planning permission to erect a 1.5 storey, 4 bedroom chalet dwelling, with garage, associated infrastructure and parking. A similar scheme (S/2439/18/FL) was granted by the Planning Committee in Feb 2019 for the erection of a single storey dwelling and ancillary parking. Officers are of the view that the proposed development complies with relevant policies of the Development Plan, that there are no material considerations which indicate that permission should be refused, and that therefore the proposed development is acceptable.

## **Relevant planning history**

3. Applications relating to the 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

S/3215/19/DC – Discharge of conditions 4 (Foul Water Drainage) and 5  
(Surface Water Drainage) of planning permission S/2937/16/FL – Discharged  
(subject to current High Court challenge)

4. Applications relating to the adjacent application site, land to the front (south):

20/02453/S73 – 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 as amended by planning committee on the 26th May  
2021 in relation to paragraph 3.2.4" (Re-submission of 20/01547/S73)

- approved Currently subject to High Court challenge (as referred to below, see appendix 7 regarding the Claimant's case and appendix 8 regarding the Council's response).

20/01547/S73 - 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 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" – Withdrawn

S/0277/19/COND9 – Condition 9 – foul and surface water drainage – subject to non-determination appeal, LPA seeking confirmation that appeal is within time and valid.

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 – subject to non-determination appeal, LPA seeking confirmation that appeal is within time and valid.

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/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

Officer's Note: this is not the complete planning history but rather details of those applications most relevant to the proposal put before members. For a complete planning history, one should review the on-line public register, including with reference to S/0791/88/O – One Bungalow – Refused and appeal dismissed, which has been referenced by third parties. Third party representations also draw reference to case law regarding the weight to be attached to the fall-back position of planning permissions and have included a summary table of the planning history of the site. The representation quotes 'it is common ground that the correct test to be applied in considering a fall back

argument is whether there is a reasonable possibility that if planning permission were to be refused, use of land, or a development which has been permitted, would take place, and such use or development would be less desirable than that for which planning permission is sought.” (emphasis added)’. The representation concludes that previous decisions for a site are certainly capable of being a material considerations, but not every extant planning permission for a site creates a fall-back position.

## **Planning policies**

### **5. National Guidance**

National Planning Policy Framework 2021 (NPPF)  
Planning Practice Guidance  
National Design Guide 2019

### **6. 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/1 Mitigation and Adaptation to Climate Change  
CC/3 Renewable and Low Carbon Energy  
CC/4 Water Efficiency  
CC/6 Construction Methods  
CC/7 Water Quality  
CC/8 Sustainable Drainage Systems  
CC/9 Managing Flood Risk  
HQ/1 Design Principles  
NH/2 Protecting and Enhancing Landscape Character  
NH/4 Biodiversity  
NH/6 Green Infrastructure  
H/8 Housing Density  
H/12 Residential Space Standards  
H/16 Development in Residential Gardens  
SC/11 Land Contamination  
TI/2 Planning for Sustainable Travel  
TI/3 Parking Provision  
TI/10 Broadband

### **7. 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

## **Consultation**

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

8. No objection. The Highway Authority can confirm that they will not be adopting any part of this development. Recommends the inclusion of conditions regarding a traffic management plan and deliveries during demolition/construction including muck away.

#### **Contaminated Land Officer**

9. No objection. The design and access statement describes the proposed site as “an open area of garden land which was more recently in use for materials storage/compound”. Though the end use is sensitive to the presence of contamination, the site is likely to be low risk. Recommends the inclusion of a condition regarding unexpected contamination.

#### **Drainage**

10. No comments received

#### **Environmental Health Officer**

11. No objection. Recommends the inclusion of a condition regarding construction noise hour limitations and an informative regarding piling.

#### **Longstanton Parish Council**

12. Having considered this application at their meeting on Monday 8th February, Longstanton Parish Council have recommended this application for Parish Council SUPPORT, however, they still have serious concerns over the increase in traffic on Fews Lane itself which is used as a public footpath. These concerns about highway safety have been raised by Longstanton Parish Council since the first application on this site in 2015. They have and continue to feel that the development impacts the safety of pedestrians using the public right of way and there is an impact on visibility for traffic leaving Fews Lane onto the High Street.
13. 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.

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

14. Representations have been received from the following addresses objecting to the application:
  - 6 Mitchcroft Road
  - 34 Mitchcroft Road
  - The Elms, Fews Lane (The Fews Lane Consortium Ltd)
15. The following concerns have been raised (as summarised):
  - The existing tree line should not be cut back and additional trees should be planted

- Highway safety grounds
- No safe access to the site has been provided
- The top of Mitchcroft Road corner to Few's Lane along the High Street would need double yellow lines due to the increase in dwellings
- The Local Highway Authority previously recommended refusal for other applications on the same site. Why have they taken a different approach to this application? The Local Highway Authority has stated outside of the application that its view has changed because the land necessary to provide a widened carriageway of Few's Lane sufficient for two cars to pass without either having to reverse along or into the public highway is not within the ownership or control of the applicant. The local highway authority also states that it is unable to request a condition for pedestrian visibility splays because the land necessary is not in the ownership or control of the applicant. It is because the Local Highway Authority has unlawfully taken into consideration irrelevant considerations, the identity of the owner of land within the application site and the identity of owner of land outside the application site that is not owned by the applicant.
- S. 327A of the Town and Country Planning Act 1990 specifically prohibits local planning authorities from entertaining applications where any requirement imposed by the Act or by any provision made under the Act has not been satisfied. Article 7(1) of the DMPO 2015, which was made pursuant to the 1990 Act, requires applications to comply with the instructions in the application form. The application form requires that the land required for visibility splays should be included within the red line boundaries shown on the location plan. Accordingly, this application for planning permission is being considered by the local planning authority ultra vires the 1990 Act.
- If approved, please attach the following conditions:
  - o The development authorised by this permission shall not commence until the local planning authority has approved in writing a full scheme of works for the carriageway of Few's Lane to be widened to a width of at least 5 metres for at least the first 5 metres of the carriageway as measured from the back of the footway along High Street and the approved works have been completed in accordance with the local planning authority's written approval and certified in writing as complete by the local planning authority. Reason: In the interests of highway safety, to ensure safe and suitable access to the site for all users (NPPF 2019 paragraph 108/Local Plan 2018 policy HQ/1), including users of the public footpath, by allowing two vehicles to safely pass in Few's Lane without either vehicle being required to reverse into the adopted public highway or along the public footpath.
  - o The development authorised by this permission shall not commence until the local planning authority has approved in writing a full scheme of works for two pedestrian visibility splays to measure at least 2 metres by 2 metres measured from and along the back of the footway along High Street and the edges of the carriageway of Few's Lane and the approved works have

- been completed in accordance with the local planning authority's written approval and certified in writing as complete by the local planning authority. Reason: In the interests of highway safety, to ensure safe and suitable access to the site for all users (NPPF 2019 paragraph 108/Local Plan 2018 policy HQ/1), including users of the public footpath, by allowing sufficient inter-visibility between pedestrians and vehicles making use of the junction.
- o The pedestrian visibility splays shall be maintained free of any obstruction above 600mm in height at all times thereafter for the lifetime of the development. Reason: In the interests of highway safety, to ensure safe and suitable access to the site for all users (NPPF 2019 paragraph 108/Local Plan 2018 policy HQ/1), including users of the public footpath, by ensuring that sufficient inter-visibility between pedestrians and vehicles making use of the junction is maintained for the lifetime of the development.
  - The development of the land at The Retreat is a single, integrated development designed to share a common infrastructure and access. The development, which would erect 5 houses, has been divided amongst multiple planning applications for only one or two houses each, and these applications have been submitted over multiple years in order to attempt to avoid the requirements for suitable access and infrastructure that would be required if the entire site were developed as a whole.
  - It is not reasonable for the local planning authority to continue to consider these applications in isolation when they comprise part of a larger site where there would be a requirement for the provision of adequate infrastructure and access if the site were to be developed as a whole.
  - The approach being taken by the local planning authority also would create a dangerous precedent if development which has unacceptable impacts may be permitted simply by the developer 'salami-slicing' the development into multiple smaller parcels that individually fall below the threshold where improvements to infrastructure and access are required.
  - Should the local planning authority adopt this approach, it would likely see this approach being used by developers in regards to a number of smaller sites throughout the village, in particular the site at 50 Mills Lane, and in surrounding villages.
  - The Few's Lane Consortium would urge the local planning authority to carefully consider the implications of its decision in this case for small sites throughout the district.
  - In 1988, the Council refused planning permission at this site because there was insufficient visibility at the junction of Few's Lane and High Street to permit any additional dwellings to use the access via Few's Lane. The council's 1988 decision to refuse planning permission was upheld by the Planning Inspectorate in 1989 on the grounds that there was insufficient visibility at the junction of Few's Lane and High Street to permit any additional dwellings to use the access via Few's Lane. Extracts from the appeal statement provided.

- The junction of Few's Lane and High Street has not been altered or improved since the 1988 and 1989 decisions, and although a bypass of the village has been completed since that time, the visibility at the junction is significantly less than it was in 1988 and 1989 due to the growth of trees and hedges since that time.
- Planning applications submitted for the site in 2012, 2014, and 2016 all failed to meet the national information requirements for applications for planning permission as they failed to include the land necessary to access the development from the adopted public highway within the red line boundary shown on the location plan. The invalidity of these applications was not considered by the decision makers at the time.
- Highway Authority advice has been inconsistent, previously requesting in relation to the 2012 application conditions relating to a 5m widening of the lane and 2m x 2m visibility splays. The conditions were attached.
- In 2014, The Retreat was sold to the current landowner. This is material because the longstanding position of the district council and county council on the suitability of this site for development inexplicably changed due to the lobbying efforts of the current landowner.
- In 2016, an application was made for planning permission for the erection of an additional dwelling. This application was refused by the local planning authority. That decision was the subject of an appeal, which was determined in 2018. The appeal was allowed. However, this appeal decision should be given very light weight as a material consideration in the current planning appeal. The reasons for this include:
  - Third parties were denied the opportunity to inspect the appeal documents and make representations to the Inspector. The local planning authority has accepted that the Inspector's assertion that the appeal documents had been available to third parties at the local planning authority's offices was not factually correct.
  - The Inspector appears to have been wholly unaware of the 1989 planning decision for the same type of development at the same site, in which an Inspector reached exactly the opposite conclusions on highway safety at the same junction.
  - The location plan for the application did not conform to the national validation requirements and did not indicate what land was to be used for access to the site from the adopted public highway.
  - The Inspector appears to have been unaware that Few's Lane is a public footpath as this was not indicated on the location plan as is required by the national validation requirements.
  - The Inspector failed to take into account the emerging local plan, which was adopted the day after the appeal decision, and which contained policy H/16 which specifically restricted the development of additional dwellings in residential gardens where it was not possible to provide safe access to the site.
- At the same time that the planning appeal above was being decided in 2018, the appellant also submitted a second application for the same development to the local planning authority.
- In that application, the local highway authority again requested conditions for 2m x 2m pedestrian visibility splays and the widening of

the carriageway to 5m for at least the first 5m from the boundary of the adopted public highway.

- In the course of the local planning authority's consideration of this application, the applicant contacted the planning officer and informed her that the owner of The Retreat did not own the land necessary for the improvements to Few's Lane sought by the local highway authority.
- Rather than informing the applicant that the ownership of land to which a planning application relates is not a material planning consideration, the planning officer instead proceeded to lobby the local highway authority to remove its requests for conditions requiring improvements to the junction on the basis of this immaterial consideration.
- In response, the local highway authority removed its requests for conditions.
- In a letter dated 12 December 2018, the local highway authority explained its unlawful reasoning for the decision:
- "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."
- The local highway authority has stated that pedestrian visibility splays of 1.5 metres x 1.5 metres can be accomplished within land owned by the local highway authority. It is on this basis that the Design Manual for Roads and Bridges has been taken into account by the local highway authority.
- In all other planning applications for non-major residential development, the local highway authority and the local planning authority evaluate applications against the guidance contained in the adopted Cambridgeshire Design Guide for Streets and the Public Realm and the Manual for Streets.
- The Cambridgeshire Design Guide recommends minimum pedestrian visibility splays of 2m x 2m.
- The Design Manual for Roads and Bridges specifically states in its introductory section that it applies to motorways and trunk roads. Neither Few's Lane nor High Street are a motorway or trunk road.
- Rather than using the appropriate guidance and applying it correctly to the junction, the local highway authority appears to have selected the guidance based on the physical parameters of the junction.
- The local highway authority should be basing its statutory consultation response upon highway safety considerations and it is unlawful for the local highway authority to instead base its decision on the ownership of

land within the application site, which itself is an immaterial consideration.

- The local highway authority has refused to say whether it conducted any highway safety assessment in formulating its statutory consultation response. The local highway authority also refuses to clarify the extent of any highway safety assessment, if one was in fact conducted, or what the findings of that assessment were. The local highway authority has refused to say whether the findings of any safety assessment were taken into account in formulating the local highway authority's statutory consultation response.
- The local highway authority has refused to answer any questions in regards to its statutory consultation response.
- The local highway authority has obtained legal representation in regards to its statutory consultation response for this development and has instructed that all correspondence from members of the public should be directed to its solicitor.
- The county councillor for Longstanton has declined to explain or defend the statutory consultation response of the local highway authority. She has declined to respond to emails and has declined invitations to meet with residents of Fewes Lane and Mitchcroft Road to discuss concerns about highway safety in regards to this development
- Officers of the local highway authority have not been willing to state that the local highway authority's consultation response reflects their own independent professional assessment of the highway safety implications of the development.
- The local highway authority's solicitor has not responded on behalf of the local highway authority to any of our queries about highway safety directed to the local highway authority. However, she has responded to confirm her receipt of our correspondence.
- The planning conditions recommended by the local highway authority are wholly inadequate. The condition for the construction traffic management plan has been varied in the case of this application to remove the requirement for the provision of on-site parking, and no requirement for suitable and safe parking or access to the site has been included that condition.
- Officers of the local planning authority have not responded to requests to meet with residents of Mitchcroft Road and Fewes Lane to discuss their concerns.
- Officers of the local planning authority have not responded lawfully to requests for information under the Environmental Information Regulations knowing that by the time a complaint is brought to the Information Commissioner's Office, the current planning appeal already will have been determined and the 6-week period for statutory review will have expired.
- Officers of the local planning authority have declined to state if any highway safety assessment of the development site has been conducted. If any such assessment has occurred, local planning authority officers have declined to clarify the scope of that assessment,

to state the findings of any such assessment, or to explain how any findings made have been considered by officers.

- Officers of the local planning authority have previously stated that it is “correct” for the local planning authority to apply the highway safety standards for motorways and trunk roads to the junction of Fews Lane and High Street despite the fact that Fews Lane is an unpaved, single-width carriageway and public footpath that is not maintainable at public expense and despite the facts that neither Fews Lane nor High Street are either a motorway or a trunk road.
- Officers of the local planning authority have not disputed the fact that this site for development in Fews Lane is the only time that it has applied the highway safety standards for motorways and trunk roads to a public footpath or a residential access from an unclassified road.
- Officers of the local planning authority have previously stated that there is land within the adopted public highway for 1.5 metre by 1.5 metre pedestrian visibility splays. Officers of the local planning authority have not provided any evidence in support of this assertion except for a reference to this fact in a 12 December 2018 letter from the local highway authority.
- No appropriate design justification for 1.5 metre by 1.5 metre visibility splays has been provided by the local planning authority or the local highway authority.
- The local planning authority has accepted that the ownership of land to which a planning application relates is not normally a material planning consideration. The local planning authority does not assert that anything in the circumstances of the present application justifies the granting of a personal planning permission.
- Despite the acceptance of this legal principle by the local planning authority, in a meeting in January 2021, the local planning authority’s assistant director for delivery made clear that 1.5 metre by 1.5 metre visibility splays had been selected by the local planning authority not because of any material highway safety reason, but rather based on the ownership of the land required to access the site.
- No drawing or plan of the access showing the visibility splays has been provided by the applicant to officers, and officers have provided no such drawing or plan to the planning committee. Unquestionably, if one were to remove or narrow the footways along High Street, pedestrian visibility splays could be accommodated in theory. However, this removes provisions for safe pedestrian infrastructure, and again, no details concerning the layout or construction of the visibility splays has been provided.
- The footway widths have not been stated by the applicant or officers. Officers appear to have no information on the footway widths, and this matter appears not to have been considered.
- Officers of the local planning authority have refused to state why this application was not determined within the time allowed by statute.
- The local planning authority has not responded lawfully to requests for information held by the authority providing evidence as to the

authority's reasons for not determining the application within the time allowed.

- The local planning authority has acted unlawfully in failing to maintain public access to its statutory planning register from May 2021 until 2 August 2021. In current judicial review proceedings, the local planning authority has not disputed that public access to the planning register was not maintained during that period.
- The local planning authority has not disputed that it has breached its legal duty of candour in current judicial review proceedings in regards to development at this site by not providing an adequate explanation of its decision making processes in regards to the planning decision taken for this site in May 2021.
- Officers of the local planning authority have not been appropriately straightforward, either with the High Court or with members of its planning committee, in regards to this site. Officers have refused to explain the many inconsistencies in their reasoning in regards to development at this site.
- In order for the planning committee's decision making process to be fair, officers must act in an unbiased and impartial manner. When it can be demonstrated that officers have provided incorrect information to the committee or withheld information from the committee that they knew to be material, the fairness of the decision making process will also be undermined.
- Both local members for Longstanton objected to the same type and amount of development at the same site in 2019 on the basis of inadequate provision for highway safety—in particular because of the inadequate visibility at the junction of Fews Lane and High Street, the lack of an adequate construction traffic management plan, the status of Fews Lane as a public footpath, the adverse impacts on the safety of highway users. Cllr Cheung Johnson attended a meeting of the planning committee and expressed these concerns directly to the committee. The objections expressed by the local members continue to be material in regards to this decision.

16. Representations have been received from the following addresses neither objecting nor supporting to the application:

- 8 Mitchcroft Road

17. The following comments have been raised (as summarised):

- Confirmation that the tree line to the rear elevation of the property won't be cut back or thinned and will be thickened

18. A judicial review pre-action protocol letter of 30 April 21 was received from Mr Fulton on behalf of Fews Lane Consortium Limited ("FLCL") for this application and another application (20/02453/S73) relating to the adjacent site to the front. The pre-action protocol letter can be summarised as follows:

- Article 7(I) of the 2015 Order states that an application form for planning permission specifies that a location plan must be submitted that complies with the following instructions: "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).”

- In the case of application S/0277/19/FL, the area outlined in red on the location plan, which is relied upon also by purported application 20/02453/S73, failed to include all the land necessary to carry out the proposed development contrary to Article 7 (l) of the 2015 Order. Specifically, the land outlined in red failed to include the land required for visibility splays.
- The LPA has no jurisdiction to entertain, much less approve, either application

## **The site and its surroundings**

19. The property known as The Retreat comprises a single-storey dwelling off an unadopted road known as Fews Lane. There are extant planning permissions to demolish The Retreat and replace it with two chalet style dwellings (S/0277/19/FL and 20/02453/S73 (S73 subject to current Judicial Review proceedings, see appendices 3-6 for associated decision notices and committee reports and appendices 7 and 8 regarding the JR claim and the Council’s formal response)). Parking for these two new dwellings would take place from the site frontage onto Fews Lane.
20. The current proposal and site is on land to the rear of the approved pair of chalet style dwellings which would replace The Retreat. The site is subject to an extant planning permission for a bungalow granted on appeal on 27 September 2018 (S/2937/16/FL), see appendix 1.
21. The site is also subject to an extant and identical planning permission to that allowed on appeal – permission ref. S/2439/18/FL - granted on 25 March 2019, which was reported the South Cambs Planning Committee meeting on 13 Feb 2019. S/2439/18/FL included an amended red line site plan connecting to the public adopted highway.
22. Para. 2 of the Officer Report for S/2439/18/FL to the 2019 Planning Committee stated *‘The previous application was refused on grounds of highway safety and was appealed successfully. In the light of that decision and the details submitted with the current application, officers are of the view that the proposed development is acceptable’*
23. The current proposal put before members of the Planning Committee is for a 1.5 storey dwelling to be erected in the former garden area to the rear of the proposed two new properties. The current proposal, together with the approvals to the front of the site onto Fews Lane, would complete the build out of the wider site which began with the two existing new homes constructed to the west and north west of The Retreat.

24. Fews Lane is not an adopted highway and comprises a single vehicle width gravel/surfaced track. The lane currently serves as an access to a double garage serving 135 High Street and to 3 other dwellings (The Willows and the two other recently constructed dwellings to the west of the Retreat) as well as to development plots at The Retreat. The Lane varies in width and the lane runs alongside a tree lined and vegetated area (to the north) with boundaries to No 135 and The Willows to the south side. A footpath (Public Right of Way) linking the Home Farm residential development to the south and west of Fews Lane with High Street emerges onto the south side of Fews Lane at a point to the immediate west of The Willows (and before the existing informal turning area beyond). The site lies within the designated village framework. To the immediate north of the site is a drainage ditch which outfalls to Longstanton Brook. The site is otherwise unconstrained.

### **The proposal**

25. The application seeks consent for the erection of a chalet bungalow with garage and associated infrastructure. It would contain 4 bedrooms. The application sets out that the proposed dwelling:

- Mirrors the recently constructed dwelling to the west known as The Elms with the same roof pitch and ridge height.
- Has a ridge height that is lower than the approved dwellings (Plots 4 & 5) to the south.
- Has as a smaller footprint than the approved bungalow on the site and yet still provides four usable bedrooms, giving an increase in garden size.
- Provides parking within the curtilage of the site and the ability to turn and leave the dwelling in forward gear.

### **Planning assessment**

#### **Principle of development**

26. Policy S/2 of the South Cambridgeshire Local Plan sets out the Plan objectives based on principles of sustainable development. Policy S/3 provides a presumption in favour of sustainable development. In locating new residential development, policy S/6 sets out the development strategy based on a sequential approach to development.

27. Policy S/7 states that development and redevelopment of unallocated land and buildings within development frameworks will be permitted provided that:

- a. Development is of a scale, density and character appropriate to the location, and is consistent with other policies in the Local Plan; and
- b. Retention of the site in its present state does not form an essential part of the local character, and development would protect and enhance local features of green space, landscape, ecological or historic importance; and
- c. There is the necessary infrastructure capacity to support the development

28. Policy S/10 classifies Longstanton as a group village where residential development will be permitted of up to 8 dwellings. Therefore, the principle of a new dwelling within the village framework as proposed would be considered acceptable subject to other material planning considerations discussed below.
29. In addition, and in any event, the principle of development of a dwelling on the site has already been established through the granting of application S/2439/18/FL which remains extant until 25 March 2022 and also the appealed application S/2937/16/FL which remains extant until 27 September 2021. These two applications are strong material considerations relating to the principle of development. For the reasons set out below in relation to the specific criteria in S/7 and H/16, officers consider the principle of a dwelling on the site to be acceptable.

### **Design and character**

30. Policy HQ/1 of the adopted Local Plan states that all new developments should preserve or enhance the character of the local area and be compatible with its location and appropriate in terms of scale, mass, form, siting, design, proportions and materials. Policy HQ/1 also states that planning permission will not be granted where the proposed development would, amongst other criteria, have an unacceptable adverse on village character.
31. Policy H/16 relates to development in residential gardens and states that:
- The development of land used or last used as residential gardens for new dwellings will only be permitted where:
- a. The development is for a one-to one replacement of a dwelling in the countryside under Policy H/14 and/or:
  - b. There would be no significant harm to the local area taking account of:
    - i. The character of the local area;
    - ii. Any direct and on-going impacts on the residential amenity of nearby properties;
    - iii. The proposed siting, design, scale, and materials of construction of the buildings;
    - iv. The existence of or ability to create a safe vehicular access;
    - v. The provision of adequate on-site parking or the existence of safe, convenient and adequate existing on-street parking;
    - vi. Any adverse impacts on the setting of a listed building, or the character of a conservation area, or other heritage asset;
    - vii. Any impacts on biodiversity and important trees;
    - viii. Ensuring that the form of development would not prevent the development of adjoining sites
32. The surrounding area has a mix of styles and designs of residential properties but is generally characterised by compact residential properties set within close proximity of one another. The character of this part of Longstanton also comprises mainly detached dwellings which sit within modest plots. The proposed design of the dwelling is of a chalet style, with a ridge height of circa 7m. The proposal would comprise a 1.5 storey dwelling of a very similar scale

and design to the 2 dwellings recently constructed on the adjacent site under planning permission S/1498/15/FL.

33. The materials for the dwelling would consist of a clay pan tile in natural red with brick walls using Ibstock Ivanhoe cream buff multi-facing brick and white uPVC windows. Officers consider that such materials would be in-keeping with the surrounding buildings and consider that the proposal would be appropriate in terms of scale, mass, form, siting, design, proportions and materials.
34. The site has an area of approximately 0.05 hectares and the proposed dwelling would represent a density of 20 dwellings per hectare which is below the 30 dwellings per hectare usually sought by policy H/8. Given the constraints of the site adjacent to the other residential properties and the surrounding pattern of development a lower density is considered acceptable in this instance. The proposal is considered to comply with the aims and objectives of policy H/8.
35. The proposal is of a scale, density and character appropriate to the location. The site does not form an essential part of the local character and has sufficient space around its boundaries to protect existing features such as hedging. No significant harm to the local area would arise as per the criteria set out in policy H/16. The proposal complies with policies S/7, HQ/1, H/8 and H/16 of the adopted Local Plan 2018 and section 12 of the NPPF.

### **Highway matters**

36. Occupiers of neighbouring properties and the Parish Council have raised concerns about the access arrangements. The means of access would be from the High Street and along Fewes Lane, the same as the most recent extant permission ref. S/2439/18/FL and other recent planning permissions. Officers consider that the proposal would not materially intensify the use of the access beyond that already approved, and taking account of approvals granted in the area since, the access is appropriate to serve the proposed dwelling. There is no objection from the Local Highway Authority regarding the proposed access.
37. Occupiers of neighbouring properties have raised concerns regarding highway safety, the need for upgrades to Fewes Lane, provision of visibility splays and the piecemeal development of properties off Fewes Lane. Officers have examined the committee reports to S/0277/19/FL and 20/02453/S73 (see appendices 4 and 6), which informed the most recent planning permissions on the adjacent site to the south for 2 new dwellings where highway safety matters were considered in detail.
38. Paragraphs 43 – 55 of the S/0277/19/FL report are considered relevant to the consideration of the current application in that they deal with the planning merits of the suggested improvements to Fewes Lane, the extent of the red line and visibility splays, issues which have been raised again under this

application. The relevant paragraphs from the original committee report are set out below:

*‘43: Paragraph 109 of the NPPF states developments should only be prevented or refused on highways grounds if there would be an ‘unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.*

*44: The local highway authority (LHA) initially objected as the application was not supported by sufficient pedestrian/cycle information to demonstrate that the proposed incremental development would not be prejudicial to the satisfactory functioning of the highway. The LHA requested that the pedestrian/cycle surveys be carried out, for the duration of 5 days Monday – Friday (not during the school holidays), between the hours of 7.30 – 9.30 and 15.00 – 17.00, along with details of weather on these days.*

*45: The applicant has since undertaken a survey for the use of Fewes Lane by cycles and pedestrians. This was carried out between 27 March and 2 April. The survey results indicate that on average there were 10 pedestrian movements per hour up and down Fewes Lane with a cluster of secondary school children during the a.m. and p.m. peaks representing almost 50% of all pedestrian movements. There was a record of just one cyclist during the week long survey. Full details of the survey are available to view on the Council’s website.*

*46: Following the submission of the requested pedestrian/cycle information the LHA has withdrawn its request for refusal. As such, the LHA has not identified any unacceptable impact on highway safety. This is notwithstanding the survey information excludes highway users who pass the entrance to Fewes Lane as suggested by an objector.*

*47: The LHA’s approval is subject to conditions that the existing Public Right of Way (PROW) be constructed using a bound material, for the first ten metres from the back of the footway along High Street; the submission of a traffic management plan and an informative to the effect that the granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.*

*48: The requested works requiring the surface of Fewes 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 Cambridgeshire County Council.*

*49: The above conditions are considered necessary in this instance. No conditions are sought in respect of the width of the Lane at its junction with High Street or for pedestrian visibility splays to be provided as recommended by some local residents. Objections that the application is not valid as the red line plan does not take account of the necessary visibility splays are not*

*relevant as no requirement for such splays to be provided is considered necessary.*

*50: In considering the residual cumulative impact on the road network, account is taken of the increased level of traffic due to the total cumulative development of the original curtilage of The Retreat, and the two other properties (built in the 1960's) which use Fews Lane for vehicular access. With the recent approval for a dwelling under reference S/2439/18/FL, the former curtilage of The Retreat will have been subdivided into a total of 5 separate residential plots with the two additional houses opposite.*

*51: So far as the residual cumulative impacts on the road network are concerned, there would typically be around 4.5 vehicular movements per dwelling over a 12-hour period. This means that with the two new dwellings the total number of vehicular movements would increase to approximately 31.5. The local highway authority has not raised any concerns that the existing free flow of traffic along the High Street will be materially affected. Significantly, the LHA has not considered the residual cumulative impact on the road network arising from a total of seven dwellings to be "severe" as per the wording in paragraph 109 of the NPPF.*

*52: Attention is drawn to the two appeal decisions attached as appendix 1 and 2. In the former appeal (from 1989), the inspector noted that Fews Lane served three dwellings and the appeal proposal would increase this to 4. He considered the junction of Fews Lane and High Street (then the route of the B1050 through the village) to be unsafe given visibility to the south was considerable impeded by vegetation. As the road is straight, it was anticipated that vehicles would be travelling close to the maximum permitted speed and this would have a harmful effect on traffic safety. No such overriding harm was found in respect of traffic travelling from a northerly direction.*

*53: In the subsequent 2018 decision, the appeal inspector was aware that the B1050 had ran through the centre of Longstanton, but that the village by-pass now has a signposted route that skirts its western edge. He observed that traffic now has no need to take the old route to by-pass the village and that the time of his 9 a.m. visit on a school day, the level of traffic in the High Street appeared to be quite low. He opined there was no evidence to suggest these conditions were unusual. His conclusion was that although Fews Lane does not meet modern highway standards in terms of both its geometry and construction, the development would provide safe and appropriate access.*

*54: Officers conclude that there has clearly been a material change of circumstances in highway conditions between 1989 and 2018, namely the construction of the village bypass. This has had a material impact on traffic flows. The current application for an additional dwelling is also to be determined in accordance with the same road conditions that prevailed at the time of the second appeal.*

*55: Having had due regard to the matters already discussed, officers have no reason to dispute the conclusion of the LHA in respect of any highway related matters. The proposal therefore complies with policies TI/2 and TI/3.'*

39. It is clear from the above extract that from a relatively recent committee report in an adjacent location (S/0277/19/FL) that the Inspector, for the related appeals on Fews Lane, and officers, robustly considered the Fews Lane highway safety issues. Officers have also considered the cumulative impact of the total amount of properties along Fews Lane.
40. The conditions proposed by third parties in relation to the upgrade of Fews Lane and provision of visibility splays, have not been imposed on the two extant permissions for two dwellings to the front of Fews Lane S/0277/19/FL or 20/02453/S73, or for the two extant planning permissions on the current site to the north of these, which include the appealed permission S/2937/16/FL or S/2439/18/FUL (see appendices 1 and 2). Contrary to the third party representations, taking into account the most relevant and recent planning history and approach to this matter, it is officers' judgement that it would be inconsistent and unnecessary of the LPA to seek to secure the improvements to Fews Lane as sought by third parties. These improvements and splays have not been sought by the Local Highway Authority on the current application.
41. Detailed consideration of visibility splays was also set out in the recent report to planning committee for the S73 application for the adjacent site, land to the front (south), ref. 20/02453/S73 (January 2021 with updates in April and May). This committee report is attached at appendix 4. Officers consider the arguments set out in that report, especially in relation to the adequacy of the existing visibility splays at the junction of Fews Lane and High Street, are relevant to the consideration of the current application.
42. Officer advice is that it is not necessary to seek to apply conditions as part of this application to upgrade Fews Lane or provide or maintain pedestrian visibility splays through the imposition of a Grampian condition because the splays required are contained within the adopted highway and provide adequate visibility. Material circumstances have not altered to suggest an alternative conclusion that improvements to Fews Lane are now necessary in order to grant planning permission. Officers are also of the view that given permissions S/2937/16/FL S/2439/18/FL, 20/02453/S73 and S/0277/19/FL (appendices 1, 2, 3 and 5) did not impose requirements to upgrade Fews Lane as sought by third parties, that to impose additional requirements now under this application would not be reasonable, particularly in light of the fact that S/2439/18/FL could itself be implemented without such requirements (expiry date of permission 25 March 2022). Officers note the third-party representations regarding the weight to be attributed to fall-back applications and representations which set out the planning history and challenge the validity of a number of the existing permissions, but they do alter officer advice.

### **Residential amenity**

*Residential amenity of neighbouring properties*

43. The proposal would result in an increase of the ridge height by 2m in comparison to the previously approved scheme. The proposal would also include dormer windows in the front and rear roof slopes. The front dormer windows would have a minimal projection and the rear dormer would have a sloped roof. The scheme has been designed to keep the bulk of the first floor accommodation to a minimum and the roof pitch would help mitigate the potential impact upon No.6 Mitchcroft Road. No first floor windows are proposed on either side elevation.
44. There would likely be a small amount of overshadowing to a small part of the rear of The Elms in the early part of the day and a similar small amount of overshadowing to the rear garden of 6 Mitchcroft Road in the latter part of the day. Nonetheless, as a matter of judgement, officers are satisfied that the proposal would adequately protect the health and amenity of neighbours and thus comply with policies H/16 and HQ/1.
45. There would be a degree of overlooking of the rear gardens of the two approved dwellings on the adjacent site under S/0277/19/FL. It should be noted that these are also proposed new builds and do not have existing residential amenity. Future occupiers of these properties would be likely to be aware of the constraints of the site and layout of approved plots adjacent. In any event, there would be a circa of 22m of back-to-back distance. This relationship is acceptable in this case.
46. The Environmental Health Officer has recommended conditions for attachment in respect of working hours, contamination and piling. The working hours condition is considered reasonable for attachment in accordance with Policy CC/6. Contamination and piling conditions are also recommended to be imposed.
47. The proposal is considered to comply with the principles of Policy HQ/1 and would not harm the amenity of neighbouring properties.

*Amenity of future occupiers*

48. The gross internal floor space measurements for units in this application are shown in the table below:

<b>Unit Type</b>	<b>Number of bedrooms</b>	<b>Number of bed spaces (persons)</b>	<b>Number of storeys</b>	<b>Policy Size requirement (m<sup>2</sup>)</b>	<b>Proposed size of unit</b>	<b>Difference in size</b>
1	4	7	2	115	148	+33

49. The proposal exceeds the policy requirement for gross internal floor space. A sufficient sized rear garden is also proposed. The proposal is compliant with policies HQ/1 and H/12.

### **Renewables / Surface and Foul Water / Biodiversity**

50. As per adopted policies CC/3, CC/4, CC/7, CC/8 and CC/9, conditions are recommended in respect of renewables, water efficiency and surface water drainage. Surface water is indicated to be controlled via a soak-away system.

51. Foul water drainage is detailed to be connected to the existing system and can be addressed through Building Regulation requirements.

52. As per policy NH/4 and NPPF guidance, the applicant is encouraged to seek to enhance biodiversity on the site. The proposed plans include a wall mounted sparrow terrace on one of the gables. A condition is recommended to be imposed to secure the detail of this and other biodiversity enhancements as appropriate.

### **Other matters**

53. There have also been substantial third-party representations in respect of the application and previous applications, concerning their validity, the details provided and the application by the County Council of its Highway Policies. This includes matters in relation to the planning history of the site – including an earlier 1989 appeal decision which was dismissed on grounds of visibility - and inconsistency of advice from the Local Highway Authority over the course of time, stating that visibility at the junction is now less than before because of vegetative growth.

54. 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 current proposals by County Highway officers reported above is also considered to be satisfactory – noting that the application of County Council policies and standards (national and local) 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 - albeit members are not bound to follow their advice - including on the matter of the need for an explicit visibility splay to be shown for pedestrians at the site entrance.

55. Officers recognise that over the course of time, the nature of the advice from the LHA has changed as has the nature of the highway network around Longstanton. Based upon the current layout, location of the access and nature of the High Street and in consideration of the recent planning history and appeal history, officers do not consider conditions to improve the access and provide visibility splays to be reasonable or necessary.

56. Representations suggest the LHA's previous advice on S/2439/18/FL was unlawfully based upon matters of land ownership. The LHA's current advice is

not framed in this way and the period to challenge the previous decision of the LPA / advice from the LHA on that application has passed. The extant permission S/2439/18/FL is therefore a strong material planning consideration for members of the Planning Committee. Officers note that representations have been made directly to the LHA from Fewes Lane Consortium regarding its statutory consultation response and assessment of the highway safety implications of the proposal. There is nothing to suggest that the LHA has changed its position.

57. The Council does not agree that it has no lawful authority (notwithstanding the non-determination appeal process that this application is now subject to) to entertain these applications pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015. An extensive bundle of correspondence between FLCL and the Council (together with an index) is attached to this report at appendix 7.
58. Judicial Review proceedings have been issued in relation to 20/02453/S73 and are ongoing (see appendices 7 and 8). The Council is defending its decision as lawful. That consent remains valid pending any decision of the High Court.
59. The application has been advertised as affecting a Public Right of Way (PROW). Taking into account previous decisions on this site and adjacent sites, officers do not consider there would be an adverse effect upon the PROW.
60. Third party comments regarding the retention of existing landscaping and the filling in of gaps are noted. The plans show that the landscaping is to be retained which aligns with the previous approval on the site. No conditions previously were applied in regard to boundary planting and officers do not consider it necessary to impose such conditions now.
61. Previous representations from third parties have been made in relation to impacts of the frontage scheme on green infrastructure as per policy NH/6. Officers do not consider this application to give rise to any concerns regarding potential conflict with NH/6 given the retention of border hedgerow to the site.
62. Representations have been received which suggest that following the sale of the Retreat in 2014 to the current landowner, the suitability of the site for development inexplicably changed due to the lobbying efforts of the current landowner. Officers confirm that this assessment of the application is not based upon the identity of the applicant but on the individual merits of the proposal.
63. Representations received suggest that limited weight should be given to the 2018 appeal decision re S/2937/16/FL at appendix 1. Officers disagree, the appeal decision deals with the primary issue of highway safety in detail. The decision on S/2937/16/FL is beyond the period of judicial challenge. The reasoning given by the Inspector for allowing the appeal is sound and officers advise that significant weight should be given to the appeal in the consideration of this application.

64. Representations question why the statutory period for determination of the application has expired without the application being determined. The non-determination of this application relates primarily to the complexity and extent of legal planning challenges to development proposals along Fewes Lane made by Fewes Lane Consortium.
65. Representations allege that the LPA has failed to maintain public access to its statutory planning register from May 2021 until 2 August 2021 and that in the current judicial review proceedings, the local planning authority has not disputed that public access to the planning register was not maintained during that period. Officers are of the view that this application, having been received on 11 Dec 2020, has been sufficiently well publicised and available for view on the public register so as have not to have caused any prejudice to third parties in relation to the formulation of representations to the proposal. Issues relating to the duty of candour in relation to current judicial review proceedings have been raised in representations and have been responded to by the Council (see appendix 9).

#### Traffic Management Plan and Muck-Away

66. The LHA has recommended two conditions, one relating to a Traffic Management Plan (TMP) and another relating to delivery and muck away movements from the site to between 9.30hrs and 16.00hrs Mon-Fri only. The conditions are recommended in the interests of highway safety.
67. Neither of these two conditions have been imposed on the two extant permissions for the site previously (S/2937/16/FL or S/2439/18/FUL). Officers consider a TMP condition to be unnecessary given the limited scale of the proposal. Within the appeal decision for S/2937/16/FL at para 16 the Planning Inspector also considered this point concluding that 'Many small developments are able to take place without any specific or detailed conditions relating to construction traffic, and there seems no reason why the appeal scheme should be any different'. Officers agree.
68. By way of an alternative, an informative is proposed by officers to encourage co-ordination of development with adjacent land if being developed.
69. Regarding the LHA request for limiting delivery and muck away movements, the proposal does not include a basement and is likely to involve piled foundations and as such the extent of any muck-away is likely to be limited. Officers do not consider this condition to be necessary – noting proposed condition 3 in any event – and that a condition, as per Environmental Health advice, is proposed to control the noise impacts from piling operations.

#### **Planning balance and conclusion**

70. Taking into consideration the above points, including the site history, Parish Council comments, the third-party representations and the advice from the Local Highway Authority, officers consider that the proposal is acceptable and

complies with Local and National policies. Officers would have recommended approval of the application (subject to conditions) as in accordance with the Development Plan with no material considerations indicating otherwise.

## Recommendation

Officers recommend that the Planning Committee determines it would be **Minded to Approve** the application if it had the authority to do so subject to the following conditions and informative:

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.  
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development, which have not been acted upon).
- 2 The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.  
Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.
- 3 No construction site machinery or plant shall be operated, no noisy works shall be carried out and no construction related deliveries taken at or dispatched from the site except between the hours of 0800-1800 Monday to Friday, 0800-1300 Saturday and not at any time on Sundays or Bank or Public holidays.  
(Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).
- 4 No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the dwelling.  
(Reason – In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and NPPF guidance that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.)
- 5 The dwelling hereby approved shall not be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with.  
(Reason – To improve the sustainability of the dwelling and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the South Cambridgeshire Local Plan 2018.)

- 6 No development above slab level shall be commenced until full details of the proposed arrangements for surface water drainage, both from the building itself and from the proposed driveway area, have been submitted to and approved in writing by the local planning authority. The new dwelling shall not be occupied or brought into use until the surface water drainage has been installed and made operational, in accordance with the approved details.  
(Reason – To ensure a satisfactory means of drainage in accordance with policy CC/8 of the South Cambridgeshire Local Plan 2018.)
- 7 The dwelling hereby approved shall not be occupied until the dwelling has been provided with sufficient infrastructure, including sockets, cabling and connection points, sufficient to enable Wi-Fi, and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling, unless otherwise agreed in writing with the Local Planning Authority.  
(Reason – To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the property and improve opportunities for home working and access to services, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.)
- 8 If during the development contamination not previously identified is found to be present at the site, such as putrescible waste, visual or physical evidence of contamination of fuels/oils, backfill or asbestos containing materials, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.  
(Reason – In the interests of public health, policy SC/11, South Cambridgeshire Local Plan 2018).
- 9 In the event of the foundations for the proposed development requiring piling, prior to any piling taking place, the applicant shall provide the local authority with a report / method statement for approval detailing the type of piling and mitigation measures to be taken to protect local residents noise and or vibration. Potential noise and vibration levels at the nearest noise sensitive locations shall be predicted in accordance with the provisions of BS 5528, 2009 - Code of Practice for Noise and Vibration Control on Construction and Open Sites Parts 1 - Noise and 2 -Vibration (or as superseded). Development shall be carried out in accordance with the approved details.  
(Reason: In the interests of minimising noise disturbance, policy SC/10, South Cambridgeshire Local Plan 2018).
- 10 No development above slab level shall commence until a biodiversity enhancement scheme has been submitted to and approved in writing by the Local Authority. It shall include the consideration of native planting,

hedgehog habitat and connectivity and the proposed specification, number and locations of internal and / or external bird and / or bat boxes on the new buildings and any other measures to demonstrate that there will be a net biodiversity gain on the site of at least 10% (unless an alternative target is otherwise agreed by reason of viability). The biodiversity enhancement scheme as agreed shall be carried out prior to the occupation of the development and subsequently maintained in accordance with the approved scheme for the lifetime of the development.

(Reason: In accordance with the NPPF 2021 para 174 and Policy NH/4 of South Cambridgeshire Local Plan 2018)

#### **INFORMATIVE:**

The contractor is encouraged to liaise with adjacent development plots if carried out simultaneously and minimise impacts on surrounding streets in terms of muck-away, contractor parking, control of deliveries and control of dust, mud and debris in relation to the functioning of the adopted public highway.

Appendices:

#### *Rear Plots*

Appendix 1: Appeal decision relating to S/2937/16/FL of 27 Sep 2018

Appendix 2: Decision notice relating to S/2439/18/FUL of 25 March 2019

#### *Frontage Plots*

Appendix 3: Decision notice relating to 20/02453/S73 of 27 May 2021

Appendix 4: 21 May Planning Committee Report relating to 20/02453/S73

Appendix 5: Decision notice relating to S/0277/19/FL of 9 May 2019

Appendix 6: 8 May 2019 Planning Committee Report relating to S/0277/19/FL

#### *Other*

Appendix 7: Fews Lane Consortium Judicial Review Claim

Appendix 8: SCDC Judicial Review Response

Appendix 9: SCDC Duty of Candour Response



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## Appeal Decision

Site visit made on 6 September 2018

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 27 September 2018**

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**Appeal Ref: APP/W0530/W/18/3197008**

**Land at rear of 'The Retreat', Few's Lane, Longstanton, Cambs CB24 3DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Gerry Caddoo against the decision of South Cambridgeshire District Council.
  - The application Ref S/2937/16/FL, dated 28 October 2016, was refused by notice dated 4 September 2017.
  - The development proposed is the erection of a 3-bedroomed bungalow with parking.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the erection of a 3-bedroomed bungalow with parking, on land at the rear of 'The Retreat', Few's Lane, Longstanton, Cambs CB24 3DP, in accordance with the terms of the application, Ref S/2937/16/FL, dated 28 October 2016, subject to the conditions appended hereto.

### Preliminary Matters

2. The Council's decision to refuse planning permission cited two reasons. One of these related to affordable housing. Subsequently, in an email dated 6 September 2018, the Council has confirmed that it no longer wishes to pursue that refusal reason.
3. During the course of the appeal, in July 2018, the revised version of the National Planning Policy Framework (the NPPF) came into effect. The appellant and the Council were given the opportunity to comment on any implications for the appeal.
4. An application for costs has been made by the appellant against the Council. That application is the subject of a separate decision.

### Procedural Matters

5. A neighbouring occupier, Mr D Fulton, questions the validity of the appeal, and raises issues of procedural fairness. In this connection, my attention is drawn to various provisions in the Town and Country Planning (Development Management Procedure) Order 2015 (the DMPO), and also to the Planning Practice Guidance (PPG), and the Council's own local validation requirements. Amongst other things, the 'red line' around the application site should include all the land necessary to carry out the proposed development. As examples, this may include land required to access the site from a public highway, and visibility splays.

6. However, these examples are not necessarily relevant in all cases. In the present case the application site, as defined on the submitted Location Plan, encompasses the proposed new dwelling and its garden area. Although access to the site is via an unadopted road (Fews Lane) and a shared private driveway, no alterations are proposed to either of these, nor to their visibility splays, and for reasons that I shall explain, I do not consider that any such alterations are reasonably required. In addition, whilst land outside the red line might be needed for parking and other purposes during construction, these are not part of the development itself. No development is therefore proposed or required outside the application site, and on this basis, I consider that the boundary as defined meets the necessary statutory requirements. In this respect the development now proposed is clearly distinguishable from the appeal case cited by Mr Fulton<sup>1</sup>.
7. The application and appeal were each accompanied by an ownership Certificate under DMPO Article 14. As far as I am aware, there is no challenge to the accuracy of those certificates. With regard to Fews Lane and the shared driveway, there was no requirement for notice to be served on the owners of these areas, because they are outside the application site. In any event, it is evident that adjoining occupiers were notified by the Council, and a notice was placed in a local newspaper. There is no evidence that any owner has been denied the opportunity to comment, or otherwise disadvantaged.
8. The local validation requirements, and the PPG, also ask for any adjoining land owned by the applicant to be outlined in blue. In the present case, no such land was identified. It is not clear whether this was an error, bearing in mind the potential for ownership to be split between related individuals and companies, but to my mind nothing turns on the point. It is clear that the Council was aware that the applicant either owned or controlled the existing property 'The Retreat', and took this into account. There is nothing to suggest that any other land outside the application site could or should have been identified as blue land. Consequently any failure in this respect cannot have affected the Council's decision, and nor is there any apparent reason why it should affect the outcome of this appeal.
9. In addition, Mr Fulton requests that a decision on the appeal be held back for four weeks, to allow him further time to comment, because of difficulties in accessing some of the documents via the Council's website. However, I note that the documents are also available to inspect at the Council's offices, and Mr Fulton acknowledges that he has been aware of the appeal since March of this year. Comments were initially requested by 8 August 2018, but in Mr Fulton's case, this was extended up to 18 September. In the circumstances, I see no compelling reason to delay my decision further.
10. In view of all the above matters, and having regard to the particular facts of this case, I am satisfied that the appeal is valid, and that there is no evidence of any procedural unfairness to any interested party. I have therefore proceeded to determine the appeal on this basis.

### **Main Issue**

11. In the light of all the above matters, there is one main issue in the appeal. This concerns the proposed development's effects on highway safety.

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<sup>1</sup> APP/K1128/W/17/3187008, land at Venn farm, Brixton, Devon

## Reasons for decision

12. The Council's remaining refusal reason relates to highway safety issues, during the construction period only. The refusal notice suggests that construction vehicles could cause disruption of the highway and interference with the passage of through vehicles, on a road where the principal function is said to be carrying traffic freely and safely between centres of population. To my mind this paints a picture which is at odds with reality.
13. On my visit I saw that the village of Longstanton lies close to the B1050, which is a local road running from the A14 at Bar Hill to Earith, and thence providing access to a network of smaller roads and settlements in the Fens. At one time, the B1050 evidently ran through the centre of Longstanton, along the High Street, but some years ago the village was by-passed, so that the signposted route now skirts its western edge. This new by-pass is a high-standard modern road, which appears to have ample capacity for the likely volume of through traffic. In contrast, the old route through the village centre and the High Street, which is now unclassified, is a slower alternative with no discernible advantage. At the time of my visit, despite being around 9am on a school day, the level of traffic in the High Street appeared quite low. There is no evidence before me to suggest that these conditions were in any way unusual.
14. Fews Lane is an unmade road with a gravel surface. The lane does not meet modern highway standards in terms of its geometry or its construction, but it serves only five existing dwellings, including two recently built adjacent to the appeal site. There is sufficient width in the lane for two cars or light vans to pass each other, and for either of these to pass a pedestrian or cyclist. When a larger vehicle is involved, there will be a need for some care, but that is not an unusual situation, and nor does it mean the lane is dangerous. Visibility at the junction with the High Street is slightly restricted, but not unduly so. There is no evidence of any accident record. The proposed development would add only one further dwelling, of no more than average size. Apart from construction traffic, the Council does not dispute that the traffic generated by the new dwelling can be accommodated safely. In all these respects, the proposed development would provide safe and appropriate access, complying with the relevant provisions of Policy DP/3<sup>2</sup>.
15. With regard to the construction phase, the appellant has submitted a Traffic Management Plan (TMP)<sup>3</sup>. The Council considers that this is insufficient to guarantee the safety of all highway users, and this view reflects the advice of the Highway Authority (HA), whose consultation response identifies various detailed criticisms of the TMP. But the HA acknowledges that what it sees as defects in the TMP could be overcome by relatively minor amendments. The Council has made no further comment, and therefore appears to accept the HA's advice on these points. I note that an earlier TMP was agreed with the same applicant in connection with the adjoining development. It is therefore quite clear that, were I to agree that some form of management plan for construction traffic was necessary, an acceptable plan could be secured by condition.

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<sup>2</sup> Of the South Cambridgeshire Development Control Policies, adopted July 2007

<sup>3</sup> The document referred to here is the Traffic Management Plan submitted with the application; subsequently, on 6 September 2018 the appellant submitted a Construction Transport Management Plan by SLR Consultants, but this was ruled inadmissible because it was outside the usual appeal deadlines, and I have paid no regard to it

16. However, having regard to all the above matters, that is not my view. The proposed development is only a single dwelling, and the construction period envisaged in the TMP is fairly short. The appeal site is not unduly constrained. Traffic on the High Street is relatively light. None of these circumstances indicates a need for any particular requirements regarding construction traffic. Many small developments are able to take place without any specific or detailed conditions relating to construction traffic, and there seems no reason why the appeal scheme should be any different. It follows that the Council's refusal reason is not justified.
17. Returning briefly to Mr Fulton's contentions, the suggestion seems to be that if the red line had included Few's Lane, and the theoretical visibility splays, then the Council could have imposed conditions relating to these, possibly requiring widening, resurfacing, or clearance of vegetation. But in the light of my findings above, such works are not necessary on safety grounds, and I note that this view is also shared by the Council. Indeed, the Council comments that their effect would be visually damaging, and I agree.
18. I therefore conclude that the appeal proposal would not have any significant effects on highway safety. In this respect the scheme accords with the relevant policy requirement under Policy DP/3.

### **Other Matters**

19. The proposed dwelling would be single storey, and therefore would not cause any overlooking or overshadowing to other nearby properties. The site is in a residential area, where other properties are quite close to each other, and hence there is no reason to think that one more dwelling would be likely to add unacceptably to the level of noise, nor create unacceptable odours from cooking or refuse bins. In none of these respects is there any apparent likelihood of any significant adverse effects on neighbouring occupiers.

### **Conclusions**

20. For the reasons explained above, I conclude that that the proposed new dwelling would have no significant adverse effects on highway safety, and in this respect it would accord with the development plan. No other material considerations have been demonstrated that justify withholding planning permission. The appeal is therefore allowed.
21. In granting permission, although I have found that conditions relating to traffic management or road improvements are unjustified, I agree that a number of others are needed. In particular, conditions relating to foul and surface water drainage are necessary, to prevent flooding, and these need to take effect prior to commencement, to ensure an orderly sequence of works. A restriction on the hours of noisy operations is reasonable, during construction, to protect living conditions in the area. A condition requiring adherence to the approved plan is needed, in the interests of certainty. These conditions are set out in the attached schedule. However, a specific condition controlling run-off from the new dwelling's driveway is unnecessary, as this can be controlled by the condition that I have imposed relating to surface water drainage.

*J Felgate*

INSPECTOR

## SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the approved plan, Drawing No. FLL-NB2-02.
- 3) During the period of the construction of the development, no power-operated machinery shall be operated in connection with the development, and no deliveries of materials or equipment shall be either received or despatched from the site outside the following hours:  
Weekdays: 08.00 – 18.00 hours  
Saturdays: 08.00 – 13.00 hours  
Sundays and Bank Holidays: none
- 4) No construction work shall be commenced until full details of the proposed arrangements for foul water drainage have been submitted to the local planning authority and approved in writing. The new dwelling shall not be occupied or brought into use until the foul water drainage system has been installed and made operational, in accordance with these approved details.
- 5) No construction work shall be commenced until full details of the proposed arrangements for surface water drainage, both from the building itself and from the proposed driveway area, have been submitted to the local planning authority and approved in writing. The new dwelling shall not be occupied or brought into use until the surface water drainage system has been installed and made operational, in accordance with these approved details.

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**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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**Mr & Mrs G Caddoo  
The Retreat  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP**

**The Council hereby grants permission for The erection of a 3 bedroom bungalow with parking**

**At: Land rear of The Retreat, Fews Lane, Longstanton, Cambridge, Cambridgeshire, CB24  
3DP**

**For: Mr & Mrs G Caddoo**

**In accordance with your application dated 26 June 2018 and the plans, drawings and documents which form part of the application, subject to conditions set out below.**

- 1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.  
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development, which have not been acted upon).**
- 2. The development hereby permitted shall be carried out in accordance with the following approved plans: FLL-NB2-01 Rev C and FLL-NB2-02  
(Reason - To facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990).**
- 3. No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the dwelling. (Reason – In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and paragraphs 148, 151 and 153 of the National Planning Policy Framework 2018 that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.)**
- 4. The dwelling hereby approved shall not be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with.  
(Reason – To improve the sustainability of the dwelling and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the South Cambridgeshire Local Plan 2018.)**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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5. No development above slab level shall be commenced until full details of the proposed arrangements for surface water drainage, both from the building itself and from the proposed driveway area, have been submitted to and approved in writing by the local planning authority. The new dwelling shall not be occupied or brought into use until the surface water drainage has been installed and made operational, in accordance with the approved details.  
(Reason – To ensure a satisfactory means of drainage in accordance with policy CC/8 of the South Cambridgeshire Local Plan 2018.)
  
  6. The dwelling hereby approved shall not be occupied until the dwelling has been provided with sufficient infrastructure, including sockets, cabling and connection points, sufficient to enable Wi-Fi, and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling, unless otherwise agreed in writing with the Local Planning Authority.  
(Reason – To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the property and improve opportunities for home working and access to services, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.)
  
  7. During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays, or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.  
(Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).
  
  8. During the period of demolition and construction, no deliveries shall be made to and from the site between 0730 and 0930 hours and between 1500 and 1800 hours on weekdays or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.  
(Reason - To minimise noise disturbance for adjoining residents and to reduce potential conflicts with pedestrians, particular schoolchildren using Fews Lane and High Street in accordance with Policy CC/6 and HQ/1 of the South Cambridgeshire Local Plan 2018).

**Informatives**

1. In the event of an air source heat pump being proposed, prior to the commencement of development, a noise impact assessment and insulation scheme detailing the technical details and sound power/noise output of the air source heat pump and any mitigation measures in order to minimise the level of noise emanating from the said plant and or equipment shall be submitted to and approved in writing by the Local Planning Authority. Any noise insulation scheme as approved shall be fully implemented before the use hereby permitted is commenced and shall thereafter be maintained in strict accordance with the approved details and shall not be altered without prior approval.

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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**General**

**1. Statement as to how the Local Planning Authority (LPA) has worked with the applicant in a positive and proactive manner on seeking solutions**

The LPA positively encourages pre-application discussions. Details of this advice service can be found on the Planning pages of the Council's website [www.scambs.gov.uk](http://www.scambs.gov.uk). If a proposed development requires revisions to make it acceptable the LPA will provide an opinion as to how this might be achieved. The LPA will work with the applicant to advise on what information is necessary for the submission of an application and what additional information might help to minimise the need for planning conditions. When an application is acceptable, but requires further details, conditions will be used to make a development acceptable. Joint Listed Building and Planning decisions will be issued together. Where applications are refused clear reasons for refusal will identify why a development is unacceptable and will help the applicant to determine whether and how the proposal might be revised to make it acceptable.

In relation to this application, it was considered and the process managed in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

**2. Circular 04/2008 (Planning Related Fees) states that where an application is made under Article 21 of the Town and Country Planning (General Development Procedure) Order 1995 [now superseded by Article 30 of the Town and Country Planning (Development Management Procedure)(England) Order 2010], a fee will be payable for any consent, agreement or approval required by condition or limitation attached to the grant of planning permission (or reserved matter consent).**

The fee is £116 per request or £34 where the permission relates to an extension or alteration to a dwellinghouse or other development in the curtilage of a dwellinghouse. The request can be informal through the submission of a letter or plans, or formal through the completion of an application form and the submission of plans. Any number of conditions may be included on a single request. The form is available on the Council's website [www.scambs.gov.uk](http://www.scambs.gov.uk) (application forms - 1app forms-application for the approval of details - pack 25.)

- 3. It is important that all conditions, particularly pre-commencement conditions, are fully complied with, and where appropriate, discharged prior to the implementation of the development. Failure to discharge such conditions may invalidate the planning permission granted. The development must be carried out fully in accordance with the requirements of any details approved by condition.**
- 4. All new buildings that are to be used by the public must, where reasonable and practicable, be accessible to disabled persons and provide facilities for them. The applicant's attention is therefore drawn to the requirements of Section 76 of the Town and Country Planning Act 1990 and the Building Regulations 2000 (as amended) with respect to access for disabled people.**
- 5. In order to obtain an official postal address, any new buildings should be formally registered with South Cambridgeshire District Council. Unregistered addresses cannot be passed to**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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Royal Mail for allocation of postcodes. Applicants can find additional information, a scale of charges and an application form at [www.scambs.gov.uk/snn](http://www.scambs.gov.uk/snn). Alternatively, applicants can contact the Address Management Team: call 08450 450 500 or email [address.management@scambs.gov.uk](mailto:address.management@scambs.gov.uk). Please note new addresses cannot be assigned by the Council until the footings of any new buildings are in place.

6. The applicant's attention is drawn to the requirements of the Party Wall etc. Act 1996 if works are proposed to a party wall.
7. If you wish to amend the permitted scheme, and you consider the revisions raise no material issues, you should make an application for a Non Material Amendment. If agreed, the development can go ahead in accordance with this amendment although the revised details will not replace the original plans and any conditions attached to the originally approved development will still apply. If, however, you or the Council consider the revisions raise material issues you may be able to make an application for a Minor Material Amendment. If approved, this will result in a new planning permission and new conditions as necessary may be applied. Details for both procedures are available on the Council's website or on request.
8. If this development involves any works of a building or engineering nature, please note that before any such works are commenced it is the applicant's responsibility to ensure that, in addition to planning permission, any necessary consent under the Building Regulations is also obtained. Advice in respect of Buildings Regulations can be obtained from Building Control Services at South Cambridgeshire District Council. Their contact details are: tel. 03450 450 500 or [building.control@scambs.gov.uk](mailto:building.control@scambs.gov.uk) or via the website [www.scambs.gov.uk](http://www.scambs.gov.uk).
9. A delegation report or committee report, setting out the basis of this decision, is available on the Council's website.

To help us enhance our service to you please click on the link and complete the customer service questionnaire: [www.surveymonkey.com/s/2S522FZ](http://www.surveymonkey.com/s/2S522FZ)

*S J Kelly*

**Stephen Kelly**

Joint Director for Planning and Economic Development for Cambridge and South Cambridgeshire

South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA

**THIS PERMISSION DOES NOT CONSTITUTE APPROVAL UNDER BUILDING REGULATIONS AND IS NOT A LISTED BUILDING CONSENT OR CONSERVATION AREA CONSENT. IT DOES NOT CONVEY ANY APPROVAL OR CONSENT WHICH MAY BE REQUIRED UNDER ANY ENACTMENT, BYE-LAW, ORDER OR REGULATION OTHER THAN SECTION 57 OF THE TOWN AND COUNTRY PLANNING ACT 1990.**

**SEE NOTES SEPARATELY**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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**IMPORTANT INFORMATION REGARDING CONDITIONS**

If you have been granted Planning Permission and/or Listed Building Consent you may wish to get started immediately, however it is always important to carefully read the decision notice in full before any work begins.

The majority of Planning Permissions and Listed Building Consents have conditions attached. Some conditions request further information that requires approval by the Local Planning Authority before any development takes place ('pre-commencement'). All conditions are set out on the decision notice.

Under Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is a criminal offence to carry out unauthorised works to a listed building. Under Section 9 of the Act, a person shall be guilty of an offence should they fail to comply with any condition attached to the consent.

**HOW DO I DISCHARGE THE CONDITIONS**

Please note that the process takes up to eight weeks from the date the Local Planning Authority receives a valid application. Therefore it is important to plan ahead and allow plenty of time before work is due to commence.

You need to fill in a form to submit your request to discharge conditions, and accompany the relevant details/samples. You can download the necessary form by using the following link: <https://www.scambs.gov.uk/content/apply-planning-permission>. This form can be emailed directly to [planning@scambs.gov.uk](mailto:planning@scambs.gov.uk) or submitted by post to South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA

Alternatively you can submit an application to discharge the conditions through the Government's Planning Portal website: <https://www.planningportal.co.uk/applications>. Please note, The Planning Portal refers to it as 'Approval of details reserved by a condition'.

When the required information has been submitted you will receive a reference and an acknowledgement letter. Once the Local Planning Authority is satisfied that the requirement of the condition have been met you will receive a formal notification that the conditions have been discharged.

**FEES**

£0 – for all Listed Building Consent 'Discharge of Conditions' applications;

£34 – for all householder 'Discharge of Conditions' applications;

£116 – for all other types 'Discharge of Conditions' applications.

Please contact your Case Officer with any queries.

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION  
SUBJECT TO CONDITIONS**

**Decision Date: 25 March 2019**

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**NOTES**

**Appeals to the Secretary of State**

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so using a form which you can get from the Customer Support Unit, Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.

Alternatively, an online appeals service is available through the Appeals area of the Planning Portal - see [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs). The Planning Inspectorate will publish details of your appeal on the internet. This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information you are happy will be made available to others in this way, including personal information belonging to you. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

Fully completed appeal forms must be received by the Planning Inspectorate within six months of the date of this decision notice except where the property is subject to an enforcement notice, where an appeal must be received within 28 days.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving the notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

**Purchase Notices**

If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonable beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the District Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Our Ref: 20/02453/S73  
Your Ref: Demolition of the existing bu...

27 May 2021



Mr Gerry Caddoo  
Landbrook Homes Ltd  
The Retreat, Fews Lane  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP  
Cambridgeshire

South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge  
CB23 6EA

[www.scambbs.gov.uk](http://www.scambbs.gov.uk) | [www.cambridge.gov.uk](http://www.cambridge.gov.uk)

Dear Mr Caddoo

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

### **Application under Section 73 to Remove or Variation of a Condition**

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 as amended by planning committee on the 26th May 2021 in relation to paragraph 3.2.4" (Re-submission of 20/01547/S73)

Site address: The Retreat Fews Lane Longstanton CB24 3DP

We are pleased to enclose your formal notice of planning permission for the above development. Please ensure that work is carried out in line with the approved plans referred to on the decision notice. This will avoid the need for any enforcement action.

### **Making changes to the approved plans**

In the event that you wish to change your proposal, please contact your case officer who will advise you on whether the change can be dealt with as a "non-material" or "material" amendment. In either case you will have to complete a form and provide fresh drawings.

### **Important information regarding conditions**

If you have been granted Planning Permission / Listed Building Consent / Advertisement Consent you may wish to get started immediately, however it is always important to carefully read the decision notice in full before any work begins.

The majority of planning decisions have conditions attached. Some conditions request further information that requires approval by the Local Planning Authority before any development takes place ('pre-commencement'). All conditions are set out on the decision notice.

Under Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is a criminal offence to carry out unauthorised works to a listed building. Under Section 9 of the Act, a

person shall be guilty of an offence should they fail to comply with any condition attached to the consent.

### **How do I discharge the conditions**

Please note that the process takes up to eight weeks from the date the Local Planning Authority receives a valid application. Therefore it is important to plan ahead and allow plenty of time before work is due to commence.

You need to fill in a form to submit your request to discharge conditions, and accompany the relevant details/samples. You can download the necessary form by using the following link:  
<https://www.greatercambridgeplanning.org>

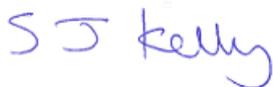
Alternatively you can submit an application to discharge the conditions through the Government's Planning Portal website: <https://www.planningportal.co.uk/applications>. Please note, The Planning Portal refers to it as 'Approval of details reserved by a condition'.

When the required information has been submitted you will receive a reference and an acknowledgement letter. Once the Local Planning Authority is satisfied that the requirements of the condition have been met you will receive a formal notification that the conditions have been discharged.

### **Appeals against conditions**

You should also be aware that the applicant has the right to appeal against any conditions attached to this Notice, please see <https://www.gov.uk/planning-inspectorate> for details. If you are concerned about any condition you should contact the case officer in the first instance for advice.

Yours sincerely



SJ Kelly  
Joint Director For Planning & Economic Development For  
Cambridge & South Cambridgeshire



**Notice of Planning Permission**  
Subject to conditions

Reference 20/02453/S73  
Date of Decision 27 May 2021

Mr Gerry Caddoo  
Landbrook Homes Ltd  
The Retreat, Fews Lane  
Fews Lane  
Longstanton  
Cambridge  
CB24 3DP  
Cambridgeshire

The Council hereby GRANTS Planning Permission for:

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 as amended by planning committee on the 26th May 2021 in relation to paragraph 3.2.4" (Re-submission of 20/01547/S73)

at

The Retreat Fews Lane Longstanton CB24 3DP

In accordance with your application received on 21 May 2020 and the plans, drawings and documents which form part of the application.

**Conditions**

- 1 Conditions 3-6 and 9 -16 of planning permission S/0277/19/FL (set out below as conditions 3-6 and 9 -16) shall continue to apply to this permission. Where such conditions pertaining to S/0277/19/FL have been discharged, the development of 20/02453/S73 shall be carried out in accordance with the terms of discharge and those conditions shall be deemed to be discharged for this permission also. The development hereby permitted shall be begun before the expiration of 3 years from the date of permission S/0277/19/FL being 9 May 2019.

Reason To define the terms of the application.

- 2 The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

- 3 The materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be as described in the application form or shall be submitted to and

approved in writing by the Local Planning Authority prior to the commencement of development. Where materials are approved by the Local Planning Authority, the development shall be carried out in accordance with the approved details.

(Reason - To ensure the appearance of the development is satisfactory in accordance with Policy HQ/1 of the South Cambridgeshire Local Plan 2018)

- 4 Prior to the first occupation of the development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.

(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/6 of the adopted South Cambridgeshire Local Plan 2018)

- 5 All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NE/6 of the South Cambridgeshire Local Plan 2018)

- 6 Prior to the first occupation of the development a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment for each dwelling shall be completed before that/the dwelling is occupied in accordance with the approved details and shall thereafter be retained.

(Reason - To ensure that the appearance of the site does not detract from the character of the area in accordance with Policy HQ/1 of the adopted South Cambridgeshire Local Plan 2018.)

- 7 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, as amended by planning committee on the 26th May 2021 in relation to paragraph 3.2.4' unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety

- 8 (Not Applicable)

- 9 No development above slab level shall occur until schemes for the provision and implementation of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The schemes shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with an implementation programme agreed in writing with the Local Planning Authority.

(Reason - To reduce the risk of pollution to the water environment, to ensure a satisfactory method of foul water drainage and to reduce the risk of flooding in accordance with Policies CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018).

- 10 All finished floor levels shall be a minimum of 300 mm above the existing ground level.

(Reason - To reduce the risk of flooding in accordance with policy CC/9 of the South Cambridgeshire Local Plan 2018)

- 11 No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the development.

(Reason - In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and paragraphs 148, 151 and 153 of the National Planning Policy Framework 2018 that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.)

- 12 The development hereby approved shall not be occupied until a water conservation strategy, which demonstrates a minimum water efficiency standard equivalent to the BREEAM standard for 2 credits for water use levels, unless demonstrated not practicable, has been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

(Reason - To improve the sustainability of the development and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the south Cambridgeshire Local Plan 2018.)

- 13 The dwellings hereby approved shall not be occupied until they have been made capable of accommodating Wi-Fi and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling or other emerging technology, unless otherwise agreed in writing with the Local Planning Authority.

(Reason - To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the development, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.)

- 14 During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays, or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.

(Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).

- 15 During the period of demolition and construction, no deliveries shall be made to and from the site between 0730 and 0930 hours and between 1500 and 1800 hours on weekdays or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.

(Reason - To minimise noise disturbance for adjoining residents and to reduce potential conflicts with pedestrians, particular schoolchildren using Fews Lane and High Street in accordance with Policy CC/6 and HQ/1 of the South Cambridgeshire Local Plan 2018)..

- 16 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A and B of Part 1 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf.

(Reason - In the interests of protection of residential amenity and the character of the area in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018).

## Informatives

- 1 The Council urges the applicant to establish a liaison mechanism between residents, the site manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes.
- 2 If during the development contamination not previously identified is found to be present at the site, such as putrescible waste, visual or physical evidence of contamination of fuels/oils, backfill or asbestos containing materials, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.
- 3 The granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.
- 4 There shall be no burning of waste or materials on site without the prior consent of the Council's Environmental Health Officer.

## Plans and drawings

This decision notice relates to the following drawings:

<b>Reference/Document/Drawing Title</b>	<b>Date Received</b>
FLL-45-01	28.01.2019
FLL-45-02	28.01.2019

It is important the development is carried out fully in accordance with these plans. If you are an agent, please ensure that your client has a copy of them and that they are also passed to the contractor carrying out the development. A copy of the approved plan(s) is/are kept on the planning application file.

## Authorisation

Authorised by:



SJ Kelly  
Joint Director For Planning & Economic Development For  
Cambridge & South Cambridgeshire

South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge  
CB23 6EA

Date the decision was made: 27 May 2021

## **Working with the applicant**

The LPA positively encourages pre-application discussions. Details of this advice service can be found at <https://www.greatercambridgeplanning.org>. If a proposed development requires revisions to make it acceptable the LPA will provide an opinion as to how this might be achieved. The LPA will work with the applicant to advise on what information is necessary for the submission of an application and what additional information might help to minimise the need for planning conditions. When an application is acceptable, but requires further details, conditions will be used to make a development acceptable. Joint Listed Building and Planning decisions will be issued together. Where applications are refused clear reasons for refusal will identify why a development is unacceptable and will help the applicant to determine whether and how the proposal might be revised to make it acceptable.

In relation to this application, it was considered and the process managed in accordance with paragraph 38 of the National Planning Policy Framework.

## **General Notes**

This decision notice does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Your attention is specifically drawn to the requirements of the Equality Act 2010 and the Equality Act (Disability) regulations 2010, the British Standards Institution BS8300:2009 "Design of Buildings and their approaches to meet the needs of disabled people – Code of Practice" and to Approved Document 'M' "Access to and use of buildings", volumes 1 and 2 of the Building Regulations 2010 and to Approved Document 'B' "Fire Safety", volumes 1 and 2 of the Building Regulations 2010, in request of guidance on means of escape for disabled people. The development should comply with these requirements as applicable

It is an offence under Section 171 of the Highways Act 1980 to temporarily deposit building materials, rubbish or other things on the public highway or make a temporary excavation on it without the written consent of the Highway Authority. The Highway Authority may give its consent subject to such conditions as it thinks fit.

The applicant is reminded that under the Wildlife and Countryside Act 1981(Section 1) (as amended) it is an offence to take, damage or destroy the nest of any wild bird while that nest is in use or being built. Trees and scrub are likely to contain nesting birds between 1 March and 31 August. Trees within the application should be assumed to contain nesting birds between the above dates unless a survey has shown it is absolutely certain that nesting birds are not present.

## **Building Regulations 2010**

The project may be subject to the requirements of the Building regulations 2010.

Advice and assistance can be obtained from our Building Control Team, 3C Building Control on 0300 7729622 or [buildingcontrol@3csharedservices.org](mailto:buildingcontrol@3csharedservices.org) link to website at [www.3csharedservices.org](http://www.3csharedservices.org)

They will work with you offering competitive fee quotations and pre-application advice upon request.

## **Appeals to the Secretary of State**

The applicant has a right to appeal to the Secretary of State against any conditions of this planning permission, under Section 78 of the Town & Country Planning Act 1990. The appeal must be made on a form which may be obtained from:

The Planning Inspectorate,  
Temple Quay House, 2 The Square, Temple Quay, Bristol. BS1 6PN  
Telephone 0303 444 5000 or visit  
<https://www.gov.uk/planning-inspectorate>

If an enforcement notice is or has been served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: **28 days** of the date of service of the enforcement notice, **OR** within **6 months** (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.

### **Purchase Notices**

If the Local Planning Authority or the Secretary of State grants permission subject to conditions the owner may claim that he/she can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances the owner may serve a purchase notice on the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

### **Before starting work**

It is important that all conditions, particularly pre-commencement conditions, are fully complied with, and where appropriate, discharged prior to the implementation of the development. Failure to discharge such conditions may invalidate the planning permission granted. The development must be carried out fully in accordance with the requirements of any details approved by condition.

### **Street Naming and Numbering**

In order to obtain an official postal address, any new buildings should be formally registered with South Cambridgeshire District Council. Unregistered addresses cannot be passed to Royal Mail for allocation of postcodes.

Applicants can find additional information, a scale of charges and an application form at [www.scambs.gov.uk/snn](http://www.scambs.gov.uk/snn). Alternatively, applicants can contact the Address Management Team: call 08450 450 500 or email [address.management@scambs.gov.uk](mailto:address.management@scambs.gov.uk).

Please note new addresses cannot be assigned by the Council until the footings of any new buildings are in place.

### **Third Party Rights to challenge a planning decision**

Currently there are no third party rights of appeal through the planning system against a decision of

a Local Planning Authority. Therefore, if you have concerns about a planning application and permission is granted, you cannot appeal that decision.

Any challenge under current legislation would have to be made outside the planning system through a process called Judicial Review.

A 'claim for judicial review' includes a claim to review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function, in this case, a planning decision. The court's permission to proceed is required in a claim for Judicial Review. A claim for Judicial Review is dealt with by the Administrative Court and if leave to judicially review a planning decision is granted, the Judicial Review will be decided by a judge at the High Court.

An application to Judicial Review a decision must be made within **6 weeks** of the decision about which you have a grievance being made. For further information on judicial review and the contact details for the Administrative Courts, please go to <http://www.justice.gov.uk/>

26 May 2021

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

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

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## **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:**

- The appropriateness of the amended Traffic Management Plan
- Highway Safety including the safety of all users of the adopted and unadopted highways in the vicinity of the site.
- Green Infrastructure policy NH/6 and additional third-party representations

**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:** Matters have arisen following Members' earlier endorsement to approve the S73 submission at the 13 January 2021 Planning Committee meeting which require a further assessment / clarification from officers. The officer recommendation remains to approve the S73.

**Presenting officer:** Lewis Tomlinson

## Update - 26 May 2021

1. Members will recall originally considering this application at the 13 January 2021 Planning Committee meeting. The Committee resolved to approve the application subject to:
  - The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
  - Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
  - The Conditions and Informatives set out in the report from the Joint Director of Planning and Economic Development.
2. However, the S73 planning permission was not issued following the 13 January 21 Planning Committee because of incorrect officer advice given with the meeting on the necessity of advertising the application as affecting a Public Right of Way (PROW) - which in fact had been carried out appropriately - and in relation to a late representation sent to Democratic services from 6 Mitchcroft Road on the evening of the 12<sup>th</sup> January 21 which had not been passed to planning officers and not reported to Members. The S73 application was subsequently reported back to the 13 April 21 Planning Committee with updates including in respect of the PROW issue, the representation from 6 Mitchcroft Road and with respect to a further late representation from Few Lane Consortium Limited (FLCL) received on 1 April 21 in relation to policy NH/6 and Green Infrastructure.
3. Members will therefore recall considering this application again at the 13<sup>TH</sup> April 2021 Planning Committee meeting where Mr Fulton, on behalf of FLCL, raised further concern that his representations were not wholly assessed within the officer reports. Officers recommended to members that the application be deferred again so the representations could be examined and addressed in full as necessary. Members resolved to defer the application to allow this to take place.
4. The representations from Mr Fulton on behalf of Few Lane Consortium Limited ("FLCL") on the 1<sup>st</sup> March 21 and 14<sup>th</sup> March 21 can be summarised as follows:
  - Objects on highway safety grounds – no safe access for the site and adverse impacts upon the safety of users of the public highway
  - The Local Highway Authority originally objected but changed its mind as the 'local highway authority has unlawfully taken into consideration an immaterial consideration, namely, the identity of the owner of land within the application site and the identify of owner of land outside the application site that is not owned by the applicant.'
  - Recommends conditions regarding the lane to be widened to 5m, insertion of 2m by 2m pedestrian visibility splays and the maintenance of such splays
  - The development to erect 5 houses has been divided amongst multiple planning applications for 1 or 2 houses at a time. The LPA should not consider these developments in isolation.
5. Subsequent to the 13 April 2021 Planning Committee, a judicial review pre-action protocol letter of 30 April 21 has also now been received from Mr Fulton on behalf of Few Lane Consortium Limited ("FLCL") for this application and another

application (20/05101/FUL) related to the adjacent site to the rear. The pre-action protocol letter can be summarised as follows:

- Article 7(I) of the 2015 Order states that an application form for planning permission specifies that a location plan must be submitted that complies with the following instructions: “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).”
- In the case of application S/0277/19/FL, the area outlined in red on the location plan, which is relied upon also by purported application 20/02453/S73, failed to include all the land necessary to carry out the proposed development contrary to Article 7 (I) of the 2015 Order. Specifically, the land outlined in red failed to include the land required for visibility splays.
- The LPA has no jurisdiction to entertain, much less approve, either application

### **Assessment**

6. Many of the matters raised in the FLCL representations of 1<sup>st</sup> and 14<sup>th</sup> March 21 are similar to those raised and dealt with within the S73 planning committee report of 13 January 21, summarised at paragraph 24 and assessed at paragraphs 40-44 of that report (see below).
7. That notwithstanding and because FLCL representations are that these matters have not been addressed fully, officers have further examined the original committee report to S/0277/19/FL. Paragraphs 43 – 55 of that report (author John Koch) deal with the planning merits of the suggested improvements to Fews Lane, the extent of the red line and visibility splays, issues which have been raised again under this S73 application. The relevant paragraphs from the original committee report are set out below:

*‘43: Paragraph 109 of the NPPF states developments should only be prevented or refused on highways grounds if there would be an ‘unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.*

*44: The local highway authority (LHA) initially objected as the application was not supported by sufficient pedestrian/cycle information to demonstrate that the proposed incremental development would not be prejudicial to the satisfactory functioning of the highway. The LHA requested that the pedestrian/cycle surveys be carried out, for the duration of 5 days Monday – Friday (not during the school holidays), between the hours of 7.30 – 9.30 and 15.00 – 17.00, along with details of weather on these days.*

*45: The applicant has since undertaken a survey for the use of Fews Lane by cycles and pedestrians. This was carried out between 27 March and 2 April. The survey results indicate that on average there were 10 pedestrian movements per hour up and down Fews Lane with a cluster of secondary school children during the a.m. and p.m. peaks representing almost 50% of all pedestrian movements. There was a record of just one cyclist during the week long survey. Full details of the survey are available to view on the Council’s website.*

46: *Following the submission of the requested pedestrian/cycle information the LHA has withdrawn its request for refusal. As such, the LHA has not identified any unacceptable impact on highway safety. This is notwithstanding the survey information excludes highway users who pass the entrance to Few's Lane as suggested by an objector.*

47: *The LHA's approval is subject to conditions that the existing Public Right of Way (PROW) be constructed using a bound material, for the first ten metres from the back of the footway along High Street; the submission of a traffic management plan and an informative to the effect that the granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.*

48: *The requested works requiring the surface of Few's 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 Cambridgeshire County Council.*

49: *The above conditions are considered necessary in this instance. No conditions are sought in respect of the width of the Lane at its junction with High Street or for pedestrian visibility splays to be provided as recommended by some local residents. Objections that the application is not valid as the red line plan does not take account of the necessary visibility splays are not relevant as no requirement for such splays to be provided is considered necessary.*

50: *In considering the residual cumulative impact on the road network, account is taken of the increased level of traffic due to the total cumulative development of the original curtilage of The Retreat, and the two other properties (built in the 1960's) which use Few's Lane for vehicular access. With the recent approval for a dwelling under reference S/2439/18/FL, the former curtilage of The Retreat will have been subdivided into a total of 5 separate residential plots with the two additional houses opposite.*

51: *So far as the residual cumulative impacts on the road network are concerned, there would typically be around 4.5 vehicular movements per dwelling over a 12-hour period. This means that with the two new dwellings the total number of vehicular movements would increase to approximately 31.5. The local highway authority has not raised any concerns that the existing free flow of traffic along the High Street will be materially affected. Significantly, the LHA has not considered the residual cumulative impact on the road network arising from a total of seven dwellings to be "severe" as per the wording in paragraph 109 of the NPPF.*

52: *Attention is drawn to the two appeal decisions attached as appendix 1 and 2. In the former appeal (from 1989), the inspector noted that Few's Lane served three dwellings and the appeal proposal would increase this to 4. He considered the junction of Few's Lane and High Street (then the route of the B1050 through the village) to be unsafe given visibility to the south was considerable impeded by vegetation. As the road is straight, it was anticipated that vehicles would be travelling close to the maximum permitted speed and this would have a harmful effect on traffic safety. No such overriding harm was found in respect of traffic travelling from a northerly direction.*

*53: In the subsequent 2018 decision, the appeal inspector was aware that the B1050 had ran through the centre of Longstanton, but that the village by-pass now has a signposted route that skirts its western edge. He observed that traffic now has no need to take the old route to by-pass the village and that the time of his 9 a.m. visit on a school day, the level of traffic in the High Street appeared to be quite low. He opined there was no evidence to suggest these conditions were unusual. His conclusion was that although Fews Lane does not meet modern highway standards in terms of both its geometry and construction, the development would provide safe and appropriate access.*

*54: Officers conclude that there has clearly been a material change of circumstances in highway conditions between 1989 and 2018, namely the construction of the village bypass. This has had a material impact on traffic flows. The current application for an additional dwelling is also to be determined in accordance with the same road conditions that prevailed at the time of the second appeal.*

*55: Having had due regard to the matters already discussed, officers have no reason to dispute the conclusion of the LHA in respect of any highway related matters. The proposal therefore complies with policies TI/2 and TI/3.'*

8. It is clear from the above extract from the original application committee report (S/0277/19/FL) that the Inspector, for the related appeals on Fews Lane and officers robustly considered the Fews Lane highway safety issues. Officers considered the cumulative impact of the total amount of properties along Fews Lane. The proposed conditions by FLCL in relation to the upgrade of Fews Lane and visibility splays were not imposed on the original planning consent nor has the Highway Authority requested visibility splay conditions on the current application.
9. Neither members nor officers are bound to follow the advice of the Local Highway Authority. In relation to this S73 application and for purposes of clarity, the officer advice is that the ownership of Fews Lane is immaterial in the consideration of the necessity of upgrades to it, including those sought by FLCL.
10. Officer advice is that it is not necessary to seek to apply additional conditions as part of this S73 application to upgrade Fews Lane or provide or maintain pedestrian visibility splays through the imposition of a Grampian condition because the splays required are contained within the adopted highway. Material circumstances have not altered to suggest an alternative conclusion that improvements to Fews Lane are now necessary in order to grant planning permission. Officers are also of the view that given S/0277/19/FL did not impose the requirements to upgrade Fews Lane as sought by FLCL, that to impose additional requirements now under this S73 application - which is to amend the wording of the Traffic Management Plan - would not be reasonable, particularly in light of the fact that S/0277/19/FL could itself be implemented without such requirements (expiry date of permission 9 May 22).
11. It is to be noted that the current S73 application only seeks to amend the wording of the Traffic Management Plan condition and does not seek to change the design or layout of the approved dwellings. There also has been no material change in the surrounding context or planning policy to warrant forming an alternative view. The representations from FLCL do not raise any new material considerations to warrant a change to the officer recommendation.

12. The current application 20/02453/S73 is submitted pursuant to section 73 of the 1990 Act. Pursuant to article 7(1)(c)(i) of the 2015 Order, no location plan is required and therefore no location plan containing a red line and associated visibility splays has been submitted with this application as the location plan from the original consent is relied upon. Application S/0277/19/FL and the associated committee report considered representations concerning the adequacy of the access to the plot, proposed improvements including the widening of the Few's Lane access, visibility splays and the extent of the red line. That permission can no longer be judicially challenged. The Council does not agree that it has no lawful authority to entertain the S73 application pursuant to s. 327A of the 1990 Act and article 7 of the DMPO 2015.
13. Notwithstanding that neither the S73 application nor S/0277/19/FL include a site location plan which extend to the adopted highway and include visibility splays, 1.5m pedestrian visibility splays are available within the adopted highway at the junction of Few's Lane with the High Street. The Highway Authority has a duty to maintain the highway which includes the verge in this case. If the Highway Authority fails in this duty and an accident were to occur as a result of this failure, then that would be a matter for the Highway Authority to deal with. The pedestrian visibility splays available accord with the minimum recommendation of a 1.5m splay which is understood to be derived from a previous version of The Design Manual for Road and Bridges. The splay includes grass verge that forms part of the adopted public highway.
14. Officers have considered all third party representations which includes all the letters from FLCL. All substantive points have been addressed in this report and previous reports. This also includes a letter from FLCL dated 29<sup>th</sup> October 2020 which is contained within the bundle that forms an appendix to this report.
15. The remainder of this report is unedited from the reports that were presented previously.

### **Recommendation**

16. Officers recommend that the planning committee **APPROVE** this application subject to:
  - The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
  - Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
  - The Conditions and Informatives set out in the 13 January 21 report from the Joint Director of Planning and Economic Development.

## Further UPDATE - 13 April Planning Committee

1. A further representation has been received from Fewes Lane Consortium on the 1<sup>st</sup> April. The following concerns have been raised (as summarised):
  - Fewes Lane constitutes an important east-west link in the existing green infrastructure of Longstanton and provides a connection to Northstowe.
  - The proposal would result in the removal of a hedge that run along the front of The Retreat which would impact upon wildlife and the character of the lane.
  - The proposal is therefore Contrary to policy NH/6 (Green Infrastructure) and HQ/1 (Design Principles) as it would the proposal does not preserve or enhance the character of the local area, damages the public amenity value of the public footpath, impinges upon the safety of users of the footpath and would result in Fewes Lane being dominated with car parking.
2. The original planning permission S/0277/19/FL was issued in May 2019 and therefore was assessed against the current Local Plan. This S73 application does not seek to alter the design of the proposal but seeks to amend the wording of condition 7 (Traffic Management Plan). Officers are satisfied that there has been no material change in policy or the surrounding context that requires a re-assessment of any other conditions attached to the approved development. Issues regarding the surrounding character of the area, car parking and the safety of users have been considered under S/0277/19/FL and adequately assessed against the requirements of Policy HQ/1.
3. Officers accept that the removal of the hedge along the front of The Retreat would result in a degree of harm and would raise some conflict with Policy NH/6. However, given that the hedge is only one part of the green infrastructure of the lane, this loss is not considered to be significant in comparison and therefore would not warrant a refusal of the application on these grounds. Especially when taking into consideration the fall-back position of the extant planning permission and the fact that this S73 does not seek to alter the design of the proposal. The officer recommendation remains one of approval.

## Update Report - 13April 2021 Planning Committee

4. Members will recall considering this application at the 13 January 2021 Planning Committee meeting. The Committee resolved to approve the application subject to:
  - The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
  - Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
  - The Conditions and Informatives set out in the report from the Joint Director of Planning and Economic Development.
5. At the Planning Committee meeting, in response to a point specifically raised at the meeting by Mr Fulton on behalf of Few's Lane Consortium Limited ("FLCL"), officers advised that Article 15 of the Town and Country Planning Development Management Procedure (England) Order 2015 (publicity requirements for planning applications) did not apply to the S73 application because it was not an application for planning permission but an application to vary the wording of a condition. This was an error because a S73 application is still an application for planning permission.
6. However, the context within which this point was raised at the Committee related to whether the application had been advertised as affecting a Public Right of Way (PROW). Officers confirm that in fact the application was advertised as affecting a PROW and therefore Article 15 was satisfied in this case. Whether a proposal affects a PROW is a matter of judgement and this issue was covered in the officer report. A copy of the advertisement is attached as Appendix 1 to this report.
7. A representation had been sent to Democratic services from 6 Mitchcroft Road on the evening of the 12<sup>th</sup> January (the day before the planning committee). Due to human error, this representation not passed onto planning officers and therefore was not reported to members.
8. The representation from 6 Mitchcroft Road can be summarised as follows:
  - Objects on highway safety grounds
  - Recommends conditions regarding the lane to be widened to 5m, insertion of 2m by 2m pedestrian visibility splays and the maintenance of such splays
9. As the conditions were not imposed on the original planning consent nor did the Highway Authority request such conditions on the current application, officers do not consider it reasonable to apply such conditions now. This late representation does not raise any new material considerations and as such would not have changed the officer recommendation.
10. The remainder of this report is unedited from the report that was presented to the October Planning Committee meeting as set out below.

### Recommendation

11. Officers recommend that the planning committee **APPROVE** this application subject to:

- The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
- Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
- The Conditions and Informatives set out in the 13 January 21 report from the Joint Director of Planning and Economic Development.

## 13 January 2021, Planning Report 20/02453/S73

### Executive Summary

12. 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.

### Relevant planning history

13. 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

14. 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

### Planning policies

#### 15. National Guidance

National Planning Policy Framework 2019 (NPPF)  
Planning Practice Guidance  
National Design Guide 2019

## **16. 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

## **17. 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

## **Consultation**

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

18. 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**

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

### **Drainage**

20. Drainage has no comments to this variation

### **Environmental Health Officer**

21. 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**

22. 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.

23. 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.

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

24. 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].)

## **The site and its surroundings**

25. 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.
26. Fews Lane is not an adopted highway and comprises a single vehicle width gravel/surfaced track. The lane currently serves as an access to a double garage serving 135 High Street and to 3 other dwellings (The Willows and the two other recently constructed dwellings to the west of the Retreat) as well as to development plots at The Retreat. The Lane varies in width and the hard surfaced track runs alongside a tree'd and vegetated area (to the north) with boundaries to No 135 and The Willows to the south side. A footpath (Public Right of Way) linking the Home Farm residential development to the south and west of Fews Lane with High Street emerges onto the south side of Fews Lane at a point to the immediate west of The Willows (and before the existing informal turning area beyond). The site lies within the designated village framework and is otherwise unconstrained.

## **The proposal**

27. 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.

28. 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.”*

29. 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*

30. The application is accompanied by the following supporting information:

- Traffic Management Plan prepared SLR dated December 2019

31. The applicant claims that the submitted Traffic Management Plan (TMP) is informed by lessons learnt during the construction in 2018 of the two existing new homes on the site. The TMP 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 however, mean that space for parking within the site is limited. Accordingly, the Traffic Management Plan refers to provision for contractor parking at Digital Park in Station Road, Longstanton (noting that Few's 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 the terms of part ii of the original planning condition (above) cannot be met and it is this departure from the original condition that has prompted this application.

## Planning assessment

32. 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]

33. The principle of development of the dwellings 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 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.
34. 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 users of the PROW along the unadopted Fews Lane and the existing users of the unadopted road that comprises Fews Lane as well as pedestrian and vehicle users of the High Street passing the entrance to Fews Lane.

### Highway Safety – Traffic Management Plan

#### Traffic Management Plan Assessment

35. The construction of any development gives rise to additional movements during the construction phase – including contractor vans and larger delivery vehicles (and some 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 will at certain times 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 seeking to accommodate these movements, including an indication of the swept path and a turning area within the site – but reflecting its restricted size.

36. The Council has consulted the Local Highway Authority as the consultee for matters regarding highway safety. The Local Highway Authority, originally expressed concerns about the earlier TMP submission which 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.*

37. Officers have noted the earlier response of the Highway Authority and its more recent consideration (reported above) of the revised submission. Officers accept the conclusions of the Local Highway Authority to the more recent submissions. Having specific regard to the relatively short length of Fews Lane, its character, variable width and surface material, officers consider that vehicle movements along it are 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) officers have noted that 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 Parish Council and third parties have expressed concern about this approach, but officers

consider there to be few practical or safer alternatives to this approach for a development of this scale – where the number of large vehicle movements will be limited. The TMP commits to keep clear access to the existing homes along Fews Lane throughout the construction phase and to maintain the right of way clear of obstructions for pedestrians.

38. The third-party representations and Parish comments highlight a number of concerns surrounding access and movements of vehicles into and along 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. 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 using and entering/leaving Fews Lane is accordingly considered to be satisfactorily addressed by the TMP. At the access point into Fews Lane, intervisibility between vehicles or pedestrians on the High Street and Fews Lane, noting the existing footway width along High Street and the position of hedges and boundaries, has been judged to be appropriate. 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.
39. 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.
40. There have also 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 reported above is also 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.
41. 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.

42. Over the last six months or more a number of letters and emails between the Council and Fews Lane Consortium Limited (“FLCL”) have been submitted in connection with the red line shown on the Location Plan for planning permission S/0277/19/FL – the original planning permission for this site.

43. On 13th November 2020 Fews Lane Consortium Ltd 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, Fews 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 regard to both applications as the pre-action protocol has now been completed....”

44. Proceedings have not to date been issued and the Council is waiting to hear from FLCL as to its intentions as to any proceedings. The Council does not agree 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. An extensive bundle of correspondence between FLCL and the Council (together with an index) is attached to this report. In the event that any further submissions are received that are material to the Committee’s consideration of this matter, officers will provide an update to the meeting. It remains the Council position however that the Committee are entitled to determine the application before them.

## **Planning balance and conclusion**

45. Taking into consideration the above points, including the site history, Parish Council comments, the third party representations and the advice from the Local Highway Authority, 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

## **Recommendation**

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

- 1 Conditions 3-6 and 8-16 of planning permission S/0277/19/FL (set out below as conditions 3-6 and 8-16) shall continue to apply to this permission. Where such conditions pertaining to 1S/0277/19/FL have been discharged, the development of 20/02453/S73 shall be carried out in accordance with the terms of discharge and those conditions shall be deemed to be discharged for this permission also.  
Reason To define the terms of the application.
- 2 The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.  
  
Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.
- 3 The materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be as described in the application form or shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Where materials are approved by the Local Planning Authority, the development shall be carried out in accordance with the approved details.  
(Reason - To ensure the appearance of the development is satisfactory in accordance with Policy HQ/1 of the South Cambridgeshire Local Plan 2018)
- 4 Prior to the first occupation of the development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/6 of the adopted South Cambridgeshire Local Plan 2018)
- 5 All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NE/6 of the South Cambridgeshire Local Plan 2018)
- 6 Prior to the first occupation of the development a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment for each dwelling shall be completed

before that/the dwelling is occupied in accordance with the approved details and shall thereafter be retained.

(Reason - To ensure that the appearance of the site does not detract from the character of the area in accordance with Policy HQ/1 of the adopted South Cambridgeshire Local Plan 2018.)

- 7 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 unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interest of highway safety

- 9 No development above slab level shall occur until schemes for the provision and implementation of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The schemes shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with an implementation programme agreed in writing with the Local Planning Authority.

(Reason - To reduce the risk of pollution to the water environment, to ensure a satisfactory method of foul water drainage and to reduce the risk of flooding in accordance with Policies CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018).

- 10 All finished floor levels shall be a minimum of 300 mm above the existing ground level.

(Reason - To reduce the risk of flooding in accordance with policy CC/9 of the South Cambridgeshire Local Plan 2018)

- 11 No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the development.

(Reason - In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and paragraphs 148, 151 and 153 of the National Planning Policy Framework 2018 that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.).

- 12 The development hereby approved shall not be occupied a water conservation strategy, which demonstrates a minimum water efficiency standard equivalent to the BREEAM standard for 2 credits for water use levels unless demonstrated not practicable, has been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

(Reason - To improve the sustainability of the development and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the south Cambridgeshire Local Plan 2018.).

- 13 The dwellings hereby approved shall not be occupied until they have been made capable of accommodating Wi-Fi and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling or other emerging technology, unless otherwise agreed in writing with the Local Planning Authority.(Reason - To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the development, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.).
- 14 During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays, or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority. (Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).
- 15 During the period of demolition and construction, no deliveries shall be made to and from the site between 0730 and 0930 hours and between 1500 and 1800 hours on weekdays or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority. .(Reason - To minimise noise disturbance for adjoining residents and to reduce potential conflicts with pedestrians, particular schoolchildren using Fews Lane and High Street in accordance with Policy CC/6 and HQ/1 of the South Cambridgeshire Local Plan 2018)..
- 16 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A and B of Part 1 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf. (Reason - In the interests of protection of residential amenity and the character of the area in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018).

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

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Mr Gerry Caddoo,  
LANDBROOK HOMES LTD  
The Retreat  
Fews Lane  
Longstanton  
Cambridge  
Cambridgeshire  
CB24 3DP

The Council hereby grants permission for Demolition of the existing bungalow and construction of two dwellings including car parking and landscaping

At: The Retreat, Fews Lane, Longstanton, Cambridge, Cambridgeshire, CB24 3DP  
For: Mr Gerry Caddoo, LANDBROOK HOMES LTD

In accordance with your application dated 18 January 2019 and the plans, drawings and documents which form part of the application, subject to conditions set out below.

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.  
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development, which have not been acted upon).
2. The development hereby permitted shall be carried out in accordance with the following approved plans: FLL-45-01, FLL-45-02  
(Reason - To facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990).
3. The materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be as described in the application form or shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Where materials are approved by the Local Planning Authority, the development shall be carried out in accordance with the approved details.  
(Reason - To ensure the appearance of the development is satisfactory in accordance with Policy HQ/1 of the South Cambridgeshire Local Plan 2018).
4. Prior to the first occupation of the development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/6 of the adopted South Cambridgeshire Local Plan 2018).

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
**SUBJECT TO CONDITIONS**

**Decision Date: 09 May 2019**

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5. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NE/6 of the South Cambridgeshire Local Plan 2018).
6. Prior to the first occupation of the development a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment for each dwelling shall be completed before that/the dwelling is occupied in accordance with the approved details and shall thereafter be retained.  
(Reason - To ensure that the appearance of the site does not detract from the character of the area in accordance with Policy HQ/1 of the adopted South Cambridgeshire Local Plan 2018.)
7. g) 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.(Reason: In the interests of highway safety).
8. ..
9. No development above slab level shall occur until schemes for the provision and implementation of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The schemes shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with an implementation programme agreed in writing with the Local Planning Authority.  
(Reason - To reduce the risk of pollution to the water environment, to ensure a satisfactory method of foul water drainage and to reduce the risk of flooding in accordance with Policies CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018).
10. All finished floor levels shall be a minimum of 300 mm above the existing ground level.  
(Reason – To reduce the risk of flooding in accordance with policy CC/9 of the South Cambridgeshire Local Plan 2018).

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

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11. j) No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the development.  
(Reason – In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and paragraphs 148, 151 and 153 of the National Planning Policy Framework 2018 that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.)
12. The development hereby approved shall not be occupied a water conservation strategy, which demonstrates a minimum water efficiency standard equivalent to the BREEAM standard for 2 credits for water use levels unless demonstrated not practicable, has been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.  
(Reason – To improve the sustainability of the development and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the south Cambridgeshire Local Plan 2018.)
13. The dwellings hereby approved shall not be occupied until they have been made capable of accommodating Wi-Fi and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling or other emerging technology, unless otherwise agreed in writing with the Local Planning Authority.  
(Reason – To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the development, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.)
14. During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays, or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.  
(Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).
15. During the period of demolition and construction, no deliveries shall be made to and from the site between 0730 and 0930 hours and between 1500 and 1800 hours on weekdays or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.  
(Reason - To minimise noise disturbance for adjoining residents and to reduce potential conflicts with pedestrians, particular schoolchildren using Fews Lane and High Street in accordance with Policy CC/6 and HQ/1 of the South Cambridgeshire Local Plan 2018).
16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A and B of Part 1 of Schedule 2 of the

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

---

Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf.

(Reason - In the interests of protection of residential amenity and the character of the area in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018).

**Informatives**

1. a) If during the development contamination not previously identified is found to be present at the site, such as putrescible waste, visual or physical evidence of contamination of fuels/oils, backfill or asbestos containing materials, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.
- b) The granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.
- c) There shall be no burning of waste or materials on site without the prior consent of the Council's Environmental Health Officer.

**General**

1. **Statement as to how the Local Planning Authority (LPA) has worked with the applicant in a positive and proactive manner on seeking solutions**

The LPA positively encourages pre-application discussions. Details of this advice service can be found on the Planning pages of the Council's website [www.scambs.gov.uk](http://www.scambs.gov.uk). If a proposed development requires revisions to make it acceptable the LPA will provide an opinion as to how this might be achieved. The LPA will work with the applicant to advise on what information is necessary for the submission of an application and what additional information might help to minimise the need for planning conditions. When an application is acceptable, but requires further details, conditions will be used to make a development acceptable. Joint Listed Building and Planning decisions will be issued together. Where applications are refused clear reasons for refusal will identify why a development is unacceptable and will help the applicant to determine whether and how the proposal might be revised to make it acceptable.

In relation to this application, it was considered and the process managed in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
**SUBJECT TO CONDITIONS**

**Decision Date: 09 May 2019**

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2. Circular 04/2008 (Planning Related Fees) states that where an application is made under Article 21 of the Town and Country Planning (General Development Procedure) Order 1995 [now superseded by Article 30 of the Town and Country Planning (Development Management Procedure)(England) Order 2010], a fee will be payable for any consent, agreement or approval required by condition or limitation attached to the grant of planning permission (or reserved matter consent).

The fee is £116 per request or £34 where the permission relates to an extension or alteration to a dwellinghouse or other development in the curtilage of a dwellinghouse. The request can be informal through the submission of a letter or plans, or formal through the completion of an application form and the submission of plans. Any number of conditions may be included on a single request. The form is available on the Council's website [www.scambs.gov.uk](http://www.scambs.gov.uk) (application forms - 1app forms-application for the approval of details - pack 25.)

3. It is important that all conditions, particularly pre-commencement conditions, are fully complied with, and where appropriate, discharged prior to the implementation of the development. Failure to discharge such conditions may invalidate the planning permission granted. The development must be carried out fully in accordance with the requirements of any details approved by condition.
4. All new buildings that are to be used by the public must, where reasonable and practicable, be accessible to disabled persons and provide facilities for them. The applicant's attention is therefore drawn to the requirements of Section 76 of the Town and Country Planning Act 1990 and the Building Regulations 2000 (as amended) with respect to access for disabled people.
5. In order to obtain an official postal address, any new buildings should be formally registered with South Cambridgeshire District Council. Unregistered addresses cannot be passed to Royal Mail for allocation of postcodes. Applicants can find additional information, a scale of charges and an application form at [www.scambs.gov.uk/snn](http://www.scambs.gov.uk/snn). Alternatively, applicants can contact the Address Management Team: call 08450 450 500 or email [address.management@scambs.gov.uk](mailto:address.management@scambs.gov.uk). Please note new addresses cannot be assigned by the Council until the footings of any new buildings are in place.
6. The applicant's attention is drawn to the requirements of the Party Wall etc. Act 1996 if works are proposed to a party wall.
7. If you wish to amend the permitted scheme, and you consider the revisions raise no material issues, you should make an application for a Non Material Amendment. If agreed, the development can go ahead in accordance with this amendment although the revised details will not replace the original plans and any conditions attached to the originally approved development will still apply. If, however, you or the Council consider the revisions raise material issues you may be able to make an application for a Minor Material Amendment. If approved, this will result in a new planning permission and new conditions as necessary may be applied. Details for both procedures are available on the Council's website or on request.
8. If this development involves any works of a building or engineering nature, please note that before any such works are commenced it is the applicant's responsibility to ensure that, in

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

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addition to planning permission, any necessary consent under the Building Regulations is also obtained. Advice in respect of Buildings Regulations can be obtained from Building Control Services at South Cambridgeshire District Council. Their contact details are: tel. 03450 450 500 or [building.control@scambs.gov.uk](mailto:building.control@scambs.gov.uk) or via the website [www.scambs.gov.uk](http://www.scambs.gov.uk).

9. A delegation report or committee report, setting out the basis of this decision, is available on the Council's website.

To help us enhance our service to you please complete our [Customer Service Questionnaire](#)

*SS Kelly*

**Stephen Kelly**

Joint Director for Planning and Economic Development for Cambridge and South Cambridgeshire

South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA

**THIS PERMISSION DOES NOT CONSTITUTE APPROVAL UNDER BUILDING REGULATIONS AND IS NOT A LISTED BUILDING CONSENT OR CONSERVATION AREA CONSENT. IT DOES NOT CONVEY ANY APPROVAL OR CONSENT WHICH MAY BE REQUIRED UNDER ANY ENACTMENT, BYE-LAW, ORDER OR REGULATION OTHER THAN SECTION 57 OF THE TOWN AND COUNTRY PLANNING ACT 1990.**

**SEE NOTES OVERLEAF**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

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**NOTES**

**Appeals to the Secretary of State**

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so using a form which you can get from the Customer Support Unit, Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.

Alternatively, an online appeals service is available through the Appeals area of the Planning Portal - see [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs). The Planning Inspectorate will publish details of your appeal on the internet. This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information you are happy will be made available to others in this way, including personal information belonging to you. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

Fully completed appeal forms must be received by the Planning Inspectorate within six months of the date of this decision notice except where the property is subject to an enforcement notice, where an appeal must be received within 28 days.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving the notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

**Purchase Notices**

If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonable beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the District Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING PERMISSION**  
SUBJECT TO CONDITIONS

**Decision Date: 09 May 2019**

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**IMPORTANT INFORMATION REGARDING CONDITIONS**

If you have been granted Planning Permission and/or Listed Building Consent you may wish to get started immediately, however it is always important to carefully read the decision notice in full before any work begins.

The majority of Planning Permissions and Listed Building Consents have conditions attached. Some conditions request further information that requires approval by the Local Planning Authority before any development takes place ('pre-commencement'). All conditions are set out on the decision notice.

Under Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is a criminal offence to carry out unauthorised works to a listed building. Under Section 9 of the Act, a person shall be guilty of an offence should they fail to comply with any condition attached to the consent.

**HOW DO I DISCHARGE THE CONDITIONS**

Please note that the process takes up to eight weeks from the date the Local Planning Authority receives a valid application. Therefore it is important to plan ahead and allow plenty of time before work is due to commence.

You need to fill in a form to submit your request to discharge conditions, and accompany the relevant details/samples. You can download the necessary form by using the following link: <https://www.scambs.gov.uk/content/apply-planning-permission>. This form can be emailed directly to [planning@scambs.gov.uk](mailto:planning@scambs.gov.uk) or submitted by post to South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA

Alternatively you can submit an application to discharge the conditions through the Government's Planning Portal website: <https://www.planningportal.co.uk/applications>. Please note, The Planning Portal refers to it as 'Approval of details reserved by a condition'.

When the required information has been submitted you will receive a reference and an acknowledgement letter. Once the Local Planning Authority is satisfied that the requirement of the condition have been met you will receive a formal notification that the conditions have been discharged.

**FEES**

£0 – for all Listed Building Consent 'Discharge of Conditions' applications;

£34 – for all householder 'Discharge of Conditions' applications;

£116 – for all other types 'Discharge of Conditions' applications.

Please contact your Case Officer with any queries.

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

8 May 2019

**AUTHOR/S:** Joint Director of Planning and Economic Development

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**Application Number:** S/0277/19/FL

**Parish(es):** Longstanton

**Proposal:** Demolition of the existing bungalow and construction of two dwellings including car parking and landscaping

**Site address:** The Retreat, Fews Lane, Longstanton, CB24 3DP

**Applicant(s):** Landbrook Homes Ltd

**Recommendation:** Approval

**Key material considerations:** Principle of Development  
Character and appearance of the local area  
Residential Amenity  
Highway safety

**Committee Site Visit:** 7 May 2019

**Departure Application:** No

**Presenting Officer:** John Koch, Team Leader

**Application brought to Committee because:** At the request of the Local Member

**Date by which decision due:** 9 May 2019

### Executive Summary

1. The application proposes the addition of one new dwelling on land within the village framework and is acceptable in principle subject to the details in respect of scale, layout, appearance, landscaping and the means of access.
2. Residents and one of the local members have raised various concerns, although no material objections have been received from consultees, which cannot be mitigated through the use of appropriate conditions.
3. Officers consider that the details of the proposal are acceptable and subject to various safeguarding conditions, the development will not have an adverse impact in terms of the character and appearance of the local area, residential amenity and highway safety.

### Relevant Planning History

4. S/2439/18/FL – Erection of a 3 bedroom bungalow with parking (land rear of The

Retreat) – Approved

S/2937/16/FL- Proposed erection of a 3-bedroomed bungalow with parking (land rear of The Retreat) – Refused but appeal allowed and decision attached as appendix 1.

S/1498/15/FL- Erection of 2 dwellings (The Oaks and The Beeches) – Approved

S/0999/14/FL – Extension and alteration to existing bungalow to provide a house (The Retreat) – Approved

S/0791/88/O – One Bungalow – Refused and appeal dismissed. Decision attached as appendix 2

### **National Guidance**

5. National Planning Policy Framework (NPPF) 2019  
National Planning Practice Guidance

### **Development Plan Policies**

6. **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/4 Water Efficiency  
CC/6 Construction Methods  
CC/7 Water Quality  
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
7. **South Cambridgeshire LDF Supplementary Planning Documents (SPD):**  
District Design Guide SPD - Adopted March 2010

### **Consultation**

8. **Longstanton Parish Council** – Object on the grounds the development would be overdevelopment of the site in both density and layout. Considering the original number of dwellings that were located in Few's Lane prior to the incremental applications received since 2016 (2 bungalows up to 2016) these dwellings replacing the bungalow will increase dwellings to 7 (considering the other approved application, completed builds and vehicular access for the house on the corner of Few's Lane). In addition, Longstanton Parish council have raised concerns with all applications received for this site about highway safety, in particular that of pedestrians using the lane as a public footpath and the increase in traffic these dwellings will produce and

the visibility from the lane onto the High Street.

9. **Local Highway Authority** – Originally objected as the application was not supported by sufficient pedestrian/cycle information to demonstrate that the proposed incremental development would not be prejudicial to the satisfactory functioning of the highway as concerns have been raised by the District Councillor and Parish Council with regards to the number of pedestrians and cyclist using Fews Lane.
10. Following the submission of the requested pedestrian/cycle information the Local Highway Authority's request for refusal has now been overcome.
11. 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.
12. 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, for both phases all such 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.Reason: in the interests of highway safety
13. In the event that the Planning Authority is so minded as to grant permission to the proposal please add an informative to the effect that the granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.
14. **Drainage Officer** – No objections in principle. However, the proposals have not demonstrated a suitable surface water and foul water drainage provision and there is extensive surface water flooding indicated on the Environment Agency's Surface Water Maps. Conditions are requested requiring further details of foul and surface water drainage and all finished floor levels shall be a minimum of 300 mm above the existing ground level.
15. **Environmental Health Officer** – No objections subject to conditions requiring limitations on the hours of use for construction site machinery and plant and construction related deliveries and no burning of waste or materials on site without prior consent.
16. **Contaminated Land** – There are no immediately evident environmental constraints at this site, however the development is for residential which is a sensitive end use. Therefore I recommend the following informative be attached to the consent to cover the eventuality of any unforeseen contamination:
17. If during the development contamination not previously identified is found to be present at the site, such as putrescible waste, visual or physical evidence of

contamination of fuels/oils, backfill or asbestos containing materials, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.

### **Representations**

18. **Cllr Cheung Johnson** - Objects on the following grounds:

- Overlooking of existing properties because of additional height of new dwellings, potential impact of light onto lower bungalows
- Highways authority concerns on safety, this is a heavily used footpath for residents and Few Lane itself is unsuited for increased vehicular access, in particular at the junction of the High Street

19. **Third parties** - Objections have been received on behalf of two neighbouring properties as well as from the Fews Lane Consortium Ltd raising the following points:

- Density of development not in keeping
- Bulky and overbearing mass out of context creating an undesirable visual impact
- Would violate the 45 degree rule and reduce daylight
- Loss of sunlight on neighbouring properties. Impact should be considered cumulatively with other developments on the site
- Overlooking private amenity space of the property and other neighbouring dwellings
- No provision for safe access for vehicles or pedestrians along Fews Lane
- Vehicles would not be able to enter and exit the parking spaces shown in forward gear. Furthermore, vehicles would have to reverse into or across the public footpath either when entering the parking area or exiting the parking area. This poses a severe and unacceptable risk to the safety of users of the public footpath and to motorists and cyclists making use of Fews Lane.
- Insufficient visibility onto High Street. Too close to the Mitchcroft Road opening on a blind corner next to bus stops
- Fews Lane is of substandard design and construction. Dangerous due to inadequate junction design and inability of highway users along High Street and vehicles exiting Fews Lane to see each other.
- No proposal to mitigate the unsafe impacts on traffic safety. Need to widen Fews Lane to 5 m for first 5 m with a suitable bound material if approved
- The Council has previously misdirected itself in not considering the total additive effects on highway safety resulting from the increased level of traffic due to the total cumulative development of the original curtilage of The Retreat, all of which uses

Fews Lane for all access.

- Residual cumulative impact should have due regard to impacts on the wider road network to include access, economy, safety and the environment .
- Loss of obscuring foliage
- Need to remove permitted development rights if approved
- The previous approval for a dwelling under planning permission ref S/0999/14/FL has expired and is no longer relevant as other permissions have been granted since within the rear garden of The Retreat. Will lead to significant overcrowding in the area.
- The officer's report should explicitly make clear to the committee that the impacts of the wider development of the site can be material planning considerations.
- Piecemeal development in the area by the same developer is against the spirit of the planning process and all of the applications should be considered as a single application
- The application is not valid as the red line plan does not take account of necessary visibility splays

### **Site and Surroundings**

20. The Retreat comprises a single-storey dwelling off an unadopted road known as Fews Lane. The Lane currently serves as an access for 5 existing dwellings and a sixth recently approved behind The Retreat, but not yet constructed. The Lane also serves as a footpath linking the Home Farm residential development to the south and west of Fews Lane with High Street.
21. The site lies within the designated village framework and is otherwise unconstrained.

### **Proposal**

22. The proposal is to demolish the existing dwelling and replace it with two, two-storey dwellings of similar scale, layout and appearance to each other. The upper storey would be contained within the roofspace. The properties would be roughly aligned with The Beeches to the west, each with their own parking areas to meet adopted standards and access off Fews Lane. The proposed external materials would comprise Istock Cream Buff multi facing brickwork under a natural red-coloured Marley Melodie Clay single pantile roof.

### **Planning Assessment**

23. The key considerations in this case relate to the principle of development, the impact on the character and appearance of the area; residential amenity of existing and future occupiers; and highway safety.

#### *Principle of Development*

24. Policy S/2 of the Local Plan sets out the Plan objectives based on principles of sustainable development. Policy S/3 provides a presumption in favour of sustainable development. In locating new residential development, policy S/6 sets out the development strategy based on a sequential approach to development.

25. Policy S/10 classifies Longstanton as a Group Village where residential development will be permitted of up to an indicative maximum scheme size of 8 dwellings. Therefore the principle of a new dwelling within the village framework as proposed is considered acceptable subject to other material planning considerations.
26. The existing site density will be increased from approximately 14 dph to 29 dph. The overall density of development off and to the north of Fewes Lane will be increased from 15 dph to 18 dph. This is consistent with Policy H/8 which primarily requires housing developments to achieve an average net density of 30 dph in Group Villages. This density may vary from the above when justified by the character of the locality, and given the size of the site and its relationship to other properties, the proposed density is not considered to be excessive within its wider context.

#### *Character and Appearance*

27. Policy S/7 states that development and redevelopment of unallocated land and buildings within development frameworks will be permitted provided that:
  - a. Development is of a scale, density and character appropriate to the location, and is consistent with other policies in the Local Plan; and
  - b. Retention of the site in its present state does not form an essential part of the local character, and development would protect and enhance local features of green space, landscape, ecological or historic importance; and
  - c. There is the necessary infrastructure capacity to support the development;”
28. Policy HQ/1 of the adopted Local Plan states that all new development should preserve or enhance the character of the local area and be compatible with its location and appropriate in terms of scale, mass, form, siting, design, proportions and materials. Policy HQ/1 also states that planning permission will not be granted where the proposed development would, amongst other criteria, have an unacceptable adverse on village character.
29. Representations have been submitted which state the proposal is not in keeping with the character of the area. The previous approval for a dwelling under planning permission ref S/0999/14/FL has expired and has not been used as a basis in considering the merits of this application.
30. The surrounding area has a mix of styles and designs of residential properties but is characterised by mainly two storey residential properties which generally sit within modest plots. While of modest scale and appearance, the existing single-storey dwelling on the site has a somewhat dated appearance and does not particularly enhance its surroundings.
31. The new dwellings utilise similar materials to other recently constructed dwellings and are generally of a similar modest form and appearance. The buildings are most clearly seen in conjunction with The Beeches which lies to the west. This dwelling is of two storeys albeit the upper accommodation is contained entirely within the roofspace. It has an eaves and ridge height of 2.4 and 6.9 m respectively. The two new dwellings also contain the upper accommodation within the roofspace but have eaves and ridge heights of 3.7 and 7.8 m respectively. They are separated from The Beeches by a gap of 6 m and by an open area of more than 28 m to the east and dwellings in Mitchcroft Road.
32. While they have a greater scale than The Beeches as well as the other newer properties also served off Fewes Lane, the two new dwellings are reasonably divorced

from other development such that their overall scale will not appear over-dominant or out of place in the street scene. Views from the High Street will also be mitigated by the presence of existing screening along Fewes Lane and along part of the site boundary to the east.

33. Unlike The Beeches, parking provision will be at the front of the properties, but the residual garden area is not inconsistent with the front of other properties nearby. An agreed landscaping scheme can be secured to allow for softening of the frontage to help reduce the impact of car parking.
34. There may be some impact from the siting of Plot 2 on the canopies of the tree screen along the eastern boundary, most of which are within the curtilage of the adjoining property. Their protection during construction works can be controlled by way of a safeguarding condition. Details of the proposed landscaping and boundary treatments are also required to help assimilate the development into its surroundings.
35. The proposed dwellings are therefore considered to preserve the character of the surrounding area and are compatible with their location and appropriate in terms of scale, mass, form, siting, design, proportions and materials. They therefore comply with Policies S/7 and HQ/1 in this respect.

#### *Residential Amenity*

36. For the proposed occupiers, the gross internal floor areas accord with space standards as set out in Policy H/12 and will thus ensure a reasonable level of residential amenity and quality of life for future occupants as well as long term sustainability and usability of the new homes. The rear gardens also have areas which comply with the minimum requirements set out in the District Design Guide.
37. The size and siting of the new dwellings and their set back from the road are such that there will be no harmful loss of privacy for the properties opposite. The properties have rear garden depths of approximately 11 m (Plot 1) and 14 m which comply with amenity area standards set out in the District Design Guide. There are two windows at first floor level and one of these serves an en-suite room served by a rooflight with a cill height 1.7 m above floor level. There is a distance of over 20 m between the rear elevations and the front of the recently approved bungalow and this is acceptable given that the private amenity space of that property will be unaffected.
38. Any overlooking of The Beeches from Plot 1 will be oblique and is no different from many domestic situations. The 6 m wide gap between the two properties will further help mitigate this impact. The property behind known as The Elms also has its private amenity area to the north (i.e. out of view from the new dwellings) such that it will be unaffected. There is also an oblique distance of 19 m between the rear bedroom window in Plot 1 (the nearest property) and the front of The Elms. Given that any overlooking will be towards the front of this property this distance is sufficient such as to not result in unreasonable loss of privacy. 6 Mitchcroft Road lies to the north-east and the distance from the rear of the house on Plot 2 is approximately 19 m to its nearest boundary. When combined with the existing tree screen in between, this means that the existing privacy enjoyed by this property will be maintained.
39. Any adverse impact on daylight and from overshadowing would mainly be felt by The Beeches. This property lies to the west of Plot 1 and any possible overshadowing would be very early in the morning leaving its private amenity space otherwise largely unaffected. There is no violation of the 45 degree rule and the relative position and orientation of neighbouring dwellings means that any impact will not be significant

such as to warrant refusal.

40. The development will therefore comply with Policy HQ/1.
41. Respondents have requested that permitted development rights be removed in the event the application is approved. Government advice is that this measure should be used sparingly, but nonetheless the addition of some permitted development under Classes A and B could have an unacceptable impact on the amenity of other residential properties. A condition is therefore necessary in this regard.
42. The Environmental Health Officer has requested conditions to ameliorate the impact on residential amenity during construction. Given the restricted nature of Fews Lane these are justified in accordance with policy CC/6 and will be worded to echo those attached to the recent planning permission reference S/2439/18/FL for consistency. An informative can be added requiring no burning of waste or materials on site without prior consent.

#### *Highway Safety*

43. Paragraph 109 of the NPPF states developments should only be prevented or refused on highways grounds if there would be an '*unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*'.
44. The local highway authority (LHA) initially objected as the application was not supported by sufficient pedestrian/cycle information to demonstrate that the proposed incremental development would not be prejudicial to the satisfactory functioning of the highway. The LHA requested that the pedestrian/cycle surveys be carried out, for the duration of 5 days Monday – Friday (not during the school holidays), between the hours of 7.30 – 9.30 and 15.00 – 17.00, along with details of weather on these days.
45. The applicant has since undertaken a survey for the use of Fews Lane by cycles and pedestrians. This was carried out between 27 March and 2 April. The survey results indicate that on average there were 10 pedestrian movements per hour up and down Fews Lane with a cluster of secondary school children during the a.m. and p.m. peaks representing almost 50% of all pedestrian movements. There was a record of just one cyclist during the week long survey. Full details of the survey are available to view on the Council's website.
46. Following the submission of the requested pedestrian/cycle information the LHA has withdrawn its request for refusal. As such, the LHA has not identified any unacceptable impact on highway safety. This is notwithstanding the survey information excludes highway users who pass the entrance to Fews Lane as suggested by an objector.
47. The LHA's approval is subject to conditions that the existing Public Right of Way (PROW) be constructed using a bound material, for the first ten metres from the back of the footway along High Street; the submission of a traffic management plan and an informative to the effect that the granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.
48. 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

Cambridgeshire County Council.

49. The above conditions are considered necessary in this instance. No conditions are sought in respect of the width of the Lane at its junction with High Street or for pedestrian visibility splays to be provided as recommended by some local residents. Objections that the application is not valid as the red line plan does not take account of the necessary visibility splays are not relevant as no requirement for such splays to be provided is considered necessary.
50. In considering the residual cumulative impact on the road network, account is taken of the increased level of traffic due to the total cumulative development of the original curtilage of The Retreat, and the two other properties (built in the 1960's) which use Few's Lane for vehicular access. With the recent approval for a dwelling under reference S/2439/18/FL, the former curtilage of The Retreat will have been subdivided into a total of 5 separate residential plots with the two additional houses opposite.
51. So far as the residual cumulative impacts on the road network are concerned, there would typically be around 4.5 vehicular movements per dwelling over a 12-hour period. This means that with the two new dwellings the total number of vehicular movements would increase to approximately 31.5. The local highway authority has not raised any concerns that the existing free flow of traffic along the High Street will be materially affected. Significantly, the LHA has not considered the residual cumulative impact on the road network arising from a total of seven dwellings to be "severe" as per the wording in paragraph 109 of the NPPF.
52. Attention is drawn to the two appeal decisions attached as appendix 1 and 2. In the former appeal (from 1989), the inspector noted that Few's Lane served three dwellings and the appeal proposal would increase this to 4. He considered the junction of Few's Lane and High Street (then the route of the B1050 through the village) to be unsafe given visibility to the south was considerably impeded by vegetation. As the road is straight, it was anticipated that vehicles would be travelling close to the maximum permitted speed and this would have a harmful effect on traffic safety. No such overriding harm was found in respect of traffic travelling from a northerly direction.
53. In the subsequent 2018 decision, the appeal inspector was aware that the B1050 had ran through the centre of Longstanton, but that the village by-pass now has a signposted route that skirts its western edge. He observed that traffic now has no need to take the old route to by-pass the village and that the time of his 9 a.m. visit on a school day, the level of traffic in the High Street appeared to be quite low. He opined there was no evidence to suggest these conditions were unusual. His conclusion was that although Few's Lane does not meet modern highway standards in terms of both its geometry and construction, the development would provide safe and appropriate access.
54. Officers conclude that there has clearly been a material change of circumstances in highway conditions between 1989 and 2018, namely the construction of the village by-pass. This has had a material impact on traffic flows. The current application for an additional dwelling is also to be determined in accordance with the same road conditions that prevailed at the time of the second appeal.
55. Having had due regard to the matters already discussed, officers have no reason to dispute the conclusion of the LHA in respect of any highway related matters. The proposal therefore complies with policies TI/2 and TI/3.

### *Other Matters*

56. In view of the consultation response from the Drainage Officer, conditions in respect of foul and surface water drainage and finished floor levels should be imposed in accordance with policies CC/8 and CC/9. An informative will also be added in respect of contamination as requested by the consultee.
57. Conditions are also required in respect of a scheme for renewable energy, water efficiency measures and broadband provisions to accord with newly adopted Plan policies CC/3, CC/4 and TI/10 respectively.
58. The objection that piecemeal development in the area by the same developer is against the spirit of the planning process is not a material planning consideration.
59. The representation that the impacts of the wider development of the site can be material planning considerations has been acknowledged in the drafting of this report.

### **Recommendation**

60. Approval subject to:

Planning conditions and Informatives as set out below, with the final wording of any amendments to these to be agreed in consultation with the Chair and Vice Chair prior to the issuing of planning permission.

### **Conditions**

- a) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.  
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development, which have not been acted upon.)
- b) The development hereby permitted shall be carried out in accordance with the following approved plans: FLL-45-01, FLL-45-02  
(Reason - To facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990).
- c) The materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be as described in the application form or shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Where materials are approved by the Local Planning Authority, the development shall be carried out in accordance with the approved details.  
(Reason - To ensure the appearance of the development is satisfactory in accordance with Policy HQ/1 of the South Cambridgeshire Local Plan 2018).
- d) Prior to the first occupation of the development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/6 of the adopted South Cambridgeshire Local Plan 2018).

- e) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.  
(Reason - To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/6 of the adopted South Cambridgeshire Local Plan 2018.)
- f) Prior to the first occupation of the development a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment for each dwelling shall be completed before that/the dwelling is occupied in accordance with the approved details and shall thereafter be retained.  
(Reason - To ensure that the appearance of the site does not detract from the character of the area in accordance with Policy HQ/1 of the adopted South Cambridgeshire Local Plan 2018.)
- g) 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.  
(Reason: In the interests of highway safety).
- h) No development above slab level shall occur until schemes for the provision and implementation of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The schemes shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with an implementation programme agreed in writing with the Local Planning Authority.  
(Reason - To reduce the risk of pollution to the water environment, to ensure a satisfactory method of foul water drainage and to reduce the risk of flooding in accordance with Policies CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018).
- i) All finished floor levels shall be a minimum of 300 mm above the existing ground level.  
(Reason – To reduce the risk of flooding in accordance with policy CC/9 of the South Cambridgeshire Local Plan 2018).
- j) No development above slab level shall take place until a scheme has been submitted that demonstrates a minimum of 10% of carbon emissions (to be

calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The scheme shall be implemented and maintained in accordance with the approved details prior to the occupation of the development.

(Reason – In accordance with policy CC/3 of the South Cambridgeshire Local Plan 2018 and paragraphs 148, 151 and 153 of the National Planning Policy Framework 2018 that seek to improve the sustainability of the development, support the transition to a low carbon future and promote a decentralised, renewable form of energy generation.)

- k) The development hereby approved shall not be occupied a water conservation strategy, which demonstrates a minimum water efficiency standard equivalent to the BREEAM standard for 2 credits for water use levels unless demonstrated not practicable, has been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

(Reason – To improve the sustainability of the development and reduce the usage of a finite and reducing key resource, in accordance with policy CC/4 of the south Cambridgeshire Local Plan 2018.)

- l) The dwellings hereby approved shall not be occupied until they have been made capable of accommodating Wi-Fi and suitable ducting (in accordance with the Data Ducting Infrastructure for New Homes Guidance Note) has been provided to the public highway that can accommodate fibre optic cabling or other emerging technology, unless otherwise agreed in writing with the Local Planning Authority.

(Reason – To ensure sufficient infrastructure is provided that would be able to accommodate a range of persons within the development, in accordance with policy TI/10 of the South Cambridgeshire Local Plan 2018.)

- m) During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays, or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.

(Reason - To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018).

- n) During the period of demolition and construction, no deliveries shall be made to and from the site between 0730 and 0930 hours and between 1500 and 1800 hours on weekdays or before 0800 hours and after 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.

(Reason - To minimise noise disturbance for adjoining residents and to reduce potential conflicts with pedestrians, particular schoolchildren using Fews Lane and High Street in accordance with Policy CC/6 and HQ/1 of the South Cambridgeshire Local Plan 2018).

- o) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A and B of Part 1 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf.

(Reason - In the interests of protection of residential amenity and the character of the area in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018).

### **Informatives**

- a) If during the development contamination not previously identified is found to be present at the site, such as putrescible waste, visual or physical evidence of contamination of fuels/oils, backfill or asbestos containing materials, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved to the satisfaction of the Local Planning Authority.
- b) The granting of a planning permission does not constitute a permission or licence to a developer to carry out any works within, or disturbance of, or interference with, the Public Highway, and that a separate permission must be sought from the Highway Authority for such works.
- c) There shall be no burning of waste or materials on site without the prior consent of the Council's Environmental Health Officer.

### **Background Papers:**

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

- South Cambridgeshire Local Plan 2018
- South Cambridgeshire Local Development Framework Supplementary Planning Documents (SPD's)
- Planning File Reference: S/277/19/FL

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## Index

		<b>Page(s)</b>
<b>Section A: Acknowledgement of Service and supporting documents</b>		
1	Acknowledgement of Service	1 – 10
2	Summary Grounds for resisting the claim	11 – 27
<b>Section B: Exhibits</b>		
1	Letter dated 03.12.2018 – Daniel Fulton to Cambridgeshire County Council	28 – 32
2	Letter dated 12.12.2018 – Cambridgeshire County Council to Daniel Fulton	33 – 36
3	Email from Daniel Fulton to Stephen Reid dated 28.09.2020 @ 7.47am	37 – 44
4	Email from Stephen Reid to Daniel Fulton dated 16.10.2020 @ 3.18pm	45 – 54
5	Email from Daniel Fulton to Stephen Reid dated 30.04.2021 @ 11.19am	55 – 60
6	Email from Stephen Reid to Daniel Fulton dated 14.05.2021 @ 4.17pm	61 – 70
7	Email from Daniel Fulton to Stephen Reid dated 21.05.2021 @ 11.49am	71 – 75
8	Email from Stephen Reid to Daniel Fulton dated 27.05.2021 @ 2.50pm	76 – 78
9	Presentation to Planning Committee 27.05.2021	79 – 104
10	Email from Daniel Fulton to Stephen Reid dated 21.06.2021 @ 4.57pm	105 – 111
11	Email from Stephen Reid to Daniel Fulton dated 05.07.2021 @ 4.59pm	112 – 126
12	Email from Daniel Fulton to Stephen Reid dated 06.07.2021 @ 6.55am	127 – 130
13	Email from Daniel Fulton to Stephen Reid dated 06.07.2021 @ 1.52pm	131 – 142
14	Email from Stephen Reid to Daniel Fulton dated 06.07.2021 @ 1.54pm	143 – 157
15	Email from Stephen Reid to Daniel Fulton dated 06.07.2021 @ 3.34pm	158 – 172
16	Email from Daniel Fulton to Stephen Reid dated 28.07.2021 @ 8.32pm	173 – 176
17	Email from Daniel Fulton to Stephen Reid dated 01.08.2021 @ 3.57pm	177 - 182
<b>Section C: Cases</b>		
1	R (Luton BC) v Central Bedfordshire Council et al [2014] EWHC 4325 (Admin)	183 – 240
2	R (Mansell) v Tonbridge & Malling BC [2019] PTSR 1452 (see ICLR Leading Planning Cases)	N/A
3	R (Morge) v Hampshire CC [2011] UKSC 2 (see ICLR Leading Planning Cases)	N/A
4	R (Maxwell) v Wiltshire Council [2011] EWHC 1840 (Admin)	241 – 259
5	R (Samuel Smith Old Brewery (Tadcaster) et al) v North Yorkshire CC [2020] PTSR 221	260 – 276
<b>Section D: Schedule of Costs</b>		
1	Counsel £5,700 + VAT fee note	277
2	Stephen Reid, Solicitor for Defendant £2,550	278
3	Toby Williams, Planning Officer for the Defendant £602.	279 - 280

# Judicial Review

## Acknowledgment of Service

Name of court

High Court of Justice  
Administrative Court

Claim number

Name of claimant (including any reference)

Name of defendant

Interested parties

**This Acknowledgment of Service is filed on behalf of**

Name

who is the

Defendant

Interested party

**Name and address of person to be served**

Name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

## Section A

Tick the appropriate box

- I intend to contest all of the claim  
– **complete sections B, C, D and F**
- I intend to contest part of the claim  
– **complete sections B, C, D and F**
- I do not intend to contest the claim  
– **complete section F**
- The defendant (interested party) is a court or tribunal and intends to make a submission  
– **complete sections B, C and F**
- The defendant (interested party) is a court or tribunal and does not intend to make a submission  
– **complete sections B and F**
- The applicant has indicated that this is a claim to which the Aarhus Convention applies  
– **complete sections E and F**
- The Defendant asks the Court to consider whether the outcome for the claimant would have been substantially different if the conduct complained of had not occurred (see s.31(3C) of the Senior Courts Act 1981)  
– **A summary of the grounds for that request must be set out in/accompany this Acknowledgment of Service**

**Note:** If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

## Section B

**B1.** Insert the name and address of any person you consider should be added as an interested party.

1. Name

### Address

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email (if you have one)

2. Name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email (if you have one)

## Section C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

## Section D

**D1.** Give details of any directions you will be asking the court to make.

Set out below

attached

**Note:** If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties form **N464** with this acknowledgment of service.

## Section E

Response to the claimant's contention that the claim is an Aarhus claim

**E1.** Do you deny that the claim is an Aarhus Convention claim?

Yes. Set out your grounds for denial in the box below.

No

**E2.** Do you wish to vary the costs limits under CPR 45.43(2)?

Yes. State the reason why you want to vary the limits on costs recoverable from a party.

No

## Section F

### Statement of truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- I believe** that the facts stated in this form are true. I confirm that all relevant facts have been disclosed in this application.
- The defendant** believes that the facts stated in this form are true. **I am authorised** by the defendant to sign this statement.
- The interested party** believes the facts stated in this form are true. **I am authorised** by the interested party to sign this statement.

### Signature



- Defendant
- Litigation friend
- Defendant's legal representative (as defined by CPR 2.3(1))

### Date

Day                      Month                      Year

Full name

Name of defendant's legal representative's firm

If signing on behalf of firm or company give position or office held

Give an address to which notices about this case can be sent to you

Name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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If applicable

Phone number

DX number

Email

If you have instructed counsel, please give their name address and contact details below.

Name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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If applicable

Phone number

DX number

Your reference

Email

**Completed forms**, together with a copy, should be lodged with the Administrative Court Office (court address, listed below), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of lodgement with the Court.

### **Administrative Court addresses**

#### **Administrative Court in London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

#### **Administrative Court in Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

#### **Administrative Court in Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

#### **Administrative Court in Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

#### **Administrative Court in Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

**BETWEEN: -**

**THE QUEEN  
(FEWS LANE CONSORTIUM LIMITED)**

**Claimant**

**And**

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

**Defendant**

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**SUMMARY GROUNDS FOR RESISTING THE CLAIM**

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**[References in square brackets are to the Claim Bundle]**

- 1 The Claimant seeks to challenge the Council's decision as Local Planning Authority to grant planning permission (S/20/02453/S73) under s.73 of the Town and Country Planning Act 1990 (as amended), for the variation of Condition 7 (Traffic Management Plan) of planning permission S/0277/19/FL at land at the rear of 'The Retreat', Few's Lane, Longstanton, Cambs CB24 3DP.
- 2 The Grounds are unarguable and totally without merit. Permission for the claim should be refused under CPR 54.4, and the Court is invited to record that the claim is totally without merit under CPR 3.3(7).

## Relevant Background

- 3 On 9 May 2019, the Council granted planning permission for the demolition of an existing bungalow and construction of two dwellings including car parking and landscaping at the Retreat, Fewes Lane, Long Stanton, Cambridge, CB24 3DP (S/0277/19/FL) [120-127].
- 4 Condition 7 of the 2019 consent was a pre-commencement condition requiring the submission of a traffic management plan, to be agreed with the Council. It identified principal areas of concern which primarily related to construction related traffic [121].
- 5 There was no challenge to the grant of the 2019 consent and the 3-year commencement period for that consent has not expired (Condition 1) [120]. The 2019 consent represents a highly material fallback position.
- 6 By an application dated 21 May 2020, the applicant sought a variation of Condition 7 under s.73 of the TCPA 1990 (as amended) [129-131]. In essence, the variation application sought to amend the wording of the condition from a pre-commencement condition to a condition requiring compliance with an approved Traffic Management Plan (prepared by SLR Consulting and dated December 2019) [132-147]. That is, it sought both the variation of the condition and approval of the Traffic Management Plan.
- 7 The focus of the Traffic Management Plan, consistent with the identified areas of concern, was on construction works associated with the development [135].
- 8 The s.73 application was considered at 3 Planning Committee meetings.
- 9 In January 2021, the Committee resolved to approve the application subject to [161, para. 1]:
- The revision of one paragraph of the Traffic Management Plan, so as to prevent delivery vehicles from parking on any street within the village of Longstanton;
  - The addition of an informative urging the applicant to establish a liaison mechanism between residents, the site manager, and Longstanton Parish Council, to monitor compliance with the Traffic Management Plan and to resolve any disputes.
  - The Conditions and Informatives set out in the Officer Report which had recommended approval.

- 10 The Officer Report for the January Committee recorded that the Claimant had made representations in relation to the application on 7 occasions: 10 July 2020, 27 July 2020, 20 August 2020, 23 August 2020, 3 September 2020, 8 September 2020, and 28 September 2020. These were summarised in the Officer Report [172, para. 24].
- 11 Not one the 7 representations made by the Claimant raised any of the points now made in the first 3 Grounds of this Claim, and only generalised assertions were made in respect of Ground 4.
- 12 Following the January 2021 resolution, the consent was not issued. That was because, although the application had been advertised as affecting a PROW, officers mistakenly gave advice at the meeting that such advertisement was not required. In addition, a late representation had also been received by a resident (not the Claimant) the evening before the January meeting which had not been passed to officers nor reported to Members [161, para. 2].
- 13 In April 2021, the application was reported back to Committee with updates responding to the above matters. In addition, a further update was required as a result of a late representation from the Claimant dated 1 April 2021 raising non-compliance with Policy NH/6 (Green Infrastructure). This was responded to in the further update, with no change to the recommendation of approval [166].
- 14 This 8<sup>th</sup> representation also did not touch upon any of the Grounds now raised in the Statement of Facts and Grounds.
- 15 At the April 2021 Committee, the Claimant raised yet further concerns that its representations had not been fully assessed within the Officer Reports. In response, the Committee agreed to defer consideration of the application so that the representations could be examined and addressed, as necessary [161, para. 3].
- 16 A full update was provided for the May 2021 Committee meeting [161-165]. This outlined the events above.

17 The Update also summarised the Claimant’s representations of 1 March 2021 and 14 March 2021 as follows [161, para. 4]:

- Objects on highway safety grounds – no safe access for the site and adverse impacts upon the safety of users of the public highway
- The Local Highway Authority originally objected but changed its mind as the ‘local highway authority has unlawfully taken into consideration an immaterial consideration, namely, the identity of the owner of land within the application site and the identify [sic] of owner of land outside the application site that is not owned by the applicant.’
- Recommends conditions regarding the lane to be widened to 5m, insertion of 2m by 2m pedestrian visibility splays and the maintenance of such splays
- The development to erect 5 houses has been divided amongst multiple planning applications for 1 or 2 houses at a time. The LPA should not consider these developments in isolation.

18 The first three points go to the heart of the Claimant’s concerns, that the development will give rise to highway safety issues [see SFG 37, 40, and 57 at paras. 48, 57, and 71]. That view was not shared or supported by the statutory consultee, the Local Highway Authority, or officers.

19 The May 2021 Update directly responded to those representations in full, quoting a detailed passage from the original Officer Report which resulted in the 2019 consent, in which the planning merits of the suggested highway improvements to Fews Lane, the extent of the red line, and visibility splays were all considered [162-165, paras. 6-14].

20 On these points, the Update concluded that [164, paras. 8-10, in summary]:

- Highway safety issues relating to Fews Lane have been robustly considered at appeal level.
- Officers have considered the cumulative impact of the total amount of properties along Fews Lane.
- The conditions proposed by the Claimant (on upgrading Fews Lane and visibility splays) were not imposed on the 2019 consent.
- Nor have the Highway Authority requested visibility splay conditions on the current s.73 application.

- Neither members nor officers are bound by the advice of the Highway Authority.
- The ownership of Few's Lane is immaterial to the necessity of upgrades to it.
- In Officers' view, it is not necessary to apply additional conditions as part of the s.73 application to upgrade Few's Lane or maintain pedestrian visibility splays.
- The splays required are contained within the adopted highway.
- Material circumstances have not altered to suggest that such conditions are now necessary.
- Since the 2019 consent did not impose such conditions, to impose them now would not be reasonable for a s.73 application which seeks to amend the wording of the Traffic Management Plan, particularly given that the 2019 consent could be implemented without complying with those conditions.

21 The Update also recorded that, since the April Committee, the Claimant had sent 2 pre-action protocol letters to the Council, one relating to this application, and one relating to an application for the adjacent site to the rear [161, para. 5]<sup>1</sup>. These argued that the Council had no jurisdiction to entertain this application because (in this case) the red line area on the location plan failed to include all the land necessary to carry out the proposed development contrary to Article 7(l) of the DMPO 2015, and specifically failed to include the land required for visibility splays.

22 The Update responded to these points by noting that, pursuant to Article 7(l) of the 2015 Order, no location plan is required for a s.73 application. The 2019 Officer Report had considered the representations concerning the adequacy of the access to the plot, the proposed improvements including the widening of the Few's Lane access, visibility splays, and the extent of the red line [see 110-111]. The grant of consent in 2019 had not been challenged. The Update concluded that the Council did not agree that it had no lawful authority to entertain the s.73 application pursuant to s.327A of the 1990 Act and Article 7 of the 2015 Order [165, para. 12]. An Officer Presentation was produced for the May 2021 Committee which also responded to the points raised in the pre-action letter, noting that the Council had taken external legal advice from Counsel on the points. A copy of a Counsel's advice (on the

<sup>1</sup> In fact, the Claimant had sent 3 PAP letters to the Council relating to this application dated 28 September 2020, 30 April 2021, and 21 May 2021 (**see Exhibits 3, 5 and 7 attached**) - all of which were responded to (**see Exhibits 4, 6 and 8**) - before the PAP letter for this claim at [192-196].

same point, albeit relating to a different site) and the Council's cover email were contained in the background papers accompanying the Officer Report.

- 23 Finally, the Update recorded that, notwithstanding that neither the 2019 consent nor the s.73 application included a site location plan which extended to the adopted highway and included visibility splays, 1.5m pedestrian visibility splays are available within the adopted highway at the junction of Few's Lane and the High Street, and the Highway Authority has a duty to maintain the highway, which includes the verge in this case [165, para. 13].
- 24 The Updates from April 2021 and the original January 2021 Officer Report were enclosed with the May 2021 Update. The recommendation to approve as per the January 2021 resolution remained the same [165, para. 16].
- 25 Copies of the correspondence relating to this application between the Claimant and Council, with an index running to 109 pages (redacted due to some correspondence being marked "without prejudice"), were appended to the Officer Report. These appendices have not been included in the Claim bundle.
- 26 On any view, the Claimant was heavily involved in the process leading to the decision to grant approval for the s.73 application on 27 May 2021, making many representations covering a wide range of legal and factual issues, which were all considered and put before the Committee.
- 27 Despite this, following the Decision Notice of 27 May 2021, the Claimant's pre-action letter dated 21 June 2021 stated 6 Grounds of proposed challenge [192-196], with 2 more raised by email dated 30 June 2021. Four of the Grounds (2, 3, 4, and 6) had not been raised before, whilst Ground 5 continued to be phrased in a very general fashion. No basis or explanation as to how the Grounds were made out, or how they rendered the Council's decision unlawful, was contained in the PAP letter, in breach of the Pre-action protocol for judicial review (Annex A, Section 7 Template), and despite the Claimant's considerable familiarity with judicial review procedures.
- 28 By letter dated 5 July 2021, the Council provided a full response to the PAP letter, making the point that those Grounds had not been raised before, and noting the non-compliance with

the pre-action protocol. The Claimant's PAP letter is included in the Claim bundle [192-196]; the Council's response is not included in the Claim Bundle **(but see Exhibit 11 attached)**<sup>2</sup>.

29 As to the Grounds now contained in the Statement of Facts and Grounds, Ground 1 on Policy H/16, and Ground 2 on the 2013 permission, were raised for the first time in the PAP letter and responded to in the Council's PAP response. Ground 3 on a legitimate expectation arising from the Council's Statement of Community Involvement has never been raised in this form before, though legitimate expectation was raised in vague terms for the first time by email dated 30 June 2021, after the PAP letter. As to Ground 4, it is particularised now for the first time.

30 There is no reason – let alone a good reason – provided by the Claimant as to why the above Grounds could not have been raised before, so that they could have been considered by Officers and the Council with the many other representations made by the Claimant.

31 The Planning Court has specifically deprecated such an approach, whereby issues are raised for the first time after the grant of planning permission - by a party who was fully engaged in the process up to determination - where it is claimed in subsequent judicial review proceedings that such matters should have been taken into account (*R (Luton BC) v Central Bedfordshire Council et al.* [2014] EWHC 4325 (Admin) at §107 per Holgate J). In this case, none of the Grounds have any substance. The way in which they have been raised, both inexplicably late and apparently as part of a campaign to frustrate the proper planning process relating to a development site which is adjacent to the Claimant's controlling Director (Mr. Daniel Fulton), should be reflected in any award of costs, if permission is refused.

### **Approach to Officer Reports**

32 It is well recognised that an officer report should be read using a sensible approach and with common sense applying the principles summarised in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452 at §42 per Lindblom LJ.

<sup>2</sup> The emails of 6 July 2021 **(which are also attached see Exhibits 12 and 14)** reveal how the Claimant has sought to mischaracterise the Council's responses.

33 As to the content of such reports:

*' .. [T]he courts should not impose too high a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves.'*

*(R (Morge) v Hampshire CC [2011] UKSC 2 at §36 per Baroness Hale).*

*'The court should focus on the substance of the report .. to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotation of materials, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively.'*

*(R (Maxwell) v Wiltshire Council [2011] EWHC 1840 (Admin) at §43, per Sales J)*

#### **Ground 1: failure to consider Policy H/16 of the Development Plan**

34 The lack of merit in this Ground is revealed by the fact that it was raised for the first time in the PAP letter. The Claimant made at least 8 representations during the consideration of the application. One - the late representation for the April 2021 meeting - argued that the Council had failed to consider a different policy of the Development Plan, Policy NH/6. Not one of those representations argued that the Council had failed to consider Policy H/16, which the Claimant now claims is *'the key material policy'* of the Development Plan relating to this application [36, para. 45].

35 The Officer Report for this application does not expressly reference or assess policy H/16. That is because it was not a principal consideration in assessing the merits of this application. The s.73 application was for the variation of a traffic management plan condition associated with the 2019 consent. The approved plans are the same between the 2019 consent and this s.73 application. No change to the design, scale or footprint of the scheme or the character of the

area was proposed as was confirmed in the Update for the May 2021 Committee [164, para 11, emphasis added]:

*'It is to be noted that the current S73 application only seeks to amend the wording of the Traffic Management Plan condition and does not seek to change the design or layout of the approved dwellings. **There also has been no material change in the surrounding context or planning policy to warrant forming an alternative view.**'*

The statement in bold has not been challenged or disputed by the Claimant.

36 The Officer Report for the January 2021 Meeting went on to explain that the principle of development had been established [169, para. 33]:

*'The principle of development of the dwellings 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 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.'*

37 Not only was there nothing unlawful in this approach, which recognised that the 2019 consent had established the principle of development, but it was an eminently practical and proportionate approach in the circumstances. It demonstrated that thought had been given to a change of circumstances since the decision in 2019, but that that had been ruled out. The 2019 consent had not been challenged and remained extant. There was nothing to prevent its implementation as a fall back.

38 In any event, the basis on which Policy H/16 is argued by the Claimant to be relevant reveals the lack of substance in this Ground. Policy H/16 refers to a series of development principles concerning the development of residential gardens. Of those principles, the one that the Claimant argues the Council did not consider was that there should be no significant harm to the local area, taking account of the criterion of the ability to create a safe vehicular access [37, para. 48ff.].

- 39 Yet that was precisely the issue addressed and considered carefully both in the May 2021 Update to the Officer Report [162-165] and in the main January 2021 Officer Report under the heading '*Highway Safety – Traffic Management Plan*' [175-178].
- 40 There is nothing whatsoever which turns on the “threshold” set in Policy H/16, that there should be '*no significant harm*' to the local area, contrary to the assertion in para. 52 of the Grounds [38]. That is to elevate form over substance. The analysis provided in the Officer Report took account of the cumulative impact of development and followed the advice of the Highways Authority, that there would be no harm to highway safety with the Traffic Management Plan in place.
- 41 As a result, there was in any event no failure to deal with the substance of the matter now complained of.
- 42 Lastly, for the above reasons, even if – which is denied – there was a requirement to consider Policy H/16 for this application, it is inconceivable that the application of Policy H/16 would have made any difference whatsoever to the outcome and permission should be refused (s.31(3C-3D) of the Senior Courts Act 1981). Section 31 of the 1981 Act was amended to require the Court to consider, even at the leave stage, whether the conduct complained of would have been substantially different, precisely to prevent unmeritorious Grounds such as these clogging up the Court system.
- 43 In the circumstances of this application, it was not necessary to examine the merits of the s.73 application against policy H/16 given the principle of development established by the 2019 consent and the details of the S73 application. In any event, it is inconceivable it would have made any difference to the outcome. This point was never raised by the Claimant, or any other third party, until after the grant of the s.73 permission.

**Ground 2: failure to consider the 2013 decision for additional dwellings in Fewes Lane**

- 44 As with Ground 1, this Ground is devoid of substance. The Claimant seeks to rely on a 2013 decision whilst altogether ignoring subsequent events.

45 First, the 2013 decision was superseded by a more recent planning permission, namely the 2018 appeal decision. As referred to above, the Council set out in detail its reasoning for the conclusion that highway safety would not be compromised by reference to the Officer Report for the 2019 consent (S/0277/19/FL), with full extracts quoted at paragraph 7 of the May Update [162-164]. This included consideration of appeal decisions by Inspectors of 1989 and 2018, either side of the Council's decision of 2013. The conclusion of the 2018 Inspector was specifically referred to, namely that although Few's Lane did not meet modern highway standards in terms of both its geometry and construction, that development would provide safe and appropriate access [164].

46 Secondly, the Officer Report fairly and properly relied upon the Highway Authority's view for this application, to the effect that there was no need for widening of the access or visibility splays [149]. The issue had been properly scrutinised by the Highway Authority as reflected in the Officer Report [177, para. 38, emphasis added]:

*'.. At the access point into Few's Lane, intervisibility between vehicles or pedestrians on the High Street and Few's Lane, noting the existing footway width along High Street and the position of the hedges and boundaries, has been judged to be appropriate. The Local Highway Authority officers are familiar with this site and have made it clear that they now find the TMP to be acceptable ...'*

And later [177, para. 40]

*'.. The assessment of the proposals by County Highway officers reported above is also 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.'*

47 Thirdly, the Highway Authority explained its position on visibility splays and widening to the Claimant in correspondence relating to an earlier application (S/2439/18/FL) on an adjacent site. (see Exhibit 2 attached) It was stated that pedestrian visibility splays of 1.5m x 1.5m could be achieved when exiting Few's Lane, and that the access could not be widened to 5m given it was only approximately 2m in width and due to ownership issues [93, paras. 14 / 15 and 21]. This was in response to those specific points being raised by the Claimant in a letter dated 3 December 2018 **(see Exhibit 1 attached)**.

- 48 Fourthly, on visibility splays, the May Update to the Officer report recorded that 1.5 x 1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fewes Land with the High Street, and that the Highway Authority has a duty to maintain the highway including the verge [165, para. 13].
- 49 Fifthly, as a matter of fact, the site for the 2013 permission (S/2561/12/OL) is not the same site as that relating to the site which is the subject of this challenge 20/02453/S73 (i.e. S/0277/19/FL). The 2013 permission was therefore not directly relevant to the decision before the Council. The 2013 permission was referred to in the planning history section of the Officer Report [169, para. 13].
- 50 Sixthly, and in any event, Members of the Planning Committee were presented with photographs of Fewes Lane and of its junction onto Longstanton High Street as part of the presentation made by Officers for the May 2021 meeting. Members of the Planning Committee therefore had all the necessary and relevant information before them to make an informed decision regarding the highway safety implications of their decision, including their powers to impose additional conditions if they thought it necessary to do so.
- 51 The above context amply demonstrates that, in the light of the 2018 appeal decision, the position of the Highway Authority on this application, and judgments made by the Highway Authority and officers in the Officer Report as to the availability of visibility splays and the possibility of widening, the 2013 permission was simply part of the distant planning history which had been overtaken by subsequent events. In the circumstances, it was not so obviously material as to require direct consideration (*R (Samuel Smith Old Brewery (Tadcaster) et al) v North Yorkshire CC* [2020] PTSR 221 at §32 per Lord Carnwath). Further or alternatively, it cannot sensibly be contended that the 2013 permission could possibly have made any material difference to the assessment of the highways implications and the outcome of the application, and permission should be refused (s.31(3C-3D) of the Senior Courts Act 1981).

### **Ground 3: Breach of legitimate expectation**

- 52 This Ground fails on the facts and adds nothing. There is in fact no relevant legitimate expectation and the attempt to engineer one is misconceived.

- 53 The legitimate expectation is alleged to arise from the combination of an unexceptional statement in the Statement of Community Involvement, that representations would be taken into account, together with a table attached to an email from the Claimant dated 20 April 2021, which was headed '*Planning History*' [159]. The table contained bare assertions as to whether previous permissions had been implemented, whether they were valid, and whether they provided a fall back. The email to which the table was attached gave no further indication as to the reasoning behind those assertions, stating that the attached table was shared '*summarising the planning history of the site*' [158].
- 54 The table was not put forward as a formal representation to the s.73 application, but as a reference document for a meeting. The Claimant sent the email and table to certain officers for the purposes of a meeting arranged by the Director of Planning Stephen Kelly, together with Toby Williams and the Council's Solicitor Stephen Reid, to seek to understand the Claimant's concerns (the Subject of the email was '*For today's meeting*') [158]. It is plain from a fair reading of the Claimant's email that, at that stage, the Claimant's concern was the Highways Authority's stance [158].
- 55 The Claimant mischaracterises this table, attempting to elevate it as a chronological list '*which raised a number of material considerations relating to the planning history*' [42, para. 70].
- 56 Even if – which is denied - it was a representation, there is nothing in the Council's Statement of Community Involvement which would require the Council to deal in detail with all such representations made. It is trite law that it is a matter for officers' judgment as to the detail to be presented in officer reports.
- 57 Both in terms of the context in which it was raised, and its content, the table could not give rise to a legitimate consideration that matters of validity and fallback would be expressly considered as part of the planning application.
- 58 In any event, insofar as matters of validity were raised, they were dealt with at length, see paras. 21-22 above. There is nothing in the table to suggest any other validity concerns.
- 59 The January Officer Report provided a list of the relevant planning history for the application site and for the adjacent site [169, paras. 13-14]. It was not necessary for the officer

assessment to provide a detailed analysis of the planning history of all the planning proposals for Few's Lane, nor a detailed analysis of every application and associated reasoning in respect of highway safety matters (*Maxwell, Morge*).

60 Insofar as the Officer Report did rely on a fall-back position relating to the 2019 consent, that was a planning judgment open to officers (*Mansell, §27*). It was far from irrational for officers to consider that there was a real prospect of the 2019 consent being implemented. They noted that the expiry date of the permission was 9 May 2022 [164, para. 10]. The 2019 consent remains a legitimate fall-back position.

61 As with Grounds 1 and 2, the gravamen of this Ground is the contention that a more detailed consideration of the planning history might have led to a different decision on highway safety grounds [43, para. 71]. On any fair reading of the Officer Report, including its updates, the highway safety aspects of the proposal were comprehensively covered. The relevant planning history was set out and considered as part of that analysis. Even if, which is denied, the planning history had to be picked over in minute detail, it is highly likely that the outcome would have been the same and permission should be refused under s.31(3C-3D) of the Senior Courts Act 1981.

**Ground 4: misdirection as to proper approach to applications under s. 73 of the Town and Country Planning Act 1990**

62 This Ground fails on the facts. The Ground is based on an over-zealous reading of the Officer Report focussing in on one part of it, without reading the Report fairly and as a whole (*Morge*).

63 The approach to the s.73 application was perfectly proper. The officer presentation (**see Exhibit 9 attached**) which was read to the Planning Committee in May 2021 specifically advised members that:

*'The effect of granting a S73 application is that a new planning permission is given (which is con[s]trained by the original time limit for implementation). Otherwise, the question of what conditions, if any, are necessary to make the proposed development acceptable in planning terms is for the members of planning committee. Members of the committee are free to attach new conditions not previously attached if those new conditions are necessary to make the proposed development acceptable in planning terms and meet the other six tests of planning conditions and are legal in all other respects.*

*Officers can advise members that, as a fresh permission will be issued, since S/0277/19/FL was approved, there has been no material change of policy or other circumstances which might require a re-assessment of other conditions or, indeed a re-assessment of the development as a whole. Whilst the officer's report covers re-assessment of conditions, officer's should add that we are satisfied that no wider reconsideration of the principle of development is justified.'*

- 64 There was nothing improper in officers quoting the PPG on s.73 applications, which reflects the focus of such applications [175, para. 32]. Indeed, para. 031 of the PPG reflects the language of s.73(2) of the 1990 Act. In any event, the Officer Report for the January 2021 meeting followed a proper approach, noting in the very next paragraph that the principle of development had already been established through the grant of the 2019 consent and that officers were satisfied that there had been no material change in policy or the surrounding context that required re-assessment of any other conditions attached to the approved development [175, para. 33]. Consideration was given in the Officer Report to whether there had been a material change of circumstances since the 2019 consent. This demonstrates that officers and the Council did not limit their consideration only to the condition which was the subject of the application, but considered the application from a wider perspective and found no reason to consider matters beyond the particular condition in question.
- 65 Having followed the proper approach in the Planning Assessment section of the Report [175-178], the Officer Report concluded by applying the planning balance and recommending that planning permission be granted, '*subject to conditions (with the revised wording to condition 7) imposed on planning permission S/0277/19/FL*' [178, para. 45].
- 66 The approach was therefore not solely focussed on the Condition sought to be varied by the application, but properly considered the principle of development against the backdrop of the 2019 consent and the absence of any material change in policy since then. This was a proper approach and there was no misdirection.
- 67 *Stefanou* was a very different case on its facts involving an expanded development from that which had previously been permitted. The Court was not required to – and did not - grapple with the precise terms of s.73(2) and how they should be applied in different situations. In that case, a new storey was proposed, and the flaw was the failure to consider the impact of the whole [466 §1, 484 §88]. Furthermore, when considering that impact, Gilbart J clearly did not rule out consideration of and weight to be given to the fall back position [484 §91].

68 Since issuing this claim, by emails dated 28 July 2021 and 1 August 2021 (**see Exhibits 16 and 17 attached**), the Claimant has sought to require the Council to disclose other decisions in which the Council has interpreted s.73 in the same manner as in this case. The request is misconceived. For the above reasons, the Council has not unlawfully approached the s.73 application under challenge, when the Officer Report is read as a whole (and as spelled out in the officer presentation). There is therefore no justification whatsoever for the Council to be required to disclose other s.73 decisions to show its approach there, relating to decisions which are not under challenge.

### **Other Matters**

69 The Claimant asserts that the Consortium is a community action group and has five shareholders [23, §2]. No details are provided of the shareholders.

70 No details are provided as to how the Consortium has taken its decisions concerning this litigation. In particular, no minutes of meetings, or resolutions, have been provided which demonstrate how collective decisions as to this claim have been taken and to what extent and in what way the Consortium's shareholders have been kept informed of such decisions.

71 The above information is relevant to the Council's consideration of the Claimant's Statement of Financial Support [48], and whether it is effectively acting through one controlling mind such that the corporate veil can be pierced. Daniel Fulton is an immediate neighbour of the development site.

72 The Council accepts that the claim is an Aarhus Convention claim and that the costs capping provisions do apply on the information provided at the current time. However, for the above reasons, the Council reserves its right under CPR 45.44(6) to apply at a later stage to vary the Claimant's costs cap of £10 000 (CPR 45.43(2)(b)). The Council requests disclosure of the following documents in order to ascertain whether the Claimant's decision making is undertaken following a proper and transparent process, and to discover whether its actions are really those of an individual:

- (1) Details of all meetings, minutes, and resolutions relating to this claim.
- (2) Details proving that the shareholders exist, and evidence demonstrating how they have been kept informed of any decisions relating to this claim.
- (3) Clear evidence that the Consortium truly acts as a community action group, and not in effect through one individual, namely Daniel Fulton.

73 If, following disclosure and consideration of the above documents, it transpires that the Claimant is in effect the operation of one individual, an application under CPR 45.44(6)(b) may be made.

74 For the above reasons, it is respectfully submitted that permission should be refused, and the Court is invited to record that the Grounds are totally without merit (CPR 3.3(7)). The Council seeks the costs of its Acknowledgment of Service in the sum of £8,852 .00 (plus VAT where applicable 0(detailed costs schedule to follow within the next 7 days)

ASITHA RANATUNGA

3 August 2021

I believe that the facts stated in these Summary Grounds are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Defendant to give this Statement of Truth.

SIGNED:



POSITION: Senior Planning Lawyer

DATED: 4 August 2021

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 1  
Letter dated 03.12.2018  
Daniel Fulton to Cambridgeshire County Council

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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.

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<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 the 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

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 2  
Letter dated 12.12.2018  
Cambridgeshire County Council to Daniel Fulton

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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 radii 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

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 3  
Email from Daniel Fulton to Stephen Reid  
dated 28.09.2020 @ 7.47am

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[REDACTED]

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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Sent:** 28 September 2020 07:47  
**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>  
**Subject:** The Retreat, Fews Lane, Longstanton

Dear Mr Reid,

Please see the attached letter concerning the proposed development at The Retreat, Fews Lane, Longstanton.

Kind regards,

Daniel Fulton  
Director

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

tel. 01954 789237

This email, together with any files transmitted with it, is only for the use of its intended recipient(s). It may contain information which is confidential and/or legally privileged. If you have received this email in error, please notify the sender by return email (or telephone) and delete the original message. Please note that the Fews Lane Consortium Ltd does not accept service by email.

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

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 grown 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

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 4  
Email from Stephen Reid to Daniel Fulton  
dated 16.10.2020 @ 3.18pm

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**From:** Stephen Reid  
**Sent:** 16 October 2020 15:18  
**To:** Daniel Fulton <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  
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)

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 Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA.

The Solicitor dealing with the conduct of this matter is Stephen Reid.

**Response to the claim**

- 3 Your prospective claim concerns the Council's decision to consider planning application 20/02453/S73 (the "Application").which concerns development proposed at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP.
- 4 The Council has noted that 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 Landbrook
- 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 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)

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 5  
Email from Daniel Fulton to Stephen Reid  
dated 30.04.2021 @ 11.19am

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[REDACTED]

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

**Sent:** 30 April 2021 11:19

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

**Subject:** Judicial review pre-action protocol letter: 20/02453/S73 & 20/05101/FUL (Fews Lane, Longstanton)

Dear Mr Reid,

Please see the attached pre-action letter concerning planning applications 20/02453/S73 and 20/05101/FUL, which concern proposed development at Fews Lane, Longstanton.

Kind regards,

Daniel Fulton  
Director

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

tel. 01954 789237

This email, together with any files transmitted with it, is only for the use of its intended recipient(s). It may contain information which is confidential and/or legally privileged. If you have received this email in error, please notify the sender by return email (or telephone) and delete the original message. Please note that the Fews Lane Consortium Ltd does not accept service by email.

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

30 April 2021

South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sir/Madam

**Judicial review pre-action protocol letter: Planning applications 20/02453/S73 & 20/05101/FUL**

- (1) South Cambridgeshire District Council (the "**Council**"), South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA, is the prospective defendant in a claim for judicial review. In light of the Council's current remote working arrangements, this correspondence has been sent by email only.
- (2) The prospective claimant is the Fews Lane Consortium Ltd (the "**Consortium**"), The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium represents the interests of local residents in regards to issues of planning and development.
- (3) The Council has decided to entertain two purported applications for planning permission (references 20/02453/S73 and 20/05101/FUL) despite the applications' noncompliance with the statutory requirements pursuant to the Town and Country Planning Act 1990 (the "**1990 Act**") and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "**2015 Order**"). The Council's decisions to entertain purported planning applications 20/02453/S73 and 20/05101/FUL are to be challenged through judicial review.
- (4) The prospective claimant considers the applicant for planning permission, Landbrook Homes Ltd, to be an interested party. A copy of this letter has been sent to Landbrook Homes Ltd at 36a Church Street, Willingham, Cambridge CB24 5HT.
- (5) Article 7(1) of the 2015 Order provides that:
  - "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".

- (6) The application form for planning permission specifies that a location plan must be submitted that complies with the following instructions:

“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).”

- (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) In *Maximus Networks Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1933 (Admin), [2019] PTSR 312, Dove J states at [24] that:

“Section 327A of the 1990 Act makes clear that the local planning authority has no discretion to waive or overlook failures to comply with the requirements provided by the legislation for the proper formulation of an application. By implication it makes clear that if a local planning authority were to do so that would amount to an error of law justifying the court’s intervention.”

- (9) The land outlined in red on the location plan submitted with purported application 20/05101/FUL does not include all the land necessary to carry out the proposed development. Specifically, the land outlined in red fails to include the land required for visibility splays.

- (10) Purported application 20/02453/S73 has been submitted pursuant to section 73 of the 1990 Act. Pursuant to article 7(1)(c)(i) of the 2015 Order, no location is required for when submitting an application under section 73, presumably because the application for underlying planning permission was valid when it was determined.

- (11) Purported application 20/02453/S73 seeks permission for the same development approved in permission S/0277/19/FL but subject to different conditions. In the case of purported application S/0277/19/FL, the area outlined in red on the location plan, which is relied upon also by purported application 20/02453/S73, failed to include all the land necessary to carry out the proposed development. Specifically, the land outlined in red failed to include the land required for visibility splays.

- (12) Unless or until the purported applications comply with the statutory requirements, under section 327A of the 1990 Act, the prospective defendant has no jurisdiction to entertain, much less approve, either application.

- (13) Accordingly, the prospective claimant intends to seek an order prohibiting the prospective defendant from continuing to entertain the purported planning applications in question and an order that the prospective defendant pay the prospective claimant’s costs in the claim.

- (14) Section 31 of the Senior Courts Act 1981 provides that:

“(3C) When considering whether to grant leave to make an application for judicial review, the High Court—

- (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
- (b) must consider that question if the defendant asks it to do so.

(3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.”

(15) In the case of the two purported applications in question, the decision of the prospective defendant to unlawfully entertain the purported applications despite their noncompliance with the statutory requirements is highly likely to directly prejudice the interests of the claimant.

(16) In *Mouchell Superannuation Fund Trustees v Oxfordshire County Council* [1992] 1 PLR 97 (at 105), Glidewell LJ states that:

“the combined effect of section 14(1) and (2) of the 1947 Act [which is equivalent to section 29(1) and 30(1) of the 1971 Act] was, and the combined effect of the successor provisions in the current legislation is, 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.”<sup>1</sup>

(17) Ordinarily when granting planning permission with vehicular access to an adopted public highway, a positive planning condition is typically necessary to requiring ongoing maintenance for the visibility splays in question.

(18) However, in this case, the prospective defendant has decided to entertain purported planning applications where that land necessary for visibility splays has been specifically excluded from the application site in contravention of the requirements of the 2015 Order. This effectively prevents a condition for adequate visibility splays from being attached to any permission granted.

(19) 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).

(20) 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.

(21) Should it become necessary to issue a claim, a complete 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, in any event, will be served with the claim form. At present, the Consortium’s total assets are less than £25, and the Consortium’s total cash on hand is less than £25.

(22) The Consortium’s address for the response and service of documents is: Fews Lane Consortium Ltd, The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium will accept a pre-action protocol response by email to <dgf@fewslane.co.uk>.

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<sup>1</sup> The successor provisions in the 1990 Act are sections 70(1) and 72(1).

(23) In the event that legal proceedings become necessary in regards to this prospective claim, please note that the Few's Lane Consortium Ltd does NOT accept service by email.

(24) The prospective claimant would like to propose 14 May, which is 14 days from today, as the date for any pre-action protocol response.

Kind regards,

Daniel Fulton  
Director

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 6  
Email from Stephen Reid to Daniel Fulton  
dated 14.05.2021 @ 4.17pm

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**From:** Stephen Reid

**Sent:** 14 May 2021 16:17

**To:** Daniel Fulton <dgf@fewslane.co.uk>

**Cc:** Kelly Stephen <Stephen.Kelly@greatercambridgeplanning.org>; Sharon Brown <Sharon.Brown@greatercambridgeplanning.org>; Toby Williams <Toby.Williams@greatercambridgeplanning.org>; Lewis Tomlinson <Lewis.Tomlinson@greatercambridgeplanning.org>

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

I am instructed to email you the attached.

I will make arrangements for a hard copy to be sent in the post to you but please note this will not be until next week.

Stephen Reid

Fews Lane Consortium Limited

Date: 14<sup>th</sup> May 2021

Dear Sirs

**Proposed claim for judicial review in relation to prospective planning permission 20/02453/s73 and 20/05101/FUL**

We write in relation to your pre-action protocol letter dated 30th April 2021 in which you indicate your intention to challenge by way of judicial review the Council's decision to entertain planning applications under ref 20/02453/s73 and 20/05101/FUL

**The Prospective Claimant**

- 1 The Prospective Claimant would be Fews Lane Consortium Limited.

**The Prospective Defendant**

- 2 The Prospective Defendant is South Cambridgeshire District Council.

Correspondence should be addressed to:  
3C Shared Services – The Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

The Solicitor dealing with the conduct of this matter is Stephen Reid.

**Response to the claim**

- 3 The first matter that I would draw to your attention is that the application under reference 20/05101/FUL is now the subject of an appeal (for non-determination) and whilst the Council is waiting to be advised as to the allocation of an Appeal Inspector the Council's position is that this application is no longer within its jurisdiction as Local Planning

Authority and therefore it is intended that this response letter will only address matters in relation to the application under planning reference 20/02453/s73.

4. You will recall that Few's Lane Consortium Limited had previously issued a Pre Action Protocol letter dated 27th July 2020 in relation to the application under 20/02453/s73 and where a response was sent dated 18th August 2020 and therefore in the first part of this response I intend to again address a number of points as set out in that response.
5. In the second part of this response I intend to then seek to address matters which have arisen post 18th August where I believe them to be relevant.
6. However, before moving to the first part of the response there is an initial point that I would like to highlight namely that the Council received an email from Mr Caddoo dated 21st August 2020 in which he asked the Council to accept the 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..."

### **FIRST PART**

7. Your claim challenges a section 73 application under planning reference 20/02453/s73 (the "s.73 Application") in relation to the grant of planning permission for the erection of 2 dwellings with parking.
8. 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 in full in this letter but they are referred to where appropriate below.
9. While your letter of 30th April 2021 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.
10. 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 Council's advice from Charles Streeton of Counsel on that matter was provided to the Consortium.
11. Turning to the points made at paragraph 10 of your letter dated 27th July 2020, 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...”
12. The basis of the Consortium's proposed claim is an allegation that any decision to grant planning permission for the Development pursuant to the S.73 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.

- 13 In relation to a 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 was 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 S.73 Application not least having regard to the confirmation referred to at paragraph numbered 6 above.

14 **LAW**

**The Statutory Scheme**

14.1 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.

14.2 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.”

14.3 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.

15 **Non-Compliance with the DMOP**

15.1 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.

16 **Article 7 of the 2015 Order**

16.1 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.

16.2 The section of the application form to which the Consortium referred to in the letter of 27th July 2020 reads as follows:

“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).”

17 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.”

18 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**

19 The particular point at issue is the location of any visibility splays required 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.

20 The issue, therefore, is whether planning permission for the Development can be granted pursuant to the S.73 Application, 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:

20.1 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.

- 20.2 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.
- 21 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.
- 22 Applying these principles, Mr Streeten expressed an opinion as set out below (in the case where he was asked to advise) :
- 22.1 *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.*
- 22.2 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.
- 23 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.
- 24 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

25 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 as to extent of the red line boundaries is not the relevant legal test as to whether an application is valid

## **SECOND PART**

- 26 Officers are of the view that the change sought under the s.73 Application makes no material changes to the actual development proposed and the purpose of the new condition is solely to make detailed provision for construction traffic.
- 27 Officers are mindful that an approval of a s.73 application results in a new planning permission and not an amendment of the original. Further, whilst the guidance quoted in paragraph 21 of the Officer’s Report presented to Planning Committee in [January 2021] is correct to limit attention to conditions that are the subject of the application, officers are also mindful of the need to consider whether any material change of policy or other circumstances which might require a re-assessment of other conditions or, indeed, the development as a whole, see *R v Stefanou v Westminster City Council & Ano* [2107] EWHC 908 (Admin) at [90].
- 28 Officers are mindful of the complaints which refer to the inadequacies of the site plan supplied with the original application – but it is submitted it is too late to challenge the validity of the permission pursuant to that original application. Fews Lane Consortium Limited at least at one stage sought to suggest a plan is required by reference to the article 7(1)(b) – which requires particulars to be included as specified in the application form but as a simple matter of statutory interpretation the Council’s position is that cannot include a plan which is dealt with separately and expressly by (c).
- 29 It follows that officers do not consider it is necessary to request a further plan, as indicated in paragraph 3 of the response dated 18th August 2020 but please note reference to confirmation under paragraph numbered 6 above
- 30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council’s position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Fews Lane and High Street,
- 31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.
- 32 Please correct me if I am wrong but isn’t it the contention of Fews Lane Consortium Limited that such land should still have been shown as included within the application site by reference to the statutory provision for operational development on highway land. If that is the contention, then it is the Council’s position that any such contention misses

the point as there is no operational development proposed for these visibility splay areas and as it is highway land its use as visibility splays involves no change of use.

- 33 In his letter Mr Streeten dated 20th July 2020 covered this particular point at paragraph 16(c). With respect to subsequent arguments made by Few's Lane Consortium (e.g. as developed at paragraphs 33-34 of your letter of 8th September 2020 ) it is the Council's position that these ignore the distinction between operational development on highway land and change of use.
- 34 Given, as noted above, there is no express requirement for a site location plan (identifying the land to which section 73 application relates ) and the proposed change of one condition does not relate to visibility splays, it is the Council's position that any challenge in relation to the s.73 Application is one which is unlikely to succeed
- 35 Notwithstanding what Few's Lane say as to the apparent stringent terms of section 327A of the 1990 Act, the Court will still have a discretion as to whether or not to quash. Mr Streeten deals with this in his Advice (at paragraph 7), and I would add to the case references made by Mr Streeten reference to the case of Maximus Networks Ltd v SSCLG and Southwark LBC and LH Hammersmith and Fulham [2018] EWHC 1933 (Admin) at [24-26]
- 36 Whilst in paragraph (18) of your letter dated 30th April 2021 you have said as set out below it is the Council's position that when a fresh report is taken to Planning Committee as to the s.73 Application it will address the extent of the red line for the purposes of the s.73 Application and the need for any visibility splays and where they are located if outside of the red line
- “(18) However, in this case, the prospective defendant has decided to entertain purported planning applications where that land necessary for visibility splays has been specifically excluded from the application site in contravention of the requirements of the 2015 Order. This effectively prevents a condition for adequate visibility splays from being attached to any permission granted...”
- 37 Officers are satisfied that the Application under reference S/0277/19/FL and the associated committee report considered representations concerning the adequacy of the access to the plot, proposed improvements including the widening of the Few's Lane access, visibility splays and the extent of the red line. Few's Lane Consortium are asked to acknowledge that the permission granted pursuant to that application can no longer be judicially challenged.
- 38 Notwithstanding that the s.73 Application seeks to amend only the Traffic Management Plan, the officer report to be presented to Planning Committee before determination of the S.73 Application will consider the representations of Few's Lane Consortium Limited , the necessity and reasonableness of requiring upgrades to Few's Lane through the S73 Application including the provision of visibility splays.
- 39 Officers of the Council are satisfied that as the local Planning Authority it does have jurisdiction to entertain the S73 Application and for all of the reasons set out or referred to above, the Council will resist any application for judicial review.
- 40 The Council has noted that the Consortium has not indicated if it would prefer to resolve the dispute without the need for legal proceedings or whether 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 is not clear if such advice has been

sought by the Consortium, notwithstanding the Council's invitation and in these circumstances the Council reserves the right to bring to the Court's attention the invitation which was made in such regard . The Council is also mindful that in a conversation on 20<sup>th</sup> April 2021 Mr Fulton said that he had received written "legal advice" and which "legal advice" he said he would share it with Council the same day but a copy of that "legal advice" has never been forthcoming.

- 41 Finally, the Council agrees that the applicant for the S.73 Application , 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)

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 7  
Email from Daniel Fulton to Stephen Reid  
dated 21.05.2021 @ 11.49am

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[REDACTED]

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

**Sent:** 21 May 2021 11:49

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

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

**Subject:** 20/02453/S73 - Pre-action protocol letter (No. 2)

Dear Mr Reid,

Please see the attached pre-action protocol letter, which concerns planning application 20/02453/S73 and the provisions of section 65 of the Town and Country Planning Act 1990.

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

21 May 2021

South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sir/Madam,

**Judicial review pre-action protocol letter: Planning application 20/02453/S73 (No. 2)**

- (1) South Cambridgeshire District Council (the "**Council**"), South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA, is the prospective defendant in a claim for judicial review. In light of the Council's current remote working arrangements, this correspondence has been sent by email only.
- (2) The prospective claimant is the Fews Lane Consortium Ltd (the "**Consortium**"), The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium represents the interests of local residents in regards to issues of planning and development.
- (3) This letter concerns planning application 20/02453/S73, which would permit development at Fews Lane, Longstanton, Cambridge CB24 3DP.
- (4) The prospective claimant considers the applicant for planning permission, Landbrook Homes Ltd, to be an interested party. A copy of this letter has been sent to Landbrook Homes Ltd at 36a Church Street, Willingham, Cambridge CB24 5HT.
- (5) Article 13(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "**2015 Order**") provides that "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".
- (6) The 2015 Order was made pursuant to a number of provisions of the Town and Country Planning Act 1990 (the "**1990 Act**"), including the provisions of section 65 of the Act.
- (7) Section 65(5) of the 1990 Act provides that, "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."
- (8) In addition, 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.”

- (9) In *Maximus Networks Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1933 (Admin), [2019] PTSR 312, Dove J states at [24] that:

“Section 327A of the 1990 Act makes clear that the local planning authority has no discretion to waive or overlook failures to comply with the requirements provided by the legislation for the proper formulation of an application. By implication it makes clear that if a local planning authority were to do so that would amount to an error of law justifying the court’s intervention.”

- (10) A part of the land to which the application relates (which is not *de minimis*) is registered under title No. CB357875 and is owned by Charles Church Developments Limited (Co. Regn. No. 1182689) of Persimmon House, Fulford, York YO19 4FE.
- (11) The ownership certificated submitted by the applicant states that “[a]ll 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” and that the steps taken were “Searches in Land Registry and advertising in local newspaper”. These statements appear to be false or misleading in a material particular.
- (12) Regardless, the registered owner of part of the land to which the application relates (Charles Church Developments Limited) has not been notified by the applicant as required under article 13 of the 2015 DMPO, and accordingly, the application can not be entertained by the local planning authority pursuant to sections 65(5) and 327A of the 1990 Act.
- (13) The council should inform the applicant that the application can not be entertained by the council. As the application is due to be considered by the council’s planning committee on Wednesday, an update on the status of this application should be published on the planning committee agenda page on the council’s website.
- (14) Should the council not take the steps stated above, the Fews Lane Consortium Ltd will apply to the High Court for an order to prohibit the council from entertaining the application, a declaration that the council erred in law, and an order that the council pay the Consortium’s costs in the claim. Injunctive relief may also be sought, including on an urgent basis, if appropriate.
- (15) 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).
- (16) 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.
- (17) Should it become necessary to issue a claim, a complete 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, in any event, will be served with the claim form. At present, the Consortium’s total assets are less than £25, and the Consortium’s total cash on hand is less than £7.

- (18) 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. The Consortium will accept a pre-action protocol response by email to <dgf@fewslane.co.uk>.
- (19) In the event that legal proceedings become necessary in regards to this prospective claim, please note that the Few's Lane Consortium Ltd does NOT accept service by email.
- (20) Should the Council continue to entertain the application after receiving this letter, it is highly likely that an application for permission for judicial review and/or an application for interim relief will be filed before the usual 14 day period response period has ended. It may be more appropriate, given the urgency of the prospective claim, to discuss the matter by telephone one day early next week.

Kind regards,

Daniel Fulton  
Director

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 8  
Email from Stephen Reid to Daniel Fulton  
dated 27.05.2021 @ 2.50pm

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**From:** Stephen Reid  
**Sent:** 27 May 2021 14:50  
**To:** Daniel Fulton <djf@fewslane.co.uk>  
**Cc:** Nigel Blazeby <Nigel.Blazeby@greatercambridgeplanning.org>  
**Subject:** FW: 20/02453/S73 - Open email

Dear Fews Lane Consortium Limited

Please note that having regard to the email I sent to you at 15:27 on Tuesday (see below) it is not my intention to send you a full response to your Pre-Action Protocol letter (No 2 ) as sent by you on 21st May.

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice  
  
Telephone: 01223 457094/07817 730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

---

**From:** Stephen Reid  
**Sent:** 25 May 2021 15:27  
**To:** Daniel Fulton <djf@fewslane.co.uk>  
**Cc:** Nigel Blazeby <Nigel.Blazeby@greatercambridgeplanning.org>; Toby Williams <Toby.Williams@greatercambridgeplanning.org>; Lewis Tomlinson <Lewis.Tomlinson@greatercambridgeplanning.org>  
**Subject:** FW: 20/02453/S73 - Open email

Dear Fews Lane Consortium Limited

I note that in your open email sent on 23<sup>rd</sup> May you say that your Land Registry search returned two records for registered land. One related to the property known as 2 Mitchcroft Road and the other related to land on the north west side of High Street, which is registered under title No. CB357875.

Presumably ,but please confirm ,it is your contention that notice of the planning application under 20/02453/S73 should have been served on the owner of

- (i) the property known as 2 Mitchcroft Road ,and
- (ii) the property under title number CB357875.

and that because notice wasn't served on such parties there is a fundamental flaw which you have suggested means the Council is positively prohibited from entertaining the application.

If that is not your contention or no longer your contention , please clarify what you believe the position to be and whether your position remains as set out in the Pre Action Protocol letter (No.2) or is now different.

I also note that in your email you say:

"...The parameter used in our search of the Land Registry is shown in the attached image..."

In these circumstances ,can I ask you to confirm that it is accepted by you that in terms of your Land Registry search the search was not limited to the red line shown on the location plan for the application under S/0277/19/FL .If that is not accepted , please clarify the reference in the "image" (included as part of your email) to a radius of "5m" .

It is the Council's position that there was no error in notice of the s.73 application not being served on the following because those properties were not part of the land shown edged red on the location plan under S/0277/19/FL

- (i) on the owner of the property known as 2 Mitchcroft Road ,and
- (ii) on the owner of the property under title number CB357875.

The points set out in your Pre-Action Protocol letter (No 2 ) are wholly without foundation or substance and I am happy to provide a Land Registry MapSearch which to my mind very clearly demonstrates that to be the case.

**Stephen Reid**  
Senior Planning Lawyer  
3C Shared Services – Legal Practice  
  
Telephone: 01223 457094/07817 730893  
Email: [stephen.reid@3csharedservices.org](mailto:stephen.reid@3csharedservices.org)

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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**From:** Daniel Fulton <djf@fewslane.co.uk>  
**Sent:** 24 May 2021 10:26  
**To:** Stephen Reid <Stephen.Reid@3csharedservices.org>  
**Subject:** 20/02453/S73 - Open email

Dear Mr Reid,

This is an open email, the purpose of which is to provide information that may assist the Council with understanding the factual details related to the prospective judicial review claim set forth in Friday's pre-action protocol letter No. 2 concerning application 20/02453/S73.

The parameter used in our search of the Land Registry is shown in the attached image. This search returned two records for registered land. One related to the property known as 2 Mitchcroft Road,

the other related to land on the north west side of High Street, which is registered under title No. CB357875.

There is no title plan available for title No. CB357875.

In order to ascertain the land to which the title register refers, it was necessary to obtain the various plans referred to in the title register.

Based on our preliminary analysis of the title register and the plans referred to in the title register, a parcel of land exists which is registered to Charles Church Developments Limited.

Part of the land to which application 20/02453/573 relates is within this parcel registered to Charles Church Developments Limited.

There is no evidence to suggest that Charles Church Developments Limited has been served with the notice required under article 13 of the DMPO 2015.

There is, however, evidence that the Council has been made aware of this fact before making a decision on the application.

Pursuant to s. 65 and s. 327A of the 1990 Act, the Council is positively prohibited from entertaining the application in these circumstances.

Kind regards,

Daniel Fulton  
Director

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

tel. 01954 789237

This email, together with any files transmitted with it, is only for the use of its intended recipient(s). It may contain information which is confidential and/or legally privileged. If you have received this email in error, please notify the sender by return email (or telephone) and delete the original message. Please note that the Fews Lane Consortium Ltd does not accept service by email.

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

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IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 9  
Presentation to Planning Committee 27.05.2021

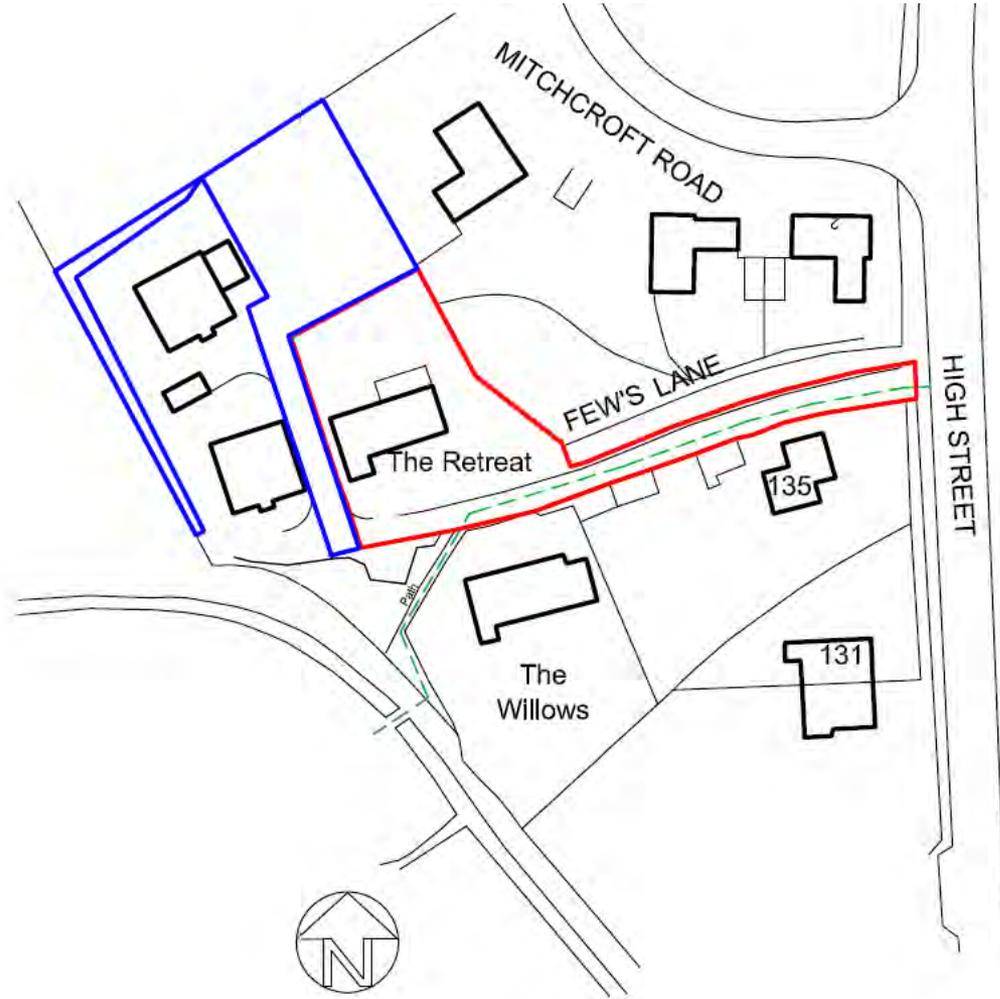
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20/02453/S73

The Retreat, Fews Lane, Longstanton

Page 175

# Site Location Plan

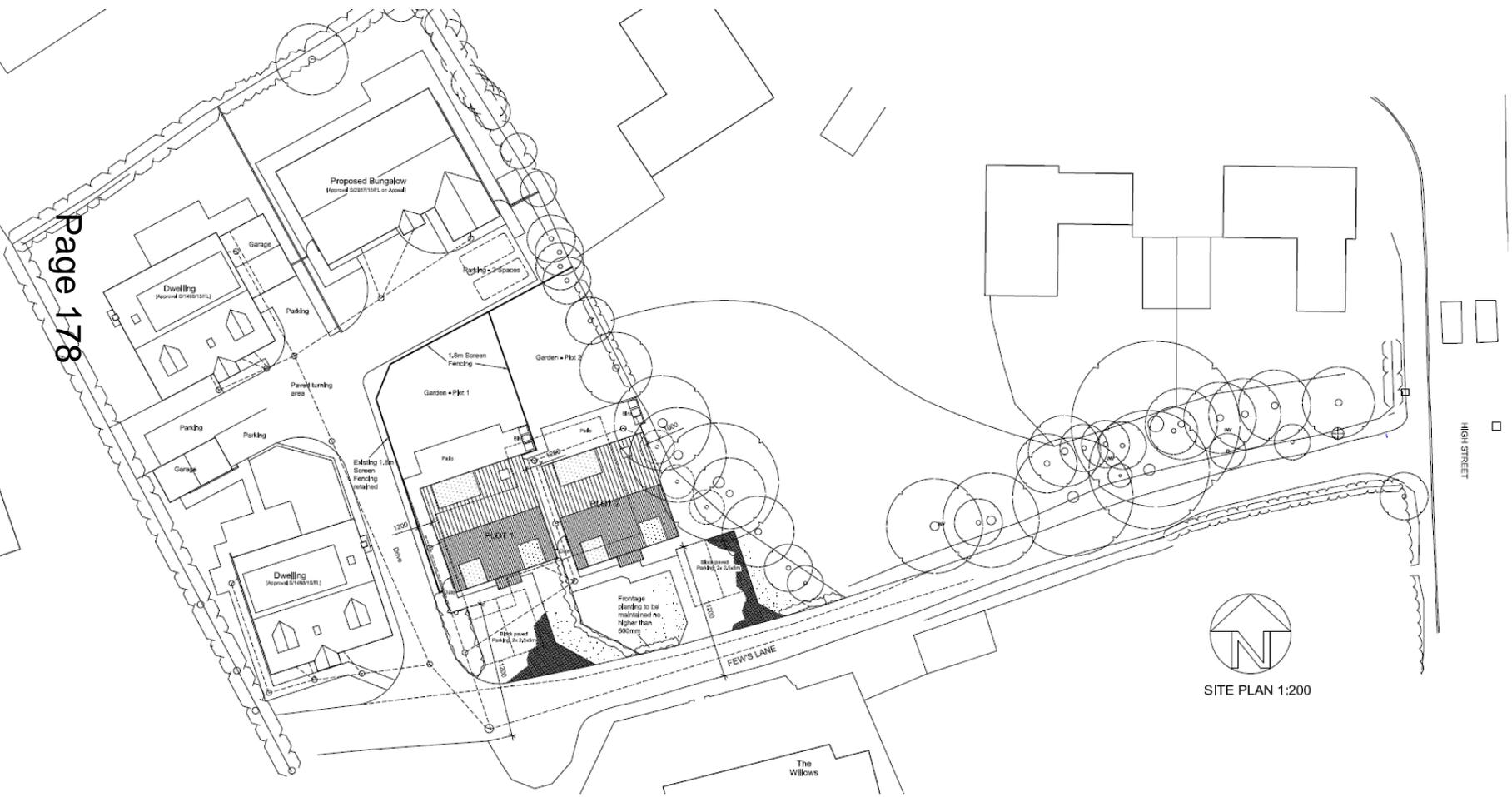


# Aerial Site View



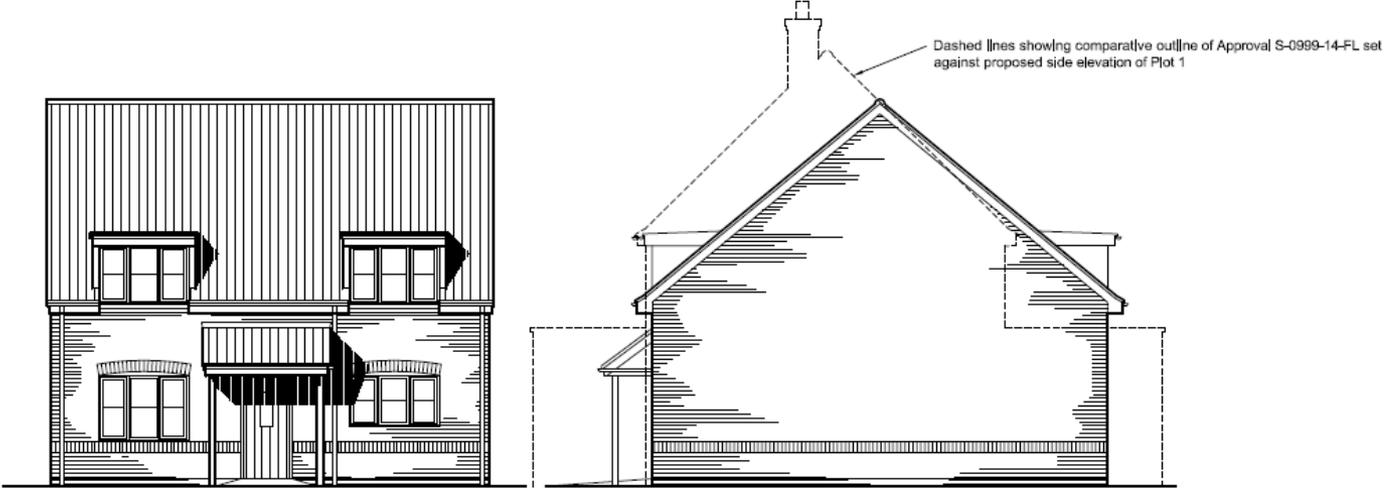
# Approved site plan

Page 178



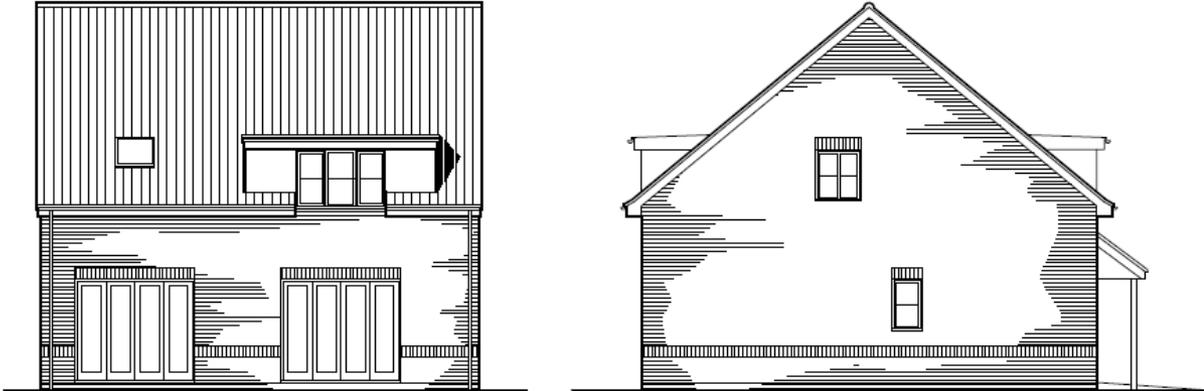
  
SITE PLAN 1:200

# Approved elevations



FRONT [South]  
ELEVATIONS 1:100 [Plots 1 & 2 Similar]

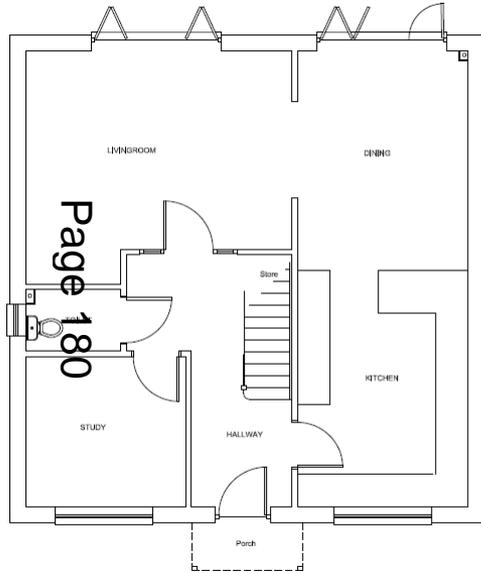
SIDE [East]



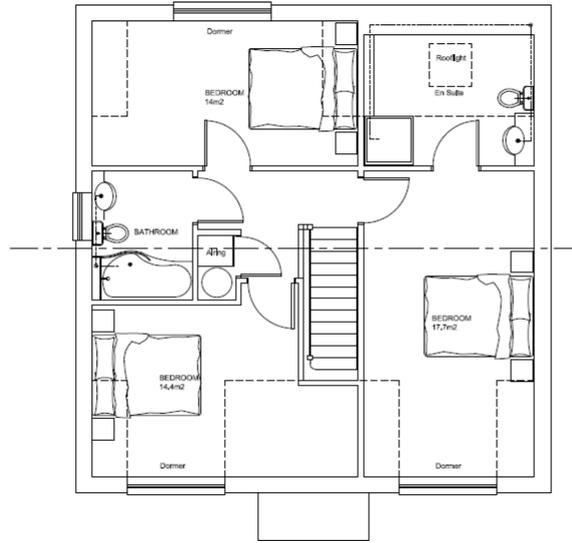
REAR [North]

SIDE [West]

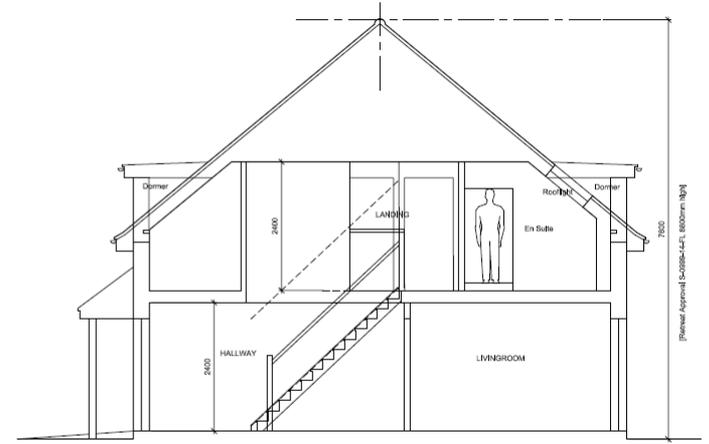
# Approved floor plans/section



GROUND FLOOR PLAN 1:50 [69m<sup>2</sup>]

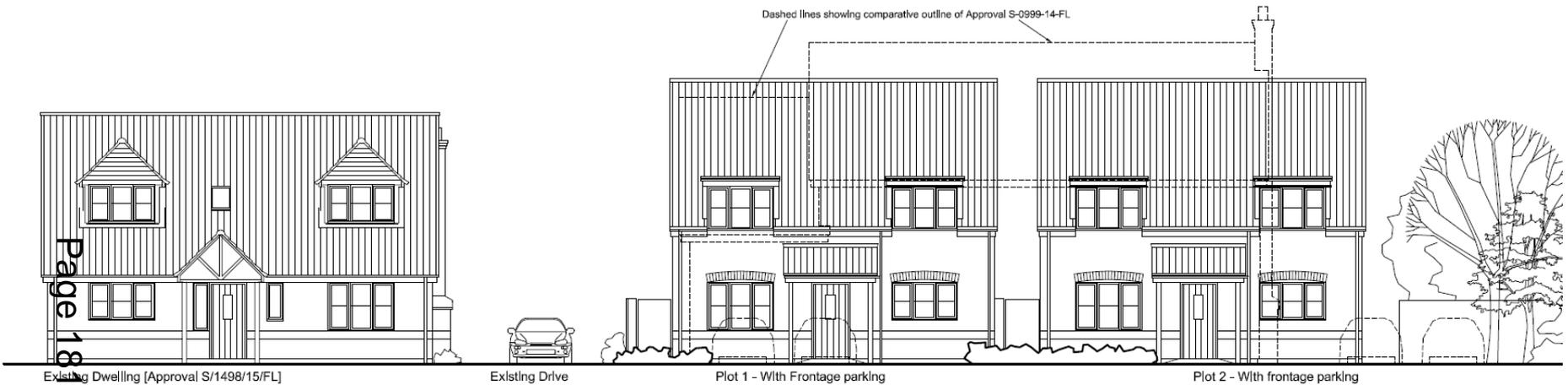


FIRST FLOOR PLAN 1:50



TYPICAL SECTION 1:50

# Approved street elevation



Page 18

Existing Dwelling [Approval S/1498/15/FL]

Existing Drive

Plot 1 - With Frontage parking

Plot 2 - With frontage parking

STREET ELEVATION - Facing Few's lane 1:100

# View up Fews Lane from access off High Street (135 High Street on left)

Page 182



# View along High Street past frontage of Fews Lane (looking north, Fews Lane on the left) - note traffic calming

Page 183



# View along High Street past frontage of Fews Lane (looking south with Fews Lane on the right )

Page 184



View along High Street past frontage of Fews Lane  
(looking south with Fews Lane on the right ) taken from  
entrance to Mitchcroft Road

Page 185



# Fews Lane entrance (looking towards the north)

Page 186



# Fews Lane entrance (looking towards the south)



Page 187

# Looking down Few's Lane (garage to 135 High Street and The Willows on the left)

Page 188



# Looking down Fews Lane (the Retreat is on the right)



# Informal turning head opposite The Retreat

Page 190



# Access onto Fews Lane from the Public Right of Way to Home Farm

Page 191



Section 73(2) of the Town and Country Planning Act 1990 states that when considering an application submitted under section 73:

*“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.”*

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.”*

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.*

*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. Notwithstanding the detail contained with the Traffic Management Plan in relation to parking of delivery vehicles, no delivery vehicles during the construction phase will park on any streets within the village of Longstanton.*

# Plan taken from the proposed Traffic Management Plan



Members will recall considering this application at the 13 January 2021 Planning Committee meeting. The Committee resolved to approve the application subject to:

- The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
- Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
- The Conditions and Informatives set out in the report from the Joint Director of Planning and Economic Development.

# Update

Full update will be reported verbally but to summarise:

- No material change of policy or circumstances which might require a re-assessment of the other conditions or the development as a whole

Page 198

The issue is whether pedestrian visibility splays at the end of Few's Lane should be included in the red line plan of S/0277/19/FL

- The Local Highway Authority are satisfied the visibility splays are within Highway land.
- FLC argues these splays must be within the red line and therefore invalidates the application
- No case law to support FLC's position. Officers advise no underlying legal flaw based on legal and external counsel advice.

# Recommendation

Officer recommendation is approval subject to:

- The revision of paragraph 3.2.4 of the Traffic Management Plan to state, during the construction stage, delivery vehicles shall not park on any street within the village of Longstanton.
- Addition of an Informative urging the establishment of a liaison mechanism between residents, the Site Manager and Longstanton Parish Council to monitor compliance with the Traffic Management Plan and to resolve any disputes; and
- The Conditions and Informatives set out in the report from the Joint Director of Planning and Economic Development.

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 10  
Email from Daniel Fulton to Stephen Reid  
dated 21.06.2021 @ 4.57pm

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[REDACTED]

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[REDACTED]

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**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Sent:** 21 June 2021 16:57  
**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>  
**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>  
**Subject:** Pre-action protocol: 20/02453/S73 (Fews Lane, Longstanton)

Dear Mr Reid,

Please find attached the Consortium's pre-action protocol letter concerning planning application 20/02453/S73.

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

21 June 2021

South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Sir/Madam,

**Judicial review pre-action protocol letter: Planning application 20/02453/S73**

- (1) South Cambridgeshire District Council (the "**Council**"), South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA, is the prospective defendant in a claim for judicial review. In light of the Council's current remote working arrangements, this correspondence has been sent to the Council by email only.
- (2) The prospective claimant is the Fews Lane Consortium Ltd (the "**Consortium**"), The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium represents the interests of local residents in regards to issues of planning and development.
- (3) The prospective claimant considers the applicant for planning permission, Landbrook Homes Ltd, to be an interested party. A copy of this letter has been sent to Landbrook Homes Ltd at 36a Church Street, Willingham, Cambridge CB24 5HT.
- (4) The prospective claim concerns the Council's decision issued on 27 May 2021 in regards to planning application 20/02453/S73, which proposes the demolition of the existing bungalow and the erection of two dwellinghouses at The Retreat, Fews Lane, Longstanton, Cambridge CB24 3DP.
- (5) The decision is to be challenged on the following grounds:

**Ground 1:** The Defendant misdirected itself in fact in stating in the officer's report that, "1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane with the High Street."

**Ground 2:** Contrary to section 100D(1) of the Local Government Act 1972, the Defendant failed to identify the background papers relied upon in the officer's report and failed to make a copy of each background paper available for inspection.

**Ground 3:** The Defendant either (A) failed to take into consideration its decision on an application for the erection of additional dwellings at the same site from 2013, OR, even if the Defendant did take its 2013 decision into account, (B) it failed to even briefly state its reasons for reaching a different conclusion on matters of principal importance in the decision, in particular, in regards to highway safety conditions.

**Ground 4:** The Defendant misdirected itself in its officer's report in stating that planning permission S/0277/19/FL (A) was capable of implementation and (B) represented a fallback position.

**Ground 5:** The Defendant misdirected itself as to the proper approach to the determination of applications submitted under s. 73 of the Town and Country Planning Act 1990.

**Ground 6:** The Defendant ignored a material consideration in failing to consider the key material policy of the development plan, policy H/16, which concerns the erection of additional dwellings within residential gardens.

### Legal Framework

#### Misdirection in fact as grounds for judicial review

(6) In *Smith v Inner London Education Authority* [1978] 1 All ER 411, Lord Denning said (at 415):

"It is clear that, if the education authority or the Secretary of State have exceeded their powers or misused them, the courts can say: 'Stop'. Likewise, if they have misdirected themselves in fact or in law."

(7) Likewise, in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, Lord Wilberforce said (at 1047F):

"In many statutes a minister or other authority is given a discretionary power and in these cases the court's power to review any exercise of the discretion, though still real, is limited. In these cases it is said that the courts cannot substitute their opinion for that of the minister: they can interfere on such grounds as that the minister has acted right outside his powers or outside the purpose of the Act, or unfairly, or upon an incorrect basis of fact."

(8) In *Oxton Farms v Selby District Council* [1997] EWCA Civ 4004, [2017] PTSR 1103, Judge LJ said:

"An application for judicial review based on criticisms on the planning Officers' Report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken."

#### Duty to list and provide background papers for inspection

(9) Section 100B(1) of the Local Government Act 1972 (the "**1972 Act**") provides that:

"Copies of the agenda for a meeting of a principal council and [...] copies of any report for the meeting shall be open to inspection by members of the public".

(10) Section 100D(1) of the 1972 Act provides that:

"if and so long as copies of the whole or part of a report for a meeting of a principal council are required by section 100B(1) or 100C(1) above to be open to inspection by members of the public—

- (a) those copies shall each include a copy of a list, compiled by the proper officer, of the background papers for the report or the part of the report, and
- (b) at least one copy of each of the documents included in that list shall also be open to inspection at the offices of the council."

(11) Section 100D(4) of the 1972 Act provides that:

“For the purposes of this section the background papers for a report are those documents relating to the subject matter of the report which—

- (c) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and
- (d) have, in his opinion, been relied on to a material extent in preparing the report, but do not include any published works.”

(12) Section 100E(1) of the 1972 Act provides that:

“Sections 100A to 100D above shall apply in relation to a committee or sub-committee of a principal council as they apply in relation to a principal council.”

(13) In *R (Kinsey) v Lewisham London Borough Council* [2021] EWHC 1286 (Admin) at [101] - [103], Lang J states:

“Access to reports and background papers not only allow the public to be informed, but to participate by making written representations to councillors and officers in advance of the meeting and also assisting the preparation of oral representations. A breach of these provisions is significant: see *R (Joicey) v Northumberland County Council* [2014] EWHC 3657 (Admin), [2015] PTSR 622 at [47] per Cranston J.:

‘The very purpose of a legal obligation conferring a right to know is to put members of the public in a position where they can make sensible contributions to democratic decision-making.’

This decision was recently affirmed by Dove J in *R (Holborn Studios Limited) v London Borough of Hackney (No2)* [2020] EWHC 1509 (Admin), [2021] JPL 17 at [71].

The mere fact of a failure to disclose information strictly in accordance with the duties under sections 100B and 100D will not by itself necessarily require the quashing of any decision made at a relevant meeting. It is necessary to consider the significance of the failure, having regard to the purpose of the duty: see *R (McCann) v Bridgend County Borough Council* [2014] EWHC 4335 (Admin) per HHJ Keyser QC at [27].”

### Adequate reasoning

(14) In *Padfield v Minister of Agriculture, Fisheries and Food* [1968] A.C. 997 at 1061-1062, Lord Upjohn said that if decision maker “does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly.”

(15) In *R (Oakley) v South Cambridgeshire District Council* [2017] EWCA Civ 71, [2017] 1 WLR 3765 at [46], Elias LJ states:

“there do not appear to be any decisions (apart from Jay J in this case) where a court has held that reasons need not be given even though the reasoning is otherwise opaque”.

The Court of Appeal then went on to reverse the decision of Jay J referenced above.

(16) In *R v Mendip District Council ex p Fabre* (2000) 80 P. & C.R. 500 (at 510), Sullivan J, as he then was, discussed a situation in which a common law obligation to give reasons would arise:

“An obvious example of such a circumstance is, in principle, where a local planning authority has changed its mind and decided to grant planning permission for a development which it has previously refused ... I say ‘in principle’ because it may be plain from all the surrounding circumstances why the council has changed its mind, as was the case in *ex p. Chaplin* (per Pill LJ at p. 53). There may be cases where reasons should be set out in a minute. ... Equally, there may be cases where that would be unnecessary in the light of the factual background. I am satisfied that this case falls into the latter category ... If there has been an earlier refusal, as recommended by

a planning officer, followed by a grant of planning permission, contrary to the planning officer's considered recommendation, some explanation will be required, since by definition it will not be possible to find it in the officer's report. So it will be necessary to search elsewhere for the reasons why the members decided to change their minds. In such circumstances, it might well be sensible at the very least to record the members' reasons in the form of a minute ..."

(17) *South Buckinghamshire District Council v Porter (No. 2)* [2004] UKHL 33, [2004] 1 WLR 1953 at [36]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospect of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

#### Interpretation of Section 73 of the Town and Country Planning Act 1990

(18) Section 73 of the Town and Country Planning Act 1990 (the "**1990 Act**") provides that:

"(1) This section applies ... 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,
- (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."

(19) In *R (Stefanou) v Westminster City Council* [2017] EWHC 908 (Admin) at [36], Gilbert J states:

"It is common ground that on a s 73 application the LPA was obliged to comply with s 70(2) *TCPA 1990* and s 38(6) of *PCPA 2004*. Thus, it had to have regard to the development plan and any material considerations (s 70(2) *TCPA*) and then determine the application in accordance with the development plan unless material considerations indicated otherwise (s 38(6) *PCPA*). Reference was made to *Pye v Sec of State for the Env't* [1998] 3 PLR 72, approved in *Powergen UK PLC v Leicester City Council* [2000] JPL 1037 [2001] 81 P & CR 47 (CA) per Schiemann LJ."

(20) In *Stefanou* at [88], Gilbert J further states that:

What is also quite clear, and I so find, is that the WCC officers had approached this application in an entirely inappropriate mindset. The email of 9<sup>th</sup> February 2016 that

*'There is a problem I am afraid.....  
Your proposals now include the addition of a new storey to the link. These are changes that are much more significant than non-material or other minor amendments.*

*Therefore I am afraid that you need to apply for the whole scheme, as revised. Applications for planning permission and listed building consent are required.*

*Clearly, in our assessment we will only focus on the revised elements, because the rest has consent...'*

contains a very straightforward error of law. As *Pye and Powergen* make clear, the whole scheme now applied for had to be considered in accordance with the relevant tests."

#### Remedies sought & ADR

- (21) The Consortium intends to seek an order quashing the Council's decision, a declaration that the Council erred in law, and an order that the Council pay the Consortium's costs in the claim.
- (22) Because a quashing order is necessary, the Consortium does not feel that any form of alternate dispute resolution would be appropriate for this claim. Nevertheless, the Consortium hopes that the Council will recognise the serious legal defects in its decision and agree to a consent order quashing the Council's decision.
- (23) The various legal errors committed by the Council go to the heart of Council's decision making process. In no way could it be considered likely that the same decision (particularly in regards to highway safety conditions) would have been reached if not for the legal errors alleged. Accordingly, the court can not rightly refuse to grant permission for judicial review or refuse to grant relief under s. 31 of the Senior Courts Act 1981.
- (24) 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(3) 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).
- (25) 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.
- (26) Should it become necessary to issue a claim, a complete statement of the Consortium's financial resources and a statement of financial support received will be provided at the earliest opportunity and, in any event, will be served with the claim form.
- (27) 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. The Consortium will accept a pre-action protocol response by email to <dgf@fewslane.co.uk>.
- (28) In the event that legal proceedings become necessary in regards to this prospective claim, please note that the Few's Lane Consortium Ltd does NOT accept service by email.
- (29) The Consortium would like to propose a reply date of 5 July 2021, which is 14 days from the date of this letter. As a claim in this matter must be issued by 8 July 2021, the Consortium will not be able to agree to any extensions of time in regards to the pre-action protocol.

Kind regards,

Daniel Fulton  
Director

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 11  
Email from Stephen Reid to Daniel Fulton  
dated 05.07.2021 @ 4.59pm

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**From:** Stephen Reid  
**Sent:** 05 July 2021 16:59  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>; Rory McKenna <[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>  
**Subject:** FW: Fews Lane S73 PAP response July5thCl  
**Importance:** High

Dear Fews Lane Consortium Limited

Please see attached which I am instructed to send to you on behalf of the Council

Please note it is being sent to you as an email only in the light of your confirmation that an email copy would be accepted.

Please acknowledge receipt and if you have any queries please let me know.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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**From:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>  
**Sent:** 05 July 2021 16:57  
**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>

**Subject:** Fews Lane S73 PAP response July5thCl

5<sup>th</sup> July 2021

To :

Fews Lane Consortium Limited  
By email only

Dear Fews Lane Consortium Limited

**Response to judicial review pre-action protocol letter:  
Planning application 20/02453/S73**

This letter is the Council's Response to a Letter Before Claim dated 21 June 2021 ("PAP letter"). It follows the template for a Response to a Letter Before Claim contained in Annex B to the Pre-action protocol for judicial review under the Civil Procedure Rules.

**The Prospective Claimant ("the Claimant")**

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

**The Prospective Defendant ("the Council")**

South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge, CB23 6EA

## Reference details

This matter is being handled by Stephen Reid of 3C Shared Services Legal Practice, who can be contacted via email at [Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)

## The details of the matter being challenged

The decision proposed to be challenged is the Council's decision of 27th May 2021 to approve a planning application (Ref: 20/02453/S73) for:

*'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 as amended by planning committee on the 26th May 2021 in relation to paragraph 3.2.4" (Re-submission of 20/01547/S73)'*

at The Retreat, Fewes Lane ,Long Stanton, Cambridge, CB24 3DP.

## Response to the proposed claim

- 1 The PAP letter does not comply with the template for a Letter before claim under the Pre-action protocol for judicial review (Annex A). Whilst the PAP letter does identify the Grounds on which you propose to challenge the Council's decision, it does not go on to provide any detail or explain how each Ground is said to render the Council's decision unlawful (see Section 7 of the Template under Annex A, and the requirement to explain why it is contended that the decision is wrong).
- 2 This is a requirement you are clearly well aware of, as you have complied with it in numerous PAP letters sent to the Council since 2019.
- 3 Notwithstanding this failure, the Council has sought below to respond to the Grounds as it understands they will be argued. Insofar as the Grounds are argued differently or additional Grounds are raised in any claim, the Council reserves the right to refer to the failure to comply with the Pre-action protocol in relation to costs.
- 4 The proposed claim will be contested in full, should it be served on the Council.

## Background

- 5 On 9 May 2019, the Council granted planning permission for the demolition of the existing bungalow and construction of two dwellings including car parking and landscaping at the Retreat, Fewes Lane, Long Stanton, Cambridge, CB24 3DP (S/0277/19/FL).

- 6 Condition 7 of the 2019 consent was a pre-commencement condition requiring the submission of a traffic management plan, to be agreed with the Council, including principal areas of concern.
- 7 There was no challenge to the grant of the 2019 consent and the 3 year commencement period for that consent has not expired (Condition 1).
- 8 By an application under s.73 of the TCPA 1990 (as amended), the applicant sought a variation of Condition 7. In essence, the variation application sought to amend the wording of the condition from a pre-commencement condition to a condition requiring compliance with an approved Traffic Management Plan (prepared by SLR Consulting and dated December 2019).
- 9 The application was considered at 3 Planning Committee meetings.
- 10 In January 2021, the Committee resolved to approve the application subject to:
- The revision of one paragraph of the Traffic Management Plan so as to prevent delivery vehicles from parking on any street within the village of Longstanton;
  - The addition of an informative urging the applicant to establish a liaison mechanism between residents, the site manager, and Longstanton Parish Council, to monitor compliance with the Traffic Management Plan and to resolve any disputes.
  - The Conditions and Informatives set out in the Officer Report which had recommended approval.
- 11 The Officer Report recorded that the Claimant had made representations in relation to the application on 10 July 2020, 27 July 2020, 20 August 2020, 23 August 2020, 3 September 2020, 8 September 2020, and 28 September 2020. These were summarised in the Officer Report (para. 24).
- 12 Following the January 2021 resolution, the consent was not issued. That was because, although the application had been advertised as affecting a PROW, officers mistakenly gave advice at the meeting that such advertisement was not required. A late representation had also been received by a resident the evening before the January meeting which had not been passed to officers and reported to Members.
- 13 In April 2021, the application was reported back to Committee with updates responding to the above matters. In addition, a further update was required as a result of a late representation from the Claimant dated 1 April 2021 raising non-compliance with Policy NH/6 (Green Infrastructure). This was responded to in the further update, with no change to the recommendation of approval.
- 14 At the April 2021 Committee, you raised yet further concerns that your representations had not been fully assessed within the Officer Reports. In response, the Committee agreed to defer consideration of the application so that your representations could be examined and addressed, as necessary.

- 15 A full update was provided for the May 2021 Committee meeting. This outlined the events above.
- 16 The Update also summarised the Claimant's representations of 1 March 2021 and 14 March 2021. It responded to those representations in full, quoting a detailed passage from the original Officer Report which resulted in the 2019 consent, in which the planning merits of the suggested highway improvements to Few's Lane, the extent of the red line and visibility splays were all considered.
- 17 On these points, the Update concluded that (paras. 8-10, in summary):
- Highway safety issues relating to Few's Lane had been robustly considered at appeal level.
  - Officers had considered the cumulative impact of the total amount of properties along Few's Lane.
  - The conditions proposed by the Claimant (on upgrading Few's Lane and visibility splays) were not imposed on the 2019 consent.
  - Nor had the Highway Authority requested visibility splay conditions on the current s.73 application.
  - Members and officers were not bound by the advice of the Highway Authority.
  - The ownership of Few's Lane was immaterial to the necessity of upgrades to it.
  - In Officers' view, it was not necessary to apply additional conditions as part of the s.73 application to upgrade Few's Lane or maintain pedestrian visibility splays.
  - The splays required are contained within the adopted highway.
  - Material circumstances have not altered to suggest that such conditions are now necessary.
  - Since the 2019 consent did not impose such conditions, to impose them now would not be reasonable for a s.73 application which seeks to amend the wording of the Traffic Management Plan, particularly given that the 2019 consent could be implemented without complying with those conditions.
- 18 The Update also recorded that, since the April Committee, the Claimant had sent 2 pre-action protocol letters to the Council, one relating to this application, and one relating to an application for the adjacent site to the rear. These argued that the Council had no jurisdiction to entertain this application because (in this case) the red line area on the location plan failed to include all the land necessary to carry out the proposed development contrary to Article 7(l) of the DMPO 2015, and specifically failed to include the land required for visibility splays.
- 19 The Update responded to these points by noting that pursuant to Article 7(l) of the 2015 Order, no location plan is required for a s.73 application. The 2019 application and Officer Report considered the representations concerning the adequacy of the access to the plot, the proposed improvements including the widening of the Few's Lane access, visibility splays, and the extent of the red line. The grant of consent in 2019 had not been challenged. The Council did not agree that it had no lawful authority to entertain the s.73 application pursuant to s.327A of the 1990 Act and Article 7 of the 2015 Order (para. 12).

- 20 An Officer Presentation was produced for the May 2021 Committee. This also responded to the points raised in the pre-action letter, noting that the Council had taken external legal advice from Counsel on the points. As relevant, Counsel's view was that: (1) granting planning permission for development which relied on adopted highway land outside the red line site boundary as part of the visibility splays was not in breach of the requirements of the 2015 Order; (2) Provided that the land on which operational development would take place was within the red line boundary, and the remaining land is adopted highway, the requirements of the 2015 Order would be complied with. A copy of a Counsel's advice and the Council's cover email were contained in the background papers accompanying the Officer Report (Doc. 2) and in any event had been sent to the Claimant albeit in relation to a different site .
- 21 Finally, the Update recorded that, notwithstanding that neither the 2019 consent nor the s.73 application included a site location plan which extended to the adopted highway and included visibility splays, 1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane and the High Street, and the Highway Authority has a duty to maintain the highway, which includes the verge in this case (para. 13).
- 22 The Updates from April 2021 and the original January 2021 Officer Report were enclosed with the May 2021 Update. The recommendation to approve as per the January 2021 resolution remained the same. Copies of the correspondence relating to this application between the Claimant and Council was included, with an index (109 pages) albeit that some pages were redacted because of correspondence which had been marked "without prejudice".
- 23 It will be apparent from the above that throughout the consideration of this application, you have made many representations raising a wide range of legal and factual issues. Officers have sought to ensure that your points have been considered and put before the Committee.
- 24 Despite this, following the resolution of the Committee to approve the application and the Decision Notice dated 27 May 2021, you now propose to challenge that decision on 6 Grounds. It would appear that Grounds 2, 3, 4, and 6 have not been raised by you before. It is felt that these are matters which could have been raised in response to the publication of the Update to the Officer Report in May 2021, such that they could have been considered at that stage.
- 25 Should the claim be issued, the Council reserves the right to refer to these matters in relation to the merits and costs.

*Ground 1: The Defendant misdirected itself in fact in stating in the officer's report that, "1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane with the High Street."*

- 26 This Ground is hopeless. The leading case on mistake of fact is *E v SSHD* [2004] QB 1044 in which the Court of Appeal set out the ordinary requirements for a finding of unfairness based on a mistake of fact (para. 66 per Carnwath LJ).

- 27 First, there must have been a mistake as to an existing fact. The Council disputes your claim that there has been a mistake on the facts as to the available visibility splays. 1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane with the High Street.
- 28 Secondly, the fact must have been established in the sense that it is uncontentious and objectively verifiable. It is the Council's position that you have not demonstrated, let alone established, that the Council's view - that 1.5m visibility splays are available - is wrong.
- 29 Thirdly, it is not being suggested that the Claimant was responsible for the mistake but if the objectively verifiable evidence of the extent of the visibility splays were available, the Council would reasonably have expected this to have been confirmed by you and evidence provided by you as to the extent of the visibility splays said to be available .
- 30 Fourthly, the mistake must have played a material (not necessarily decisive) part in the decision.

*Ground 2: Contrary to section 100D(1) of the Local Government Act 1972, the Defendant failed to identify the background papers relied upon in the officer's report and failed to make a copy of each background paper available for inspection.*

- 31 This Ground is similarly without merit or substance. It fails on the facts. The Officer Report was careful and detailed, and included a series of updates which comprehensively set out for the Committee, and members of the public, the issues relating to the application.
- 32 By reference to s.100D(4) of the 1972 Act, there were, in any event, no background papers to the Officer Report which were relied upon which were not already in the public domain. Specifically, the May 2021 Update included all previous Updates and the January 2021 Officer Report. It also enclosed an Index with all correspondence between the Claimant and the Council on this application (Agenda Item 5 to the May 2021 Meeting). It is not clear what you say this omitted or what you say was not available and prevented you from responding.
- 33 More generally, you do not identify which background papers were omitted and in what way they prevented you from participating in the consideration of the application. By reference to the background above, you clearly had a full opportunity to engage in the planning process on this application. Even if there were a failure to comply with the provisions under s.100B and s.100D of the 1972 Act – which is denied - you provide no reasons whatsoever as to the significance of any such failure, which would be relevant to relief (*McCann*).

*Ground 3: The Defendant either (A) failed to take into consideration its decision on an application for the erection of additional dwellings at the same site from 2013, OR, even if the Defendant did take its 2013 decision into account, (B) it failed to even briefly state its*

*reasons for reaching a different conclusion on matters of principal importance in the decision, in particular, in regards to highway safety conditions.*

- 34 You have not provided the basis on which it is claimed that the failure to take account of the Council's decision in 2013 for the "same site" (see below) renders this decision wrong.
- 35 It is assumed that the Claimant is referring to application Ref: S/2561/12/OL and Condition 10 of that permission which required 2m x 2m visibility splays from and along the highway boundary. However, the site for S/2561/12/OL is not the same site as that relating to the application which you propose to challenge 20/02453/S73 (i.e. S/0277/19/FL). There was therefore no requirement for the Planning Committee to consider S/2561/12/OL which is 8 years old, was not directly relevant to the decision before the Council, and which has in any event been superseded by more recent planning permissions.
- 36 As referred to above, the Council set out in detail its reasoning for the conclusion that highway safety would not be compromised by reference to the Officer Report for the 2019 consent (S/0277/19/FL). Extracts are quoted in paragraph 7 of the May 2021 Officer Report. This included references to relevant appeal decisions and changes to the nature of the highway through Longstanton.
- 37 In addition, Members of the Planning Committee were presented with photographs of Few's Lane and of its junction onto Longstanton High Street as part of the presentation made by Officers for the May 2021 meeting. It was therefore not necessary to consider S/2561/12/OL or state reasons for reaching a different conclusion regarding the necessity of highway safety related planning conditions.
- 38 Members of the Planning Committee had all the necessary and relevant information before them to make an informed decision regarding the highway safety implications of their decision, including their powers to impose additional conditions if they thought it necessary to do so.
- 39 Even if the 2013 decision were relevant – which it was not – the reasons for the decision on this application were more than adequate, enabling the parties to understand why permission was granted and what conclusion was reached on the principal important controversial issue of highway safety. The reasons need refer only to the main issues, not to every material consideration (*South Bucks v Porter*).

*Ground 4: The Defendant misdirected itself in its officer's report in stating that planning permission S/0277/19/FL (A) was capable of implementation and (B) represented a fallback position.*

- 40 You have provided no explanation as to why you say that the 2019 consent was incapable of implementation and could not constitute a fall-back position.

- 41 The 2019 consent (S/0277/19/FL) was granted on 9 May 2019 with a three-year time period for implementation (Condition 1). The 3 year period has not expired.
- 42 In any event, the availability of a fall-back position was but one strand of the reasoning supporting Officers' view that there were no highways safety concerns, and that additional conditions were not necessary (para. 17 above). Even if reference to the 2019 consent were removed from that reasoning, there remains perfectly adequate support for the conclusion that there was no need to impose further highway safety conditions.

*Ground 5: The Defendant misdirected itself as to the proper approach to the determination of applications submitted under s. 73 of the Town and Country Planning Act 1990.*

- 43 This Ground fails on the facts. The approach to this s.73 application was perfectly proper. The officer presentation which was read to the Planning Committee meeting in May 2021 specifically advised members that:

*'The effect of granting a S73 application is that a new planning permission is given (which is conf[s]trained by the original time limit for implementation). Otherwise, the question of what conditions, if any, are necessary to make the proposed development acceptable in planning terms is for the members of planning committee. Members of the committee are free to attach new conditions not previously attached if those new conditions are necessary to make the proposed development acceptable in planning terms and meet the other six tests of planning conditions and are legal in all other respects.*

*Officers can advise members that, as a fresh permission will be issued, since S/0277/19/FL was approved, there has been no material change of policy or other circumstances which might require a re-assessment of other conditions or, indeed a re-assessment of the development as a whole. Whilst the officer's report covers re-assessment of conditions, officer's should add that we are satisfied that no wider reconsideration of the principle of development is justified.'*

- 44 The Officer Report for the January 2021 meeting (to which updates were made for the April and May meetings) took the same approach, that the principle of development had already been established through the grant of the 2019 consent and that officers were satisfied that there had been no material change in policy or the surrounding context that required re-assessment of any other conditions attached to the approved development (para. 33).
- 45 The approach was not solely focussed on the Condition sought to be varied by the application, but properly considered the principle of development against the backdrop of the 2019 consent and the absence of any material change in policy since then. This was a proper approach and there was no misdirection.

*Ground 6: The Defendant ignored a material consideration in failing to consider the key material policy of the development plan, policy H/16, which concerns the erection of additional dwellings within residential gardens.*

46 The lack of merit in this Ground is revealed by the fact that it is raised now, for the first time, in the PAP letter. Despite the many representations made by the Claimant throughout the consideration of this application – including, for example, the late representation for the April 2021 meeting, which raised Policy NH/6 - none of those representations argued that the Council had failed to consider Policy H/16, which you now claim is ‘*the key material policy*’ of the Development Plan relating to this application.

47 The Officer Report for this application does not expressly reference or assess policy H/16 because it was not a principal consideration in assessing the merits of the proposal. The s.73 application was for the variation of a traffic management plan condition associated with the 2019 consent. Policy H/16 refers to a series of development principles concerning the development of residential gardens. The approved plans are the same between the 2019 consent and this s.73 application. No change to the design, scale or footprint of the scheme or the character of the area was proposed as was confirmed in the Update for the May 2021 Committee (para 11):

*‘It is to be noted that the current S73 application only seeks to amend the wording of the Traffic Management Plan condition and does not seek to change the design or layout of the approved dwellings. There also has been no material change in the surrounding context or planning policy to warrant forming an alternative view.’*

48 The Officer Report for the January 2021 Meeting also explained that the principle of development had been established (para. 33):

*‘The principle of development of the dwellings 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 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.’*

49 No third-party representations were made specifically in relation to policy H/16. In those circumstances, it was not necessary specifically to examine the merits of the s.73 application against policy H/16 given the principle of development established by the 2019 consent and the details of the S73 application.

*Grounds raised on 30 June 2021*

- 50 Most recently, by email dated 30 June 2021, you have raised 2 further Grounds which you propose will form part of your claim. The time you have provided for the Council to respond to these Grounds is woefully inadequate. Nonetheless, our initial consideration of them indicates that they are devoid of merit.
- 51 First, you claim that the Council has breached a legitimate expectation by failing to consider representations made by the Claimant on 20 April 2021. This is both vague and weak. The table which you refer to was attached to the email and contained the planning history of the site. This was sent to the Council for the purposes of a meeting arranged with the Director of Planning Stephen Kelly, Toby Williams and the Council's Solicitor Stephen Reid. It was not put forward as a formal representation to the s.73 application, but plainly as a reference document for the meeting. It could not give rise to a legitimate consideration that these particular matters would be expressly considered as part of the planning application.
- 52 In any event, the Update for the May 2021 meeting provided a list of the relevant planning history for the application site and of the adjacent site. It was not necessary for the officer assessment to provide a detailed analysis of the planning history of all the planning proposals for Fews Lane, nor a detailed analysis of every application and associated reasoning in respect of highway safety matters. As set out above in the Background section and under the response to Ground 3, the May 2021 Update referenced the key excerpts from the Officer Report for the 2019 consent regarding highway safety, noting changes in time associated with the nature of High Street Longstanton and the creation of the village by-pass. The appeal decision is also referenced. The relevant planning history was set out and considered.
- 53 The suggestion that extant permissions are not capable of implementation falls behind the fact that the 2019 consent was not challenged, and the facts set out in response to Ground 4 above. The 2019 consent remains a legitimate fall-back position.
- 54 Secondly, you state that the description of the development on the decision notice is materially different from the description of the development in the application which was consulted upon, that officers had no lawful authority to amend the description of the development, and that this amounts to an abuse of process.
- 55 This proposed Ground is misconceived. The very minor change to the description of development brought it into line with the terms of the Planning Committee's resolution. The resolution related to a very minor alteration to the Traffic Management Plan, which was sought by the Committee. The Chair and Vice Chair to the Planning Committee were consulted and agreed to the minor change in the description of development for the Decision Notice. It was also agreed by the applicant. No party could possibly have been prejudiced by the very minor changes to the description of development on the Decision Notice.

- 56 Insofar as necessary to do so, the Council will rely on s.31(2A) and (3B) of the Senior Courts Act 1981 to argue that it is highly likely that the outcome would have been the same, even if any or all of the Grounds were made out.
- 57 It is noted that you propose to issue proceedings as an Aarhus Convention claim and to seek a costs capping order. The Council does not dispute that the claim may come within the scope of the Convention, but reserves its position as to whether the proposed Claimant's financial resources meet the criteria of making the claim prohibitively expensive if a costs cap is not applied, depending on the details provided.

### **Details of any other Interested Parties**

It is noted that the applicant under the 2019 consent, Landbrook Homes Ltd. is considered to be an Interested Party.

### **Disclosure**

The Council has noted that it appears no disclosure has been sought by you in the PAP Letter .

The Council would however request disclosure from you as to copies of any relevant papers ,including minutes of any meeting of the shareholders of Fews Lane Consortium Limited ,relating to and/or otherwise authorising the decision of the Claimant to issue the PAP letter of 21<sup>st</sup> June 2021. Alternatively , if the decision was the sole decision of a Director of the Claimant please confirm that to be the case and whether having made that decision the other shareholders of the Claimant have been so advised.

### **ADR proposals**

It is agreed that ADR proposals would not be appropriate given that only the Court can quash a decision of the Council.

### **Address for further correspondence and service of court documents**

This is set out above in the Reference details section.

Yours Sincerely,

**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)

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

<b>THE QUEEN</b>	
(on the application of FEWS LANE CONSORTIUM LTD)	<u>Claimant</u>
and	
<b>SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL</b>	<u>Defendant</u>
and	
<b>LANDBROOK HOMES LTD</b>	<u>Interested Party</u>

---

Exhibit 12  
Email from Daniel Fulton to Stephen Reid  
dated 06.07.2021 @ 6.55am

---

[REDACTED]

---

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

**Sent:** 06 July 2021 06:55

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

**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>; Rory McKenna <[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>

**Subject:** Re: Fews Lane S73 PAP response July5thCl

**Importance:** High

Dear Mr Reid,

Thank you for the response to the Consortium's pre-action correspondence dated 21 June 2021.

However, no response has been forthcoming to the Consortium's pre-action correspondence dated 4 June 2021 at 12:36 p.m.:

"Paragraph 13 of the officer's report states that, '1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane with the High Street'.

Could I please ask the Council to clarify the source of information upon which the above statement is based?"

It is essential that the Council clarifies, in clear and unambiguous terms, the factual circumstances of its decision making process.

If the Council does not do so, this would have the effect of precluding the Consortium from being able to adequately argue its claim.

I must ask for a clear and unambiguous response to the question quoted above by 5:00 p.m. today.

If a satisfactory response is not received by that time, the Consortium will make the following applications when filing the claim form:

1. an application pursuant to CPR Part 18 for an order that the Council provides clarification on the matter referenced above within 7 days of the date of the order,
2. an application for permission for the Claimant to amend the claim form and statement of facts and grounds within 21 days of the date of service of the clarification referenced in point 1 above,
3. an application for permission for the Claimant to adduce additional evidence within 21

- days of the date of service of the clarification referenced above in point 1, and
4. an application that the Claimant's application for permission for judicial review be stayed until 21 days have elapsed following the date of service of the clarification referred in point 1 above.

Lastly, I would also note that no response has been received in regards to the Consortium's pre-action correspondence dated 14 June 2021 at 7:36 a.m.

The lack of timely responses to the prospective claimant's requests (from 4 June and 14 June) for factual clarification have significantly increased the prospective claimant's costs of preparing the claim, and the prospective claimant may make reference to these circumstances in the future in regards to costs.

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 5 Jul 2021, at 4:59pm, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

**Dear Fews Lane Consortium Limited**

**Please see attached which I am instructed to send to you on behalf of the Council**

**Please note it is being sent to you as an email only in the light of your confirmation that an email copy would be accepted.**

**Please acknowledge receipt and if you have any queries please let me know.**

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

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
Cambourne, Cambridge, CB23 6EA**

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

---

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

**Sent:** 05 July 2021 16:57

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

**Subject:** Fews Lane S73 PAP response July5thCl

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<Fews Lane S73 PAP response July5thCl.pdf>

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

---

Exhibit 13  
Email from Daniel Fulton to Stephen Reid  
dated 06.07.2021 @ 1.52pm

---



---

**From:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Sent:** 06 July 2021 13:52  
**To:** Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)>  
**Cc:** Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>  
**Subject:** Re: S.73 response  
**Importance:** High

Dear Mr Reid,

I acknowledge receipt of your email.

This is not a full response to the points you raise, but I am able to acknowledge that two mistakes were made in my email from 6:55 a.m. today.

I apologise for incorrectly stating that no response was received to the 4 June 2021 email. I should have stated that the Council declined to provide a substantive response to that email.

The text of that response, from 1:54 p.m. on 4 June 2021, was as follows:

"I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council's intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73."

I also apologise for incorrectly stating that no response was received to the 14 June 2021 email. Again, I should have stated that the Council declined to provide a substantive response to that email.

The text of that response, from 14 June 2021, was as follows:

"I acknowledge receipt of a further email received yesterday.

It is not accepted that the planning committee was misdirected . The Council is of the view that it is possible to accommodate 1.5m x 1.5m pedestrian visibility splays within the adopted highway.

It is felt the recent correspondence is not necessarily taking the parties forward and my instructions at this stage are not to engage in further correspondence with you pending the issue of any Judicial Review proceedings as to the Planning Permission issued under reference 20/02453/S73 . I can confirm I am instructed to accept service of any proceedings in such regard.”

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 6 Jul 2021, at 1:08pm, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

Dear Fews Lane Consortium Limited

A. I acknowledge receipt of your email sent at 06:55 today.

B.1 In your email today you very clearly state :

“...no response has been forthcoming to the Consortium’s pre-action correspondence dated 4 June 2021 at 12:36 p.m...”

B.2 Having regard to B.1 above ,can I ask you to confirm that you did indeed receive a response namely an email sent to you at 13:54 on 4<sup>th</sup> June 2021 .You have previously already acknowledged this, not least in the context of an email sent by you at 15:15 on 6<sup>th</sup> June and which email included a copy of the email I had sent on 4<sup>th</sup> June and so I am not clear why you are now suggesting that no response has been forthcoming.

B.3 When I emailed you on 4<sup>th</sup> June I referred to paras 30,31,32,33 and 34 from the letter of 14<sup>th</sup> May and I have again set out those paras below for ease of reference and have added some yellow

highlighting by way of emphasis to show that notwithstanding your email sent today the Council has previously identified the source of information:

“....

30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council's position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Few's Lane and High Street,

31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.

32 Please correct me if I am wrong but isn't it the contention of Few's Lane Consortium Limited that such land should still have been shown as included within the application site by reference to the statutory provision for operational development on highway land. If that is the contention, then it is the Council's position that any such contention misses the point as there is no operational development proposed for these visibility splay areas and as it is highway land its use as visibility splays involves no change of use.

33 In his letter Mr Streeten dated 20th July 2020 covered this particular point at paragraph 16(c). With respect to subsequent arguments made by Few's Lane Consortium (e.g. as developed at paragraphs 33-34 of your letter of 8th September 2020 ) it is the Council's position that these ignore the distinction between operational development on highway land and change of use.

34 Given, as noted above, there is no express requirement for a site location plan (identifying the land to which section 73 application relates) and the proposed change of one condition does not relate to visibility splays, it is the Council's position that any challenge in relation to the s.73 Application is one which is unlikely to succeed...”

C.1 In your email today you also include the following:

“....I would also note that no response has been received in regards to the Consortium's pre-action correspondence dated 14 June

2021 at 7:36 a.m...”

C.2 A response to your email of 14<sup>th</sup> June was sent the same day in which the following comments were made (although it is acknowledged that my email wrongly referred to an email from you the day before but your email of 14<sup>th</sup> June was included as part of the response sent to you on 14<sup>th</sup> June) so I am not clear why you are now suggesting that no response has been forthcoming to your email of 14<sup>th</sup> June :

“...It is not accepted that the planning committee was misdirected . The Council is of the view that it is possible to accommodate 1.5m x 1.5m pedestrian visibility splays within the adopted highway.

It is felt the recent correspondence is not necessarily taking the parties forward and my instructions at this stage are not to engage in further correspondence with you pending the issue of any Judicial Review proceedings as to the Planning Permission issued under reference 20/02453/S73 . I can confirm I am instructed to accept service of any proceedings in such regard....”

C.3 Your email of 14<sup>th</sup> June suggested as follows:

“...No background papers were listed or made available for the committee prior to the decision being taken on the application...”

C.4 Can I refer you however to para 44 of the Report to Planning Committee on 26<sup>th</sup> May 2021 and which included the following :

“...An extensive bundle of correspondence between FLCL and the Council (together with an index) is attached to this report..”

C.5 The extensive bundle of correspondence attached to the Committee report extended to 119 pages (although it is acknowledged that some of the pages were redacted where they involved correspondence which had been marked by FLCL as “WITHOUT PREJUDICE”)

D. In the light of the above, can the Council request that you advise whether you are prepared to send an updated email to correct the email sent at 06:55 today. If, however, you are not prepared to send an email to correct the email sent at 06:55 today it would be helpful if you would please advise why you are not willing to do so.

Stephen Reid

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
Cambourne, Cambridge, CB23 6EA**

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

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

**Sent:** 06 July 2021 06:55

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

**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Sharon Brown  
<[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams  
<[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson  
<[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>; Rory McKenna  
<[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>

**Subject:** Re: Fews Lane S73 PAP response July5thCl

**Importance:** High

Dear Mr Reid,

Thank you for the response to the Consortium's pre-action correspondence dated 21 June 2021.

However, no response has been forthcoming to the Consortium's pre-action correspondence dated 4 June 2021 at 12:36 p.m.:

"Paragraph 13 of the officer's report states that, '1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fews Lane with the High Street'.

Could I please ask the Council to clarify the source of information upon which the above statement is based?"

It is essential that the Council clarifies, in clear and unambiguous terms, the factual circumstances of its decision making process.

If the Council does not do so, this would have the effect of precluding the Consortium from being able to adequately argue its claim.

I must ask for a clear and unambiguous response to the question quoted above by 5:00 p.m. today.

If a satisfactory response is not received by that time, the Consortium will make the following applications when filing the claim form:

1. an application pursuant to CPR Part 18 for an order that the Council provides clarification on the matter referenced above within 7 days of the date of the order,
2. an application for permission for the Claimant to amend the claim form and statement of facts and grounds within 21 days of the date of service of the clarification referenced in point 1 above,
3. an application for permission for the Claimant to adduce additional evidence within 21 days of the date of service of the clarification referenced above in point 1, and
4. an application that the Claimant's application for permission for judicial review be stayed until 21 days have elapsed following the date of service of the clarification referred in point 1 above.

Lastly, I would also note that no response has been received in regards to the Consortium's pre-action correspondence dated 14 June 2021 at 7:36 a.m.

The lack of timely responses to the prospective claimant's requests (from 4 June and 14 June) for factual clarification have significantly increased the prospective claimant's costs of preparing the claim, and the prospective claimant may make reference to these circumstances in the future in regards to costs.

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 5 Jul 2021, at 4:59pm, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

Dear Fews Lane Consortium Limited

Please see attached which I am instructed to send to you on behalf of the Council

Please note it is being sent to you as an email only in the light of your confirmation that an email copy would be accepted.

Please acknowledge receipt and if you have any queries please let me know.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
Cambourne, Cambridge, CB23 6EA**

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Huntingdonshire District Council and South Cambridgeshire District Council**

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

**Sent:** 05 July 2021 16:57

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

**Subject:** Fews Lane S73 PAP response July5thCl

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---

**From:** Stephen Reid

**Sent:** 04 June 2021 13:54

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

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

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

Notwithstanding your email sent at 12:59 today may I invite you to look

at paragraphs numbered 30,31,32,33 and 34 of the attached letter sent to as recently as 14<sup>th</sup> May this year, and which it is believed dealt with the matters now raised in relation to your further emails received this week.

It is not the Council's intention to add anything further at this stage.

Stephen Reid

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

**Sent:** 04 June 2021 12:59

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

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

**Subject:** Re: s.73 application Fewslane

Dear Mr Reid,

Paragraph 13 of the judicial review pre-action protocol states that:

“Requests for information and documents made at the pre-action stage should be proportionate and should be limited to what is properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues. The defendant should comply with any request which meets these requirements unless there is good reason for it not to do so. Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.”

Section 100D(1) of the Local Government Act 1972 requires that a list of background papers that disclose any facts or matters on which a report or a part of a report is based and have been relied upon to a material extent in the preparation of said report.

In respect of decision 20/02453/S73, the Council failed to comply with this statutory requirement. Had the Council done so, this email seeking information on the decision would not be necessary.

Paragraph 13 of the officer's report states that, “1.5m pedestrian visibility splays are available within the adopted highway at the junction of Fewslane with the High Street”.

Could I please ask the Council to clarify the source of information upon which the above statement is based?

If the Council declines to respond to this query, this is likely to be drawn to the attention of the court in relation to the issue of costs.

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 4 Jun 2021, at 11:31am, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

Dear Fews Lane Consortium Limited

I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council's intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
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---

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

**Sent:** 04 June 2021 13:05

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

**Subject:** FW: S.73 response

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
Cambourne, Cambridge, CB23 6EA**

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

---

**From:** Stephen Reid

**Sent:** 14 May 2021 16:17

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

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

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

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

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

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

I am instructed to email you the attached.

I will make arrangements for a hard copy to be sent in the post to you but please note this will not be until next week.

Stephen Reid

**Disclaimer**

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<S.73 response.docx>

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

---

Exhibit 14  
Email from Stephen Reid to Daniel Fulton  
dated 06.07.2021 @ 1.54pm

---



---

**From:** Stephen Reid  
**Sent:** 06 July 2021 15:34  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Rory McKenna <[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>  
**Subject:** FW: S.73 response  
**Importance:** High

Dear Fews Lane Consortium Limited

- A. You have now emailed me a further email in which you have included the following:

“...I acknowledge receipt of your email.

This is not a full response to the points you raise, but I am able to acknowledge that two mistakes were made in my email from 6:55 a.m. today.

I apologise for incorrectly stating that no response was received to the 4 June 2021 email. I should have stated that the Council declined to provide a substantive response to that email.

The text of that response, from 1:54 p.m. on 4 June 2021, was as follows:

“I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council’s intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73.”

- B. The email you have wrongly quoted from in your latest email however was not the one I sent at 1;54 on 4<sup>th</sup> June but rather one I sent at 11;31 on 4<sup>th</sup> June.
- C. You appear not to have taken note of para B.3 of my email sent earlier

today so may I point out the email sent at 1:54 on 4<sup>th</sup> June ,and which email is again set out below and which I have now highlighted in green .

- D. I feel it is wholly incorrect for you to suggest that “...the Council declined to provide a substantive response...” because the email sent at 1;54 on 4<sup>th</sup> June very clearly referred to the source of information by reference to the letter of 14<sup>th</sup> May 2021 and I again set out below paras 30 and 31 from the letter of 14<sup>th</sup> May which was attached to the email of 4<sup>th</sup> June and which paras (and also paras 32,33 and 34) are very clearly referred to in the email of 4<sup>th</sup> June :

“...30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council’s position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Fewes Lane and High Street,

31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.

- E. I also note that in your latest email you have not sought to address paras C.3 and C.4 as included in my earlier email of today so you may want to consider whether to comment in such regard

C.3 Your email of 14<sup>th</sup> June suggested as follows:

“...No background papers were listed or made available for the committee prior to the decision being taken on the application...”

C.4 Can I refer you however to para 44 of the Report to Planning Committee on 26<sup>th</sup> May 2021 and which included the following :

“...An extensive bundle of correspondence between FLCL and the Council (together with an index) is attached to this report..”

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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**From:** Stephen Reid

**Sent:** 04 June 2021 13:54

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

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

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

Notwithstanding your email sent at 12:59 today may I invite you to look at paragraphs numbered 30,31,32,33 and 34 of the attached letter sent to as recently as 14<sup>th</sup> May this year, and which it is believed dealt with the matters now raised in relation to your further emails received this week.

It is not the Council's intention to add anything further at this stage.

Stephen Reid

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

**Sent:** 04 June 2021 12:59

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

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

**Subject:** Re: s.73 application Fews lane

Dear Mr Reid,

Paragraph 13 of the judicial review pre-action protocol states that:

“Requests for information and documents made at the pre-action stage should be proportionate and should be limited to what is properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues. The defendant should comply with any request which meets these requirements unless there is good reason for it not to do so. Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.”

Section 100D(1) of the Local Government Act 1972 requires that a list of background papers that disclose any facts or matters on which a report or a part of a report is based and have been relied upon to a material extent in the preparation of said report.

In respect of decision 20/02453/S73, the Council failed to comply with this statutory requirement. Had the Council done so, this email seeking information on the decision would not be necessary.

Paragraph 13 of the officer’s report states that, “1.5m pedestrian visibility splays are available within the adopted highway at the junction of Few’s Lane with the High Street”.

Could I please ask the Council to clarify the source of information upon which the above statement is based?

If the Council declines to respond to this query, this is likely to be drawn to the attention of the court in relation to the issue of costs.

Kind regards,

Daniel Fulton  
Director

Few’s Lane Consortium Ltd  
The Elms  
Few’s Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

This email, together with any files transmitted with it, is only for the use of its intended recipient(s). It may contain information which is confidential and/or legally privileged. If you have received this email in error, please notify the sender by return email (or telephone) and delete the original message. Please note that the Few’s Lane Consortium Ltd does not accept service by email.

The Few’s Lane Consortium Ltd is registered in England and Wales. Company No. 11688336

On 4 Jun 2021, at 11:31am, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

Dear Fews Lane Consortium Limited

I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council's intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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<Mail Attachment.eml><Mail Attachment.eml><Mail Attachment.eml>

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

**Sent:** 04 June 2021 13:05

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

**Subject:** FW: S.73 response

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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**From:** Stephen Reid  
**Sent:** 14 May 2021 16:17  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Kelly Stephen <[Stephen.Kelly@greatercambridgeplanning.org](mailto:Stephen.Kelly@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>  
**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

I am instructed to email you the attached.

I will make arrangements for a hard copy to be sent in the post to you but please note this will not be until next week.

Stephen Reid

Fews Lane Consortium Limited

Date: 14<sup>th</sup> May 2021

Dear Sirs

**Proposed claim for judicial review in relation to prospective planning permission 20/02453/s73 and 20/05101/FUL**

We write in relation to your pre-action protocol letter dated 30th April 2021 in which you indicate your intention to challenge by way of judicial review the Council's decision to entertain planning applications under ref 20/02453/s73 and 20/05101/FUL

**The Prospective Claimant**

- 1 The Prospective Claimant would be Fews Lane Consortium Limited.

**The Prospective Defendant**

- 2 The Prospective Defendant is South Cambridgeshire District Council.

Correspondence should be addressed to:  
3C Shared Services – The Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

The Solicitor dealing with the conduct of this matter is Stephen Reid.

**Response to the claim**

- 3 The first matter that I would draw to your attention is that the application under reference 20/05101/FUL is now the subject of an appeal (for non-determination) and whilst the Council is waiting to be advised as to the allocation of an Appeal Inspector the Council's position is that this application is no longer within its jurisdiction as Local Planning

Authority and therefore it is intended that this response letter will only address matters in relation to the application under planning reference 20/02453/s73.

4. You will recall that Few's Lane Consortium Limited had previously issued a Pre Action Protocol letter dated 27th July 2020 in relation to the application under 20/02453/s73 and where a response was sent dated 18th August 2020 and therefore in the first part of this response I intend to again address a number of points as set out in that response.
5. In the second part of this response I intend to then seek to address matters which have arisen post 18th August where I believe them to be relevant.
6. However, before moving to the first part of the response there is an initial point that I would like to highlight namely that the Council received an email from Mr Caddoo dated 21st August 2020 in which he asked the Council to accept the 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..."

### FIRST PART

7. Your claim challenges a section 73 application under planning reference 20/02453/s73 (the "s.73 Application") in relation to the grant of planning permission for the erection of 2 dwellings with parking.
8. 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 in full in this letter but they are referred to where appropriate below.
9. While your letter of 30th April 2021 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.
10. 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 Council's advice from Charles Streeton of Counsel on that matter was provided to the Consortium.
11. Turning to the points made at paragraph 10 of your letter dated 27th July 2020, 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...”
12. The basis of the Consortium's proposed claim is an allegation that any decision to grant planning permission for the Development pursuant to the S.73 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.

- 13 In relation to a 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 was 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 S.73 Application not least having regard to the confirmation referred to at paragraph numbered 6 above.

14 **LAW**

**The Statutory Scheme**

14.1 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.

14.2 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.”

14.3 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.

15 **Non-Compliance with the DMOP**

15.1 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.

16 **Article 7 of the 2015 Order**

16.1 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.

16.2 The section of the application form to which the Consortium referred to in the letter of 27th July 2020 reads as follows:

“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).”

17 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.”

18 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**

19 The particular point at issue is the location of any visibility splays required 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.

20 The issue, therefore, is whether planning permission for the Development can be granted pursuant to the S.73 Application, 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:

20.1 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.

- 20.2 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.
- 21 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.
- 22 Applying these principles, Mr Streeten expressed an opinion as set out below (in the case where he was asked to advise) :
- 22.1 *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.*
- 22.2 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.
- 23 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.
- 24 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

25 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 as to extent of the red line boundaries is not the relevant legal test as to whether an application is valid

## **SECOND PART**

- 26 Officers are of the view that the change sought under the s.73 Application makes no material changes to the actual development proposed and the purpose of the new condition is solely to make detailed provision for construction traffic.
- 27 Officers are mindful that an approval of a s.73 application results in a new planning permission and not an amendment of the original. Further, whilst the guidance quoted in paragraph 21 of the Officer’s Report presented to Planning Committee in [January 2021] is correct to limit attention to conditions that are the subject of the application, officers are also mindful of the need to consider whether any material change of policy or other circumstances which might require a re-assessment of other conditions or, indeed, the development as a whole, see *R v Stefanou v Westminster City Council & Ano* [2107] EWHC 908 (Admin) at [90].
- 28 Officers are mindful of the complaints which refer to the inadequacies of the site plan supplied with the original application – but it is submitted it is too late to challenge the validity of the permission pursuant to that original application. Fews Lane Consortium Limited at least at one stage sought to suggest a plan is required by reference to the article 7(1)(b) – which requires particulars to be included as specified in the application form but as a simple matter of statutory interpretation the Council’s position is that cannot include a plan which is dealt with separately and expressly by (c).
- 29 It follows that officers do not consider it is necessary to request a further plan, as indicated in paragraph 3 of the response dated 18th August 2020 but please note reference to confirmation under paragraph numbered 6 above
- 30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council’s position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Fews Lane and High Street,
- 31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.
- 32 Please correct me if I am wrong but isn’t it the contention of Fews Lane Consortium Limited that such land should still have been shown as included within the application site by reference to the statutory provision for operational development on highway land. If that is the contention, then it is the Council’s position that any such contention misses

the point as there is no operational development proposed for these visibility splay areas and as it is highway land its use as visibility splays involves no change of use.

- 33 In his letter Mr Streeten dated 20th July 2020 covered this particular point at paragraph 16(c). With respect to subsequent arguments made by Few's Lane Consortium (e.g. as developed at paragraphs 33-34 of your letter of 8th September 2020 ) it is the Council's position that these ignore the distinction between operational development on highway land and change of use.
- 34 Given, as noted above, there is no express requirement for a site location plan (identifying the land to which section 73 application relates ) and the proposed change of one condition does not relate to visibility splays, it is the Council's position that any challenge in relation to the s.73 Application is one which is unlikely to succeed
- 35 Notwithstanding what Few's Lane say as to the apparent stringent terms of section 327A of the 1990 Act, the Court will still have a discretion as to whether or not to quash. Mr Streeten deals with this in his Advice (at paragraph 7), and I would add to the case references made by Mr Streeten reference to the case of Maximus Networks Ltd v SSCLG and Southwark LBC and LH Hammersmith and Fulham [2018] EWHC 1933 (Admin) at [24-26]
- 36 Whilst in paragraph (18) of your letter dated 30th April 2021 you have said as set out below it is the Council's position that when a fresh report is taken to Planning Committee as to the s.73 Application it will address the extent of the red line for the purposes of the s.73 Application and the need for any visibility splays and where they are located if outside of the red line
- “(18) However, in this case, the prospective defendant has decided to entertain purported planning applications where that land necessary for visibility splays has been specifically excluded from the application site in contravention of the requirements of the 2015 Order. This effectively prevents a condition for adequate visibility splays from being attached to any permission granted...”
- 37 Officers are satisfied that the Application under reference S/0277/19/FL and the associated committee report considered representations concerning the adequacy of the access to the plot, proposed improvements including the widening of the Few's Lane access, visibility splays and the extent of the red line. Few's Lane Consortium are asked to acknowledge that the permission granted pursuant to that application can no longer be judicially challenged.
- 38 Notwithstanding that the s.73 Application seeks to amend only the Traffic Management Plan, the officer report to be presented to Planning Committee before determination of the S.73 Application will consider the representations of Few's Lane Consortium Limited , the necessity and reasonableness of requiring upgrades to Few's Lane through the S73 Application including the provision of visibility splays.
- 39 Officers of the Council are satisfied that as the local Planning Authority it does have jurisdiction to entertain the S73 Application and for all of the reasons set out or referred to above, the Council will resist any application for judicial review.
- 40 The Council has noted that the Consortium has not indicated if it would prefer to resolve the dispute without the need for legal proceedings or whether 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 is not clear if such advice has been

sought by the Consortium, notwithstanding the Council's invitation and in these circumstances the Council reserves the right to bring to the Court's attention the invitation which was made in such regard . The Council is also mindful that in a conversation on 20<sup>th</sup> April 2021 Mr Fulton said that he had received written "legal advice" and which "legal advice" he said he would share it with Council the same day but a copy of that "legal advice" has never been forthcoming.

- 41 Finally, the Council agrees that the applicant for the S.73 Application , 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)

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 15  
Email from Stephen Reid to Daniel Fulton  
dated 06.07.2021 @ 3.34pm

---



---

**From:** Stephen Reid  
**Sent:** 06 July 2021 15:34  
**To:** Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)>  
**Cc:** Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Rory McKenna <[Rory.Mckenna@3csharedservices.org](mailto:Rory.Mckenna@3csharedservices.org)>  
**Subject:** FW: S.73 response  
**Importance:** High

Dear Fews Lane Consortium Limited

- A. You have now emailed me a further email in which you have included the following:

“...I acknowledge receipt of your email.

This is not a full response to the points you raise, but I am able to acknowledge that two mistakes were made in my email from 6:55 a.m. today.

I apologise for incorrectly stating that no response was received to the 4 June 2021 email. I should have stated that the Council declined to provide a substantive response to that email.

The text of that response, from 1:54 p.m. on 4 June 2021, was as follows:

“I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council’s intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73.”

- B. The email you have wrongly quoted from in your latest email however was not the one I sent at 1;54 on 4<sup>th</sup> June but rather one I sent at 11;31 on 4<sup>th</sup> June.

- C. You appear not to have taken note of para B.3 of my email sent earlier today so may I point out the email sent at 1:54 on 4<sup>th</sup> June ,and which email is again set out below and which I have now highlighted in green .
- D. I feel it is wholly incorrect for you to suggest that "...the Council declined to provide a substantive response..." because the email sent at 1;54 on 4<sup>th</sup> June very clearly referred to the source of information by reference to the letter of 14<sup>th</sup> May 2021 and I again set out below paras 30 and 31 from the letter of 14<sup>th</sup> May which was attached to the email of 4<sup>th</sup> June and which paras (and also paras 32,33 and 34) are very clearly referred to in the email of 4<sup>th</sup> June :

"...30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council's position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Fews Lane and High Street,

31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.

- E. I also note that in your latest email you have not sought to address paras C.3 and C.4 as included in my earlier email of today so you may want to consider whether to comment in such regard

C.3 Your email of 14<sup>th</sup> June suggested as follows:

"...No background papers were listed or made available for the committee prior to the decision being taken on the application..."

C.4 Can I refer you however to para 44 of the Report to Planning Committee on 26<sup>th</sup> May 2021 and which included the following :

"...An extensive bundle of correspondence between FLCL and the Council (together with an index) is attached to this report.."

**Stephen Reid**  
Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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**From:** Stephen Reid

**Sent:** 04 June 2021 13:54

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

**Cc:** Kelly Stephen <[stephen.kelly@greatercambridgeplanning.org](mailto:stephen.kelly@greatercambridgeplanning.org)>; Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Toby Williams <[Toby.Williams@greatercambridgeplanning.org](mailto:Toby.Williams@greatercambridgeplanning.org)>; Lewis Tomlinson <[Lewis.Tomlinson@greatercambridgeplanning.org](mailto:Lewis.Tomlinson@greatercambridgeplanning.org)>

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

Notwithstanding your email sent at 12:59 today may I invite you to look at paragraphs numbered 30,31,32,33 and 34 of the attached letter sent to as recently as 14<sup>th</sup> May this year, and which it is believed dealt with the matters now raised in relation to your further emails received this week.

It is not the Council's intention to add anything further at this stage.

Stephen Reid

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

**Sent:** 04 June 2021 12:59

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

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

**Subject:** Re: s.73 application Fews lane

Dear Mr Reid,

Paragraph 13 of the judicial review pre-action protocol states that:

“Requests for information and documents made at the pre-action stage should be proportionate and should be limited to what is properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues. The defendant should comply with any request which meets these requirements unless there is good reason for it not to do so. Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.”

Section 100D(1) of the Local Government Act 1972 requires that a list of background papers that disclose any facts or matters on which a report or a part of a report is based and have been relied upon to a material extent in the preparation of said report.

In respect of decision 20/02453/S73, the Council failed to comply with this statutory requirement. Had the Council done so, this email seeking information on the decision would not be necessary.

Paragraph 13 of the officer’s report states that, “1.5m pedestrian visibility splays are available within the adopted highway at the junction of Few’s Lane with the High Street”.

Could I please ask the Council to clarify the source of information upon which the above statement is based?

If the Council declines to respond to this query, this is likely to be drawn to the attention of the court in relation to the issue of costs.

Kind regards,

Daniel Fulton  
Director

Few’s Lane Consortium Ltd  
The Elms  
Few’s Lane  
Longstanton  
Cambridge  
CB24 3DP

tel. 01954 789237

This email, together with any files transmitted with it, is only for the use of its intended recipient(s). It may contain information which is confidential and/or legally privileged. If you have received this email in error, please notify the sender by return email (or telephone) and delete the original message. Please note that the Few’s Lane Consortium Ltd does not accept service by email.

The Few’s Lane Consortium Ltd is registered in England and Wales. Company No. 11688336

On 4 Jun 2021, at 11:31am, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

Dear Few's Lane Consortium Limited

I am instructed to write and acknowledge receipt of the three attached emails received from you this week but also to advise that the Council does not at this stage intend to provide a more substantive response to those emails .

I can also confirm that I am instructed that it is the Council's intention to strenuously resist any application for Judicial Review of the recent decision of the Planning Committee as to the s.73 application under reference 20/0245/S73.

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

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

**Sent:** 04 June 2021 13:05

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

**Subject:** FW: S.73 response

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 01223 457094/07817 730893

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

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

---

**From:** Stephen Reid

**Sent:** 14 May 2021 16:17

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

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

**Subject:** FW: S.73 response

Dear Fews Lane Consortium Limited

I am instructed to email you the attached.

I will make arrangements for a hard copy to be sent in the post to you but please note this will not be until next week.

Stephen Reid

Fews Lane Consortium Limited

Date: 14<sup>th</sup> May 2021

Dear Sirs

**Proposed claim for judicial review in relation to prospective planning permission 20/02453/s73 and 20/05101/FUL**

We write in relation to your pre-action protocol letter dated 30th April 2021 in which you indicate your intention to challenge by way of judicial review the Council's decision to entertain planning applications under ref 20/02453/s73 and 20/05101/FUL

**The Prospective Claimant**

- 1 The Prospective Claimant would be Fews Lane Consortium Limited.

**The Prospective Defendant**

- 2 The Prospective Defendant is South Cambridgeshire District Council.

Correspondence should be addressed to:  
3C Shared Services – The Legal Practice  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

The Solicitor dealing with the conduct of this matter is Stephen Reid.

**Response to the claim**

- 3 The first matter that I would draw to your attention is that the application under reference 20/05101/FUL is now the subject of an appeal (for non-determination) and whilst the Council is waiting to be advised as to the allocation of an Appeal Inspector the Council's position is that this application is no longer within its jurisdiction as Local Planning

Authority and therefore it is intended that this response letter will only address matters in relation to the application under planning reference 20/02453/s73.

4. You will recall that Few's Lane Consortium Limited had previously issued a Pre Action Protocol letter dated 27th July 2020 in relation to the application under 20/02453/s73 and where a response was sent dated 18th August 2020 and therefore in the first part of this response I intend to again address a number of points as set out in that response.
5. In the second part of this response I intend to then seek to address matters which have arisen post 18th August where I believe them to be relevant.
6. However, before moving to the first part of the response there is an initial point that I would like to highlight namely that the Council received an email from Mr Caddoo dated 21st August 2020 in which he asked the Council to accept the 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..."

### FIRST PART

7. Your claim challenges a section 73 application under planning reference 20/02453/s73 (the "s.73 Application") in relation to the grant of planning permission for the erection of 2 dwellings with parking.
8. 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 in full in this letter but they are referred to where appropriate below.
9. While your letter of 30th April 2021 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.
10. 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 Council's advice from Charles Streeton of Counsel on that matter was provided to the Consortium.
11. Turning to the points made at paragraph 10 of your letter dated 27th July 2020, 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...”
12. The basis of the Consortium's proposed claim is an allegation that any decision to grant planning permission for the Development pursuant to the S.73 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.

- 13 In relation to a 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 was 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 S.73 Application not least having regard to the confirmation referred to at paragraph numbered 6 above.

14 **LAW**

**The Statutory Scheme**

14.1 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.

14.2 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.”

14.3 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.

15 **Non-Compliance with the DMOP**

15.1 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.

16 **Article 7 of the 2015 Order**

16.1 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.

16.2 The section of the application form to which the Consortium referred to in the letter of 27th July 2020 reads as follows:

“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).”

17 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.”

18 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**

19 The particular point at issue is the location of any visibility splays required 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.

20 The issue, therefore, is whether planning permission for the Development can be granted pursuant to the S.73 Application, 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:

20.1 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.

- 20.2 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.
- 21 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.
- 22 Applying these principles, Mr Streeten expressed an opinion as set out below (in the case where he was asked to advise) :
- 22.1 *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.*
- 22.2 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.
- 23 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.
- 24 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

25 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 as to extent of the red line boundaries is not the relevant legal test as to whether an application is valid

## **SECOND PART**

- 26 Officers are of the view that the change sought under the s.73 Application makes no material changes to the actual development proposed and the purpose of the new condition is solely to make detailed provision for construction traffic.
- 27 Officers are mindful that an approval of a s.73 application results in a new planning permission and not an amendment of the original. Further, whilst the guidance quoted in paragraph 21 of the Officer’s Report presented to Planning Committee in [January 2021] is correct to limit attention to conditions that are the subject of the application, officers are also mindful of the need to consider whether any material change of policy or other circumstances which might require a re-assessment of other conditions or, indeed, the development as a whole, see *R v Stefanou v Westminster City Council & Ano* [2107] EWHC 908 (Admin) at [90].
- 28 Officers are mindful of the complaints which refer to the inadequacies of the site plan supplied with the original application – but it is submitted it is too late to challenge the validity of the permission pursuant to that original application. Few’s Lane Consortium Limited at least at one stage sought to suggest a plan is required by reference to the article 7(1)(b) – which requires particulars to be included as specified in the application form but as a simple matter of statutory interpretation the Council’s position is that cannot include a plan which is dealt with separately and expressly by (c).
- 29 It follows that officers do not consider it is necessary to request a further plan, as indicated in paragraph 3 of the response dated 18th August 2020 but please note reference to confirmation under paragraph numbered 6 above
- 30 Whilst there has been some debate as to whether pedestrian splays need to be 1.5m x 1.5m or 2m x 2m, it is the Council’s position that 1.5m is the correct figure (see points 14 and 15 and 21.3 of a Cambridgeshire County Council letter dated 12th December 2018 but apparently dealing with the same junction – Few’s Lane and High Street,
- 31 There is a further point namely whether all the land required for such splays is on highway land. There is an email from Jon Finney dated 6th January 2021 in which he confirms that it is all on highway land. This is consistent with earlier comments to the same end, and the later email from Jon Finney on the same date confirms this position even though the relevant land is not shown on the highways register. The land forms part of a grass verge.
- 32 Please correct me if I am wrong but isn’t it the contention of Few’s Lane Consortium Limited that such land should still have been shown as included within the application site by reference to the statutory provision for operational development on highway land. If that is the contention, then it is the Council’s position that any such contention misses

the point as there is no operational development proposed for these visibility splay areas and as it is highway land its use as visibility splays involves no change of use.

- 33 In his letter Mr Streeten dated 20th July 2020 covered this particular point at paragraph 16(c). With respect to subsequent arguments made by Few's Lane Consortium (e.g. as developed at paragraphs 33-34 of your letter of 8th September 2020 ) it is the Council's position that these ignore the distinction between operational development on highway land and change of use.
- 34 Given, as noted above, there is no express requirement for a site location plan (identifying the land to which section 73 application relates ) and the proposed change of one condition does not relate to visibility splays, it is the Council's position that any challenge in relation to the s.73 Application is one which is unlikely to succeed
- 35 Notwithstanding what Few's Lane say as to the apparent stringent terms of section 327A of the 1990 Act, the Court will still have a discretion as to whether or not to quash. Mr Streeten deals with this in his Advice (at paragraph 7), and I would add to the case references made by Mr Streeten reference to the case of Maximus Networks Ltd v SSCLG and Southwark LBC and LH Hammersmith and Fulham [2018] EWHC 1933 (Admin) at [24-26]
- 36 Whilst in paragraph (18) of your letter dated 30th April 2021 you have said as set out below it is the Council's position that when a fresh report is taken to Planning Committee as to the s.73 Application it will address the extent of the red line for the purposes of the s.73 Application and the need for any visibility splays and where they are located if outside of the red line

“(18) However, in this case, the prospective defendant has decided to entertain purported planning applications where that land necessary for visibility splays has been specifically excluded from the application site in contravention of the requirements of the 2015 Order. This effectively prevents a condition for adequate visibility splays from being attached to any permission granted...”

- 37 Officers are satisfied that the Application under reference S/0277/19/FL and the associated committee report considered representations concerning the adequacy of the access to the plot, proposed improvements including the widening of the Few's Lane access, visibility splays and the extent of the red line. Few's Lane Consortium are asked to acknowledge that the permission granted pursuant to that application can no longer be judicially challenged.
- 38 Notwithstanding that the s.73 Application seeks to amend only the Traffic Management Plan, the officer report to be presented to Planning Committee before determination of the S.73 Application will consider the representations of Few's Lane Consortium Limited , the necessity and reasonableness of requiring upgrades to Few's Lane through the S73 Application including the provision of visibility splays.
- 39 Officers of the Council are satisfied that as the local Planning Authority it does have jurisdiction to entertain the S73 Application and for all of the reasons set out or referred to above, the Council will resist any application for judicial review.
- 40 The Council has noted that the Consortium has not indicated if it would prefer to resolve the dispute without the need for legal proceedings or whether 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 is not clear if such advice has been

sought by the Consortium, notwithstanding the Council's invitation and in these circumstances the Council reserves the right to bring to the Court's attention the invitation which was made in such regard . The Council is also mindful that in a conversation on 20<sup>th</sup> April 2021 Mr Fulton said that he had received written "legal advice" and which "legal advice" he said he would share it with Council the same day but a copy of that "legal advice" has never been forthcoming.

- 41 Finally, the Council agrees that the applicant for the S.73 Application , 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@3cshareservices.org](mailto:stephen.reid@3cshareservices.org)

IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

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Exhibit 16  
Email from Daniel Fulton to Stephen Reid  
dated 28.07.2021 @ 8.32pm

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[REDACTED]

---

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

**Sent:** 28 July 2021 20:32

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

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

**Subject:** Re: Further information on decision 20/02453/S73 (Second time of asking)

**Importance:** High

Dear Mr Reid,

Could I please ask for confirmation that you have received this email and a date by which the Council will respond?

In addition, although presently blocked from accessing the planning register, I have been unable to find any other officer's report in which the approach taken in the by the Council's in regards to s. 73 in decision 20/02453/S73 was taken. This decision appears to have been the only instance in which the Council interpreted section 73 in this manner.

If there are other decisions in which section 73 was interpreted in the same manner, could the Council please disclose them?

Could you also please clarify why the Council chose to interpret section 73 in the manner it did in this application when it has apparently not done so in other similar recent applications?

Did the Council take into consideration other recent decisions issued under section 73 or consider whether its approach was consistent?

If the Council has not fully clarified these matters and provided the requested disclosure by the date of its acknowledgment of service, appropriate urgent applications will be filed with the court.

The Consortium will not allow the Council to deny the Consortium a fair opportunity to obtain permission on the basis of the papers by withholding information and documents about its decision making 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 21 Jul 2021, at 9:08am, Daniel Fulton <[dgf@fewslane.co.uk](mailto:dgf@fewslane.co.uk)> wrote:

Dear Mr Reid,

I am writing to again request clarification on aspects of the Council's reasoning in regards to planning decision 20/02453/S73. This the second time of asking.

I have rephrased these questions to try to make them as direct as possible.

Paragraph 13 of the officer's report states that: "The pedestrian visibility splays available accord with the minimum recommendation of a 1.5m splay which is understood to be derived from a previous version of The Design Manual for Road[s] and Bridges".

- Why did the Council decide to use the Design Manual for Roads and Bridges in the planning assessment of the junction of Fews Lane and High Street?
- Can the Council identify any other instances in the past one year or past five years in which the Council used the Design Manual for Roads and Bridges in the planning assessment of a residential access road within the district?
- If there are any such instances, could the Council please provide application reference numbers for those applications?

Thank you very much for your assistance.

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IN THE HIGH COURT OF JUSTICE

Claim No.CO/2372/2021

QUEEN'S BENCH DIVISION  
PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
(on the application of FEWS LANE CONSORTIUM LTD) Claimant

and

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** Defendant

and

**LANDBROOK HOMES LTD** Interested Party

---

Exhibit 17  
Email from Daniel Fulton to Stephen Reid  
dated 01.08.2021 @ 3.57pm

---

[REDACTED]

[REDACTED]

**Stephen Reid**

Senior Planning Lawyer

3C Shared Services – Legal Practice



Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA**

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

---

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

**Sent:** 01 August 2021 15:57

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

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

**Subject:** Re: Further information on decision 20/02453/S73 (Second time of asking)

Dear Mr Reid,

The Fews Lane Consortium has been waiting patiently for the Council to provide information concerning its decision making process on application 20/02453/S73 and requested disclosure since the pre-action phase of claim CO/2372/2021.

Could you please confirm if it is the council's intention to file and serve its acknowledgment of service without providing the outstanding requested information and the outstanding requested disclosure?

I will also note that the Fews Lane Consortium has been unable to search for related decision in the public planning register due to the Council's installation of software that blocks certain users from access the planning register. This has had the effect of precluding the Consortium from being able to consider certain grounds in regards to consistency of decision making. This otherwise would have been possible if not for the Council's continuing breach of its obligations under article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

If the Council requires more time to respond to the requests for information and disclosure and

prepare its acknowledgment of service, the Fews Lane Consortium would be agreeable to an application for a reasonable extension of time for the Council.

If the Council does not wish to apply for an extension of time for the acknowledgment of service, the Consortium anticipates that there will be a need for a number of contentious applications in regards to requests for further information and disclosure. This is likely to significantly increase the overall costs of the proceedings.

The Consortium considers that the Council has only remote prospects of success in this claim, and those prospects are likely to be further diminished once all the facts of the claim are on the table. In light of these circumstances, we hope that the Council will give thoughtful consideration to agreeing to quash the impugned decision by consent before further legal costs are incurred.

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 29 Jul 2021, at 1:32pm, Stephen Reid <[Stephen.Reid@3csharedservices.org](mailto:Stephen.Reid@3csharedservices.org)> wrote:

**Dear Fews Lane Consortium Limited**

I acknowledge receipt of your email sent at 20:32 yesterday.

At this stage I am not able to give you a date by which the Council will respond.

When I receive instructions as to your email it would be my intention to respond further.

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

<image001.png>

Telephone: 01223 457094/07817 730893

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

**Main Office Address: South Cambridgeshire Hall, Cambourne Business Park,  
Cambourne, Cambridge, CB23 6EA**

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

---

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

**Sent:** 28 July 2021 20:32

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

**Cc:** Sharon Brown <[Sharon.Brown@greatercambridgeplanning.org](mailto:Sharon.Brown@greatercambridgeplanning.org)>; Stephen Kelly  
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**Importance:** High

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**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Friday 19<sup>th</sup> December 2014

**Before :**

**MR JUSTICE HOLGATE**

-----  
**Between :**

<b>The Queen on the application of Luton Borough Council</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>Central Bedfordshire Council</b>	<b><u>Defendant</u></b>
<b>Houghton Regis Development Consortium</b>	<b><u>Interested Party</u></b>

(Transcript of the Handed Down Judgment of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400, Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

**Peter Village QC and Andrew Tabachnik** (instructed by **Winckworth Sherwood LLP**) for  
the **Claimant**

**Saira Kabir Sheikh QC** (instructed by **Central Bedfordshire Council**) for the **Defendant**  
**Robin Purchas QC and Hugh Richards** (instructed by **King and Wood Malletsons LLP**) for  
the **Interested Party**

Hearing dates: 2, 3 and 4 December 2014

**Judgment**  
**As Approved by the Court**

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**Mr Justice Holgate:**

1. On 2 June 2014 Central Bedfordshire Council (“CBC”) granted planning permission to the Houghton Regis Development Consortium, the First Interested Party for a substantial urban extension on 262 hectares of Green Belt land on the Houghton Regis North Site 1 (“HRN1”). The second to fifth interested parties are members of the consortium. In this judgment I will refer to the interested parties collectively as the “IP”.
2. The permission was granted in outline, with details of access, appearance, landscape, layout and scale reserved for subsequent approval. The outline consent authorises a large scale development which includes up to 5,150 dwellings and up to 202,500 sq m gross of development in the classes A1 to A3 (retail), A4 (public house), A5 (take away), B1, B2, B8 (offices, industrial and storage and distribution), C1 (Hotel), C2 (care home), D1 and D2 (community and leisure) and other uses. According to the schedule of development parameters, the scheme includes (in addition to 25,000 sq m of B2 and 125,000 sq m of B8) up to:-
  - 5000 sq m of B1 offices
  - 10,000 sq m for a main food store, 2,500 sq m of food retail, 12,500 sq m of comparison retail and 5,000 sq m of A2 to A5 uses
  - A hotel of 3,000 sq m
  - 40,000 sq m of D1 (non-residential institutions)
  - 5,000 sq m of D2 space (including a cinema of up to 3,000 sq m)
3. The planning permission was accompanied by a section 106 obligation also dated 2 June 2014. Clause 5 and the fourth and ninth schedules imposed an obligation on those interested in the development site to provide a minimum of 10% of the total number of dwellings as “affordable housing dwellings”. But it is common ground that the obligation may require up to 30% of the total number of dwellings to be provided as affordable units, pursuant to a review mechanism based upon the sales figures actually achieved.
4. On 10 July 2014 Luton Borough Council (“LBC”), an adjoining local planning authority, filed a claim for judicial review. Singh J ordered that the application for permission be adjourned to an oral hearing. On 9 September 2014 Supperstone J gave directions for the application to be dealt with at a rolled up hearing, which took place before me on 2 to 4 December 2014.
5. CBC’s decision is of great importance to LBC. The Luton/Dunstable/Houghton Regis “conurbation” has been surrounded by a tight Green Belt boundary since 1980, which has constrained peripheral expansion. LBC is unable to find land within its own administrative area to meet all of its housing needs, a significant proportion of which is for affordable dwellings. LBC has therefore been co-operating with neighbouring authorities, including CBC, in order that some of its needs is met within other areas. Approximately 80% of LBC’s administrative boundary is shared with CBC on its northern, western and southern sides.

6. Although the grounds of challenge ranged over a number of subjects, Mr Peter Village QC, who appeared on behalf of LBC, confirmed that his client would not have challenged the permission, if it had secured a higher minimum level of affordable housing acceptable to that authority. In this context I also note that any earlier objections to LBC's standing were not pursued at the hearing.

### **Protective Costs Order**

7. In the Claim Form LBC sought to rely upon the Aarhus Convention, the protective costs regime in Section VII of CPR 45 and the related costs limits in the Practice Direction. In its Acknowledgement of Service CBC disputed that the Convention applied to this claim. This issue was to have been dealt with in the hearing before me. Shortly beforehand, the decision of the Court of Appeal in Secretary of State for Communities and Local Government ("SCLG") and Venn [2014] EWCA Civ 1539 was handed down. As a result, Ms. Saira Kabir Sheikh QC, who appeared on behalf of CBC, accepted that most of the grounds raised by LBC fell within the scope of environmental matters. But there remained an issue as to whether the Convention or CPR 45.44 provides protection to planning authorities in the position of LBC.
8. However, on the second day of the hearing the LBC and CBC resolved this difference by agreeing that an order should be made imposing a cap of £0 on their respective costs. I will reflect that agreement in the formal order of the Court.
9. It is essential to consider the grounds of challenge in context and so I will first summarise matters under the following headings before going on to deal with the 10 grounds broadly in the sequence in which they were argued. The cross-references are to the relevant sections of this judgment:-
  - Evolution of planning policy (paras. 10-35)
  - The 2012 planning application for HRN1 (para. 36)
  - The A5/M1 link road and the Woodside link road (paras. 37-40)
  - Overview of the 10 grounds of challenge (para. 41)
  - LBC's representations to CBC on Houghton Regis North (paras. 42-64)
  - The Officers' Reports on the planning application (paras. 66-89)
  - Legal principles for reviewing decisions taken by a local planning authority (paras. 90-98)
  - Ground 1 (paras. 100-111)
  - Ground 4 (paras. 112-119)
  - Ground 3 (paras. 120-136)
  - Ground 5 (paras. 137-140)
  - Ground 2 (paras. 141-161)

- Ground 6 (paras. 162-163)
- Ground 8 (paras. 164-169)
- Ground 7 (paras. 170-196)
- Ground 9 (paras. 197-207)
- Ground 10 (paras. 208-210)

**Evolution of planning policy**

10. In 1980 the HRN1 site was included in the Green Belt upon the approval by the Secretary of State of the Bedfordshire County Structure Plan.
11. The Bedfordshire and Luton Strategic Housing Market Assessment (“SHMA”) published in March 2010 assessed housing market needs for the period 2001–2021. It assessed the position in both Luton Borough and the southern part of Central Bedfordshire together and indicated that 7,700 social rented housing and 3,200 intermediate affordable housing units would be required out of a total of 21,600 dwellings.
12. The 2010 SHMA was updated in a document issued in June 2014 so as to cover the period 2011–2031. This was prepared in the context of the duty on both authorities to cooperate, imposed by S33A of the Planning and Compulsory Purchase Act 2004 (which had been inserted by the Localism Act 2011 – “the duty to cooperate”). Paragraph 32 explained that the authorities would focus the overall assessment of housing need upon the whole of their respective administrative areas. In summary, Luton Borough was assessed as having an overall housing requirement over the period 2011-2031 of 17,800 units, of which about 28.4% would need to be affordable dwellings. For Central Bedfordshire the SHMA stated that 25,600 dwellings should be provided over the period, of which 34.8% should be affordable dwellings. In addition, the Claimant states that the capacity assessments it has carried out for its own area show that only about 6000 new homes can be provided within Luton in the period to 2031, therefore leaving a very substantial proportion to be accommodated outside LBC’s area.

*Regional Planning Guidance for the South East (RPG 9) - 2001*

13. In tracing the evolution of planning policies, it is necessary to go back to March 2001 when the Regional Planning Guidance for the South East (“RPG9”) was issued. As paragraph 8 of the Claimant’s skeleton states, at that stage HRN1 lay within a broader area described as a Priority Area for Economic Regeneration (“PAER”). Paragraphs 4.15 to 4.17 of the document explained why the PAERs were needed. The criteria for designation included above average unemployment rates, high levels of social deprivation, low skill levels, dependence on declining industries and derelict urban fabric. Dedicated *regeneration* strategies were said to be needed in order to tackle the problems of each PAER and to maximise the contribution of each area to the social and economic wellbeing of the region. In the list of PAERs there was included Luton Dunstable and Houghton Regis.

14. As regards Green Belts, paragraph 6.5 stated the Government's then view that there was not a *general* case for reviewing existing Green Belt boundaries, but added that where settlements are tightly constrained by the Green Belt, then local circumstances might indicate the need for a review after carrying out urban capacity studies.
15. Paragraphs 12.35 to 12.41 of RPG9 dealt specifically with Luton, Dunstable and Houghton Regis. Even at that stage it was recognised that although the area had good north south strategic routes, "east-west communications are poor and would benefit from enhancement" and "there is also severe congestion on the local road network". Paragraph 12.38 pointed out the problems caused by the area's dependence on its former manufacturing base and the need for major economic restructuring and regeneration in order to diversify the employment base. Paragraph 12.40 pointed out that the towns are amongst the most densely populated outside Greater London and are tightly constrained by the Green Belt. Paragraph 12.41 required joint working to (inter alia) develop complimentary strategies through development plans which, in particular, would encourage development proposals and land uses contributing to economic restructuring and sustainable urban regeneration.

*South Bedfordshire Local Plan Review - 2004*

16. On the 27<sup>th</sup> January 2004 CBC adopted the South Bedfordshire Local Plan Review (2004). Policies GB1 and GB2 applied traditional Green Belt restraint policies to the designated Green Belt, including HRN1.

*Milton Keynes and South Midlands Sub-Regional Strategy - 2005*

17. The approach set out in RPG9 was taken further in Milton Keynes and South Midlands Sub-Regional Strategy published in March 2005 ("the Sub-Regional Strategy"). This strategy was based upon a prior study which had assessed four options for distributing growth across the area. The study preferred an option which included the focussing growth on the Luton-Dunstable-Houghton Regis area. The sub-regional strategy's objectives included a major increase in the number of new homes in the sub-region, meeting the need for affordable housing and a range of types and sizes of market housing, together with *a commensurate level of economic growth* and developing skills in the work force (paragraph 14).
18. For Luton, Dunstable and Houghton Regis the emphasis was to be on building the principal growth towns into vibrant communities with a major improvement in the local economy and skills base and capacity to meet housing need (paragraph 15). This was to be achieved through economic regeneration across the urban area. In addition the area or town known as Leighton Linlade was identified in order to provide a proportion of the growth attributable to this part of the conurbation in a complimentary manner.
19. Paragraph 79 et seq dealt with issues specific to Luton, Dunstable and Houghton Regis, pointing out that this area had coalesced into a single conurbation forming the largest urban area in Bedfordshire. Paragraph 81 referred to the substantial problems in the area regarding unemployment and the skills base with the consequent need to concentrate efforts on the continued regeneration of the economy, to achieve (inter alia) "urban renaissance". Paragraph 82 made the important statement that "while some of these aims can be met within the present confines of the urban area, others

cannot. The Green Belt forms a tight boundary all around the towns so that, in recent years, it has become increasingly difficult to meet locally-generated needs, especially for the housing of the relatively young population. Development has been diverting north of the Green Belt to other parts of Bedfordshire and beyond, sometimes to locations less inherently sustainable than Luton/Dunstable/Houghton Regis.” The Sub-Regional Strategy stated that although it would be essential to release development capacity within the towns, nonetheless that would be substantially less than was necessary even to meet local needs, quite apart from securing additional regeneration and investment. Consequently, paragraph 83 stated that “these exceptional circumstances require a review of the Green Belt around Luton/Dunstable/Houghton Regis to provide headroom for potential development needs to 2031 and specifically to accommodate sustainable mixed-use urban extensions which support the continued regeneration of the existing urban area.”

20. Policy 2(a) stated “the LDD should review Green Belt boundaries around the Luton/Dunstable/Houghton Regis conurbation and Leighton Linlade so that in combination sufficient land is made available the land use needs of the Sub-Regional Strategy to 2021. Subject to testing through LDDs, sufficient areas of safeguarded reserved land should also be excluded from the Green Belt to meet needs to 2031. In the case of Luton, Dunstable and Houghton Regis, the review *should focus on two areas of search* which would exclude the Chilterns AONB: *from west of Dunstable to the A6 in the north...*” (emphasis added). It is common ground that the HRN1 site, although not specifically identified or allocated in the Sub-Regional Strategy (which was not of course a site-specific document), nonetheless falls within that area of search.

*East Of England Plan - 2008*

21. In May 2008 the East of England Plan was published. In all material respects it incorporated and retained the relevant provisions of the Sub-Regional Strategy to which I have just referred.

*Revocation of Regional and Sub-Regional Plans - 2013*

22. On 3 January 2013 the East of England Plan and the Sub-Regional Strategy were revoked by the Secretary of State, as part of the revocation of regional plans generally, pursuant to powers conferred by the Localism Act 2011.

*The Luton and South Central Bedfordshire Joint Core Strategy – 2011*

23. In March 2011 the draft Luton and Southern Central Bedfordshire Joint Core Strategy (“Joint Core Strategy”) was submitted by LBC and CBC acting jointly to the Secretary of State for independent examination by an Inspector. The extracts from that document contained in the Core Bundle are from the pre-Submission version of the plan, but I am told that there were no material differences for the purposes of this case between that version of the plan and the subsequent Submission edition.
24. Paragraph 3.13 stated that in addition to new development opportunities within the urban areas, four urban extensions would be delivered in order to meet the quantity

and rate of new housing, employment and infrastructure required. Two of those urban extensions were to be located to the north of the main conurbation, namely North of Houghton Regis and secondly North of Luton (para. 3.14). Two other extensions were proposed, including one to the east of Leighton Linlade. I am told that the whole of each of these extensions was located with the Green Belt and the area of CBC. They were said to have the potential to deliver 13,500 new homes (para. 3.29) distributed as follows: 2,500 homes at east of Leighton Linlade, 4,000 at North of Luton and 7,000 at North of Houghton Regis. Paragraph 3.30 explained that that would provide a potential oversupply of about 4,050 homes in relation to a plan period ending in 2026, but might nonetheless be released by then under a contingency plan.

25. Chapter 10 of the Joint Core Strategy dealt with the strategic site specific allocations. Paragraph 10.19 explained that for the 15 years covered by the plan period 2011-2026, North of Houghton Regis had been identified as a suitable site for the provision of 5,150 new homes, 30 hectares of new employment opportunities and associated infrastructure, plus a contingency of 1,850 additional homes and a further 10 hectares of employment land if required by future needs.
26. North Houghton Regis was proposed to be allocated as a Strategic Site Specific Allocation (“SSSA”), lying between the M1 and the A5. It was to be delivered as two sites (para. 10.20). Site 1 (in effect HRN1), the eastern part of the allocation, extended from the M1 on its eastern boundary to the A5120 on its western flank. Site 2, intended to be developed at a later stage, was bounded by the A5120 to the east and the A5 to the west. “The proposed A5-M1 link road provides the northern boundary for both sites and the Green Belt boundary will be revised to align with this.” Paragraph 10.21 made it plain that the existing urban area lying to the south of the allocation would form its southern boundary and that the Green Belt would be altered in this area so as to remove land lying within the allocated area. It added “the contingency there has been included within the area will remove the need for a further review should more development be required within or beyond the period to 2026.” The two sites would be “fully integrated with each other as well as with the urban area of Houghton Regis so as to provide truly sustainable development” (paragraph 10.22).
27. Policy CS 14 dealt specifically with the HRN1 site. It identified the area of the site and the proposal to revise the Green Belt boundaries so as to exclude from the Green Belt land up to the alignment of the A5-M1 link road. The Policy required a master plan to be prepared providing (inter alia) a mix of uses necessary to achieve a sustainable community including housing, employment land and supporting social, community and green infrastructure.
28. The Joint Core Strategy got as far as the examination stage in front of an independent inspector. But in September 2011 LBC withdrew its support from the plan and it was subsequently abandoned. However, it is important to note from paragraph 3.10(2) of the Officer’s Report to CBC’s Development Management Committee meeting held on 28 August 2013 in relation to the HRN1 planning application that “the abandoned Joint Core Strategy was *not abandoned due to any disagreement between the joint councils regarding this site. Its intended removal from the Green Belt and its allocation for residential and commercial development was supported by both councils at the Joint Planning Committee*” (emphasis added). Mr Village QC confirmed that LBC accepts the accuracy of that statement.

29. In January 2013 the pre-submission Central Bedfordshire Development Strategy (“DS”) was published. Policy 2 states that the DS plans for the delivery of a total of 28,700 new homes and 27,000 new jobs between 2011-2031. The policy envisages that some of that development will be located at North of Houghton Regis. Policy 3 proposes revisions to the Green Belt boundary so as to exclude urban extensions such as HRN. Chapter 13 of the plan deals with site specific policies.
30. Paragraphs 13.1 to 13.31 relate to the Houghton Regis North Strategic Allocation. Paragraph 13.2 indicates that a total of around 7,000 new homes can be accommodated in total: 5,500 homes on site 1 and 1,500 on site 2. About 40 hectares of employment land is provided for: 32 hectares on site 1 and 8 hectares on site 2. Much of the text in paragraph 13.3 and elsewhere is similar to the draft Joint Core Strategy referred to above.
31. Policy 60 of the draft DS deals specifically with the Houghton Regis North Strategic Allocation. The court was told that the area covered by that allocation corresponds to the area of the proposed allocation in the former Joint Core Strategy.
32. I will refer only to that part of policy 60 which concerns site 1. That site again is located between the A5120 and the M1. The Policy provides for a mix of uses necessary to achieve a sustainable community, including about 5,500 private and affordable homes, 32 hectares of new employment land, commercial facilities including local centres, retail units, a food store and a public house and other related facilities. The Policy also states that Site 1 will provide opportunities to assist in “the regeneration of Houghton Regis through the timely delivery of supporting infrastructure...”. Policy 60 ends by stating that the Green Belt boundary will follow the alignment of the A5-M1 link road. The Infrastructure Schedule, referred to in paragraph 13.13, identified the new Junction 11A on the M1, the A5-M1 link and the Woodside Link as “critical”
33. The DS was accompanied by a Sustainability Appraisal (“SA”). Chapter 4 of the SA explains the strategic site assessment process. The SA set out the criteria which had been employed and the range of alternative sites considered. A total of 42 sites were taken forward for more detailed examination (para. 4.6). The last paragraph 4.17 on page 90 stated that a “further factor” was the relationship between development and infrastructure, including situations “where development can be used to bring about new, or improvements to existing, infrastructure. A number of the mixed use strategic sites are all of a size and in a location that can enable infrastructure improvements to be brought about that will benefit existing residents as well as the new development. *This is particularly the case for the land North of Houghton Regis proposal, which is facilitating the development of the A5/M1 link road and the Woodside connection. These pieces of new strategic infrastructure are critical to the future success of Dunstable and Houghton Regis and the fact that the development site will help their delivery weighs significantly in favour of the proposal*” (emphasis added).
34. Paragraph 20 of the Claimant’s skeleton refers to the inclusion of HRN1 in Table 6 of the SA as Site 18. It is submitted that two other sites are of particular note for the purposes of these proceedings, namely Site 8 - West of Luton and Site 27 - Marston Vale. However during the hearing, Mr Village QC confirmed that Site 27 is located

to the east of Milton Keynes and, taking into account the SA's assessment of its relationship to the housing needs covered by the plan, was of no real relevance to addressing LBC's housing requirements. As for Site 8, Table 6 noted that this site scored badly (and indeed worse than site 18) as regards Green Belt and coalescence issues. Not surprisingly, that aspect was not taken any further during the hearing.

35. Paragraph 21 of the Claimant's skeleton went on to complain that CBC had failed to comply with its duty to cooperate with LBC, under Section 33A of the 2004 Act, in relation to cross-boundary housing matters. However, Mr Village QC confirmed on behalf of LBC that the Court is not being asked to decide in these proceedings whether the duty to cooperate has been complied with. He stated that that would be a matter for future consideration by the Inspector conducting the independent examination into the draft DS. The highest that Mr Village put this aspect was that LBC's allegations concerning non-compliance with the duty should have been taken into account by CBC when assessing the weight to be given to the emerging draft DS.

### **The 2012 Planning Application for HRN1**

36. On 24 December 2012 the HRN1 Planning Application was submitted to CBC. It was accompanied by an Environmental Statement ("ES"). The Non-Technical Summary of that ES expressly stated that the Applicant had made no assessment of any alternatives to development at HRN1 (para. 4.1). The Application was also accompanied by a Retail Assessment ("RA"). CBC commissioned an independent review of that Assessment by a specialist firm of consultants, Turley Associates ("Turleys"). The Applicant also provided a viability assessment, with a view to justifying the amount of affordable housing which could be contributed by the scheme, having regard to development and infrastructure costs. That viability appraisal was subjected to an independent review by the consultants EC Harris, instructed on behalf of CBC. Ground 7 complains about CBC's failure to make that material available to the Claimant so as to enable it to make representations thereon.

### **The A5-M1 link road and the Woodside link road**

37. As long ago as 2001 the poor east-west communications from which the conurbation suffers had already been recognised (see para. 12.36 of RPG9). The point was taken up again in 2005 in paragraph 86 of the Sub-Regional Strategy which stated that positive action across the conurbation by Local Authorities and others is required on a number of short and medium term priorities. It made clear that the initial focus would be on such matters as ensuring the early delivery of sustainable urban extensions to complement and support the continued regeneration of existing urban areas, mainly but not exclusively, after completion of the M1 widening and the northern bypasses.
38. One of the functions of the A5-M1 link road is to serve as a northern bypass of the conurbation. The road also serves nationally and regionally important functions. Its total cost is of the order of £172 million. The Government is willing to contribute £127 million of the total cost of the scheme. However, as recorded on page 11 of the August 2013 OR, the Secretary of State for Transport had indicated his intention to approve the road should planning permission be granted for HRN1 on the basis that that site would contribute £45 million. According to the assessment by CBC, the link road would serve no purpose at all and in particular could not facilitate the HRN1 development unless constructed in its entirety; the link road cannot be delivered

without funding from the HRN1 development; and the HRN1 scheme cannot be fully developed unless the link road is in place (see for example the Officer's report to CBC's Committee meeting on 4 September 2013 – the September 2013 OR). The developers' contribution of £45 million has been secured by an agreement with the Secretary of State under Section 278 of the Highways Act 1980 dated 16 September 2011 (see paragraph 6.4 of the third witness statement of Mr Moriarty). Mr Village made it clear on behalf of the Claimant that no legal challenge is made to the legal propriety of HRN1 having been required to make a contribution to the costs of the link road on that scale.

39. The Woodside link road is intended to provide a new route between the improved Junction 11a on the M1 forming part of the A5-M1 link road scheme and the Woodside industrial estate. The object of this second link is to provide traffic from the estate with an attractive alternative route in order to gain access to the national motorway network and avoid congestion, for example, in the centre of Dunstable. The cost of the Woodside link is something of the order of £42 million. The IP will provide necessary land at no cost, but make no direct financial contribution (see para. 7.1 of Mr Moriarty's third witness statement).
40. All parties have thought it appropriate to refer to the decision of the Secretary of State for Transport dated 30 September 2014 (and therefore postdating the decision the subject of the present challenge) in which the Minister made a Development Consent Order to enable the Woodside link road to be carried out. In paragraph 34 of his decision the Secretary of State accepted that there is a compelling case in the public interest for authorising the construction of the road. In part that was based upon his conclusions in paragraph 24, where he accepted (a) that the link would make economic sense by providing a greatly improved connection between the industrial estate and the motorway network, (b) the Woodside link is critical to the successful delivery of the HRN1 development and (c) in turn that development would make a significant financial contribution to the cost of the A5-M1 link road. Paragraph 11 of the decision records that LBC supported the Woodside link road on the basis that its social and economic benefits outweighed any negative environmental impacts.

### **An overview of the Grounds of Challenge**

41. Mr Village QC helpfully grouped the 10 Grounds of Challenge under five headings. He described the first heading as misdirections which comprised:
  - i) Ground 1 – failure on the part of CBC to take into account paragraph 83 of the National Planning Policy Framework (“NPPF”) to the effect that Green Belt boundaries should only be altered in exceptional circumstances and through the preparation or review of a local plan;
  - ii) Ground 3 – CBC erred in attributing “substantial weight” to its emerging DS;
  - iii) Ground 4 – the Officer's Report to the Committee materially misstated the treatment of the HRN1 site in previous planning policy documents;
  - iv) Ground 5 – the Officer's Report improperly treated the allocation of the HRN1 site in the DS as in effect inevitable.

The second heading concerns Ground 2 and involves an allegation that CBC wrongly failed to assess alternative sites or strategies. The third heading comprises Grounds 6 and 8 which allege legal errors in the identification of “very special circumstances” in order to override Green Belt protection. The fourth heading concerns Ground 7, an allegation that CBC failed to disclose the IP’s viability assessment and the appraisal of it by CBC’s consultant. The fifth heading covers Grounds 9 and 10 and the alleged legal errors with regard to the application of the sequential test in paragraph 24 of the NPPF.

### **Representations by LBC to CBC on Houghton Regis North**

42. I have already recorded the common ground in these proceedings that when the draft Joint Core Strategy was abandoned owing to disagreement between the two Local Authorities, LBC did not withdraw from the process because of any disagreement over the proposed allocation of the HRN1 Site.
43. About a year after the withdrawal from the Joint Core Strategy, CBC published on 20 June 2012 their draft development strategy for Central Bedfordshire for consultation. On 10 September 2012 the Head of Planning and Transportation at LBC produced a report for its Executive setting out that Council’s Consultation Response to that draft. It stated that Luton is “likely to face an unmet need of between 5,000 to 12,000 dwellings over the next 20 years (given its estimated overall capacity within Luton of approximately 6,000 during that period)” (Summary of Comments III). LBC, recognising that the draft strategy proposed the same three urban extensions as had been previously advanced in the withdrawn Joint Core Strategy, stated that it “supports the proposed scale of urban extensions but seeks clarification of the proposed housing mix, size and tenure, and how this will address housing needs across the housing market areas...” (Summary of Comments IV).
44. LBC then added that it “urges consideration be given to looking at all possibilities for *extra growth* near to Luton, including to the west, in order to help address Luton’s housing need” (Summary of Comments V – emphasis added). I cannot accept LBC’s submission that this paragraph raised the possibility of an *alternative* location for growth as opposed to an *additional* location for growth, additional to the urban extensions proposed in the draft strategy (as CBC submitted). There can be no doubt about the matter, given the unequivocal statement in paragraph 15 that “in addition to the proposed urban extensions contained within the Development Strategy, Luton Borough Council urges that consideration be given to looking at all possibilities for extra growth near to Luton, including to the west, in order to help address Luton’s housing need.”
45. Moreover in a concluding paragraph 26, LBC stated “there is much in the proposed draft strategy to be welcomed...of critical importance will be the phasing and delivery of planned urban extensions with supporting strategic infrastructure (A5-M1 link; Junction 11a; Woodside link;...)”. Paragraph 8 plainly stated that “these urban extensions are to be delivered by broadly the same strategic infrastructure investment envisaged by the withdrawn Core Strategy”, i.e. the road links to which I have already referred.
46. On 7 December 2012 LBC sent a further letter to CBC enclosing the same consultation response of September that year. LBC alleged that CBC had failed to

address specific issues raised by LBC, leading to a suggestion for the first time that CBC might no longer be able to demonstrate the exceptional circumstances required to justify removing land from the Green Belt.

47. Following the submission of the HRN1 planning application to CBC on 24 December 2012, meetings took place between officers of LBC and CBC in February and March 2013 at which that application was discussed. In his witness statement Mr Trevor Holden, the Chief Executive of LBC, states that he was present at meetings that took place on 6 February and 20 March 2013. He says that LBC's concerns regarding cross-border housing provision and the HRN1 application were discussed at those meetings. LBC stated that it would require affordable housing to be delivered on the HRN1 site. CBC responded that there were viability issues within that proposal which would lead to a reduction in the amount of affordable housing that could be provided. Mr Holden states that "I recall at both meetings that I and LBC officers asked that LBC be provided with the viability evidence to support any reduced affordable housing provision on the HRN1 applications site." He does not suggest that CBC agreed to that request in those terms. Mr Christopher Pagdin, Head of Planning and Transportation at LBC, was also present at those two meetings. He states that LBC asked to "be involved in the viability appraisal work."
48. On 12 February 2013 Mr Pagdin sent a letter to CBC stating that a "key issue raised at the Leaders/Chief Executives meeting on 6 February was whether Luton residents would have equal access to any affordable housing brought forward as part of any development in close proximity to Luton, including the Houghton Regis and the North of Luton Urban Extensions." There was no suggestion in that letter that LBC had requested sight of a detailed viability appraisal or had been promised access to such material.
49. Following the meeting, on 28 March 2013 CBC sent a letter to Mr Pagdin which referred expressly to the meeting which had taken place on 20 March. Attached to the letter was the "Areas of Agreement" between the two authorities. The second topic was headed "Access to Affordable Rent Housing". Under point 1 it was agreed that CBC would provide the opportunity for Luton residents to access up to 50% of affordable rent housing provided on the two strategic allocations planned for HRN and land North of Luton.
50. The only agreement in relation to viability material upon which LBC relies is point 5 under the same heading, which stated:

"CBC officers will arrange for LBC officers to be involved at key points in the viability appraisal work and subsequently to meet with the developers of the north of Houghton Regis strategic allocation, to discuss key issues including the opportunities to improve delivery of affordable housing on that site."
51. On 15 April 2013 a report was prepared by officers of LBC for the Council's Executive to provide its formal response to CBC's pre-submission DS and also to the planning application on HRN1. Paragraph iii of the Summary of Comments set out Luton's main concern. The Council wanted to ensure that the significant amount of development to be located close to the conurbation should be sustainable. That was

said to be necessary for several reasons. “Firstly it needs to address the social needs for affordable housing within the conurbation as a whole as set out in the jointly commissioned Strategic Housing Market Assessment. Secondly it is needed in order to demonstrate under the duty to cooperate how this development will help to address the principle element of unmet need within Luton i.e. that of affordable housing. Thirdly unless these developments address the wider needs of the conurbation including affordable housing it is considered that it will not meet the criteria for removal from the Green Belt.”

52. To help put the matter into context, paragraph 11 of the Report recorded that over the planned period 2011-2031 it was likely that Luton would have a potential unmet housing need of around 4800 dwellings, and so a large proportion of that need should be met within CBC’s area. LBC were also seeking contributions from other neighbouring planning authorities.
53. Paragraph v of the Summary expressed LBC’s concerns as to the quantum of both convenience and comparison floor space proposed within the HRN1 application and suggested that it was significantly larger than would be appropriate for a development of this scale. The concern related to the potential for adverse economic impact upon nearby town centres.
54. In paragraph iv of the Summary LBC repeated the suggestion made in September and December 2012 that CBC consider accommodating *additional* growth to the west of Luton, but there is nothing in the text to indicate that LBC was now suggesting that this should be in *substitution* for HRN.
55. Paragraph viii of the Summary set out LBC’s stance. It objected to the HRN1 application unless three requirements were satisfactorily met, the second of which is no longer relevant in these proceedings. The other requirements were (a) “ongoing negotiations over access to up to 50% of affordable housing delivered in the urban extensions of Houghton Regis and North of Luton are successful and delivering a significant quantum of affordable housing for Luton’s residents” and (c) “the quantum of retail floor space to be catered within the Houghton Regis urban extension is significantly reduced.”
56. On 10 June 2013 LBC wrote to CBC stating:-

“I think we have made considerable progress in relation to a range of issues covering for instance affordable housing and transport issues and I understand we are waiting further viability work in relation to Houghton Regis (HR1) application before the discussions around affordable housing will continue.”
57. As CBC and IP pointed out, no concern was expressed by LBC at that stage about any failure by CBC to comply with any alleged promise to provide a viability appraisal.
58. On 15 August 2013 CBC wrote to Councillor Timoney, the Portfolio Holder for Regeneration and the Deputy Leader of LBC. The author referred to a meeting earlier that week on 11 August and sought to confirm the issues that had been discussed and

how the two authorities might continue to move forward. The summary of the main issues discussed between the parties included the following:

“We provided you with an update of the scheme [i.e. the HRN1 proposal], an understanding of viability issues you must consider as part of the development and the main points being raised by officers in the report to development management committee on 28 August”.

59. The letter went on to make it plain that the planning application would be considered by the committee on 28 August and that papers for the meeting (i.e. the Officers' Report) would be available on CBC's website as from 14 August. In response to LBC's suggestion that it might make further representations, the letter confirmed that although any such comments would arrive too late to be dealt with in the officers' report, they would be presented to the committee if they arrived with CBC before the meeting. The letter explicitly set out the position on development viability in very clear terms (see ground 7 below).
60. In addition a further meeting had taken place on 5 August to discuss retail matters raised by LBC. The minutes of that meeting reveal that there was discussion of the retail assessment carried out by Barton Willmore, the developer's consultant. Paragraph 6 of the minutes also made it clear that there was an opportunity to discuss the independent report commissioned by CBC from Turleys on the developer's material.
61. Accordingly, from about the middle of August 2013 it was possible for LBC to consider the detailed report from officers which had been prepared for the committee meeting programmed for 28 August. There was ample opportunity for LBC to raise with CBC any matters about which it was concerned, including any lack of information or failure to take into account significant planning considerations.
62. A letter was indeed sent on behalf of LBC on 27 August, the day before CBC's committee meeting. It is noteworthy that the letter was drafted with the benefit of Counsel's advice. In summary, the letter referred back to the points put to CBC in LBC's April 2013 representations and then went on to set out LBC's "current position". It is reasonable to suppose that this letter would have set out all of those matters which LBC considered to be particularly significant at that stage. In that context I note that at the foot of the second page the author acknowledged that CBC had undertaken "extensive viability assessments and negotiations which had resulted in the HRN1 applicants offering that 10% of the houses can be delivered as affordable within the scheme, along with a potential uplift mechanism in future years should the viability of the scheme improve."
63. Despite the fact that Luton say that the current proceedings have been brought because they consider the amount of affordable housing provided by HRN1 for LBC's area to be inadequate, it is significant that no complaint was raised at all in the letter of 27 August 2013 that CBC had failed to provide LBC with viability information or to comply with the promises it had made in that respect. No explanation has been given for that omission.

64. Under the heading “Current Position” the letter of the 27 August 2013 did make other points. First, the letter stated that the amount of affordable housing which would be made available to LBC by the development was inadequate, secondly the letter argued that the development would be making a disproportionately large contribution towards the costs of the A5-M1 link and went on to suggest that if a lower sum were to be paid then more money would be available for increasing the amount of affordable housing. The letter went on to raise for the first time a prematurity objection. It argued that the proposed development would be of such a scale that the soundness of the proposed allocation in CBC’s draft DS should be determined through the examination in public of that plan so as to avoid prejudicing scrutiny of HRN1 as part of CBC’s wider strategy and the outcome of that process. Not surprisingly, when the committee met on the 28 August they resolved to defer consideration of the application so that they could be advised in more detail about the merits of the objections recently made by LBC. That resulted in the production of September 2013 OR which was considered by the Committee when they reconvened on 4 September 2013.

### **The Officers’ Reports to Committee**

65. It is of course axiomatic that a report of this kind should be read as a whole. The main report was a carefully structured analysis of the issues relevant to the planning application as the officers saw them. It is important to bear in mind when looking at any particular paragraph challenged that it is frequently interrelated with material which either precedes or follows it.
66. In this part of the judgment I will set out some of the key paragraphs in the August 2013 OR. In the General Introduction (page 7) it was stated that:-

“The proposal, and those that will inevitably follow it, will change the physical, social and economic environment for the residents of the conurbation and beyond by providing or being associated with major new road infrastructure, significant amounts of new housing, new employment floorspace, open spaces, community facilities, shopping floorspace and public transportation.

For that reason, it is important that Members consider carefully the process by which it reaches a decision. This report is structured to assist the Committee in reaching a clear and lawful decision, taking into account all of the matters that it must.”

67. There then followed an Executive Summary.

“(ii) There has been a long history of promoting growth of the conurbation at Houghton Regis which originates with the principle of seeking growth points as sought by Government’s Sustainable Communities Plan in 2003, then specifically through the old Regional Spatial Strategy for the east of England, and the Milton Keynes South Midlands Sub Regional Strategy. This latter document of 2005 included the early

recognition that there would be a need to consider the removal of the Green Belt to the north of Houghton Regis and Dunstable for this purpose. This included also the need for a strategic road to link the A5 to the M1 via a new Junction 11a. All subsequent local actions for delivering a local plan, including the publication of local planning documents and associated public consultation have been predicated on this history and has occurred after the publication of the current Development Plan for the area.

...

(iv) ...It is worthy of notice that there have been very few objections to the principle of development.

...

(viii) There are a number of issues arising from the proposals that are key to a commercially viable development as proposed but are also of significant concern to the statutory consultees, Luton Borough Council or Council advisors. These issues are:

- The amount of affordable housing that can be afforded by the development.

...

- The relationship between the development, the A5 – M1 link road and the Woodside link.”

68. There then followed a section entitled “planning context and history” which included the following extracts.

“The application site has been identified as a site with the potential to accommodate sustainable mixed use development for a number of years. Regional Planning Guidance note 9 (2001) identified an area north of Luton/Dunstable/Houghton Regis, including the application site, as an area in which a mixed use urban extension should be brought forward as the most sustainable way of accommodating the bulk of housing development required in this area.”

69. Similarly the officer’s report referred to the sub regional strategy of 2005 “which proposed the *area* as a location for growth ...” (emphasis added).

“The effect of the new RSS and the Milton South Midlands Sub Regional Strategy was to allocate the Houghton Regis Strategic Urban Extension (within which the application is located) for residential, employment and supporting community uses, in an area where the Green Belt was to be rolled back, albeit with the

Local Development Strategy being asked to set the exact boundaries.

Towards that end, a Joint Planning Committee from Luton Borough Council, the former South Bedfordshire District Council and the former Bedfordshire County Council was formally created to deliver 'The Luton and South Bedfordshire Joint Core Strategy'. This document reached Examination Stage in 2011 and included land to the north of Houghton Regis as an urban extension. Following the withdrawal of that document and the dissolving of the Joint Committee for unrelated reasons, the proposal is now included within the Development Strategy for Central Bedfordshire which will be submitted to the Secretary of State in the near future. That Development Strategy includes a specific policy for the allocation of the Houghton Regis SUE and for the removal of Green Belt to accommodate it."

70. The next section of the report summarised in considerable detail representations made by consultees and others on the planning application. CBC's Strategic Planning and Housing Team Leader made a number of pertinent points, including the following:

"The Joint Core Strategy for Luton and Southern Central Bedfordshire was endorsed for development management purposes by Central Bedfordshire Council's Executive in August 2011 and still remains a material consideration. However, given the time that has elapsed since the endorsement and the progress now made on the Development Strategy, more weight should be given to the Development Strategy."

"The circumstances that have led to this planning application being drawn up in advance of the plan-making process are understood. *However, determining a planning application of this scale in advance of the plan-making process being completed should not be done lightly, if the integrity of the plan-led system is to remain. There would need to be significant benefits to the public interest to justify such a decision.*

It is noticeable that there is no groundswell of public opinion against the proposal evident through the consultations on the Development Strategy and, indeed, this has been the case going back 7 or 8 years to previous Joint Committee consultations. *Even objections to this proposal from the development industry have been relatively limited, with new sites being proposed in addition to, rather than instead of, Houghton Regis North.*

The particular circumstances of this site mean it appears highly suitable for development, as set out in the Sustainability Appraisal report for the Development Strategy. Of particular note are the size of the site, its location adjacent to an area of

high housing demand, its ability to deliver key road infrastructure to the benefits of the wider area and the relative lack of constraints. *In my view, it is difficult to envisage a strategy to meet housing needs that does not include, in some form, development of this site. This should be considered in relation to the question of prematurity*” (emphasis added).

71. The report then set out a list of “determining issues”, each of which was treated as a heading under which more detailed advice was given by officers to the Committee. The first subject was “compliance with the adopted development plan for the area”. Paragraph 1.3 set out gave advice which went to the very heart of the issues which the members had to determine:

“1.3 In respect of the Green Belt, policy GB2 confirms that the site lies within the Green Belt where no exception for major development is made. Significant weight should be given to this policy. Therefore the Committee will need to consider whether there are any very special circumstances for development of the site.

[The key issue of principle when considering the planning application is that as the proposed Houghton Regis North SUE allocation has not yet been formally confirmed in an adopted Development Plan, the application site has not yet been removed from the Green Belt. Therefore a key consideration in determining this application is whether the application is premature when read against policy GB2 in advance of the formal adoption of the replacement Development Plan. Then having considered that, whether there are very special circumstances that would support planning permission in advance of the adoption of the Development Strategy. It is a fact that the site lies in the Green Belt and so the planning application represents inappropriate development in the Green Belt. Therefore it should only be permitted if very special circumstances (VSCs) apply. This argument is presented in detail within Section 3 below.]”

72. The second subject was “Compliance with the National Planning Policy Framework”. After referring to the research carried out in the past in order to plan for the economic growth of the area (para.2.3), the report continued:

“2.4 The applicant has highlighted the economic advantages of the proposal within their Planning Statement submitted with the application. They point to the proposal providing 32 hectares of employment land, up to 130,500 sq m of commercial floorspace and additional jobs from retail, schools, leisure and recreation facilities and services. They expect in the region of 2,500 permanent jobs and a further 2,500 temporary construction jobs over the lifetime of the development.

2.5 Central Bedfordshire Council is proactively planning for the development needs for business by ensuring that sufficient land is allocated in the forthcoming Development Strategy for new employment use. This is being allocated on several new employment sites, but includes the express requirement that significant new employment provision is included within the Houghton Regis North proposed Urban Extension. This is balanced by the allocation of sufficient housing to not only reflect the anticipated growth in the area but also to offer new business and employment opportunities. The planning application provides for 32ha of new employment land as part of its proposals and therefore can be considered to comply with emerging Development Plan policy and the NPPF in this respect.

2.6 The significance of the investment that both local government, national government and from the applicants for this planning application are making to the delivery of the A5 to M1 Link Road and Junction 11a is substantial. This infrastructure is crucial to open up opportunities for business investment; not least within Dunstable where it will help to ameliorate the congestion in the town centre. The Woodside Link Road in turn will offer an alternative route for business traffic that is currently hampered by poor connections to the motorway network. Together, the A5-M1 Link Road and the Woodside Link Road, present the opportunity to encourage significant new business investment in the area.”

73. Paragraph 2.9 referred expressly to the advice which CBC had received from the independent retail consultant, Turleys, on the application of retail policy in NPPF. The attention of the members was specifically drawn to the following:

“3. There is concern about the robustness of the applicant’s sequential approach where the applicant has not justified why there is no assessment of the ability of alternative sites to cater for retail provision.”

“4. The council should balance the negative impacts of a retail development that diverts investment against the beneficial impacts of the overall development. Such benefits are a material consideration.”

74. Pages 59-61 of the officer’s report contained a careful assessment of the potential economic impact of the proposed retail floor space within the development. I record that no legal challenge is made to that part of the report.
75. Paragraph 2.18 of the report gave important advice to members. It reminded them that Green Belt policy is a fundamental policy within the NPPF. It pointed out that the proposal was for “inappropriate development” which is by definition harmful to

the Green Belt and should not be approved except in very special circumstances. The policy from the NPPF was quoted:-

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. “Very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

76. The report then directed members that this was the “primary decision” that the Council would need to reach before considering other material considerations and for that reason the issue was dealt with separately in the following section 3 of the report. Paragraph 3.1 of the report stated:

“3.1 The site subject of this planning application lies wholly within the approved Green Belt for the area. The proposed policy of the emerging Development Strategy suggests that the Green Belt in the area to the north of Houghton Regis and south of the proposed new A5-M1 link road is removed to make way for the proposed urban expansion. There is a substantial body of evidence developed through that process which has concluded that it is appropriate to remove the Green Belt designation to allow for the urban expansion within which the application is set. However, this policy is not yet in place. Therefore it falls to the Council to determine whether “very special circumstances” exist for this development to proceed.”

77. Paragraphs 3.2 – 3.7 then analysed the extent to which the proposals would cause specific harm to any of the five purposes of Green Belt designation. In summary, it was concluded that the proposal would not cause harm as regards prevention of coalescence, preservation of special character or the regeneration of urban land. As to checking the unrestricted sprawl of large built up areas, the members were advised that plainly the proposal was of a substantial size, involving the development of 262 hectares. On the other hand “it is not unrestricted in the sense that there is a substantial physical boundary within which it will be clearly contained: i.e. the approved line of the A5-M1 strategic link road. Whilst the Green Belt is harmed by the proposal in this sense, it is recognised that this new road will form a strong physical boundary against further sprawl to the north of Houghton Regis by its nature.” The key element of harm to Green Belt purpose was identified in paragraph 3.5 of the report in the following terms, “the area affected is of a pleasant open rural and rural fringe character though the landscape analysis of the site concludes that the area does differ in quality across the site. However, the proposal by reason of its scale will encroach upon the countryside and will be harmful as a result.” Paragraph 3.8 then stated:

“3.8 On the basis that there will be harm to the Green Belt by reason of the proposal’s impact through extending an urban area into the countryside, then it is necessary to determine what “very special circumstances” may exist that clearly outweighs that harm.”

78. Paragraph 3.9 advised the members on the sort of factors which could be considered to amount to very special circumstances. No criticism is directed to that paragraph. It is relevant to note the following advice which it contained, “the important point to bear in mind is that the substantial benefits must arise from the unique circumstances of the proposal or otherwise it could be repeated too often, to the long term, cumulative harm of the Green Belt.” Paragraph 3.10-3.20 set out in detail the officer’s analysis to whether very special circumstances existed in this case. In particular, paragraph 3.10 stated:

“3.10 The following are considered very special circumstances in favour of the application proposal:

(1) *There is a clear urgent need for development of land in the Green Belt in order to meet immediate housing and economic need for the area identified now and over the next 20 years;*

(2) *Successive emerging Development Plans since 2001 have identified the application site as being suitable for removal from the Green Belt and allocation as a residential-led mixed use development. The abandoned Joint Core Strategy was not abandoned due to any disagreement between the joint Councils regarding this site. Its intended removal from the Green Belt and its allocation for residential and commercial development was supported by both councils at the Joint Planning Committee.*

(3) *The emerging Central Bedfordshire Development Strategy re-affirms the Houghton Regis North allocation for removal from the Green Belt and development for an urban extension of Houghton Regis to meet urgent need.*

(4) *CBC has shown its continued commitment to the development of Houghton Regis through the production of the Houghton Regis North Framework Plan 2012, adopted for Development Control purposes in advance of the adoption of the emerging Development Strategy.*

(5) *The planning application will directly fund a £45m contribution towards the costs of the M1-A5 link road, which is identified in the Chancellor’s Autumn Statement 2012 as a key infrastructure project for the nation. The funding contribution enabled by this development and delivery of the A5-M1 Link*

*will generate a substantial amount of economic benefit to the wider area.*

(6) No formal Local Plan has been adopted since 2004, despite the clear continuing identification of the site in replacement planning policy documents. If subsequent Development Plan documents had reached adoption stage, then the application site would have been allocated for residential development and removed formally from the Green Belt. *Delaying a decision or refusing the planning application on Green Belt grounds until the adoption of the Development Strategy and the formal confirmation of the planning allocation in the Development Plan will serve no good purpose, other than to delay much needed housing and employment opportunities for the area, and set back the delivery of the M1-A5 link Road and Junction 11a works to the M1 that is concerned a nationally important infrastructure project*” (emphasis added).

79. In paragraph 3.11 members were reminded that in October 2012 the Secretary of State for Transport had published an interim decision letter confirming that he was minded to approve proposed A5-M1 link road. The Secretary of State had made it clear, however, that the final decision would be issued as and when a planning permission for the proposed development at HRN1 was issued so as to secure the remainder of the funding required to deliver the link road. Paragraph 3.12 adopted the reasoning of the Inspector at the link road inquiry as to why there were very special circumstances to justify that scheme. The officer then advised on the implications of the link road for the merits of the HRN1 application:

“3.13 This strategic link road adjoining the development is a unique feature. The benefits of the new strategic road have been recognised through a separate process of formal application, Public Inquiry and decision making at a national level. The achievement of those benefits is directly linked to the delivery of this application. It is considered that this is a very special circumstance which outweighs the identified harm to the Green Belt.”

80. Paragraphs 3.14 - 3.16 explained why the scheme’s promotion of economic growth should also be treated as forming part of very special circumstances:

“3.14 The scale of the development proposal offers an opportunity for economic growth on a variety of fronts. Economic growth is a national objective, a priority of the Government and is an important material consideration set out in the National Planning Policy Framework. The proposal includes the provision of a substantial amount of new employment land and in particular the opportunity for firms to take advantage of the infrastructure assets unique to its location: new and fast access to the motorway network, new

bus links via the Guided Busway project which is to be completed in September 2013, fast links to an international airport and on a scale that offers new opportunities to boost the local economy through the substantial new growth in spending as new families and businesses locate in the area.

3.15 This anticipated economic growth on this scale of development proposed is not unique in a national context, but neither are such large scale development proposals common. The proposal will certainly have a regional significance boosting construction, new opportunities for business expansion and creation, new national distribution opportunities and creating new consumer demand. In respect of the local economy, there will be more opportunities for employment in an area in which there is a particular need.

3.16 It is considered that the potential for this development to assist in providing economic growth opportunities on a large scale is itself a very special circumstance. It is further considered that the scale of the proposal offers sufficient benefits to substantially outweigh the harm caused to the Green Belt in this location.”

81. Paragraphs 3.17-3.18 of the report explained why the proposal’s contribution to meeting housing needs in the area, including needs arising within Luton Borough, also contributed to very special circumstances:

“3.17 The evidence underlying the proposed Central Bedfordshire Development Strategy (and the planning history beforehand) underlines the clear need for a substantial growth in housing in this area and is referred to elsewhere in this report. That need is identified as 28,700 homes over a plan period up to 2031. It is a need of a scale that has resulted in proposals for three major urban extensions totalling some 13,500 dwellings in addition to that sought from other sources. This development proposal forms a significant part (5150 dwellings) of that proposed provision.

3.18 In the face of this substantial need, which arises not only from within the Central Bedfordshire area but also from its neighbour, Luton Borough, it is appropriate for the Committee to decide that the ability of the application to deliver a substantial portion of the required housing and its accompanying requirement for infrastructure is a very special circumstance. Bearing in mind that the evidence underlying the Council’s proposed Development Strategy concludes that a release of Green Belt land is appropriate then it is also appropriate to take the view that the ability to address an identified need by means of the application proposals substantially outweighs the harm caused to the Green Belt.”

82. Paragraph 3.19 then dealt with other proposed uses within the development including community buildings, public open space, and leisure facilities. It was clearly stated that those elements should not be considered as providing benefits sufficiently substantial as to amount to a very special circumstance.

83. The overall conclusion to section 3 of the report read:

“3.20 In conclusion, whilst it is acknowledged that the proposals could be considered to be harmful to the Green Belt by encroaching upon the countryside, it is also considered that the historic strategic planning policy context, the delivery of the A5-M1 strategic road, the significant economic growth potential for the area and the well evidenced and substantial housing need are all sufficient, “very special circumstances” to outweigh any harm caused.”

84. Section 4 of the officer’s report dealt with the Luton and South-Central Bedfordshire Joint Core Strategy. The report recognised the circumstances in which this plan had been withdrawn in 2011 and advised that although that strategy together with the regional planning policies had fallen by the wayside, the underlying evidence base continued to support a growth agenda for Luton, Dunstable and the Houghton Regis area. Thus, on 23 August 2011 CBC endorsed the former Joint Core Strategy for development/management purposes and had incorporated the majority of the work already undertaken on within the emerging Central Bedfordshire DS. Paragraph 4.4 of the report is of some importance when considering criticisms made by the Claimant:

“4.4 The Committee could reasonably give some weight to the fact that the current proposal complies with the policies contained in the L&SCB JCS document in that it proposed the allocation of land at Houghton Regis North for Urban Extension and is based upon a history of policy development to that end. It is within *that area* that this planning application lies” (emphasis added).

85. Section 5 of the officer’s report advised members on how they should approach the pre-submission version of CBC’s DS. Paragraph 5.1 reads:

“5.1 The Central Bedfordshire Development Strategy document is at a stage of production where it is ready to be submitted for Examination. At this stage, the weight given to the document is significant and greater than the L&SCB Joint Core Strategy. Once submitted, it would supersede that document. However, until it is formally adopted, the National Planning Policy Framework should carry greater weight.”

86. Paragraph 5.32 summarised the application of policy 60 of the DS to the planning application. It stated that the application had been designed to align closely to the details of the policy so that it was “broadly compliant with it”. Paragraph 5.33 then advised that greater weight should be given to the policies of the draft DS than the adopted South Bedfordshire Local Plan Review 2004. A major reason for that conclusion was that, self-evidently, the 2004 plan substantially pre-dated the NPPF, whereas the DS had been prepared so as to accord with the NPPF.

“5.34 The planning application conforms closely to the policy direction that the Council wishes to go and explicitly delivers a major part of the urban extensions at Houghton Regis that the Council considers to be a key part of its Development Strategy.

5.35 Taking all of the above policy analysis in previous sections into account, the Committee is advised to give substantial weight to the pre-Submission Development Strategy for Central Bedfordshire with the exception of retail policy 12 and parking policy 27 (which will need correcting). The reason is that the Development Strategy has been written to be in accordance with national planning policy set out in the National Planning Policy Framework 2012.

5.36 The Committee will recognise that this “weighting” appears not to give the Development Plan primacy when making a decision on a planning application. However, this is because in the Case Officer’s opinion, the current adopted Development Plan is not up-to-date sufficiently to deal with the planning application as submitted or to comply with the NPPF.”

87. Section 8 of the officer’s report addressed issues arising from the Environmental Impact Assessment. Paragraphs 8.14-8.23 dealt with the subject of Affordable Housing. Paragraph 8.17 of the report stated that from the outset that the developer had been clear that because of challenging economic conditions and exceptional costs applicable to the development, its viability had been affected “to the extent that the full expectations for affordable housing cannot be delivered.” The accuracy of paragraphs 8.19 and 8.20 has not been challenged in these proceedings:

“8.19 However, as part of the original Luton and South Bedfordshire Joint Committee, both LBC and CBC will have been aware that the delivery of the substantial growth sought by both Councils was dependent on the delivery of a substantial amount of costly infrastructure. Both will also have been aware of the “Infrastructure Delivery Plan and Funding Study commissioned by both Councils and undertaken by AECOM which was completed on October 2010. The study determined that given the overall scale and spatial allocation of infrastructure required across Luton and southern Central Bedfordshire that there was going to be a significant

infrastructure deficit and an understanding that this was likely to cause viability issues for whichever large scale urban extension was being considered around the Luton/Dunstable/Houghton Regis conurbation.

8.20 CBC, through its individual efforts and with the co-operation of the developer and the Department of Transport, has sought to secure one of the most significant and necessarily expensive infrastructure projects, the A5-M1 link. This adds to the understanding that there will be an impact on the likely amount of affordable housing that can be obtained from this particular development.”

88. The assessment of the amount of affordable housing that could be provided both as a minimum and as part of the uplift mechanism was dependent upon the viability appraisal work undertaken by the developer and reviewed by the CBC’s independent consultants, E C Harris. The planning application submitted on the 24 December 2012 had been accompanied by a Viability Statement (para. 9.9). The financial information underpinning the conclusions of the viability appraisal work was commercially confidential, for the reasons explained in a letter dated 5 March 2013 sent to CBC by the Applicant’s legal advisor. The officer’s report made it plain that that letter had been publically available on the Defendant’s planning application file (para. 9.8). I return to this part of the report when considering Ground 7 of the challenge.
89. The conclusions of the report were set out in section 11:

“11.1 The application proposal is for the larger part of the Houghton Regis Urban Extension which is in turn part of the larger strategy for providing significant urban extensions to accommodate much needed additional housing and employment growth in the area. Much of that growth is being planned for in urban extensions not just here, but also at Leighton – Linslade and to the North of Luton. The application proposal is therefore a critical part of a larger strategy to provide not only significant growth within Central Bedfordshire but to accommodate the needs of a growing conurbation including Luton, Dunstable and Houghton Regis.

11.2 The balance to be struck in considering this application, involves the competing demands of commercial viability, loss of Green Belt, need for housing, the clear national priority for economic growth, landscape and ecological protection, urban regeneration, providing community facilities for a healthy population and meeting the Council’s stated priority of delivering a major new strategic road of national significance. All in a context of reducing public services and public financial support.

11.3 It is considered that the scheme is insufficiently financially viable at present to afford the full requirements for affordable housing and the full package of mitigation. However, the mitigation package suggested above is still extremely significant and has been shaped by reference to identified local priorities. The work undertaken with the applicant's representatives has been conducted in an informed and conscious way to achieve the mitigation package and review/uplift mechanism which both parties believe best reflects local priorities. For example, the approach to the provision of green infrastructure, the forward funding (£45m) of the A5-M1 link road and new M1 junction before significant development is achieved all reflects local priorities. The application has been the subject of extensive consultation with a significant majority of responses not objecting in principle or positively supporting the proposals.

11.4 The Committee will wish to take into account that the planning application has been submitted in advance of the adoption of the Development Plan, in which the site is an allocated strategic development site proposed for removal from the Green Belt. However, it should also be recognised that the now revoked Regional Spatial Strategy for the East of England and the withdrawn Joint Core Strategy both identified the site as being suitable for removal from the Green Belt in order to help meet housing and employment need. The evidence base shows there is nowhere else more suitable for the growth to go. In considering the very special circumstances in relation to development in the Green Belt, it is concluded that the tests have been met. It assists in delivering the A5-M1 link road. It is recognised that the planning application is critical locally, regionally and nationally in helping to boost much needed housing, infrastructure provision and economic investment.”

#### **Legal Principles for reviewing decisions taken by a local planning authority**

90. A great many of LBC's grounds involve criticisms of the officers' reports to CBC's committee. Accordingly, it is necessary to refer to the legal principles which govern challenges of this kind. I gratefully adopt the summary given by Mr Justice Hickinbottom in the case of The Queen (Zurich Assurance Ltd trading as Threadneedle Property Investments) -v- North Lincolnshire Council [2012] EWHC 3708 (Admin) at paragraphs 15-16.

“15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:

(i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.

(ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:

"[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Judge LJ as he then was).

(iii) In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (R v Mendip District Council ex parte Fabre (2000) 80 P & CR 500, per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory test" for determination of a planning application (Oxton Farms, per Pill LJ).

16. The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:

(i) The interpretation of policy is a matter of law, not of planning judgment (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13).

(ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.

(iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780 per Lord Hoffman)."

91. I would also draw together some further citations:

“[The purpose of an officer’s report] is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members, who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer’s report setting out in great detail background material, for example in respect of local topography, development plan policies or matters of planning history if the members were only too familiar with that material. Part of a planning officer’s expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary detail.” (per Sullivan J in R v Mendip DC ex p Fabre (2000) 80 P&CR 500 at 509).

92. In R (Siraj) v Kirkless MBC [2010] EWCA Civ 1286 Sullivan LJ stated at para. 19:

“It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a common sense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning subcommittee”

93. In R (Maxwell) -v- Wiltshire Council [2011] EWHC 1840 (Admin) at paragraph 43 Sales J (as he then was) stated:

“The Court should focus on the substance of a report of officers given in the present sort of context, to see whether it has sufficiently drawn councillors’ attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotations of material, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively.”

94. In Morge v Hants CC [2011] UKSC 2; [2011] PTSR 337 at [36] Baroness Hale of Richmond said:

“ ... in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities. As Lord Hoffmann put it in R (Alconbury Developments Ltd) v Secretary of State

*for the Environment, Transport and the Regions [2003] 2 AC 295*, para 69: “In a democratic country, decisions about what the general interest requires are made by democratically elected bodies or persons accountable to them.” Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved.”

95. In *R (Bishops Stortford Federation) v East Herts DC* [2014] PTSR 1035 Cranston J held at paragraph 40:

“The courts have cautioned against undue judicial intervention in policy judgments by expert tribunals within their areas of special competence (see *AH (Sudan) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening)* [2008] AC 678, para 30, per Baroness Hale of Richmond), and this reticence has been applied to considering the decisions of planning inspectors on issues of planning judgment: see *Wychavon District Council v Secretary of State for Communities and Local Government* [2009] PTSR 19, para 43, per Carnwath LJ. Arguably, the same applies to experienced planning committees with their training and codes of conduct.”

96. A number of the issues raised by LBC in these proceedings were not mentioned in its representations to CBC (e.g. the application of the sequential test). However, LBC correctly makes the point that that does not alter LBC's standing or entitlement to bring a claim for judicial review to quash the planning permission relying on such matters (see *Kides v South Cambridgeshire D.C.* [2003] 1 P & CR 19 at para 132-134). LBC has a genuine interest in obtaining the relief sought.
97. However, the principle in *Kides* does not detract from the principle laid down in *Fabre*, *Oxton* and related authorities as to the approach to be taken to a judicial review of a local authority's decision to grant planning permission on the basis of an officer's report to committee. It is primarily the function of the officers to judge which issues to address in the report and which to omit, as well as the depth to which any issue included in the report is explored and the amount of information supplied. Quite apart from the *Kides* issue of standing, there is a separate and crucial question for the Court to determine, namely whether the officer's report can be said to have been defective because it was significantly misleading, applying the tests in *Oxton* and *Fabre*. On that aspect a failure by parties to raise an issue in their representations to the local planning authority may be highly material, if not determinative, unless that issue was one which the legislation required the authority to take into account in any event (e.g.

the statutory development plan - see section 70(2) of the Town and County Planning Act 1990 and R (St James's Homes Ltd) v Secretary of State [2001] EWHC Admin 30; [2001] PLCR 27)).

98. I should also refer to the decision of the Court of Appeal in R v Secretary of State for the Environment ex parte Powis [1989] IWLR 584 in which the Court of Appeal held that in general judicial review is to be conducted by reference to the material which was before the decision-maker at the time of his or her decision and without regard to fresh evidence. That principle is subject to exceptions, including evidence on whether or not a procedural error has been committed, such as a breach of a legitimate expectation.

### **Grounds 1, 3, 4 and 5**

99. Mr Village QC grouped these four grounds under one heading as misdirections by CBC.

### **Ground 1**

100. In summary, LBC submits that CBC failed to take into account paragraph 83 of the NPPF, or to apply that paragraph when dealing with the issue of whether the grant of planning permission would be premature prior to the completion of the examination of the draft DS (the “prematurity” issue). In effect the officers’ report acknowledged that a permission for HRN1 would result in the site being removed from the Green Belt in any future review of Green Belt boundaries (paras 3.1 and 11.4) LBC also relies upon paragraph 12 of the Secretary of State’s decision letter dated 30 September 2014, adopting paragraph 4.111 of the Examining Authority’s report.
101. In so far as is material paragraph 83 of the NPPF provides:-
- “...Once established Green Belt boundaries should only be altered in exceptional circumstances through the preparation or review of a local plan.”
102. LBC submits that paragraph 83 requires the removal of a site from the Green Belt to be dealt with solely through the local plan process so that the relevant issues can be examined by an independent Inspector. It is however important to note that Mr Village very fairly accepted that he was relying upon a policy principle, rather than a legal rule. He nevertheless submitted that paragraph 83 contains an “injunction” to local planning authorities to deal with the matter through the preparation and adoption of a local plan and criticised the officer’s report, in particular paragraph 3.10(6), for failing to draw the attention of members to that “injunction” (or more accurately policy requirement). He added that the effect of CBC’s decision had been improperly to circumvent its duty to co-operate with LBC under section 33A of the 2004 Act in relation to strategic development proposals. He said that the report had therefore “significantly misled” the Committee, applying the Oxton test.
103. CBC and the IP submit that there was before the local planning authority a planning application which it was statutorily obliged to determine. Paragraph 83 of the NPPF could not override that duty. It relates to the authority’s plan-making function, rather than to its development management role. In the latter situation, paragraphs 87 and

88 of the NPPF are apposite: “inappropriate development” should not be permitted in the Green Belt unless “very special circumstances” are demonstrated which clearly outweigh any harm. The IP submits that those paragraphs are not disapplied simply because a proposal involves large scale development. The duty to co-operate applied to CBC’s plan-making function and does not require development management decisions to be put on hold whilst the plan-making process is completed.

### **Discussion**

104. In my judgment there can be no doubt that CBC was under a duty to determine the HRN1 application according to paragraphs 87 to 88 of the NPPF. Paragraph 83 is directed to the review of Green Belt boundaries through the local plan process and therefore was not directly in play.
105. However, it does not follow that paragraph 83 is incapable of being relevant in the determination of a planning application. It may be material where the decision-maker is considering whether the proposal should be refused on the grounds of prematurity. All parties agreed that at the time of the decision the relevant material policy on prematurity was contained in the Planning Practice Guidance (“PPG”) (which is broadly to the same effect as earlier guidance). The PPG suggests that prematurity is unlikely to constitute a reason for refusal of planning permission unless (inter alia):-
- “the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or planning of new development that are central to an emerging Local Plan.”
106. In applying that guidance, paragraph 83 of the NPPF may be a material consideration. In the circumstances of a particular case, a planning authority *might* judge that the release of a site from the Green Belt by the grant of planning permission would be premature because it would pre-empt decisions which ought to be taken through a review of Green Belt boundaries, in order to prevent the plan-making process from being undermined.
107. In the present case the real issue is, applying Oxton and Fabre, to what extent was it necessary as a matter of law for the officers’ reports to refer to the policy principle in paragraph 83 of the NPPF. For that purpose it is very relevant to consider the way in which the issues were presented to CBC by LBC and others. Even in its last minute representations of 27 August 2013, LBC made no reference to the principle in paragraph 83, even though at that stage it raised a prematurity objection for the first time (and the letter was “endorsed” by Counsel). The “paragraph 83” point was not raised by LBC until after LBC had decided to grant planning permission, namely in its letter dated 7 October 2013 requesting the Secretary of State to call in the application for his own determination. Even then, prematurity was only raised in a generalised manner, without any real attempt to explain specifically why a release of the site should only be dealt with through the plan-making process (see also the Secretary of State’s reply dated 30 January 2014 refusing to call in the decision). The suggestion in the Claimant’s Skeleton that the application of paragraph 83 of the NPPF was linked to compliance with CBC’s duty to co-operate under section 33A was not raised at that stage.

108. LBC has not suggested that “paragraph 83” arguments were raised by other parties to any substantial extent, or even at all.
109. When seen in this context, I am satisfied that the officer’s report (and consequently CBC’s decision) cannot be faulted as a matter of law under ground 1. First, the reports did address the prematurity issue in sufficient depth. The importance of the issue was explained in the comments of the Strategic Planning and Housing Team Leader at page 49 and in para. 1.3 of the August 2013 OR. The September 2013 OR for the adjourned Committee meeting on 4 September 2013 specifically addressed the prematurity points raised in LBC’s letter of 27 August 2013. The contrary is not suggested. The officer referred to the “pressing need” for the proposed housing and infrastructure and the previous support of LBC for development in this location. The members were advised on the policy guidance relied upon by LBC and they concluded that the grant of permission would not unacceptably prejudice the emerging development plan and that it would be inappropriate to delay approval to the scheme. Those were properly matters of judgment for CBC.
110. Second, paragraphs 3.1, 3.10(6), and 11.4 show that, in any event, CBC had well in mind the policy principle that ordinarily a Green Belt boundary is only reviewed through the local plan process. Given the context I have already summarised, as well as the principles laid down in Oxton and Fabre, there was no requirement for CBC to go further into the application of paragraph 83 of the NPPF. There was nothing misleading about the reports to Committee in this respect. Accordingly, I reject ground 1.
111. I think it would be helpful to consider ground 4 next.

#### **Ground 4**

##### **Submissions**

112. LBC complains that paragraphs 3.10(2) and 11.4 “materially over-stated HRN1’s planning pedigree” by stating that:-

“... successive emerging development plans since 2001 have identified the application site as being suitable for removal from the Green Belt and suitable for allocation as a residential-led mixed use development,

- the revoked regional strategy identified the site as being suitable for removal from the Green Belt in order to help meet housing and employment need.”

LBC says that this was “significantly misleading” applying the Oxton test, because although the withdrawn Joint Core Strategy and CBC’s draft DS do identify the HRN1 *site* as being suitable for release from the Green Belt as an expansion of the urban area, the earlier policy documents did not do so, given that they were strategic plans and therefore not site-specific. However, Mr Village QC accepted that Policy 2(iii) of the Sub-Regional Strategy (2005) and the draft East of England Plan (2008) (which incorporated the former), identified an “area of search” for a sustainable urban extension, and that HRN1 fell within that area of search.

113. Secondly, LBC, relying upon Hunston Properties Ltd v Secretary of State [2013] EWHC 2678 (Admin), criticises paragraph 4.4 of the August 2013 OR for giving “some weight” to the Joint Core Strategy. It is said that in view of the fact that that plan had been withdrawn, the Committee could only have been advised to give “no weight” to the plan.
114. I note, however, that neither of these points was mentioned in LBC’s letter to CBC of 27 August 2013.

### **Discussion**

115. As regards the first contention, the paragraphs criticised by LBC need to be read in the context of the officers’ report as a whole. Pages 10 and 11 made it clear that the earlier strategic plans had merely identified an *area* to the north of Luton/Dunstable/Houghton Regis within which a mixed use urban extension should be brought forward. Read in context, the summarising sentences in paragraphs 3.10(2) and 11.4 cannot be treated as “significantly misleading”. Moreover, the policy background would have been well-known to members of the Committee.
116. There is no merit either in the second contention which would have the absolute effect of preventing any weight being given to any policy or plan which had been withdrawn simply because of the bare fact of withdrawal. I reject that argument. First, paragraph 13 of the first instance judgment in Hunston only recorded a matter of common ground between the parties in that case (and no doubt in the context of the circumstances of that case). The point was neither argued nor decided and so Hunston could not be an authority for this purpose.
117. Second, in my judgment a plan which has been withdrawn *may* form part of the relevant planning history for the determination of a planning application, depending upon the circumstances in which that plan was drawn up and, more particularly, withdrawn. The present case illustrates the point. LBC has overlooked paragraphs 3.10(2), and 4.1 to 4.5 of the August 2013 OR.
118. Paragraph 3.10(2) (the accuracy of which is not challenged by LBC) records that the Joint Core Strategy was not abandoned because of any disagreement by LBC regarding the HRN1 site; its intended removal from the Green Belt and allocation for residential and commercial development was promoted by both councils (i.e. LBC and CBC). In section 4 of the report officers made the following points:-
- “(i) In August 2011 CBC had endorsed the evidence base underlying the East of England Regional Plan and the Joint Core Strategy and had incorporated the majority of that work in its own draft Development Strategy;
  - (ii) It was a matter for the Committee to decide how much weight to be given to the Joint Core Strategy;
  - (iii) The Committee could give “some weight” to the Joint Core Strategy in that its allocation of land at Houghton Regis North for an urban extension was based upon a history of policy development to that end.”

119. Accordingly, I reject ground 4 of the challenge.

### **Ground 3**

#### **Submissions**

120. LBC challenges the conclusion in paragraph 5.35 of the August 2013 OR that “substantial weight” be given to CBC’s pre-submission draft DS. A decision on the weight to be given to a consideration is quintessentially a matter of judgment and not a subject for judicial review. So, the Claimant puts its case in two ways. First, it is said that the CBC failed to take into account and apply the whole of paragraph 216 of the NPPF, which provides:-

“216. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”

LBC argues that although CBC applied the third intention (consistency of the emerging plan with the NPPF) it failed to apply the first two criteria (the stage reached by the emerging plan and the extent to which there are unresolved objections to relevant policies). Secondly, it is contended that CBC’s judgment that “substantial weight” be given to the draft DS is irrational.

121. CBC and the IP submit that CBC’s decision was not irrational given the context especially the history of the policies dealing with the extension of the conurbation. CBC and the IP also argue that none of the criteria in paragraph 216 of NPPF had primacy and that, in any event, the assessment of the weight to be attached to the emerging strategy is the light of objections thereto.

#### **Discussion**

122. I deal firstly with the application of paragraph 216 of NPPF. In his reply, Mr Village submitted that the essential point was that the first criterion had not been applied by CBC. I cannot accept that contention. The August 2013 OR plainly assessed the weight to be given to the emerging strategy by reference to the stage it had reached. For example, at page 49 of the report the Strategic Planning and Housing team leader

advised the Committee that a decision to grant planning permission for development on this scale before completion of the plan-making process should not be undertaken lightly, if the integrity of the plan-led system is to remain; there would need to be significant benefits to the public interest to justify any such decision. He then added that there had been no groundswell of public opinion against the proposal, going back over 7 to 8 years, and that objections from the development industry had been relatively limited, proposing new sites in *addition* to, rather than in *substitution* for, Houghton Regis North.

123. Furthermore, CBC's evaluation of the weight to be given to the proposal in the draft DS to allocate the HRN1 site would have been influenced by the analysis in the officers' report of the evaluation of the policy strategy for sustainable urban extensions to the conurbation (see below).
124. As to the second criterion, Mr Village QC acknowledged in his reply that the September 2013 OR had addressed objections to the allocation of the site in the draft DS and had advised members that:

“the significance that can be attributed to [the allocation] must be *limited* by reason of the fact that there are currently objections to the identification of the site on Development Strategy – in particular from Luton Borough Council”  
(emphasis added)

Mr Village suggested that this conflicted with the advice in the main report to give “substantial weight” to the strategy, or was otherwise confusing. But I see no such difficulty. As I explain under ground 3 below, the decision to give “substantial weight” overall to the draft strategy properly took into account a range of factors. Here, the officers were merely stating, as they were entitled to do, that that weight, albeit substantial, was to some degree limited by the outstanding objections (i.e. it was less than it would otherwise have been).

125. For completeness I deal with LBC's submission recorded at the end of paragraph 35 above. It has to be remembered that CBC was deciding the weight to be attached to the draft DS for the purposes of determining the IP's application, not for all purposes. It had to do so in the context of the representations it received on the application. It is significant that in its representations to CBC, LBC raised non-compliance with the duty to cooperate only briefly and without linking that point to the weight to be attached *in this case* to the draft DS, notwithstanding that it had ample opportunity to comment on the August 2013 OR. Applying the tests in Oxton and Fabre, I do not see how CBC's decision can be criticised on this ground. The essential point is that CBC did address all of the substantial points raised by LBC.
126. Mr Village QC accepted in his reply that the third criterion in paragraph 216 had been taken into account by CBC. Paragraphs 64 and 67.3 of the Claimant's Skeleton argue that the last sentence of paragraph 5.35 of the main report is circular and self-serving. Although the sentence appears to give “the [i.e. sole] reason” for according substantial weight to the draft strategy, it is clear from a fair reading of both of the officers' reports that CBC did take into account and apply the whole of paragraph 216 of the NPPF. In any event, I do not follow LBC's criticism. The sentence complained of was merely an evaluation in accordance with the third criteria in paragraph 216.

127. I turn to consider the irrationality argument. I would make the preliminary observation that expressions such as “substantial weight”, or for that matter “limited weight”, do not have some uniform meaning, or even carry some numerical evaluation. Their significance depends upon the particular context in which they have been used. They often represent no more than a summary expressing how the decision-maker has pulled together a number of judgmental factors. It is difficult to see how in the present type of case a rationality challenge could succeed merely on the basis that a decision-maker has decided to give “substantial weight” to a policy. Instead, the challenge ought to be directed to the process of reasoning which has been adopted.
128. This is in fact acknowledged by the Claimant in paragraph 63 of its skeleton, in which it is asserted that “in all circumstances” the judgment was irrational, but unfortunately without identifying any circumstances which would support that argument. I raised this question with Mr Village, who answered by saying that “no authority properly applying paragraph 216 of the NPPF could properly give substantial weight in the light of the factual circumstances.” Given the conclusions I have set out on paragraph 216, the irrationality argument as advanced during the hearing before me appears to add nothing further.
129. I will, however, summarise how I understand the reasoning set out in the report. That reasoning must be understood as a whole.
130. First, in relation to the statutory development plan, the South Bedfordshire Local Plan Review 2004, is not up to date in terms of compliance with the NPPF (paragraph 5.36). The draft DS has been designed so as to accord with the NPPF and its policies on housing, employment, retail, infrastructure and delivery and therefore should be given greater when compared with the 2004 plan (paragraph 5.33). That conclusion is directly relevant to the last sentence of paragraph 5.35 criticised by LBC. Second, paragraphs 4.1 to 4.4 of the report explained why “some weight” should be given to the withdrawn Joint Core Strategy. That conclusion must have had some regard also to paragraph 3.10(2) of the report (that the reasons for withdrawal did not impinge on the merit of HRN) and to the evidence base upon which that strategy had been based (see e.g. paragraphs 4.1, 4.2 and 11.4). Page 49 of the report explained that greater weight should be given to the draft DS given the time which had elapsed since the Joint Core Strategy and the progress made (see also paragraph 2.1). Third, CBC’s judgment was influenced by the carrying forward of the draft allocation from the Joint Core Strategy to CBC’s draft DS. Fourth, the report carefully considered relevant policies of the NPPF and decided that greater weight should be given to the NPPF than to the draft DS.
131. I can see nothing irrational in that series of evaluations made by CBC, and indeed no specific submission to the contrary was made. Accordingly, I reject the contention that the judgment made in the officer’s reports to give substantial weight to the draft DS was irrational.
132. There remains one further point which was raised in an email to the Court from LBC’s Counsel on 8 December 2014, after the hearing had been concluded. Attached to the email was a letter dated 3 December 2014 to CBC from the Inspector conducting the examination into the submitted version of CBC’s draft DS. The hearings have yet to begin, but, following a common procedure, the Inspector has set

out his “initial views” on whether the strategy is legally compliant and sound and on whether CBC has complied with the duty to co-operate. The last matter is important because if the Inspector should reach a *final* conclusion that the duty has not been satisfied, then under the Planning and Compulsory Purchase Act 2004 it will not be possible for the strategy to be adopted. Although the Inspector has stated that he has “significant concerns”, he has also made it plain that he has “yet to hear your full response” and, of course, the issues he has raised have yet to be examined at the public hearing.

133. In paragraph 26 of his letter the Inspector has also raised an issue as to the amount of affordable housing which the strategy may deliver in order to meet LBC’s unmet needs, given that the policy requirement for up to 30% affordable homes is subject to viability testing and that the strategic mixed-use allocations (not just HRN) are associated with infrastructure requirements. Whereas the duty to co-operate and “objectively assessed housing need” are to be dealt with in the initial hearing sessions (paragraph 3), other issues (including those raised in paragraph 26) would be covered in any subsequent hearings. I also note that the Inspector’s initial view is that most matters going to the issue of the “soundness” of the plan “seem capable of being resolved” through the “Main Modification” procedure.
134. I have read the Inspector’s letter as a whole along with the email submissions from all Counsel, for which I am grateful. By definition, the letter constitutes material which post-dates the decision which LBC is challenging, and was not before CBC at the material time. According to R v Secretary of State ex parte Powis [1984] IWL 584 it is inadmissible in these proceedings. The email from LBC’s Counsel of 9 December at 9:17am does not really address that principle. It is said that the Court is not being asked to endorse the Inspector’s concerns or to speculate on the likely outcome of the examination; that is a matter for the Inspector. Plainly that is correct. Instead, it is suggested that the letter confirms an “entirely predictable consequence” of LBC’s objections to the draft DS as at the date of CBC’s decision to grant planning permission. It is submitted that the legal consequence for these proceedings (and the only consequence identified) is to provide the “clearest confirmation” that CBC’s decision to accord “substantial weight” to the DS was perverse.
135. I do not accept LBC’s submissions for several, independent reasons. First it has not been explained how, in the face of ex parte Powis, this new material could support the rationality challenge. Second, as I have said the merits of that challenge depend critically upon a proper understanding of what “CBC” meant by “substantial weight”. I have summarised CBC’s reasoning on the matter and I do not see how the new material undermines the rationality of that reasoning. Third, although not raised in the recent emails, I have also considered the new ex post facto material in the context of the first and second criteria of paragraph 216 of the NPPF. I have explained why, on a fair reading of the reports to Committee, I consider that CBC properly took those criteria into account in a manner which cannot be impugned. One reason why the Committee was advised that permission for HRN1 should not be granted unless there were “significant benefits to the public interest” (p. 49 of the August 2013 OR) was because of the need to respect “the integrity of the plan-led system” ... when determining the HRN1 application at this stage of the plan-making process. CBC had well in mind possible outcomes of that process. Fourth, although in its letter of 27 August 2013 LBC expressed the view that only “little weight” should be given to

policies in the emerging plan relating to Houghton Regis, and although the letter was written with the benefit of legal advice and warned that a judicial review would be brought if planning permission were to be granted, it was not suggested that CBC could not give “substantial weight” to its strategy, on the basis explained in the August 2013 OR (and as clarified by the September 2013 OR).

136. I reach the firm conclusion that the issues raised under ground 3 were all matters for the planning judgment of CBC and are not open to legal criticism. That view is not altered by the recent letter from the Inspector dated 3 December 2014. I should add that I do not accept the forensic submission in the email of 9 December 2014 that the planning system would be brought into disrepute if the draft strategy should subsequently be “thrown out (or withdrawn)” on grounds which were before CBC at the time of its decisions. It is plain from the officer’s report that CBC judged that planning permission should be granted for HRN1 because of a combination of very important benefits which clearly outweighed the disbenefits, and having regard also to the history of plans for the release of sustainable urban extensions from the Green Belt including HRN.

## **Ground 5**

### **Submissions**

137. LBC criticises the statement in paragraph 3.10 (6) of the August 2013 OR:-

“Delaying a decision or refusing the planning application on Green Belt grounds until the adoption of the Development Strategy and the formal confirmation of the planning allocation in the Development Plan will serve no good purpose, other than to delay much needed housing and employment opportunities for the area and set back the delivery of the M1-A5 link road and Junction 11a works...”

It is said that this implied that the future adoption of “relevant parts” of the draft Strategy was “inevitable” or expressed a “degree of total certainty” (sic). The “relevant parts” are a reference to the proposal in the strategy to allocate this particular site, rather than to the strategy as a whole. LBC argues that the implicit view that allocation was inevitable or certain was irrational. That is the sole basis of the challenge under ground 5.

### **Discussion**

138. I do not accept the construction which LBC places upon paragraph 3.10(6) of the August 2013 OR. The complaint also reveals the danger of reading such a passage in isolation and not by reference to the report as a whole.
139. First, this paragraph appears in the section of the report dealing with “very special circumstances” (paragraphs 3.9 to 3.20), which concluded that the scheme would deliver very substantial benefits in the public interest. Second, CBC had well in mind the “substantial body of evidence” from work on previous plans and the overall draft strategy pointing to the need to release the site from the Green Belt for the expansion of the urban area (e.g. paragraphs 3.1, 3.10 (2), 4.1, 4.2 and 11.4). Third, the

members were entitled to take into account the limited opposition to the proposal and advice that “it is very difficult to envisage a strategy to meet housing needs that does not include, in some form, development of this site” (p. 49 of the August 2013 OR). The tone of the report was not to suggest that the allocation of the site was, as Mr Village put it, a “foregone conclusion”, but nevertheless something which was highly likely, given the needs requiring to be met, the planning history and the representations made. Fourth, the true focus of the sentence criticised by LBC is the prejudice which would be caused by *delaying* a decision on the proposals to develop the site. These were all matters for the judgment of CBC.

140. I find no basis at all for impugning this part of the report, whether on the grounds of irrationality or otherwise, and I therefore reject ground 5.

## **Ground 2**

### **Submissions**

141. LBC argues that the decision to grant planning permission was unlawful because CBC failed to consider (a) alternative sites for the development of necessary housing (and the related uses) or (b) alternative strategies for the development of HRN1. Submission (b) assumes that the site *is* released for development, but in that event LBC contends that the amount of housing provided, and therefore affordable housing, should have been increased. Only two alternative strategies were put forward before the court. First, it was said that the size of the contribution from the development to the Department for Transport to the cost of the A5-M1 link road should have been reduced below £45m, so that additional funding would have been available for more affordable housing. Second, it was said that the amount of land devoted to retail development should have been reduced, and that would have enabled more housing development to be carried out.
142. In summary, Mr Village QC submitted that CBC’s decision should be quashed because
- i) CBC had been obliged as a matter of law to consider alternative sites and had failed to do so; or
  - ii) It had failed to consider whether, as a matter of discretion it should address alternative sites; or
  - iii) In paragraph 11.4 of the August 2013 OR CBC did embark upon a consideration of alternative sites but carried out the exercise inadequately; or
  - iv) CBC failed to consider either of the alternative Strategies for the HRN1 site identified above.

Under (iii) LBC referred to the non-technical Summary of the Environment Statement (paragraph 4.1), from which it is clear the developer did not consider alternative sites.

143. CBC and the IP submitted:-
- i) LBC did not raise alternative sites as an issue to be addressed by CBC before the decision to grant planning permission was taken;

- ii) This case did not fall into the exceptional category in which the planning authority was obliged as a matter of law to consider alternative sites;
- iii) There was no separate obligation to consider *whether* to address alternative sites;
- iv) The references in the officer's report to the "evidence base" did not involve any acceptance by CBC that it should consider alternative sites and, in any event, there was nothing inadequate about the assessment made in the officer's reports;
- v) CBC did not make any error of law in relation to alternative strategies.

### **Discussion**

- 144. Before coming to the case law on alternative sites, I begin by examining the extent to which LBC raised the matter in its representations to CBC on the planning application.
- 145. In paragraph 15 of its representations dated 15 September 2012 on a consultation draft of CBC's DS, LBC urged CBC to consider all possibilities for "*extra* growth" near to Luton, including to the west "*in addition* to the proposed urban extensions contained within the Development Strategy" (including HRN). That statement was unequivocal. LBC did not ask for sites to be considered as alternatives, or substitutes, for HRN. Instead, it was seeking more sites in addition to those proposed by CBC for allocation. Paragraphs III to V of the "Summary of Comments" in the same document can only be read in the same way, having regard to paragraph 15.
- 146. On 15 April 2013 LBC sent representations to CBC both on the pre-submission version of the latter's draft Strategy and on the HRN1 planning application. Paragraph vi of the Summary of Comments relied upon LBC's earlier comments in September 2012 and repeated its request that sites for accommodating "additional growth to the west of Luton" be considered. There was no suggestion in those representations that CBC should examine the sites as alternatives to HRN. LBC did state that it would oppose the release of HRN1 unless three requirements were met, including the provision of more housing and a reduction in retail floorspace (on retail impact grounds), but plainly its objective was to secure a change in the package of land uses within the site. That had nothing to do with the issue of alternative sites at all.
- 147. Even LBC's last minute letter of 27 August 2013 chose not to raise the issue of alternative sites. Instead, having acknowledged that the A5 – M1 link road "may well be needed for this development to go ahead", LBC merely argued that the scheme should contribute less than £45m to the costs of that road (without identifying any figure) so that the amount of affordable housing could be increased. That simply represented an alternative *strategy*, on the assumption that the site would be released as an urban extension. It was not suggested during the hearing that any other party raised the issue of alternative sites.
- 148. There has been no suggestion that the officers reports misled the Committee as regards LBC's stance on alternative sites. But more importantly, it is highly

significant that a neighbouring planning authority which had worked with CBC for several years on the identification of land to meet housing and other needs did not think it appropriate to suggest that substitutes for HRN1 should be considered, let alone preferred. That accords with the advice of one of CBC's officers that "it is very difficult to envisage a strategy to meet housing needs that does not include, in some form, development of this site" (p.19 of the August 2013 OR). It is much to be regretted that a challenge of this nature should be raised as an afterthought in a claim for judicial review.

149. The first issue is whether in the circumstances of this case, CBC was under a duty to assess alternative sites. Contrary to the submission in paragraph 50.7 of the Claimant's skeleton this is not a case in which "the existence of an alternative site" has been raised, as explained above (see para.36 of South Cambridgeshire District Council v Secretary of State [2008] J.P.L 519).
150. As a general principle an examination of alternative sites is only capable of being a material consideration in exceptional circumstances. It does not fall into the category of considerations which the 1990 Act *mandates* the decision-maker to take into account. Instead, it falls within the category of considerations where it is for the decision-maker to decide for himself what he will take into account, subject to review on Wednesbury principles (paragraphs 20 and 30 of R (Jones) v North Warwickshire Borough Council [2001] PLCR 31; and see also CREEDNZ v Governor-General [1981] 1 NZLR 172 and Re Findlay [1985] AC 319).
151. Those principles were elucidated by Carnwath LJ in Derbyshire Dales District Council v Secretary of State [2010] 1 P&CR 19; [2009] EWCH 1729 (Admin), where he held:-

"(i) There is an important distinction between (1) cases where a possible alternative site is *potentially* relevant so that a decision-maker does not err in law if he has regard to it and (2) cases where an alternative is *necessarily* relevant so that he errs in law by failing to have regard to it (paragraph 17);

(ii) Following CREEDNZ, Findlay and R (National Association of Health Stores v Secretary of State for Health) [2005] EWCA Civ 154, in the second category of cases the issue depends upon *statutory construction* or whether it can be shown that the decision-maker acted *irrationally* by failing to take alternative sites into account. As to the first point, it is necessary to show that planning legislation either expressly requires alternative sites to be taken into account, or impliedly does so because that is "so obviously material" to a decision on a particular project that a failure to consider alternative sites directly would not accord with the intention of the legislation (paragraphs 25-28);

(iii) Planning legislation does not expressly require alternative sites to be taken into account (paragraph 36), but a legal obligation to consider alternatives may arise from the requirements of national or local policy (paragraph 37);

(iv) Otherwise the matter is one for the planning judgment of the decision-maker (paragraph 36). In assessing whether it was irrational for the decision-maker not to have had regard to alternative sites, a relevant factor is whether alternative sites have been identified and were before the decision-maker (paragraphs 21, 22 and 35 and see Secretary of State v Edwards [1995] 68 P&CR 607 where that factor was treated as having “crucial” importance in the circumstances of that case).

152. Turning to the present case, my firm conclusion is that alternative sites were not “obviously material” and that CBC did not act irrationally by failing to assess alternative sites, for a combination of reasons:-

- i) It was confirmed in oral submissions on behalf of LBC that housing needs cannot be met unless substantial releases of land are made from the Green Belt;
- ii) At no stage before CBC’s decision did LBC identify alternative sites or suggest that consideration be given by CBC to looking for substitute sites. Instead, LBC contended that more housing land needed to be released in addition to that proposed in the DS. It has not been suggested that any other party raised alternative sites as an issue;
- iii) The Sustainability Appraisal (Table 6) in respect of the draft Core Strategy was available to LBC, but it was not suggested to CBC before the decision that that document indicated that any other site should be preferred to HRN1;
- iv) In LBC’s skeleton (paragraph 20) it is suggested, post-decision, that sites 8 and 27 in the Sustainability Appraisal should have been considered. But no legal criticism has been made of CBC’s appraisal of those sites. Site 8 would have a greater impact on the Green Belt than HRN1 and scores less well overall. Site 27 scores badly in terms of “relationship to housing need”. Indeed, it is located to the east of Milton Keynes and Mr Village accepted that it would not assist in meeting housing needs arising in Luton. No satisfactory explanation was given for putting forward site 27 in support of this ground of challenge;
- v) The expert view of CBC’s officers was that it is highly likely that HRN1 would need to be released in any event (page 49 of the August 2013 OR);
- vi) CBC’s judgment (paragraph 11.4 of the August 2013 OR) was that the evidence base relating to earlier plans and the Joint Core Strategy “shows there is nowhere else *more suitable* for the growth to go” (emphasis added and see paragraphs 3.1, 4.1 and 4.2);
- vii) The withdrawal of LBC from the Joint Core Strategy did not alter the position that it had supported the allocation of HRN in that strategy, which itself had been the subject of a Sustainability Appraisal and Strategic Environmental Assessment;

- viii) LBC's two outstanding objections to the HRN1 application focused on increasing the amount of affordable housing that would be delivered from that site for Luton and on reducing the amount of retail floorspace. It was not suggested by LBC that an examination of alternative sites should be conducted in order to address these issues. In effect, those matters were left to be dealt with by CBC on the merits of the HRN1 site itself.
153. I also reject LBC's second submission that CBC's decision should be quashed because of a failure to consider *whether* to examine alternative sites. Mr Village QC sought to support this submission by referring to the body of case law summarised in paragraph 39.2.2 of the Judicial Review Handbook (6<sup>th</sup> Edition) by Michael Fordham QC dealing with circumstances in which a statutory body has a duty to consider whether or not to exercise a statutory power (see also Stovin v Wise [1996] AC 923, 949). But he accepted that the relevant power here is the power to grant or refuse the application for planning permission. Thus, the submission is, with respect, misconceived because it elevates the ability of a planning authority to treat alternative sites as a potentially relevant consideration into the status of a statutory power.
154. LBC's argument could not be restricted simply to alternative sites. Logically, it would also apply to *any* consideration material to the determination of a planning application. The argument cannot be right. It is contradicted by the analysis in, for example, North Warwickshire Borough Council and Derbyshire Dales District Council which distinguishes between considerations which a decision-maker is *obliged* by the legislation to take into account and those which he *may* take into account. The latter category is not the subject of any "duty to consider".
155. In any event, for the reasons I have already given in relation to the first issue, I do not consider that CBC was under any obligation in the circumstances of the present case to consider whether or not to address alternative sites.
156. Turning to the third issue, I do not accept that in paragraph 11.4 of the August 2013 OR CBC embarked upon a consideration of alternative sites, which it then carried out inadequately. As I have previously explained, the phrase "evidence base" embraces the body of evidence accumulated during the preparation of successive plans supporting the release of land at HRN as an urban extension (see paragraphs 3.1, 4.1 and 4.2 of the report), which would include, but is not limited to, table 6 in the Sustainability Appraisal. I reject LBC's submission, based upon paragraphs 88 to 90 of the judgment of Lindblom J in R (Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin), that the approach taken by CBC in the present case was legally inadequate. In Forge Field Society not only was it common ground that there was an obligation to consider alternative sites (paragraph 85), the planning authority failed to deal with an alternative that it was expressly asked to consider. In the present case, LBC did not raise the issue of alternative sites or identify any alternative site for consideration by CBC.
157. The fourth issue concerns whether CBC failed to address two alternative "strategies". The first strategy relied upon by Mr Village QC was the suggested reduction in the contribution of £45m to the cost of the A5-M1 link road. That was raised in the LBC's letter of 27 August 2013. However, this matter was expressly dealt with in section 4 of the September 2013 OR. The report addressed the criticisms (a) that the contribution was disproportionate having regard to the extent of the anticipated usage

of the link road by traffic related to the HRN1 site and (b) that the latter should not fund the entirety of the funding gap for the link road. The response stated (*inter alia*):-

- i) The A5-M1 link, although nationally significant infrastructure, could not come forward without the HRN1 development;
- ii) The HRN1 development could not come forward without the A5-M1 link;
- iii) The link could not facilitate the HRN1 development unless delivered in its entirety;
- iv) If the current viability situation should change then the section 106 obligation contained a mechanism for applying the uplift in value (i.e. to affordable housing);
- v) Monies secured from other developments, which come forward in the light of the construction of the link, could be used to fund additional infrastructure, such as affordable housing.

158. Points (iv) and (v) were also explained at pages 97 and 98 of the August 2013 OR. In addition, 8.55 of that report plainly stated that the HRN1 project was dependent upon (*inter alia*) the A5-M1 link and that link had been given “an indication of funding by the Secretary of State for Transport, but only on this basis that there will be a contribution from this development of £45 million...” (see also paragraph 3.11 of the August 2013 OR).

159. Accordingly, CBC proceeded on the basis that without the contribution of £45m towards the A5-M1 link road, HRN1 would not go ahead. Plainly CBC appreciated that that contribution had the effect of reducing the affordable housing contribution from this particular site. CBC decided that that consequence should be accepted when they weighed the merits of the proposal overall and, in particular, the other benefits that the scheme would achieve (including transportation, employment and economic growth in the conurbation). That was quintessentially a matter of planning judgment for CBC with which this Court cannot interfere. The short answer is that CBC disagreed with LBC on this aspect, as they were entitled to do.

160. As to the alternative submission that CBC failed to consider requiring a reduction in retail development so that affordable housing could be increased, there is no evidence that that was ever raised as an alternative strategy for CBC to consider. LBC raised concerns as to the scale of the retail element in an entirely different context, namely impact on town centres, as to which no legal challenge is brought. CBC were under no legal obligation to assess this alternative strategy. I also note from paragraph 19 of the written statement of Jennie Selley that the need for the scale of retail floor space proposed to contribute to the viability of the scheme was explained at the Briefing Meeting for the Committee on 15 August 2013.

161. For the above reasons I reject all aspects of ground 2.

## **Ground 6**

### **Submissions**

162. Ground 6 complains that the officers' reports failed to advise the Committee of a Ministerial Statement dated 1<sup>st</sup> July 2013 that unmet housing need was unlikely to constitute very special circumstances outweighing harm to the Green Belt. In fact the statement simply states that the "single issue" of unmet housing demand "is unlikely to outweigh harm to the Green Belt and other harm". So the submission was put on the basis that the report had to draw specific attention to that policy statement, in order to avoid misleading members and to avoid the risk of members thinking otherwise.

### **Discussion**

163. This ground is wholly misconceived. It is plain from paragraphs 3.9 to 3.20 of the August 2013 OR that the advice to members was that the very special circumstances comprised a number of substantial planning benefits, including, but not limited to, the meeting of housing need. There is no evidence that any member of the Committee thought otherwise, or even any risk of any member thinking otherwise. The well-established principle referred to in paragraph 15(i) of the Zurich Assurance case ([2012] EWHC 3708 (Admin)) is applicable. This ground is utterly unarguable.

## **Ground 8**

### **Submissions**

164. LBC submit that because the 30,000 sq m of retail floorspace proposed was more substantial than would be required if only the residents in the HRN1 scheme were to be taken into account (paragraph 8.35 of the August 2013 OR). CBC erred in law by failing to consider whether "that element" was justified by very special circumstances. It is also said that in the absence of a need case for the entirety of the retail provision, and absent any good reason for not substituting additional affordable housing, it was impossible for CBC to conclude that very special circumstances existed in relation to that element.
165. Ms. Kabir Sheikh QC for CBC relied upon the decision of the Court of Appeal in Wychavon District Council v Secretary of State [2009] PTSR 19; [2008] EWCA Civ 692 for the following principles on the interpretation of the then national Green Belt policy (which was not materially different to the relevant parts of the NPPF): -

(i) "Very special circumstances" connotes a qualitative rather than quantitative test. Rarity may contribute to the special quality of a factor, but is not essential (paragraph 21);

(ii) The policy neither excludes nor restricts the consideration of any potentially relevant factors. The policy limits itself to stating that the balance of such factors must be such as clearly

to outweigh harm to the Green Belt and other harm (paragraph 23);

(iii) Consideration of that balance is a matter for the judgment of the decision-maker on the circumstances of the individual case (paragraphs 23 – 24).”

166. She then submitted that in so far as any part of the proposed retail floorspace is not justified by a retail need case, that would have been reflected in CBC’s assessment of harm. In this case, as in others, the Council was entitled to assess the *overall harm* resulting from the development and to compare that harm with the *overall benefits* of the proposal constituting very special circumstances and then to judge whether the latter clearly outweighed the former. In other words, CBC was entitled to strike that planning balance by considering the proposed development in its totality, or holistically. Mr Purchas QC and Mr Richards for the IP made submissions to like effect.

### **Discussion**

167. I accept the submissions for CBC and the IP. There was no effective reply by LBC to those points, which I consider to be correct. The NPPF does not require the planning authority to chop up a mixed use proposal into separate components and to apply the very special circumstances test separately in relation to each such component. No authority was cited to support that interpretation and I do not think that it is justifiable on the language used in paragraph 88 of the NPPF.
168. LBC’s alternative argument in paragraph 94 of its skeleton suggests in effect that the proposal actually before CBC should have been rejected by them because of a preference for reducing retail development in favour of a greater amount of affordable housing. That is simply a variant of the “alternative strategy” argument that I have already rejected under ground 2. CBC was not under any obligation to commit that alternative.
169. For the above reasons I reject ground 8 as being wholly unarguable.

### **Ground 7**

#### **Submission**

170. It is submitted by LBC that CBC had erred in law because of a failure to disclose to LBC the developer’s viability report and the appraisal of that report by CBC’s independent consultant E C Harris. The reduced amount of affordable housing in the HRN1 scheme (a minimum of 10%) was the central issue for LBC who wished to test the viability information upon which that level of provision had been accepted. Ultimately by the end of the hearing this ground rested upon two propositions:-
- i) Paragraph 5 of the Statement of Agreement enclosed with the letter from CBC to LBC dated 28 March 2013 amounted to a legitimate expectation giving LBC the right to be consulted on the viability reports received by CBC;

- ii) Even if LBC had no such legitimate expectation, CBC's failure to disclose the viability material to LBC so as to enable the latter to make representation thereon amounted to procedural unfairness which materially prejudiced LBC. That formulation was based upon paragraph 49 of the decision of the Court of Appeal in Secretary of State for Communities and Local Government v Hopkins Development Ltd [2014] EWCA Civ 470, in substitution for the former "fair crack of the whip" test in Fairmount Developments Limited v Secretary of State for the Environment [1976] 1 WLR 1255.

171. In summary CBC and the IP submitted that:-

- i) The Statement of Agreement had not given rise to any legitimate expectation;
  - ii) The requirement of procedural fairness did not entitle LBC to be given copies of the viability material, even taking into account the position of LBC as an adjoining planning authority, part of whose housing needs fell to be met within CBC's area, or the statutory duty upon both authorities to co-operate;
- (ii) In any event LBC's own conduct demonstrates that it had not been caused material prejudice by the conduct of CBC.

### **Discussion**

172. In earlier sections of this judgment I have already set out relevant communications between LBC and CBC. I now summarise what occurred.

173. As far back as 24 December 2012 when the planning application was made, the developer submitted a Viability Statement. A key point made in the planning application submission documents was that the development would not be viable at an affordable housing requirement of 30%. That required a viability appraisal to be conducted as between the developer and CBC so as to satisfy the latter on the level of affordable housing provision at which planning permission could be granted. The financial information supplied to CBC by the DP is commercially confidential as explained in a letter dated 5 March 2013 from its legal adviser and included in the planning application file (paragraphs 9.8 to 9.10 of the August 2013 OR).

174. On 6 February and 20 March 2013 meetings took place between officers of LBC and CBC at which LBC "asked that LBC be provided with the viability evidence to support any reduced affordable housing permission on the HRN1 application site. (Holder WS paragraph 6; Chick WS 2 paragraph 9; Pagodin WS 1 paragraph 11). The only statement or agreement on the part of CBC upon which the Claimant relies pursuant to these requests is that set out in point 5 under "Access to Affordable Rent Housing" in the CBC/LBC Statement of Agreement enclosed with CBC's letter of 28 March 2013:-

"CBC officers will arrange for LBC officers to be involved at key points in the viability appraisal work and subsequently to meet with the developers of the north of Houghton Regis strategic allocation, to discuss key issues including the

opportunities to improve delivery of affordable housing on that site”

175. It is not suggested by LBC that that agreement involved any discussion with the developer, who had already claimed confidentiality for the viability appraisal, or that there was any discussion between the authorities as to how that confidentiality could be appropriately protected if that material were to be disclosed to LBC so that it could make representations to CBC, which the latter could take into account when determining the planning application. There is no evidence that either authority addressed or discussed those relevant considerations before the decision to grant planning permission was taken.
176. Although the Claimant’s evidence asserts that subsequently “continual requests by LBC” were made (Chick WS 2 para.9), Mr Davie on behalf of CBC says in paragraph 11 of his witness statement that he is not aware of any such requests. Moreover, the contemporaneous material in the bundles before the court do not bear out the assertion. The matter was not raised in LBC’s consultation response objecting to HRN1 dated 15 April 2013. The letter to CBC from Councillor Timoney dated 10 June 2013 merely stated “we are awaiting further viability work in relation to the Houghton Regis (HR1) application before the discussions around affordable housing will continue, having noted that “considerable progress” had already been made.
177. On 15 August 2013 Councillor Young wrote on behalf of CBC to Councillor Timoney to confirm the issues that had been discussed at their meeting on 11 August 2013 and how the parties might continue to move forward on these matters. At that meeting CBC provided LBC with an “understanding of the viability issues we must consider as part of the development”. LBC was notified that the officer’s report to Committee was available on CBC’s website from 14 August, that the matter would be dealt with at a meeting to be held on 28 August and that any further representations from LBC would be presented to the Committee if submitted beforehand. The letter contained the following unequivocal passage:-
- “The viability of the development has been rigorously tested by our own viability consultants who have concluded that the S106 and affordable housing package which can be derived from the scheme represents ‘a commercial offer’ from the promoters which is likely to undercut the profits which they might normally be expected to make. Clearly, viability is impacted by the agreement between the developer and the DfT for the developer to pay a significant contribution towards the A5-M1 link. However, it is also a fact that the market conditions are currently having a significant adverse impact upon the extent of the S106 package which can reasonably be delivered from this application. My officers are therefore recommending that any permission given on this site must be subject to an ‘uplift mechanism’ which enables the community to share in that uplift, should development values rise significantly in future.”
178. From the tenor of that letter and from the officer’s report (paragraphs 9.11 to 9.20) it must have been obvious to LBC that CBC was proposing to accept the advice it had

received from E C Harris and that the minimum amount of affordable housing should be set at 10% (but subject to a proposed “uplift mechanism”). If LBC had thought that it had been given a promise or expectation that it would receive confidential viability information and E C Harris’s report, and then have an opportunity to make representations on that material, it would have protested straight away that it had been treated unfairly or improperly, asked for that material to be disclosed forthwith and for the Committee meeting to be deferred so that it could make representations in good time. But none of that happened. A reply was sent by Councillor Timoney on 27 August 2013 but it did not raise the non-disclosure of viability information.

179. Indeed, it does not appear from the documentation that that issue was pursued by LBC until a request was made under the Freedom of Information Act 2000 on 4 July 2014, that is to say just over a month after the formal decision notice granting planning permission and only 6 days before the Claim Form in the present proceedings was filed. I note that at that stage the FOI request was made in the knowledge that the planning permission had been granted; it could not have been made in order to enable LBC to make representations to CBC on the planning application.
180. In paragraph 90 of its skeleton argument LBC correctly acknowledges that the disclosure of information which is commercially confidential to the developer would be damaging to that party’s interest, but it was submitted initially that there is no reason why disclosure could not have taken place at least to the extent ordered by the First Tier Tribunal of the Regulatory Chamber in London Borough of Southwark v The Information Commissioner and Land Lease (Elephant and Castle) Limited EA/2013/0162.
181. But this line of argument does not assist the Claimant in the present case, as Mr Village QC did acknowledge. First, that case was concerned with the obligation to disclose information under the Environmental Information Regulations 2004. It is accepted that disclosure under that legislation would be to the general public and not just to LBC (see e.g. Regulations 4 and 5). Consequently, the exception in Regulation 12(5)(e) relating to commercially confidential information is very much in play, as is evident from the Tribunal’s decision. Secondly, the Tribunal refused to order disclosure of material of the kind which LBC now says it would have wished to review (see paragraphs 55 to 56 of the decision).
182. It is well-established that (a) material of this kind is to be treated as confidential in the process for determining a planning application, (b) the Court is most unlikely to order disclosure of such material in a judicial review and (c) non-disclosure does not afford a ground for challenging a grant of planning permission, whether because of procedural unfairness, irrationality, or otherwise (see e.g. R (Bedford) v Islington LBC [2002] EWHC 2044 (Admin) (paragraphs 99 to 102); R (English) v East Staffordshire Borough Council [2010] JPL 586; R (Perry) v Hackney LBC [2014] JPL 1329 (paragraphs 23 to 36); R (Perry) v Hackney LBC [2014] EWHC 3499 (Admin) (paragraphs 48 to 51, 64 to 65 and 86 to 100). No submissions were made in this case to challenge the correctness of these decisions or the principles they lay down.
183. In the light of the above, Mr Village QC confirmed that ground 7 depends upon LBC’s arguments relating to (a) legitimate expectation and (b) procedural unfairness because of LBC’s “special position”.

184. Mr Village QC submitted that point 5 in the Statement of Agreement sent by CBC on 28 March 2013 amounted to a promise of consultation on the confidential viability information before the application was determined (i.e. category (b) in paragraph 57 of R v North and East Devon health Authority ex parte Coughlan [2001] QB 213). That should involve an examination of the precise terms of the statement relied upon, the circumstances in which the promise was made and the nature of the statutory or other discretion (paragraph 56). It is also relevant that the expectation relied upon is said to have been owed to LBC alone (paragraph 59). Consequently there is no dispute that the expectation relied upon had to be sufficiently certain in relation to the disclosure of *confidential* material.
185. The terms of the Statement of Agreement must be considered in context. In the circumstances, LBC ought to have been aware that the material the subject of ground 7 was confidential and that that confidentiality belonged to the IP. The Agreement followed the letter of 5 March 2013 from the IP's legal advisor which was available on the planning application file. In any event, LBC ought to have been aware of the approach taken to confidentiality in cases such as Bedford and English. Indeed, it would be most surprising if LBC had not encountered this issue before in its dealings with developers in carrying out its own development management functions. The Professional Guidance Notice: Financial Viability in Planning, paragraph 4.3.1 of which was relied upon in paragraph 9.1 of Mr Moriarty's second witness statement, was issued by the RICS in August 2012.
186. Against that background two things should have been plain to LBC when discussing with CBC the terms of the Statement of Agreement. First, those terms needed to state expressly that LBC would have access to *confidential* information of a kind which ordinarily would not be disclosed by CBC to other parties. Second, unless the IP was involved in the process, it might object to the release of that information to LBC. Alternatively, any willingness on the part of the IP to share information with LBC is highly likely to have been dependent upon agreeing procedures for determining what material would be disclosed to LBC, how the confidentiality of that material and representations thereon by LBC would remain protected and how any such representations would be taken into account by the Committee. From the evidence before the Court none of those matters was addressed at any stage before the agreement was made, or before CBC's decisions were taken.
187. Accordingly, in my judgment the terms of the Statement of Agreement, when read in the context set out above, was inadequate to create a legitimate expectation that LBC would be entitled to receive and make representations on confidential viability information. The text only promised to "involve" LBC "at *key points* in the viability appraisal work and subsequently to meet with the developers..." to discuss "*key issues* including the opportunities to improve delivery of affordable housing on that site." "Key points" simply referred to stages in the handling of the planning application. The phrase "to discuss key issues" was plainly insufficient to create a promise or expectation that commercially confidential information would be disclosed.
188. Although it is unnecessary to my conclusion on this point, I am reinforced in my view by the subsequent conduct of LBC. At no stage before the decision to grant planning permission was made did LBC give any indication that in its view (putting legal analysis to one side) CBC had broken a promise.

189. There remains the second question of whether what occurred amounted to procedural unfairness causing material prejudice to LBC. As I have previously explained, this argument is put forward solely on the basis of LBC's special position, namely that the satisfaction of Luton's housing needs was dependant in part upon securing provision, particularly of affordable housing, in Central Bedfordshire, which was supported by the statutory duty to co-operate in preparing development plans.
190. Certain matters are not in dispute. First, CBC did obtain viability information from the IP and subjected that material to independent scrutiny. That course accords with paragraph 65 of the judgment of Patterson J in the second Perry case. CBC followed good practice. Second, the relevant factors affecting the viability appraisal were summarised in the publicly available part of the August 2013 OR; commercially sensitive material and the report by EC Harris was provided to the members of the Committee in the confidential section of the report. Those matters were taken into account by the decision-maker. Third, it was understood between the two authorities that the affordable housing provision on the HRN1 site would be split 50/50 between their two respective areas. Consequently, CBC itself had a significant interest in testing the viability information supplied to it by the IP in order to maximise affordable housing towards meeting the needs of its own area.
191. Accordingly, the real nature of LBC's complaint is that it did not have the opportunity to examine the viability appraisal itself, not merely so that it could make its own assessment of that material in parallel with that of CBC, but also so that it could make representations to CBC which would be taken into account in the decision on the planning application. Mr. Village QC accepted that in order to protect confidentiality such representations would have had to be put to the Committee in the confidential part of their papers. That underscores the point that the obligation of fairness claimed by LBC would apply to it alone. No other participants in the process, apart from the IP, would have been entitled to see those representations.
192. In assessing this argument I have regard to paragraphs 99-100 of the judgment of Ouseley J in the Bedford case and to paragraph 91 of the judgment of Patterson J in the second Perry case, from which the following principles are plain:-
- i) Fairness in the planning process is not confined to considering the interests of objectors, or just LBC. Fairness also has to respect the position of the applicant as regards the confidentiality of commercially sensitive information which he supplies to the decision-maker;
  - ii) The decision-maker needs to be able to examine such matters with applicants in a confidential manner and if independent consultants are instructed any disclosure to them of the material should be made in confidence;
  - iii) If such confidentiality is not respected then the decision-maker will be hindered in its negotiations with developers over the content of publicly beneficial packages such as the extent of affordable housing. The public interest would be harmed.
193. Given these principles, the special position upon which LBC relies could not have been sufficient by itself to impose an obligation of disclosure upon CBC and to receive confidential representations from LBC. Nor did such an obligation arise

merely because in February and March 2013 LBC made requests to be supplied with “the viability evidence to support any reduced affordable housing.” Requests of that general nature did not engage with the imperative principles set out in the Bedford case. One way of dealing with the situation would have been to discuss and agree a protocol on disclosure involving the IP. That was not done. There is no evidence of LBC pursuing that approach with CBC or even seeking confirmation from CBC that commercially confidential would be made available to it, or to define the information it would receive.

194. It is a truism that the requirements of fairness are highly fact sensitive. In the circumstances of this case, I do not consider that it can be said that the procedure followed by CBC was unfair to LBC.
195. Moreover, I do not think that LBC can legitimately claim to have suffered unfairness causing them material prejudice. In George v Secretary of State [1979] 77 LGR 689, 695 Lord Denning MR stated that “there is no such thing as a technical breach of natural justice... You should not find a breach of natural justice unless there has been substantial prejudice to the applicant as a result of the mistake or error which has been made.” In the present case, LBC took no steps whatsoever to raise the non-disclosure of viability information in August 2013 when the officer’s report became available, or indeed subsequently until the FOI request was made in July 2014, after CBC’s grant of permission. No real evidence has been put before the Court to explain why that is so. The matter ought to have been raised by August 2013 at the very latest, bearing in mind that the procedure followed by CBC had to be fair to the IP as well as other participants. I can see no justification for the delay in the point being raised, with all the potential that has had to cause prejudice to the IP, least of all when the Claimant is itself a planning authority.
196. For all these reasons I reject ground 7.

## **Ground 9**

### **Submissions**

197. LBC complains that CBC failed to apply lawfully the sequential test in paragraph 24 of the NPPF in relation to the retail element of the proposed development. In essence the test requires that main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. Paragraph 27 states that where an application fails to satisfy the sequential test, “it should be refused”.
198. Having said that, it is plain, and not disputed by LBC, that a failure to comply with the sequential test does not have to result in a refusal of permission. As a matter of law the planning authority is entitled to decide that there are other factors in support of granting permission to which they may attach more weight than the breach of the sequential test.
199. The IP supplied a Retail Assessment, section 6 of which dealt with the sequential test. LBC relies upon a review of that assessment in section 3 of a report prepared in June 2013 by CBC’s independent consultants, Turleys. Those consultants agreed that the appropriate centres to be included in “the sequential search” were Houghton Regis

and Dunstable (paragraph 3.11). Turleys pointed out that the proposed retail floorspace was likely to meet the needs not only of the local resident population but also “a much wider area than just Houghton Regis (paragraph 3.10). Turleys made a number of criticisms of the IP’s assessment, including “the approach adopted... in assessing alternative sites demonstrates limited flexibility in applying the sequential approach and does not provide a robust assessment...” (see also paras. 3.16 and 3.17). Turleys identified a site in Dunstable, the Quadrant, which should be considered further (paragraphs 3.30-3.32). The consultants’ overall conclusion to section 3 (paragraph 3.37) suggested that the applicant might provide further material to justify its approach. But Mr Village QC stated that that was not done and I proceed on that basis.

200. Paragraph 8.40 of the August 2013 OR quoted the entirety of Turley’s concluding chapter 5, entitled “Principal Findings and Recommendations” (paragraphs 5.1 to 5.11). Paragraph 5.4 summarises the gist of paragraphs 3.16, 3.17 and 3.37. In opening LBC’s case, Mr Village confirmed that there is no suggestion that the officer’s report was significantly misleading in reporting the views of the Council’s independent consultant applying the test in Oxton. In my judgment that must be correct.
201. Instead, LBC’s criticism is that given the statement in the “Reasons” for the grant of permission in the decision notice of 2 June 2014 that the proposal “complies with the National Planning Policy Framework”, it is impossible to discern in the face of Turley in the NPPF had been passed (paragraphs 101-102 of LBC’s skeleton).
202. CBC submits that in paragraphs 5.5 and 5.6 of Turleys’ report, set out in full of the August 2013 OR, the consultants recommended that the Members reach a decision on the application by striking an overall balance between positive and negative impacts. They stressed the importance of balancing adverse and *beneficial impacts* in reaching a judgment as to whether there are considerations which would outweigh any adverse impacts of the proposals. Members were directed to the summary of the benefits of the scheme in the IP’s submission documents. Read in context (e.g. the phrase “positive impacts”) it is plain that by “impacts” Turleys meant “effects”; so that “adverse impacts” was not limited to the retail impact test in paragraph 26 of the NPPF. Finally, in section 3 of the September 2013 OR, members were specifically directed to consider extracts attached from Turleys’ report, including paragraphs 3.35 to 3.37 and 5.1 to 5.11. The officers’ reports were not misleading.

### **Discussion**

203. In essence I accept the submissions for CBC.
204. To put the matter into context, I note that LBC did raise objections to the proposal under the retail impact test, that Turleys advised that the proposal was unlikely to cause significantly adverse retail impact and that the officer’s report and the Committee proceeded on that basis. However, LBC did not raise any objections under the sequential test, not even in their letter to CBC of 27 August 2013 following the publication of the August 2013 OR with its express references to the Turleys report. Although the owners of the Quadrant Centre in Dunstable did object on the basis that insufficient “sequential testing” had been carried out, it is not suggested that

the report was significantly misleading in the way that that objection was put to the Committee. No further detail was provided to the Court on that aspect.

205. LBC's argument is based upon interpreting a single sentence in the "Reasons" section of the decision notice as indicating that the Committee were satisfied that the sequential test had been satisfied. That argument is misconceived. First, when the former obligation to give reasons applied, the requirement was only to give "summary reasons". Second, the position is not substantially different from when a decision-maker decides that a proposal accords or complies with the statutory development plan (for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004). That is a judgment which should look at the plan as a whole; some policies may support a proposal and others may point to a refusal (City of Edinburgh v Secretary of State for Scotland [1997] 1 WLR 1447). The analysis is no different when a decision-maker states that a proposal complies with the NPPF. That may well be a judgment, as here, that the proposal accords with the NPPF as a whole, or taken overall. It cannot be inferred without more that the decision-maker has necessarily formed the view that the proposal complies with each and every policy in the NPPF.
206. Instead, the correct legal approach is to assume (as in paragraph 15(i) of the Zurich Assurance case [2012] EWHC 3708 (Admin)) that the Committee followed or adopted the reasoning of the report. There is no evidence to suggest otherwise. On that basis it is plain that the members were invited to proceed on the basis of Turleys' views as set out in section 5 of their report and as quoted in paragraph 8.40 of the August 2013 OR. In other words, they struck a balance between the overall benefits and disbenefits of the scheme, including the failure to satisfy the sequential test completely. It is to be noted that paragraph 5.5 of Turleys' Report was underlined in the officer's report. The point could hardly be clearer; but in any event it is also confirmed by paragraph 23 of the witness statement of Jennie Selley.
207. Ground 9 is wholly unarguable. In the light of the reasons given above I do not think it is necessary, nor would it be appropriate for me to deal with the submissions made on whether paragraph 24 of the NPPF does or does not allow for "disaggregation". Further argument on the point would have been necessary.

## **Ground 10**

### **Submissions**

208. LBC submits that CBC failed to apply sequential and retail impact tests in respect of I proposed main town centre uses, notably 5000 m<sup>2</sup> of office space, a 3000 m<sup>2</sup> hotel, and a 3000 m<sup>2</sup> cinema. LBC accepts that it did not raise these points at any stage before the decision to grant planning permission, but relies once again on the decision in Kides. LBC does not suggest that any other party raised these points.

### **Discussion**

209. I accept the submissions of CBC and the IP that this ground is quite unarguable.
210. As I have explained previously, the Kides decision is concerned with standing, but that is not the issue here. The true issue is whether the planning permission should be struck down simply because the officer's report did not mention these particular

matters. The relevant principles for that purpose are contained in Oxton and Fabre. It was a matter for the judgment of the officers as to whether to include issues of this nature in their report. Applying a measure of common sense, these land uses formed a relatively small part of a 262 hectare sustainable urban expansion which would be expected to contain a sustainable mix of uses in any event (see e.g. paragraph 93 of the IP's skeleton). CBC approached the lack of robustness in the sequential testing of *retail* floorspace as a matter to be put in the overall planning balance. It is perfectly plain from their report that officers, and likewise members, considered that the very substantial benefits of the scheme clearly outweighed any harm. The non-inclusion in the officers' report of sequential and impact tests in relation to non-retail main town centre uses, where no particular issues had been raised on these matters, cannot be faulted in law. I reject ground 10.

### **Conclusion**

211. Although I have rejected grounds 6, 8, 9 and 10 as wholly unarguable, I consider that the other grounds crossed the threshold of arguability. In order to avoid unnecessary procedural complications in the event of this matter going any further, I will grant permission to apply for judicial review in relation to the claim as a whole. However, for the reasons set out above that claim is dismissed.

### **Addendum to judgment**

212. I now deal with:-

- i) The Claimant's application for permission to appeal;
- ii) The Claimant's application for an extension of time within which to appeal, or to seek leave to appeal from the Court of Appeal and the IP's opposing application to abridge time;
- iii) The IP's application for an order that the costs of Acknowledgment of Service be paid by the Claimant limited to £10,000.

The Defendant and the IP oppose ii). The IP opposes ii) and the Claimant opposes iii). I am grateful for the written submissions of the parties.

### **Permission to appeal**

213. I refuse permission to appeal to the Court of Appeal. I do not consider an appeal would have a real prospect of success. The grounds of challenge have been fully argued during a hearing which lasted 2.5 days. I have found that grounds 6, 8, 9 and 10 were wholly unarguable. I have sought in the judgment to deal with each of the various arguments raised by the Claimant in some detail. The application for permission does not identify any omission or error in the judgment which the Claimant would seek to argue in the Court of Appeal. It badly seeks permission to appeal "across the board" relying upon "the arguments put forward in support of the application".

214. I do not consider that any other compelling reason as to why the appeal should be heard has been given. The fact that the planning permission is for a very substantial

development on a very large area of Green Belt is not a “compelling reason” to justify an appeal from a decision on judicial review. The same applies to the Claimant’s objective of securing as much affordable housing as possible. These matters go to planning merits, a matter for the decision-maker.

215. I do not consider that this case raises important questions of planning law and practice which, in the public interest, should be considered by the Court of Appeal. Most of the challenge depended upon a detailed review of lengthy reports by officers to Committee, in the light of the representations made to the Defendant on the merits of the planning application, particularly those made by the Claimant itself. The challenge did not involve the Court ruling on the *construction* of the NPPF as opposed to the *application* of that document (see e.g. paras 122 to 128, 163, 167-8, 203-7 and 209-10).
216. I cannot see any basis for granting permission to appeal on only some of the grounds of appeal (as suggested at the end of paragraph 2 of the application).

#### **Time limit for appealing**

217. It is most unfortunate that this project, which will deliver much needed development and nationally important infrastructure, has been delayed by a challenge lacking in legal merit.
218. I acknowledge that judgment is being handed down on Friday 19 December 2014 shortly before a substantial holiday period which may affect not only the availability of counsel, but also of solicitors and the Claimant’s officers and members. On the other hand the Claimant’s team had the benefit of the draft judgment sent out at 2:37pm on Monday 15 December.
219. In contrast to the Claimant’s request to extend the 21 day time limit in CPR 52.4(2)(b) to 28 days, the IP asks the Court to reduce it to 14 days, so as to expire on 2 January 2015. But for the intervening holiday period I would have been very sympathetic to the IP’s application.
220. In the circumstances, I think the appropriate balance to strike is that the normal 21 day time limit shall apply. I have asked my clerk to communicate that decision to the parties during the morning of 18 December 2014.

#### **The costs of the IP’s Acknowledgement of Service**

221. The general principle in Bolton against multiple sets of costs does not apply to costs of preparing an Acknowledgment of Service (para. 76 of R (Mount Cook Land Ltd) v Westminster City Council [2004] 2 P&CR. 22 and per Walker J in R(Kenyon) v Wakefield Council [2013] EWHC 1269 (Admin)).
222. I have decided that four of the ten grounds were unarguable. If they alone had been pursued permission would have been refused. The IP needed to prepare an Acknowledgement of Service in any event. I do not see why the Claimant should be able to avoid the IP’s “Mount Cook” costs in relation to those four grounds, simply because I granted permission on all grounds for the practical procedural reason given in paragraph 211 of the judgment.

223. The agreement on cost capping was between the Claimant and the Defendant. In any event, the application made by the IP respects CPR 45.43.
224. Although with the benefit of substantial oral argument I was able to reject grounds 6, 8, 9 and 10 fairly briefly, at the stage of preparing an Acknowledgment of Service the IP would have had to consider a substantial amount of the supporting material relied upon by the Claimant.
225. Taking into account the Claimant's submissions on the amount of costs, I consider that the proportionate amount which should be paid by the Claimant to the IP in respect of the relevant part of the costs of the Acknowledgment of Service is £7,000.
226. Paragraph 4 of the Claimant's submissions seeks permission to appeal also in respect of the costs order. I refuse permission because neither of the tests in CPR 52.3(6) is satisfied. The exercise of my discretion lies well within the scope of established principles.

**Neutral Citation Number: [2011] EWHC 1840 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/07/2011

**Before :**

**THE HONOURABLE MR JUSTICE SALES**

-----  
**Between :**

**The Queen**  
**(on the application of Michael Maxwell)**

**Claimant**

**- and -**

**Wiltshire Council**

**Defendant**

**- and -**

**Mr & Mrs Martin Walker**

**Interested**  
**Parties**

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(Transcript of the Handed Down Judgment of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400, Fax No: 020 7404 1424  
Official Shorthand Writers to the Court)  
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**Mr Richard Harwood** (instructed by **Richard Buxton Solicitors**) for the **Claimant**  
**Mr Timothy Jones** (instructed by **Wiltshire Council Legal Services**) for the **Defendant**

Hearing date: 22/6/11  
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**Judgment**  
**As Approved by the Court**

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## **Mr Justice Sales :**

### *Introduction*

1. This is an application for judicial review of a grant of conservation area consent dated 14 January 2010 (“the Consent”) by the Defendant Council (“the Council”) for the demolition of a cottage called “Copsewood” at Low Road, Little Cheverell, Devizes.
2. Little Cheverell is a picturesque, small village, which is designated as a conservation area. “Copsewood” is located down a lane on the fringes of the village. It is set in an attractive garden which is to be retained under the proposed redevelopment of the site.
3. “Copsewood” is owned by the interested parties (“Mr and Mrs Walker”). They wish to demolish the cottage, which is in a state of poor repair and has been for some time, and replace it with a building of broadly equivalent dimensions and appearance but of modern construction. According to estimates they have received, that will be a considerably cheaper way of achieving a cottage which is habitable and in a good state of repair than engaging in the thorough-going renovation work which would otherwise be required if the existing fabric of the building were to be retained. Mr and Mrs Walker have planning permission for the new cottage but also require conservation area consent to proceed with the work, by demolishing the existing cottage.
4. The Claimant is another resident in the village. He objects to the demolition of the existing cottage on the ground that it is an old building, the loss of which and its replacement by what he characterises as a modern pastiche will adversely affect the character of the village.
5. Mr and Mrs Walker’s proposal to replace the existing cottage with an equivalent building of modern construction has divided opinion in the village. As appeared from a consultation conducted by the Council, many people in the locality support the proposal while a significant number are opposed to it.
6. There was some debate at the hearing about how old “Copsewood” is. The Claimant maintains that it could date back to the late 18<sup>th</sup> century, but a surveyor’s report commissioned by Mr and Mrs Walker dates it to about the 1860s. It is not a listed building.
7. Mr Harwood, who appeared for the Claimant, submits that the Consent should be quashed on three grounds:
  - i) the Council failed to have proper regard to the planning guidance issued by the Secretary of State in Planning Policy Guidance Note 15 (“PPG 15”);
  - ii) the Council failed properly to consider and reach a conclusion whether the proposal complied with PPG 15 and, if it did not comply, to reach a conclusion why PPG 15 should not be followed;
  - iii) the Council acted irrationally and contrary to the statutory purpose of the conservation area regime by concluding that a new building would make a greater contribution to the character and appearance of the conservation area

than the existing building, which the Council acknowledged made a positive contribution to the area.

*The statutory and policy context*

8. The Council has designated the area of Little Cheverell, including “Copsewood”, as a conservation area pursuant to section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”), which provides:

“Every local planning authority –

(a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and

(b) shall designate those areas as conservation areas.”

9. The focus of designation of a conservation area is the characteristics of the area. This may be contrasted with the listing of “buildings of special architectural or historic interest” under section 1 of the Act, where the focus is on the characteristics of a particular building which merits preservation (see also section 16(2) of the Act, which provides that in considering whether to grant listed building consent for works in relation to such a building, the relevant authority “shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”).

10. Section 74(1) of the Act provides that a building in a conservation area shall not be demolished without conservation area consent from the appropriate authority (here, the Council). Section 72(1) of the Act provides, in material part, as follows:

*“72. General duty as respects conservation areas in exercise of planning functions*

(1) In the exercise, with respect to any buildings or other land in a conservation area, of [the relevant functions], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

11. At the relevant time, national planning policy in relation to listed buildings and conservation areas was contained in PPG 15, which is entitled “Planning and the historic environment”. Paragraph 1.1 of PPG 15 provides:

*“Planning and conservation*

1.1 It is fundamental to the Government’s policies for environmental stewardship that there should be effective protection for all aspects of the historic environment. The

physical survivals of our past are to be valued and protected for their own sake, as a central part of our cultural heritage and our sense of national identity. They are an irreplaceable record which contributes, through formal education and in many other ways, to our understanding of both the present and the past. Their presence adds to the quality of our lives, by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness which is so important an aspect of the character and appearance of our towns, villages and countryside. The historic environment is also of immense importance for leisure and recreation.”

12. Section 3 of PPG 15 deals with listed building control. So far as material, it provides:

*“Listed building control*

...

3.3 The importance which the Government attaches to the protection of the historic environment was explained in paragraphs 1.1-1.7 above. Once lost, listed buildings cannot be replaced; and they can be robbed of their special interest as surely by unsuitable alteration as by outright demolition. They represent a finite resource and an irreplaceable asset. There should be a general presumption in favour of the preservation of listed buildings, except where a convincing case can be made out, against the criteria set out in this section, for alteration or demolition. While the listing of a building should not be seen as a bar to all future change, the starting point for the exercise of listed building control is the statutory requirement on local planning authorities to “have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses” (section 16). This reflects the great importance to society of protecting listed buildings from unnecessary demolition and from unsuitable and insensitive alteration and should be the prime consideration for authorities in determining an application for consent. ...

*General criteria*

3.5 The issues that are generally relevant to the consideration of all listed building consent applications are:

- (i) the importance of the building, its intrinsic architectural and historic interest and rarity, in both national and local terms ...;

(ii) the particular physical features of the building (which may include its design, plan, materials or location) which justify its inclusion in the list: list descriptions may draw attention to features of particular interest or value, but they are not exhaustive and other features of importance (e.g. interiors) may come to light after the building's inclusion in the list;

(iii) the building's setting and its contribution to the local scene, which may be very important, e.g. where it forms an element in a group, park, garden or other townscape or landscape, or where it shares particular architectural forms or details with other buildings nearby;

(iv) the extent to which the proposed works would bring substantial benefits for the community, in particular by contributing to the economic regeneration of the area or the enhancement of its environment (including other listed buildings). ...

3.11 If a building is so sensitive that it cannot sustain any alterations to keep it in viable economic use, its future may nevertheless be secured by charitable or community ownership, preserved for its own sake for local people and for the visiting public, where possible with non-destructive opportunity uses such as meeting rooms. Many listed buildings subsist successfully in this way – from the great houses of the National Trust to buildings such as guildhalls, churches and windmills cared for by local authorities or trusts – and this possibility may need to be considered. The Secretaries of State attach particular importance to the activities of the voluntary sector in heritage matters: it is well placed to tap local support, resources and loyalty, and buildings preserved in its care can make a contribution to community life, to local education, and to the local economy. ...

#### *Demolitions*

3.16 While it is an objective of Government policy to secure the preservation of historic buildings, there will very occasionally be cases where demolition is unavoidable. Listed building controls ensure that proposals for demolition are fully scrutinised before any decision is reached. These controls have been successful in recent years in keeping the number of total demolitions very low. The destruction of historic buildings is in fact very seldom necessary for reasons of good planning: more often it is the result of neglect, or of failure to make imaginative efforts to find new uses for them or to incorporate them into new development.

3.17 There are many outstanding buildings for which it is in practice almost inconceivable that consent for demolition would ever be granted. The demolition of any Grade I or Grade II building should be wholly exceptional and should require the strongest justification. Indeed, the Secretaries of State would not expect consent to be given for the total or substantial demolition of any listed building without clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed; that preservation in some form of charitable or community ownership is not possible or suitable (see paragraph 3.11); or that redevelopment would produce substantial benefits for the community which would decisively outweigh the loss resulting from demolition. The Secretaries of State would not expect consent to demolition to be given simply because redevelopment is economically more attractive to the developer than repair and re-use of a historic building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building. ...

3.19 Where proposed works would result in the total or substantial demolition of the listed building ... the Secretaries of State would expect the authority, in addition to the general considerations set out in paragraph 3.5 above, to address the following considerations:

(i) the condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use. Any such assessment should be based on consistent and long-term assumptions. Less favourable levels of rents and yields cannot automatically be assumed for historic buildings. Also, they may offer proven technical performance, physical attractiveness and functional spaces that, in an age of rapid change, may outlast the short-lived and inflexible technical specifications that have sometimes shaped new developments. Any assessment should also take account of the possibility of tax allowances and exemptions and of grants from public or charitable sources. In the rare cases where it is clear that a building has been deliberately neglected in the hope of obtaining consent for demolition, less weight should be given to the costs of repair;

(ii) the adequacy of efforts made to retain the building in use. The Secretaries of State would not expect listed building consent to be granted for demolition unless the authority (or where appropriate the

Secretary of State himself) is satisfied that real efforts have been made without success to continue the present use or to find compatible alternative uses for the building. This should include the offer of the unrestricted freehold of the building on the open market at a realistic price reflecting the building's condition (the offer of a lease only, or the imposition of restrictive covenants, would normally reduce the chances of finding a new use for the building);

(iii) the merits of alternative proposals for the site. Whilst these are a material consideration, the Secretaries of State take the view that subjective claims for the architectural merits of proposed replacement buildings should not in themselves be held to justify the demolition of any listed building. There may very exceptionally be cases where the proposed works would bring substantial benefits for the community which have to be weighed against the arguments in favour of preservation. Even here, it will often be feasible to incorporate listed buildings within new development, and this option should be carefully considered: the challenge presented by retaining listed buildings can be a stimulus to imaginative new design to accommodate them.”

13. Section 4 of PPG 15 deals with conservation areas. So far as material, it provides:

*“Assessment and designation of conservation areas*

4.2 It is the quality and interest of areas, rather than that of individual buildings, which should be the prime consideration in identifying conservation areas. There has been increasing recognition in recent years that our experience of a historic area depends on much more than the quality of individual buildings – on the historic layout of property boundaries and thoroughfares; on a particular “mix” of uses; on characteristic materials; on appropriate scaling and detailing of contemporary buildings; on the quality of advertisements, shop fronts, street furniture and hard and soft surfaces; on vistas along streets and between buildings; and on the extent to which traffic intrudes and limits pedestrian use of spaces between buildings. Conservation area designation should be seen as the means of recognising the importance of all these factors and of ensuring that conservation policy addresses the quality of townscape in its broadest sense as well as the protection of individual buildings. ...

*Conservation area control over demolition*

4.25 Conservation area designation introduces control over the demolition of most buildings within conservation areas (section 74 of the Act)... Applications for consent to demolish must be made to the local planning authority or, on appeal or call-in, to the Secretary of State ...

4.26 In exercising conservation area controls, local planning authorities are required to pay special attention to the desirability of preserving or enhancing the character or appearance of the area in question; and, as with listed building controls, this should be the prime consideration in determining a consent application. In the case of conservation area controls, however, account should clearly be taken of the part played in the architectural or historic interest of the area by the building for which demolition is proposed, and in particular of the wider effects of demolition on the building's surroundings and on the conservation area as a whole.

4.27 The general presumption should be in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area. The Secretary of State expects that proposals to demolish such buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (paragraphs 3.16-3.19 above). In less clear-cut cases – for instance, where a building makes little or no such contribution – the local planning authority will need to have full information about what is proposed for the site after demolition. Consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment. It has been held that the decision-maker is entitled to consider the merits of any proposed development in determining whether consent should be given for the demolition of an unlisted building in a conservation area. ...”

14. In these proceedings the Claimant relies in particular upon the cross reference in paragraph 4.27 of PPG 15 to the criteria relating to listed buildings in paragraphs 3.16 to 3.19 and to the presumption in paragraph 4.27 for retention of buildings which make a positive contribution to the character or appearance of a conservation area. The committee of the Council which decided to grant the Consent considered that the existing cottage did make a positive contribution to the character and appearance of the conservation area.
15. The Council, on the other hand, emphasises what was said in paragraph 4.26 about “the prime consideration” for determining a consent application (which reflected the statutory duty in section 72(1) of the Act). As explained below, the committee of the Council considered that the replacement of the existing cottage by a building of equivalent dimensions and design and appearance would enhance the character or appearance of the area. The Council also emphasised that the presumption in paragraph 4.27 in favour of retaining buildings which make a positive contribution to

a conservation area is expressed to be a “general presumption” (rather than, for example, a strict presumption) and that the cross reference in that paragraph to paragraphs 3.16 to 3.19 was expressed as a reference to “the same broad criteria” as are set out in those paragraphs for consideration of proposals to demolish a listed building. Mr Jones, for the Council, submitted that the use of the word “broad” here showed that the guidance in paragraphs 3.16 to 3.19 was intended to operate as a general indication of the approach to be adopted to a proposal to demolish a building in a conservation area and that it was not intended that the guidance in those paragraphs for the approach to demolition of a listed building was to apply with full literal force and effect. To read the policy guidance as the Claimant sought to do, he submitted, would improperly promote individual buildings in a conservation area to the same level of protection as a listed building, even though they were not themselves of such architectural or historical interest as to merit being listed.

16. In September 2007, Kennet District Council promulgated non-statutory planning policy in relation to the conservation area in the form of a document entitled “Little Cheverell conservation area: character appraisal and management proposals” (“the local policy”). In April 2009, the District Council merged with Wiltshire County Council to form the Defendant Council. The local policy remains in effect.

17. The foreword to the local policy included the following:

“The Council has designated a new conservation area at Little Cheverell in recognition of the architectural and historic interest of the village and the quality of the landscape setting.

Little Cheverell is an attractive and generally well-maintained village of particular interest because of its location at the foot of the northern scarp of Salisbury Plain and in the valley running north. Apart from the effects of traffic the 20<sup>th</sup> century has made relatively little impact on the village and it remains largely unspoilt, retaining its low density rural character. Trees and the landscape setting are crucial parts of village character. Little Cheverell is generally modest in scale, the higher status houses being largely hidden from view. Much of the village is 18<sup>th</sup> or 19<sup>th</sup> century and a number of buildings are listed.”

18. The local policy is intended to identify and record those special qualities of the village that make up its architectural and historic character so as to provide a sound basis for planning policies and decisions on development, amongst other things. The local policy emphasises that all the buildings in the village sit within the landscape and refers to the contribution to the appearance of the village made by trees, hedges and green spaces, including private gardens. “Copsewood” was referred to in the local policy in this context, as follows: “Copsewood is located in a mature, riparian garden of great charm and character...”. It was also included in a list at Appendix 1 to the local plan of “Locally important unlisted buildings”.

19. Section 2.11 of the local policy, headed “Future pressures and capacity for change”, included the following statement:

“Having regard to general planning policy there are unlikely to be any major changes within the proposed conservation area in the foreseeable future but where there are any new proposals or if replacement of existing buildings is under consideration it will be important to ensure that designs have regard to their historic and physical contexts.”

20. Section 3.5 of the local policy included the following statement:

“Applications for planning permission, conservation area consent, and tree works will be assessed with reference to the Conservation Area Appraisal. *There will be a presumption in favour of conserving the key unlisted buildings identified. Where trees, hedges and views are important to the character of the area there will also be a presumption that these should be preserved.*

Following on from the above the preferred policy of conservation for Little Cheverell will be the preservation of the established ‘status quo’ rather than specific proposals for change. Where proposals for change occur the intention is to provide a framework to allow this to be carefully considered and managed in a positive way to reinforce the existing character and appearance of the area.” [Emphasis in original]

#### *The factual background*

21. On 27 January 2009 Mr and Mrs Walker submitted applications for conservation area consent and planning permission to demolish and replace “Copsewood”. The applications were in due course reported to the planning committee of the Council. The Council’s officers recommended rejection of the applications, because the existing cottage made a positive contribution to the character and appearance of the conservation area and, in their view, its demolition would be contrary to PPG 15. The committee, however, decided to grant consent on the grounds that the replacement would not harm the character or appearance of the conservation area but would make a positive contribution to it.
22. The Claimant commenced judicial review proceedings in relation to that decision. Permission was granted for those proceedings on 6 July 2009. The Council then agreed to submit to judgment on the basis that the reasons given for the decision were inadequate, without accepting the other grounds of complaint advanced by the Claimant, and the decision to give conservation area consent was quashed. The application for conservation area consent therefore fell to be re-determined by the Council, acting by its relevant planning committee (“the committee”).
23. Council officers prepared a report for committee members for a meeting of the committee scheduled to take place on 14 January 2010 (“the Report”). The officers

again recommended that the application should be refused. Section 2 of the Report provided a summary in these terms:

“The main issue to consider is:

- Whether the proposal is in accordance with the local planning authority’s duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

In considering the above, the national guidance contained within [PPG 15] and [the local plan] are relevant.

Also relevant is the fact that there is an extant planning permission for a replacement dwelling on the site. The committee are entitled to take this into account in determining the application for Conservation Area consent.”

24. The Report therefore properly referred to the basic statutory duty on the Council under section 72 of the Act (the first paragraph quoted in para. [23] above), to PPG 15 and the local policy and to the existence of planning permission for the replacement building. The existence of planning permission was relevant to show that it was likely that if the existing cottage was demolished, an equivalent modern replacement would in fact be built in its place – demolition would not simply leave a gap in the landscape: see paragraph 4.27 of PPG 15.

25. The Report contained photographs of the existing building and drawings of the proposed replacement. It set out the view of the conservation officer that, contrary to representations made on behalf of Mr and Mrs Walker, the building made a positive contribution to the conservation area and went on:

“Therefore, there is a presumption in favour of its retention under PPG 15 and the case put forward is not sufficient to meet the strict demolition tests set out in paras 3.17-3.19 of PPG 15. The application must therefore be refused.”

26. The Report summarised the representations received as a result of a consultation by the Council on the proposal to demolish and replace “Copsewood”. There were significant levels of both support for and objection to the proposal from members of the public.

27. Section 9 of the Report was headed “Planning considerations”. It quoted from PPG 15 as follows:

“PPG 15 provides clear guidance on assessing proposals for demolition of buildings within a conservation area;

Paragraph 4.27 states ‘The general presumption should be in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area. The Secretary of State expects that proposals to demolish such buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (paragraphs 3.16-3.19 above).’ –

‘3.19 Where proposed works would result in the total or substantial demolition of the listed building, or any significant part of it, the Secretaries of State would expect the authority... to address the following considerations:

(i) the condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use. ...

(ii) the adequacy of efforts made to retain the building in use. ...

(iii) the merits of alternative proposals for the site. ...”

28. In these proceedings the Claimant criticises the Report for not setting out paragraphs 3.16, 3.17 and 3.19 of PPG 15 in full (see para. [12] above).
29. The Report assessed that the existing cottage made a positive contribution to the character and appearance of the conservation area. It noted its age and described it as “nestled in the valley” on the edge of a wooded area, so as to contribute to the character of Little Cheverell as a rural and unspoilt village. The Report noted that the existing building was clearly in need of renovation and modification works, such as the replacement of its sub-standard, single-storey extension dating from the mid-twentieth century and the complete stripping and replacement of the roof. However, the officers expressed the view in strong terms that there was “scant justification” for the proposal in terms of the guidance in PPG 15.
30. The meeting of the committee took place on 14 January 2010, attended by seven councillors and members of the public. The meeting was addressed by some of the councillors, including in particular Councillor Gamble, and by members of the public.
31. Councillor Gamble is the council member for Little Cheverell and had a particular interest in the application. He had approached the question of conservation area consent with great care. According to his evidence, he had read all the relevant provisions of PPG 15 (which I take to mean that his reading included all the provisions of PPG 15 I have set out above, including the full text of paragraphs 3.16 to 3.19). He had prepared notes for his presentation to the meeting, from which he spoke. He stated his view that “Copsewood” is “a very pretty cottage indeed” in a highly regarded setting and that it makes a positive contribution to the village. He then went on to make the following points set out in his notes:

“Does that mean it cannot be replaced? Well, the Conservation Area Statement [i.e. the local plan] says “*there will be a presumption in conserving the key unlisted buildings identified*”. Quite right! It would be anachronistic to say otherwise. PPG 15 says “*procedures (for demolition in a conservation area) are essentially the same as for listed building consent applications*”. We agree, therefore, that demolition is a serious matter and is not to be taken lightly.

Does this mean that demolition is forbidden? The Conservation Area Statement says “*new housing development will be restricted (inter alia) to the replacement of existing dwellings*” so it clearly envisages that demolition and rebuilding of a dwelling in the area is a possibility.

PPG 15 says in para 4.26 “*in the case of conservation area controls, account should clearly be taken of the part played in the architectural or historic interest of the area by the building for which demolition is proposed, and in particular of the wider effects of demolition on the building’s surroundings and on the conservation area as a whole*”. In para 4.27 it says “*consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment*”.

So the key questions are,

- A. does Copswood play a part in the architectural or historic interest of the area; and
- B. are there acceptable and detailed plans for redevelopment?

Well, Copswood is not listed as being of special architectural or historic interest. As far as I have read, there are no known historical associations of the building but I do think the building is very attractive from the outside.

It is close inspection which suggests that all is not quite as cute as it seems. The building seems to have had at least three building phases. The newest are only a few decades old and are evidenced by, for example, the breezeblock construction of a bay window and the concrete shuttering lining the inglenook fireplace. The beams are, for the most part, not old English oak or elm but look to me as if they come from B&Q. I have been looking for analogies here and the best I can do is to suggest the impression of a building that is a little like a film set – it looks good from one side but when you get round the back, there’s not much there. There are old bits from the 19<sup>th</sup> century, of course, but there’s nothing very special and I understand much of the old material would be salvaged for use in the new building.

On balance, I am satisfied that demolition of this building is allowable if there are acceptable and detailed plans for redevelopment. On that matter, I believe the answer is simple because the new plans in large measure are externally a copy of the existing building. The new structure would be about half a metre higher to meet modern building regulations. It is only the two storey extension on the footprint of the existing single storey kitchen and bathroom that is materially different. An extension in this manner, as far as I can tell, has never been in contention.

In my view, therefore, the proposed building meets the conditions of Section 7.8 of the English Heritage guidance on conservation area management which says "*when considering proposals [for] new development, the local planning authority's principal concern should be the appropriateness of the overall mass or volume of the building, its scale and its relationship to its context. A new building should be in harmony with its neighbours*".

I believe the designs in front of us meet these conditions in full and that the effect of the new building on the conservation area would, therefore, in my opinion, be minimal.

I believe that the application thus meets all the expectations of PPG 15, of the Conservation Area Statement and of English Heritage. If the new building is painted pink, then, in a very short time, it will be hard to tell that very much has changed.

I will be voting in favour of the application."

32. I did not have witness statements from the other committee members, so it is unclear on the facts whether each of them (like Councillor Gamble) had done background reading of their own of the full text of PPG 15, or whether they had simply relied on the summary of it and limited extracts from it set out in the Report. The Claimant's grounds for judicial review made a complaint that the summary and extracts in the officers' Report were inadequate, so if there were an answer that in fact the committee members had each read PPG 15 for themselves, it would have been appropriate for evidence to that effect to be put before the court. No such evidence was adduced, so I consider the inference to be drawn is that the other councillors had not read the text of PPG 15 for themselves. (I make no criticism of them for this: councillors will usually be entitled to rely upon officers' reports as providing sufficient information for decisions to be taken by them; it simply means that in the present case it is necessary to assess the Claimant's complaint about the adequacy of the officers' Report).
33. There was debate at the meeting and the consensus among the six committee members who voted on the issue (the chairman of the meeting chose to abstain) was that the demolition of the existing cottage and its replacement by a modern version of it would actually enhance the area. In the light of Councillor Gamble's presentation,

the thrust of this reasoning was that, looked at from a distance and in its green setting on the edge of the village, the existing cottage made a positive contribution to the appearance of the conservation area and the replacement cottage would make a similar positive contribution; and if one approached the building more closely, the existing cottage was in a poor and unattractive state and the replacement Copsewood would look better and improve the appearance of the conservation area.

34. Mr Wilmott, the Council officer in attendance at the meeting, sought to capture the sense of the Committee's view in a paragraph of text as follows:

“The Council has considered the matter afresh and has considered that the existing dwelling at Copsewood makes a positive contribution to the character and appearance of the area, as identified in the Little Cheverell Conservation Area Character Appraisal and Management Proposals. The Council is aware of the presumption in favour of retaining buildings which make such a contribution and of the broad criteria set out in paragraphs 3.16-3.19 of PPG15. However, the prime consideration the Council has had regard to is the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Little Cheverell Conservation Area. In this case, the Council has concluded that the design and siting of the replacement dwelling proposed would be an improvement on the existing and would enhance the character and appearance of the area to a greater extent than could be achieved by allowing the existing building to remain. In these circumstances, the Council does not consider that the cost of repairing the existing building should be given overriding weight as it does not consider that the building itself is of such importance and value that it should be retained when set against the merits of the proposed replacement and its positive contribution to the conservation area.”

(The last sentence is a little opaque, but in context I think it is tolerably clear that what the committee meant was that the architectural and historic value of the existing building was not so great as to warrant insistence on repair and renovation of the building at significantly greater cost than would be involved in its demolition and replacement by an equivalent modern building: this sort of balancing approach was in line with paragraph 3.19(i) of PPG 15, set out at para. [12] above).

35. This text was put to the councillors, who agreed it. The six councillors who considered the application then voted on it and resolved unanimously that the Consent should be granted.

*The grounds of review*

- (i) *The Council failed to have proper regard to PPG 15*

36. As the Claimant's argument on this ground was developed, it involved a complaint about the summary of the effect of the relevant paragraphs in PPG 15 contained in the Report prepared by officers for the committee. Mr Harwood also submitted that on no

proper interpretation of PPG 15 could the grant of consent be regarded as compatible with PPG 15. In particular, he said that the approach indicated by Councillor Gamble involved a subjective claim for the architectural merits of the proposed replacement building, which – according to paragraph 3.19(iii) of PPG 15 (para. [12] above) – could not in itself be held to justify the demolition of the existing “Copsewood” cottage.

37. I deal with this latter point first. I do not accept Mr Harwood’s submission. In my judgment, Councillor Gamble’s approach to the issue, adopted with full knowledge of the terms of PPG 15, was well-considered, well-informed and legitimate. The approach to protection of buildings in conservation areas set out in PPG 15 is a demanding one (see *Fulford v Secretary of State for the Environment*, unrep., 26 March 1997, Stephen Richards sitting as a Deputy Judge of the High Court), and Councillor Gamble properly treated it as such. He recognised that there should be a presumption in favour of retaining the existing building, but on balance he assessed that that presumption was outweighed on the particular facts.
38. I do not consider that Councillor Gamble’s preference for the replacement cottage as something which would enhance the conservation area involved a “subjective claim” for its “architectural merits” of the kind to which paragraph 3.19(iii) of PPG 15 refers. That sub-paragraph is directed to the sort of situation where it might be argued that, say, some proposed new skyscraper design by a leading architect is in architectural terms of such superior aesthetic value as to represent an improvement upon an existing listed building which would have to be demolished to allow it to be built. But in the present case there was no proposal to be any significant change in the architectural design of the cottage - it was simply going to be re-built in the same design but (in the opinion of Councillor Gamble and the other committee members) to an enhanced overall standard. Councillor Gamble’s approach to the issue was in line with the guidance in paragraph 3.19 of PPG 15 and with the Council’s governing duty under section 72 of the Act (rehearsed at paragraph 4.26 of PPG 15). He had proper regard to the condition of the building and the balance of its value against the cost of repairing it (paragraph 3.19(i)), to the adequacy of efforts made to retain the building in use (paragraph 3.19(ii) – in substance in this context, this came down to the same balancing issue as under paragraph 3.19(i), since there was no question of “Copsewood” being a building of a quality which might attract charitable or community ownership of the kind contemplated by paragraph 3.11 of PPG 15) and to the merits of the alternative proposals for the site (paragraph 3.19(iii)). The approach he adopted was not ruled out by anything said in paragraphs 3.16 and 3.17 of PPG 15.
39. As regards the complaint concerning the contents of the Report, Mr Harwood pointed out that it did not set out the full text of paragraphs 3.16, 3.17 and 3.19 of PPG 15 and submitted that for that reason it did not provide proper guidance to the committee members as to the approach they should adopt to the application for conservation area consent. On the evidence before me, it appears that the committee members other than Councillor Gamble had not read the full text of PPG 15. They were dependent on the Report to be informed how, in the light of PPG 15, they should approach the matter.
40. It was common ground that national planning policy guidance is a material consideration to be taken into account when considering an application for conservation area consent. Obviously, if such guidance is to be taken into account properly, it has to be understood with its proper relevant effect.

41. Mr Jones submitted that, in assessing the adequacy of the Report, the appropriate legal standard to be applied is that which is applied when assessing the adequacy of reasons given by a public authority when determining a planning application. He referred me in that regard to the familiar guidance given in *South Buckingham DC v Porter (No. 2)* [2004] UKHL 33; [2004] 1 WLR 1953, at [36] per Lord Brown of Eaton-under-Heywood, as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

42. I do not think this submission is correct. The standard for assessment of reasons given by a decision-maker does not provide an appropriate guide for the standard to be met in a report by a person who is not himself the decision-maker (here, the Council officers) to another person who has responsibility for making the decision (here, the committee members) intended to draw that person’s attention to the proper approach to be taken and to material considerations. In the former case, the purpose of the obligation to give reasons is to explain why the decision-maker has reached a particular conclusion on an application with a sufficient degree of particularity so that an informed observer can understand why that conclusion was reached. Accordingly, as Lord Brown points out, the reasons can be quite shortly stated and “... need refer only to the main issues in the dispute, not to every material consideration.” In the latter case, the purpose of a report it is to equip the person who has to make the decision in question (who may not have a significant degree of background knowledge of the circumstances in which it has to be made) with sufficient indications of the approach they should adopt and of any material factors which they

should take into account (and, depending on the context, perhaps indicating other factors which they have a discretion whether to take into account or factors which they should not take into account).

43. However, in my judgment, applying the proper test, the Claimant's challenge on this ground is not made out. I accept Mr Jones' other submissions in this regard. He correctly observed that the court should focus on the substance of a report by officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotation of materials, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively. I also consider that his submissions at para. [15] above about the drafting of paragraph 4.27 of PPG 15 (the significance of the phrase "the *general* presumption" and the phrase "the same *broad* criteria") are correct. On proper interpretation, paragraph 4.27 does not indicate that planning authorities are required to apply exactly the same approach to an application to demolish a building in a conservation area as would be applied to an application to demolish a listed building.
44. The interpretation of paragraph 4.27 which I prefer, in line with Mr Jones' submissions, is supported by the different statutory context in which it provides guidance (sections 69 and 72 of the Act, relating to the protection of conservation areas as areas), as distinct from the statutory provisions for which paragraphs 3.16 to 3.19 of PPG 15 provide guidance (sections 1 and 16 of the Act, relating to the need to protect particular buildings). I do not consider that paragraph 4.27 can properly be read as intending to import exactly the same strict approach to protection of specific buildings as is appropriate in the context of preservation of listed buildings.
45. In my view, the officers' Report in this case provided committee members with appropriate and sufficient guidance regarding the approach they should adopt to consideration of Mr and Mrs Walker's application for conservation area consent. It gave a proper indication of the approach required to be applied by section 72 of the Act. It set out the general presumption in favour of retention of old buildings contained in paragraph 4.27 of PPG 15. Setting out the headings of the sub-paragraphs in paragraph 3.19 of PPG 15 was in my opinion a sufficient indication of the broad criteria which paragraph 4.27 stated should be taken into account. The parts of sub-paragraphs 3.19(i), (ii) and (iii) which were not quoted in the Report were not germane to the particular application and context which the committee had to consider, and the Council officers could fairly and properly decide that it would not be helpful to committee members to set those sub-paragraphs out in full. The same is true of paragraphs 3.16 and 3.17 of PPG 15. As a matter of substance, the committee members were given good direction by the Report and the relevant effect of PPG 15 was not misrepresented.

(ii) *The Council failed properly to consider and reach a conclusion whether the proposal complied with PPG 15.*

46. It follows from my ruling on Ground (i) above that this ground of challenge also fails. In my view, the committee members did properly and adequately consider the

application of the guidance in PPG 15 to the circumstances of the case before them. They could properly reach the conclusion, as they did, that the grant of the Consent did not involve any departure from the guidance in PPG 15.

*(iii) Irrationality*

47. Mr Harwood submitted that the decision of the committee was irrational, since by it they failed to protect and preserve any part of the historic fabric of the existing “Copsewood” cottage. He said that it is in the nature of a conservation area that planning authorities should aim to conserve what is there; in this case, that could be achieved by refusing conservation area consent for the proposed demolition of the existing cottage and leaving it to the owners to either sell the property or renovate it; accordingly, it was irrational for the committee to grant the consent.
48. I dismiss this challenge as well. Neither the Act nor PPG 15 suggest that demolition of an old building in a conservation area will always be unacceptable. On the contrary, PPG 15 sets out factors to be taken into account in deciding whether it is acceptable or not. The argument under this Ground is in substance a repetition in different legal clothes of the argument of the Claimant under Ground 1, which I have already rejected. It is not irrational for a local authority to allow for demolition of an old but undistinguished building in a conservation area in circumstances such as those in the present case.
49. In this case, the committee were entitled to conclude that the replacement of the existing building with a modern building of similar appearance and improved finish, occupying the same setting, would enhance the area. There was nothing irrational in their consideration of the matter or in the conclusion they arrived at.

*Conclusion*

50. For these reasons, I dismiss this claim for judicial review.

A

Supreme Court

**Regina (Samuel Smith Old Brewery (Tadcaster)  
and another) v North Yorkshire County Council**

B

[2020] UKSC 3

2019 Dec 3;  
2020 Feb 5

Lord Carnwath, Lord Hodge, Lord Kitchin, Lord  
Sales JJSC, Baroness Hale of Richmond

C

*Planning — Development — Green Belt land — Application for extension of magnesium limestone quarry in Green Belt — Planning officer's report concluding that proposed development would not materially harm character and openness of Green Belt — Local planning authority granting application — Whether planning officer erring in approach to "openness" of Green Belt — Whether visual quality of landscape essential part of "openness" for which Green Belt protected — National Planning Policy Framework (2012), para 90*

D

The local planning authority granted planning permission for the extension of a mineral extraction quarry situated on Green Belt land. The claimants, who owned land in the vicinity of the quarry, sought judicial review of the grant of planning permission on the ground that the planning officer's report, which had been considered by the local authority's planning committee, was flawed in that the concept of "openness" in paragraph 90 of the National Planning Policy Framework (2012)<sup>1</sup> had been misapplied so that it had erred in concluding that the development in the

E

Green Belt was "not inappropriate". The judge dismissed the claim for judicial review but the Court of Appeal allowed the claimants' appeal and quashed the grant of planning permission.

On appeal by the local planning authority—

F

*Held*, allowing the appeal, that it was clear from the history and aims of the Green Belt policy that the visual quality of the landscape was not in itself an essential part of the "openness" for which the Green Belt was protected; that the concept of "openness" in paragraph 90 of the National Planning Policy Framework was a broad policy concept which referred back to the underlying aim of Green Belt policy of preventing urban sprawl, that openness was the counterpart of urban sprawl and was not necessarily about the visual qualities of the land, nor did it imply freedom from any form of development; that paragraph 90 showed that some forms of development, including mineral extraction, might be compatible with the

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concept of openness, and a quarry could, as a barrier to urban sprawl, be regarded as open in Green Belt terms; that the issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt, or otherwise conflict with the purposes of including the land within the Green Belt; that the officer's report specifically identified and addressed those issues and there was no error of law on the face of the report; that paragraph 90 did not expressly or by implication refer to visual impact as a necessary part of the analysis and the matters relevant to openness in any particular case were matters of planning judgement and not law; that the officer had been entitled to take the view in his planning judgement that, in the context of the quarry extension, and taking account of other matters, there was no detracton from openness in Green Belt terms; and that, accordingly, the

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<sup>1</sup> National Planning Policy Framework, para 90: see post para 9.

judge's order dismissing the claim for judicial review would be restored (post paras 5, 22, 39–42). A

*Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983, SC(Sc), *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2014] 1 P & CR 3 and [2014] PTSR 1471, CA, *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] PTSR 623, SC(E) and *Turner v Secretary of State for Communities and Local Government* [2017] 2 P & CR 1, CA considered. B

Decision of the Court of Appeal [2018] EWCA Civ 489 reversed.

The following cases are referred to in the judgment of Lord Carnwath JSC:

*Bolton Metropolitan Borough Council v Secretary of State for the Environment* [2017] PTSR 1063; (1990) 61 P & CR 343, CA

*CREEDNZ Inc v Governor General* [1981] 1 NZLR 172 C

*Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin); [2010] 1 P & CR 19

*Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC (Admin) 2643; [2014] 1 P & CR 3; [2014] EWCA Civ 825; [2014] PTSR 1471, CA

*Findlay, In re* [1985] AC 318; [1984] 3 WLR 1159; [1984] 3 All ER 801, HL(E)

*Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] PTSR 623; [2017] 1 WLR 1865; [2017] 4 All ER 938, SC(E) D

*R (Heath & Hampstead Society) v Camden London Borough Council* [2007] EWHC 977 (Admin); [2007] 2 P & CR 19

*R (Heath & Hampstead Society) v Vlachos* [2008] EWCA Civ 193; [2008] 3 All ER 80, CA

*R (Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404; [2016] Env LR 30, CA E

*Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] PTSR 274, CA

*Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13; [2012] PTSR 983, SC(Sc)

*Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin)

*Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P & CR 1, CA F

The following additional case was cited in argument:

*R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452, CA

### APPEAL from the Court of Appeal

On 22 September 2016 the local planning authority, North Yorkshire County Council, granted planning permission to the quarry owner, Darrington Quarries Ltd, to extend the operational face of the Jackdaw Crag Quarry in Tadcaster, a magnesian limestone quarry which lay in Green Belt land. The first claimant, Samuel Smith Old Brewery (Tadcaster), and the second claimant, Oxtan Farm, sought judicial review of the decision to grant planning permission, on the ground that the report of the planning officer, which had been considered by the local authority's planning and regulatory functions committee, had misapplied paragraph 90 of the National Planning Policy Framework (2012) ("NPPF"), and that the authority had consequently erred in concluding that the proposed development for mineral extraction was not inappropriate in the Green H

A Belt. The quarry owner was made an interested party in the proceedings. On 7 March 2017 Hickinbottom J [2017] EWHC 442 (Admin) dismissed the claimants’ application. On 16 March 2018 the Court of Appeal (Lewison and Lindblom LJ) [2018] EWCA Civ 489 allowed an appeal by the claimants and quashed the planning permission.

B Pursuant to permission to appeal granted by the Supreme Court (Baroness Hale of Richmond PSC, Lord Carnwath and Lady Arden JJSC) on 5 November 2018, the local planning authority appealed. The issue on the appeal was whether the local authority had misunderstood and/or misapplied paragraph 90 of the NPPF when it concluded that the proposed development was not “inappropriate” in the Green Belt.

The facts are stated in the judgment of Lord Carnwath JSC, post, paras 15–20.

C *Daniel Kolinsky QC* and *Hannah Gibbs* (instructed by *Solicitor, North Yorkshire County Council, Northallerton*) for the local planning authority.

*Alison Ogley* (instructed by *Walker Morris llp, Leeds*) for the quarry owner.

D *Peter Village QC, James Strachan QC, Ned Helme* and *Ruth Keating* (instructed by *Pinsent Mason llp, Leeds*) for the claimants.

LORD CARNWATH JSC (with whom LORD HODGE, LORD KITCHIN and LORD SALES JJSC and BARONESS HALE OF RICHMOND agreed) handed down the following judgment.

### E *Introduction*

1 The short point in this appeal is whether the appellant county council, as local planning authority, correctly understood the meaning of the word “openness” in the national planning policies applying to mineral working in the Green Belt, as expressed in the National Planning Policy Framework (2012) (“NPPF”). The Court of Appeal [2018] EWCA Civ 489, disagreeing with Hickinbottom J [2017] EWHC 442 (Admin) in the High Court, held that, in granting planning permission for the extension of a quarry, the council had been misled by defective advice given by their planning officer. In the words of Lindblom LJ, giving the leading judgment:

G “It was defective, at least, in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in paragraph 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the ‘openness of the Green Belt’ ...” (para 49, per Lindblom LJ).

H He thought that, having regard to the officer’s own assessment, it was “quite obviously relevant”, and therefore a necessary part of the assessment. The court quashed the permission.

2 In this court, the council, supported by the quarry operator (the third respondent), argues that the Court of Appeal’s reasoning was based on misunderstandings both of the relevant policies and of the officer’s report, and that the permission should be reinstated. The first and second

respondents (collectively referred to as “Samuel Smith”) seek to uphold the decision and reasoning of the Court of Appeal. A

### *Green Belt policy*

#### *History and aims*

3 Although we are directly concerned with the policies in the NPPF (in its original 2012 version), Green Belt policies have a very long history. It can be traced back to the first national guidance on Green Belts in Circular 42/55 (issued in August 1955). More recently Planning Policy Guidance 2: Green Belts (published in 1995 and amended in 2001) (“PPG2”) confirmed the role of Green Belts as “an essential element of planning policy for some four decades”; and noted that the purposes of Green Belt policies and the related development control policies set out in 1955 “remain valid today with remarkably little alteration” (paragraph 1.1). The NPPF itself, as appears from ministerial statements at the time, was designed to consolidate and simplify policy as expressed in a number of ministerial statements and guidance notes, rather than to effect major policy changes (see *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2015] PTRS 274, paras 16 et seq, 22, per Sullivan LJ). B C D

4 In the NPPF the concept of “openness” first appears in the introduction to section 9 (“Protecting Green Belt land”) which gives a statement of the fundamental aim and the purposes of Green Belt policy:

“79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. E

“80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and F
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

5 This statement of the “fundamental aim” of the policy and the “five purposes” is unchanged from PPG2. The Planning Policy Guidance included a fuller statement of certain “objectives” for the use of land within defined Green Belts, including (for example) providing opportunities for access to open countryside, and retaining and enhancing attractive landscapes (paragraph 1.6), but adding: G

“The extent to which the use of land fulfils these objectives is however not itself a material factor in the inclusion of land within a Green Belt, or in its continued protection. For example, although Green Belts often contain areas of attractive landscape, the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection. The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over the land use objectives”: paragraph 1.7. H

A It is clear therefore that the visual quality of the landscape is not in itself an essential part of the “openness” for which the Green Belt is protected.

*Control of development in Green Belts*

B 6 Key features of development control in Green Belts are the concepts of “appropriate” and “inappropriate” development, and the need in the latter case to show “very special circumstances” to justify the grant of planning permission. In *R (Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] Env LR 30 (“the *Lee Valley* case”), Lindblom LJ explained their relationship:

C “18. A fundamental principle in national policy for the Green Belt, unchanged from PPG2 to the NPPF, is that the construction of new buildings in the Green Belt is ‘inappropriate’ development and should not be approved except in ‘very special circumstances’, unless the proposal is within one of the specified categories of exception in the ‘closed lists’ in paragraphs 89 and 90 ... The distinction between development that is ‘inappropriate’ in the Green Belt and development that is not ‘inappropriate’ (ie appropriate) governs the approach a decision-maker must take in determining an application for planning permission. ‘Inappropriate development’ in the Green Belt is development ‘by definition, harmful’ to the Green Belt—harmful because it is there—whereas development in the excepted categories in paragraphs 89 and 90 of the NPPF is not.”

E 7 These concepts are expressly preserved in the policies for the control of development set out in paragraphs 87 et seq of the NPPF:

“87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

F “88. ... ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

8 Paragraph 89 indicates that construction of new buildings is to be regarded as “inappropriate” with certain defined exceptions. The exceptions include, for example, “buildings for agriculture and forestry”, and (relevant to authorities discussed later in this judgment):

G “• provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it ...”

H “• limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”

9 Paragraph 90, which defines forms of development regarded as “not inappropriate” is directly in issue in the present case:

“Certain other forms of development are also not inappropriate in Green Belt *provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt*. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order.” (Emphasis added. I shall refer to the words so emphasised as “the openness proviso”.)

10 Paragraphs 89–90 replace a rather fuller statement of policy for “Control of Development” in section 3 of PPG2. Paragraphs 3.4–3.6 (“New buildings”), and paragraphs 3.7–3.12 (“Re-use of buildings”, and, under a separate heading, “Mining operations, and other development”) cover substantially the same ground, respectively, as NPPF paragraphs 89 and 90, but in rather fuller terms. The policy for “Mining operations, and other development” was as follows:

“3.11 Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction *need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored*. Mineral and local planning authorities should include appropriate policies in their development plans. Mineral planning authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration ...

“3.12 The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development *unless they maintain openness and do not conflict with the purposes of including land in the Green Belt*.” (Emphasis added.)

11 It will be noted that a possible textual issue arises from the way in which the PPG2 policies have been shortened and recast in the NPPF. In the Planning Policy Guidance the openness proviso is in terms directed to forms of development other than mineral extraction (it also appears in the section on re-use of buildings: paragraph 3.8). By contrast, mineral extraction is not expressly subject to the proviso, but may be regarded as not inappropriate, subject only to “high environmental standards” and the quality of restoration. In the shortened version in the NPPF these categories of potentially appropriate development have been recast in paragraph 90, and brought together under the same proviso, including the requirement to preserve openness.

12 I do not read this as intended to mark a significant change of approach. If that had been intended, one would have expected it to have been signalled more clearly. To my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material

A change. It may also have been thought that, whereas mineral extraction in itself would not normally conflict with the openness proviso, associated building or other development might raise greater problems. A possible example may be seen in *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2014] 1 P & CR 3; [2014] PTSR 1471 discussed below (para 26).

B *Other relevant policies*

13 *Mineral policies* A later part of the NPPF (section 13, headed “Facilitating the sustainable use of minerals”) deals with mineral development generally. It emphasises the importance of ensuring a sufficient supply of minerals to support economic growth (paragraph 142); and gives advice on the inclusion of mineral policies in local plans (paragraph 143), and on the determination of planning applications (paragraph 144). The latter includes (inter alia) a requirement to ensure that there are “no unacceptable adverse impacts on the natural and historic environment” and that provision is made for “restoration and aftercare at the earliest opportunity to be carried out to high environmental standards”. No issue arises under these policies in the present case, but they show that development which is “appropriate” in Green Belt may be found unacceptable by reference to other policy constraints.

14 *Local plan policies* The proposal was also subject to Green Belt and other policies in the local plan (the Selby District Core Strategy Local Plan). These are summarised by Lindblom LJ (para 9). It is not suggested by either party that these materially affect the legal issues arising in the present appeal.

E *The application and the officer’s report*

15 The application was for an extension to the operational face of Jackdaw Crag Quarry, a magnesian limestone quarry owned and operated by the third respondent, Darrington Quarries Ltd. The quarry, which extends to about 25 hectares, is in the Green Belt, about 1.5 kilometres to the southwest of Tadcaster. It has been operated by Darrington Quarries for many years, planning permission for the extraction of limestone having first been granted in July 1948 and subsequently renewed. The proposed extension is for an area of about six hectares, expected to yield some two million tonnes of crushed rock over a period of seven years.

16 The application had received planning permission in January 2013, but that permission was quashed because of failings in the environmental impact assessment. The application came back to the county council’s Planning and Regulatory Functions Committee on 9 February 2016, when the committee accepted their officer’s recommendation that planning permission be granted. Following completion of a section 106 of the Town and Country Planning Act 1990 agreement planning permission was granted on 22 September 2016.

17 The officer’s report, prepared by Vicky Perkin for the Corporate Director, Business and Environmental Services, was an impressively comprehensive and detailed document, running to more than 100 pages, and dealing with a wide range of planning considerations. Under the heading “Landscape impact”, the report summarised the views of the council’s

Principal Landscape Architect, who had not objected in principle to the proposal, but had drawn attention to the potential landscape impacts and the consequent need to ensure that mitigation measures are maximised (paras 4.118 and 7.42–5). A

18 For present purposes the critical part of the report comes under the heading “Impacts of the Green Belt” (para 7.117 et seq). Having summarised the relevant national and local policies, she referred (para 7.120) to the consultation response from Samuel Smith stating: B

“the application site falling within the Green Belt is critical in the determination of the proposal and added that *‘mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that the proposal both preserves the openness of the Green Belt and doesn’t conflict with the purposes of including land within the Green Belt’*. The objector also stated that one of the aims of the Green Belt, in *‘assisting in urban regeneration will be materially harmed by the development’*...” (Emphasis added.) C

19 The officer commented:

“7.121 When considering applications within the Green Belt, in accordance with the NPPF, it is necessary to consider whether the proposed development will firstly preserve the openness of the Green Belt and secondly ensure that it does not conflict with the purposes of including land within the Green Belt. D

“7.122 It is considered that the proposed development preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Openness is not defined, but it is commonly taken to be the absence of built development. Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into this area of a scale considered to conflict with the aims of preserving the openness of the Green Belt. E

“7.123 In terms of whether the proposed development does not conflict with the purposes of including land within the Green Belt, the proposed quarrying operations are not considered to conflict with the purposes of including land within the Green Belt. Equally, it is not considered that the proposed development would undermine the objective of safeguarding the countryside from encroachment as it should be considered that the site is in conjunction with an operational quarry which will be restored. The proposed development is a temporary use of land and would also be restored upon completion of the mining operations through an agreed [restoration plan]. F

“7.124 The purposes of including land within the Green Belt to prevent the merging of neighbouring towns and impacts upon historic towns are not relevant to this site as it is considered the site is adequately detached from the settlements of Stutton, Towton and Tadcaster. It is also important to note that the A64 road to the north severs the application site from Tadcaster. G

“7.125 As mentioned in the response from [Samuel Smith], one of the purposes of the Green Belt is assisting in urban regeneration which the H

A objector claims will be undermined by the proposed development. Given the situation of the application site, adjacent to an existing operational quarry and its rural nature, and the fact that minerals can only be worked where they are found, it is considered that the site would not, therefore, undermine this aim of the Green Belt.

B “7.126 The restoration scheme is to be designed and submitted as part of a section 106 Agreement, it is considered that there are appropriate controls to ensure adequate restoration of the site. Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn’t conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt, and would, therefore, comply with Policy SP3 and SP13 of the Selby District Core Strategy Local Plan and NPPF.”

20 Section 8 of the report gives the planning officer’s conclusion:

D “8.4 It is considered that the proposed screening could protect the environment and residential receptors from potential landscape and visual impacts.

“8.5 Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn’t conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt.”

E *Legal principles*

F 21 Much time was taken up in the judgments below, as in the submissions in this court, on discussion of previous court authorities on the relevance of visual impact under Green Belt policy. The respective roles of the planning authorities and the courts have been fully explored in two recent cases in this court: *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983 and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] PTSR 623. In the former Lord Reed JSC, while affirming that interpretation of a development plan, as of any other legal document, is ultimately a matter for the court, also made clear the limitations of this process:

G “Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse ...” (para 19).

In the *Hopkins Homes* case (paras 23–34) I warned against the danger of “over-legalisation” of the planning process. I noted the relatively specific

language of the policy under consideration in the *Tesco* case, contrasting that with policies: “expressed in much broader terms [which] may not require, nor lend themselves to, the same level of legal analysis.” A

22 The concept of “openness” in paragraph 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...” Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land. B

23 It seems surprising in retrospect that the relationship between openness and visual impact has sparked such legal controversy. Most of the authorities to which we were referred were concerned with the scope of the exceptions for buildings in paragraph 89 (or its predecessor). In that context it was held, unremarkably, that a building which was otherwise inappropriate in Green Belt terms was not made appropriate by its limited visual impact (see *R (Heath & Hampstead Society) v Camden London Borough Council* [2007] 2 P & CR 19, upheld at *R (Heath & Hampstead Society) v Vlachos* [2008] 3 All ER 80). As Sullivan J said in the High Court: C

“The loss of openness (ie unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective. If the replacement dwelling is more visually intrusive there will be further harm in addition to the harm by reason of inappropriateness ...” (para 22). D

To similar effect, in the *Lee Valley* case [2016] Env LR 30, Lindblom LJ said: “The concept of ‘openness’ here means the state of being free from built development, the absence of buildings—as distinct from the absence of visual impact ...” (para 7, cited by him in his present judgment at para 19). E

24 Unfortunately, in *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin) (a case about another familiar Green Belt category—cemeteries and associated buildings), Green J went a stage further holding, not only that there was “a clear conceptual distinction between openness and visual impact”, but that it was: “wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact” (para 78, emphasis in original). F

25 This was disapproved (rightly in my view) in *Turner v Secretary of State for Communities and Local Government* [2017] 2 P & CR 1, para 18. This concerned an inspector’s decision refusing permission for a proposal to replace a mobile home and storage yard with a residential bungalow in the Green Belt. In rejecting the contention that it was within the exception for redevelopment which “would not have a greater impact on the openness of the Green Belt”, the inspector had expressly taken account of its visual G

A effect, and that it would “appear as a dominant feature that would have a harmful impact on openness here”. The Court of Appeal upheld the decision. Sales LJ said:

B “The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.” (Para 14.)

C Before us there was no challenge to the correctness of this statement of approach. However, it tells one nothing about how visual effects may or may not be taken into account in other circumstances. That is a matter not of legal principle, but of planning judgement for the planning authority or the inspector.

D 26 The only case referred to in argument which was directly concerned with mineral extraction as such was *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2014] 1 P & CR 3 (upheld at [2014] PTSR 1471). That concerned an application for permission for an exploratory drill site to explore for hydrocarbons in the Green Belt, including plant and buildings. The inspector had considered the potential effect of the development on the Green Belt:

E “... I consider Green Belt openness in terms of the absence of development. The proposal would require the creation of an extensive compound, with boundary fencing, the installation of a drilling rig of up to 35 metres in height, a flare pit and related buildings, plant, equipment and vehicle parking on the site. Taking this into account, together with the related HGV and other traffic movements, I consider that the Green Belt openness would be materially diminished for the duration of the development and that there would be a conflict with Green Belt purposes in respect of encroachment into the countryside over that period.” (Quoted by Ouseley J at para 16.)

G He refused permission, taking the view that it did not fall within the exception for “mineral extraction”, and that there were no very special circumstances to outweigh the harm to the Green Belt identified in that passage.

27 It was held that he had erred in failing to treat the proposal as one for mineral extraction, and therefore potentially within the exception in NPPF paragraph 90. Ouseley J noted the special status of mineral extraction under Green Belt policy. As he said:

H “67. One factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects. Those are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place where those operations

achieve what is required in relation to the minerals. Minerals can only be extracted where they are found ... A

“68. Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt.”

28 However, he made clear that it remained necessary for the decision-maker to consider the proposal under the proviso to paragraph 90. Affirming his decision in the Court of Appeal, Richards LJ said (para 41): B

“The key point, in my judgment, is that the inspector approached the effect on Green Belt openness and purposes on the premise that exploration for hydrocarbons was necessarily inappropriate development since it did not come within any of the exceptions. He was not considering the application of the proviso to paragraph 90 at all: on his analysis, he did not get that far. Had he been assessing the effect on Green Belt openness and purposes from the point of view of the proviso, it would have been on the very different premise that exploration for hydrocarbons on a sufficient scale to require planning permission is nevertheless capable in principle of being appropriate development. His mind-set would have been different, or at least it might well have been different.” C D

Although the decision turned principally on a legal issue as to the meaning of “mineral extraction”, it is significant that the impact on the Green Belt identified by the inspector (including a 35 metre drill rig and related buildings) was not thought necessarily sufficient in itself to lead to conflict with the openness proviso. That was a matter for separate planning judgement. E

#### *Material considerations*

29 Section 70(2) of the Town and Country Planning Act 1990 (“the Act”) required the council in determining the application to have regard to the development plan and “any other material consideration”. In summary Samuel Smith’s argument, upheld by the Court of Appeal, is that the authority erred in failing to treat the visual effects, described by the officer in her assessment of “Landscape impact” (para 17 above) as “material considerations” in its application of the openness proviso under paragraph 90. F

30 The approach of the court in response to such an allegation has been discussed in a number of authorities. I sought to summarise the principles in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P & CR 19. The issue in that case was whether the authority had been obliged to treat the possibility of alternative sites as a material consideration. I said: G

“17. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is *necessarily* relevant, so that he errs in law if he fails to have regard to it. H

“18. For the former category the underlying principles are obvious. It is trite and long-established law that the range of potentially relevant

A planning issues is very wide (*Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for the decision-maker (*Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by *failing* to have regard to alternative sites, it is necessary to find some legal principle which compelled him (not merely empowered) him to do so.”

B

31 I referred to the discussion of this issue in a different context by Cooke J in the New Zealand Court of Appeal, in *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, 182 (adopted by Lord Scarman in the House of Lords in *In re Findlay* [1985] AC 318, 333–334, and in the planning context by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority* [2017] PTST 1063, 1071):

C

“26. [Cooke J] took as a starting point the words of Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223, 228: ‘If, in the statute conferring the discretion there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters.’ He continued: ‘What has to be emphasised is that it is only when the statute *expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation* that the court holds a decision invalid on the ground now invoked. It is not enough that it is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision ...’ (emphasis added).

D

E

“27. In approving this passage, Lord Scarman noted that [Cooke J] had also recognised, that: ‘... in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers ... would not be in accordance with the intention of the Act.’ (*In re Findlay* at p 334.)

F

“28. It seems, therefore, that it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because ‘obviously material’) requires to be taken into account ‘as a matter of legal obligation’.”

G

32 *Mutatis mutandis*, similar considerations apply in the present case.

H The question therefore is whether under the openness proviso visual impacts, as identified by the inspector, were expressly or impliedly identified in the Act or the policy as considerations required to be taken into account by the authority “as a matter of legal obligation”, or alternatively whether, on the facts of the case, they were “so obviously material” as to require direct consideration.

*The reasoning of the courts below*

33 Hickinbottom J in the High Court held in summary that consideration of visual impact was neither an implicit requirement of the openness proviso, nor obviously relevant on the facts of this case. He said:

“64. I stress that we are here concerned with differential impact, ie the potential adverse visual impact over and above the adverse spatial impact. On the facts of this case ... it is difficult to see what the potential visual impact of the development would be over and above the spatial impact, which, as Mr Village concedes, was taken into account. In any event, even if there were some such impact, that does not mean that openness would be adversely affected; because, in assessing openness, the officers would still have been entitled to take into account factors such as the purpose of the development, its duration and reversibility, and would have been entitled to conclude that, despite the adverse spatial and visual impact, the development would nevertheless not harm but preserve the openness of the Green Belt.

“65. In this case, the potential visual impact of the development falls very far short of being an obvious material factor in respect of this issue. In my judgment, in the circumstances of this case, the report did not err in not taking into consideration any potential visual impact from the development. Indeed, on the facts of this case, I understand why the officers would have come to the view that consideration of visual impact would not have materially added to the overarching consideration of whether the development would adversely impact the openness of the Green Belt.”

34 Lindblom LJ took the opposite view. He summarised the visual impacts described by the officer:

“42. The proposed development was a substantial extension to a large existing quarry, with a lengthy period of working and restoration. As the Principal Landscape Architect recognised in her response to consultation, and the officer acknowledged without dissent in her report, there would be permanent change to the character of the landscape (paras 4.109 and 4.115 of the report). The ‘quality of the Locally Important Landscape Area as a whole would be compromised’ (para 7.41). *The exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so* (paras 4.111 and 7.42). *Long distance views could be cut off by the proposed bunding and planting.* Agricultural land would ultimately be replaced by a ‘deep lower level landscape’ of grassland (para 4.113). The ‘character and quality’ of the landscape would be ‘permanently changed’ and the ‘impact cannot be described as neutral’ (paras 4.115 and 7.44). Concluding her assessment of ‘Landscape Impact’, the officer was satisfied that the ‘proposed screening could protect the environment and residential receptors from potential landscape and visual impacts’, and that with the proposed mitigation measures the development would comply with national and local policy (paras 7.47 and 8.4).

“43. That assessment did not deal with the likely effects of the development on the openness of the Green Belt as such, either spatial or visual. *It does show, however, that there would likely be—or at least*

A *could be—effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working* (para 4.111 of the officer’s report). The officer’s conclusion overall (in para 7.47) was, in effect, that the proposed screening would be effective mitigation, without which the development would not be acceptable. But this was not followed with any discussion of the harmful effects that the screening measures themselves might have on the openness of the Green Belt.” (Emphasis added.)

35 He then directed particular attention to para 7.122 of the report, which he understood to encapsulate her views on the application of the openness proviso under NPPF paragraph 90:

C “45. So it is to para 7.122 that one must look, at least in the first place, to see whether the officer considered the relevance of visual impact to the effect of this development on the openness of the Green Belt. Did she confront this question, and bring the committee’s attention to it? I do not think she did. *She neither considered, in substance, the likely visual impact of the development on the openness of the Green Belt nor, it seems, did she ask herself whether this was a case in which an assessment of visual impact was, or might be, relevant to the question of whether the openness of the Green Belt would be preserved.* Indeed, *her observation that openness is ‘commonly taken to be the absence of built development’ seems deliberately to draw the assessment away from visual impact, and narrow it down to a consideration of spatial impact alone.* And the burden of the assessment, as I read it, is that because the further extraction of limestone would take place next to the existing quarry, the ‘scale’ of the development would not fail to preserve the openness of the Green Belt. This seems a somewhat surprising conclusion. But what matters here is that it is a consideration only of spatial impact. Of the visual impact of the quarry extension on the openness of the Green Belt, nothing is said at all. *That was, it seems to me, a significant omission, which betrays a misunderstanding of the policy in paragraph 90 of the NPPF.*

F “46. One must not divorce para 7.122 from its context. The report must be read fairly as a whole. The question arises, therefore: did the officer address the visual impact of the development on the openness of the Green Belt in the remaining paragraphs of this part of her report, or elsewhere? I do not think she did. *Her consideration of the effects of the development on the ‘purposes of including land in the Green Belt’, in paras 7.123 to 7.125, is unexceptionable in itself. However, she did not, in these three paragraphs, revisit the question of harm to the openness of the Green Belt, either in spatial or in visual terms.* The conclusion to this part of the report, in para 7.126, is that the ‘character and openness of the Green Belt’ would not be materially harmed by the development—a conclusion repeated in para 8.5—and that the proposal would therefore comply with Policy SP3 and Policy SP13 of the local plan and the NPPF. But I cannot accept that this conclusion overcomes the lack of consideration of visual impacts on ‘openness’ in the preceding paragraphs. It seems to treat ‘character’ as a concept distinct from ‘openness’. Even if these two concepts can be seen as related to each other, and however wide the concept of ‘character’ may be, there is no

suggestion here that the officer was now providing a conclusion different A  
from that in para 7.122, or additional to it.

“47. The same may also be said of the officer’s earlier discussion  
of ‘Landscape Impact’ in paras 7.41 to 7.47. Her assessment  
and conclusions in that part of her report are not imported into  
para 7.122, or cross-referred to as lending support to her conclusion  
there.” (Emphasis added.)

36 This led to the overall conclusion in para 49 (quoted in part at the  
beginning of this judgment):

“I can only conclude, therefore, that the advice given to the  
committee by the officer was defective. It was defective, at least, *in*  
*failing to make clear to the members that, under government planning*  
*policy for mineral extraction in the Green Belt in paragraph 90 of*  
*the NPPF, visual impact was a potentially relevant and potentially*  
*significant factor* in their approach to the effect of the development on  
the ‘openness of the Green Belt’, and hence to the important question of  
whether the proposal before them was for ‘inappropriate’ development  
in the Green Belt—and, indeed, in implying that the opposite was so  
... One can go further. *On the officer’s own assessment of the likely*  
*effects of the development on the landscape, visual impact was quite*  
*obviously relevant to its effect on the openness of the Green Belt. So the*  
*consideration of this question could not reasonably be confined to*  
*spatial impact alone.*” (Emphasis added.)

37 Although it is necessary to read the discussion in full, I have highlighted  
what seem to me the critical points in Lindblom LJ’s assessment of the failure E  
to take account of visual effects; in summary: (i) In paras 42 and 43, he  
extracts from the officer’s own landscape assessment the observation that  
“the exposed face of the extended quarry would be as visible as that of  
the existing quarry, if not more so” and that “long distance views could be  
cut off by the proposed bunding and planting”. This leads to the view that  
“there would likely be—or at least could be—effects on openness in both F  
respects, including the closing-off of long distance views by the bunding and  
planting that would screen the working”. (ii) In para 7.122, where the officer  
purported to address the issue of openness, she failed to consider the likely  
effect of such visual impact nor its relevance to whether the openness of the  
Green Belt would be preserved. Instead, by in effect equating openness with  
absence of built development, she tended to narrow the issue down to a  
consideration of spatial impact alone. That betrayed a misunderstanding of G  
the policy in paragraph 90 of the NPPF. (iii) The subsequent paragraphs dealt  
with other aspects of the effect on the purposes of the Green Belt, and were  
unexceptionable in themselves; but they did not revisit the question of visual  
impact or so make up for the deficiency in para 7.122. (iv) The officer’s advice  
was defective in this respect. Further on her own assessment visual effect was  
“quite obviously relevant” to the issue of openness, and the committee could H  
not reasonably have thought otherwise.

38 I hope I will be forgiven for not referring in detail to the arguments  
of counsel before this court, which substantially reflected the reasoning  
respectively of the High Court and the Court of Appeal. I note that Mr Peter  
Village QC for Samuel Smith made a further criticism of para 7.122, not

A adopted by Lindblom LJ, that the officer treated the fact that the site abutted the existing quarry as reducing its impact on openness.

*Discussion*

39 With respect to Lindblom LJ's great experience in this field, I am unable to accept his analysis. The issue which had to be addressed was whether  
 B the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion  
 C of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.

40 Lindblom LJ criticised the officer's comment that openness is "commonly" equated with "absence of built development". I find that a little surprising, since it was very similar to Lindblom LJ's own observation in the *Lee Valley* case (para 23 above). It is also consistent with the contrast drawn  
 D by the NPPF between openness and "urban sprawl", and with the distinction between buildings, on the one hand, which are "inappropriate" subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.

41 As to the particular impacts picked out by Lindblom LJ, the officer was entitled to take the view that, in the context of a quarry extension  
 E of six hectares, and taking account of other matters, including the spatial separation noted by her in para 7.124, they did not in themselves detract from openness in Green Belt terms. The whole of paras 7.121 to 7.126 of the officer's report address the openness proviso and should be read together. Some visual effects were given weight, in that the officer referred to the restoration of the site which would be required. Beyond this, I respectfully agree with Hickinbottom J that such relatively limited visual impact which  
 F the development would have fell far short of being so obviously material a factor that failure to address it expressly was an error of law. For similar reasons, with respect to Mr Village's additional complaint, I see no error in the weight given by the officer to the fact that this was an extension of an existing quarry. That again was a matter of planning judgement not law.

G *Conclusion*

42 For these reasons, I would allow the appeal and confirm the order of the High Court dismissing the application.

*Appeal allowed.  
Order of Hickinbottom J restored.*

H

SHIRANIKHA HERBERT, Barrister

**Professional Fees of:  
Mr Asitha Ranatunga - Date of call: 11/10/2001**

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Sol's Ref:  
Purchase Order No:

Our Ref: 153998

Date: 04/08/2021

**Fews Lane: Demolition and erection of 2 dwellinghouses (20/02453/S73), The Retreat JR**

Date	Description	Amount	Vat%	Vat
02/07/2021	Review of papers and drafting of PAP Response	£2,150.00	20.0%	£430.00
24/07/2021	First draft of Summary Grounds 22 - 24 July.	£2,100.00	20.0%	£420.00
26/07/2021	Review of emails considering attachments to Summary Grounds. 3 x emails to SR.	£450.00	20.0%	£90.00
28/07/2021	Final review of Summary Grounds with tweaks.	£550.00	20.0%	£110.00
03/08/2021	Final review of Summary Grounds. Telephone conference with instructing solicitor on final tweaks and exhibits.	£450.00	20.0%	£90.00

<b>VAT SUMMARY</b> 20.0% (FEE) Amount: £5,700.00, VAT: £1,140.00	<b>Total Fees</b>	<b>£5,700.00</b>
	<b>Total VAT</b>	<b>£1,140.00</b>
	<b>Total Due</b>	<b>£6,840.00</b>

**FOR EACH ITEM OF WORK, PAYMENT IS TO BE MADE WITHIN 30 DAYS OF THE INITIAL FEE NOTE. STATUTORY INTEREST MAY BE CHARGED ON LATE PAYMENT.**

**ANY CHEQUES SHOULD BE MADE PAYABLE TO Mr Asitha Ranatunga**

ANY PAYMENTS BEING MADE BY BACS SHOULD BE MADE INTO CORNERSTONE BARRISTERS BACS ACCOUNT; Sort Code 60-80-08 ACC 60547413

PLEASE QUOTE OUR REFERENCE NO. ON ALL CORRESPONDENCE

Previously rendered on 07/07/2021, 07/07/2021, 28/07/2021, 28/07/2021, 28/07/2021, 04/08/2021, 04/08/2021 Printed on 04/08/2021

CO/2372/2021

Time of Stephen Reid

Solicitor acting for the Defendant

80 emails	£1,200.00
Perusing documents etc	£ 750.00
Drafting	£ 150.00
Telephone	£ 300.00
Preparation	£ 150.00
Total	£2,550.00

Based on £150.00 per hour

Detailed schedule to follow (once IT issues resolved)

**TW timesheet**

S73 Fews Lane Time	Date	Task
	9 July 21	Review of summary grounds for Counsel
	9 July 21	Research and evidence gathering for SR re reps of 21 April, email to Stantec, email from Stantec
	9 July 21	Stantec report provision for SR
	9 July 21	Extracts of Stantec report for SR
	9 July 21	Telephone call SR re summary grounds
15mins	6/7 July 21	Further email with SR re further correspondence with FLC 6 July 21 re mistakes plus telephone call
15mins	6 July 21	E-mail with SR re FLC email of 6 July 21
15mins	5 July 21	E-mail to SR further review of PAP response.
30mins	5 July 21	Review of PAP response for SR
15mins	2 July 21	Email Counsel
15mins	2 July 21	Email SR re visibility splays
90mins	1 July 21	Email and review for Counsel re FLC two further grounds of JR challenge, suggested text, including detailed, review of appeal, history search, review of S73 report

20mins	1 July 21	Call with Counsel re factual checking on PAP
60mins	1 July 21	Various emails and exchanges with County and Urban Design Team
15mins	30 June 21	Email to SR and Urban Design
15mins	29 June 21	Emails with Urban Design
240mins	25 Jun 21	Draft full PAP response and associated research including provision of zip file
	22 June 21	Email and review of correspondence for FLC re PAP
	22 June 21	Email to SR re PAP letter response technical matters
	22 June 21	Telephone call with SR
	21 June 21	Email SR re FLC correspondence
	14 June 21	Emails to SR re instructions on further FLC correspondence of 13 June 21
	10 June 21	Emails to SR re FLC correspondence of 10 June 21
	10 June 21	Detailed research and email to SR re grounds of PAP challenge points 5(1-3)
	10 June 21	Email to Director and SR re PAP letter of 8 June 21 and approach
<b>555 mins</b>		

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**IN THE HIGH COURT OF JUSTICE**  
**CO/2372/2021**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Claim No.

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN**  
**(on the application of FEWS LANE CONSORTIUM LTD)**

**Claimant**

- and -

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

**Defendant**

- and -

**LANDBROOK HOMES LTD**

**Interested**  
**Party**

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**DRAFT CLAIMANT'S SECOND REQUEST FOR FURTHER INFORMATION OR**  
**CLARIFICATION UNDER CPR PART 18 AND PRACTICE DIRECTION 18**

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To the Defendant's Solicitor

You are requested to provide the following clarification or information under CPR Part 18 and the Part 18 Practice Direction by \_\_\_\_\_.

The Defendant does not accept that CPR Part 18 applies to judicial review proceedings issued under CPR 54. However, the Defendant provides the responses below pursuant to its duty of candour using the table below for convenience.

This is the fourth time of asking in regards to the information requested in Nos. 1 through 4.

Whilst the Defendant accepts that the Claimant (FLCL) has made a number of requests asking for information, as the Claimant is aware the Defendant has sent upwards of a dozen emails/letters to the Claimant as referred to below and accordingly it is not accepted that the Defendant has failed to enter into correspondence with the Claimant. The Defendant provided proper and proportionate responses in a timely fashion.

1. email sent to FLCL at 13:54 on 4<sup>th</sup> June 2021 (with copies of correspondence between FLCL and Cambs County Council in December 2018 attached)

2. email sent to FLCL at 09:03 on 8<sup>th</sup> June 2021

3. email sent to FLCL at 10:27 on 14<sup>th</sup> June 2021

4. email sent to FLCL at 16:59 on 5<sup>th</sup> July 2021 (with a copy of the Pre-Action response letter dated 14<sup>th</sup> May 2021)

5. email sent to FLCL at 13:09 on 6<sup>th</sup> July 2021

6. email sent to FLCL at 15:34 on 6<sup>th</sup> July 2021

7. email sent to FLCL at 13:32 on 29th July 2021
8. email sent to FLCL at 11:36 on 6<sup>th</sup> August 2021
9. email sent to FLCL at 15:40 on 6<sup>th</sup> August 2021
10. email sent to FLCL at 13:13 on 9th August 2021
11. email sent to FLCL at 15:47 on 9<sup>th</sup> August 2021
12. email sent to FLCL at 11:08 on 10<sup>th</sup> August 2021
13. email sent to FLCL at 18:43 on 10<sup>th</sup> August 2021
14. email sent to FLCL at 18:59 on 10<sup>th</sup> August 2021
15. email sent to FLCL at 17:26 on 23<sup>th</sup> August 2021
16. email sent to FLCL at 09:59 on 24<sup>th</sup> August 2021

The Defendant did not accept an offer to extend time to comply with these requests prior to filing the acknowledgment of service.

Please see above. The Defendant took the reasonable view that in addition to its responses in the emails referred to above, its Summary Grounds would deal with the substance of the points raised.

	Request	Response
1	Why did the Defendant decide to use “a previous version of <i>The Design Manual for Road and Bridges</i> ” [CB/165] in its evaluation of this planning application?	<p>The Local Highway Authority had advised that 1.5m pedestrian visibility splays within the public highway were acceptable in this instance and in so doing referenced DMRB . The Case Officer relied upon the LHA advice.</p> <p>The Design Manual for Roads and Bridges comprises a suite of documents that contain information about current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the UK. In effect the DMRB is the only source of detailed guidance on matters such as visibility splays and it is common practice amongst Local Highway Authorities to use it for a wide range of situations beyond motorways and trunk roads, such as the small scale scheme</p>

	Request	Response
		<p>under challenge here (cf. Manual for Streets which does not contain detailed guidance on such matters).</p> <p>The Officer Report stated that it is understood that the minimum recommendation of a 1.5m splay is derived from a previous version of DMRB. One of the documents in the previous version of the DMRB, doc ref. TD4195 (Vehicular access to all purpose trunk roads), provides a detailed schematic showing that in fact 1m splays either side of a 2m wide access up to a footway can be acceptable. Whilst TD4195 has been superseded by document ref. CD123 (Geometric design of at-grade priority and signal-controlled junctions) as part of the current DMRB, the schematic remains unchanged.</p> <p>The reference to the DMRB as part of the evaluation of the planning application was therefore within the context of its use by the Local Highway Authority as part of a wide range of national guidance that it relies upon to underpin its response as statutory consultee on highways matters. The Local Highway Authority's position was ultimately informed by judgment. Officers did not depart from that judgment in the Officer Report, and the matter was ultimately left to the Planning Committee to consider.</p>
2	<p>Can the Defendant please identify any other planning applications in the recent past in which it has evaluated a planning application for minor residential development against the standards contained in any version of the <i>Design Manual for Roads and Bridges</i>?</p>	<p>The LPA would have to undertake a study to establish that information but on the substantive point, the LHA has stated that it has accepted the creation of pedestrian visibility splays within the adopted public highway elsewhere within South Cambridgeshire.</p>

	Request	Response
		<p>As referred to in answer to Question 1 above, it is standard practice for Local Highway Authorities, including Cambridgeshire County Council, to use the DMRB as part of a suite of national guidance to underpin its comments on a range of planning applications. Whilst the document may not expressly be referred to as having been considered and applied in many other planning applications, this is because it is guidance used as a matter of course by the Local Highway Authority, along with other national highway guidance, as a tool to underpin its comments. Express reference to DMRB was made in the Officer Report so as to provide a fuller response, given that highway safety had been raised by a third party.</p>
3	<p>Why did the Defendant instruct its planning committee that the <i>Design Manual for Roads and Bridges</i> was the “correct” guidance to apply in regards to this application?</p>	<p>Please see response to question 1</p> <p>Ultimately, the test to be applied in relation to highway safety matters is that contained in paragraph 111 of the NPPF:</p> <p><i>Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.</i></p> <p>The concerns raised by third parties as to the adequacy of visibility splays at the junction of Fewes Lane with High Street were considered. However, national highways guidance, including from the DMRB, supported the view that they were adequate. Drawing on that guidance, the Local Highway</p>

	Request	Response
		<p>Authority raised no issue with the visibility splays in this instance. There was nothing unlawful in the consideration of this issue, and the Planning Committee's judgment on it, by following the recommendation to grant the application.</p>
4	<p>The planning officer's report contained the following quotation from paragraph 21a-031-20180615 of the Planning Practice Guidance [CB/175]: "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." Did the Defendant follow this approach when determining this application? If not, why did the Defendant decide not to follow this approach?</p>	<p>This point is substantively dealt with in the Defendant's Summary Grounds at paras. 62-68. The following response is for clarification only.</p> <p>The LPA did rely upon the guidance from paragraph 21a-031-20180615 of the Planning Practice Guidance. This was set out within the report and, during the committee meeting, it was confirmed that the guidance remained extant.</p> <p>The report identified that the S73 application sought only to amend the Traffic Management Plan condition, however, the report and the officer presentation also addressed matters such as the visibility splays since these had been raised by third parties.</p> <p>During the officer presentation, Members were given advice on the relevant statutory test to ensure they were clear on how they were to consider the application. Section 73(2) of the Town and Country Planning Act 1990 was specifically read out to them.</p>
5	<p>On what date were the Claimant's representations submitted on 19 May 2021 added to the Defendant's planning register?</p>	<p>26<sup>th</sup> May 2021 at 8:50am.</p>
6	<p>Were members of the Defendant's planning committee provided with a copy of Claimant's representations submitted on 19 May 2021?</p>	<p>No, however the officer addressed the content of the representation in his presentation.</p> <p>The representation identified that</p> <p><i>"it is necessary that all members of the district council involved in the decision making process in any capacity have been correctly directed as to which considerations are material and what</i></p>

	Request	Response
		<p><i>questions they are being asked to assess in regards to the application”.</i></p> <p>It referred to the relevant statutory test, identified that there was a degree of confusion amongst Members and the Parish Council regarding</p> <p><i>“whether it is possible to ask the decision maker to attach new conditions that were not attached to the extant permission” and asked that “these issues are brought to the attention of the local members and the parish council to clarify any confusion that may linger from previous attempts to decide this application”.</i></p> <p>The officer responded to this request in his presentation by expressly identifying the relevant statutory test, Section 73(2) to Members to ensure that they were clear on how they were to consider the application. There was clear opportunity for Members to seek further clarification had they been unclear on how they should proceed to consider the application.</p>
7	Were members of the Defendant's planning committee informed that the Claimant's representations submitted on 19 May 2021 had been received and were available on the Defendant's planning register? If so, by what means and on what date were the members informed?	No
8	A prepared statement [ <b>Defendant's Acknowledgment of Service Bundle/24</b> ] was read out to the committee by an officer before the planning application was considered. Why was the committee not provided with this information in writing sufficiently in advance of the meeting to consider the information in the prepared statement together with the officer's report?	As part of the LPA's standard operational practice, officers' oral presentations are not provided to Members in writing ahead of the committee meeting.

Signed

Claimant \_\_\_\_\_

Position or office held \_\_\_\_\_

(If signing on behalf of firm or company)

**The Statement of truth is to be completed by the Responding Party when responding on this form.\***

Statement of truth

I believe that the facts stated in this response are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Defendant to sign this statement.

Full name \_\_\_\_\_

Name of Defendant's solicitor's firm \_\_\_\_\_

Signed \_\_\_\_\_

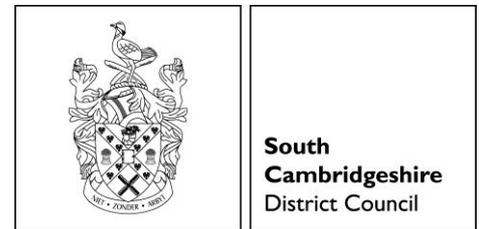
\*(Defendant) ('s solicitor)

Position or office held \_\_\_\_\_

(if signing on behalf of firm or company)

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# Agenda Item 6



**Report to:** South Cambridgeshire District Council Planning Committee 29 September 2021

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

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## **S/1963/15/CONDG – Land To North And South Of And Immediate Linton**

Proposal: Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL

Applicant: Abbey Developments Limited

Key material considerations: Surface Water Drainage and Flood Risk

Date of Member site visit: None

Departure Application: No

Decision due by: 18 June 2021

Application brought to Committee because: Referral from the Council's Director of Planning and Economic Development, Parish Council objection and the wider public interest.

Presenting officer: Michael Sexton

### **Executive Summary**

1. Outline planning permission was granted on 01 September 2017 for “residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road” under planning reference S/1963/15/OL.
2. Approval of matters reserved for appearance, landscaping, layout, and scale (comprising 55 dwellings) was later granted on 15 November 2019 under planning reference S/2501/19/RM.
3. Condition 10 of the outline consent requires, prior to the commencement of any development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation to be submitted to and approved in writing by the Local Planning Authority, in consultation with the Environment

Agency, Lead Local Flood Authority and Linton Parish Council. The condition was imposed to ensure a satisfactory method of surface water drainage and to prevent the increased risk of flooding.

4. This application seeks to agree those details.
5. The concerns from Linton Parish Council in relation to the submitted scheme are noted.
6. However, the Council's specialist advisors and statutory consultees, namely the Environment Agency and the Lead Local Flood Authority, consider the surface water drainage scheme to be acceptable and to provide a satisfactory method of surface water drainage and to prevent the increased risk of flooding.
7. Officers therefore consider that the details submitted, as amended, comply with the requirements of condition 10 of the outline consent, relevant national and local planning policy and the condition should be discharged.

### **Relevant planning history**

8. S/1963/15/CONDF – Submission of details required by condition 5 (Hard and Soft Landscaping) of planning permission S/1963/15/OL – Approved (13 August 2021).
9. S/1963/15/COND5 – Condition 5 - Landscaping – Appealed for Non-Determination (decision pending).
10. S/1963/15/COND10 – Condition 10 - Drainage – Appealed for Non-Determination (decision pending).
11. S/1963/15/CONDD – Submission of details required by condition 17 (EDS) of planning permission S/1963/15/OL – Approved (21 May 2021).
12. S/1963/15/CONDC – Submission of details required by condition 18 (CEMP) of planning permission S/1963/15/OL – Approved (21 May 2021).
13. S/2501/19/RM – Approval of matters reserved for appearance landscaping layout and scale following outline planning permission S/1963/15/OL for residential development for up to 55 dwellings with landscape buffer and new vehicular access from Bartlow Road – Approved (15 November 2019).
14. S/1963/15/OL – Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road – Approved (01 September 2017).
15. S/1577/15/E1 – EIA Screening Opinion for residential development – No objections (15 July 2015).

## Planning policies

### National Guidance

16. National Planning Policy Framework 2021  
National Planning Practice Guidance  
National Design Guide 2019

### South Cambridgeshire Local Plan 2018

17. CC/7 – Water Quality  
CC/8 – Sustainable Drainage Systems  
CC/9 – Managing Flood Risk  
HQ/1 – Design Principles

### South Cambridgeshire Supplementary Planning Documents (SPD):

18. Sustainable Design and Construction SPD – Adopted January 2020  
Cambridgeshire Flood and Water SPD – Adopted November 2016

### Consultation

19. **Linton Parish Council** – Objection.

Comments received 25 May 2021

The document showing overland surface water routes is very concerning.

The land north of the development site slopes significantly between Horseheath Rd and Bartlow road (and continues sloping towards the river). The blue arrows show the water reaching the northern edge of the northern site and then turning eastwards along a contour to avoid entering the site. No drainage features have been proposed that would enable this to happen. The reality is that water will continue to flow downhill according to the laws of gravity into the gardens (and potentially homes) of the occupants as has occurred in adjacent sites.

Similarly, no consideration has been given to the surface water flow witnessed from the roads to the north of Bartlow Road into the site itself (Ridgeway and Kenwood Gardens) and how this is likely to flow into the spine road on the southern site. Surface water flow along Bartlow road certainly does not simply flow to the east of the site entirely as is shown in this plan.

The SUDS scheme would appear to be in the wrong position to deal with the surface water flow as shown by the blue arrows.

The agreed planting barrier on the southern boundary, to keep pets and residents from the river, has again disappeared.

As the developer has made “no material amendments” to the plans since the last submission, previous LPC comments still stand.

The southern site layout still shows the foul water drain going to the Bartlow Road manhole, contrary to explicit conditioning.

The main concern of LPC in relation to the drainage of this site is that the representations of the EA flood maps are categorically incorrect when compared with the real life experienced by the village. The EA flood maps from both river water and surface water are being challenged by LPC following discussions with the EA and LLFA.

Comments to support objections to this and previous submissions:

The area shown as Flood zone 3 with a flood risk of 1 in 100 (or greater) each year has been shown with photographic evidence to have flooded 3 times in 3 months since December 2020. The river heights recorded at the monitoring station by the site showed water heights between 0.827m and 0.872m during the periods of the photos submitted to SCDC, the EA and the LLFA.

The EA states that flooding in the local area is possible in the event that the water height at this monitoring station is over 0.74m. Since 2012 water heights have been recorded by the EA as follows:

- Water height between 0.74m to 0.84m - number of occasions 17
- Water height between 0.84m to 0.94m - number of occasions 9
- Water height between 0.94m to 1.04m - number of occasions 1
- Water height between 1.04m to 1.14m - number of occasions 4

On 17 occasions in the last 9 years (April 2012 to May 2021) the river has reached the heights where the water levels shown in the photographs supplied have been exceeded. This means that the area shaded in dark blue as flood zone 3 actually has a risk of flooding at least 1.9 times every calendar year based on this recent evidence.

Also provided to the SCDC, the EA and LLFA is a photograph of the site taken following the flooding event in 2001 along with the closest comparison possible in 2021 given the change in the season, trees and camera technology. This is the most recent of our, on average, 30 year flooding events. The photograph is sadly not angled up the site to demonstrate the actual water level as no one in the local area ever thought that “Noah’s Flood Field” (it’s local name) would ever be put forward for development. The EA flood maps for 2001 and 1968 provided by the applicant in the OL application represent the real zone 2 flood risk on this site (although we would argue that the risk of flooding is considerably greater than the 1 in 100 to 1 in 1000 year event that this is supposed to represent – with the highest levels being reached at least once in every 100 years if not once in every 30). The archaeological evidence showing “river silt” at the 43.5m contour line concurs with this. This evidence was clearly taken into account when the neighbouring properties in Finchams Close were developed in the 1970s. The properties have all been built above this level, with

those closest to the river/its flood plain having at least a 1m drop in their gardens. Their gardens then adjoin a drainage ditch to mitigate flooding potential. In 2001 the gardens of these properties were flooded, but the houses remained dry.

The metadata of the photos submitted should give their dates, times and locations – they are supplied unedited except with a reduction in resolution to allow more pictures to be submitted in one email. These images can be resupplied with a map detailing their exact locations and at full resolution if required.

One final point about LPC understanding of “breaching the aquifer” in response to the comments from the developer. Aquifers are layers of porous rock (in our case chalk) that sit on top of impermeable rock. The rock in a principal aquifer has high intergranular and/or fracture permeability enabling them to provide a high level of water storage (it contains more air pockets). Had the trial hole that could not hold a head of water been dug into a consistent layer of chalk, porosity readings consistent with chalk would have been achieved. The fact that huge volumes of water “disappeared” so rapidly is indicative that the base of the pit was into or at least at the top of the rock with higher permeability or a fracture/fault consistent with the principal aquifer – hence our terminology that the aquifer had been breached.

LPC Decision: Object and do refer this to the District Council Full Planning Committee

Comments received 26 March 2021

Additional Comments from Linton Parish Councils (LPC) Planning Consultant under instruction from LPC

We note there are 76 documents submitted for this condition. They do not take into account the substantially reduced area of porosity indicated by the revised landscape plans submitted under condition 5.

Section 6 of the surface water letter acknowledges that the southern site had poor insitu soakage tests and high ground water levels, and is therefore unsuitable for infiltration. These same ground conditions and previous recorded flooding events make development of the buildings and pumping station in the same area risky. However, even the Northern site porosity tests failed and the proposal therefore does not comply with the requirements.

The solution proposed is that all the water would instead be discharged to the River Granta. There is no acknowledgement within the document (only the ecology letter) that this is a Protected Chalk Stream, and that there should be a suitably enhanced level of protection for the river and its ecology. It therefore poses a risk to ecology and the environment.

The new drainage proposal to discharge the surface water drainage to the chalk stream has not yet been assessed as part of the conditions for the ADS and

CEMP. It has less detail than previously, and previous objections about the design and impact of the proposed swale, outfalls and hydro brake are likely to still apply.

The SDP Surface Water Drainage letter proposes that in the event of a sewer or overland flow flood event, the flood water will not enter the buildings, but will instead flood/pond external hardstanding/landscaping areas. These external areas are now designed to discharge into the chalk river, and therefore the new proposal is likely to cause risk of contamination.

The SuDs Maintenance Plan 2.5 page 2 proposes that the road drainage is adopted by Anglian Water. This is unlikely to occur, as it has already been refused and the falls do not comply with Building Regulations, and Highways has also refused to adopt the roadways for reasons that include that the slopes are not compliant and the smart sponges are expensive to maintain. Very little information is provided about the maintenance company Abbey employ and it appears from Companies House to be dormant, so is of little assurance.

Scaling off the drawings, the Northern Site concrete ring soakaways are located too close to the road and possibly also too close to the nearest house.

Rainwater runs onto the permeable paving from the roadways, and is therefore contaminated. This has not been taken into account in the maintenance and the Smart Sponges are only provided for the roadway. Highways do not adopt permeable paving so this critical drainage infiltration scheme relies on individual householders and their maintenance.

The infiltration into individual rear gardens is not a SuDS scheme as there is no sequence of infiltration, and should it fail in times of flood, it is likely to result in flooding elsewhere.

The Attenuation Pond/swale, hydro brake and headways are not part of the approved OL and RM plans. The precast concrete sandbags are poor quality structures and would not last for the life of the development, especially as the pond is located within a public open space. The appearance of the sandbags, hydro brake and headways is not natural and rural and is not appropriate for the views and appearance of the river valley.

The road tracking drawings submitted for this condition are relevant to another condition so should not be approved under this.

The Test Locations of November 2019 do not appear to correspond with the evidence on site, as location TP4 is in the position of a topsoil mound and TP5 within the cleared archaeological site. In those locations the conditions would not be as drawn. The infiltration calculations have the same issues as before, as (for instance) they do not appear to accord with the CIRIA soil types for the relevant types of soil reported in the 2015 Rossi Report.

The RSK Report of 20 March 2020 Section 3 reports on the 2017 porosity trial pits. These were the tests that failed and included pits TP7 and TP10 which are

likely to have breached the aquifer, as substantial amounts of water were poured into the pit and quickly disappeared. Under the regulations, this should have been a failure, but in Section 4 of the Report, the speed of water loss is then used to average out the results so that the poor porosity results elsewhere were improved. The 2017 results are also confused with the later tests after the archaeological dig of 2018 as Section 4 reports that TP6 was abandoned because it was in the position where topsoil had been removed for archaeology.

The maps show no tests described in this report were located where the scheme proposes the two major infiltration positions.

The exceedance flow route in the event of the design not being capable to dealing with the demand, proposes all water for the Northern site flows down onto Bartlow Road. Highways have not responded on this but are likely not to agree. As LPC's videos show, a substantial amount of water already flows down via the North site onto Bartlow Road, and this proposed design would make the flooding worse.

In response to the letter of 24 October 2020, we note that the EA map provided by LPC is that of actual recorded flood events of 1968 and 2001. There is no reason why any future event would be less extensive than this, especially in light of Climate Change. As the photographic and cellar evidence shows, numerous flood events, prior to the construction of the EA monitoring station, were worse than these two EA recorded events. The NPPF policies and footnote 50 are based on flood risk, and this includes evidence of prior flood events where there is a vulnerable use (housing).

There is a new ditch within the public open space next to the proposed swale. It involves conflict with the EDS and CEMP and the principles of conditions 17 and 18 so should not be discharged under this condition. It is not approved under RM and will breach the buffer zone and ensure that voles etc no longer have the separation for their protection described in the EDS.

The data used for porosity is not robust, and the design relies on high maintenance details such as smart sponges. As a result, there is a greater risk of flooding on site and elsewhere. The proposal introduces a swale on infiltration crates, with poor quality materials based predominately on concrete, despite being within a key valley landscape location.

The issues with the proposed swale are as previously commented, and this structure is not part of the RM approved plans.

LPC Decision: Object and (unless minded to refuse under delegated powers), refer this to the District Council Full Planning Committee.

Comments received 22 March 2021

The comments received on 22 March provide a copy of the objection and comments made to application S/1963/15/COND10 and comprises 14 pages. As the comments relate to a separate submission, albeit on a related topic,

those comments are not reproduced within the report but are appended to it for reference and transparency.

A full copy of the comments received from Linton Parish Council on 25 May, 26 March and 22 March is available in Appendix 1.

20. **Ecology Officer** – No objection.

The proposals for the drainage layout have not been altered in a way which would cause additional ecological impacts since my colleague's comments of 6th January 2021. The letter from ACD Environmental (undated) confirming a legally-compliant approach for water vole and pollution prevention measures has also been resubmitted. Therefore, there is no objection to the proposed drainage layout.

21. **Environment Agency** – No objection.

Comments dated 02 March 2021:

We are satisfied that the proposed soakaways in the northern part of the site will maintain adequate clearance above peak seasonal groundwater levels. We therefore have no objection to the discharge of Condition 10.

Comments dated 12 May 2021:

I confirm that we have no objection, in principle, to the discharge of condition 10 subject to the approval of the LLFA.

22. **Lead Local Flood Authority** – No objection, as amended.

Comments dated 26 May 2021

Surface water from private areas in the northern site will be managed by infiltration through individual plot soakaways and permeable paving. The northern site access road will drain into a ring soakaway. The southern site will be managed by permeable paving and a balancing pond with crated storage and a flow control, which will restrict surface water to 2.8 l/s during all events up to and including a 1 in 100 year storm event plus a 40% allowance for climate change. Surface water from the balancing pond will then pass through a filter trench with gravel riffles to provide a final element of surface water treatment before out-falling into the River Granta.

Water quality has been adequately addressed when assessed against the Simple Index Approach outlined in the CIRIA SuDS Manual. The SuDS management train consisting of permeable paving, swales, a balancing pond and a filter strip with gravel riffles will provide sufficient surface water treatment prior to discharging into the River Granta chalk stream. The permeable paving, balancing pond, ditch outfall and public soakaways will be managed by a private management company in line with the Ciria SuDS Manual. The ring soakaways serving the public access roads will be managed by the Local Highways

Authority.

It has been identified that the southern site experienced flooding from the River Granta on the 21st October 2001. The river level at this time was recorded at 41.576 metres AOD, the highest level ever recorded. Finished floor levels will be set to a minimum of 42.200 metres AOD. According to the most up-to-date Environment Agency flood plain modelling, the balancing pond will be located entirely within Flood Zone 1. The southern part of the southern site experienced further flooding from the River Granta in December 2020/ January 2021. The applicant has however provided photographic evidence to confirm that this flooding was confined to the EA modelled flood zones and did not extend to the part of the site proposed for development.

An overland flow plan has been provided to demonstrate that surface water flows from Bartlow Road would be routed along the eastern undeveloped area of the site towards the River Granta. Overland flows coming from Bartlow Road to the north-west would flow onto the site following local topography, and be intercepted by the sites drainage system. The proposed drainage system will accept surface water flows during all events up to and including a 1 in 100 year storm event plus a 40% allowance for climate change, with no system flooding anticipated in such an event.

23. **Sustainable Drainage Engineer** – No comment received to amended submission (11 May 2021).

Original comments dated 31 March 2021:

The Lead Local Flood Authority are in consultation with the Environment Agency with concerns about the existing flood risk modelling/mapping of the site. The LLFA has requested that the applicant performs additional localised modelling to clarify the feasibility of the proposed scheme.

We support the LLFA response dated 22/03/2021

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

24. One representation has been received from The Limetrees, All Saints Rd, Ipswich. A full redacted version of the comments can be found on the Council's website. In summary the following concerns have been raised:
- Jointly own the land adjacent to the southern residential application.
  - Details do not provide reasonable assurance that the drainage proposal would not result in groundwater contamination from cars and streets which could percolate into surrounding shallow groundwater and affect our land.
  - Main SuDS feature is at southern boundary adjacent to our land; data does not provide assurance that during high rain events flood risk would not be increased from run off to this single large feature.
  - Risk that the floodplain storage capacity could be in part taken up by seepage from the SuDs feature thus negatively affecting our land and the Granta River.

- The long term maintenance plans for SuDs do not provide robust assurance that they will be maintained in good order for the lifetime of the development, in fact the expected time period for its duration is not mentioned.

## **The site and its surroundings**

25. The site is located outside of the development framework boundary of Linton and in the countryside. It is situated to the east of the village and comprises land to the north and south of Bartlow Road covering an area of approximately 3.5 hectares. The land rises to the north. A public right of way lies to the east of the northern parcel of the site while the River Granta, a County Wildlife Site, runs within a valley to the south west of the southern parcel. Residential development lies to the west of the site.
26. The site lies mainly within Flood Zone 1 (low risk), with the southernmost portion of the southern parcel being within Flood Zones 2 and 3 (medium and high risk).
27. The site benefits from outline and reserved matters permission for the development of 55 residential properties and associated works.

## **The proposal**

28. The application seeks to discharge condition 10 of outline consent S/2503/15/OL, which requires the submission and approval of a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation.
29. The full wording of condition 10 is set out below:

Prior to the commencement of any development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency, Lead Local Flood Authority and Linton Parish Council. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework and the National Planning Policy Guidance, and the results of the assessment provided to the local planning authority. The system should be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 30% an allowance for climate change. The submitted details shall be in accordance with the Flood Risk Assessment reference 151077 dated July 2015 by Rossi Long Consulting and provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters. The scheme shall take into account any subsequent changes in any revised flood map produced by the

Environment Agency between approval and implementation of the scheme. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.

(Reason - To ensure a satisfactory method of surface water drainage and to prevent the increased risk of flooding in accordance with Policies DP/1 and NE/11 of the adopted Local Development Framework 2007.)

30. Condition 10 of the outline consent refers to Policies DP/1 (Sustainable Development) and NE/11 (Flood Risk) of the Local Development Framework 2007, which have since been replaced by Policies HQ/1, CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018. For the avoidance of doubt, full copies of these policies are provided in Appendix 2.

## Policy Background

31. Chapter 14 of the National Planning Policy Framework (NPPF) deals with meeting the challenge of climate change, flooding and coastal change. Paragraph 167 of the NPPF sets out that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Development should only be allowed in areas at risk of flooding where (in light of a site-specific flood-risk assessment and the sequential and exception tests, as applicable) it can be demonstrated that it incorporates sustainable drainage systems.
32. At a local level, Policies CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018 are relevant to the assessment of the details submitted. Policy CC/7 deals with the protection and enhancement of water quality, Policy CC/8 deals with sustainable drainage systems and sets out that development proposals must incorporate appropriate sustainable surface water drainage systems (SuDS) appropriate to the nature of the site, and Policy CC/9 deals with managing flood risk. As noted above, full copies of these policies are provided in Appendix 2.
33. The Cambridgeshire Flood and Water SPD provides guidance on the approach taken to the design of new development to manage and mitigate flood risk, including sustainable drainage systems. The SPD promotes the surface water hierarchy as follows (figure 6.8):
  - i) To ground in an adequate soakaway or some other adequate infiltration system; or where that is not reasonably practical
  - ii) A watercourse; or where that is not reasonably practical
  - iii) A surface water sewer; or where that is not reasonably practical
  - iv) A combined sewer.
34. The Greater Cambridge Sustainable Design and Construction SPD was adopted in January 2020. Several references are made to the Cambridgeshire Flood and Water SPD (2016) and specifically incorporates updates following the publication of the adopted Local Plan in 2018. Whilst it is acknowledged that the

adoption of the Sustainable Design and Construction SPD was post the approval of the development under applications S/1963/15/OL and S/2501/19/RM and therefore the imposition of the condition currently under consideration, it is a material consideration in the assessment of this application.

## **Planning Assessment**

### **Key Issues**

35. The key issues to consider in the determination of this application relate to whether the scheme ensures a satisfactory method of surface water drainage and prevents an increased risk of flooding.

### **Surface Water Drainage & Flood Risk**

#### Overview

36. The site is located within Flood Zones 1, 2 and 3 (low, medium and high risk) and comprises arable land and a water meadow that discharges into the river at the natural greenfield run-off rate. The River Granta is the most significant watercourse in the area and is located immediately to the south of the site.
37. Outline consent S/1963/15/OL secured a parameter plan for the development of the site as part of the approved plans condition (condition 4), which set out the areas of proposed residential development and proposed strategic green buffer and undeveloped areas. The built-up areas, including private gardens, are wholly located within Flood Zone 1 (low risk). The buffer zone to the south would be partially located within Flood Zones 1, 2 and 3 (low, medium and high risk).
38. The formal layout of the site has been established through reserved matters permission S/2501/19/RM, in line with the parameter plan secured at outline stage.
39. As set out above, condition 10 of the outline consent requires, prior to the commencement of development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation.
40. The condition also requires the details submitted to be in accordance with the Flood Risk Assessment submitted at outline stage (Rossi long Consulting, July 2015) and to take into account any subsequent changes in any revised flood map produced by the Environment Agency between approval and implementation of the scheme.
41. The application, as amended, is supported by an array of plans, documents and drainage calculations to demonstrate a satisfactory method of surface water drainage and to prevent the increased risk of flooding.

## Flood Risk Assessment (2015) Summary

42. Outline consent S/1936/15/OL was supported by a site specific Flood Risk Assessment (Rossi Long Consulting, July 2015). The Assessment sought to provide information on the flood risks associated with the application site and to present appropriate mitigation measures for the proposed development where flood risk has been identified. A site specific flood map was provided in Appendix D of the Assessment.
43. Paragraph 1.8 of the Assessment set out that the proposed surface water drainage strategy would include either the use of infiltration drainage techniques and/or a restricted discharge into the adjacent watercourse and the provision of on-site attenuation up to the critical 100 year plus climate change storm event, in accordance with the National Planning Policy Framework and the Flood Risk and Coastal Change Planning Practice Guidance.
44. Section 4 of the Assessment undertook a review of flood hazard. Paragraph 4.21 of the Assessment set out that the site was at a low risk of flooding from all sources except: (a) fluvial flooding, which was considered to present a medium risk due to the sites partial location within the flood plain of the River Granta; and (b) surface water flooding which was considered to present a medium risk due to the increased impermeable area created by the development of the site. Paragraph 4.22 of the Assessment went on to detail that the focus of the Assessment would be to mitigate the flood risks posed from these sources by: (a) sequentially locating all residential development outside of the extent of the fluvial flood plain; (b) incorporating the finished floor level and site level design parameters (as detailed within Section 5 of the Assessment); and (c) implementing an appropriate surface water drainage strategy using sustainable drainage techniques (as detailed within Section 6 of the Assessment).
45. Section 5 (flood risk mitigation measures) of the Assessment recommended that the finished floor level of the residential dwellings be set a minimum of 150mm – 300mm above the surrounding ground levels and adjacent highway/private drives. It also recommended that, where possible, all external hardstanding areas should be designed to fall away from the proposed dwellings so that in the event of a sewer surcharging or overland flow flood event, the flood water will not enter the buildings, but will instead flood/pond external hardstanding/landscaping areas.
46. Turning to the reserved matters stage, matters of layout and scale were established though reserved matters permission S/2501/19/RM, with the supporting Design and Access Statement stating in paragraph 12.3 that floor levels have been set above the external adjacent ground level, noting the provisions of Section 5 of the Flood Risk Assessment. Condition 1 of the reserved matters permission secures a list of approved plans, including layout of the site and elevations and floor plans of the dwellings.
47. Section 6 (surface water drainage strategy) of the Assessment looked at existing surface water runoff rates on the site against those that would arise

because of the proposed development, noting that the development would introduce an impermeable area of approximately 1.39 hectares onto the site (prior to any mitigation measures being implemented into the drainage strategy). To ensure the development does not exceed the existing discharge rates (table 6.1 of the Assessment) the Assessment set out that adequate mitigation measures would be required as part of the proposed surface water drainage strategy. Paragraph 6.7 of the Assessment notes that climate change guidance would result in an increase to the peak rainfall intensity of 30%, which was incorporated into the surface water drainage strategy set out in the Assessment.

48. Paragraph 6.8 of the Assessment set out that the development would incorporate a Sustainable Drainage System (SuDS) that suits the site conditions and location. The Assessment then considered the options of infiltration and restricted discharge. Both options indicatively illustrated the provision of an Infiltration Basin or Attenuation Lagoon as part of the layout in the southern portion of the site beyond the built form of development (as shown in Appendix G and Appendix I of the Assessment).
49. Section 7 (offsite impact) of the Assessment set out that the area of development was located in flood zone 1 and therefore would not be located within the fluvial flow path of any watercourse and would not occupy any critical floodplain storage and therefore have no significant impact on the hydrological morphology of the surrounding area. The proposed surface water drainage strategy, as set out in Section 6 of the Assessment, would include either the use of infiltration techniques and/or a restricted discharge into the adjacent watercourse and the use of on-site attenuation and therefore would have no significant increase in the risk of surface water flooding to the site, its occupants or surrounding development.
50. Section 8 (residual risk) of the Assessment considered remaining flood risks with the main residual flood risk considered to be from the possible blockages of sewers, both private and public, which surround and cross the site. Should the maintenance of these structures not be undertaken then there is an increased risk that they could cause on-site flooding. The Assessment noted that should the system be in private ownership then a maintenance company would be needed to ensure the effective long term use of the drainage system over the lifetime of the development, in the absence of an adopted system.
51. The Assessment concluded that the proposed development was considered appropriate from a flood risk and drainage perspective, subject to the implementation of the recommended mitigation measures put forward as part of the Assessment.
52. The Assessment was accepted at outline stage and cited in condition 10 of the outline consent and is therefore a material consideration in the assessment of this application.

Revised Environment Agency Flood Maps

53. Condition 10 of the outline consent includes a requirement for the developer to consider any changes in any revised flood map produced by the Environment Agency between approval and implementation of the scheme.
54. Appendix C of the Flood Risk Assessment submitted to support the outline application included an Environment Agency Flood Map.
55. The Southern Site Drainage Layouts submitted in support of the application to discharge condition 10 include the latest Environment Agency Flood Map, which have been illustrated alongside the consented layout and the proposed drainage strategy for the site.
56. The flood zones illustrated on the submitted plans have been cross-referenced with the Flood Map currently available on the Environment Agency's website and match those that are published by the Environment Agency.

#### Assessment of the Scheme

57. The application has been subject to formal consultation with the Environment Agency and the Lead Local Flood Authority, as required by condition 10 of the outline consent, who raise no objection to the proposed submission, as amended.
58. The northern parcel of the site will manage surface water from private areas by infiltration through individual plot soakaways and permeable paving, while the northern site access road will drain into a ring soakaway.
59. The southern parcel of the site will be managed by permeable paving and a balancing pond with crated storage and a flow control, which will restrict surface water to 2.8 l/s during all events up to and including a 1 in 100-year storm event plus a 40% allowance for climate change. Surface water from the balancing pond will then pass through a filter trench with gravel riffles to provide a final element of surface water treatment before out-falling into the River Granta.
60. The applicant has provided an amended overland flow plan to demonstrate that surface water flows from Bartlow Road would be routed along the eastern undeveloped area of the site towards the River Granta (the plan was updated following initial objection from the Lead Local Flood Authority such that the revised plan reflects post development topography). Overland flows coming from Bartlow Road to the north-west would flow onto the site following local topography and be intercepted by the sites drainage system.
61. The proposed drainage system will accept surface water flows during all events up to and including a 1 in 100-year storm event plus a 40% allowance for climate change, with no system flooding anticipated in such an event.
62. In terms of water quality, the Lead Local Flood Authority has confirmed that this has been adequately addressed when assessed against the Simple Index Approach outlined in the CIRIA SuDS Manual.

63. The SuDS management train consisting of permeable paving, swales, a balancing pond and a filter strip with gravel riffles will provide sufficient surface water treatment prior to discharging into the River Granta chalk stream. The permeable paving, balancing pond, ditch outfall and public soakaways will be managed by a private management company in line with the Ciria SuDS Manual.
64. No objection has been raised by the Environment Agency in respect of water quality and pollution control.
65. A maintenance company will be established by the Applicant and managed with shared areas of roads and SuDS features.
66. It has been identified that the southern site experienced flooding from the River Granta on 21 October 2001. The river level at this time was recorded at 41.576 metres above ordnance datum (AOD), the highest level recorded. Finished floor levels will be set to a minimum of 42.200 metres AOD. According to the most up-to-date Environment Agency flood plain modelling, the balancing pond will be located entirely within Flood Zone 1.
67. The southern part of the southern site experienced further flooding from the River Granta in December 2020 / January 2021, noting the concerns of Linton Parish Council in this regard. However, the applicant provided photographic evidence to confirm that this flooding was confined to the EA modelled flood zones and did not extend to the part of the site proposed for development.
68. Officers are satisfied that the submission accords with the principles of the Flood Risk Assessment (Rossi Long Consulting, July 2015) submitted at outline stage and referenced on condition 10 of the outline consent.
69. Officers are satisfied the submission has taken account of currently published flood maps produced by the Environment Agency, as required by condition 10 of the outline consent.
70. Overall, in consultation with the Environment Agency and the Lead Local Flood Authority, the proposed surface water drainage scheme is considered acceptable and to provide a satisfactory method of surface water drainage and to prevent the increased risk of flooding and to accord with the requirements of condition 10 of outline consent S/1963/15/OL.
71. The proposal would therefore comply with Policies HQ/1, CC/7, CC/8 and CC/9 of the Local Plan.

## **Other Matters**

### Ecology Officer Comments

72. The application has been subject to formal consultation with the Council's Ecology Officer given the relevance of the submission to separate ecological

conditions also imposed on the outline consent and the need for a consistent approach.

73. No objection is raised by the Council's Ecology Officer to the details submitted to condition 10, as amended, while ecological details have already been discharged for an Ecological Design Strategy (outline condition 17) and a Construction Environmental Management Plan (outline condition 18) under applications S/1963/15/CONDD and S/1963/15/CONDC.

#### Flood Events (July 2021)

74. The Council received a letter from the Lead Local Flood Authority on 27 July 2021 relating to the discharge of conditions applications for surface water drainage at the Bartlow Road site (S/1963/15/CONDG) and the Horseheath Road site (S/2553/16/CONDO). The letter followed flood events that occurred in Linton on 20 July 2021 and receipt by the Lead Local Flood Authority of several formal flood reports.
75. The Lead Local Flood Authority requested that any drainage related applications for both sites be paused until further investigation was undertaken and completed. An extract of the letter which references this application (S/1963/15/CONDG) is provided below:

S/1963/15/CONDG - Land To North And South Of Bartlow Road And Immediate Linton Cambridgeshire

As surface water flooding occurred in the vicinity of the site (namely along Bartlow Road) on the 20<sup>th</sup> July 2021, we request that any drainage related applications for the site are paused while an investigation by the LLFA takes place to assess the cause of this flooding and risk of flooding to the proposed development.

76. A full copy of the letter is enclosed in Appendix 3.
77. The Lead Local Flood Authority provided a further letter to the Council on 26 August 2021 following their investigation. The letter confirmed that the Lead Local Flood Authority were able to recommend the discharge of condition 10, stating that the submitted information confirm the application meets with national and local standards/policy and should therefore not result in an increase in surface water flood risk.
78. A full copy of the letter is enclosed in Appendix 4.

#### Linton Parish Council Comments

79. The comments and objections of Linton Parish Council are noted, with officers acknowledging that Linton Parish Council are cited as a consultee as part of condition 10.

80. The application has been subject for formal consultation with Linton Parish Council at all stages and copies of their concerns shared with the Lead Local Flood Authority for consideration as part of the assessment of the application. Virtual meetings have also taken place between Council Officers, the Environment Agency, the Lead Local Flood Authority and the Parish Council to discuss local concerns and the scheme put forward by the applicant.
81. The details of the application, as amended, have been subject to a thorough and robust assessment by the relevant technical consultees, including additional investigation by the Lead Local Flood Authority following their letter of 27 July 2021.
82. As set out above, the position of the technical consultees is that the surface water drainage scheme is acceptable and provides a satisfactory method of surface water drainage and prevents the increased risk of flooding.
83. Several points raised by the Parish Council have already been considered in the report. However, the following additional considerations are offered.
84. In the Parish Council's comments of 25 May 2021, reference is made to an historic flood event and archaeological evidence showing river sit at the 43.5 metre contour line.
85. In consultation with the Lead Local Flood Authority, the drainage scheme has been designed so that the proposed properties do not flood up to and including the 1 in 100 year storm event plus a 40% allowance for climate change. The Lead Local Flood Authority noted that it may be that the 43 metres was associated with an event of even greater intensity, however, it is difficult to give weight to that figure when formal Environment Agency records indicate the highest ever recorded level of 41.576 metres AOD in 2001, when severe flooding occurred across the country.
86. The Parish Council raise concern that the planting barrier on the southern boundary of the site, to keep pets and residents from the river, has disappeared.
87. Details of hard and soft landscaping have been discharged under application S/1963/15/CONDF, which show areas of soft landscaping adjacent to the river comprising trees, proposed woodland flower and grass mix areas, scrub and native planting.
88. In the same comments concern is raised by the Parish Council that the southern site layout (drawing number E17-084-141 Rev C14. Dated 15 April 2021) showed the foul water drain going to the Bartlow Road manhole, contrary to explicit conditioning (i.e., condition 11 of the outline consent).
89. Although the application is submitted to deal with matters of surface water drainage, officers acknowledged this concern and requested a revised southern site layout plan to omit the foul water drain detail to the Bartlow Road manhole, to avoid any potential confusion or conflict between conditions.

90. A revised southern site layout (drawing number E17-084-141 Rev C15. Dated 03 June 2021) has been submitted to support the application and removes details of foul water drains on Bartlow Road.
91. Officers consider the revised drawing an appropriate response to the Parish Council's concern.
92. In the Parish Council's comments of 26 March 2021 reference is made to highways not adopting permeable paving and therefore the drainage infiltration scheme is reliant on individual householders and their maintenance.
93. Condition 4 of the reserved matters permission, reference S/2501/19/RM, requires the developer to submit and agree details of the proposed arrangements for future management and maintenance of the proposed streets within the development. The condition requires the streets to thereafter be maintained in accordance with the approved management and maintenance details until such time as an Agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.
94. Officers are satisfied that, alongside the SuDS Maintenance Plan submitted in support of this application, condition 4 of the reserved matters permission provides sufficient comfort in respect of highway maintenance.

#### Third Party Comments

95. The comments made in a third-party representation are noted, with many points already considered in the report.
96. In consultation with the Environment Agency and the Lead Local Flood Authority the scheme is considered to adequately address pollution control, to prevent an increased risk of flooding and to provide long-term maintenance arrangements, which can be secured as part of any formal decision through the list of approved plans and documents.

#### **Planning balance and conclusion**

97. The concerns of Linton Parish Council and residents in relation to the surface water drainage and flood risk are noted. However, the Council's specialist advisors and statutory consultees consider the surface water drainage scheme to be acceptable and to provide a satisfactory method of surface water drainage and to prevent the increased risk of flooding.
98. For the reasons set out in this report, officers consider the discharge of conditions application to be acceptable and to accord with relevant national and local planning policies, and having taken all relevant material considerations into account, it is considered that condition 10 should be discharged in this instance.

## Recommendation

99. Officers recommend that the Planning Committee approves the application and discharges condition 10 of outline consent S/1963/15/OL, with the following plans, calculations and documents listed as part of the formal decision notice.

Exploratory Hole Location Plan (drawing number 775216-DWG-ENV-002. Dated 04 July 2017).

Northern Site Drainage Layout (drawing number E17-084-131 Rev C7. Dated 15 December 2020).

Northern Site Exceedance Flow Plan (drawing number E17-084-177.1 Rev P1. Dated 27 June 2020).

Northern Site Surface Water Drainage Maintenance Identification Plan (drawing number E17-084-170 Rev P5. Dated 15 December 2020).

Overland Surface Water Flow Routes in proposed Situation (drawing number E17-084-SK501 Rev P1. Dated April 2021).

Private Domestic Drainage Sheet 1 (drawing number E17-084-162 Rev T5. Dated 23 October 2020).

Southern Site Drainage Layout (Surface Water Drainage Only) (drawing number E17-084-141 Rev C15. Dated 03 June 2021).

Southern Site Surface Water Drainage Maintenance Identification Plan (drawing number E17-084-171 Rev P8. Dated 15 December 2020).

Storage Pond Plan and Sections (drawing number E17-084-141.2 Rev P7. Dated 29 April 2021).

Surface Water Drainage Strategy Northern Site (drawing number E17-084-177 Rev P5. Dated 16 December 2020).

Surface Water Drainage Strategy Southern Site (drawing number E17-084-178 Rev P8. Dated 16 December 2020).

Typical Surface Water Drainage Construction Details Sheet 1 of 2 (drawing number E17-084-160 Rev P1. Dated 27 June 2018).

Typical Surface Water Drainage Construction Details Sheet 2 of 2 (drawing number E17-084-160 Rev P1. Dated 27 June 2018).

Calculation Sheet, SDP Consulting Engineers (E17-084. Dated May 2020).

Drainage Calculations for LLFA, SDP Consulting Engineers (E17-084. Dated October 2020).

Hydraulic Calculations Area 100M<sup>2</sup> – 150M<sup>2</sup> PLOTS 27, 28, 29, 30, 31, SDP Consulting Engineers. Dated 09 March 2020.

Hydraulic Calculations Area 150M<sup>2</sup> – 200M<sup>2</sup> Plot 55, SDP Consulting Engineers. Dated: 09 March 2020.

Hydraulic Calculations Roof Area up to 100M<sup>2</sup>, SDP Consulting Engineers. Dated: 09 March 2020.

Microdrainage Surface Water Drainage Calculations Southern Site, SDP Consulting Engineers (E17.084. Dated December 2020).

Northern Site Hydraulic Calculations, SDP Consulting Engineers. Dated 25 August 2020.

Permeable Paved Parking Area Calculations, SDP Consulting Engineers. Dated: 05 March 2020.

S38 SA SA15 Calculations, SDP Consulting Engineers. Dated: 11/03/2020.

SA16 Rev A (Plot 44) Calculations, SDP Consulting Engineers. Dated: 08 December 2020.  
SA27 Rev A (Plot 55) Calculations, SDP Consulting Engineers. Dated: 09 December 2020.  
Southern Site Plots 1, 2, 3, 32, 33, 41, 42 & 43 Calculations, SDP Consulting Engineers. Dated 10 March 2020.  
Southern Site PLOTS 34 – 40 Calculations, SDP Consulting Engineers. Dated 11 March 2020.  
Trial Pit Log, RSK Environment Limited (ref 1921215. Dated 19 March 2020).

Flood Plain Letter, SDP Consulting Engineers (ref NG/SJ/E17.084. Dated 24 October 2020).  
Maintenance inspection checklist, SDP Consulting Engineers, (ref E17-084-172).  
Monitoring of boreholes in northern parcel, RSK Environment Limited, (ref 1921215 L03 (01). Dated 18 February 2021).  
Soakaway Tests, RSK Environment Limited (ref 1921215 L02 (00). Dated: 10 December 2020).  
SuDS Maintenance Plan, SDP Consulting Engineers (E17-084 Issue P9. Dated December 2020).  
Surface Water Drainage, SDP Consulting Engineers (Addendum note to F.R.A. by Rossi Long Consulting).

## **Background Papers**

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

- South Cambridgeshire Local Plan 2018
- South Cambridgeshire Supplementary Planning Documents (SPDs)
- Planning File References: S/1963/15/CONDG, S/1963/15/COND10, S/1963/15/CONDF, S/1963/15/CONDD, S/1963/15/CONDC, S/2501/19/RM, S/1963/15/OL and S/1577/15/E1.

## **Appendices**

Appendix 1: Linton Parish Council Comments  
Appendix 2: Planning Policies  
Appendix 3: Lead Local Flood Authority Letter (27 July 2021)  
Appendix 4: Lead Local Flood Authority Letter (26 August 2021)

## **Report Author:**

Michael Sexton – Principal Planner  
Telephone: 07704 018467

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S/1963/15/CONDG – Abbey Developments Limited - Land To North And South Of And Immediate, Linton - Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL – Amendment: Amended drainage details following consultee comments (see cover letter). Decision Required.

LPC Comments (from LPC Planning Committee Meeting held on 20<sup>th</sup> May 2021):

LPC Comments on the current amendments:

The document showing overland surface water routes is VERY concerning.

The land north of the development site slopes significantly between Horseheath Rd and Bartlow road (and continues sloping towards the river). The blue arrows show the water reaching the northern edge of the northern site and then turning eastwards along a contour to avoid entering the site. **NO DRAINAGE FEATURES HAVE BEEN PROPOSED THAT WOULD ENABLE THIS TO HAPPEN.** The reality is that water will continue to flow downhill according to the laws of gravity into the gardens (and potentially homes) of the occupants as has occurred in adjacent sites.

Similarly, no consideration has been given to the surface water flow witnessed from the roads to the north of Bartlow Road into the site itself (Ridgeway and Kenwood Gardens) and how this is likely to flow into the spine road on the southern site. Surface water flow along Bartlow road certainly does not simply flow to the east of the site entirely as is shown in this plan.

The SUDS scheme would appear to be in the wrong position to deal with the surface water flow as shown by the blue arrows.

The agreed planting barrier on the southern boundary, to keep pets and residents from the river, has again disappeared.

As the developer has made “no material amendments” to the plans since the last submission, previous LPC comments still stand.

The southern site layout still shows the foul water drain going to the Bartlow Road manhole, contrary to explicit conditioning.

**The main concern of LPC in relation to the drainage of this site is that the representations of the EA flood maps are categorically incorrect when compared with the real life experienced by the village. The EA flood maps from both river water and surface water are being challenged by LPC following discussions with the EA and LLFA.**

Comments to support objections to this and previous submissions:

The area shown as Flood zone 3 with a flood risk of 1 in 100 (or greater) each year has been shown with photographic evidence to have flooded 3 times in 3 months since December 2020. The river heights recorded at the monitoring station by the site showed water heights between 0.827m and 0.872m during the periods of the photos submitted to SCDC, the EA and the LLFA.

The EA states that flooding in the local area is possible in the event that the water height at this monitoring station is over 0.74m. Since 2012 water heights have been recorded by the EA as follows:

- Water height between 0.74m to 0.84m - number of occasions 17
- Water height between 0.84m to 0.94m - number of occasions 9

- Water height between 0.94m to 1.04m - number of occasions 1
- Water height between 1.04m to 1.14m - number of occasions 4

On 17 occasions in the last 9 years (April 2012 to May 2021) the river has reached the heights where the water levels shown in the photographs supplied have been exceeded. This means that the area shaded in dark blue as flood zone 3 actually has a risk of flooding at least 1.9 times every calendar year based on this recent evidence.

Also provided to the SCDC, the EA and LLFA is a photograph of the site taken following the flooding event in 2001 along with the closest comparison possible in 2021 given the change in the season, trees and camera technology. This is the most recent of our, on average, **30 year** flooding events. The photograph is sadly not angled up the site to demonstrate the actual water level as no one in the local area ever thought that “Noah’s Flood Field” (it’s local name) would ever be put forward for development.

The EA flood maps for 2001 and 1968 provided by the applicant in the OL application represent the real zone 2 flood risk on this site (although we would argue that the risk of flooding is considerably greater than the 1 in 100 to 1 in 1000 year event that this is supposed to represent – with the highest levels being reached at least once in every 100 years if not once in every 30). The archaeological evidence showing “river silt” at the 43.5m contour line concurs with this. This evidence was clearly taken into account when the neighbouring properties in Finchams Close were developed in the 1970s. The properties have all been built above this level, with those closest to the river/its flood plain having at least a 1m drop in their gardens. Their gardens then adjoin a drainage ditch to mitigate flooding potential. In 2001 the gardens of these properties were flooded, but the houses remained dry.

The metadata of the photos submitted should give their dates, times and locations – they are supplied unedited except with a reduction in resolution to allow more pictures to be submitted in one email. These images can be resupplied with a map detailing their exact locations and at full resolution if required.

One final point about LPC understanding of “breaching the aquifer” in response to the comments from the developer. Aquifers are layers of porous rock (in our case chalk) that sit on top of impermeable rock. The rock in a principal aquifer has high intergranular and/or fracture permeability enabling them to provide a high level of water storage (it contains more air pockets). Had the trial hole that could not hold a head of water been dug into a consistent layer of chalk, porosity readings consistent with chalk would have been achieved. The fact that huge volumes of water “disappeared” so rapidly is indicative that the base of the pit was into or at least at the top of the rock with higher permeability or a fracture/fault consistent with the principal aquifer – hence our terminology that the aquifer had been breached.

**LPC Decision: Object and do refer this to the District Council Full Planning Committee**

**S/1963/15/CONDG – Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL 76 documents submitted for this.**

Additional Comments from Linton Parish Councils (LPC) Planning Consultant under instruction from LPC

We note there are 76 documents submitted for this condition. They do not take into account the substantially reduced area of porosity indicated by the revised landscape plans submitted under condition 5.

Section 6 of the surface water letter acknowledges that the southern site had poor insitu soakage tests and high ground water levels, and is therefore unsuitable for infiltration. These same ground conditions and previous recorded flooding events make development of the buildings and pumping station in the same area risky. However, even the Northern site porosity tests failed and the proposal therefore does not comply with the requirements.

The solution proposed is that all the water would instead be discharged to the River Granta. There is no acknowledgement within the document (only the ecology letter) that this is a Protected Chalk Stream, and that there should be a suitably enhanced level of protection for the river and its ecology. It therefore poses a risk to ecology and the environment.

The new drainage proposal to discharge the surface water drainage to the chalk stream has not yet been assessed as part of the conditions for the ADS and CEMP. It has less detail than previously, and previous objections about the design and impact of the proposed swale, outfalls and hydro brake are likely to still apply.

The SDP Surface Water Drainage letter proposes that in the event of a sewer or overland flow flood event, the flood water will not enter the buildings, but will instead flood/pond external hardstanding/landscaping areas. These external areas are now designed to discharge into the chalk river, and therefore the new proposal is likely to cause risk of contamination.

The SuDs Maintenance Plan 2.5 page 2 proposes that the road drainage is adopted by Anglian Water. This is unlikely to occur, as it has already been refused and the falls do not comply with Building Regulations, and Highways has also refused to adopt the roadways for reasons that include that the slopes are not compliant and the smart sponges are expensive to maintain. Very little information is provided about the maintenance company Abbey employ and it appears from Companies House to be dormant, so is of little assurance.

Scaling off the drawings, the Northern Site concrete ring soakaways are located too close to the road and possibly also too close to the nearest house.

Rainwater runs onto the permeable paving from the roadways, and is therefore contaminated. This has not been taken into account in the maintenance and the Smart Sponges are only provided for the roadway. Highways do not adopt permeable paving so this critical drainage infiltration scheme relies on individual householders and their maintenance.

The infiltration into individual rear gardens is not a SuDS scheme as there is no sequence of infiltration, and should it fail in times of flood, it is likely to result in flooding elsewhere.

The Attenuation Pond/swale, hydro brake and headways are not part of the approved OL and RM plans.

The precast concrete sandbags are poor quality structures and would not last for the life of the development, especially as the pond is located within a public open space. The appearance of the sandbags, hydro brake and headways is not natural and rural and is not appropriate for the views and appearance of the river valley.

The road tracking drawings submitted for this condition are relevant to another condition so should not be approved under this.

The Test Locations of November 2019 do not appear to correspond with the evidence on site, as location TP4 is in the position of a topsoil mound and TP5 within the cleared archaeological site. In those locations the conditions would not be as drawn. The infiltration calculations have the same issues as before, as (for instance) they do not appear to accord with the CIRIA soil types for the relevant types of soil reported in the 2015 Rossi Report.

The RSK Report of 20 March 2020 Section 3 reports on the 2017 porosity trial pits. These were the tests that failed and included pits TP7 and TP10 which are likely to have breached the aquifer, as substantial amounts of water were poured into the pit and quickly disappeared. Under the regulations, this should have been a failure, but in Section 4 of the Report, the speed of water loss is then used to average out the results so that the poor porosity results elsewhere were improved. The 2017 results are also confused with the later tests after the archaeological dig of 2018 as Section 4 reports that TP6 was abandoned because it was in the position where topsoil had been removed for archaeology.

The maps show no tests described in this report were located where the scheme proposes the two major infiltration positions.

The exceedance flow route in the event of the design not being capable to dealing with the demand, proposes all water for the Northern site flows down onto Bartlow Road. Highways have not responded on this but are likely not to agree. As LPC's videos show, a substantial amount of water already flows down via the North site onto Bartlow Road, and this proposed design would make the flooding worse.

In response to the letter of 24 October 2020, we note that the EA map provided by LPC is that of actual recorded flood events of 1968 and 2001. There is no reason why any future event would be less extensive than this, especially in light of Climate Change. As the photographic and cellar evidence shows, numerous flood events, prior to the construction of the EA monitoring station, were worse than these two EA recorded events. The NPPF policies and footnote 50 are based on flood risk, and this includes evidence of prior flood events where there is a vulnerable use (housing).

There is a new ditch within the public open space next to the proposed swale. It involves conflict with the EDS and CEMP and the principles of conditions 17 and 18 so should not be discharged under this condition. It is not approved under RM and will breach the buffer zone and ensure that voles etc no longer have the separation for their protection described in the EDS.

The data used for porosity is not robust, and the design relies on high maintenance details such as smart sponges. As a result, there is a greater risk of flooding on site and elsewhere. The proposal introduces a swale on infiltration crates, with poor quality materials based predominately on concrete, despite being within a key valley landscape location.

The issues with the proposed swale are as previously commented, and this structure is not part of the RM approved plans.

LPC Decision: **Object** and (unless minded to refuse under delegated powers), refer this to the District Council Full Planning Committee.

S/1963/15/CONDG - Abbey Developments Ltd - Land to North and South Of And Immediate Linton - Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL. **Decision Required.**

**Linton Parish Council Comments:**

Comments from previous condition S/1963/15/COND10 still stand.

Below are the comments previously comments submitted by LPC on application S/1963/15/COND10. **These are the initial comments from LPC**, additional comments will follow.

**LPC Decision: Object and refer this to the District Council Full Planning Committee**

**LPC Comment (additional comments to follow): 8th July 2020**

Holding Objection Previous comments still stand and Linton Parish Council emphatically object to the discharge of these conditions. There does not appear to be any material changes from the recently withdrawn application S/4550/19/DC. Further comments will follow.

LPC Decision: Object and refer to the District Council Full Planning Committee

**LPC Comment: 22nd July 2020**

These DoC's mainly appear to be re-submitted reports upon which LPC has already commented. The deficiencies identified in our comments dated 23 January 2020 have not been addressed. Most of the reports are also out of date as they predate the RM scheme of 2019. The data and calculations used for these conditions are therefore inaccurate, incomplete and misleading. This includes noise, flood risk, surface water drainage and foul water drainage, identified in more detail in the full response to DoCs sent separately.

The submissions include further development that was not approved in the OL and RM schemes, and would conflict with those approvals and their conditions.

The conditions are therefore not fit to be discharged.

LPC Comment:

This condition requires:

- a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation,
- consultation with the Environment Agency, Lead Local Flood Authority and Linton Parish Council.
- Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework and the National Planning Policy Guidance.
- designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 30% an allowance for climate change
- compliance with the Flood Risk Assessment reference 151077 dated July 2015 by Rossi Long Consulting
- information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.

- take into account any subsequent changes in any revised flood map produced by the Environment Agency between approval and implementation of the scheme

- Construction and completion in accordance with the approved plans prior to occupation of any part of the development / in accordance with an agreed programme of implementation.

The requirements have not been complied with:

- There has been no consultation about the proposals for this scheme with Linton Parish Council. The assessment and design fails to show it takes into account the findings of the independent specialist drainage consultant report commissioned by LPC;

- The scheme is not sustainable drainage. It is a group of soakaways cut into the chalk strata forming the casing above an aquifer. This type of design was rejected at the outset by the Environment Agency statutory consultee to the OL scheme, as it does not comply with the BRE (see below);

- The documents state that the soakaways are located where the porosity tests passed, but this is not correct (see below);
- The design storm intensity information appears not to relate specifically to this site;

- We previously noted that the design failed to provide drainage to one of the housing zones. This has been amended with a new soakaway and pond, but the rest of the design and calculations are inconsistently updated. The pond is only sequential to part of the site and is unsuitably located in the silt and previously flooded area, where the porosity tests failed and the design is vulnerable to climate change.

- The assessment and system is not 'in accordance with the principles set out in NPPF and NPPG'. For example,

- o It fails NPPF 43. The porosity assessments of 2017 failed and therefore need to be re-done. There were 14 porosity test pits, of which 12 failed, 1 penetrated the Aquifer and 2 passed. When the majority of test pits fail, the government guidance specifies that the entire assessment has to be re-done. The Statutory Consultee confirmed these would need to be re-done, but the top soil was removed instead, so there are no successful test areas.

- o The scheme fails NPPF 170. The application still does not demonstrate that this is a suitable site to discharge into the chalk strata. A number of the porosity tests penetrated the aquifer and therefore did not protect potable water. The Sustainability Consultee notes 2 more likely further breaches of the aquifer ('test pits 4 and 5 collapsing'). The collapses confirm there are significant problems with its stability and also confirm the concerns expressed by the EA consultee objecting to the use of soakaways in principle on this site at OL stage.

- o The application does not demonstrate this is safe and does not harm the environment and amenity. The aquifer casing has not been plotted in relation to the depths of the proposed drainage and foundation schemes (e.g. by non-invasive testing) and much of the excavation is also likely to be below the level of the porosity tests, so further collapse is likely.

Sections and levels should be provided to show how deep the drains will be at the deepest, how that relates to the aquifer casing, how appropriate drainage falls are provided where the slopes are steep and where drains are shown going uphill, and whether the design results in further risk of breaching the aquifer.

- o The scheme fails NPPF 157. The assessment and layout did not apply the sequential tests in NPPF 157 and therefore also fails NPPF148, 155 and 158-161.

- o The June 2020 revised scheme discharges untreated road gully drainage

into the soakaways and river as well, so compounds the problems of contamination and safety.

o It fails NPPF 155. The assessment does not take into account the current level of risk, such as the impact of existing surface water flooding on the proposed development, nor the effect of the proposed layout and design on the existing identified flood routes. It therefore also fails NPPF 157 and 158.

- There is no evidence that the scheme takes into account the charted flooding onto the site from the fields and (onto the southern site) also from Bartlow Road, nor the previously flooded areas from the river. It therefore does not take into account the current level of risk.
- The calculations do not take into account the slopes, hard landscaping,

impermeable road surfaces, retaining barriers and built-up terracing specific to this site. For example, the calculations in the SDP report do not appear to include drainage for the Northern Site. They are based on slopes of 1:500, which is not representative of this site. The slopes of road surfaces and drains in previous versions of this house layout were as steep as 1:10. This means the scheme would be substantially under-providing for storm conditions.

- The scheme does not 'take into account any subsequent changes in any revised flood map produced by the Environment Agency'. Subsequent flood maps that have not been referred to, include a map showing the previously flooded areas of this site. The position of the reintroduced pond, the pumping station and houses are within this flood area. This does not provide a scheme robustly designed for climate change.

- The first phase (i.e. unauthorised works) was premature so did not comply with an 'agreed' 'implementation programme' and the implementation programme has still not been provided.

- The maintenance scheme is not deliverable and does not 'ensure an acceptable standard of operation for the lifetime of the development' as required under NPPF 163:

o The maintenance list dates from 2018 and is based on a limited number of (out of date) drawings. It predates the pond, refers to out-of-date calculations, does not include provision for high maintenance elements of the design, such as the smart sponges, and has no provision for dealing with reported issues.

o In the SUDs Management Programme (out of date as it is from 2018), and the drainage plans, it is clear that the developer expects the SUDs to be adopted and maintained by CCC - this is not so. CCC have refused to adopt this road design and the associated drainage.

o CCC has also refused to adopt the expensive and high maintenance smart sponges that were proposed because of the slopes and flooding of the roadways. The maintenance list now omits them, but the calculations are still based on their use, and are not updated with suitable alternatives to prevent flooding.

o The drainage of roads and private surface water overlaps and many of the soakaways are in private gardens, making management, and responsibility difficult. The maintenance scheme does not provide proposals for dealing with it.

o The soakways and drains along the edges of the site conflict with tree roots of the existing and proposed trees and hedges, putting both drains and trees/hedges at risk and making future management difficult. The maintenance list omits the item.

The proposals are inconsistent:

- The calculations are out of date (2017), derive from the failed porosity tests of that date, and relate to a different design layout scheme. Any new test results from March 2020 would have been taken from areas without topsoil (and so not

meeting the requirements that they should be 0.8 -1m above the ground) into the chalk layer and/or into the breached aquifer.

- The documents state the soakaways are located where the porosity is suitable. However, the 2 pits that 'passed' were located where buildings are proposed, not where soakaways are proposed. • Section 9.8 of the Geo Environmental report of 2017, states that "At test

location TP2 within the grade C3 chalk strata, 1000 litres of was pumped into the test pit over a period of five minutes but a head of water could not be established. It is evident that the chalk strata will prove suitable for soakaway drainage ...". This is a mis-interpretation of the results – test pits discharging too quickly are also failures, and in this case it appears the aquifer was breached and the pumped water was going direct into the public water supply.

- The submitted details are not in accordance with the specified Rossi Long report. They are not updated to describe 'the measures taken to prevent pollution of the receiving groundwater and/or surface waters' based on the current scheme, where significant risks of harm have been identified.

- The GeoEnvironmental report, from section 9.8 states" Based on the CIRIA guidance, soakaways should be avoided in areas where dissolution features are known to be prevalent ... if unavoidable, should be sited at least 20m away from any foundations". Most of the soakaways are significantly closer than 20 metres to foundations and the collapses show that dissolution features are present, so the scheme does not comply with the report and CIRIA guidance.

- The reintroduced pond/ crated water storage area is inconsistently shown on the plans. The drawings plan E17-084-141.2 and 178 show it, but drawings 141 and 171 do not.

- The submissions for RM condition 8 show a large brick enclosure to the Pumping Station, and a large concrete base rather than the previous open fencing. They include an additional impermeable area of tarmac. That change of design has not been taken into account in the assessment and calculations for this flood design, and the brick walls are likely to exacerbate flood problems as this is within the previously flooded area.

- We note the line of an "existing surface water sewer" to the west of the southern site. This does not exist. The letter dated 23 June 2020 from Anglia Water (submitted for Condition 11) also confirms this.

- There is a marked connection to the sewer on Bartlow Road. This is contrary to Condition 11.

The proposals are harmful:

- They do not satisfy the reason for the condition. The proposal will not ensure a satisfactory method of surface water drainage and will not prevent the increased risk of flooding.

- The proposal is based on out- of- date information and design, and the likelihood, based on the failed porosity tests and collapsed test positions, is that the development will not be safe and that there will be unacceptable risks.

- The proposals fail NPPF 170(e) and put development at unacceptable risk from water pollution and land instability". The whole scheme is reliant on the assumption that the chalk strata is suitable for the extensive drainage soakaways, but does not take into account BRE Digest 51 "In land overlying chalk there may be serious risk of swallow holes and these may be activated by the concentrated discharge from a soakaway".

- The storage pond was previously unacceptable to statutory consultees and has been reintroduced in an untransparent way, so that those statutory consultees are disadvantaged and not made aware of the change in order to comment. • The design and information provided for the June 2020 scheme does not comply with the requirements for a SuDS scheme specified in the Anglia Water letter of 23 June 2020 (submitted with condition 11)

- The pond does not provide a sequential drainage scheme as it serves only a

small part of the site, is located in the impermeable silted flood plain and has no means of purifying the water. The main pipe leading towards the pond bypasses it, in order to discharge contaminated road and surface water direct into the river instead of dealing with it suitably on site.

- The structures of the crated storage areas and concrete filled sandbags edging the pond are not natural, and these are not high quality design, are likely to be hazardous to humans and fauna falling into the pond and becoming trapped in the crates, and over time they are likely to become contaminated.
- Neither the pond nor the crates provide appropriate oxygenation of water. As a result, both would store stagnant water, with pollution, dirt, algae and anaerobic bacteria such as *Clostridium botulinum* (which produce botulinum toxin causing botulism - paralysis). This is likely to be flushed out at times of heavy rain and flood, and the untreated stagnant water would jeopardise the safety of the drinking water extracted from the river, as well as the fish, invertebrates and other fauna. This is not sustainable or safe design.
- It introduces a new element (the pond / open water-filled storage crates) that potentially has significant safety implications and compromises the public open space.
- The use of concrete headwalls and concrete filled sandbags are not sympathetic to the simple natural character of this rural location and river views. The main surface water pipework on drawing 178 is used for both house drainage and road drainage, which does not comply with the CIRIA Regs and is therefore not adoptable.
- This main surface water pipe on drawings 141.2 and 178 leads across the pond directly into the river, so is likely to discharge contaminants from the road gulleys directly into the chalk river and water supply.
- The proposed drainage scheme and pond has no means of purifying or treating the contaminated water before it is discharged into the river Granta.
- The Granta is a rare Chalk Stream, with a high level of protection; this potential for contamination and flooding downstream is not acceptable.
- As noted previously by LPC and the Ecology consultee, the presence of a large new body of water on the river's edge (within the previously flooded area) is likely to create river surge during times of flood.

We comment on the two statutory responses:

The Sustainable Drainage Consultee has responded to confirm there is insufficient information. We add that what is provided is inconsistent and the amended scheme on drawings 141 and 178 puts the environment and the local community at unacceptable risk.

The response from County Council (Julia Breedon's response) shows that she is commenting on an incomplete submission. She assumes the road system and its drainage is being adopted by Highways, which is not the case. She assumes there is a balancing pond, which is inconsistently shown in this application and is not part of the RM approved layout. She assumes permeable paving, but much of the RM scheme on the Southern Site is tarmac / impermeable and the extent of hard landscaping has not yet been clarified (see condition 5). She refers to soakaways being "located in parts of the site where successful infiltration testing was performed", but this conflicts with the results and locations of the 2017 porosity tests. Recent winter rainfall has reminded us of the extent of river and surface water flooding in this area. The run off of mud from the field into the river is indicative of the run off of polluted water, should these houses ever be built. Households, gardens and cars will all add to pollution of the run off.

The nature of the Granta, a rare chalk stream with international protected status, has been ignored. The pollution of these streams by nearby building on their floodplain has been recently highlighted in Hampshire - it is not acceptable to pollute our stream and drinking water aquifer for unsafe and poor quality design and unnecessary and inappropriately sited development.

As the submission does not comply with the requirements of the condition and the relevant Local Plan policies, it should not be discharged.

Additional comment

Comment from Rob Mungovan, Wild Trout Trust, working with Linton Parish Council: The site was meant to have a balancing pond. To allow the discharge to enter a low flow river, which is also impounded by the mill, has the potential to cause a massive oxygen sag which will result in detriment to the river, especially its population of wild brown trout which as you know have disappeared through village in the low flows years due to...poor water quality. The EA discharge's pure ground water from its river support borehole network just above the A1307 which in low-flow periods is critical to the sustaining the ecology of that chalk river. To allow grey deoxygenated water to flow in to the Granta would be a huge step back for the upper reaches of the Granta. There are little more than 200 chalkstreams in the whole of England, I am in the process of working with the EA, the local Wildlife Trust and your parish council to try and protect and restore the River Granta. We can improve physical habitat but once water quality has declined we are faced with a big challenge especially as our rivers are receiving less rainfall, and hence weaker springflow. The developer must come up with scheme that protects and enhances the river in line with SCDC policies. Rob Mungovan, Wild Trout Trust for the Linton Parish Council.

LPC Decision: Object and do refer this to the District Council Full Planning Committee  
Please refer to the complete response to condition, sent by e-mail to the Planning Officer

**LINTON PARISH COUNCIL (ADDITIONAL INFORMATION) – 34 page document**  
**submitted on 22<sup>nd</sup> July 2020 – available on the portal**

### **LPC comments submitted – 4<sup>th</sup> Sept 2020**

S/1963/15/COND10 – Abbey Developments Limited – Land to North and South of and Immediate, Linton, Cambridgeshire – Condition 10: Drainage. For Information Only

These conditions have been sent "For Information Only", presumably in error, as it is poor practice to bypass the local democratic process.

In July 2020 LPC responded to the previous DoCs in detail, and asked for these to be referred to the SCDC Planning Committee. As the current DoCs have not addressed issues, inconsistencies and conflicts already identified, the previous objections and comments stand.

LPC Comment: The objections raised by LPC in July 2020 remain. See also the objections of November 2019. The comments and objections of LPC remain.

The recently submitted calculations are flawed.

- The calculations submitted for the LLFA appear to be based on modelling only, noting that for manholes " No coordinates have been specified, layout information cannot be produced", and also comments on page 4.
- The summary of critical results on page 7 indicates that there is still considerable flood risk, especially from the crated water storage/pond area.
- This polluted water would flood directly into the protected Chalk Stream. The fragile ecology and rarity of chalk streams worldwide must require that this scheme is rejected.

The calculations submitted to the Drainage Consultant must also be modelled, as true infiltration should be in 1m test pits through top soil and subsoil. These conditions no longer exist on site as the soil was removed to form the alien mounds. The basis for

efficacy of soakaways is questioned as the required peak seasonal levels are not represented. There should have been 300mm pits, to accord with the regulations, which should have avoided digging into the aquifer casing. This appears not to have been the case.

The response to the Sustainable Drainage Engineer states that "The floor levels to the plots closest to the River Granta flood plain and the attenuation pond are more than 300mm above the water levels" Even in recent moderate storms surface water flooding would be above this.

Run-off is said to be to ACO drains away from housing. The response states that "All the ACO drains discharge to the drainage network which in turn either connects to soakaways or to the attenuation pond and then outfalls to the River Granta".

The concern of LPC is that this overflow will cause flooding to the village centre, or overburden the drains and again result in flooding to the village.

The permeable paving is said to be relatively flat, yet Highways will not adopt the road way due to the excessive slope.

LPC Decision: Object and refer this to the District Council Full Planning Committee

### **LPC comments submitted – 8<sup>th</sup> Sept 2020**

LPC Comments : This DoC should not be sent just "for information", as it is such an important aspect for this site, its effects on the river and wider village.

Again, the documents appear to include re-submissions of previous strategies and layouts, to which LPC has previously objected in detail LPC; these objections stand. LPC has not been consulted and this submission is insufficiently detailed to determine what changes have been made to the original or even the previous submission. For example the southern site drainage layout is from April 2018, the drainage strategy is from April 2019. There might be notes on amended drainage areas, for example, but written details are not provided. Without details and consultation the condition cannot be discharged

The plans submitted have not fulfilled previous conditions, so again it is a premature submission.

The response to the sustainable drainage engineer confirms our concerns for the Granta, our Protected Chalk Stream - " All the ACO drains discharge to the drainage network which in turn either connects to soakaways or to the attenuation pond and then outfalls to the River granta"(sic)

This is not acceptable.

The significance of this and the potential detrimental effect on the ecology and potential for flooding downstream has not been given due weight,

Their remain issues with the soakaways, their height above the water table has not been confirmed and the effect on the underlying Principle Aquifer, so near to the surface (and already having been breached by test pits) has not been considered

The foul drainage system on the southern layout indicates that it will discharge into a manhole on the Bartlow Road, against specific conditioning.

The comments sent by LPC in July 2020 still stand

LPC Decision: Object and do refer this to the District Council Full Planning Committee

### **LPC comments submitted – 20<sup>th</sup> November 2020**

As the development started unlawfully, without complying with all the pre-commencement

conditions, the Meisel's case and 'Whitley Principle' applies, making the whole development unlawful. Access (adjacent the A1307), drainage (on a site subject to river and surface water flooding), landscaping (on this key prominent site), and works carried out that affect the amenity of the neighbours, would all 'go to the heart of the permission'.

All the reserved matters should have been applied for by 1 September 2019 in order for the timescale not to lapse. It is therefore even more questionable whether these other DC's should have been accepted.

The submissions include development that was not approved and would conflict with those approvals and their conditions.

#### LPC Comments:

There is a clear condition that "Prior to the commencement of any development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency, Lead Local Flood Authority and Linton Parish Council". This submission cannot therefore be "for information only", proper consultation must take place

This scheme is based on inaccurate data and out of date maps and must be rejected.

As the development started unlawfully, without complying with all the pre-commencement conditions, the Meisel's case and 'Whitley Principle' applies, making the whole development unlawful. Access (adjacent the A1307), drainage (on a site subject to river and surface water flooding), landscaping (on this key prominent site), and works carried out that affect the amenity of the neighbours, would all 'go to the heart of the permission'.

All the reserved matters should have been applied for by 1 September 2019 in order for the timescale not to lapse. It is therefore even more questionable whether these other DC's should have been accepted. Better sites with less risk of flooding are available and this site is not a priority for development as it is not allocated in the Local Plan.

The pressure on officers is apparent, but we would expect officers not to be influenced by the misleading and inaccurate information submitted by the developer.

The submission includes development that was not approved in the OL and RM schemes, and would conflict with those approvals and their conditions, including:

- The reintroduction of a swale "pond" within the previously flooded area of the site specifically objected to by LPC and statutory consultees;
- The reintroduction of the proposed connection of foul drainage to the old defective 6" foul drainage instead of the new village drain, a proposal specifically prevented by condition 11;
- The discharge of untreated surface water and roadway drainage (containing potential oil, fuel and other hazardous pollutants from the road) in a shared system into the river, a Protected Chalk Stream;
- The reintroduction of structural terraces which harm the appearance, landscape, ecology, accessibility and drainage of the development.
- The spread of development further than the disputed RM consent, and therefore significantly beyond the OL developable area.
- The river-long flood survey has not been done to evaluate the effect of this development on the river and floodplain, Nor has there been an assessment of the impact on the County Wildlife site, and Pocket Park/Leadwell Meadows the village wildlife area. Linton Parish Council comments from Ex-Ord Planning Committee meeting held on 12th Nov 2020
- The required season-long amphibian and mammal survey has not been completed. We know from recent observation that otter spraint is seen by the water level monitoring station and downstream.
- The proposals now include works within the 6m buffer of the River Granta which conflicts with the Ecology requirement. The 30m distance from the river edge for retained habitat has not been respected
- The introduction of concrete/sandbag "headwalls" will be another unsightly

introduction into valued landscape. Indeed, the Hard Landscape condition has not be addressed at all...

- There is now discharge into the watercourse which will cause harm to the wildlife and the protected Chalk Stream
- LPC submitted flood zone maps, including the overlay of the flooding as mapped by the EA in 2017. These show the extent of flooding to be expected on-site in flooding events, based upon known and observed flooding at the site - much greater than the map used by the developer.
- The maps used by the developer are outdated. The one used is an SCDC indicative map of 2010 which shows less flood area than any of the previous maps and is not what was agreed with the EA. The planning conditioning stipulates that the most up to-date map should be used, i.e. the 2017 map.
- The updated EA maps and even the SCDC flood maps in the LDP of 2010, show that part of the "developable area" of the site remains liable to flooding (Flood Zone 2). The ditches along the western edge of the southern site and behind Finchams are in Flood Zone 2, with the pumping station shown in area prone to this flooding.
- The maps used by the developer do not show the true extent of flooding, nor the nature of the flooding - water accumulates in the Ashdon area and comes downriver as flash flooding.
- The maps used by the developer do not include the effect of surface water flooding from the uplands near the northern site across Bartlow Road and onto the southern site.
- The drainage report by Create Consultants was commissioned as an update on RM1 and is applicable to RM2. LPC noted to planners & committee that this was not publicised and should have been.
- We note that in the Rossi Long report on drainage strategy, the comments by the EA refer to the previous application and a completely different drainage scheme.
- A "Flood Plain letter" has been submitted. To clarify - Work done by LPC was to restore the ditches on Pocket Park (downstream and on the other side of the river) and rescale the bank on the Recreation ground (also downstream). This has prevented floods to the Village in years following 2001, but extra surface water flooding entering the river due to this development, in particular the addition of the SW drain from SW1 to SW7 There has been no work on the River Granta, certainly nothing since 2015, that would change the location of the floodplain. (Maps from the 18th century show a very similar floodplain and river route).
- The archaeological assessment of the site also shows regular flooding to the 43.5m contour line.
- The note from the developer to Jess Prest (27th October 2020) is misleading as it intimates that the floodplain has changed since 2015 and that there will be confirmation on this - the flood plain has not changed.
- The note from the developer (Drainage correspondence) to the SuDS officer, Jessica Prest, is deliberately mis-leading (the note of 27th October 2020), in the same e-mail chain, notes that "Jessica is in agreement with the revised drainage plan". However, Jessica has only agreed that what was submitted was in agreement with their discussions).Linton Parish Council comments from Ex-Ord Planning Committee meeting held on 12th Nov 2020
- The EA map with its overlay, submitted by LPC, reflects the current flood risk, although the flooded area will probably be increased in future due to climate change.
- Building on this site is likely to increase flood risk downstream and into the village, a matter which has not been taken into account by the developer and these submissions.
- The unacceptable risk of flooding downstream is similar to the reasons for repeated refusal for development on this site and for Flemings Field, the next field in the same floodplain (refused 9 times since 1980).
- The drainage scheme and site layout are based upon inaccurate or outdated flood

maps. The whole scheme, based on inaccurate data, fails and should be rejected.

Southern site

- The proposed swale and outlet to the river include concrete headwalls and concrete/sandbag headwalls. These are unsuitable in a natural and rural area. These will be visually intrusive in this setting in valued landscape.
- Pipe 1.009 also appears to be visually intrusive, is outside the developable area and within the Ecology buffer zone and river protection zone. This would be part of Hard Landscaping, so conflicts with that condition, a DoC for which has not been submitted.
- There is a grey dotted line near the western edge said to be the "existing surface water sewer" that actually does not exist. This is the pipe that the developer was said to be "repairing", but they were actually laying new pipe in a different location.
- The wording "archaeological excavation containing broken pipe" does not align with the location of the trial pits, nor the location of the easement on the deed of grant submitted to justify the "repair". It should also be questioned why a pipe supposedly laid in 1991 would be broken, given the life expectancy of a surface water pipe should have been at least 50 (clay), 75 (cast iron) or 100+ years (PVC or ABS).
- It was this pre-empting of permission that has resulted in the current stopping of work on site. Proof has not been offered to confirm the existence of the pipe, which in any case is shown to have been diverted from its original route.
- The use of cellular crates to store surface water drainage is questionable. The SuDS and Flood Risk Officer agrees that the use of these crates is no longer viable (letter of 5/10/20 from Jessica Prest.), yet they remain in the scheme.
- The base of these crates is set at 40.2m. The nearest figure for the water table within the same contour area is 39.5m (from the approved RM), so it is not likely that there is a clear 1m between the bottom of the crated storage area and the top of the water table.
- RSK state that the infiltration tests were performed "after the wettest February on record and one of the wettest winters as well". This may have been true on average across the UK, but it is not true in Cambridge (and the surrounding area). The MET office figure for February 2020 is 66mm ... compared with 70.6mm in 2010, 71.1mm in 1990 and 72.4mm in 2001. (Please note that this was not when the flood occurred – that was October when the rainfall was 128.9mm.) Indeed, the 4 months from November 2019 to February 2020 totalled 248.2mm rain. This compares with the 3 months from August to October this year which totalled 271.8mm. It is therefore folly to state that the original figures for infiltration provided at outline are "more representative" of normal conditions.
- The maximum river levels modelled by the EA (Rossi-Long report) and quoted in this scheme for the 100year plus climate change are as follows:Linton Parish Council comments from Ex-Ord Planning Committee meeting held on 12th Nov 2020  
These numbers fall well below the actual observed levels in 2001, 1968, 1918, 1900 and 1879 (rather more frequently than a one in 100-year event). The levels reached in these floods (and events that pre-date this as evidenced by the site archaeology) is approximately 43.5m.
- The surface drainage water would enter the River Granta without treatment, including water from road gullies on site and on Bartlow Road. This is a particular concern with the first flush of water during the flash floods.
- The swale would only capture sediment if allowed to settle, when it would be stagnant with loss of oxygen (a perfect breeding ground for anaerobic bacteria such as Clostridium sp.)
- This discharge of polluted or de-oxygenated water is unacceptable into a rare chalk stream.
- The issue of de-oxygenated water, as raised by the Ecologist, has not been resolved
- The comment from the Ecology Consultant is:  
The site was meant to have a balancing pond, which has now been replaced by

underground water crates. To allow the discharge to enter a low-flow river, which is also impounded by the mill, has the potential to cause a massive oxygen sag which will result in detriment to the river, especially its population of wild brown trout which, as you know, have disappeared through village in the low flows years due to....poor water quality.

- As the crated water system is not viable and the scheme depends upon this, the whole drainage scheme fails.

Northern site

- During storm conditions surface water floods from the hill down the site and onto Bartlow Road - regularly described as "running like a river".
- There remains little mitigation for these conditions, and Bartlow Road will continue to flood from water from the site - more when the absorbency of the green field is lost.
- Surface water from the northern site and Bartlow Road will also flow into the southern site and the houses that lie along it (and are so much lower than the road)

Porosity

- The porosity assessments of 2017 failed and relate to a different design layout scheme, therefore need to be redone. There were 14 porosity test pits, of which 12 failed, 1 penetrated the Aquifer and 2 passed. When the majority of test pits fail, the government guidance specifies that the entire assessment has to be re-done.
- The Statutory Consultee confirmed these would need to be re-done, but the topsoil has been removed, so there are no successful test areas.
- Any new test results from March 2020 would have been taken from areas without topsoil (and so not meeting the requirements that they should be 0.8 -1m above the ground) into the chalk layer and/or into the breached aquifer. It fails NPPF 43.
- From the plans provided, the additional porosity tests were taken alongside the excavated area, so outside the development area. There seem to be some in the open space on the riverbank area. These are not representative. Linton Parish Council comments from Ex-Ord Planning Committee meeting held on 12th Nov 2020
- The microdrainage calculations either derive from the failed porosity tests or are based upon generalised regional data, not specific for this site and its conditions. These cannot then be used as a base for the scheme.

The scheme is based on inaccurate, outdated or non-specific data and should be rejected

Previous comments from LPC still stand

LPC Decision: Object and refer this to the District Council Full Planning Committee

### **Linton Parish Council Comments submitted 8<sup>th</sup> Jan 2021**

Previous objections stand, particularly the conflicting issues between submissions.

Please read in conjunction with comments sent in November 2020, which have more detail on rainfall, water levels, etc, and comments on conditions 5, 17, 18.

- The plans appear to have been revised in line with the November revision of the EA flood zone maps. However, If the revised EA flood map is compared to the flood zones on the layout plans (drawing 141) as contour lines, not as blocks of colour, the swale/balancing pond clearly lies partly within flood zone 2. Their lines for the flood area seem to have been based on Flood Zone 3 not 2.
- As the policy relates to risk, and it is likely they are in Flood Zone 2 they have increased the risk of surge and flooding elsewhere.
- The archaeological assessment of the site also shows regular flooding to the 43.5m contour line, an houses in Finchams Close were built beyond this line, and 1m

higher to avoid floods; their gardens flood, but not the houses,

- This is without factoring in climate change, the very different rainfall in wet winters and the usual summer drought, and the effect of surface water flooding.
- The updated EA maps and even the SCDC flood maps in the LDP of 2010, show that part of the "developable area" of the site remains liable to flooding (Flood Zone 2). The ditches along the western edge of the southern site and behind Finchams are in Flood Zone 2, with the pumping station shown in the area prone to this flooding.
- The maps used by the developer do not show the true extent of flooding, nor the nature of the flooding - water accumulates in the Ashdon area and comes downriver as flash flooding.
- The maps used by the developer do not include the effect of surface water flooding from the uplands near the northern site across Bartlow Road and onto the southern site.
- The RSK soakage tests performed in December 2020 on the northern site notes that no groundwater was encountered. This is not surprising, as the tests were done after another long period of drought. There might have been a wet winter beforehand, but the groundwater levels and aquifer remain very low (see also comments on Condition 17 - Ecology response letter - this is a semi-arid region with a stressed chalk stream)
- The test results for the southern site are also to be considered as atypical due to drought and they conflict with the Rossi findings. As the groundwater levels remain low, the crated water storage is above normal groundwater levels. It is likely to flood from below as well as from above and overflow to the river, without benefit of pollution control.
- The groundwater levels on the northern site were measured at or following a time of prolonged drought; many infiltration assessments on the southern site failed and cannot be re-tested as topsoil has gone. Extrapolation of results is not reliable – again due to summer drought, low groundwater/aquifer levels and lack of a suitable comparator.
- The recent infiltration testing by RSL, in section 4 notes that the tests were done after a wet February and winter. It does not mention that there was then a very prolonged drought (as in previous years), when the river had to be kept flowing at a trickle by the input of water from the Ashdon Aquifer. The drought conditions are reflected by the very low groundwater levels, as the aquifer (below the site) is still at low level.
- The maintenance of the drainage systems does not include who will be responsible. The ring soakaways serving the public access roads are said to be managed by the Local Highways Authority in the LLFA document, but as the scheme includes smart sponges, they will not be adopted.
- The chambers and drains, including the chambers on the frontage of the Northern site are too close to the road, retaining walls and other development and do not comply with Building Regulations.
- Areas of communal paving are noted on the Private Highways Maintenance plan as being the shared responsibility of residents - this conflicts with the maintenance plan.
- Water from roofs is said to go into sewers - already overstretched and finely balance with coping with current input. This is not a practical proposition.
- The Site drawings show minimised hard landscaping (e.g now only showing small areas by back doors, without paths to link to steps). This is to reduce the apparent hard landscape area, and maximise the calculations based on soakaway, but is not how the areas will eventually be, with concomitant impact on surface water drainage, landscape, etc. There will be paved paths, patios, greenhouses, conservatories, bike sheds, bin storage - all reducing the soakaway potential, adding significantly to surface water run-off and increasing flood risk.
- The comments of the LLFA do not accord with the recent amendments, still referring to swales and not noting the status of the Granta as an internationally

protected Chalk Stream, which requires higher levels of pollution prevention.

- CCC have indicated that the roads will not be adopted, so their management of ring soakaways is doubted. The deep bore soakaways will penetrate the aquifer.
  - The position of Hydrobrakes, sandbagged headwalls and outfall trenches are shown but without illustrations of how these will impact on the valued landscape and the sensitive natural areas. Such hard structures are out of keeping with the rural nature of the area, encroach upon the 6m buffer zone and the development edge is now within 30m of the protected zone. They do not appear on a hard landscape plan and do not accord with the RM.
  - The crated water storage encroaches on the 6m buffer zone. The outlet pipe will be visually intrusive, is outside the developable area and within the Ecology buffer zone and river protection zone. This would be part of Hard Landscaping, so conflicts with that condition, a DoC showing this has not been submitted. The Ring soakaways SA2, manholes TP6 and TP7 are shown within the 30m protection zone beyond the development edge.
  - The issue of de-oxygenated water, as raised by the Ecologist, has not been resolved – see comments on the Ecology schemes, conditions 17 and 18. which describe the river conditions.
  - The comment from the Ecology Consultant is:  
The site was meant to have a balancing pond, which has now been replaced by underground water crates. To allow the discharge to enter a low-flow river, which is also impounded by the mill, has the potential to cause a massive oxygen sag which will result in detriment to the river, especially its population of wild brown trout which, as you know, have disappeared through village in the low flows years due to....poor water quality.
  - The use of cellular crates to store surface water drainage is questionable. The SuDS and Flood Risk Officer agrees that the use of these crates is no longer viable (letter of 5/10/20 from Jessica Prest), yet they remain in the scheme.
  - The base of these crates is set at 40.2m. The nearest figure for the water table within the same contour area is 39.5m (from the approved RM), so it is not likely that there is a clear 1m between the bottom of the crated storage area and the top of the water table. • As the crated water system is not viable and the scheme depends upon this, the whole drainage scheme fails.
- The condition has not been met and cannot be discharged
- The submission includes development that was not approved in the OL and RM schemes, and would conflict with those approvals and their conditions, including:
- The swale “pond” within the previously flooded area of the site was specifically objected to by LPC and statutory consultees;
  - The proposed connection of foul drainage to the old defective 6” foul drainage instead of the new village drain, a proposal specifically prevented by condition 11;
  - The discharge of surface water and roadway drainage (containing potential oil, fuel and other hazardous pollutants from the road) in a shared system into the river, a Protected Chalk Stream which will be of greater concern at times of low flow i.e most of the year;
  - The reintroduction of structural terraces which harm the appearance, landscape, ecology, accessibility and drainage of the development.
  - The spread of development further than the disputed RM consent, and therefore significantly beyond the OL developable area.
  - The river-long flood survey has not been done to evaluate the effect of this development on the river and floodplain, nor has there been an assessment of the impact on the County Wildlife site, and Pocket Park/Leadwell Meadows the village wildlife area.
  - The required season-long amphibian and mammal survey has not been completed. We know from recent observation that otter spraint is seen by the water level monitoring station and downstream.
  - The proposals now include works within the 6m buffer of the River Granta which

conflicts with the Ecology requirement. The 30m distance from the river edge for retained habitat has not been respected

- The introduction of concrete/sandbag "headwalls" and prominent hydrobrakes will be more unsightly introductions into valued landscape. The Hard Landscape condition has not been addressed.

Linton Parish Council Decision: Object and do refer this to the District Council Full Planning Committee

construction of the proposed development to avoid and manage any construction effects on: the environment and surrounding communities.

- 4.27 The 'Considerate Constructors Scheme' is a national initiative set up by the construction industry. Any construction sites and companies that register with the scheme are monitored against a Code of Considerate Practice, which includes guidelines for respecting the community by considering the impact on their neighbours, and for protecting and enhancing the environment.

## Water Quality

### Policy CC/7: Water Quality

1. In order to protect and enhance water quality, all development proposals must demonstrate that:
  - a. There are adequate water supply, sewerage and land drainage systems (including water sources, water and waste water infrastructure) to serve the whole development, or an agreement with the relevant service provider to ensure the provision of the necessary infrastructure prior to the occupation of the development. Where development is being phased, each phase must demonstrate sufficient water supply and waste water conveyance, treatment and discharge capacity;
  - b. The quality of ground, surface or water bodies will not be harmed, and opportunities have been explored and taken for improvements to water quality, including renaturalisation of river morphology, and ecology;
  - c. Appropriate consideration is given to sources of pollution, and appropriate Sustainable Drainage Systems (SuDS) measures incorporated to protect water quality from polluted surface water runoff.
2. Foul drainage to a public sewer should be provided wherever possible, but where it is demonstrated that it is not feasible, alternative facilities must not pose unacceptable risk to water quality or quantity.

- 4.28 The quality of water bodies is measured in terms of their overall 'ecological status' which is made up of their chemical, biological and physical attributes. The Local Plan needs to ensure that development does not result in a deterioration of water quality, and that opportunities are taken for enhancement to support the achievement of the Water Framework Directive standards.

- 4.29 In South Cambridgeshire the majority of rivers are currently of moderate or poor ecological status. Most failures are due to phosphates and man-made alterations to river and bank form. In much of the south east of the district the underlying geology is chalk, providing a significant source of groundwater which is used for the public drinking water supply. It is particularly important that the quality of this water is

protected from pollution in these areas. Groundwater Protection maps are prepared by the Environment Agency, identifying zones of greatest risk.

- 4.30 Anglian Water and the Cambridge Water Company are the statutory undertakers responsible for water supply, sewerage and sewage disposal. The Environment Agency is responsible for water resource management, fluvial flooding, river management, pollution control and regulating the handling and disposal of waste water. Internal Drainage Boards (IDBs) manage all drainage within their areas excluding main rivers. Those applying for planning permission should consult statutory undertakers and IDBs as they may levy an infrastructure charge. Maps showing the area covered by individual Internal Drainage Boards can be found in the Council's Strategic Flood Risk Assessment, and in the Cambridgeshire Flood and Water Supplementary Planning Document.
- 4.31 South Cambridgeshire is a rural district, and not all developments will have access to a public sewer. It is essential that development provides appropriate plant that will treat effluent safely and protect the environment. A package treatment plant will be sought where practicable, and only where it is not practicable will a system incorporating septic tanks be acceptable.

### **Sustainable Drainage Systems**

#### **Policy CC/8: Sustainable Drainage Systems**

Development proposals must incorporate appropriate sustainable surface water drainage systems (SuDS) appropriate to the nature of the site.

Development proposals will be required to demonstrate that:

- a. Surface water drainage schemes comply with the Sustainable Drainage Systems: Non-statutory technical standards for sustainable drainage systems and the Cambridgeshire Flood and Water Supplementary Planning Document or successor documents;
- b. Opportunities have been taken to integrate sustainable drainage with the development, create amenity, enhance biodiversity, and contribute to a network of green (and blue) open space;
- c. Surface water is managed close to its source and on the surface where it practicable to do so;
- d. Maximum use has been made of low land take drainage measures, such as rain water recycling, green roofs, permeable surfaces and water butts;
- e. Appropriate pollution control measures have been incorporated, including multiple component treatment trains; and
- f. Arrangements have been established for the whole life management and maintenance of surface water drainage systems.

- 4.32 Well planned and well designed surface water management infrastructure is necessary for the creation and ongoing maintenance of sustainable communities. It provides a flood risk management function alongside benefits for amenity and

biodiversity and can be linked to a network of green (and blue) open spaces. It can also conserve water resources and help improve the quality of water as it passes through the system. All these aspects make a significant contribution to climate change adaptation.

- 4.33 The Government is committed to protecting people and property from flood risk and expects that SuDS will be provided in new developments wherever this is appropriate. However, there is still a risk that SuDS are seen as later additions to development, and do not fully realise their potential multifunctional benefits. They should be considered from the beginning of the design and masterplanning process, taking account of all opportunities and constraints, including heritage and wildlife assets.
- 4.34 In some areas of the district infiltration SuDS will not be practicable due to ground conditions, but there are a wide range of measures that can be implemented to find suitable solutions for all sites. Detailed guidance on developing proposals that include the use of SuDS that effectively manage water, are aesthetically pleasing, conserve, accommodate and enhance biodiversity, and provide amenity for local residents is provided in the Cambridgeshire Flood and Water Supplementary Planning Document.

### Managing Flood Risk

#### Policy CC/9: Managing Flood Risk

1. In order to minimise flood risk, development will only be permitted where:
  - a. The sequential test and exception tests established by the National Planning Policy Framework demonstrate the development is acceptable (where required).
  - b. Floor levels are 300mm above the 1 in 100 year flood level plus an allowance for climate change where appropriate and where appropriate and practicable also 300mm above adjacent highway levels.
  - c. Suitable flood protection / mitigation measures are incorporated as appropriate to the level and nature of flood risk, which can be satisfactorily implemented to ensure safe occupation, access and egress. Management and maintenance plans will be required, including arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime;
  - d. There would be no increase to flood risk elsewhere, and opportunities to reduce flood risk elsewhere have been explored and taken (where appropriate), including limiting discharge of surface water (post development volume and peak rate) to natural greenfield rates or lower, and

(continued)

- e. The destination of the discharge obeys the following priority order:
  - i. Firstly, to the ground via infiltration;
  - ii. Then, to a water body;
  - iii. Then, to a surface water sewer;
  - iv. Discharge to a foul water or combined sewer is unacceptable.
2. Site specific Flood Risk Assessments (FRAs) appropriate to the scale and nature of the development and the risks involved, and which takes account of future climate change, will be required for the following:
  - f. Development proposals over 1ha in size;
  - g. Any other development proposals in flood zones 2 and 3;
  - h. Any other development proposals in flood zone 1 where evidence, in particular the Strategic Flood Risk Assessment or Surface Water Management Plans, indicates there are records of historic flooding or other sources of flooding, and/or a need for more detailed analysis.
3. FRAs will need to meet national standards and local guidance (including recommendations of the South Cambridgeshire and Cambridge City Strategic Flood Risk Assessment (2010) and the Phase 1 and 2 Water Cycle Strategy or successor documents).

- 4.35 The NPPF (2012) requires a risk based sequential approach to flood risk, to avoid high risk areas and steer development to areas at lower risk. As well as minimising risk to the development itself, development should not increase flood risk elsewhere, and opportunities should be taken to reduce risk downstream, such as by reducing run off rates.
- 4.36 The Environment Agency publishes a Flood Map for Planning on their website, which identifies areas with an annual likelihood of flooding greater than 1% in any year for fluvial inland flooding (equivalent to 1 flood event in 100 years). They do not take account of existing flood defences, but show where these are present.
- 4.37 South Cambridgeshire District Council, in partnership with Cambridge City Council, commissioned a Strategic Flood Risk Assessment, which explores the nature and extent of flood risk across the area, taking account of the anticipated impacts of climate change. In addition, Cambridgeshire County Council, now the lead local flood management authority, has prepared a Surface Water Management Plan. These should be used to support the consideration of planning applications. A flooding and water management Supplementary Planning Document will be prepared in liaison with stakeholders to assist developers and key stakeholders with the effective delivery and implementation of the policy.
- 4.38 The appropriate responsible bodies including The Environment Agency, Anglian Water, Internal Drainage Boards and Cambridgeshire County Council should be

consulted, as appropriate, during the initial design process for any new development or redevelopment.

## Chapter 5 Delivering High Quality Places

- 5.1 The National Planning Policy Framework (NPPF, 2012) establishes that Planning should “always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings”.
- 5.2 South Cambridgeshire has been voted amongst the top 10 places in the country to live in a number of national surveys over recent years. The Local Plan seeks to shape development of all scales, be that small scale rural housing to major new communities, to create sustainable and successful places that protect the special qualities of the district’s rural character, whilst using the opportunities presented by development to enhance the built and natural environment, and create vibrant communities.
- 5.3 The District Council has signed up to the Cambridgeshire Quality Charter for Growth, which is a clear policy statement of the aspiration to create new developments that offer communities a fulfilling, visually pleasing and environmentally sensitive way of life.

### Key Facts:

- The district has settlements of varied and distinct local character, ranging from compact hamlets through larger villages with linear street patterns to new settlements and extensions to the urban fabric of Cambridge.
- The Council has signed up to the Cambridgeshire Quality Charter for Growth, published in 2010, which sets out core principles for the level of quality expected in new developments.
- South Cambridgeshire has adopted a District Design Guide (2010) to provide additional guidance on how developments can ensure they are sustainable and achieve a high quality of design in a way that respects the local context.

## Securing High Quality Design

### Policy HQ/1: Design Principles

1. All new development must be of high quality design, with a clear vision as to the positive contribution the development will make to its local and wider context. As appropriate to the scale and nature of the development, proposals must:
  - a. Preserve or enhance the character of the local urban and rural area and respond to its context in the wider landscape;
  - b. Conserve or enhance important natural and historic assets and their setting;

(continued)

- c. Include variety and interest within a coherent, place-responsive design, which is legible and creates a positive sense of place and identity whilst also responding to the local context and respecting local distinctiveness;
- d. Be compatible with its location and appropriate in terms of scale, density, mass, form, siting, design, proportion, materials, texture and colour in relation to the surrounding area;
- e. Deliver a strong visual relationship between buildings that comfortably define and enclose streets, squares and public places, creating interesting vistas, skylines, focal points and appropriately scaled landmarks along routes and around spaces;
- f. Achieve a permeable development with ease of movement and access for all users and abilities, with user friendly and conveniently accessible streets and other routes both within the development and linking with its surroundings and existing and proposed facilities and services, focusing on delivering attractive and safe opportunities for walking, cycling, public transport and, where appropriate, horse riding;
- g. Provide safe and convenient access for all users and abilities to public buildings and spaces, including those with limited mobility or those with other impairment such as of sight or hearing;
- h. Ensure that car parking is integrated into the development in a convenient, accessible manner and does not dominate the development and its surroundings or cause safety issues;
- i. Provide safe, secure, convenient and accessible provision for cycle parking and storage, facilities for waste management, recycling and collection in a manner that is appropriately integrated within the overall development;
- j. Provide a harmonious integrated mix of uses both within the site and with its surroundings that contributes to the creation of inclusive communities providing the facilities and services to meet the needs of the community;
- k. Ensure developments deliver flexibility that allows for future changes in needs and lifestyles, and adaptation to climate change;
- l. Mitigate and adapt to the impacts of climate change on development through location, form, orientation, materials and design of buildings and spaces;
- m. Include high quality landscaping and public spaces that integrate the development with its surroundings, having a clear definition between public and private space which provide opportunities for recreation, social interaction as well as support healthy lifestyles, biodiversity, sustainable drainage and climate change mitigation;

(continued)

- n. Protect the health and amenity of occupiers and surrounding uses from development that is overlooking, overbearing or results in a loss of daylight or development which would create unacceptable impacts such as noise, vibration, odour, emissions and dust;
  - o. Design-out crime and create an environment that is created for people that is and feels safe, and has a strong community focus.
2. Larger and more complex developments will be required to submit Masterplans and Design Codes to agree an overall vision and strategy for a development as a whole that demonstrates a comprehensive and inclusive approach.

- 5.4 The NPPF (2012) sets out a clear national policy framework for promoting good design as a key element to achieving sustainable development and emphasises the indivisible link between good design and good planning (paragraphs 56-68).
- 5.5 All new development will have an impact on its surroundings. Development needs to be of an appropriate scale, design and materials for its location and conform to the design principles set out in the policy above. The aim must be that any development from a major urban extension to Cambridge to an extension to an existing home respects, preserves and enhances the special character of South Cambridgeshire generally and the locality specifically. Any development must also take proper care to respond to its surroundings, and create sustainable, inclusive and healthy environments where people would wish to live, work, shop, study or spend their leisure time. Well designed buildings and places contribute to the quality of life, increase economic vitality, achieve high environmental standards, reduce emissions and deliver a high quality public realm.
- 5.6 A fully integrated and responsive design-led approach to development is needed rather than design being approached as a simple checklist or as an optional extra. Policy HQ/1 establishes a set of fundamental design principles that should be applied to all development to ensure it contributes to social, economic and environmental sustainability and makes a positive difference to people's lives to help provide homes, jobs and better opportunities for everyone, whilst protecting and enhancing the natural and historic environment, and conserving the countryside and open spaces that are important to everyone. Applicants will be required to demonstrate how their proposals meet the principles of sustainability, by submitting a Sustainability Statement, under Policy CC/1 in Chapter 4 Climate Change.
- 5.7 The Government requires Design and Access Statements to be submitted with most planning applications, intended to demonstrate how a proposal is functional, attractive and accessible to all. Comprehensive guidance on their format and content is provided in the Council's Design & Access Statements Briefing Note.
- 5.8 Developments should be planned comprehensively in an integrated manner, not piecemeal. Some larger scale developments or complex sites can take a number of

years to complete and are often delivered and planned in stages. In order to ensure developments take place in a coherent and structured way, Masterplans and Design Codes should be produced to agree an overall vision and strategy for a development as a whole at the outset. Guidance on what should be covered in Masterplans and Design Codes is provided in the District Design Guide Supplementary Planning Document (SPD).

- 5.9 Further guidance to support Policy HQ/1 will be provided in the review of the District Design Guide SPD. Other detailed local context information can be found in Conservation Area Appraisals. Some parish councils have prepared Village Design Guides, or are considering neighbourhood plans, which also provide local context. Other useful guidance on design includes: By Design (DETR, 2000); Urban Design Compendium (Llewelyn-Davies for English Partnerships, The Housing Corporation and Urban Design Alliance); Car parking what works where (English Partnerships); RECAP Waste Management Design Guide SPD (Cambridgeshire County Council 2012).

## Public Art

### Policy HQ/2: Public Art and New Development

1. The Council will encourage the provision or commissioning of public art that is integrated into the design of development as a means of enhancing the quality of development proposals, in particular from:
  - a. Residential developments comprising 10 or more dwellings; and
  - b. Other developments where the floor area to be built is 1,000m<sup>2</sup> gross or more, including office, manufacturing, warehousing and retail developments.
2. Where development is unable to achieve an appropriate scheme on site the Council will encourage developers to make a financial contribution to support public art initiatives. Financial contributions may be pooled (up to a maximum of five), where appropriate.
3. The provision of public art must involve the local community and could be community-led and have regard to the local circumstances of the site and/or local aspirations.
4. Where public art is provided, contributions and commuted maintenance sums for up to 10 years will be required and include the cost of decommissioning where appropriate.

- 5.10 The provision of quality visual arts and crafts as part of new developments can bring social, cultural, environmental, educational and economic benefits, both to new development and the local community. Done well, public art that is designed to reflect and enhance its surroundings will help to raise the visual quality of

## **SUSTAINABLE DEVELOPMENT**

### **POLICY DP/1 Sustainable Development**

- 1. Development will only be permitted where it is demonstrated that it is consistent with the principles of sustainable development, as appropriate to its location, scale and form. It should:**
  - a. Be consistent with the sequential approach to development, as set out in the Strategy chapter of the Core Strategy DPD;**
  - b. Minimise the need to travel and reduce car dependency;**
  - c. Make efficient and effective use of land by giving priority to the use of brownfield sites and achieve adaptable, compact forms of development through the use of higher densities;**
  - d. Include mixed-use development of compatible uses as appropriate to the scale and location of the development;**
  - e. Where practicable, use sustainable building methods and verifiably sustainable, locally sourced materials, including recycled materials, and include a Travel Plan to address the travel needs of labour during construction;**
  - f. Where practicable, minimise use of energy and resources;**
  - g. Where practicable, maximise the use of renewable energy sources;**
  - h. Incorporate water conservation measures;**
  - i. Minimise flood risk;**
  - j. Where practicable, use sustainable drainage systems (SuDS);**
  - k. Mitigate against the impacts of climate change on development through the location, form and design of buildings;**
  - l. Ensure no unacceptable adverse impact on land, air and water;**
  - m. Contribute to the creation of mixed and socially inclusive communities and provide for the health, education,**

**recreation, community services and facilities, and social needs of all sections of the community;**

- n. Where practicable, include infrastructure for modern telecommunications and information technology to facilitate home working;**
  - o. Conserve and wherever possible enhance biodiversity of both wildlife and the natural environment;**
  - p. Conserve and wherever possible enhance local landscape character;**
  - q. Involve community and providers of community services in the design process;**
  - r. Conserve and wherever possible enhance cultural heritage.**
- 2. In criteria e, f, g, j and n it will be for any applicant or developer proposing to compromise sustainability to demonstrate the impracticability of use of sustainable methods, systems, materials and energy sources and provision of sustainable infrastructure. Additional cost will not, on its own, amount to impracticability.**
- 3. For major developments, applicants must submit a Sustainability Statement and a Health Impact Assessment, to demonstrate that principles of sustainable development have been applied.**

2.3 The principles of sustainable development are fundamental to international obligations and to national, regional and strategic planning policy. These principles also underpin the strategy, and all policies and proposals of the South Cambridgeshire Local Development Framework. The eastern region is the driest in the UK. It is also a low-lying area that is vulnerable to the implications of climate change. However, it is also a rural area that is to accommodate a great deal of growth surrounding the important historic city of Cambridge. It is therefore of key importance to the continuing success of the district that development is sustainable and achieves environmental, economic and social gains for current and future generations.

2.4 This key policy draws together sustainability issues to ensure that the fundamental principles of sustainable development underpin all development proposals. The issues dealt with are covered in greater detail in the later subject chapters. It also includes references to key sustainability issues of building methods and materials, which will be part of the overall

consideration of the development proposal, but are not directly related to the planning system.

- 2.5 All planning applications for major development are required to submit a Sustainability Appraisal and a Health Impact Statement to demonstrate that they have addressed sustainability issues, including impact on health, in their development proposals. Major development is defined as:
- Residential development: the erection of 20 or more dwellings, or, if this is not known, where the site area is 0.5 hectares or more; or
  - Other development: where the floor area to be created is 1,000 m<sup>2</sup> or more, or the site area is 1 hectare or more.
- 2.6 To assist in the preparation of a Sustainability Statement and Health Impact Assessment, further guidance will be provided in a Supplementary Planning Document.

## DESIGN OF NEW DEVELOPMENT

### POLICY DP/2 Design of New Development

#### New Development Design

1. **All new development must be of high quality design and, as appropriate to the scale and nature of the development, should:**
  - a. **Preserve or enhance the character of the local area;**
  - b. **Conserve or enhance important environmental assets of the site;**
  - c. **Include variety and interest within a coherent design, which is legible and provides a sense of place whilst also responding to the local context and respecting local distinctiveness;**
  - d. **Achieve a legible development, which includes streets, squares and other public spaces with a defined sense of enclosure and interesting vistas, skylines, focal points and landmarks, with good interrelationship between buildings, routes and spaces both within the development and with the surrounding area;**

- 7.44 Development in the countryside, normally being development for agricultural purposes, including slurry from large agricultural installations, may be unacceptable if untreated effluent could enter local watercourses and the wider water environment. It will therefore be essential for such developments to provide plant which will treat their effluent if connection to the public sewer is not feasible. The policy makes clear that the District Council will not give planning permission for any development where it may prejudice the quality of ground or surface water, watercourses or sites of biodiversity importance unless measures are undertaken to mitigate the harm.

### **POLICY NE/11 Flood Risk**

**In relation to flood risk, applications for planning permission will be judged against national policy (currently in PPS25).**

- 7.45 The Proposals Map shows the flood zones, produced by the Environment Agency (EA) in 2005. These are defined in accordance with government guidance in PPG25: Development and Flood Risk and support a risk based approach to assessing flood risk. PPG25 requires the use of a sequential test when considering development proposals, to determine the suitability of types of development within the different flood zones (Zone 1 - Little or No Risk Less than 0.1% annual probability; Zone 2 - Low to Medium Risk 0.1% to 1.0% annual probability; Zone 3 - High Risk Greater than 1.0% annual probability).
- 7.46 Although the maps show areas of possible flooding from rivers, streams, watercourses or the sea, they do not take account of flood defences and always take a conservative approach where detailed information is available. The flood zones are regularly updated by the EA and the most up to date maps, including those from the South Cambridgeshire Flood Risk Assessment, modelling and other studies, will be relevant in determining planning applications. (These can be viewed on the Agency's Website: [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk))

### **SUSTAINABLE DRAINAGE SYSTEMS**

- 7.47 It is preferable to manage surface water runoff through the use of Sustainable Drainage Systems (SuDS) as they provide environmental, biodiversity and aesthetic benefits. SuDS may take the form of swales, lagoons, permeable paving, green roofs and sensitively re-engineered

channels or reed beds, depending on the nature of the development and the area.

- 7.48 The Council supports the Environment Agency in promoting sustainable drainage systems which maintain or reduce pre-development rates of run-off and will seek advice from the agency to determine allowable rates of run-off. Developers will be required to fund the scheme and legal agreements will ensure maintenance and the control of run-off to those levels in perpetuity.

## **WATER CONSERVATION**

### **POLICY NE/12 Water Conservation**

**Development must incorporate all practicable water conservation measures. All development proposals greater than 1,000 m<sup>2</sup> or 10 dwellings will be required to submit a Water Conservation Strategy prior to the commencement of the development to demonstrate how this is to be achieved.**

- 7.49 The importance of water resources in the area was highlighted through the Sustainability Appraisal of the LDF. There are a number of ways water conservation can be achieved, such as water saving devices, rainwater harvesting, and greywater recycling, and the policy offers a degree of flexibility on the exact methods used. Large developments, or cumulatively large developments, incorporating such measures could potentially reduce surface water run-off and therefore reduce levels in water courses and water tables, and have an impact on biodiversity. A balance must be achieved between management of water recycling and ensuring no adverse impact on the water environment and biodiversity.

## **HAZARDOUS INSTALLATIONS**

### **POLICY NE/13 Hazardous Installations**

**In considering proposals for hazardous substances consent or development in the vicinity of hazardous installations, account will be taken of the amount, type and location of hazardous substances present, and the need for special precautions to protect future users of the site and any other affected land.**

**My ref:** FR/21-000101 / FR/21-000085  
**Your ref:** S/2553/16/CONDO / S/1963/15/CONDG  
**Date:** 27/07/2021  
**Doc no:** 201106503  
**Officer:** Jessica Prest  
**E Mail:** Jessica.Prest@cambridgeshire.gov.uk

Place and Economy  
Environment and Commercial

Karen Pell-Coggins and Michael Sexton  
Greater Cambridge Shared Planning  
South Cambridge Hall  
Cambourne Business Park  
CB23 6EA

Box No. SH1315  
Shire Hall  
Castle Hill  
Cambridge  
CB3 0AP

### **Comments from Lead Local Flood Authority (LLFA)**

Dear Karen Pell-Coggins and Michael Sexton,

We write in respect of the following planning applications in Linton, Cambridgeshire, which are currently awaiting decision by the Local Planning Authority:

1. **S/2553/16/CONDO** - Land Off Horseheath Road Linton Cambridgeshire - Submission of details required by condition 11 (Surface water drainage) of outline planning permission S/2553/16/OL.
2. **S/1963/15/CONDG** - Land To North And South Of Bartlow Road And Immediate Linton Cambridgeshire - Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL

Whilst we previously wrote to the LPA on 1 June 2021 advising that we were satisfied with the proposed surface water drainage scheme, it is understood that the conditions have not yet been discharged. As you are aware, significant flooding occurred in Linton on 20 July 2021 and as the Lead Local Flood Authority (LLFA), we are currently conducting investigations under Section 19 of the Flood and Water Management Act 2010 into the cause of this flooding. To date, the LLFA has received 11 formal flood reports since the 20<sup>th</sup> July, including 9 reports of internal flooding to properties on 8 different streets in the village. We also received 3 further reports of flooding to external areas including gardens and outbuildings.

Both the LLFA and LPA have received information from the Parish Council and residents of Linton to suggest that the development site known as 'Land Off Horseheath Road' (S/2553/16/CONDO) may have contributed to this flooding. Flooding also occurred in the vicinity of the site known as 'Land To North And South Of Bartlow Road' (S/1963/15/CONDG) and whilst the development on that site has not yet commenced, we need to assess whether the proposed drainage system is suitable and adequate based on flooding that has occurred.

**We therefore request that any drainage related applications for both sites (S/2553/16/CONDO and S/1963/15/CONDG) are paused by the LPA until these investigations are complete. We anticipate that the initial stage of this investigation will take approximately two weeks.**

Further comments in relation to each site are provided below.

**S/2553/16/CONDO - Land Off Horseheath Road Linton Cambridgeshire**

- We have received photographic and video evidence to suggest that the development (which has already commenced despite not yet discharging the pre-commencement conditions) may have contributed to the flood events of the 20<sup>th</sup> July, the effects of which were most notable at Lonsdale, directly adjacent to the east of the development site. Flows are understood to have passed through and across the site, overwhelming the new basin in the south west of the site. We understand that water was manually removed from the basin by the on-site construction team using a tanker and pump. This water is thought to have been discharged into the public sewer network, however investigations into this are ongoing.
- Given that an infiltration basin has been proposed (the purpose of which is to allow water to soak away naturally into the ground), it is concerning that water had to be removed and disposed of manually. In line with the CIRIA SuDS Manual and best practice guidance (including the Cambridgeshire County Council Surface Water Drainage Guidance for Developers), the half drain time of an infiltration basin should not exceed 24 hours (1440 minutes). The reason for this is to allow capacity within the basin to accept any subsequent storms. The hydraulic calculations submitted with the application show an expected half drain time of 12 hours (712 minutes), however following on from 20 July 2021, it is believed it took far in excess of 24 hours for the water level to reduce. This is particularly concerning given that a pump was manually removing water at the same time. The LLFA therefore requires evidence to demonstrate the site and underlying geology are appropriate for infiltration. If not, an alternative strategy will need to be developed and submitted for approval.
- The developer proposes to include a bund around the basin to prevent any overtopping. Whilst the LLFA are not in a position to comment on the structural integrity of such a bund (this should instead be assessed by structural engineers), a breach analysis of the raised embankment would need to be undertaken, assuming bank-full conditions and this must demonstrate there will be no risk of inundation to any properties (new or existing). As per the previously submitted bund design, a concrete plug or similar should be constructed through the centre of the bund to mitigate against risk of bund collapse. An adequate maintenance plan should be put in place to ensure the structural integrity of the bund is maintained in perpetuity.

**S/1963/15/CONDG - Land To North And South Of Bartlow Road And Immediate Linton Cambridgeshire**

- As surface water flooding occurred in the vicinity of the site (namely along Bartlow Road) on the 20<sup>th</sup> July 2021, we request that any drainage related applications for the site are paused while an investigation by the LLFA takes place to assess the cause of this flooding and risk of flooding to the proposed development.

Yours sincerely,

*H Ellis*

**Hilary Ellis**

**Acting Flood Risk & Biodiversity Business Manager  
Environment and Commercial**

*Please note: We are reliant on the accuracy and completeness of the reports in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.*

**If you have any queries regarding this application please contact the Officer named at the top of this letter (contact details are above).**

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**My ref:** FR/21-000085  
**Your ref:** S/1963/15/CONDG  
**Date:** 26/08/2021  
**Doc no:** 201106640  
**Officer:** Hilary Ellis  
**E Mail:** Hilary.ellis@cambridgeshire.gov.uk

**Steve Cox: Executive Director  
Place and Economy  
Environment and Commercial**

Michael Sexton  
Greater Cambridge Shared Planning  
South Cambridge Hall  
Cambourne Business Park  
CB23 6EA

Alconbury Weald Civic Hub  
Emery Crescent  
Enterprise Campus  
Alconbury Weald  
PE28 4YE

**PROPOSAL: Submission of details required by condition 10 (Surface Water Drainage) of  
planning permission S/1963/15/OL**

**Land To North And South Of And Immediate Linton Cambridgeshire**

**Comments from Lead Local Flood Authority (LLFA)**

Dear Sir,

Following on from the letter we issued regarding a pause on this application, I would like to advise the following:

On the basis of the information submitted (as outlined in Jessica Prest's letter on 26 May 2021) and copied below for consistency, we are able to recommend the discharge of condition 10 of S/1963/15/OL. The submitted information confirms the application meets with national and local standards/policy and should therefore not result in an increase in surface water flood risk. Please note we are reliant on the accuracy and completeness of the reports in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.

- Southern Site Drainage Layout, SDP Consulting Engineers, E17-084-141-C14. Dated: 15/04/2021.
- Storage Pond Plan and Sections, SDP Consulting Engineers, E17-084-141.2-P7. Dated: 29/04/2021.
- Overland Surface Water Flow Routes In Proposed Situation, SDP Consulting Engineers, E17-084-SK501-P1. Dated: April 2021.
- Monitoring of boreholes in northern parcel, RSK Environment Limited, 1921215 L03 (01). Dated: 18th February 2021.
- Typical Surface Water Drainage Construction Details Sheet 1 of 2, SDP Consulting Engineers, E17-084-160-P1. Dated: 27/06/2018.
- Typical Surface Water Drainage Construction Details Sheet 2 of 2, SDP Consulting Engineers, E17-084-160-P1. Dated: 27/06/2018.

- Southern Site Surface Water Drainage Maintenance Identification Plan, SDP Consulting Engineers, E17-084-171-P8. Dated: 15/12/2020.
- Surface Water Drainage Strategy Northern Site, SDP Consulting Engineers, E17-084-177-P5. Dated: 16/12/2020.
- Northern Site Surface Water Drainage Maintenance Identification Plan, SDP Consulting Engineers, E17-084-170-P5. Dated: 15/12/2020.
- Storage Pond Plan and Sections, SDP Consulting Engineers, E17-084-141.2-P6. Dated: 18/12/2020.
- Surface Water Drainage Strategy Southern Site, SDP Consulting Engineers, E17-084-178-P8. Dated: 16/12/2020.
- Hydraulic Calculations Area 100M2 – 150M2 PLOTS 27,28,29,30,31, SDP Consulting Engineers. Dated: 09/03/2020.
- Hydraulic Calculations Roof Area up to 100M2, SDP Consulting Engineers. Dated: 09/03/2020.
- Hydraulic Calculations Area 150M2 – 200M2 Plot 55, SDP Consulting Engineers. Dated: 09/03/2020.
- Calculation Sheet, SDP Consulting Engineers, E17-084. Dated: May 2020.
- Drainage Calculations for LLFA, SDP Consulting Engineers, E17-084. Dated: October 2020.
- Microdrainage Surface Water Drainage Calculations Southern Site, SDP Consulting Engineers, E17.084. Dated: December 2020.
- Exploratory Hole Location Plan, MLM Group, 775216-DWG-ENV-002. Dated: 04/07/2017.
- Northern Site Drainage Layout, SDP Consulting Engineers, E17-084-131-C7. Dated: 15/12/2020.
- Network 1 Balancing Pond Flow Profile, Innovyze.
- Northern Site Hydraulic Calculations, SDP Consulting Engineers. Dated: 25/08/2020.
- Private Domestic Drainage Sheet 1, SDP Consulting Engineers, E17-084-162-T5. Dated: 23/10/2020.
- SA16 Rev A (Plot 44) Calculations, SDP Consulting Engineers. Dated: 08/12/2020.
- SA27 Rev A (Plot 55) Calculations, SDP Consulting Engineers. Dated: 09/12/2020.
- Southern Site Plots 1,2,3,32,33,41,42 & 43 Calculations, SDP Consulting Engineers. Dated: 10/03/2020.
- Southern Site PLOTS 34 – 40 Calculations, SDP Consulting Engineers. Dated: 11/03/2020.
- S38 SA SA15 Calculations, SDP Consulting Engineers. Dated: 11/03/2020.
- SuDS Maintenance Plan, SDP Consulting Engineers, E17-084. Dated: December 2020.
- Maintenance inspection checklist, SDP Consulting Engineers, E17-084-172.
- Surface Water Drainage, SDP Consulting Engineers.
- Flood Plain Letter, SDP Consulting Engineers, NG/SJ/E17.084. Dated: 24/10/2020.
- Northern Site Exceedance Flow Plan, SDP Consulting Engineers, E17-084-177.1-P1. Dated: 27/06/2020.
- Permeable Paved Parking Area Calculations, SDP Consulting Engineers. Dated: 05/03/2020.
- Soakaway Tests, RSK Environment Limited, 1921215 L02 (00). Dated: 10th December 2020.
- Trial Pit Log, RSK Environment Limited, 1921215. Dated: 19/03/2020.

Surface water from private areas in the northern site will be managed by infiltration through individual plot soakaways and permeable paving. The northern site access road will drain into a ring soakaway. The southern site will be managed by permeable paving and a balancing pond with crated storage and a flow control, which will restrict surface water to 2.8 l/s during all

events up to and including a 1 in 100 year storm event plus a 40% allowance for climate change. Surface water from the balancing pond will then pass through a filter trench with gravel riffles to provide a final element of surface water treatment before out-falling into the River Granta.

Water quality has been adequately addressed when assessed against the Simple Index Approach outlined in the CIRIA SuDS Manual. The SuDS management train consisting of permeable paving, swales, a balancing pond and a filter strip with gravel riffles will provide sufficient surface water treatment prior to discharging into the River Granta chalk stream. The permeable paving, balancing pond, ditch outfall and public soakaways will be managed by a private management company in line with the Ciria SuDS Manual. The ring soakaways serving the public access roads will be managed by the Local Highways Authority.

It has been identified that the southern site experienced flooding from the River Granta on the 21st October 2001. The river level at this time was recorded at 41.576 metres AOD, the highest level ever recorded. Finished floor levels will be set to a minimum of 42.200 metres AOD. According to the most up-to-date Environment Agency flood plain modelling, the balancing pond will be located entirely within Flood Zone 1. The southern part of the southern site experienced further flooding from the River Granta in December 2020/ January 2021. The applicant has however provided photographic evidence to confirm that this flooding was confined to the EA modelled flood zones and did not extend to the part of the site proposed for development.

An overland flow plan has been provided to demonstrate that surface water flows from Bartlow Road would be routed along the eastern undeveloped area of the site towards the River Granta. Overland flows coming from Bartlow Road to the north-west would flow onto the site following local topography, and be intercepted by the sites drainage system. The proposed drainage system will accept surface water flows during all events up to and including a 1 in 100 year storm event plus a 40% allowance for climate change, with no system flooding anticipated in such an event.

## **Informatives**

### **Ordinary Watercourse Consent**

Constructions or alterations within an ordinary watercourse (temporary or permanent) require consent from the Lead Local Flood Authority under the Land Drainage Act 1991. Ordinary watercourses include every river, drain, stream, ditch, dyke, sewer (other than public sewer) and passage through which water flows that do not form part of Main Rivers (Main Rivers are regulated by the Environment Agency). The applicant should refer to Cambridgeshire County Council's Culvert Policy for further guidance:

<https://www.cambridgeshire.gov.uk/business/planning-and-development/water-minerals-and-waste/watercourse-management/>

Please note the council does not regulate ordinary watercourses in Internal Drainage Board areas.

**Pollution Control**

Surface water and groundwater bodies are highly vulnerable to pollution and the impact of construction activities. It is essential that the risk of pollution (particularly during the construction phase) is considered and mitigated appropriately. It is important to remember that flow within the watercourse is likely to vary by season and it could be dry at certain times throughout the year. Dry watercourses should not be overlooked as these watercourses may flow or even flood following heavy rainfall.

Yours faithfully,

*H Ellis*

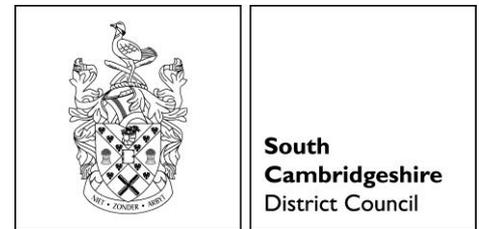
**Hilary Ellis**

**Acting Flood Risk & Biodiversity Business Manager  
Environment and Commercial**

**If you have any queries regarding this application, please contact the Officer named at the [top](#) of this letter (contact details are above).**

*Please note: We are reliant on the accuracy and completeness of the reports in undertaking our review and can take no responsibility for incorrect data or interpretation made by the authors.*

# Agenda Item 7



**Report to:** South Cambridgeshire District Council Planning Committee 29 September 2021

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

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## **21/00629/S73 – Land To The North And South Of Bartlow Road Linton**

Proposal: S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design.

Applicant: Abbey Developments Limited

Key material considerations: Foul Water Drainage

Date of Member site visit: None

Departure Application: Yes (advertised 17 March 2021)

Decision due by: 02 July 2021

Application brought to Committee because: Departure from the development plan, referral from the Council's Shared Planning Service Delegation meeting and Parish Council objection.

Presenting officer: Michael Sexton

### **Executive Summary**

1. Outline planning permission was granted on 01 September 2017 for "residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road" under planning reference S/1963/15/OL.
2. Approval of matters reserved for appearance, landscaping, layout, and scale (comprising 55 dwellings) was later granted on 15 November 2019 under planning reference S/2501/19/RM.
3. Condition 11 of the outline consent requires, prior to the commencement of any development, the submission and approval of a scheme for the provision and

implementation of foul water drainage to connect to manhole 7501 via a pumped regime.

4. This application seeks to vary condition 11 of the outline consent such that foul drainage connection to serve the development connects for the southern site between manholes 1501 and 2501 and a connection for the northern site at manhole 2503 (i.e., connection at Bartlow Road), or via connection to manhole 7501 via a pumped regime.
5. The concerns from Linton Parish Council and third parties in relation to the submitted scheme are noted.
6. However, the Council's specialist advisors and statutory consultees consider the foul water drainage scheme to be acceptable and to provide a satisfactory method of foul water drainage. Consequently, the technical consultees have raised no objection to the proposed variation of condition 11.
7. Officers therefore consider that, given the lack of objection from the statutory and technical consultees, including Anglian Water as the sewerage undertaker, that it would be appropriate to vary condition 11, the details of which would comply with relevant national and local planning policy.

## **Relevant planning history**

8. S/1963/15/CONDI – Submission of details required by condition 8 (Travel Plan) of planning permission S/1963/15/OL – decision pending.
9. S/1963/15/CONDG – Submission of details required by condition 10 (Surface Water Drainage) of planning permission S/1963/15/OL – decision pending.
10. S/1963/15/CONDE – Submission of details required by condition 11 (Foul Drainage) of planning permission S/1963/15/OL – decision pending.
11. S/1963/15/CONDF – Submission of details required by condition 5 (Hard and Soft Landscaping) of planning permission S/1963/15/OL – Approved (13 August 2021).
12. S/1963/15/CONDH – Submission of details required by condition 19 part(iii) (Post Excavation Assessment) of planning permission S/1963/15/OL – Discharge Condition in Part (13 August 2021).
13. S/1963/15/COND5 – Condition 5 - Landscaping – Appealed for Non-Determination (decision pending).
14. S/1963/15/COND10 – Condition 10 - Drainage – Appealed for Non-Determination (decision pending).
15. S/1963/15/CONDA – Submission of details required by condition 19 (iii) (Archaeology) of planning permission S/1963/15/OL – Refused (18 January 2021); Appealed (decision pending).

16. S/1963/15/CONDB – Submission of details required by condition 15 (Construction Programme) of planning permission S/1963/15/OL – Approved (21 May 2021).
17. S/1963/15/CONDD – Submission of details required by condition 17 (EDS) of planning permission S/1963/15/OL – Approved (21 May 2021).
18. S/1963/15/CONDC – Submission of details required by condition 18 (CEMP) of planning permission S/1963/15/OL – Approved (21 May 2021).
19. S/1963/15/COND9 – Condition 9 - Contamination – Discharge Condition in Part (20 January 2021).
20. S/1963/15/COND11 – Condition 11 - Foul Water Drainage – Refused (20 January 2021).
21. S/1963/15/COND16 – Condition 16 - Noise Assessment – Approved (20 January 2021).
22. S/1963/15/CONDA – Submission of details required by condition 19 (iii) (Archaeology) of planning permission S/1963/15/OL – Refused (18 January 2021).
23. S/1963/15/COND14 – Condition 14 - Dust – Approved (11 January 2021).
24. S/1963/15/COND19 – Condition 19 - Archaeological Investigation – Discharge Condition in Part (11 January 2021).
25. S/1963/15/COND13 – Condition 13 - Waste Management Plan – Approved (29 October 2020)
26. S/1963/15/COND20 – Condition 20 - Lighting – Approved (29 October 2020).
27. S/1963/15/COND21 – Condition 21 - Energy Statement – Approved (29 October 2020).
28. S/1963/15/COND22 – Condition 22 - Fire Hydrants – Approved (29 October 2020).
29. S/2501/19/RM – Approval of matters reserved for appearance landscaping layout and scale following outline planning permission S/1963/15/OL for residential development for up to 55 dwellings with landscape buffer and new vehicular access from Bartlow Road – Approved (15 November 2019).
30. S/1963/15/OL – Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road – Approved (01 September 2017).
31. S/1577/15/E1 – EIA Screening Opinion for residential development – No objections (15 July 2015).

## **Planning policies**

### **National Guidance**

- 32. National Planning Policy Framework 2021  
National Planning Practice Guidance  
National Design Guide 2019

### **South Cambridgeshire Local Plan 2018**

- 33. S/1 – Vision
- S/2 – Objectives of the Local Plan
- S/3 – Presumption in Favour of Sustainable Development
- S/5 – Provision of New Jobs and Homes
- S/6 – The Development Strategy to 2021
- S/7 – Development Frameworks
- S/9 – Minor Rural Centres
- CC/1 – Mitigation and Adaption to Climate Change
- CC/3 – Renewable and Low Carbon Energy in New Developments
- CC/4 – Water Efficiency
- CC/6 – Construction Methods
- CC/7 – Water Quality
- CC/8 – Sustainable Drainage Systems
- CC/9 – Managing Flood Risk
- HQ/1 – Design Principles
- HQ/2 – Public Art and New Development
- NH/2 – Protecting and Enhancing Landscape Character
- NH/3 – Protecting Agricultural Land
- NH/4 – Biodiversity
- NH/14 – Heritage Assets
- H/12 – Residential Space Standards
- SC/2 – Health Impact Assessment
- SC/4 – Meeting Community Needs
- SC/6 – Indoor Community Facilities
- SC/7 – Outdoor Play Space, Informal Open Space and New Developments
- SC/9 – Lighting Proposals
- SC/10 – Noise Pollution
- SC/11 – Contaminated Land
- SC/12 – Air Quality
- TI/2 – Planning for Sustainable Travel
- TI/3 – Parking Provision
- TI/8 – Infrastructure and New Developments
- TI/10 – Broadband

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

- 34. Sustainable Design and Construction SPD – Adopted January 2020  
Cambridgeshire Flood and Water SPD – Adopted November 2016

Health Impact Assessment SPD – Adopted March 2011  
Affordable Housing SPD – Adopted March 2010  
District Design Guide SPD – Adopted March 2010  
Landscape in New Developments SPD – Adopted March 2010  
Biodiversity SPD – Adopted July 2009  
Listed Buildings: Works to or affecting the setting of – Adopted July 2009  
Development Affecting Conservation Areas SPD – Adopted January 2009  
Open Space SPD – Adopted January 2009  
Public Art SPD – Adopted January 2009  
Trees and Development Sites SPD – Adopted January 2009

## **Other Guidance**

Cambridgeshire and Peterborough Minerals and Waste Local Plan July 2011  
Greater Cambridge Housing Strategy 2019 – 2023

## **Consultation**

### **35. Linton Parish Council – Objection.**

Comments received 18 June 2021

No new information has been provided on the planning portal.

Previous comments stand.

Also refer to additional comments submitted by LPC on why a S73 is not appropriate and should not be considered, the original comments made by LPC which are not on the planning portal, and the letter sent to Anglian Water disputing their assessment of the drainage/sewer situation in Linton.

The condition imposed on the OL approval was that the site drain should link to manhole 7501. This is part of a newer drain near Emsons Close. The parlous state of the drainage system at the eastern end of the village was understood by SCDC Planning Committee and was the reason for the specific condition that the sewage link should be by manhole 7501, not to manhole 2503, or any on Bartlow Road.

The drainage system at the eastern end of Linton is already over-burdened. This was the conclusion of the report commissioned by LPC at the time of the Horseheath Road application (see the report of AE designs August 2016). Since then extensions and infill housing have added to the burden, so the situation has worsened in those few years.

Indeed, the proposed link by this developer would be in addition to the burden imposed by that of the Horseheath Road development, which itself would exceed the capacity of the sewer and is being opposed.

The proposed new wording now is for a connection for the southern site between manholes 1501 and 5201 and a connection for the southern site at manhole 2503...or via a pumped connection to manhole 7501... In other words their intention is still to connect to the Bartlow Road drain as it is clear that connection to 7501 would be more costly. We are not taken in by the “or” in the revision.

The condition was imposed for well-thought-out reasons and with an understanding of the overloaded village sewage system, particularly in that part of Linton. LPC strongly opposes the variation of condition 11, as to do otherwise would be to the detriment of the health, quality of life and amenity of residents.

We also object to the way that the developer has gone directly to Anglian Water, circumventing the correct planning process. They have stated on the northern site plan that the connection will be made under a section 104 agreement (linked to a TTRO for the pavements) to try to link the installation of paths (also not approved) with the sewage connections is reprehensible.

The assessments of which manholes the development can link to are limited to the capacity of single manholes, taking no account of the effect downstream and on the wider village. These assessments and permissions by Anglian Water are flawed and connection to manholes on Bartlow Road cannot be supported.

Previous comments from LPC planning Consultant, CN Historic, still stand.

(a copy of the comments from CN Historic received ‘on behalf of Linton Parish Council’ on 23 March 2021 are replicated in the Parish Council’s comments of 18 June 2021, along with a copy of the 2016 report by AE Designs Ltd).

Comments received 23 March 2021

The adjustment of the condition seeks to link back to the system at Bartlow Road. LPCs Planning Consultant, CN Historic, commented on behalf of LPC stating that the requested S73 variation of the condition is potentially invalid.

Comments from CN Historic on behalf of LPC;  
In principle:

- i) As the S73 is a new application that would run alongside the existing consent, the policies that apply are those of the current Local Plan (see Daniel Fulton’s explanation in his response on the Bartlow application below). Under the current Local Plan, the development, including drainage, would be unacceptable as it is outside the Development Area.
- ii) A S73 application can only be made for a development which is not substantially different to that approved. By varying the conditions, the published Reasons for those conditions are no longer complied with. The reasons for the conditions of S/1963/15/OL were stated within the relevant Planning Committee Meeting and the Minutes of that meeting

of Meeting of 2 August 2017. Therefore, the nature and impact of the development would be substantially different.

- iii) The Drainage and Flood conditions were imposed because of the independent drainage report and flood evidence that were provided to Planning Committee. A development that does not comply with their recommendations would be substantially different. The proposed new foul manhole is within the same drainage sections that the Drainage report concluded were unsound and the report and Planning Committee concluded was likely to put the village at risk. The submission does not provide evidence that justifies that risk.
- iv) A S73 application can only be made if the time limit within which the development was required to begin has not expired without the development commencing. Because the timescale for the outstanding Access Reserved Matters has expired, the S73 application would not be valid.

LPC Decision: Object and refer this to the District Council Full Planning Committee.

A full copy of the comments received from Linton Parish Council on 18 June and 23 March is available in Appendix 1.

A full copy of the AE Design Assessment of Foul Water Sewage Facilities in Linton Village report (August 2016) is available in Appendix 2 and forms part of Linton Parish Council's submissions.

- 36. **Affordable Housing Officer** – No objection.
- 37. **Anglian Water** – No objection.
- 38. **Conservation Officer** – No material conservation issues.
- 39. **Designing out Crime Officer** – No objection.
- 40. **Ecology Officer** – No comment.
- 41. **Environment Agency** – No comment.
- 42. **Historic England** – No comment.
- 43. **Lead Local Flood Authority** – No comment.
- 44. **Local Highways Authority** – No objection.

Confirms that the Highway Authority will not be adopting any part of the development. Request conditions relating to access being laid out and constructed in accordance with Cambridgeshire County Council specification

and the submission of a traffic management plan, along with an informative relating to works to or within the public highway.

45. **Natural England** – No comment.

46. **Sustainable Drainage Engineer** –Support.

We recommend S73 approval is given to amend the original condition relating to foul water drainage. Specifically, the proposed foul water route has been referenced previously and Anglian Water as the statutory authority in relation to foul water connections has not raised objections to this connection point and we have not seen evidence to demonstrate this connection would be inappropriate.

47. **Urban Design** – No comment.

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

48. Two representations have been received from nos.29 Emsons Close and 30 Emsons Close in respect of the drainage impact of the proposal. Full redacted version of the comments can be found on the Council's website. In summary the following concerns have been raised:

- Existing sewer pipe is the same diameter as the one proposed to join onto the existing system, which already serves several houses.
- Flooding to houses to south side of development.
- Not clear why the development cannot support the routing of the sewer pipe directly to the 375mm pipe node at 7501.
- Overspill from the drainage could impact on the river Granta.

49. Representation has been received the Few's Lane Consortium in respect of the type of application submitted and the associated process and consideration. Full redacted versions of the comments can be found on the Council's website. In summary the following concerns have been raised:

- Section 73 is an application for a new permission.
- The site is outside the development framework and therefore contrary to Policy S/7, as such the development should be refused unless there are other material considerations indicating otherwise.
- The applicant has presented no persuasive rationale why the development now proposed should be granted.
- The conditions imposed by the Inspector in the appeal decision for the extant permission were well-reasoned and supported by a substantial body of evidence; the applicant has provided no persuasive evidence to suggest that any of the conditions imposed by the Inspector are not still reasonable and necessary.
- The weight to be afforded to a fallback position is solely a matter for the discretion of the decision maker.
- The position of the Few's Lane Consortium is that the fallback position does not, in this case, represent a sufficient reason to approve this application as a departure from the adopted development plan.
- If approved, the application would represent a departure from the adopted development plan, and under the local planning authority's

scheme of delegation a decision to approve this application may only lawfully be taken by the local planning authority's planning committee.

## **The site and its surroundings**

50. The site is located outside of the Linton development framework boundary and in the countryside. It is situated to the east of the village and comprises land to the north and south of Bartlow Road covering an area of approximately 3.5 hectares. The land rises to the north. A public right of way lies to the east of the northern parcel of the site while the River Granta, a County Wildlife Site, runs within a valley to the south west of the southern parcel. Residential development lies to the west of the site.
51. The site lies mainly within Flood Zone 1 (low risk), with the southernmost portion of the southern parcel being within Flood Zones 2 and 3 (medium and high risk).
52. The site benefits from outline and reserved matters permission for the development of 55 residential properties and associated works.

## **The proposal**

53. The application seeks to vary condition 11 of outline consent S/1963/15/OL, which requires the submission and approval of a scheme for the provision and implementation of foul water drainage to connect to manhole 7501 via a pumped regime.
54. The full wording of condition 11 is set out below:

Prior to the commencement of any development, a scheme for the provision and implementation of foul water drainage to connect to manhole 7501 via a pumped regime shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.

(Reason - To reduce the risk of pollution to the water environment and to ensure a satisfactory method of foul water drainage in accordance with Policy NE/10 of the adopted Local Development Framework 2007.)

55. The application proposes the following revised wording for condition 11:

The foul drainage connection to serve the development hereby permitted shall be carried out in accordance with drawing numbers E17-084-141 C13 and E17-084-131 C7 which depict the means of connection for the southern site between manholes 1501 and 2501 and a connection for the northern site at manhole 2503, or via a connection to manhole 7501 via a pumped regime. The scheme shall be constructed and completed prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning

Authority.

(Reason To ensure a satisfactory method of foul water drainage in accordance with Policy CC/7 of the adopted South Cambridgeshire Local Plan 2018.)

## **Section 73 Applications**

56. Representations from Linton Parish Council and third parties have questioned the appropriateness of proceeding under Section 73 of the Town and Country Planning Act 1990 to vary the condition 11 of outline consent S/1963/15/OL.

57. Section 73 of the Town and Country Planning Act 1990 states, in part:

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.

58. Planning Practice Guidance sets out the following in respect of Section 73 applications:

Amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)

How are the conditions attached to a planning permission amended?

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

Paragraph: 013 Reference ID: 17a-013-20140306

Revision date: 06 03 2014

Are there any restrictions on what section 73 can be used for?

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development.

Paragraph: 014 Reference ID: 17a-014-20140306

Revision date: 06 03 2014

What is the effect of a grant of permission under section 73?

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. Further information about conditions can be found in the guidance for use of planning conditions.

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

Paragraph: 015 Reference ID: 17a-015-20140306

Revision date: 06 03 2014

59. Planning Practice Guidance sets out the following in respect of the use of planning conditions, in part:

What options are available to an applicant who does not wish to comply with a condition?

Following the decision of a local planning authority to grant planning permission subject to conditions, an applicant may consider taking the following actions if they do not wish to be subject to a condition.

These options remain available where the applicant has agreed a pre-commencement condition, or the pre-commencement condition has been imposed where the applicant has not responded within the time limit set out in a notice served under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018:

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. 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

Revision date: 15 06 2018 See previous version

60. Officers agree that a Section 73 would constitute a new permission for development previously approved, but subject to different conditions than those previously imposed.
61. Officers agree that the site is located outside of a defined development framework boundary and would thus, given the form of development, constitute a departure from the adopted development plan, being contrary to Policy S/7 of the Local Plan. As a result, the application has been advertised as a departure.
62. Officers do not consider that the application can simply be dismissed on the grounds of the site being outside of the development framework boundary as significant weight can be attached to the extant permission, which does not lapse until 15 November 2021 (two years after the date of the approval of the last reserved matters approval, reference S/2501/19/RM).
63. However, a Section 73 application cannot be used to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. This is not the intention of the application, which seeks to vary condition 11 (foul water drainage). Nonetheless, in the view of officers, it would be necessary to update condition 2 (timescale for submission of the reserved matters) such that it relates specifically to the date of the original outline consent and does not provide an extended time limit to submit a reserved matters application. This matter is addressed in more detail later in this report under 'Other Matters' but would ensure compliance with national guidance on the use of a Section 73 application as set out above.
64. Officers do not agree with the statement of Linton Parish Council that by varying the conditions, the published reasons for those conditions are no longer complied with and that the nature and impact of the development would be substantially different.
65. The development remains for the development of 55 residential dwellings and associated works, as per the outline and reserved matters permissions. The conditions and 'reasons' for the outline consent remain relevant, many of which have been discharged.

66. The key issue for consideration in this instance is the scheme of foul water drainage, which remains relevant for the 'reason' of ensuring a satisfactory method of foul water drainage, in line with adopted policy.
67. Officers do not agree with the statement of Linton Parish Council that because the timescale of the outstanding access reserved matters has expired, the Section 73 application would not be valid. Officers do not consider there to be 'matters' outstanding and the Section 73 application to be valid.
68. Outline consent S/1963/15/OL granted permission for development including "new vehicular accesses from Bartlow Road". Officers acknowledge that condition 1 of the outline consent, which set out the requirements for the approval of "the reserved matters", does include reference to "the means of access". Nonetheless it is clear from the Officer's Report, outline decision notice and approved plans associated to the outline decision that access was dealt with at outline stage.
69. In respect of the reserved matters application, S/2501/19/RM, the proposed layout plan showed a detailed layout of the site which, alongside the accesses shown at outline stage, contain two accesses from specific houses onto Bartlow Road (private driveways).
70. The Officer Report notes under 'Proposal' that the proposal, as amended seeks reserved matters consent to includes access, layout, scale, appearance and landscaping for a residential development of 55 dwellings. The Officer Report also notes under 'Highway Safety' that two main accesses on to Bartlow Road that accord with Local Highways Authority standards were approved as part of the outline consent. The application proposes additional single driveways and shared private driveways on to Bartlow Road. The positions of the accesses are satisfactory in highway terms.
71. Officers are therefore of the view that the reserved matters application did incorporate accesses onto Bartlow Road, which were subject to formal public consultation and considered by the Council, in consultation with the Local Highways Authority, and deemed acceptable. The site layout, including the relevant accesses, is listed as an approved plan under condition 1 of the reserved matters permission.
72. Officers therefore do not consider there to be matters outstanding and, as noted above, the site has an extant permission that does not lapse until 15 November 2021.
73. Outline consent S/1963/15/OL was subject to a Section 106 Agreement dated 17 August 2017, as referred to in the informative on the decision notice. As part of this application a Deed of Variation has been / is being prepared to accompany any new permission to carry the relevant legal requirements and contributions previously secured to any new permission. An informative relating to the original Section 106 and new Deed of Variation would be appropriate as part of any new permission.

74. Overall, officers are satisfied that a Section 73 application is an appropriate mechanism in this instance to consider the proposal submitted.

## **Planning Assessment**

### **Key Issues**

75. The key issues to consider in the determination of this application relates to whether the scheme provides a satisfactory method of foul water drainage.
76. This application has been made under Section 73 of the Town and Country Planning Act 1990. Consideration has therefore been given to the question of the conditions subject to which planning permission should be granted if the Section 73 application is approved. Due regard has been had to the development plan and all material considerations including any changes to policies and circumstances since the granting of the original planning permission.

### **Foul Water Drainage**

#### Background

77. Outline application S/1963/15/OL was supported by a Utility Assessment (Rossi Long Consulting, July 2015). Chapter 7 of the Assessment detailed the approach to foul water sewerage and drainage for the scheme, setting out the following in paragraph 7.3:

Anglian Waters Pre-development report and Addendum email has confirmed:

- The development will be served by the Linton Water Recycling Centre (WRC) and the WRC currently has capacity to serve the proposed development;
  - The foul sewerage network has sufficient capacity to convey a gravity discharge from the proposed development and that the preferred connection point into the public sewer network would be via the existing Manhole 1502 located along the development sites western boundary.
  - The foul sewerage network also has sufficient capacity to convey a pumped discharge (3.8 l/s) from the proposed development and that the preferred connection point into the public sewer network would be via the existing Manhole 7501 located approximately 280m to the west of the site (adjacent grassland).
78. The Officer Report presented to the Council's Planning Committee on 07 September 2016 summarised the comments from Anglian Water to the outline application as follows:

Anglian Water – Comments that foul drainage from the development is in the catchment of the Linton water Recycling Centre that will have available

capacity for these flows and that the sewerage system at present has available capacity for these flows via a gravity connection to manhole 1502 or via a pumped regime at 3.8 l/s to manhole 7501. Further comments that from the details submitted with the application, the proposed method of surface water drainage does not relate to Anglian Water assets.

79. A full copy of the Officers Report to the Council's Planning Committee on 07 September 2016 is available in Appendix 3.
80. Outline application S/1963/15/OL was considered by the Council's Planning Committee on 07 September 2016 where the Committee resolved to approve the application. This resolution was subject to the completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990 and the addition of two extra conditions. A formal decision notice was issued on 01 September 2017 following completion of the Section 106.
81. The two extra conditions agreed by the Committee related to foul water drainage and surface water drainage, as set out on the formal decision notice, including condition 11 which is the subject of this Section 73 application.
82. The published minutes of the Council's Planning Committee meeting provide further context in respect of foul water drainage, setting out the following events / points of debate that are relevant:

Linton Parish Council had submitted a report by an independent drainage consultant that advised that a connection to manhole 1502 that was not acceptable. It was confirmed that the applicants would connect to manhole 7501 via a pumped connection at an agreed flow rate of 3.8 l/s, This manhole is on a system that has been agreed to have sufficient capacity by Anglian Water and the independent drainage consultant. A foul water drainage condition was suggested to address this matter.

Speaking as a local Member, Councillor John Batchelor focused on the viability and delivery of the site. He said that the general opinion in Linton was the foul drainage was at capacity, and contended that the developer had not addressed that issue. As a result, flooding was likely. Councillor John Batchelor said the application should be deferred until the risk of flooding had been mitigated. In response, officers stated that Anglian Water were satisfied with the applications' viability having devised a scheme for dealing with the disposal foul water by connecting to manhole 7501 via a pumped regime.

A proposal to defer the application in order to commission an engineer's report on foul water drainage capacity and flood risk issues was proposed by Councillor John Batchelor, seconded by Councillor Deborah Roberts, and put to the vote. The proposal was lost by seven votes to four.

83. A full copy of the minutes from the Council's Planning Committee meeting held on 07 September 2016 are available in Appendix 4.

84. The applicant submitted a discharge of conditions application to deal with the requirements of condition 11 in May 2020, which was later amended in October 2020 and December 2020, under planning reference S/1963/15/COND11. The details submitted showed foul water connection to manhole 2503 and a new manhole connection to the existing sewer between manholes 2501 and 1501. The technical details and plans submitted were supported by Anglian Water and the Council's Sustainable Drainage Officer as offering a satisfactory method of foul water drainage.
85. Notwithstanding the support of the relevant technical consultees, the discharge of conditions application was refused by the Local Planning Authority on 20 January 2021 as the details submitted failed to meet the specific requirements of condition 11, which required foul water drainage to connect to manhole 7501 via a pumped regime.

#### Assessment of the Proposed Variation

86. The application seeks to vary condition 11 of outline consent S/1963/15/OL such that foul drainage connection to serve the development connects for the southern site between manholes 1501 and 2501 and a connection for the northern site at manhole 2503 (i.e., connection at Bartlow Road), or via connection to manhole 7501 via a pumped regime.
87. The covering letter (Impact Planning, 11 February 2021) submitted in support of the application sets out the reason for the proposed change to the foul water drainage solution proposed and is provided below for further context:

The outline planning permission and consequent imposition of Condition 11 was dated 1st September 2017. The provisions of Section 143 of the Water Industry Act 1991 (as amended), came into effect from 1st April 2018 when important changes were made to the charging arrangements for services provided by sewerage undertakers to those developing land and laying new water and sewerage infrastructure. In terms of wastewater connections, from 1st April 2018, the developer is entitled to make a connection to the nearest practical point on the network where the existing sewer is at least the same diameter as the new sewer required to provide capacity for the development.

Since the submission of reserved matters material, the Applicant has consistently noted that the foul drainage scheme will connect to the existing network in Bartlow Road and downstream of manhole number 2503. This is in accordance with the layout approved at the reserved matters stage and in accordance with the provisions of the Water Industries Act 1991. It should be noted, that the accompanying Anglian Water asset plan extract (Appendix I), notes manhole 7501 some 300m to the west of the southern site. The proposed connection point represents a closer and practical solution to foul water drainage in accordance with the recent changes to legislation. The proposed connections will flow through manhole 1502, which was agreed as an acceptable route with existing capacity for foul

drainage from the proposals at the Outline application stage following consultation with Anglian Water.

At no stage have Anglian Water, as the sewerage undertaker, notified the Applicant that there would be any objection to a connection at these points. Anglian Water has consistently confirmed the acceptability of these connections. The recent refusal to the discharge of the Condition 11 submission under reference S/1963/15/COND11, however failed to recognise the new entitlement to connect which is available to sewerage undertakers and developers.

It is therefore submitted that the requirement to connect solely to manhole 7501, is adjusted and the revised wording condition should now also refer to the foul water drainage scheme which has been approved by Anglian Water and consistently proposed by the Applicant, as depicted on the plans accompanying this submission. The Applicant has demonstrated that an alternative connection can be achieved in accordance to with Section 143 of the Water Industry Act 1991 and as approved by the statutory undertaker, Anglian Water in both design, capacity and location.

88. Included with the applicant's covering letter are Appendix F: Anglian Water Pre-Planning Assessment Report 18th September 2018, Appendix G New Sewer Adoption – Offer Letter – Notification of Technical Approval (Anglian Water), and Appendix H: S106 Confirmation 31<sup>st</sup> March 2020 and 14<sup>th</sup> January 2021 (Anglian Water).
89. The appendices are intended to confirm that the proposed sewerage scheme, design and connection to the existing network has been approved by the sewerage undertaker, Anglian Water.
90. The applicant has also contested the validity of the drainage report re-submitted by Linton Parish Council (AE Designs, August 2016). The applicant's rebuttal includes a letter from PFA Consulting, a firm of Consulting Engineers specialising in drainage and sewerage matters. The letter concludes that the August 2016 report was not prepared to reflect the implications of development on the Bartlow Road site (rather the Horseheath Road development site) and uses incorrect methodology and incomplete data to analyse the operation of the sewer network within the village.
91. The Section 73 application has been subject to formal consultation with Anglian Water and the Council's Sustainable Drainage Engineers, who raise no objection to the proposed variation.
92. Based on the information available from the consented outline application, the approved reserved matters application (which included a foul water drainage layout connecting to Bartlow Road and the existing foul water network) and the refused discharge of conditions application relating to condition 11, at no stage has Anglian Water, as the statutory sewerage undertaker, raised any objection to the development connecting its foul water drainage scheme to the existing Bartlow Road network.

93. As noted above, the applicant has submitted evidence in support of the Section 73 application to confirm that the proposed sewerage scheme, design and connection to the existing network has been approved by Anglian Water. Officers have no evidence to the contrary.
94. It appears therefore that the specific wording of condition 11 of outline consent S/1963/15/OL was derived through a debate of the Council's Planning Committee in September 2017 considering the submission of the AE Designs Report (August 2016) from Linton Parish Council, rather than at the recommendation of a technical consultee.
95. The Council's Drainage Team has also reviewed the details of the Section 73 application and has recommended approval of the proposed variation, stating that the proposed foul water route has been referenced previously and Anglian Water as the statutory authority in relation to foul water connections has not raised objections to this connection point. The Council's Drainage Team further state that they have not seen evidence to demonstrate this connection would be inappropriate.
96. Officers therefore consider that, given the lack of objection from the statutory and technical consultees, including Anglian Water as the sewerage undertaker, that it would be appropriate to vary condition 11 of the outline consent, the details of which would comply with relevant national and local planning policy.
97. The proposed variation of condition 11 would therefore comply with Policy CC/7 of the Local Plan.

### **Other Matters**

Linton Parish Council

98. The comments made in a third-party representation are noted, with many points already considered in the report. However, the following additional considerations are offered.
99. In their comments of 18 June 2021, the Parish Council refer to the original comments made by Linton Parish Council not being available on the planning portal and their letter sent to Anglian Water disputing their assessment of the drainage/sewer situation in Linton.
100. All formal comments submitted to this Section 73 application are available on the Council's website for public view. The 'original' comments of Linton Parish Council in terms of those made to the original outline application are not on the Council's website under that planning reference number (this is likely due to different publication rules / process at that time of that application) but are shown in summary in the published committee report for that application and appended in full to that report.

101. Officers are aware of an exchange of emails / letters between Linton Parish Council and Anglian Water in respect of foul water drainage matters and the 2016 report by AE Designs Ltd. However, that correspondence / information has not been submitted formally as part of representations by either party to the Section 73 application.
102. Linton Parish Council submitted a further letter to the Council on 24 August 2021, accompanied by a copy of the Planning Committee Minutes from 07 September 2016 and a copy of the Parish Council comments submitted to the Council following the Planning Committee decision September 2016.
103. The Parish Council's letter emphasises the reason for the imposition of condition 11 at the Council's Planning Committee in September 2016, the background for which has been set out in this report.
104. A copy of the Parish Council letter (24 August 2021) is available in Appendix 5 and a copy of the Parish Council's comments following the 2016 Planning Committee is available in Appendix 6. The Planning Committee Minutes are already provided in Appendix 4.

#### Outline Conditions

105. 23 conditions were attached to the 2017 outline consent for the development. Alongside the proposed variation of condition 11 it will be necessary to update several of these conditions as part of the current Section 73 application for the reasons set out below. It will also be necessary to update the 'reasons' for each condition to reflect the Policies of the adopted South Cambridgeshire Local Plan 2018 as appropriate.
106. Officers recommend condition 2 is updated to reflect the date of the original decision so that the outline consent timescales are retained. The original condition reads as follows:

Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.  
(Reason – The application is in outline only.)

107. The updated condition would read as follows:

No new application for approval of reserved matters shall be made to the local planning authority unless such application was made prior to 01 September 2019 (being not later than 2 years from the date of outline consent S/1963/15/OL dated 01 September 2017).

108. The update is necessary to ensure that this Section 73 application does not provide for an opportunity for a further reserved matters application(s) to be submitted for development on the site (i.e., does not extend the time limit within which an application for approval of reserved matters must be made). The revision to condition 2 would ensure compliance with national guidance on the use of a Section 73 application.

109. Condition 5 (hard and soft landscape) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/CONDF dated 13 August 2021.
110. Condition 9 (contamination) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND9 dated 20 January 2021 which dealt with parts (a) to (c) of the condition inclusive. Part (d) of the condition will be re-imposed as that element of the condition deals with the identification of any contamination during remediation works that has not already been considered in the remediation method statement.
111. Condition 10 (surface water drainage) is currently the subject of discharge of conditions application S/1963/15/CONDG, which is due to be considered by the Council's Planning Committee on 08 September 2021. If the Planning Committee resolved to approve the application and discharge condition 10 then it would be necessary to update condition 10 to a compliance condition, in accordance with those details agreed. That wording could be agreed separately with the Chair and Vice Chair of the Planning Committee following the Committees consideration of the discharge of conditions application. If the Planning Committee refuse the discharge of conditions application, then condition 10 would be reimposed as per the original outline consent.
112. Condition 13 (waste management plan) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND13 dated 29 October 2020.
113. Condition 14 (dust) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND14 dated 11 January 2021.
114. Condition 15 (construction programme) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/CONDB dated 21 May 2021.
115. Condition 16 (noise) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND16 dated 20 January 2021.
116. Condition 17 (ecological design strategy) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/CONDD dated 21 May 2021.
117. Condition 18 (noise) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/CONDC dated 21 May 2021.
118. Condition 19 (archaeology) will be updated to reflect the details accepted and approved under discharge of conditions applications S/1963/15/COND19 dated 11 January 2021 and S/1963/15/CONDH dated 13 August 2021 which dealt

with parts (i) to (iii) of the condition inclusive. Parts (iv) and (v) of the condition will be re-imposed as those elements remain outstanding and have not yet been discharged.

119. Condition 20 (lighting) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND20 dated 29 October 2020.
120. Condition 21 (energy statement) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND21 dated 29 October 2020.
121. Condition 22 (fire hydrants) will be updated to reflect the details accepted and approved under discharge of conditions application S/1963/15/COND22 dated 29 October 2020.
122. All other conditions are to be re-imposed as worded on outline consent S/1963/15/OL dated 01 September 2017.

#### Third Party Comments

123. The comments made in a third-party representation are noted, with many points already considered in the report. However, the following additional considerations are offered.
124. The representation from Fewes Lane Consortium refers to the conditions being imposed by an Inspector as part of an appeal decision for the extant planning permission. This statement is incorrect as the outline application was determined and approved by the Council's Planning Committee, as set out above, and not at appeal by a Planning Inspector.

### **Planning balance and conclusion**

125. This application seeks to vary condition 11 of the outline consent such that foul drainage connection to serve the development connects for the southern site between manholes 1501 and 2501 and a connection for the northern site at manhole 2503 (i.e., connection at Bartlow Road), or via connection to manhole 7501 via a pumped regime.
126. The concerns from Linton Parish Council and third parties in relation to the submitted scheme are noted.
127. However, the Council's specialist advisors and statutory consultees consider the foul water drainage scheme to be acceptable and to provide a satisfactory method of foul water drainage. Consequently, the technical consultees have raised no objection to the proposed variation of condition 11. Furthermore, based on the information available, at no stage (i.e., outline, reserved matters, discharge of conditions) has Anglian Water, as the statutory sewerage undertaker, raised any objection to the development connecting its foul water drainage scheme to the existing Bartlow Road network

128. Officers therefore consider that, given the lack of objection from the statutory and technical consultees, including Anglian Water as the sewerage undertaker, that it would be acceptable to vary condition 11, the details of which would comply with relevant national and local planning policy.

## **Recommendation**

129. Officers recommend that the Committee grants delegated authority to officers to issue a new planning permission subject to the conditions set out below (with any variation to condition 10 agreed by Chair and Vice Chair) and conditional on the completion of a Deed of Variation (to attach the Section 106 from the 2017 outline consent to the current Section 73 application).

## **Conditions**

- a) Approval of the details of the layout of the site, the scale and appearance of buildings, the means of access and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is in outline only.

- b) No new application for approval of reserved matters shall be made to the local planning authority unless such application was made prior to 01 September 2019 (being not later than 2 years from the date of outline consent S/1963/15/OL dated 01 September 2017).

Reason: The application is in outline only.

- c) The development hereby permitted shall begin not later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: The application is in outline only

- d) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers B.12,870a, UDS32001-500-2000-1402 and 101 Revision A.

Reason: To facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

- e) For the purposes of hard and soft landscaping, works shall be carried out in accordance with the plans and documents as accepted and approved under discharge of conditions application S/1963/15/CONDF and decision dated 13 August 2021.

Reason: To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/4 of the

South Cambridgeshire Local Plan 2018.

- f) All hard and soft landscape works shall be carried out in accordance with the approved details. The works along the north eastern, south eastern and south western boundaries hatched green on drawing number UDS32001-500-2000-1402 shall be carried out prior to the commencement of construction of the dwellings. The remainder of the landscape works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies HQ/1 and NH/4 of the South Cambridgeshire Local Plan 2018.

- g) Visibility splays shall be provided on both sides of the two accesses in accordance with the measurements shown on drawing number 101 Revision A prior to the occupation of the dwellings. The splays shall be kept clear from obstruction over a height of 600mm and thereafter maintained.

Reason: In the interest of highway safety in accordance with Policies HQ/1 and TI/2 of the South Cambridgeshire Local Plan 2018.

- h) The development shall not be occupied until a full Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be implemented in accordance with the approved details.

Reason: To reduce car dependency and to promote alternative modes of travel in accordance with Policy TI/2 of the South Cambridgeshire Local Plan 2018.

- i) The development shall be carried out in accordance with the Phase 2 Geo-environmental Assessment Report (MLM, August 2017) and the Phase III Site Investigation & Risk Assessment Report (ST Consult, November 2017, as accepted and approved under discharge of conditions application S/1963/15/COND9 and decision dated 20 January 2021.

If, during remediation works, any contamination is identified that has not been considered in the remediation method statement, then remediation proposals for this material should be agreed in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy SC/11 of the

South Cambridgeshire Local Plan 2018.

- j) Prior to the commencement of any development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency, Lead Local Flood Authority and Linton Parish Council. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework and the National Planning Policy Guidance, and the results of the assessment provided to the local planning authority. The system should be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 30% an allowance for climate change. The submitted details shall be in accordance with the Flood Risk Assessment reference 151077 dated July 2015 by Rossi Long Consulting and provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters. The scheme shall take into account any subsequent changes in any revised flood map produced by the Environment Agency between approval and implementation of the scheme. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.

Reason - To ensure a satisfactory method of surface water drainage and to prevent the increased risk of flooding in accordance with Policies HQ/1, CC/7, CC/8 and CC/9 of the South Cambridgeshire Local Plan 2018.

- k) The foul drainage connection to serve the development hereby permitted shall be carried out in accordance with drawing numbers E17-084-141 Rev C13 and E17-084-131 Rev C7 which depict the means of connection for the southern site between manholes 1501 and 2501 and a connection for the northern site at manhole 2503, or via a connection to manhole 7501 via a pumped regime. The scheme shall be constructed and completed prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.

Reason: To ensure a satisfactory method of foul water drainage in accordance with Policy CC/7 of the adopted South Cambridgeshire Local Plan 2018.

- l) No construction work and or construction related dispatches from or deliveries to the site shall take place other than between the hours of 0800 to 1800 on Monday to Friday, 0800 to 1300 hours on Saturdays and no construction works or collection / deliveries shall take place on Sundays, Bank or Public Holidays unless otherwise approved in writing by the local planning authority.

Reason: To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018.

- m) The development shall be carried out in accordance with the RECAP Waste Management Design Guide Toolkit, Waste Management Strategy, Northern Site Vehicle Tracking (drawing number E17-084-132 P6), Southern Site Vehicle Tracking (drawing number E17-084-142 P8) and Refuse Strategy (Drawing number 1552-160A), as accepted and approved under discharge of conditions application S/1963/15/COND13 and decision dated 29 October 2020.

The approved facilities shall be provided prior to the occupation of any building and shall be retained thereafter unless alternative arrangements are agreed in writing by the local planning authority.

Reason: To ensure that waste is managed sustainably during the occupation of the development in accordance with objectives of Policy CS28 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy DPD 2011.

- n) The development shall be carried out in accordance with the Air & Dust Pollution Site Procedures (Abbey New Homes), as accepted and approved under discharge of conditions application S/1963/15/COND14 and decision dated 11 January 2021.

Works shall be undertaken in accordance with the approved details / scheme unless the local planning authority approves the variation of any detail in advance and in writing.

Reason: To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018.

- o) The development shall be carried out in accordance with the Covering Letter (15 April 2021), Construction Programme (published 19 April 2021) and Build Sequence Plan (drawing number (00)001), as accepted and approved under discharge of conditions application S/1963/15/CONDB and decision dated 21 May 2021.

The development shall be implemented in accordance with the approved programme unless any variation has first been agreed in writing by the Local Planning Authority.

Reason: To minimise noise disturbance for adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018.

- p) The development shall be carried out in accordance with the Discharge of Planning Condition 16 document (cass allen, 09 December 2019, RP01-19487), as accepted and approved under discharge of conditions application S/1963/15/CONDB and decision dated 20 January 2021.

All works which form part of the approved scheme shall be completed before any one of the permitted dwellings are occupied.

Reason: To minimise disturbance to adjoining residents in accordance with Policy CC/6 of the South Cambridgeshire Local Plan 2018.

- q) The development shall be carried out in accordance with the Covering Letter (15 April 2021), Errata Note - Ecological Design Strategy (EDS) Revision E 14.04.21 and Ecological Design Strategy (EDS) Revision E 15.02.2021, as accepted and approved under discharge of conditions application S/1963/15/CONDD and decision dated 21 May 2021.

Reason: To maintain and enhance ecological interests in accordance with Policies HQ/1 and NH/4 of the South Cambridgeshire Local Plan 2018.

- r) The development shall be carried out in accordance with the Covering Letter (15 April 2021), Errata Note - Construction Environmental Management Plan (CEMP) Revision D 14.04.21 and Construction Environmental Management Plan (CEMP: Biodiversity) Revision D 15.02.21, as accepted and approved under discharge of conditions application S/1963/15/CONDC and decision dated 21 May 2021.

Reason: To minimise disturbance, harm or potential impact upon protected species in accordance with Policies HQ/1 and NH/4 of the South Cambridgeshire Local Plan 2018 and their protection under the Wildlife and Countryside Act 1981.

- s) The site is subject to a programme of archaeological works in accordance with a written scheme of investigation, which will trigger the phased discharging of the condition and require submission of the following details for the written approval of the local planning authority.

- i. Approval of a Written Scheme of Investigation:

The development shall be carried out in accordance with the Written Scheme of Investigation (September 2018) and supporting email from Cambridgeshire County Council's Historic Environment Team (04 March 2019), as accepted and approved under discharge of conditions application S/1963/15/COND19 and decision dated 11 January 2021.

- ii. Fieldwork in accordance with the agreed Written Scheme of Investigation:

The development shall be carried out in accordance with the Written Scheme of Investigation (September 2018) and supporting email from Cambridgeshire County Council's Historic Environment Team (04 March 2019), as accepted and approved under discharge of conditions application S/1963/15/COND19 and decision dated 11 January 2021.

- iii. Completion of a Post-Excavation Assessment report (PXA) and approval of an approved Updated Project Design:

The development shall be carried out in accordance with the Post-Excavation Assessment and Updated Project Design (January 2021), as accepted and approved under discharge of conditions application S/1963/15/CONDH and decision dated 13 August 2021.

- iv. Completion of the programme of analysis and submission of a publication report: to be completed within two years of the completion of fieldwork, unless otherwise agreed in advance with the Planning Authority;
- v. Production of an archive report and the preparation of site archive for deposition at the Cambridgeshire Archive facility, or another appropriate store approved by the Planning Authority.

Reason: To secure the provision of archaeological excavation and the subsequent recording of the remains in accordance with Policy NH/14 of the adopted South Cambridgeshire Local Plan 2018.

- t) The development shall be carried out in accordance with the Roadway Lighting Report and House Lighting Details (letter dated 22 October), as accepted and approved under discharge of conditions application S/1963/15/COND20 and decision dated 29 October 2020.

The approved lighting scheme shall be installed, maintained and operated in accordance with the approved details.

Reason -To minimise the effects of light pollution on the surrounding area in accordance with Policy SC/9 of the South Cambridgeshire Local Plan 2018.)

- u) The development shall be carried out in accordance with the PV Schedule (table), PV Buildings Regulations Compliance for Multiple Dwellings, Drawing number 1552-102 Rev O (Site Layout at Roof level), Buildings Regulations Compliance for Multiple Dwellings, Energy Statement Letter (17 July 2020) and Carbon Emissions Reduction Study by Environmental Economics (December 2019), as accepted and approved under discharge of conditions application S/1963/15/COND21 and decision dated 29 October 2020.

The development shall be carried out in accordance with the approved details and thereafter retained.

Reason: To ensure an energy efficient and sustainable development in accordance with Policy CC/3 of the South Cambridgeshire Local Plan 2018.

- v) The development shall be carried out in accordance with drawing number SC-2786 Rev D (Proposed Mains and Services Layout), as accepted and approved under discharge of conditions application S/1963/15/COND22 and decision dated 29 October 2020.

The development shall not be occupied until the approved scheme has been implemented.

Reason: To ensure an adequate water supply is available for emergency use.

- w) As part of any reserved matter application details of the housing mix (including both market and affordable housing) shall be provided in accordance with local planning policy or demonstration that the housing mix meets local need shall be submitted to and approved in writing by the Local Planning Authority. Development shall commence in accordance with the approved details

Reason: To ensure an appropriate level of housing mix, both market and affordable housing in accordance with Policies H/9 and H/10 of the South Cambridgeshire Local Plan 2018.

## **Informatives**

- a) This permission is subject to an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 17 August 2017 and Deed of Variation dated <INSERT DATE>

## **Background Papers**

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

- South Cambridgeshire Local Plan 2018
- South Cambridgeshire Supplementary Planning Documents (SPDs)
- Cambridgeshire and Peterborough Minerals and Waste Local Plan July 2011
- Greater Cambridge Housing Strategy 2019 – 2023
- Planning File References: 21/00629/S73, S/1963/15/CONDI, S/1963/15/CONDG, S/1963/15/CONDE, S/1963/15/CONDF, S/1963/15/CONDH, S/1963/15/COND5, S/1963/15/COND10, S/1963/15/CONDA, S/1963/15/CONDB, S/1963/15/CONDD, S/1963/15/CONDC, S/1963/15/COND9, S/1963/15/COND11, S/1963/15/COND16, S/1963/15/CONDA, S/1963/15/COND14, S/1963/15/COND19, S/1963/15/COND13, S/1963/15/COND20, S/1963/15/COND21, S/1963/15/COND22, S/2501/19/RM, S/1963/15/OL and S/1577/15/E1

## **Appendices**

Appendix 1: Linton Parish Council Comments

Appendix 2: AE Designs Report

Appendix 3: Outline Committee Report (September 2016)

Appendix 4: Outline Committee Minutes (September 2016)

Appendix 5: Linton Parish Council Letter (24 August 2021)

Appendix 6: Linton Parish Council Comments following Committee Decision  
(September 2016)

**Report Author:**

Michael Sexton – Principal Planner  
Telephone: 07704 018467

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21/00629/S73 - Abbey Developments Ltd - Land South of Bartlow Road, Linton - S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design. Decision Required.

LPC Comments:

No new information has been provided on the planning portal.

Previous comments stand.

Also refer to the additional comments submitted by LPC on why a S73 variation is not appropriate and should not be considered, the original comments made by LPC which are not on the planning portal, and the letter sent to Anglia Water disputing their assessment of the drainage/sewer situation in Linton.

The condition imposed on the OL approval was that the site drain should link to manhole 7501 This is part of a newer drain near Emsons Close. The parlous state of the drainage system at the eastern end of the village was understood by SCDC Planning Committee and was the reason for the specific condition that the sewage link should be by manhole 7501, not to manhole 2503, or any on Bartlow Road.

The drainage system at the eastern end of Linton is already over-burdened. This was the conclusion of the report commissioned by LPC at the time of the Horseheath Road application (see the report of AE designs August 2016) Since then extensions and infill housing have added to the burden, so the situation has worsened in those few years.

Indeed, the proposed link by this developer would be in addition to the burden imposed by that of the Horseheath Road development, which itself would exceed the capacity of the sewer and is being opposed.

The proposed new wording now is for a *connection for the southern site between manholes 1501 and 2501 and a connection for the southern site at manhole 2503 ...or via a pumped connection to manhole 7501....* In other words their intention is still to connect to the Bartlow Road drain as it is clear that connection to 7501 would be more costly. We are not taken in by the "or" in the revision

It is noted that the owner of the land through which the connection to manhole 7501 would pass, was not notified of this route at the time of this variation, so the intention not to use this route and manhole 7501 is certain.

This condition was imposed for well-thought-out reasons and with an understanding of the overloaded village sewage system, particularly in that part of Linton. LPC strongly opposes the variation of condition 11, as to do otherwise would be to the detriment of the health, quality of life and amenity of residents.

We also object to the way that the developer has gone directly to Anglian Water, circumventing the correct planning process. They have stated on the northern site plan that the connection will be made under a section 104 agreement (linked to a TTRO for the pavements) to try to link the installation of paths (also not approved) with the sewage connections is reprehensible.

The assessments of which manholes the development can link to are limited to the capacity of single manholes, taking no account of the effect downstream and on the wider village.

These assessments and permissions by Anglian Water are flawed and connection to manholes on Bartlow Road cannot be supported.

Previous comments from LPC planning Consultant, CN Historic, still stand:

*Linton Parish Council Comments: The adjustment of the condition seeks to link back to the system at Bartlow Road. LPCs Planning Consultant, CN Historic, commented on behalf of LPC stating that the requested S73 variation of the condition is potentially invalid.*

*Comments from CN Historic on behalf of LPC; In principle:*

- 1. As the S73 is a new application that would run alongside the existing consent, the policies that apply are those of the current Local Plan (see Daniel Fultons explanation in his response on the Bartlow application below). Under the current Local Plan, the development, including drainage, would be unacceptable as it is outside the Development Area.*
- 2. A S73 application can only be made for a development which is not substantially different to that approved. By varying the conditions, the published Reasons for those conditions are no longer complied with. The reasons for the conditions of S/1963/15/OL were stated within the relevant Planning Committee Meeting and the Minutes of that meeting of Meeting of 2 August 2017. Therefore, the nature and impact of the development would be substantially different.*
- 3. The Drainage and Flood conditions were imposed because of the independent drainage report and flood evidence that were provided to Planning Committee. A development that does not comply with their recommendations would be substantially different. The proposed new foul manhole is within the same drainage sections that the Drainage report concluded were unsound and the report and Planning Committee concluded was likely to put the village at risk. The submission does not provide evidence that justifies that risk.*
- 4. A S73 application can only be made if the time limit within which the development was required to begin has not expired without the development commencing. Because the timescale for the outstanding Access Reserved Matters has expired, the S73 application would not be valid.*

LPC additional comments published on the Planning portal on the 24<sup>th</sup> March 2021 including the AE Design Ltd, Flood Defence and Drainage Engineers, on the 'Assessment of Foul Water sewerage facilities in Linton' produced in August 2016 should be taken into consideration (please see below).

Correspondence between LPC and Anglian Water will also be submitted with the comments to SCDC (please see below).

**LPC Decision: Object and do refer this to the District Council Full Planning Committee**

21/00629/S73 - Abbey Developments Ltd - Land South of Bartlow Road Linton - S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design. Decision Required.

**Additional Information from Linton Parish Council**

The following is a resubmission of a report produced by AE Design Ltd, Flood Defence and Drainage Engineers, on the 'Assessment of Foul Water sewerage facilities in Linton' produced in August 2016.

Linton Parish Council request that this is taken into consideration as additional information.

## Consultee Comments for Planning Application 21/00629/S73

### Application Summary

Application Number: 21/00629/S73

Address: Land South Of Bartlow Road Linton Cambridgeshire

Proposal: S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design.

Case Officer: Michael Sexton

### Consultee Details

Name: Mrs jenny seaward

Address: First Floor, Linton Village Hall 15 Coles Lane, Linton Cambridge, Cambridgeshire CB21 4JS

Email: Not Available

On Behalf Of: Parish - Linton

### Comments

21/00629/S73 - Abbey Developments Ltd - Land South of Bartlow Road Linton - S73 Variation of condition 11 (Foul water drainage) of outline planning permission S/1963/15/OL (Residential development for up to 55 dwellings with landscape buffer and new vehicular accesses from Bartlow Road) for revised wording to refer to the foul drainage design. Decision Required.

Linton Parish Council Comments:

The adjustment of the condition seeks to link back to the system at Bartlow Road. LPCs Planning Consultant, CN Historic, commented on behalf of LPC stating that the requested S73 variation of the condition is potentially invalid.

Comments from CN Historic on behalf of LPC;

In principle:

1. As the S73 is a new application that would run alongside the existing consent, the policies that apply are those of the current Local Plan (see Daniel Fultons explanation in his response on the Bartlow application below). Under the current Local Plan, the development, including drainage, would be unacceptable as it is outside the Development Area.

2. A S73 application can only be made for a development which is not substantially different to that approved. By varying the conditions, the published Reasons for those conditions are no longer complied with. The reasons for the conditions of S/1963/15/OL were stated within the relevant Planning Committee Meeting and the Minutes of that meeting of Meeting of 2 August 2017.

Therefore, the nature and impact of the development would be substantially different.

3. The Drainage and Flood conditions were imposed because of the independent drainage report and flood evidence that were provided to Planning Committee. A development that does not comply with their recommendations would be substantially different. The proposed new foul manhole is within the same drainage sections that the Drainage report concluded were unsound and the report and Planning Committee concluded was likely to put the village at risk. The submission does not provide evidence that justifies that risk.

4. A S73 application can only be made if the time limit within which the development was required to begin has not expired without the development commencing. Because the timescale for the outstanding Access Reserved Matters has expired, the S73 application would not be valid.

LPC Decision: Object and refer this to the District Council Full Planning Committee.

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Flood Defence and  
Drainage Engineers

August 46  
24/08/16  
emailed to all 26/8  
+ planning committee  
1/9 mtg  
for information

A E Designs Ltd.  
20, Short Road,  
Stretham, Ely,  
Cambridgeshire.  
CB6 3LS



**ASSESSMENT OF FOUL WATER SEWERAGE  
FACILITIES IN LINTON VILLAGE, CAMBS.**

**LINTON PARISH COUNCIL**

**AUGUST 2016**

**Reference: 1400 Report**

23 August 2016

## FOUL WATER DRAINAGE REPORT

**Site Address:** Linton Village, Cambridge.

**Brief:** To consider foul water sewerage capacities for extant and proposed housing loads.

- Appendices:**
- A. Location Plan.
  - B. Anglian Water record drawings.
  - C. Capacity Calculations for the extant sewerage loads.
  - D. Capacity Calculations for the proposed sewerage loads.

**Discussion:** Linton Parish Council have expressed concerns with regard to the capacity of the foul water sewerage system serving the Village of Linton. Their concerns are expressed by their perception that foul water drainage issues are becoming more frequent. Their concerns are further heightened by proposals to develop lands bounded by Lonsdale to the west and Harefield Rise and Kenwood Gardens to the south. The development proposals are for 50 dwellings. Refer to **Appendix A** for Location Plan

**Foul Water Sewerage loadings and capacities:** The foul water sewerage system has been considered using the Sewers for Adoption 7th Edition standards and the 'discharge unit' methodology. All of the occupied buildings have been assessed with a standard 3.5 discharge units (DU's) per building. No allowances have been used to consider highway drainage or informal connections. The Colebrook-White formula has been used for determining the necessary pipe capacities. The sewerage data has been taken from Anglian Water record plans attached as **Appendix B**. The principal foul sewerage is shown upon the record plan highlighted red with the pipe numbers (Pn) shown for reference to the spreadsheets. The sewage loadings have been calculated within the spreadsheet to consider foul water flows and pipe capacities relative to the available gradients.

The potential flow rates have been calculated using the standard formula from BS EN 12056-2:2000 given as  $Q = k_{DU} \sum n_{DU}$  with a frequency factor ( $k_{DU}$ ) used to represent intermittent discharges from dwellings, guest houses and offices.

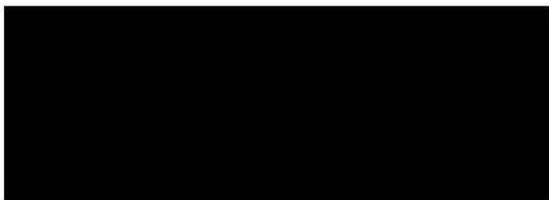
The Anglian Water data provision is not complete and where there are gaps in the data the nearest upstream and downstream invert levels have been used in the spreadsheets to give an average gradient for the sewer sections.

The flow capacity and flow velocity of the individual sewers has been calculated and is presented within the spreadsheets as FAIL or OK. The capacity check is between the calculated flow and the capacity of the sewer, whilst the velocity check is in comparison to the minimum requirement of 0.75 meters per second (m/s).

With reference to the spreadsheet for the extant situation (please refer to **Appendix C**) it can be seen that a number of sewer sections are in a parlous configuration. Sewer sections Pn1.07, Pn1.08, Pn1.09, Pn 1.10, and Pn1.11 all fail as not being able to generate sufficient self-cleansing velocities, whilst sewer sections Pn1.10, Pn1.11, Pn1.12, and Pn1.13 all fail as having insufficient capacity to convey the flows. The above calculated velocities at 0.613m/s are only 82% of the required standard. The above referenced sewers have capacities ranging between 101% and 119% over-subscription from the capacities available. Similarly, with reference to the spreadsheet for the proposed situation (please refer to **Appendix D**) it can be seen that the referred to sewer sections do not have any variation in the poor velocities for self-cleansing but have a notable increase in capacity failings with ranges between 105% and 134% over-subscription from the capacities available.

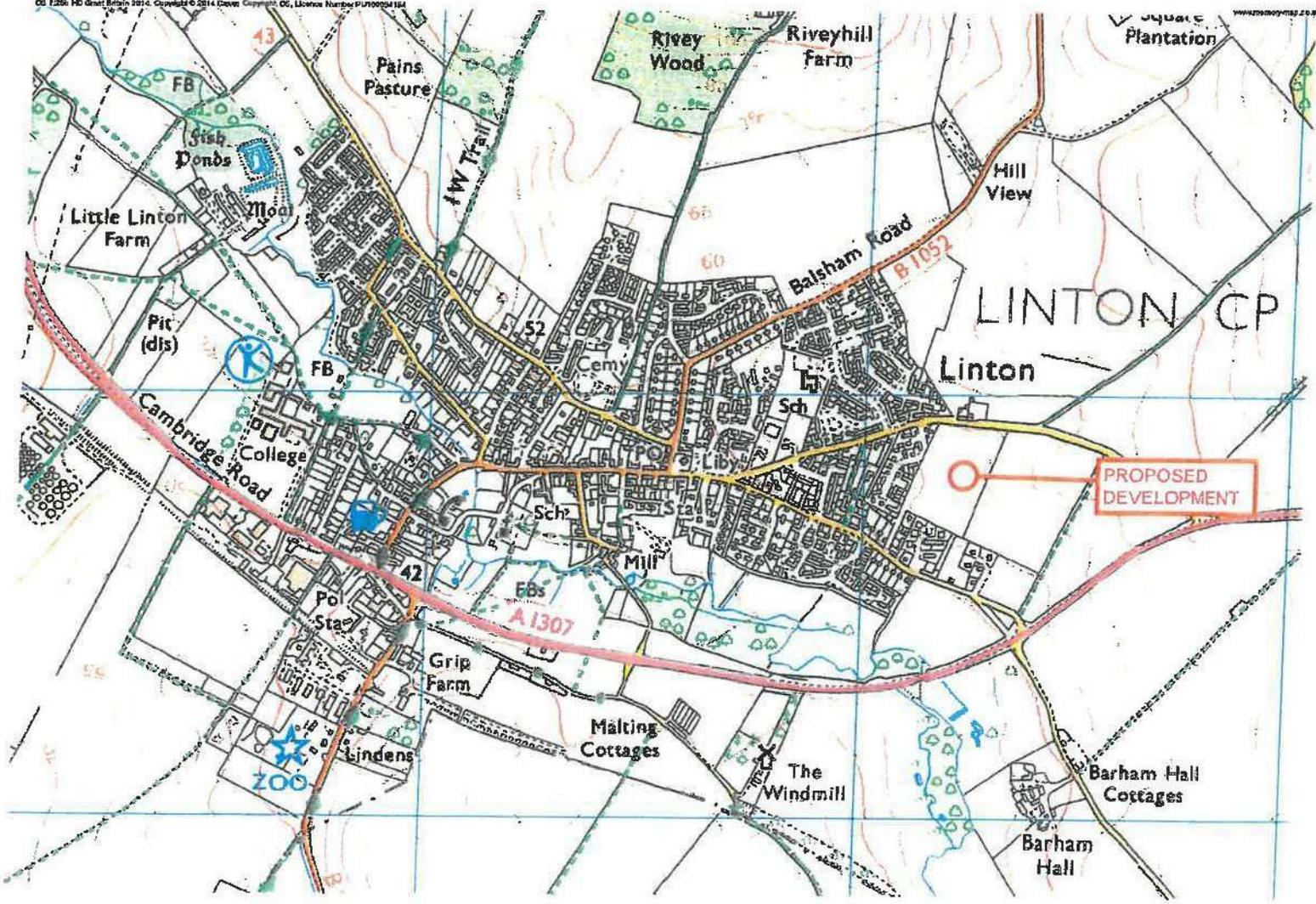
**Conclusion:** The extant foul sewerage that may serve the proposed development is currently (allowing for variations in the assessment data and Du calculations) is delicately balanced between sufficiency and failure. Any loading additions to the sewerage under review should demonstrate the suitability of the extant installation. In particular, flow additions from surface water highway drainage and informal connections, should be fully investigated before any drainage infrastructure proposals are offered.

From the desktop assessment carried out using Anglian Water sewerage data it is considered that the extant sewerage should not be further stressed by additional connections.



A E Designs Ltd. Ref: 1400 Rpt

# Appendix A



# Appendix B



DATE	DESCRIPTION	AMOUNT	CHECK NO.	BANK	INITIALS
1998-01-01	Balance Forward	1000.00			
1998-01-15	Deposit	500.00	101	ABC Bank	
1998-01-20	Withdrawal	200.00	102	ABC Bank	
1998-02-01	Deposit	750.00	103	ABC Bank	
1998-02-15	Withdrawal	300.00	104	ABC Bank	
1998-02-28	Balance Forward	1250.00			
1998-03-01	Deposit	600.00	105	ABC Bank	
1998-03-15	Withdrawal	400.00	106	ABC Bank	
1998-03-31	Balance Forward	1450.00			
1998-04-01	Deposit	800.00	107	ABC Bank	
1998-04-15	Withdrawal	500.00	108	ABC Bank	
1998-04-30	Balance Forward	1750.00			
1998-05-01	Deposit	900.00	109	ABC Bank	
1998-05-15	Withdrawal	600.00	110	ABC Bank	
1998-05-31	Balance Forward	2050.00			
1998-06-01	Deposit	1000.00	111	ABC Bank	
1998-06-15	Withdrawal	700.00	112	ABC Bank	
1998-06-30	Balance Forward	2350.00			
1998-07-01	Deposit	1100.00	113	ABC Bank	
1998-07-15	Withdrawal	800.00	114	ABC Bank	
1998-07-31	Balance Forward	2650.00			
1998-08-01	Deposit	1200.00	115	ABC Bank	
1998-08-15	Withdrawal	900.00	116	ABC Bank	
1998-08-31	Balance Forward	2950.00			
1998-09-01	Deposit	1300.00	117	ABC Bank	
1998-09-15	Withdrawal	1000.00	118	ABC Bank	
1998-09-30	Balance Forward	3250.00			
1998-10-01	Deposit	1400.00	119	ABC Bank	
1998-10-15	Withdrawal	1100.00	120	ABC Bank	
1998-10-31	Balance Forward	3550.00			
1998-11-01	Deposit	1500.00	121	ABC Bank	
1998-11-15	Withdrawal	1200.00	122	ABC Bank	
1998-11-30	Balance Forward	3850.00			
1998-12-01	Deposit	1600.00	123	ABC Bank	
1998-12-15	Withdrawal	1300.00	124	ABC Bank	
1998-12-31	Balance Forward	4150.00			

# Appendix C

POULMATER SEWERAGE ASSESSMENT OF PRINCIPAL SEWERS (EXTANT)																	A E Design Ltd			
Client: Linton Parish Council																	Flood Defence and Drainage Engineers			
Job No: 1400																	20, Sherrill Road,			
Address: Linton Village																	Birstham			
Inlet = 1.500																	Discharge rate taken as 2.5 Discharge Units per dwelling			
Inlet = 0.650																	01363 649002			
Flow = 0.50																	Flow calculation used $Q = ka \sqrt{RT(d^3)}$			
07708 185915																				
Sewer No	U/S to D/S Manholes	Upstream Easting	Coordinates Northing	Downstream Easting	Coordinates Northing	House Connected	Cumulative No of DU's	ksu	Design flow rate Q Us	Pipe Dia	Gradient m/m	Gradient 1:?	Sewer Length	Pipe Capacity	Capacity Check	V m/s	V Check	Sewer capacity % used	U/S Invert Level	D/S Level
Pa 1.01	1605-1604	557148	246659	557135	246655	4	14	0.50	1.87	150	0.0194	52	14,422	24.53	OK	1.985	OK	8	50.520	47.200
Pa 1.02	1604-1603	557136	246655	557130	246626	4	28	0.50	2.65	150	0.0194	52	29,614	24.53	OK	1.986	OK	11		
Pa 1.03	1603-1503	557130	246626	557114	246557	1	31.5	0.50	2.91	150	0.0194	52	42,154	24.53	OK	1.986	OK	11		
Pa 1.04	1503-1501	557114	246557	557130	246579	0	31.5	0.50	2.91	150	0.0194	52	17,889	24.53	OK	1.986	OK	11		47.720
Pa 1.05	1501-1502	557130	246579	557112	246543	49	189	0.50	6.87	150	0.02931	3	40,249	96.12	OK	5.451	OK	7	47.720	45.520
Pa 1.06	1502-0503	557112	246543	557050	246564	22	266	0.50	8.15	150	0.0097	103	57,667	17.89	OK	0.977	OK	47	45.520	44.950
Pa 1.07	0503-0401	557060	246543	556951	246618	22	343	0.50	9.26	150	0.0039	256	85,212	10.84	OK	0.613	FAIL	25	44.560	44.630
Pa 1.08	2401-0409	556951	246618	556959	246635	5	360.5	0.50	9.49	150	0.0039	256	36,235	10.84	OK	0.613	FAIL	88	44.630	
Pa 1.09	0409-0502	556959	246635	556923	246659	5	378	0.50	9.72	150	0.0039	256	34,095	10.84	OK	0.613	FAIL	90		
Pa 1.10	0502-0604	556923	246659	556908	246665	75	640.5	0.50	12.65	150	0.0039	256	107,056	10.84	FAIL	0.613	FAIL	117		44.275
Pa 1.11	0604-0602	556908	246665	556879	246675	7	645	0.50	12.89	150	0.0035	256	30,676	10.84	FAIL	0.613	FAIL	119		44.149
Pa 1.12	0602-0601	556879	246675	556799	246687	12	707	0.50	13.29	150	0.0058	172	80,895	13.34	FAIL	0.754	OK	101	44.149	43.678
Pa 1.13	0601-0702	556799	246687	556717	246721	12	749	0.50	13.68	150	0.0058	172	85,666	13.34	FAIL	0.754	OK	103	43.768	43.192
Pa 1.14	0702-0705	556717	246721	556682	246729	3	759.5	0.50	13.78	150	0.0174	58	33,903	23.22	OK	1.312	OK	59	43.192	
Pa 1.15	0705-0704	556682	246729	556697	246735	1	769	0.50	13.81	150	0.0174	58	45,398	23.22	OK	1.312	OK	59		
Pa 1.16	0704-0703	556697	246735	556614	246708	3,228	1911	0.50	21.86	150	0.0174	58	23,195	23.22	OK	1.312	OK	94		
Pa 1.17	0703-0702	556614	246708	556605	246708	4	1926	0.50	21.94	150	0.0274	58	34,139	23.22	OK	1.312	OK	94		41.594
Pa 1.18	0702-0703	556605	246708	556591	246706	3	1936.5	0.50	22.00	150	0.0243	41	54,192	27.53	OK	1.656	OK	80	41.594	40.763
Pa 1.19	0703-0601	556591	246706	556565	246673	2	1942.5	0.50	22.04	150	0.0246	15	33,541	45.68	OK	2.581	OK	48	40.763	38.530
Pa 1.20	0601-0602	556565	246673	556524	246652	1	1944	0.50	22.06	150	0.0411	24	42,450	35.83	OK	2.025	OK	62	39.908	38.164
Pa 1.21	0602-0605	556524	246652	556479	246645	1	1949.5	0.50	22.08	150	0.0411	24	49,041	40.33	OK	3.647	OK	5	38.164	
Pa 1.22	0605-0603	556479	246645	556449	246631	7	1974	0.50	22.21	150	0.0125	60	34,202	22.81	OK	2.005	OK	10		38.021
Pa 1.23	0603-0604	556449	246631	556427	246635	7	1999.8	0.50	22.35	150	0.0095	287	22,861	16.46	OK	1.083	OK	19	38.021	37.983
Pa 1.24	0604-0601	556427	246635	556423	246639	0	1998.5	0.50	22.35	150	0.0071	141	6,687	166.46	OK	1.605	OK	15	37.983	37.913
Pa 1.25	0601-0602	556423	246639	556373	246655	4	2012.5	0.50	22.43	150	0.0031	322	58,498	109.62	OK	0.993	OK	20	37.913	37.75
Pa 1.26	0602-0601	556373	246655	556327	246659	3	2023	0.50	22.49	150	0.0025	390	46,174	99.07	OK	0.896	OK	23	37.750	37.633
Pa 1.27	0601-0600	556327	246659			0	2023	0.50	22.49	150	0.0025	390	103,270	99.07	OK	0.896	OK	23		
Pa 1.28	2500-2501					0	2023	0.50	22.49	150	0.0025	395	0.000	99.07	OK	0.896	OK	23		



# Appendix D

FOULWATER SEWERAGE ASSESSMENT OF PRINCIPAL SEWERS (PROPOSED)																		A E Design Ltd Flood Defences and Drainage Engineers 20, Short Road, Stratton Cambs CB4 3LS		
Client: Linton Parish Council																		01223 649002		
Job No: 1400																		07708 189915		
Address: Linton Village																				
Discharge rate taken at 3.5 Discharge Units per dwelling																				
Flow calculation used $Q = K_u \sqrt{RT(dn)^3}$																				
Sewer No	U/s to D/s Manholes	Upstream Easting	Coordinates Northing	Downstream Easting	Coordinates Northing	House Connected	Correlative No of D/U's	K <sub>u</sub>	Design flow rate Q l/s	Pipe Diam	Gradient %/m	Gradient 1/3'	Sewer Length	Pipe Q capacity	Capacity Check	V m/s	V Check	Sewer capacity % used	U/s Invert Level	D/s Level
Pa 1.20	1605-1604	557148	246663	557136	246656	54	189	0.50	6.87	150	0.0294	92	14.422	24.53	OK	1.386	OK	28	55.520	47.240
Pa 1.20c	1604-1603	557136	246656	557130	246626	4	205	0.80	7.12	150	0.0194	82	25.614	24.59	OK	1.386	OK	29		
Pa 1.20a	1603-1503	557130	246626	557114	246587	1	206.5	0.50	7.19	150	0.0194	82	42.154	24.53	OK	1.386	OK	29		
Pa 1.20d	1503-1501	557114	246587	557130	246579	0	206.5	0.50	7.19	150	0.0194	52	17.889	24.53	OK	1.386	OK	29		47.720
Pa 1.20b	1501-1502	557130	246579	557112	246543	45	364	0.50	9.54	150	0.0293	3	40.249	24.52	OK	5.431	OK	10	47.720	45.520
Pa 1.20f	1502-0501	557112	246543	557060	246568	22	441	0.50	10.50	150	0.0297	103	97.497	24.29	OK	0.977	OK	63	45.620	44.950
Pa 1.207	0503-0601	557060	246568	556991	246618	22	518	0.80	11.38	150	0.0299	288	85.212	10.84	FAIL	0.613	FAIL	108	44.960	44.630
Pa 1.20e	0601-0609	556991	246618	556959	246635	5	535.5	0.50	11.57	150	0.0299	258	36.235	10.84	FAIL	0.613	FAIL	107	44.630	
Pa 1.20c	0609-0502	556959	246635	556923	246629	5	553	0.50	11.76	150	0.0299	258	84.095	10.84	FAIL	0.613	FAIL	108		
Pa 1.210	0502-0604	556923	246629	556908	246628	75	815.5	0.50	14.28	150	0.0299	258	107.056	10.84	FAIL	0.613	FAIL	132		44.276
Pa 1.211	0604-0602	556908	246628	556879	246675	7	840	0.50	14.49	150	0.0299	258	30.676	10.84	FAIL	0.613	FAIL	134		44.149
Pa 1.212	0602-0601	556879	246675	556799	246687	12	882	0.50	14.85	150	0.0298	172	80.898	13.34	FAIL	0.764	OK	111	44.149	43.676
Pa 1.213	0601-0702	556799	246687	556717	246721	12	924	0.50	15.20	150	0.0298	172	85.666	13.34	FAIL	0.764	OK	114	43.768	43.192
Pa 1.214	0702-0705	556717	246721	556682	246729	3	934.5	0.50	15.26	150	0.0174	58	39.923	23.22	OK	1.312	OK	66	43.192	
Pa 1.15	0705-0704	556682	246729	556637	246738	1	938	0.50	15.31	150	0.0174	88	45.398	23.22	OK	1.312	OK	66		
Pa 1.16	0704-0703	556637	246738	556614	246738	32B	2086	0.50	22.84	150	0.0174	58	28.195	23.22	OK	1.312	OK	98		
Pa 1.27	0703-0702	556614	246738	556605	246703	4	2100	0.80	22.91	150	0.0174	58	36.139	23.22	OK	1.312	OK	99		41.594
Pa 1.18	0702-0703	556605	246703	556571	246706	3	2110.5	0.50	22.97	150	0.0243	41	34.132	27.53	OK	1.566	OK	83	41.594	40.763
Pa 1.19	0703-0601	556571	246706	556555	246673	2	2117.5	0.50	23.01	150	0.0266	15	33.541	45.68	OK	2.581	OK	50	40.763	38.930
Pa 1.20	0601-0602	556555	246673	556524	246652	1	2121	0.50	23.03	150	0.0411	24	42.490	35.83	OK	2.025	OK	64	39.908	38.164
Pa 1.21	0602-0605	556524	246652	556478	246645	1	2124.5	0.50	23.05	375	0.0411	24	49.041	403.35	OK	3.647	OK	6	38.164	
Pa 1.22	0605-0603	556478	246645	556449	246631	7	2149	0.50	23.18	375	0.0125	80	32.202	221.81	OK	2.005	OK	10		38.031
Pa 1.23	0603-0604	556449	246631	556427	246635	7	2173.5	0.50	23.31	375	0.0085	287	22.361	116.46	OK	1.063	OK	20	38.031	37.953
Pa 1.24	0604-0601	556427	246635	556428	246639	0	2173.5	0.80	23.31	375	0.0071	141	8.657	166.66	OK	1.805	OK	14	37.953	37.913
Pa 1.25	0601-0602	556428	246639	556423	246635	4	2187.9	0.50	23.39	375	0.0091	322	52.458	109.82	OK	0.993	OK	21	37.913	37.779
Pa 1.26	0602-0601	556423	246635	556373	246655	1	2196	0.50	23.44	375	0.0025	395	46.174	99.07	OK	0.896	OK	24	37.750	37.638
Pa 1.27	0601-0800	556373	246655			0	2198	0.50	23.44	375	0.0025	395	103.270	99.07	OK	0.896	OK	24		
Pa 1.28	0800-2601	246659				0	2198	0.50	23.44	375	0.0025	395	0.000	99.07	OK	0.896	OK	24		

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

7 September 2016

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

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**Application Number:** S/1963/15/OL

**Parish(es):** Linton

**Proposal:** Outline application for residential development of up to 55 Houses

**Site address:** Land North and South of Bartlow Road, Linton

**Applicant(s):** Pembroke College, University of Cambridge and G W Balaam & Sons Ltd.

**Recommendation:** Delegated Approval

**Key material considerations:** Housing Land Supply  
Principle of Development  
Character and Appearance of the Area  
Density  
Housing Mix  
Affordable Housing  
Developer Contributions  
Design Considerations  
Trees and Landscaping  
Biodiversity  
Highway Safety and Sustainable Travel  
Flood Risk  
Neighbour Amenity  
Heritage Assets

**Committee Site Visit:** 6 September 2016

**Departure Application:** Yes

**Presenting Officer:** Karen Pell-Coggins, Principal Planning Officer

**Application brought to Committee because:** The officer recommendation conflicts with the recommendation of Linton Parish Council and the development would represent a departure to the Local Development Framework

**Date by which decision due:** 9 September 2016 (Extension of Time)

### Executive Summary

1. This proposal, as amended, seeks permission for a residential development outside

the Linton village framework and in the countryside. This development would not normally be considered acceptable in principle as a result of (i) its size and (ii) its out of village framework location. However, the Council acknowledges at present it cannot currently demonstrate a five-year housing land supply and so our housing supply policies must be considered out of date. In light of a recent High Court decision, the Local Planning Authority must determine the appropriate weight to apply to out of date policies relevant to their planning function. The National Planning Policy Framework (NPPF) states that there is a presumption in favour of sustainable development, and as such policies that seek to guide development to the most sustainable locations have a clear planning function. Where relevant policies are out of date, the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

2. In light of the lack of five-year housing land supply and having regard to recent local appeal decisions, the rural settlement policies are considered to continue to have significant weight in the determination of planning applications adjacent to or within close proximity to village frameworks. This will help ensure that development proposals outside and in close proximity to village frameworks have due regard to the availability of an appropriate level of services, facilities, employment and sustainable transport options. For Rural Centres and Minor Rural Centres, subject to all other relevant material considerations, it is considered that there is a case to be made that conflict with those policies should not be given significant weight, under the circumstances of a lack of five-year housing supply. Subject to other material considerations, this would mean in principle that the Council may grant permission for development in and adjacent to our larger villages. This is in the context of paragraph 14 of the NPPF and the test that permission should be granted unless there would be evidence of significant harm. This is consistent with local appeal decisions in this category of village since the lack of five-year supply.
3. The development would have some visual impact upon the landscape setting and setting of listed buildings of the village. However, it is considered that the landscape impact is limited and can be successfully mitigated as part of the outline application and the preservation of the setting of listed buildings can be achieved through the design of the development at the reserved matters stage.
4. These limited adverse impacts must be weighed against the benefits of the positive contribution of up to 55 dwellings towards the housing land supply in the district based on the objectively assessed 19,500 dwellings target set out in the SHMA and the method of calculation and buffer identified by the Inspector, the provision of 40% affordable homes, developer contributions towards sport space, children's play space, community facilities in the village and improvements to traffic schemes in the village, employment during construction to benefit the local economy and greater use of local services and facilities to contribute to the local economy.
5. The scale of the development proposed by this application (up to 55 dwellings) exceeds that supported by Policy ST/5 of the adopted Core Strategy of the LDF in relation to Minor Rural Centres (maximum 30 dwellings). Taking account of the range and scale of services and facilities available in Linton, including convenient accessibility to public transport, and in the context of a lack of five-year supply, the departure to policy due to the scale of development proposed by this application and its location adjacent to the village framework is justified as it would not cause significant demonstrable harm.

## **Planning History**

6. S/1109/80/O - Bungalow and Garage - Refused (North of Bartlow Road)  
SC/1170/73/O - Agricultural Dwelling - Refused (North of Bartlow Road)  
SC/0172/68/O - Residential Development - Refused (North of Bartlow Road)  
SC/0091/63/O - Residential Development - Refused (North of Bartlow Road)  
SC/0144/62/O - Residential Development - Refused (North and South of Bartlow Road)

## **National Guidance**

7. National Planning Policy Framework  
Planning Practice Guidance

## **Development Plan Policies**

8. **South Cambridgeshire Local Development Framework Core Strategy DPD 2007**  
ST/2 Housing Provision  
ST/5 Minor Rural Centres
9. **South Cambridgeshire Local Development Framework Development Control Policies DPD 2007**  
DP/1 Sustainable Development  
DP/2 Design of New Development  
DP/3 Development Criteria  
DP/4 Infrastructure and New Developments  
DP/7 Development Frameworks  
HG/1 Housing Density  
HG/2 Housing Mix  
HG/3 Affordable Housing  
NE/1 Energy Efficiency  
NE/3 Renewable Energy Technologies in New Development  
NE/4 Landscape Character Areas  
NE/6 Biodiversity  
NE/7 Sites of Biodiversity or Geological Importance  
NE/11 Flood Risk  
NE/12 Water Conservation  
NE/14 Lighting Proposals  
NE/15 Noise Pollution  
NE/17 Protecting High Quality Agricultural Land  
CH/2 Archaeological Sites  
CH/4 Development Within the Setting of a Listed Building  
CH/5 Conservation Areas  
SF/10 Outdoor Playspace, Informal Open Space, and New Developments  
SF/11 Open Space Standards  
TR/1 Planning For More Sustainable Travel  
TR/2 Car and Cycle Parking Standards  
TR/3 Mitigating Travel Impact
10. **South Cambridgeshire LDF Supplementary Planning Documents (SPD):**  
Open Space in New Developments SPD - Adopted January 2009  
Biodiversity SPD - Adopted July 2009  
Trees & Development Sites SPD - Adopted January 2009  
Landscape in New Developments SPD - Adopted March 2010  
Development Affecting Conservation Areas SPD - Adopted January 2009

Listed Buildings SPD - Adopted July 2009  
Affordable Housing SPD - Adopted March 2010  
District Design Guide SPD - Adopted March 2010

11. **South Cambridgeshire Local Plan Submission - March 2014**  
S/3 Presumption in Favour of Sustainable Development  
S/5 Provision of New Jobs and Homes  
S/6 The Development Strategy to 2031  
S/7 Development Frameworks  
S/9 Minor Rural Centres  
HQ/1 Design Principles  
H/7 Housing Density  
H/8 Housing Mix  
H/9 Affordable Housing  
NH/2 Protecting and Enhancing Landscape Character  
NH/3 Protecting Agricultural Land  
NH/4 Biodiversity  
NH/5 Sites of Biodiversity or Geological Importance  
NH/14 Heritage Assets  
CC/1 Mitigation and Adaptation to Climate Change  
CC/3 Renewable and Low Carbon Energy in New Developments  
CC/4 Sustainable Design and Construction  
CC/6 Construction Methods  
CC/9 Managing Flood Risk  
SC/6 Indoor Community Facilities  
SC/7 Outdoor Playspace, Informal Open Space, and New Developments  
SC/8 Open Space Standards  
SC/10 Lighting Proposals  
SC/11 Noise Pollution  
TI/2 Planning for Sustainable Travel  
TI/3 Parking Provision  
TI/8 Infrastructure and New Developments

### **Consultation**

12. **Linton Parish Council** – Recommends refusal. The full comments to the amended scheme are set out in Appendix 1. A summary of the concerns are set out below: -
- i) The site is outside the village framework and the sites were rejected in the SHLAA and Local Plan as having no development potential.
  - ii) Linton is classified as a Minor Rural centre which allows a maximum of 30 dwellings.
  - iii) The site has been submitted for development over the last 50 years and rejected.
  - iv) Significant and damaging to Linton and the floodplain and have a wider effect along the river valley.
  - v) Adversely affect views and the setting of Linton in the open landscape.
  - vi) Impact upon the approach to the conservation area, listed buildings and the character of the village.
  - vii) Noise impact from the A1307.
  - viii) Total destruction of archaeology.
  - ix) Limited separation of village and A1307 and loss of soft edge to the village.
  - x) Housing mix should reflect the needs of the village for bungalows and smaller affordable homes.
  - xi) The development has no potential for employment.
  - xii) Self-contained developments that would discourage community life.

- xiii) Distance to village centre long and access poor.
  - xiv) Occupiers would not use village facilities due to parking and congestion in village.
  - xv) Add to traffic parking and congestion in village.
  - xvi) Infrastructure is at capacity particularly the schools.
  - xvii) Impact upon utilities and services.
  - xviii) The safety and capacity of junctions on to the A1307.
  - xix) Additional traffic through the village that would impact upon the conservation area.
  - xx) Traffic impact on Bartlow Road from number of accesses.
13. **Conservation Officer** – Comments as amended that there are no designated heritage assets adjacent to the site. However, there is a grade II\* listed building and grade II listed structure close to the site at Barham Hall. The site of Barham Hall is slightly elevated and has views over the development site. Therefore impacts upon the setting need to be taken into account. The development seeks to retain a green buffer along Bartlow Road and to the north east of the site. The helps keep the development form in line with Linton and retain the rural character of the site. Although the principle of developing this site for residential purposes is largely acceptable, its impact upon the nearby heritage assets needs to be considered and mitigated where possible. This will be through a suitable layout, appropriate form and design and use of high quality materials at the reserved matters stage.
14. **Urban Design Officer** – Comments as amended that the revised layout with a reduced developable area and reduced number of units (from 78 to 55) is welcomed. This set back from the eastern boundary, relocation and thinning of the woodland boundary, and the retention of some agricultural land to the east will reduce the visual impact of the development, and help retain a rural setting to the village. The density is fairly low (approx. 17dph), but this is appropriate given the edge of village location, and should allow space for mature landscaping elements to develop between the houses to reduce the negative impact this development will undoubtedly have on the surrounding open landscape character. Request further points to be considered in relation to the detailed layout such as character areas, siting of buildings, focal points, surveillance from public rights of way and position of open spaces.
15. **Landscape Design Officer** – Comments as amended that the previous concerns have been addressed through the reduction in the number of dwellings on the site and the revised site area being pulled back to allow a foreground of open land behind which sits a filtering woodland to the edge of the settlement. This would also retain views from Rivey Hill from the south and the development would not protrude into the river valley when viewed from public land to the east. Some negative landscape and visual impacts would remain but these have been reduced and therefore the site would be able to accommodate up to 55 dwellings with suitable landscape mitigation so as to not harm the landscape setting of the village.
16. **Trees and Landscapes Officer** – Comments that the site comprises two parcels of land that are currently agricultural. Trees present are confined to the outer boundaries of each parcel. Has no objections as the application is supported by a comprehensive report that shows the existing trees overlaid on to the illustrative masterplan. The tree works are agreed and the development would provide an opportunity to improve the volume and diversity of green infrastructure. Requires a condition to be attached to any consent in relation to an updated aboricultural assessment and tree protection strategy.
17. **Ecology Officer** – Comments that the application is supported by an Ecology Report that does not identify any significant biodiversity constraints to development except for species rich hedgerows and the occurrence of otters using the River Granta but

does consider a suitably wide buffer zone adjacent to the River Granta to be important. The species rich hedgerows on the northern and southern site should be retained and integrated within the development and not fall under private ownership.

18. There is a small area of woodland that would provide some screening of the development from the River Granta. The River Granta is a County Wildlife site and the application should provide some form of enhancement or assist in the positive management of the river. An objection is raised as the application is not providing any specific enhancement to the river. It is screening itself from it, providing an off-set from it and providing a pond that is necessary for the development. The northern bank of the river is being kept secluded through the retention of scrub and tall vegetation. The River Granta being a County Wildlife Site must be protected. The provision of the wild buffer zone presents much opportunity for the integration of ditches, scrapes, and other wetland features to truly enhance this area of land and compliment the setting of the setting of the river as well as to control the movement of people to reduce disturbance to some areas.
19. The design of the attenuation pond should allow for suitable variations in shore line depths and draw down zones for wading birds. The use of swales through the development is welcomed as it would allow water quality to be improved. The pond should connect to the river via a ditch rather than a closed pipe to provide a habitat corridor. The headwall as an outfall to the river would be oversized and detract from the natural status of the area when viewed from Leadwell Meadows. The setting of the pond is compromised by the 5 dwellings closest to it as the whole development could enjoy and attractive vista to the river if these were removed.
20. The proposal has serious implications to increase flood risk to the built up-area of Linton as the Parish Council see the meadow as part of the natural catchment to the river. A positive that could come from the development is the opportunity to contribute to flood protection and alleviation of the risk to the village. A number of discussions have taken place in recent years to discuss how flood moves across Leadwell Meadows and where would be the best position to have a bund to hold back water and give the village a greater degree of protection. The backing up of water may cause water to be extended beyond its current floodplain. The development should not compromise the delivery of future flood protection for the village by developing at all within the floodplain or on land that may be flooded by future flood protection schemes. An alternative approach would be hold back water upstream of the A1307 bridge by means of a bund increasing the floodplain towards Barham Hall. The development may provide a means to fund proper investigation of flood protection options.
21. A reliable report has been received that states there is a population of Roman Snails in a ditch to the west of the southern field close to the River Granta. These are a protected species and a survey should be carried out to prior to determination to see if they are present on site. If so, appropriate avoidance, mitigation, compensation and enhancement measures would be required to inform the application.
22. Suggests conditions in relation to a scheme of ecological enhancement a strategy for the management of the pond and River Granta.
23. **Local Highways Authority** – No objection. Comments that drawing number 101 Revision A is acceptable for the accesses to the site.
24. **Cambridgeshire County Council Transport Assessment Team** – Comments that the peak flows have demonstrated that there is adequate capacity at the Bartlow

Road junction with the A1307 for the development and that the junction impact assessment of the Bartlow Road junction with the A1307 is appropriate and the proposal would not have a detrimental impact upon this junction. Further comments that there are westbound queues on the A1307 at peak times and the proposal would result in an additional 32 vehicles joining the queue.

25. Requires a contribution toward the review and recalibration of the operation of the junction of the A1307 with Linton Village College. Has no objections as amended subject to a condition for a Travel Plan Welcome Pack and the following mitigation measures being secured through a condition or section 106 agreement: -
- i) Widening of the footway on the west side of Barlow Road to a minimum width of 1.8 metres between the site boundary and its junction with Crossways. This is in place of the grass verge to allow more room for walking with children away from moving vehicles. To be provided as part of a S278 agreement.
  - ii) Relocation of the Cambridge and Haverhill bus stops at the site in order that they can accommodate bus stop shelters at each stop. The location and design of the bus stops and shelters will need to be agreed with the County Council and Parish Council. The applicant to incorporate this provision into the designs of the frontages of both sites on the north and south side of Bartlow Road. The bus stop shelters to be directly implemented by the applicant with commuted sum for maintenance by Linton Parish Council to be secured as part of a S106 agreement;
  - iii) The applicant is required to install 10 cycle parking Sheffield stands at locations to be agreed with CCC and Linton Parish Council as part of S278 works.
  - iv) To contribute a sum of £25,000 towards City Deal proposals for bus priority measures along the A1307 in Linton, principally to go towards a review and recalibration of the operation of the junction of the A1037 with Linton Village College to update the operation of the junction to improve its performance.
  - iv) We would require the applicant to make a contribution of £10,000 towards City Deal proposals for reducing bus journey times along High Street Linton.
26. **Cambridgeshire County Council Historic Environment Team** – Comments that an archaeological evaluation was carried out prior to the submission of the application. The evidence can be summarised as sparse remains of low significance in the area north of Bartlow Road that does not require a mitigation strategy and Roman and Saxon remains to the south of Bartlow Road that were not extraordinary or of national significance that would require a strategy for recording and preservation. No objections subject to a condition requiring a scheme of investigation to the south of Bartlow Road.
27. **Historic England** – Comments that the application should be determined in accordance with the national and local policy guidance and the on the basis of the Council's specialist conservation advice.
28. **Cambridgeshire County Council Flood & Water Team** – Comments as amended that the impermeable area has reduced to 1.09 hectares and the development would only be acceptable if a surface water drainage condition is attached to any consent.
29. **Environment Agency** – Comments that the site is located above a principal aquifer, a Source Protection Zone 2 and within a WFD Drinking Water Protected Area. Considers the previous agricultural use and infrastructure ground activities to be potentially contaminative. Due to the high proximity to the River Granta and high vulnerability of groundwater, the site is considered of high sensitivity and further investigation is necessary. Has no objections to the scheme as amended subject to conditions in relation to contamination, surface water disposal and piling. Further comments that the Flood Risk Assessment demonstrates that the development is

within flood zone 1 (low risk) and has no objections subject to a condition ensure that the development is carried out in accordance with the Flood Risk Assessment. Also requests informatives with regards to surface water drainage, foul water drainage, pollution control and flood risk.

30. **Anglian Water** – Comments that foul drainage from the development is in the catchment of the Linton water Recycling Centre that will have available capacity for these flows and that the sewerage system at present has available capacity for these flows via a gravity connection to manhole 1502 or via a pumped regime at 3.8 l/s to manhole 7501. Further comments that from the details submitted with the application, the proposed method of surface water drainage does not relate to Anglian Water assets.
31. **Environmental Health Officer** – Has no objections subject to conditions in relation to the hours of construction works and construction related deliveries to and from the site, pile driven foundations, a programme of measures to minimise the spread of dust, construction phases of the development, noise and vibration impact assessment and mitigation for gas governor, noise protection for dwellings from traffic noise from the A1307, external lighting and a waste management strategy.
32. **Contaminated Land Officer** – Comments that the proposed residential end use is sensitive to land contamination and agrees with the conclusions of the report, in that the potential for contamination is generally low but further site investigation is recommended. Requires a condition for the detailed investigation of contamination and remedial measures for the removal of any contamination found.
33. **Affordable Housing Officer** – Comments that the site is located outside the development framework, and should be treated as an exception site and developed for 100% affordable housing to meet the local housing need of Linton, in accordance with Policy H/10 of the Local Plan. However, if this site is not treated as an exception site, then 40% affordable housing should be provided as part of this development in accordance with policy H/9. Our district wide policy for tenure split is 70/30 in favour of rented and not 50/50 as proposed by the developer. There are currently 1,700 applicants on the housing register in South Cambs and Linton has a housing need for 79 applicants. The highest demand both in Linton and across South Cambridgeshire is for 1 and 2 bedroom accommodation.
34. **Section 106 Officer** – Comments that contributions are required towards outdoor sport space, community facilities, waste receptacles and monitoring. Informal open space and children's play space would be provided on the site. These would be secured by a section 106 agreement.
35. **Cambridgeshire County Council Growth Team** – Comments that there are sufficient early years, primary and secondary education places available to accommodate the development. Requires a libraries and life long learning contribution towards the reorganisation of the layout of Linton library to enable extra shelving and resources to serve the additional residents. Requires a strategic waste contribution towards an expansion in the capacity of the Thriplow Household Recycling Centre if 5 contributions have not been pooled.
36. **NHS England** – Comments that due to capacity levels in Linton, current priorities, and the size of this development, there is not an intention to seek contribution on this occasion.
37. **Crime Prevention Design Advisor** – Has no objections.

38. **Huntingdonshire District Council Sustainability Officer** – Comments that the requirements of policy are recognised and the efficiency measure suggested should go some way to achieving energy and carbon savings when compared to current building regulations. Although limited information has been provided in the form of a water conservation strategy, the development would not use more than 103 litres per person per day making it compliant with policy. The document provides a good feasibility of numerous renewable energy technologies. Solar thermal panels and a centralised heating system using a biomass boiler would meet the 10% requirements of the policy. However, the solar pv panels would not meet the policy. There are some inconsistencies in the figures and a condition should be attached to ensure further information is provided in the form of worked up examples of the preferred option to ensure policy compliance.
39. **Campaign for the Protection of Rural England** – Comments that although the Council cannot demonstrate a 5 year housing land supply, this is being addressed through the local plan process and other important material considerations should not be overridden by this. The emerging plan is at an advanced stage and sites outside development frameworks should come forward through this process. Evidence at the hearings should demonstrate that the housing needs forecasts for the district can be met by the proposed sites in the emerging plan. Further comments that the development would break out into the open countryside and entail the loss of good agricultural land. There would be an adverse impact upon rural landscape by also the valley of the River Granta. Linton is a Minor Rural Centre and the development would exceed the indicative maximum size of 30 dwellings within the development framework.

### **Representations**

40. Approximately **135 letters of objection** have been received from local residents in relation to the application. They raise the following concerns: -
- i) Outside village framework and sprawl to the countryside. Departure to local plan.
  - ii) Scale of development exceeds the limit of 30 dwellings in Minor Rural Centres.
  - ii) Development on the floodplain and increased risk of flooding to the village and other villages downstream.
  - iii) The area is within part of a flood relief scheme.
  - iv) Increase in traffic through village and on to the A1307 which is a dangerous road.
  - v) Pressure on infrastructure that is already at capacity- schools, doctors, roads, drainage etc.
  - vi) Significant distance to village facilities and narrow pavements.
  - vii) Would add to parking congestion in village and potential withdrawal of bus service.
  - viii) Impact upon character of the village due to reduction in separation from the A1307.
  - ix) Harm to conservation area and landscape.
  - x) Impact upon ecological environment of Leadwell Meadows and detract from the environment of the Pocket Park.
  - xi) Loss of archaeological features.
  - xii) Noise and pollution due to proximity to the A1307.
  - xiii) Housing does not address local needs and lack of affordable housing.
  - xiv) No provision for commercial development.
  - xv) Potential contamination of river.
  - xvi) Isolated development from the rest of the community.
  - xvii) Planning history of rejected proposals.
  - xviii) Inadequate public consultation.
  - xix) No benefits to the local community.

- xx) Incorrect viewpoint assessments.
- xxi) Need more planting and wildlife corridors.
- xxii) Lack of energy efficiency measures.
- xxiii) Layout does not reflect village characteristics.
- xxiv) Lack of on-site parking would lead to on-street parking.
- xxv) Potential for further village expansion and better sites in the village.
- xxvi) Impact upon residents amenities.
- xxvii) No space to expand businesses in the village.
- xxviii) Close to gas pipeline.

41. **One letter of support** has been received from a local resident in relation to the application that makes the following points: -

- i) The housing would help more young people stay in the village.
- ii) Local businesses would benefit.

However, the resident also comments that the Bartlow Road junction needs improvement.

42. The **Headteachers of Linton Heights Junior School and Linton Infants School** are concerned about the impact upon the schools. The Junior School is a tired and unsuitable building. There is not enough space to house the current pupils so for a number of years a temporary portacabin has been used as a classroom. Any increase in children would require significant improvements. The Infant School has had a number of alterations over the years and is at maximum capacity in terms of the hall and toilets and in order to offer a quality education, 4 of 6 classrooms are undersized. Neither school would be able to welcome new families moving into the area.

43. **Chair Linton Village College Governors** – Comments that the County Council assessment in relation to the capacity of Linton Village College (LVC) to take more students is correct. However, this is based upon the designated feeder schools only and the following points should be noted: -

- i) LVC is an Academy and makes its own admissions policy;
- ii) LVC is oversubscribed. The PAN for 2016/17 is 165 students. 180 have been accepted and there is a waiting list of around 40.
- iii) LVC has historically admitted 20% of students from outside the catchment area and mostly in Suffolk.
- iv) LVC has recently expanded its catchment to include some primary schools in Essex. This is because of the expansion of Saffron Walden and that the County High can no longer guarantee places.
- v) LVC is an OFSTED rated Outstanding school- it has been and is oversubscribed. As the Multi Academy Trust expands, there have been three new applications from primary schools, one in Suffolk. This means that there is pressure to give priority for admissions to members of the Trust.

44. Many of these points have not been considered by the County Council and it is considered that the formula for calculating capacity is out of date and should not be given weight.

### **Site and Surroundings**

45. The site is located outside of the Linton village framework and in the countryside. It is situated to the east of the village and comprises land to the north and south of Bartlow Road. It measures approximately 3.5 hectares in area. The land rises to the north.

46. The land to the north of Bartlow Road comprises open grassland. There are hedges

along the majority of the northern boundary and western boundaries. The eastern boundary is open. The southern boundary has a number of young trees. Open agricultural land lies to the north and south. Open grassland, a hedge and public footpath lie to the east. A residential development (The Ridgeway) lies to the west.

47. The land to the south of Bartlow Road comprises open arable land and a water meadow. There are hedges along the northern and western boundary of the site. The eastern boundary is open. The A1307 runs along an embankment on the south eastern boundary of the site. The River Granta is a County Wildlife Site that runs within a valley to the south west. Residential developments lie to the north (Bartlow Road) and west (Finchams Close). Open land lies to the east and south beyond the A1307.
48. The site is situated within the East Anglian Chalk Landscape Character Area on grade 3 (good to moderate) agricultural land. The site lies mainly within Flood Zone 1 (low risk) but the part to the far south lies within Flood Zones 2 and 3 (medium and high risk).
49. The Linton conservation area lies approximately 420 metres to the west. The nearest listed buildings are the grade II\* Barham Hall that is 350 metres to the south east and grade II Tower Mill that is 360 metres to the south west.

### **Proposal**

50. The proposal as amended seeks outline permission for a residential development on the site of up to 55 dwellings including two access points to the site. The layout, design and external appearance, and landscaping are matters reserved for later approval.
51. 40% of the dwellings would be affordable in nature. No details of the affordable mix and tenure split are known to date. These mixes will be determined at the time of the reserved matters application to reflect the most up-to-date position. The remaining 60% of the dwellings would be available for sale on the open market. No details of the market mix are known.
52. The development is intended to be predominantly two to two and a half storeys in height. The illustrative masterplan shows that the dwellings would front Bartlow Road and be arranged around the two main access roads. The development would incorporate a range of detached and semi-detached properties. A Local Area of Play and informal open space in the form of a small village green would be provided within the development to the north of Bartlow Road. A Local Equipped Area of Play and informal open space in the form of a linear green space that links Bartlow Road to the woodland paths would be provided within the development to the south of Bartlow Road. The total amount of open space would be 1.35 hectares. Strategic landscape buffers would be provided to the east of both developments at the entrance to the village.

### **Planning Assessment**

53. The key issues to consider in the determination of this application relate to housing land supply, the principle of the development, housing density, housing mix, affordable housing, developer contributions and the impacts of the development upon the character and appearance of the area, highway safety, ecology, trees and landscaping, heritage assets and neighbour amenity.

### ***Housing Land Supply***

54. The National Planning Policy Framework (2012) (NPPF) requires councils to boost significantly the supply of housing, including by meeting their objectively assessed need for housing and by identifying and maintaining a five-year housing land supply with an additional buffer as set out in paragraph 47.
55. The Council accepts that it cannot currently demonstrate a five year housing land supply in the district as required by the NPPF, having regard to appeal decisions in Waterbeach in 2014, and as confirmed by more recent appeal decisions. The five-year supply as identified in the latest Annual Monitoring Report (February 2016) for South Cambridgeshire is 3.9 years on the basis of the most onerous method of calculation, which is the method identified by the Waterbeach Inspector. This shortfall is based on an objectively assessed housing need of 19,500 homes for the period 2011 to 2031. This is identified in the Strategic Housing Market Assessment 2013 together with the latest update undertaken for the Council in November 2015 as part of the evidence responding to the Local Plan Inspectors' preliminary conclusions. It uses the latest assessment of housing delivery contained in the housing trajectory November 2015. The appropriate method of calculation is a matter before the Local Plan Inspectors and in the interim the Council is following the method preferred by the Waterbeach appeal Inspector.
56. Paragraph 49 of the NPPF states that adopted policies "for the supply of housing" cannot be considered up to date where there is not a five year housing land supply. This includes the rural settlement policies and village framework policy.
57. Further guidance as to which policies should be considered as 'relevant policies for the supply of housing' emerged from a recent Court of Appeal decision (Richborough v Cheshire East and Suffolk Coastal DC v Hopkins Homes). The Court defined 'relevant policies for the supply of housing' widely so as not to be restricted to 'merely policies in the Development Plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites,' but also to include, 'plan policies whose effect is to influence the supply of housing by restricting the locations where new housing may be developed.' Therefore all policies which have the potential to restrict or affect housing supply may be considered out of date in respect of the NPPF.
58. In the case of this application, policies which must be considered as potentially influencing the supply of housing land include ST/2 and ST/5 of the adopted Core Strategy and adopted policies DP/1, DP/7, CH/3, CH/5, NE/4, NE/6 and NE/17 of the adopted Development Control Policies. Policies S/7, S/9, HQ/1 and NH/3 of the draft Local Plan are also material considerations and considered to be relevant (draft) policies for the supply of housing.
59. However the Court also made clear that even where policies are considered 'out of date' for the purposes of NPPF paragraph 49, a decision maker is required to consider what (if any) weight should be attached to such relevant policies having regard to compatibility with the NPPF.
60. The rural settlement classification in the adopted and emerging development plans identifies the sustainability of villages in South Cambridgeshire, having regard to the level of services and facilities within a village and the availability and frequency of public transport to access higher order services in Cambridge and elsewhere. They are a key factor in applying paragraph 14 of the NPPF which says that where a five-year supply cannot be demonstrated, permission should be granted unless any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. The NPPF also includes as a core principle that planning should “actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable”.

61. In light of the lack of five-year housing land supply and having regard to recent local appeal decisions, the rural settlement policies are considered to continue to have significant weight in the determination of planning applications adjacent to or within close proximity to village frameworks. This will help ensure that development proposals outside and in close proximity to village frameworks have due regard to the availability of an appropriate level of services, facilities, employment and sustainable transport options.
62. As a general principle, the larger, better served villages categorised as Rural Centres and Minor Rural Centres are likely to be more able to support unplanned housing growth than the smaller, less well served Group and Infill Villages, without fundamentally undermining the development strategy for South Cambridgeshire. This has some commonality with the approach taken in the submitted Local Plan where a limited number of housing allocations in the rural area were included for Rural Centres and Minor Rural Centres, including for larger sites that the windfall threshold in Minor Rural Centres, but no allocations for Group and Infill Villages other than a very limited number where they were put forward by Parish Councils under the Localism agenda.
63. As such, in Rural Centre and Minor Rural Centres, subject to all other relevant material considerations, it is considered that there is a case to be made that conflict with relevant settlement hierarchy policies should not be given significant weight, under the circumstances of a lack of five-year housing supply and in light of paragraph 14 of the NPPF and the test of significant demonstrable harm. This is consistent with the recent appeal decision in Melbourn where the Inspector said that as the rural settlement policies are out of date due to a lack of five-year supply, but that the conflict with those policies “carried limited weight”. However, given the limited sustainability of Group and Infill villages, there is a case to continue to resist proposals that would conflict with the rural settlement policies which would allow for unsustainable forms of development, unless there are particular site specific considerations that indicate that there would not be significant demonstrable harm.
64. Notwithstanding the above, each planning application must be considered on its own merits taking account of local circumstances and all other relevant material considerations.

#### ***Principle of Development***

65. The site is located outside the Linton village framework and in the countryside where Policy DP/7 of the LDF and Policy S/7 of the Draft Local Plan state that only development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside will be permitted.
66. Linton is identified as a Minor Rural Centre under Policy ST/5 of the LDF and Policy S/8 of the emerging Local Plan where there is a reasonable range of services and facilities and residential developments of up to 30 dwellings are supported in policy terms. The erection of a residential development of up to 55 dwellings would therefore not under normal circumstances be considered acceptable in principle.
67. Given the current lack of a 5 year housing land supply and the fact that policies DP/7

and ST/5 are out of date, a judgement needs to be made as to whether the scale of the development is acceptable for this location in terms of the size of the village and the sustainability of the location. As set out in the Housing Land Supply section above, it is considered that significant weight can be given to the rural settlement and framework policies. Nevertheless, in light of a five year land supply and recent appeal decisions, as a matter of general principle the scale of development proposed relative to the comparative accessibility of this minor rural centre would not conflict significantly with the thrust of the core development principle of the NPPF and will not in itself create demonstrable harm.

### ***Sustainable Development***

68. The NPPF states that there are 3 dimensions to sustainable development, economic, social and environmental.

### ***Economic Aspects***

69. The provision of up to 55 new dwellings will give rise to employment during the construction phase of the development and would have the potential to result in an increase in the use of local services and facilities, both of which will be of benefit to the local economy.

### ***Social Aspects***

#### *Provision of Housing*

70. The development would provide a benefit in helping to meet the current housing shortfall in South Cambridgeshire through the delivery of up to 55 dwellings. The applicants own the site and it is available for development now subject to securing the necessary planning consents. It is intended that construction work could commence in 2016/2017 with the residential element being complete within 5 years of the outline consent. There are no known technical constraints to delivery.

#### *Scale of Development and Services*

71. The Services and Facilities Study 2013 states that in mid 2012 Linton had an estimated population of 4,530 and a dwelling stock of 1,870. It is one of the larger villages in the district. An additional 55 dwellings would increase the number of dwellings in the village by 3%. This is not considered to be out of scale and character with the size of the village.
72. Whilst it is acknowledged that the most preferable location for development is first on the edge of the city of Cambridge and secondly in Rural Centres, it is considered that Linton is a reasonably sustainable location to accommodate increased housing development. The Services and Facilities Study 2013 identifies a wide range of services and facilities in the village that include a secondary school, junior school, infant school, health centre, dentist, post office, 4 food stores plus a small supermarket, other services such as hairdressers, florists etc., 3 public houses, a village hall and 3 other community centres, a recreation ground and a bus route to Cambridge and Haverhill with a service every 30 minutes during the day Mondays to Saturdays and hourly on Sundays.
73. The majority of the services and facilities are located on the High Street. The site is situated on the edge of the village at a distance of approximately 800 metres from the shops (10 minutes) and immediately adjacent a bus stop. These distances are

considered acceptable. There is an existing public footway along the northern boundary of the site to the south of Bartlow Road. This would ensure that there is convenient accessibility by walking and cycling to the centre of the village.

74. The village is ranked at jointly at No. 6 in the Village Classification Report 2012 in terms of access to transport, secondary education, village services and facilities and employment. It only falls below the Rural Centres that have slighter better accessibility to public transport. Given the above assessment, the future occupiers of the development would not be wholly dependent upon the private car to meet their day-to-day needs and wider needs could be served by public transport.

#### *Housing Density*

75. The overall site measures 14.6 hectares in area. The developable site area measures 6.36 hectares. The erection of up to 55 dwellings would equate to a maximum of 26 dwellings per hectare. Whilst this density would be below the requirement of at least 40 dwellings per hectare for sustainable villages such as Linton under Policy HG1 of the LDF, the sensitive nature of the site on the edge of the village and need for comprehensive landscaping dictates that a lower density of development is both reasonable and necessary for this particular site. This policy can be given considerable weight as the development may compromise local character.

#### *Affordable Housing*

76. 40% of the development would consist of affordable housing to meet local needs as set out in Policy HG/3 of the LDF. Given that the application is currently at outline stage only, it is considered that the exact mix and tenure of the affordable dwellings could be agreed at the reserved matters stage.

#### *Market Housing Mix*

77. The development would provide a range of dwelling types and sizes that range from one and two bedroom homes to larger family homes to comply with Policy HG/2 of the LDF or Policy H/8 of the emerging Local Plan as some weight can be attached to this policy. Given that the application is currently at outline stage only, it is considered that the exact mix of the market dwellings could be agreed at the reserved matters stage, albeit a condition will be needed to secure this.

#### *Developer Contributions*

78. Development plan policies state that planning permission will only be granted for proposals that have made suitable arrangements towards the provision of infrastructure necessary to make the scheme acceptable in planning terms.
79. Regulation 122 of the CIL Regulations states that a planning obligation may only constitute a reason for granting planning permission for the development of the obligation is: -
- i) Necessary to make the development acceptable in planning terms;
  - ii) Directly related to the development; and,
  - iii) Fairly and reasonably related in scale and kind to the development.
80. The Recreation and Open Space Study 2013 identified that Linton had a deficit of 4.19 hectares of sports space. Linton has one recreation ground with a senior football pitch and a cricket pitch with the cricket square next to the football goal area and a bowl green. The pavilion is in very good condition with home and away changing, a

bar area and kitchen. There is a need for an additional football pitch to meet local need and improved drainage at the existing facility. The cricket club also require an additional pitch to meet the demand for additional junior teams. The study did not take account of the facilities at Linton Village College, which although at the current time are available for public hire, are not guaranteed through a community access agreement.

81. Off-site contributions are required towards additional facilities to meet the demand for the development in accordance with Policies SF/10 and SF/11 of the LDF.
82. Linton Parish Council highlights the lack of infrastructure in the village to cope with the development and comments that it ideally requires additional land to provide the facilities required for the village but states that this is not possible at present as no landowner would be prepared to sell for agricultural rates while the Council does not have a 5 year housing land supply. It has therefore put forward projects that would be located on the recreation ground. These include a BMX/skate park, climbing wall and replacement of bowls area with a multi-use games area, and trim trail on the recreation ground. The contribution required would be tariff based contribution of approximately £55,000.
83. The Recreation and Open Space Study 2013 identified that Linton had a deficit of 3.41 hectares of children's play space. The development would be located approximately 1.8km from the nearest play area and therefore it is paramount that a formal play area is provided on the site. Given that a Local Equipped Area of Play and Local Area of Play would be provided within the development.
84. No off-site contributions are required towards additional facilities to meet the demand for the development in accordance with Policies SF/10 and SF/11 of the LDF.
85. The Recreation and Open Space Study 2013 identified that Linton had a surplus of 0.27 hectares of informal open space. The development would provide informal public open space in the form a linear parkland north to south through the development and woodland walks.
86. No off-site contributions are therefore required towards additional facilities to meet the demand for the development in accordance with Policies SF/10 and SF/11 of the LDF. However, contributions are required for maintenance of the space if it adopted by the Parish Council.
87. The Community Facilities Audit 2009 states that Linton is served by Linton Village Hall which is run by a charity and can accommodate 170 seated and 200 standing. It holds an entertainment licence but no alcohol license, public dances, disabled access and toilets. There is only a basic kitchen but no food preparation area. Linton Village Hall is not considered to satisfy the Council's indoor facilities standard in terms of quantity of space and quality of space.
88. Off-site contributions are required towards community facilities to comply with Policy DP/4 of the LDF.
89. Linton Parish Council again highlights the lack of infrastructure in the village to cope with the development. It has therefore put forward a project to build a multi-purpose community centre with a focus aimed at young people and which will be available for hire by scouts, guides, brownies and other users. This would need to be funded by other sources but at present these have not been identified. The contribution required would be tariff based contribution of approximately £27,000.

90. The RECAP Waste Management Design Guide requires household waste receptacles to be provided for the development. Off-site contributions are required towards the provision to comply with Policy DP/4 of the LDF. The contribution would be £72.50 per dwelling and £150 per flat.
91. To ensure the provision and usage of on-site infrastructure, a monitoring fee of £1,000 is required.
92. The development is expected to generate a net increase of 17 (16.5) early years aged children of which 9 are liable for contributions. In terms of early years' capacity, County education officers have confirmed that there is sufficient capacity in the area to accommodate the places being generated by this development. Therefore no contribution for early years provision is required.
93. The development is expected to generate a net increase of 20 (19.25) primary school places. The catchment school is Linton Infant & Linton Heights Junior schools. In terms of primary school capacity, County education officers have confirmed that there is sufficient capacity in the area to accommodate the places being generated by this development. Therefore no contribution for primary education is required.
94. The development is expected to generate a net increase of 14 (13.75) secondary school places. The catchment school is Linton Village College. County education officers have confirmed that there is sufficient capacity in the area to accommodate the places being generated by this development. Therefore no contribution for secondary education is required.
95. The proposed increase in population from this development (55 dwellings x 2.5 average household size = 138 new residents) will put pressure on the library and lifelong learning service in the village. Linton library already serves a population of nearly 5,000 including the villages of Linton, Hildersham and Horseheath. A contribution of £42.12 per increasing population for enhancement to the library in Linton, a total of £5,812.56 (138 new residents X £42.12). This contribution would be used towards the reorganisation of the layout of Linton Library including the remodelling of the existing library counter, to enable extra shelving units and appropriate resources (both Adult and Junior) to be installed in the library to serve the additional residents.
96. This development falls within the Thriplow Household Recycling Centre catchment area for which there is currently insufficient capacity. The development would require a contribution of £461.45 (£8.39 x 55) towards the project to expand capacity unless 5 schemes have been pooled towards this project.
97. NHS England considers there is sufficient GP capacity to support the development. Therefore no contributions are required towards health facilities.
98. Appendix 2 provides details of the developer contribution required to make the development acceptable in planning terms in accordance with Policy DP/4 of the LDF and paragraph 204 of the NPPF. It is considered that all of the requested contributions to date meet the CIL tests and would be secured via a Section 106 agreement. Confirmation is awaited from the applicants to agreement to these contributions.
99. Members will note that the Cambridgeshire County Council Growth Team consider there is sufficient early years, primary and secondary school capacity but that this is contested by the Headteachers of both the local Junior and Infants schools. The

comments of the Headteachers of the Junior and Infants Schools and the Governors of Linton Village College are noted. Whilst the schools are well attended Cambridgeshire County Council Growth Team has advised that in-catchment demand indicates there is sufficient capacity to accommodate new development (although any further future development beyond these sites may see this position reviewed). In effect the schools fill with out-of-catchment pupils, who in future would be accommodated in their local catchment. The Council would have no basis on which to seek education contributions that would be CIL compliant.

### ***Environmental Aspects***

#### *Character and Appearance of the Area*

100. The site is currently open grassland and arable land that is located outside the Linton village framework and in the countryside. It forms part of the landscape setting and sensitive settlement edge to the village. These are important material planning considerations.
101. The site is situated within the East Anglian Chalk Landscape Character Area and the landscape character of the site and its immediate surrounding are typical of East Anglian Chalk comprising large agricultural fields separated by clipped hedges, set in an open and gently rolling landscape, with long views available both over lower land and to hills featuring wooded tops.
102. The proposal would result in the introduction of development in an area that is currently undeveloped. Given the site characteristics and landscape setting, development of the scale proposed has the potential to result in some loss of openness to the countryside and visual harm to the setting of the village.
103. The application has been submitted in outline with all matters reserved, including layout. It is considered that up to 55 dwellings could be accommodated on the site with limited harm to the landscape setting of the village. The amended scheme would retain open land and the water meadows that provide a rural setting to the village from close views on the A1307 and longer distance views from Rivey Hill. In addition, a significant landscape buffer would be provided around the whole of the development that would mitigate the visual impact of the proposal and enhance biodiversity. It is therefore considered that limited weight can be given to Policy NE/4 of the LDF.

#### *Design Considerations*

104. The application is currently at outline stage only. All matters in terms of access to the site, the layout of the site, scale, external appearance and landscaping are reserved for later approval. The masterplan is therefore illustrative only at this stage.
105. The plan shows the site to the north of Bartlow Road to comprise development concentrated around a single road with a small open space at the centre. There would be farmstead design development adjacent to Bartlow Road at the entrance to the village to reflect the transition from the open landscape to the built-up modern development in The Ridgeway. There would be a LAP in the north eastern corner.
106. The land to the south of Bartlow Road would comprise a linear form of development along Bartlow Road that would respect the existing linear pattern of dwellings and a curved layout that would works with the different land levels. There would be a central

LEAP and an area of open space running north to south that would provide pedestrian links to woodland paths within the structural landscape planting to the east.

107. The main characteristics of the layout are supported and are considered to result in a high quality development that would be in keeping with the character and appearance of the area. The provision of detached and semi-detached properties of two to two and half storey scale would reflect the surroundings. However, the Urban Design Officer has raised some points in relation to the layout that would require further consideration at the reserved matters stage.

#### *Trees/ Landscaping*

108. The proposal would not result in the loss of any important trees and hedges that significantly contribute towards the visual amenity of the area. The majority of the trees and hedges would be retained and protected. The only hedges removed would be to provide accesses to dwellings on to Bartlow Road in an area that is more built-up and less rural character.
109. A substantial amount of landscaping is proposed within the development that includes structural planting in the form of a landscape buffer to the east of the site, planting within the open space that runs north to south through the site and planting within the water meadow to the south of the site. The proposal would therefore comply with Policy NE/6 of the LDF that seeks to maintain, enhance, restore or add to biodiversity.

#### *Ecology*

110. The site is located immediately to the north of the River Granta that is a County Wildlife Site. The existing water meadow to the north of the river would be retained as a buffer and protected and enhanced as part of the development. The amended plan does not show this area to be accessible to the public in order to retain its interest features in the form of the rural environment and biodiversity richness. Measures for enhancement include the provision of a surface water attenuation pond and a wild zone. Precise details of enhancement and management of this area would be agreed through conditions attached to any consent. The proposal would therefore comply with Policy NE/7 of the LDF that seeks to ensure that the intrinsic natural features of particular interest are safeguarded or enhanced.
111. The 5 dwellings to the south of the site are considered to be situated an adequate distance away from the buffer zone to ensure that the County Wildlife Site is protected.
112. The final location and design of the headwall would be subject to a condition as the drainage strategy is currently at outline stage. It would need to meet the requirements of the Environment Agency. Alternatively, the headwall could discharge to a ditch prior to entering the River Granta.
113. Roman snails have been found in a ditch close to the site that is a protected species. A survey is required to be carried out prior to the determination of the application to ensure that the development would not result in the loss of this protected species. Members will be updated on the report at the meeting.

#### *Highway Safety and Sustainable Travel*

114. Bartlow Road leads from the centre of the village to the A1307 (Cambridge to Haverhill Road). It has a speed limit of 30 miles per hour from the village to the point

at the entrance to the site where it changes to 60 miles per hour.

115. The development would result in a significant increase in the level of traffic in the area. However, no objections have been raised by Cambridgeshire County Council Transport Assessment Team in relation to the impact of the development upon the capacity and functioning of the public highway. The proposal is not therefore considered to be detrimental to highway safety to sustain a reason for refusal.
116. The access widths of the main roads into the site to the north and south of Bartlow Road would measure 5.5 metres and accommodate two-way traffic. They would have 2.0 metres footpaths on each side to would provide safe pedestrian movements. The proposed vehicular visibility splays to the site to the north of Bartlow Road that measure 2.4 metres x 120 metres to the west and 2.4 metres x 121 metres to the east to the junction with the A1307 and 2.4 metres x 80 metres to the southern kerbline would be achievable. The proposed vehicular visibility splays to the site to the south of Bartlow Road that measure 2.4 metres x 70 metres to the west and 2.4 metres x 90 metres to the east would also be achievable. The accesses would therefore accord with Local Highways Authority standards.
117. There is a bus stop on Barlow Road immediately adjacent the site. This gives direct public transport access to Cambridge and Haverhill by a 30 minute service Monday to Saturdays. This is easily accessible by walking. A Section 106 legal agreement would be required to secure the widening of the footway on the southern side of Bartlow Road to the junction with Crossways to allow more space for pedestrian movements, the relocation of the bus stops within the sites so they are able to accommodate shelters, the installation of cycle parking in the village, a contribution of £25,000 towards bus priority measures along the A1307 principally to review and recalibrate the operation of the junction of the A1307 with Linton Village College, and a contribution of £10,000 to reduce bus journey times along the High Street. The plan also shows the provision of a crossing point on Bartlow Road.
118. The Transport Statement commits to the provision of a travel plan to encourage the use of alternative modes of transport other than the private motor vehicle for occupiers of the new dwellings prior to occupation. However, further details are required and a full travel plan would need to be agreed prior to first occupation of the dwellings. This would be a condition of any consent.
119. The development therefore has the potential to comply with Policies DP/3, DP/4, TR/1, TR/2 and TR/3 of the LDF that seek to ensure that the proposal would not have an adverse impact upon from traffic generation.

#### *Flood Risk*

120. The site is located within Flood Zones 1, 2 and 3 (low, medium and high risk). It currently comprises arable land and a water meadow that discharges into the river at the natural greenfield run-off rate.
121. The River Granta is the most significant watercourse in the area that is located immediately to the south of the site. There are no other notable watercourses within the vicinity of the site. The main sources that would increase the risk of flooding to the site are therefore fluvial flooding from the river and surface water flooding.
122. The design of the development has utilised the sequential approach. The built-up areas including gardens would be wholly located within Flood Zone 1 (low risk). The buffer zone to the south would be partially located within Flood Zones 1, 2 and 3 (low,

medium and high risk). The surface water attenuation pond would be located outside the critical 1 in 100 year plus climate change floodplain.

123. The development has a 'more vulnerable' flood risk classification due to the residential use. An appropriate surface water drainage system of sustainable drainage techniques is therefore required to ensure that it would not increase the risk of flooding to the site and surrounding area. In addition, appropriate ground and floor levels would need to be incorporated into the scheme.
124. The surface water drainage system would comprise SUDS in the form of infiltration systems such as soakaways to accommodate surface water from a 1 in 100 year storm event plus climate change on the site to the north of Bartlow Road. To the south of Bartlow Road, a surface water attenuation pond would be provided along with a piped outfall to restrict the run-off from the development to existing greenfield run-off rates. This could also include infiltration to the surrounding land. In addition, other measures such as permeable paving and storage tanks could be incorporated.
125. Floor levels would be set a minimum of 150mm above ground levels and external hard surfaces would be designed to fall away from dwellings.
126. Given the above outline strategy, no objections have been raised to the development by the Environment Agency or County Flood Team. Conditions would be attached to any consent to secure a detailed surface water drainage scheme together with its maintenance and management. The proposal would therefore comply with Policy NE/11 of the LDF that seeks to ensure that the development would not increase the risk of flooding to the site and surrounding area.
127. Any future flood relief scheme on Leadwell Meadows to the south of the river would need to consider the impact upon the development should permission be granted.

#### *Neighbour Amenity*

128. Whilst it is acknowledged that there would be a change in the use of the land from an open field to residential dwellings, the development is not considered to result in a significant level of noise and disturbance that would adversely affect the amenities of neighbours. A condition would be attached to any consent in relation to the hours of use of power operated machinery during construction and construction related deliveries to minimise the noise impact upon neighbours.
129. The impact of the development itself on neighbours in terms of mass, light and overlooking will be considered at the reserved matters stage and would need to comply with Policy DP/3 of the LDF. It is noted that the land falls southwards.

#### *Heritage Assets*

130. The site is located in an area of high archaeological potential. However, an evaluation has been carried out that has not found any significant features of archaeological interest. A condition would be attached to any consent to secure a programme of excavation together with the recording and preservation of any features. The proposal would therefore comply with Policy CH/2 of the LDF that seeks to protect features of archaeological importance.
131. The site is located approximately 420 metres from the boundary with the conservation area. The development is considered to preserve the setting of the conservation area given that there are no views of the site from the conservation area or views from the

site to the conservation area and the increase in traffic through the village is not considered significant when taking into consideration the size of the village.

132. The site is located approximately 350 metres from the nearest listed buildings at Barham Hall and Tower Mill. The development is unlikely to harm the setting of these listed buildings given that their immediate settings comprise open land and the development would be surrounded by a landscape buffer. However, given the elevated position of Barham Hall, the detailed design of the development would need to take account of the current rural setting. This would be determined at the reserved matters stage.
133. Thus the statutory requirements in sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of listed buildings and conservation areas would be met and the proposal would comply with Policies CH/4 and CH/5 of the LDF.

#### *Other Matters*

134. The development is not considered to result in a risk of contamination providing a condition is attached to any consent to control any contamination identified during the development.
135. The site is located on grade 3 (good to moderate) agricultural land. The development would result in the permanent loss of this agricultural land contrary to policy NE/17. However, this policy does not apply where land is allocated for development in the LDF or sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural use of the land. In this case, this is considered satisfactory given the absence of up-to-date policies for the supply of housing in the district. Therefore, limited weight can be attached to this policy.
136. The Parish Council has raised that the development does not provide for potential for employment. However, the local planning authority is considering the development proposal as it stands and whether it comprises sustainable development, including access to employment, which is addressed above.
137. The site is not located within or close to any designated employment area and it is not necessary to consider the lack of any employment within the proposal is not .
138. The gas main that runs across the site to the north of Bartlow Road is located outside the site.
139. The comments of Linton Parish Council in relation to the submission of inaccurate or incomplete assessments is noted. However, the reports are considered satisfactory and they do not necessarily form the basis of the recommendations of the specialist consultees and officers which are based upon the situation on the ground.
140. The lack of consultation with the local community is regrettable as this is encouraged by the Council but would not warrant refusal of the application.
141. A condition would be attached to any consent to secure fire hydrants in the interests of safety given the scale of the development.

#### **Conclusion**

142. In considering this application, the following relevant adopted Core Strategy and

Development Plan policies are to be regarded as out of date while there is no five year housing land supply:

143. Core Strategy  
ST/2: Housing Provision  
ST/5: Minor Rural Centres
144. Development Plan  
DP/1: Sustainable Development  
DP/7: Village Frameworks  
HG/1: Housing Density  
HG/2: Housing Mix  
NE/4 Landscape Character Areas  
NE/6: Biodiversity  
NE/17: Protecting High Quality Agricultural Land  
CH/2: Archaeological Sites  
CH/4: Development Within the Setting of a Listed Building  
CH/5: Conservation Areas  
This means that where planning permission is sought which would be contrary to the policies listed above, such applications must be determined against paragraph 14 of the NPPF.
145. This report sets out that the development would have some visual impact upon the landscape setting and setting of listed buildings of the village. However, it is considered that the landscape impact is limited and has been successfully mitigated as part of the outline application and the preservation of heritage assets could be achieved by the design of the development at the reserved matters stage and the use of an appropriate condition in respect of archaeological interests.
146. These limited adverse impacts must be weighed against the following benefits of the development:  
i) In the context of a lack of five-year housing land supply, the positive contribution of up to 55 dwellings towards the housing land supply in the district based on the objectively assessed need for 19,500 dwellings and the method of calculation and buffer identified by the Waterbeach Inspector.  
ii) Contribution of 40% affordable housing in the context of a high level of district wide housing need and a local housing need for 79 applicants  
iii) Potential for access to public transport, services and facilities and local employment.  
iv) Developer contributions towards sport space, children's play space, community facilities in the village and improvements to traffic schemes in the village.  
v) Employment during construction to benefit the local economy.  
vi) Greater use of local services and facilities to contribute to the local economy.
147. Whilst it is acknowledged that the policies for the determination of housing in the LDF are out-of-date, the adverse impacts of granting planning permission are not considered to significantly and demonstrably outweigh the benefits offered by this application.

### **Recommendation**

148. It is recommended that the Planning Committee approves the application subject to the following: -

### **Conditions**

- a) Outline planning permission- submission of reserved matters
- b) Approved Plans (where relevant)
- c) Details of Hard and Soft Landscaping Scheme, including boundary treatments
- d) Landscaping Implementation
- e) Visibility Splays
- f) Travel Plan
- g) Contamination Investigation
- h) Flood Risk Assessment
- i) Surface Water Drainage Scheme including maintenance and management
- j) Foul Water Drainage
- k) Noise and Deliveries During Construction
- l) Waste Management Strategy
- m) Spread of dust
- n) Construction Phases
- o) Noise Protection
- p) Species Survey
- q) Ecological Enhancement
- r) Ecological Management
- s) Archaeological Work
- t) External Lighting
- u) Renewable Energy Statement
- v) Housing Mix
- x) Fire Hydrants

***Section 106 agreement***

- a) Affordable Housing
- b) Open Space
- c) Community Facilities
- d) Waste Receptacles
- e) Strategic Waste
- f) Transport Requirements

**Background Papers:**

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

- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Development Framework Supplementary Planning Documents (SPD's)
- South Cambridgeshire Local Plan Submission 2014
- Planning File References: S/1963/15/OL

**Report Author:**

Karen Pell-Coggins  
Telephone Number:

Principal Planning Officer  
01954 713230

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

Minutes of a meeting of the Planning Committee held on  
Wednesday, 7 September 2016 at 10.30 a.m.

**PRESENT:** Councillor David Bard – Chairman  
Councillor Kevin Cuffley – Vice-Chairman

Councillors:	John Batchelor	Anna Bradnam
	Brian Burling	Pippa Corney
	Sebastian Kindersley	David McCraith
	Charles Nightingale	Deborah Roberts
	(substitute)	
	Tim Scott	Robert Turner

Officers in attendance for all or part of the meeting:

Julie Ayre (Planning Team Leader (East)), Julie Baird (Head of Development Management), Thorfinn Caithness (Principal Planning Officer), Alistair Funge (Planning Enforcement Officer), John Koch (Planning Team Leader (West)), Karen Pell-Coggins (Principal Planning Officer), Stephen Reid (Senior Planning Lawyer) and Ian Senior (Democratic Services Officer)

Councillors Nigel Cathcart, Cicely Murfitt and Peter Topping were in attendance, by invitation.

### **1. APOLOGIES**

Councillor Des O'Brien sent Apologies for Absence. Councillor Charles Nightingale attended as substitute.

### **2. DECLARATIONS OF INTEREST**

Councillor John Batchelor declared a non-pecuniary interest in Minute 4 (S/1963/15/OL – Bartlow Road, Linton) because he had been present at Parish Council meetings when this application had been discussed. Councillor Batchelor was Chair of the Governors of Linton Village College and had contributed the background note on student capacity that formed part of the Committee agenda. He said that this note had been written some time ago before he became a District Councillor in May 2016. Councillor Batchelor was considering the matter afresh.

Councillor David McCraith declared a non-pecuniary interest in Minute 7 (S/0243/16/FL – Snow Centre in Bassingbourn) by virtue of the proximity of his house to the application site.

Councillor Tim Scott declared a non-pecuniary interest in Minute 4 (S/1963/15/OL – Bartlow Road, Linton) because one of the applicants was a close family friend. Councillor Scott withdrew from the Chamber, took no part in the debate and did not vote.

### **3. MINUTES OF PREVIOUS MEETING**

The Committee authorised the Chairman to sign, as a correct record, the minutes of the meeting held on 3 August 2016.

### **4. S/1963/15/OL - LINTON (BARTLOW ROAD)**

Members visited the site on 6 September 2016.

Councillor Tim Scott withdrew from the Chamber.

Officers verbally updated members in relation to Foul Drainage, Surface Water Drainage and Flood Risk, Ecology, Education and Developer Contributions. The site area was also clarified.

Linton Parish Council had submitted a report by an independent drainage consultant that advised that a connection to manhole 1502 that was not acceptable. It was confirmed that the applicants would connect to manhole 7501 via a pumped connection at an agreed flow rate of 3.8 l/s. This manhole is on a system that has been agreed to have sufficient capacity by Anglian Water and the independent drainage consultant. A foul water drainage condition was suggested to address this matter.

Linton Parish Council had requested a new Flood Risk Assessment based upon an updated map that appeared to have been prepared in relation to meeting to discuss a flood relief scheme for the village. It was not the official map on the Environment Agency website and the submitted Flood Risk Assessment was based upon the official map. The status of the flood relief scheme was questioned as no planning permission had been sought for such a scheme. A surface water drainage condition was suggested to address this matter together with the maintenance and management of the system subject to the section 106 agreement.

A survey for Roman Snails had been carried out on the site and it was confirmed that none were seen and no empty shells found to suggest the presence of this protected species. The Ecology Officer had advised that the scheme for ecological enhancement condition should take in account the species.

Cambridgeshire County Council had advised that the schools have sufficient capacity to accommodate demand within the catchment area. If schools wish to accommodate pupils out of catchment, the funding for any expansion of schools cannot be agreed as part of the development as it would not comply with the CIL regulations.

The developer had confirmed agreement to the developer contributions set out in appendix 2 of the report.

Jake Nugent (applicant's agent) and Councillor Enid Bald (Linton Parish Council) addressed the meeting. As well as speaking as a Committee member, Councillor John Batchelor also spoke as one of the local District Councillors. Councillor Henry Batchelor, the other local Member, had submitted a written statement focussing on the following points:

- cumulative impact
- the unsatisfactory and "outdated" statutory consultation process conducted by Cambridgeshire County Council relating to pupil capacity at the three local schools
- inconsistent evidence as to the ability of the drainage network to cope with this development
- a 2013 report suggesting that the A1307 could not cope with any more traffic, thus making unsustainable further large-scale development alongside it
- the proposed development being outside the village framework.

Mr. Nugent referred to the presumption in the National Planning Policy Framework in favour of sustainable development. He maintained that this proposal was sustainable. He said that the proposal would address, in part, the shortfall in the District's housing supply,

and provide much needed affordable housing. Mr Nugent said that the development would not increase flood risk.

Councillor Bald observed that the proposal was outside the village framework, and had been rejected during the Strategic Housing Land Availability Assessment process as being unsustainable. The proposal would compromise both the landscape and local character. It would have serious implications for traffic safety both along the A1307 and in Linton High Street. The Section 106 contributions were insufficient and only Linton Village College had space to expand. Councillor Bald said that flooding was a serious issue as the proposal extended into the flood plain, adversely affecting the peaceful character of the meadows. In response to a question, Councillor Bald said that Linton Village College accepted students from outside its catchment area because the village was a Rural Centre.

Speaking as a local Member, Councillor John Batchelor focussed on the viability and deliverability of the site. He said that the general opinion in Linton was the foul water drainage was at capacity, and contended that the developer had not addressed that issue. As a result, flooding was likely. Councillor John Batchelor said the application should be deferred until the risk of flooding had been mitigated. In response, officers stated that Anglian Water were satisfied with the application's viability having devised a scheme for dealing with the disposal foul water by connecting to manhole 7501 via a pumped regime.

Committee members debated the application at length. They made the following points:

- The significance the comments from the Campaign for the Protection of Rural England (paragraph 39 of the report), and increased flood risk (paragraph 20)
- Traffic on the A1307, especially at peak times
- Concern about increased flood risk, especially to those houses on the southern edge of the development, and location of the attenuation pond
- Concern about the proposed heights of buildings on the edge of the village
- Linton Village College was at full capacity
- It was reckless to build this number of houses next to the A1307
- Reliability of pumped sewage systems
- The danger of building houses on the flood plain

Rob Lewis (Education Department, Cambridgeshire County Council) addressed the meeting, and answered questions. The discussion related to varying methods of assessing school capacity, consultation with schools, and the sustainability of transporting students to alternative schools.

A Housing Officer confirmed that 70% of the affordable housing would be for rent, with the first eight being offered to those with a local connection, and the remainder being offered to those with a local connection and to others on a 50 /50 basis.

Officers pointed out that the current application was outline only.

A proposal to defer the application in order to commission an engineer's report on foul water drainage capacity and flood risk issues was proposed by Councillor John Batchelor, seconded by Councillor Deborah Roberts, and put to the vote. The proposal was lost by seven votes to four.

The Committee **approved** the application, subject to:

1. The prior completion of a Legal Agreement under Section 106 of the Town and Country Planning Act 1990 relating to Affordable Housing, community facilities,

open space, strategic waste, transport requirements and waste receptacles, as detailed in Appendix 1 to the report, and the maintenance and management of the surface water drainage scheme;

2. Two extra Conditions, as follows:
  - (a) Prior to the commencement of any development, a scheme for the provision and implementation of foul water drainage to connect to manhole 7501 via a pumped regime shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.  
(Reason - To reduce the risk of pollution to the water environment and to ensure a satisfactory method of foul water drainage in accordance with Policy NE/10 of the adopted Local Development Framework 2007.)
  - (b) Prior to the commencement of any development, a detailed scheme for the provision and implementation of flood risk and surface water drainage mitigation in accordance with the Flood Risk Assessment reference 151077 dated July 2015 by Rossi Long Consulting shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency and Linton Parish Council. The scheme shall take into account any subsequent changes in any revised flood map produced by the Environment Agency between approval and implementation of the scheme. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the Local Planning Authority.  
(Reason - To ensure a satisfactory method of surface water drainage and to prevent the increased risk of flooding in accordance with Policies DP/1 and NE/11 of the adopted Local Development Framework 2007); and
3. The Conditions referred to in the report from the Head of Development Management.

Councillor Deborah Roberts voted to refuse the application, and asked that her name be recorded.

#### 5. **S/2921/15/OL - WILLINGHAM (LAND SOUTH OF 1B OVER ROAD)**

Members visited the site on 6 September 2016.

Mrs Metherell (objector) addressed the meeting. She referred to

- Increased flood risk to existing properties
- Traffic in Over Road

Councillors Brian Burling and Pippa Corney (local Members) acknowledged the traffic and parking issues in Over Road, and raised the ideas of double yellow lines to prevent parking, and asking the developer (with the understanding that this could not be demanded) to provide parking on site for residents living along Over Road.

Committee members made the following points:

# LINTON PARISH COUNCIL

Clerk: Mrs. Jenny Seaward, The Village Hall, Coles Lane, Linton, Cambridge. CB21 4JS.  
Email: [lintonpc@btconnect.com](mailto:lintonpc@btconnect.com)  
Telephone: 01223 891001  
Chairman: Ms Merrie Mannassi  
[www.lintoncambridgeshire-pc.gov.uk](http://www.lintoncambridgeshire-pc.gov.uk)



FAO: Stephen Kelly, Julie Ayre, Michael Sexton and Karen Pell-Coggins  
Greater Cambridge Shared Planning  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge  
CB23 6EA

24<sup>th</sup> August 2021

**RE: Reasons for imposing drainage conditions for Bartlow Rd site - S/1963/15/CONDE (Foul Condition 11 for Bartlow Rd) and 21/00629/S73 (variation of condition application for Bartlow Rd)**

Dear All,

Please find accompanying this letter the Minutes of the Planning Committee of 7<sup>th</sup> September 2016 record the reason for the flood and drainage conditions for Bartlow Road and confirms that Anglian Water and the applicant (who were both present at the Committee Meeting) agreed this condition was appropriate, in accordance with the independent report's findings.

The reason for the condition stands as the drainage is no better than it was in 2016. In fact, the drains are more under pressure due to the additional houses added since the report.

The agreement of Anglian Water to this condition for the Bartlow Rd site is also pertinent to the delivery of the foul drainage for the Horseheath Rd site.

Linton Parish Council would like to add that the comments from the Planning Officer (extract below) regarding the flood plain restoration and flood map were erroneous.

*"Linton Parish Council had requested a new Flood Risk Assessment based upon an updated map that appeared to have been prepared in relation to meeting to discuss a flood relief scheme for the village. It was not the official map on the Environment Agency website and the submitted Flood Risk Assessment was based upon the official map. The status of the flood relief scheme was questioned as no planning permission had been sought for such a scheme. A surface water drainage condition was suggested to address this matter together with the maintenance and management of the system subject to the section 106 agreement"*

This was an official flood map which included surface water flooding; the flood risk assessment used by the developer was based on an outdated map. The "flood relief scheme" was actually a floodplain restoration scheme, based on re-digging ditches as per LPC Riparian Duties. The scheme did not require planning permission, had been advised by the EA and SCDC (Rob Mungovan, who continues

to advise LPC on river and flooding matters) and was partly funded by SCDC. LPC had no chance to refute these errors in the meeting and the factually incorrect statements unfairly influenced the committee decision. Linton Parish Council submitted comments to SCDC following the decision of the Planning Committee in the meeting on the 7<sup>th</sup> September 2016, these also accompany this letter as an attachment to the email.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'J.S.' or similar initials, followed by a period.

Mrs Jenny Seaward

Clerk and RFO to Linton Parish Council

## **BARTLOW ROAD S/1963/15/OL**

Following the Planning Committee decision on the above application, Linton Parish Council considers that the grounds upon which this decision was reached was made on incomplete information and inappropriate data. We feel that the decision should be reviewed and the decision re-assessed for the following reasons:

- The concerns laid out in the Holding Objection have not been adequately addressed
- There has been no adequate Environmental Impact Assessment for the site, with regard to the impact on the village, its setting and the areas downstream.
- The Flood Assessment concerned only the sites of the development, failing to take regard of the effects of the development on the river and the existing housing downstream.
- The housing would be detrimental to the flood amelioration and defence work currently being carried out in conjunction with other villages and landowners
- Safety of the national fuel line which crosses the site has not been addressed
- The outline layout and type of housing indicated would mainly be 2-3 storey houses which would be most unsuited to this area of rising ground, with housing on the skyline affecting the village setting and views out of our Special Conservation Area, in particular
- The most suitable housing is as the current adjacent housing mix, which is predominantly bungalows. The housing numbers proposed would be undeliverable.
- The s106 contributions are not adequate to compensate for the harm that would be caused by the development. In particular the need to provide suitable flood defences and flooding amelioration for the extra surface water flooding due to loss of open space. This would detrimentally affect the current housing in Linton and on downstream; we are working with other villages and landowners to mitigate flooding.
- The s106 contributions for education were based on inappropriate data, barely taking into account the natural birth rate within the village, not considering the educational needs of incoming families and the needs of feeder villages outside Linton. We would request that the data upon which the s106 was calculated be re-evaluated to reflect the actual situation of the area.

### **Rainwater / flooding**

The SHLAA confirms that the River Granta follows part of the southern boundary and as a consequence the southern quarter of the site is within the water meadows and flood zone 2. The indicative plan shows that although the housing has been moved slightly away from the river, part of this flood plain would still be built upon.

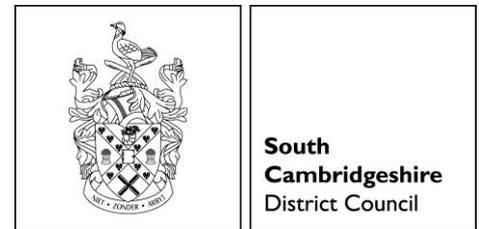
The meadow is a natural catchment area for the flooding of the river, and any obstruction will exacerbate the flooding of the core of the village. As confirmed by the LPA Ecologist, the proposed housing will have a significant and detrimental effect on the effectiveness of this catchment area and will lead to flooding elsewhere along the river and downstream of the site, exacerbating the flooding problems of Linton.

The impact on the village would be detrimental, as would the provision of visually prominent bunding and the raising of building heights and floor levels of the new housing to prevent their flooding. The pre-application concerns of the Ecology Officer have not been taken into account as the changes have been minimal, and the public amenity areas and flood relief areas are all still within the parts of the site liable to regularly flood. This means any relief provision would be ineffective when it is flooded. There is no certainty of provision within the application scheme of off-site mitigation, and even so, this is likely to be obtrusive and detrimental to the prominent valley setting.

The application therefore fails Local Plan DPD policy DP/1 for sustainable development, which requires that flood risk be minimised. It also does not comply with the requirements of NPPF103 as well as Policies 4.3, 4.6, 4.8 and 5.1 of the emerging Cambridgeshire Flood and Water SPD.

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# Agenda Item 8



29 September  
2021

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

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

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## **S/2553/16/CONDH – Ward Linton / Parish Linton (Land Off Horseheath Road)**

Proposal: Submission of details required by condition 12 (foul water drainage) of planning permission S/2553/16/OL for outline planning application with all matters reserved for up to 42 dwellings and allotments (not less than 0.45 hectares)

Applicant: Croudace Homes

Key material considerations: Foul Water Drainage and Neighbour Amenity

Date of Member site visit: N/A

Is it a Departure Application?: No

Decision due by: 9 September 2021

Application brought to Committee because: The application is one that in the opinion of officers, in consultation with the Chair and Vice-Chair, should be determined by Committee because of special planning policy considerations, the complexity of the application, the application is significant and / or of strategic importance to an area beyond both specific site and parish

Presenting officer: Karen Pell-Coggins

### **Executive Summary**

1. The application seeks to agree the foul drainage details in relation to condition 12 of planning consent S/2553/16/OL for the erection of up to 42 dwellings on the site and allotments.
2. The foul drainage system will consist of discharge of foul drainage from the dwellings via foul water sewers to a private foul pumping station which would

then direct the flows via foul water sewers towards manhole 1801 in Lonsdale to connect to main foul sewerage system.

3. The concerns from the Parish Council and local residents in relation to the method of foul drainage and the impacts upon the foul drainage system and the amenities of existing and new dwellings is noted.
4. However, the Council's specialist advisors and statutory consultees consider the foul drainage scheme to be acceptable and it would not result in significant harm to the quality of water resources or adversely affect the amenities of neighbours of the existing or new dwellings.

### **Relevant planning history**

5. **S/4418/19/RM** - Approval of matters reserved for access appearance landscaping layout and scale following outline planning permission S/2553/16/OL for the erection of 42 dwellings including the provision of 0.45ha for allotments - Approved
6. **S/2553/16/OL** - Outline planning application with all matters reserved for up to 42 dwellings and allotments (not less than 0.45 hectares) - Appeal Allowed

### **Planning policies**

7. **South Cambridgeshire Local Plan 2018 Policies**  
CC/7 Water Quality  
HQ/1 Design Principles  
SC/10 Noise Pollution  
SC/14 Odour and Other Fugitive Emissions to Air
8. **Supplementary Planning Documents (SPD's)**  
Cambridgeshire Flood and Water - Adopted November 2016  
Greater Cambridge Sustainable Design and Construction - Adopted January 2020
9. **National Policy**  
National Planning Policy Framework (NPPF) 2021  
National Design Guide 2019

### **Consultation**

10. **Anglian Water** – No reply but see below.

Previous comments: -

No objections.

Response to Linton Parish Council Drainage Consultant's Report - Assessment of Foul sewerage facilities in Linton Village August 2016

Anglian Water was consulted on both planning applications for Land Off Horseheath Road Linton and Bartlow Road, Linton. We can confirm that there is a capacity to accommodate the foul flows from both developments. We note that both planning applications were approved by the Local Planning Authority South Cambridgeshire with drainage conditions applied to the decision notices. Anglian Water works closely with the Local Planning Authority and the developer to ensure that the approved drainage strategy is complied without causing detriment to our network and to the local area.

We have checked the reported incidents to Anglian Water for this area. We can confirm that our field technicians who visited the area have investigated these issues accordingly and resolved them on site. We can confirm these issues within our foul network were related to blockages in our foul network which are caused by non-flushable items being flushed into our network. These items can cause issues and prevent the foul sewerage flows from moving within the network causing blockages until our field technicians from our operations team do visit the affected area and flush the network.

Our network capacity assessment is based on the number of dwellings as well as the applicant's drainage strategy such as the point of connection and the proposed discharge rates. Our engineers when carrying out their capacity assessment take into account the additional foul flows from the proposed development to be discharged into our network. They also take into account the existing developments and local growth in the area as well as any incidents of flooding that are network capacity related incidents. The available capacity within the network and within our water recycling centre will be dependent upon the development proposal, location of any connection point and proposed discharge rates proposed by the applicant.

Please note we don't take into account the incidents of flooding that are not related to capacity in our network such as blockages caused by non-flushables, tree roots, operational maintenance issues and surface water flooding. Such incidents need to be reported to our operation team on 0345 714 5145. During the heavy rainfall storm events our foul drainage network may become overwhelmed with the sudden surge of surface water caused by heavy rainfall which can enter our network for not having anywhere else to drain. These incidents are also not related to capacity in our network.

Response to Linton Parish Council response to the above

We can confirm that our senior engineer has reviewed the assessment supplied to the parish by A E Designs and we made the following observations

In general the flow rates used are substantially higher than we would use to determine demand loading. Although Sewers for Adoption is a recognised standard the flow rate employed (4000 lts/house/day) is a factored value rather than a limit state parameter. It is used to ensure sufficient allowance is made for areas of uncertainty in design when considering the most appropriate minimum pipe size. It is not intended as representative of actual demand.

In evaluating actual demand ahead of flow measurement, our practice is to base the initial assumptions on the values derived from our observations of water consumption, occupancy and asset performance. We refer to this in our minimum asset standards (MAS) and calculate the base dry weather flow value as follows:

Occupancy rate of 2.35 people per dwelling  
Consumption rate of 125 lt/head/day  
Diurnal peak factor of 2.12  
Infiltration allowance of 25%

These represent an average of values across our region.

Whereas using the Sewers for Adoption rate produces a peak dry weather flow of 0.046 l/s per property, the MAS calculation for demand is 0.008 l/s per property.

There is in general, a pronounced diurnal pattern in demand flow from residential areas. Consequently sewerage is designed to allow for a degree of flow balancing. Therefore, along with the instantaneous flow rate when assessing capacity, we also consider the volumetric loading in cubic metres over a given time (eg. m<sup>3</sup>/hr or m<sup>3</sup>/day).

In this context the 10-fold disparity between our average observed volumetric loading and that extrapolated from the Sewers for Adoption rate becomes very significant.

11. **Drainage Officer** - No objections, as amended.

Information has been supplied to confirm the outstanding points raised. The foul water scheme shall be constructed and maintained in full accordance with submitted information supplied on 10 December 2020.

The foul water pumping station is still within close proximity of a dwelling, whilst this may have the potential for smell nuisance this is outside of our remit to comment on.

Previous comments: -

Croudace Drainage Statement referenced DES/035/410 (C) and dated July 2020 has been reviewed.

The Croudace Drainage Statement appears to propose a private foul water pumping station with 24 hour storage capacity and telemetry system 'which will provide the management company with a direct contact should a failure occur'.

The foul water pumping station will discharge at a yet to be agreed rate to an existing foul water public sewer manhole within the neighbouring Lonsdale Estate.

Confirmation of the private pump station rate that has been agreed with Anglian Water is required.

Consideration of the risk of flooding following failure of the on-site pumping station and how this risk will be managed - supported by calculations - is required.

Detailed construction drawings of the proposed foul water drainage system and onsite pump station are required.

Confirmation that an agreement has been made with the necessary landowners/consenting authorities to cross third party land is required.

A Management and Maintenance Plan for all proposed drainage features that are to be adopted and maintained by a third party management company is required.

Please submit the MicroDrainage Network Model for the foul water drainage network.

With reference to Appendix G (Foul Water Drainage Strategy) of the Drainage Statement, the minimum distance of the private foul water pumping station to habitable buildings appears to be around 2.5m. Sewers for adoption guidance indicates 15m may be more appropriate to minimise the risk of odour, noise and nuisance. Please provide justification for the distance of the private foul water pumping station to any habitable buildings

12. **Environment Agency** – From the information available the associated pumping station appears to be located within floodzone 1, low risk, not floodzone 2 as has been suggested.

We are unable to recommend the discharge of Condition 4 for the following reason. We support your SuDS engineer's comments and await the applicant response.

13. **Environmental Health Officer** – No objections, as amended.

Accepts that the noise is unlikely to be an issue given the attenuation that is likely to be achieved through the siting of the electric pump in the underground concrete tank.

In relation to the odour, a pump rate of 2 or 3 a day is unlikely to allow septicity to occur whilst it is waiting to be pumped (particularly as it will be diluted material with other waste water such as baths, sinks, showers, etc.) and it is accepted that it is unlikely that odour nuisance will occur.

Previous comments: -

I understand a number of concerns have been raised by local residents and Linton parish council concerning the suitability of the proposal, citing amongst concern, issues of noise and odour. In response, I make the following comments.

#### Noise

The applicant has not provided any details of the noise that may arise from the equipment or how this will be attenuated. Whilst I do not feel it necessary for a full noise survey to be undertaken, some information concerning the noise levels from the pump (or any other significant noise contributors) would be useful as well as the expected attenuation any housing would provide could allow me to ensure that these concerns are unlikely to affect local residents to the proposal.

#### Odour

Generally speaking, odour may arise from pumping stations if the waste is allowed to go septic. Whether this material is likely to go septic will depend on multiple factors including how often the pumping station discharges into the mains sewer, whether any chemical dosing is undertaken as well as the concentration of waste to the water. It would be useful for the applicant to confirm how they calculate the capacity of the pumping station and how frequent they estimate that the waste will be pumped.

14. **Lead Local Flood Authority** – The condition application is for the discharge of a foul condition, which we do not comment on. As stated in our previous response, the application does not appear to have any surface water flood risk or drainage implications therefore we have no comments to make.
15. **Linton Parish Council** – Objects to the application, as amended.

Letter received 23 July 2021

Linton Parish Council have grave concerns regarding your consideration of LPC comments, which appear to be being ignored or not treated with due seriousness. Also, weight appears to be given to information that is based on inconsistent drawings, out-dated, inaccurate or inappropriate. We request that the conditions for drainage schemes, surface water and foul water conditions are re-considered and that your objections to these are re-instated.

Following the heavy rainfall of 20th July 2021 which, although not unprecedented, has served to highlight the special issues of flooding in this village, LPC request a full inquiry into flooding and a moratorium on development and the use of SUDs schemes. The inadequacy of the sewage system and poor maintenance of drains are contributing factors to the flooding. The need to review the systems that affect the village and lead to the problems have been seen so clearly over the past few days and solutions need to be found. These are issues that LPC has been raising for many years.

Please see comments previously raised by LPC on SUDS and surface water drainage schemes. These include:

- i) Inadequate porosity and infiltration tests - wrong time of year, inappropriate sites, following long dry spells, unable to repeat accurately due to changed surface and substrate of test holes.
- ii) The routes of surface water flooding - down spine roads, following contours rather than the route that developers would like them to follow
- iii) Historic flooding levels
- iv) Local knowledge of flooding routes and levels of water.
- v) Inadequacy of flood prevention measures such as loss of bunds as shown in the OL applications
- vi) Inaccurate EA flooding maps, or the wrong/outdated/inaccurate maps being used.
- vii) Conflict between plans and drawings in different applications.
- viii) Impact of balance ponds and hard structures on the landscape
- ix) Failure to take into account the cumulative effect of development on the drains.

Full details are in the comments submitted by LPC to the applications and amendments.

LPC has not been given the right of response and in a number of cases has only discovered retrospectively that the specialist drainage report that the planning condition was based on has been ignored.

The parlous state of the foul water and sewage systems have been repeatedly raised. The cumulative effect of development and additional pressure on the system has been ignored. The disputed calculations of Anglian Water appear to have over-ridden the LPC commissioned engineering reports, the informed comments of our own engineers on LPC and consultants, in making decisions on development.

In the documents recently forwarded to LPC as part of the appeal process. we see that a document has been used to inform the decision to remove the LLFA objections to the Bartlow Road drainage scheme. This probably refers to work done on the river around 1968. This work would have been done by the EA and is probably the cement lining of the river to change the drainage through the village near the High Street bridge and Dog and Duck. This did not change the floodplain or affect the river near the development sites; it merely turned a section of the rare chalk stream into a drainage channel (work that is currently being reviewed with a view to returning the stream to its natural state). Being so far downstream, there is no effect on the development site.

Later work, by LPC, has helped restore the floodplain (helped by a grant from SCDC) but this is again downstream of the development site and has no bearing on flooding or surface water drainage in that area. In fact we are acutely aware that the development sites could undo the work done by LPC to protect the village, FYI all this work by LPC was advised by experts and appropriate authorities and with full permission.

The points raised by the developer that these works have any bearing on flooding on site is refuted. The surface water flooding schemes proposed by the

developers would add to flooding problems in the village, downstream and the state of our rare chalk stream.

The unique geological, geographical and flooding sensitivity of Linton need to be fully understood and the proposals of the developers reviewed - current housing development is not appropriate and not sustainable. Linton is in a river valley with a rare chalk stream. It can flood from the river, from surface water and also from the gravel beds beneath the village. It lies over a main aquifer which, like the river, may be full or nearly dry due to over abstraction; a sensitive area. This, combined with a dated sewage system, already at overcapacity, leaves us vulnerable to climate changes or even seasonal changes - the latest flood is nothing new.

If developers would design houses suited to needs, in appropriately small numbers and with proper provision for the welfare of neighbours and the situation, then they might be acceptable. As it is, a full review of housing development and its effects on the established community need to be re-considered and the development proposals rejected.

For the moment we need building work to be stopped at Horseheath Road, and any supposed pre-commencement work to be forbidden at Bartlow Road.

It is clear that the drainage and foul water schemes for both sites are not appropriate, will not work, are detrimental to the village and will add to the long-term problems of Linton.

NB A recent short burst of heavy rain had the Horseheath Road "balance pond" overflowing, flooding neighbouring gardens and houses in Lonsdale, and causing flooding downstream into the village. The developer saw fit to pump out the pond into the yellow pipe leading to the manhole on Bartlow Road (not currently a permanent connection, and one that LPC object to most strongly) the result was, as expected, muddy water and grit flooding out near the Fire Station. This is what will happen should a permanent connection be made, though then it will be sewage that floods out. The capacity of the system cannot cope with additional waste added to the Bartlow Road manholes, as LPC have said repeatedly.

Comments on application

Please read in conjunction with the comments on S/4418/19/CONDD, Foul Water Pump. The recent amendments/information only refer to noise and odour (relying on manufacturer assertions rather than data) but LPC now comment on the drainage scheme.

LPC are aware that a connection has been laid to the Lonsdale manhole, for which SCDC approval has not been given, indeed this connection has been specifically objected to by LPC, as it links to the already over-capacity Bartlow Road sewer pipe (see below and also the Bartlow Road development).

Anglian Water has been cavalier, if not negligent, in its assessment of the connections, and hold vicarious responsibility and would be liable should the foul water scheme fail.

When this condition came to LPC for comment, we responded (along with the Sustainable Drainage Engineer) that there was insufficient information to give fully informed comments. We now submit comments on the (still incomplete) information that has been submitted.

A drainage layout is included which gives insufficient detail regarding the route of the foul water drains and how they might link to the main sewer (the 6 inch victorian pipe) , which runs down Bartlow Road. The link across the easement is not drawn nor is the link to the main sewer. It appears that the link to the village sewage system is expected (by the developer) to be via the manhole in Lonsdale that then links to the already overburdened sewer on Bartlow Road. This is not acceptable and the condition should be refused.

i) The sewage pipe is planned to go through the "easement" of the SCDC Ransom Strip to link to the already-overburdened Lonsdale manhole. This is not part of the original plan and has not been sufficiently assessed i.e. in conjunction with the overall sewage system.

ii) This will then link to the 6inch Victorian sewer on Bartlow Road; a link expressly forbidden in the Bartlow Road development due to lack of capacity. Since that OL application, there have been several infill houses and extensions that also feed into this sewer pipe. However, the connection at Lonsdale has not been evaluated to consider the additional burden.

LPC request that Anglian Water is engaged in discussion regarding the connection of this development to the sewage system via Lonsdale.

iii) We do not contest that there is capacity at the pumping station and sewage treatment works at Cow Gallery Woods, west of Linton. However, we do argue that the pipes and drains through the village are already at or over capacity (development in Linton includes recent infill areas, house expansion and other outline planning applications, not considered by the reports)

iv) Linton Parish Council commissioned an independent report on the state of the drains on the western side of the village (AE Design report to be sent through to be considered with LPC comments). Our expert refutes the patency of the existing drain network.

v) The recommendations of the AE Design Assessment of Foul Water Sewerage Facilities in Linton Village in August 2016 concluded that the foul water main from this area into the village was the worst part of the village's pipework, 'in a parlous configuration' and should not be put under additional stress by being added to. The report identified that these sections through the village had insufficient capacity to convey the loads, had poor velocity and were unable to self-cleanse. The charts referred to in Appendices show these sections failed as they were already at over capacity of 105% to 134% and had varying slopes of between 1in5 and 1in75, all of which failed.

vi) The concern of LPC is that our expert is correct and that the High Street and historic core of the village will have to be dismantled (most houses in the Special Conservation Area have cellars and fragile foundations or baseplates) in order to accommodate larger pipes to carry the foul waste generated by the

development. The pipework from this site does not just lie under the modern developments of the 1970's, as shown in both the analyses, but also under the historic core of the village - the Outstanding Conservation Area with the highest density of listed buildings in Cambridgeshire and its narrowest High Street.

vii) The difficulties of installing new sewer pipes across the Recreation ground at the west of the village show how problematic it would be and the disruption that would be caused to the village to improve the sewage system to cope with the burden of the development.

viii) The Diocese report (for the OL application) and Anglian Water do not assess the capacity of the main village drainage, only the local capacity close to the point of connection. Our expert assessed beyond this, where the old village main drain is undersized and defective. A connection to a different sewage pipe is required.

ix) Recent moderate rainfall caused the contents of the Victorian sewer to overflow near the Fire Station (a regular event) the odour of sewage overspill was obvious and lasted for days. If this happens now, how much worse will it be when the additional houses (recent infill and being built) and this estate are added to the over-capacity system?

Please also see the comments on the Bartlow Road development which also contest the use of the Bartlow Road sewer for their estate.

Previous comments on the application: -

Concerns remain due to the proximity of the pumping station to houses with issues of noise, odours and loss of amenity (nuisance). This is placed at the area of the site that is prone to flooding, in SPZ2. Overflow or flooding from the foul sewage would contaminate the SUDS pond and the aquifer (which supplies our drinking water), immediately below or to Lonsdale. Please see previous comments, which still stand.

Please see Appendix A for a copy of the comments in relation to application S/4418/19/CONDD.

Please see Appendix B for a copy of the comments in relation to the Bartlow Road development.

Report from Linton Parish Council Drainage Consultant - Assessment of Foul sewerage facilities in Linton Village August 2016

The extant foul sewerage that may serve the proposed development is currently (allowing for variations in the assessment and discharge units calculations) delicately balanced between sufficiency and failure. Any loading additions to the sewerage under review should demonstrate the suitability of the extant installation. In particular, flow additions from surface water highway drainage and informal connections should be fully investigated before any drainage infrastructure proposals are offered.

From the desktop assessment carried out using Anglian Water sewerage data it is considered that the extant sewerage should not be further stressed by additional connections.

Please see Appendix C for a full copy of the above report.

Response to Anglian Water's response to report

We disagree with the contents of your letter and do not accept the assessment of capacity of the foul water system at that end of the village. The capacity to accommodate the foul flows from these developments is strongly doubted, knowing the parlous state of the sewerage system in this area ( see the report of AE designs and that SCDC has previously identified Lonsdale as an area where drains are a problem). Since that report more housing has been linked to the Bartlow Road pipe, with more small developments to come, exacerbating the issue of over-capacity.

Neither the surface water drainage nor the foul water conditioning (for either Horseheath Road or Bartlow Road developments) have been approved by the Local Planning Authority. Without this approval Anglian Water must not allow the proposed connections to be made. Nor can the planning process be circumvented by the developer adding the sewer linkages to TTRO submissions. The approval of conditions by the LPA is a requirement that takes precedence over any "approvals" given by Anglia Water. The drainage strategies have not been approved nor the conditions complied with.

You refer to the reasons for blockages. The network would not block if the gradient and flow through the system were sufficient to cope with what is put into the system. It is evident that the diameter of the pipe and self-cleansing velocities are inadequate to deal with even the current input.

LPC would like to see the calculations and assessments that have been made that lead them to consider that the connections are suitable. We consider your capacity assessment to be flawed.

We note that surface water flooding has not been taken into account, as you have acknowledged.

This is a particular problem in Linton due to its situation in the Granta Valley, with water from the hills surging into the village; these are now a regular feature of our climate. As you state, the foul water system may become overwhelmed by the surface water floods. This will enter your system as there is nowhere else for it to go, and surely must be taken into account when making your assessments as this is part of the required capacity of the network.

The various incidents of flooding (pluvial, fluvial and upward through the gravel beds) have been regularly reported and are subject to investigation and discussion with the LLFA and EA. The incidents of overflow due to heavy rainfall, which then goes into the drains and sewers are definitely related to

capacity in the network- sewage overflow from the inadequate pipes is hardly a new thing in Linton.

You note that Anglian Water "don't take into account incidents of flooding. ..caused by heavy rainfall which can enter the network for not having anywhere else to drain".

The principle of using SUDS schemes to deal with surface water flooding is that there is a natural watercourse to take the overflow, otherwise this is discharged into the sewage system.

SUDS maintenance will be undertaken by Anglian Water "From the end of the intermediate SUDS management area, where the adoption break point is identified and agreed ...up to the point where flows infiltrate into the ground, flow into a watercourse or enter the sewer network (Anglian Water Services Limited "Towards sustainable water stewardship" - Sustainable drainage systems (SUDS) adoption manual). The SUDs schemes to deal with surface water flooding do not meet conditions and have not been approved.

There is no natural watercourse for overflow on Horseheath Road - Martins Lane is not a watercourse but a footway and lane - so not to be considered as a natural watercourse for overflow, as the developer seems to consider. The overflow of surface water will join the already over-capacity sewer at Bartlow Road, causing sewage overflow.

There are clear issues with any of these end-points - the natural watercourse does not exist and the sewers are already overburdened. Dealing with this overflow is an issue for Anglian Water to deal with, and which has not been taken into account.

The attachment of more sewers to the current system is not acceptable.

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

16. Two representations have been received from local residents. A summary of the concerns is set out below. A full copy of the representations can be viewed on the Council's website.

17. **7 Lonsdale**

Concerns in relation to the capacity of the package pump system, venting of the system, health hazards from aerosol and other vented sewer gas, siting of the pump, noise, and lack of a health risk assessment. Alternative routing should be considered along with the need for additional sewer capacity.

18. **13 Lonsale**

Concerns in relation to the method of foul drainage and siting of the storage tank and resulting noise and smells. More logical to drain direct to the south.

## **The site and its surroundings**

19. The site is located outside the Linton development framework and in the countryside. It is situated to the south of Horseheath Road, east of Lonsdale and north of Martins Lane, Harefield Rise and Kenwood Gardens.
20. The site measures approximately 2.8 hectares in area and formerly comprised open agricultural land. The land falls north to south and east to west. Construction on the approved development of 42 dwellings and allotments has commenced.
21. The site is located in Flood Zone 1 (low risk). The land within the south western corner of the site and some properties in Lonsdale to the south west of the site are subject to the risk of surface water flooding.

## **The proposal**

22. The proposal seeks to discharge condition 12 of planning consent reference S/2553/16/OL dated 14 March 2018 in relation to foul water drainage of the site.
23. The full wording of the condition is set out below.

No development shall take place until details of a scheme for foul water drainage have been submitted to and been approved in writing by the Local Planning Authority, and including arrangements for subsequent management, and the details shall be implemented as approved and in accordance with an agreed programme.

24. The foul water drainage strategy for the site is discharge from the dwellings via a network of sewers to a private foul pumping station on the northern part of the public open space on the south western part of the site and then to manhole in Lonsdale and the main public sewer.

## **Planning Assessment**

25. The key issues to consider in the determination of this application relate to impact of the method of foul drainage upon the foul drainage system and the impact of the method of foul drainage upon the amenities of existing neighbours and the occupiers of the new dwellings.

### **Foul Drainage System**

26. The pumping station would be underground. It would have a capacity of 24,480 litres and would accommodate 150 litres per person for 24 hours storage in accordance with Building Regulations Part H requirements. It would be pumped 2 to 3 times per day. A telemetry system would be installed which

will provide the management company with a direct contact should a failure occur. The pumping station will be set to a rate agreed by Anglian Water at 5 litres per second.

27. The effluent will be then pumped through a rising main that will be laid within the footpath of the main estate road and pass between plots 33 and 34 and across land owned by SCDC before outfall to a break chamber and then to a gravity sewer that connects into an existing manhole (MH 1801) within Lonsdale. This will then connect to the existing main foul water sewer system on Bartlow Road.
28. Anglian Water has confirmed that there is adequate capacity within the system for the foul water flows from development at this site and the proposal would not be detrimental to the foul sewerage network or the local area. The method of calculation is based upon actual demand taking into account the development proposal, location of any connection point and proposed discharge rates together with initial assumptions on the values derived from our observations of water consumption, occupancy, asset performance and volumetric loading over a given time. This is different to the calculation from the Parish Council's Drainage Consultant that has assessed the capacity with regards to the rate in the Sewers for Adoption document which produces a higher rate as it is based upon design uncertainties. This is explained further in the response to the Parish Council's Drainage Consultants report from Anglian Water in paragraph 10. It has also been confirmed that the combined impact of foul drainage from this site and the Bartlow Road site has been taken into consideration.
29. The Drainage Officer has advised that the method of foul water disposal is acceptable based upon the detailed information, drawings and calculations submitted for discharge to the foul pumping station and its connection to the main foul sewer.
30. The Drainage Plan shows the route of the system from the foul pump to the manhole in Lonsdale where it joins the existing system. The Drainage Statement Anglian Water Pre Planning document in the appendices shows the route of the existing system from Lonsdale towards Bartlow Road.
31. Surface water from the site will be discharged by infiltration methods to a basin within the southern part of the public open space. This is subject to a separate application under reference S/2553/16/CONDO.
32. Sudden rainfall that may discharge into the network is an existing situation and not as a result of the development.
33. The foul drainage scheme is acceptable and is not considered to adversely affect the quality of water resources.
34. The proposal would therefore comply with Policy CC/7 of the Local Plan.

### **Neighbour Amenity**

35. The foul pumping station would be sited approximately 29 metres from the existing dwelling at No. 7 Lonsdale, approximately 32 metres from the existing dwelling at No. 9 Lonsdale, approximately 4 metres from the new dwelling on plot 31, approximately 17 metres from the new dwelling on plot 20, and approximately 23 metres from the new dwelling on plot 8. It would be sited approximately 14 metres from the boundary of the existing dwelling at No. 7 Lonsdale.
36. Whilst it is acknowledged that the pumping station would be situated closer to the dwelling on plot 31 than the 15 metres to dwellings distance recommended if it was to be adopted by Anglian Water, an assessment of the impact upon the amenities of existing dwellings and occupiers of the new dwellings has been carried out.
37. The Environmental Health Officer has not raised any significant concerns in relation to noise or odours as a result of the siting of the foul pump station and its management and maintenance.
38. Noise from the pump would be limited given that it would be underground and encased by concrete that would provide appropriate attenuation measures.
39. Odours from the pump are not likely to be septic given that it will be pumped 2 to 3 times per day and the waste would be diluted by wastewater.
40. A formal health and safety risk assessment of the foul drainage options for the site is not required. The Council has to consider the application as submitted prior to any consideration of any alternative schemes.
41. The siting of the foul pump is acceptable and would not adversely affect the amenities of neighbours of the existing or new dwellings.
42. The proposal would therefore comply with Policies HQ/1, SC/10 and SC/14 of the Local Plan.

## **Planning Balance and Conclusion**

43. The concerns from the Parish Council and local residents in relation to the method of foul drainage and the impacts upon the foul drainage system and the amenities of existing and new dwellings is noted. However, the Council's specialist advisors and statutory consultees consider the foul drainage scheme to be acceptable and it would not result in significant harm to the quality of water resources or adversely affect the amenities of neighbours of the existing or new dwellings.

## **Recommendation**

44. Officers recommend that the Planning Committee accept the following foul drainage details but do not formally discharge the condition as the development has commenced.

Response to Condition 12 foul water planning consultation comments from Chris Gray on 08/09/2020 (REF:S/2553/16/CONDH)

E-mail dated 29 March 2021 from Croudace Homes

Drainage Calculations

Anglian Water letter dated 13 August 2020

Foul Pump Station details

Drawing numbers:-

035/032 Revision G	Drainage Layout
035/042	Foul Water Pumping Station Detail
035/345	Drainage Maintaining Body Plan
5.3-01	Access Point (Type H)
5.3-06	GRP Inspection Chamber (Type J)
5.3-07	Manhole Concrete Ring (Type M)
5.3-08	Manhole Concrete Ring (Type N)
5.3-11	Pipe Bedding Detail

## **Background Papers**

Planning applications S/2553/16/CONDH, S/2553/16/OL, S/4418/19/RM and S/4418/19/CONDD.

## **Appendices**

Appendix A: Linton Parish Council comments in relation to application S/4418/19/CONDD.

Appendix B: Linton Parish Council comments in relation to the Bartlow Road application.

Appendix C: Report from Linton Parish Council Drainage Consultant - Assessment of Foul sewerage facilities in Linton Village August 2016

## **Report Author:**

Karen Pell-Coggins – Senior Planning Officer  
Telephone: 07704 018456

# Consultee Comments for Planning Application S/4418/19/CONDD

## Application Summary

Application Number: S/4418/19/CONDD

Address: Land South Of Wheatsheaf Barn Horseheath Road Linton Cambridgeshire

Proposal: Submission of details required by condition 4 (Foul Pump) of planning permission  
S/4418/19/RM

Case Officer: Michael Sexton

## Consultee Details

Name: Mrs jenny seaward

Address: First Floor, Linton Village Hall 15 Coles Lane, Linton Cambridge, Cambridgeshire CB21  
4JS

Email: Not Available

On Behalf Of: Parish - Linton

## Comments

S/4418/19/CONDD - Croudace Homes - Land South of Wheatsheaf Barn Horseheath Road, Linton - Submission of details required by condition 4 (Foul Pump) of planning permission S/4418/19/RM. For Information.

Linton Parish Council Comments:

Please read this in conjunction with LPC comments submitted for S/2553/16/CONDDH - the foul drainage condition - LPC previously had insufficient information to give a properly informed response.

LPC are aware that works have been allowed to take place regarding foul connections, without having been approved, and are appalled at this serious error.

The additional information submitted refers only to noise and odour from the pump station without giving specific data on either of these. There is no evidence that these issues have been dealt with, only assertions from the manufacturer.

The issues raised by LPC have not been addressed, and ask that our previous comments stand: There is no illustration of the foul pump and how this will impact upon the landscape.

The maintenance and management of the system has not been specified, as raised by the Sustainable Drainage Engineer in his comment of 29th May 2020. Conditions cannot be approved without this. Who takes responsibility when/if it fails?

Despite the condition still being outstanding, the sewage storage tank has been installed. This tank, and its site, does not appear on the OL or PL or PLD plans and has not been approved.

The storage capacity of the tank is only 5 days. If a breakdown occurs the supply chain for parts and time for repair will be more than this. Who has signed off that this tank and system is adequate for the development?

There is no data to show that this waste can be dealt with by the Lonsdale manhole and its link to Bartlow road sewer.

There is no data to show that the current sewer can take this additional burden.

There is insufficient information given regarding the pump, its housing, the site and its effect on the neighbours.

There is no illustration of the pump housing nor detail of the effect on the landscape.

The tank has already been sited within the aquifer without due regard to its potential negative effect on our drinking water.

The drainage plan:

A drainage layout is included which gives insufficient detail regarding the route of the foul water drains. The link across the easement is not drawn nor is the link to the main sewer.

It appears that the link to the village sewage system is via the manhole in Lonsdale that then links to the already overburdened sewer on Bartlow Road.

LPC commissioned an independent report on sewerage in this area (AE Design report to be sent through to be considered with LPC comments). A report by SCDC also noted that the sewers in the area of Lonsdale were of concern and inadequate.

Recommendations of the AE Design Assessment of Foul Water Sewerage Facilities in Linton Village in August 2016 concluded that the foul water main from this area into the village was the worst part of the villages pipework, in a parlous configuration and should not be put under additional stress by being added to. The report identified that these sections through the village had insufficient capacity to convey the loads, had poor velocity and were unable to self-cleanse. The charts referred to in Appendices show these sections failed as they were already at over capacity of 105% to 134% and had varying slopes of between 1in5 and 1in75, all of which failed.

The plans supplied do not fulfil the conditions and should be refused.

Please see previous comments and the updated comments on Foul Drainage.

It is imperative that the drains of this area, and how additional links to the Bartlow Road sewage pipe will affect the rest of the village, should be discussed with Anglian Water. They appear to assess each link in isolation and not as part of a cumulative system, which is overloaded, threatening the village.

Cllr John Bald proposed to object and refer to the SCDC Full Planning Committee. Cllr Amy Smith seconded. All Agreed.

Linton Parish Council Decision:

Object and do refer this to the District Council Full Planning Committee

# **Consultee Comments for Planning Application**

## **S/1963/15/CONDE**

### **Application Summary**

Application Number: S/1963/15/CONDE

Address: Land To North And South Of And Immediate Linton Cambridgeshire

Proposal: Submission of details required by condition 11 (Foul Drainage) of planning permission S/1963/15/OL

Case Officer: Michael Sexton

### **Consultee Details**

Name: Mrs jenny seaward

Address: First Floor, Linton Village Hall 15 Coles Lane, Linton Cambridge, Cambridgeshire CB21 4JS

Email: Not Available

On Behalf Of: Parish - Linton

### **Comments**

S/1963/15/CONDE - Abbey Developments Ltd - Land To North And South Of And Immediate Linton - Submission of details required by condition 11 (Foul Drainage) of planning permission S/1963/15/OL. For Information Only.

Linton Parish Council Comments:

Response to Foul Water Sewage Facilities by Graham Eves.

The report submitted by LPC from AE Design refers to the general state of the sewage system at the eastern end of the village, which it notes was "parlous" even at the time of commissioning. Since then several extensions and infill houses have been added, so the situation has worsened in those few years. The report includes the potential harm of adding any extra load to the 6inch Victorian sewer on Bartlow Road - the one to which the developer proposes to link. It is irrelevant which development this was originally commission for, any extra loading will have the same effect.

Indeed, the proposed link by the developer would be in addition to the burden imposed by that of the Croudace homes development, which itself would exceed the capacity of the sewer and is being opposed.

The report is additional information that indicates that linking the development site to an already overburdened system is not feasible. The main point is that the state of the drains was understood by SCDC and was the reason for the specific condition that the sewage link should be by manhole 7501. The arguments presented by Mr Eves are spurious and irrelevant to the weight that should be given to the report.

Response to Parish Objections - no new information has been submitted on the planning portal.  
Previous comments stand.

Previous decision from LPC still stand.

Linton Parish Council Decision: Object and do refer this to the District Council Full Planning Committee



Flood Defence and  
Drainage Engineers

August 46  
RECEIVED  
24/08/16  
emailed to all 26/8  
+ planning committee  
1/9 mtg,  
for information

A E Designs Ltd.  
20, Short Road,  
Stretham, Ely,  
Cambridgeshire.  
CB6 3LS  
Tel: 01353 649002  
Mob: 07708 185915  
alan@aedesignsltd.co.uk

**ASSESSMENT OF FOUL WATER SEWERAGE  
FACILITIES IN LINTON VILLAGE, CAMBS.**

**LINTON PARISH COUNCIL**

AUGUST 2016

**Reference: 1400 Report**



23 August 2016

## **FOUL WATER DRAINAGE REPORT**

**Site Address:** Linton Village, Cambridge.

**Brief:** To consider foul water sewerage capacities for extant and proposed housing loads.

**Appendices:**

- A. Location Plan.
- B. Anglian Water record drawings.
- C. Capacity Calculations for the extant sewerage loads.
- D. Capacity Calculations for the proposed sewerage loads.

**Discussion:** Linton Parish Council have expressed concerns with regard to the capacity of the foul water sewerage system serving the Village of Linton. Their concerns are expressed by their perception that foul water drainage issues are becoming more frequent. Their concerns are further heightened by proposals to develop lands bounded by Lonsdale to the west and Harefield Rise and Kenwood Gardens to the south. The development proposals are for 50 dwellings. Refer to **Appendix A** for Location Plan

**Foul Water Sewerage loadings and capacities:** The foul water sewerage system has been considered using the Sewers for Adoption 7th Edition standards and the 'discharge unit' methodology. All of the occupied buildings have been assessed with a standard 3.5 discharge units (DU's) per building. No allowances have been used to consider highway drainage or informal connections. The Colebrook-White formula has been used for determining the necessary pipe capacities. The sewerage data has been taken from Anglian Water record plans attached as **Appendix B**. The principal foul sewerage is shown upon the record plan highlighted red with the pipe numbers (Pn) shown for reference to the spreadsheets. The sewage loadings have been calculated within the spreadsheet to consider foul water flows and pipe capacities relative to the available gradients.

The potential flow rates have been calculated using the standard formula from BS EN 12056-2:2000 given as  $Q = k_{DU} \sum n_{DU}$  with a frequency factor ( $k_{DU}$ ) used to represent intermittent discharges from dwellings, quest houses and offices.

The Anglian Water data provision is not complete and where there are gaps in the data the nearest upstream and downstream invert levels have been used in the spreadsheets to give an average gradient for the sewer sections.

The flow capacity and flow velocity of the individual sewers has been calculated and is presented within the spreadsheets as FAIL or OK. The capacity check is between the calculated flow and the capacity of the sewer, whilst the velocity check is in comparison to the minimum requirement of 0.75 meters per second (m/s).

With reference to the spreadsheet for the extant situation (please refer to **Appendix C**) it can be seen that a number of sewer sections are in a parlous configuration. Sewer sections Pn1.07, Pn1.08, Pn1.09, Pn 1.10, and Pn1.11 all fail as not being able to generate sufficient self-cleansing velocities, whilst sewer sections Pn1.10, Pn1.11, Pn1.12, and Pn1.13 all fail as having insufficient capacity to convey the flows. The above calculated velocities at 0.613m/s are only 82% of the required standard. The above referenced sewers have capacities ranging between 101% and 119% over-subscription from the capacities available. Similarly, with reference to the spreadsheet for the proposed situation (please refer to **Appendix D**) it can be seen that the referred to sewer sections do not have any variation in the poor velocities for self-cleansing but have a notable increase in capacity failings with ranges between 105% and 134% over-subscription from the capacities available.

**Conclusion:** The extant foul sewerage that may serve the proposed development is currently (allowing for variations in the assessment data and Du calculations) is delicately balanced between sufficiency and failure. Any loading additions to the sewerage under review should demonstrate the suitability of the extant installation. In particular, flow additions from surface water highway drainage and informal connections, should be fully investigated before any drainage infrastructure proposals are offered.

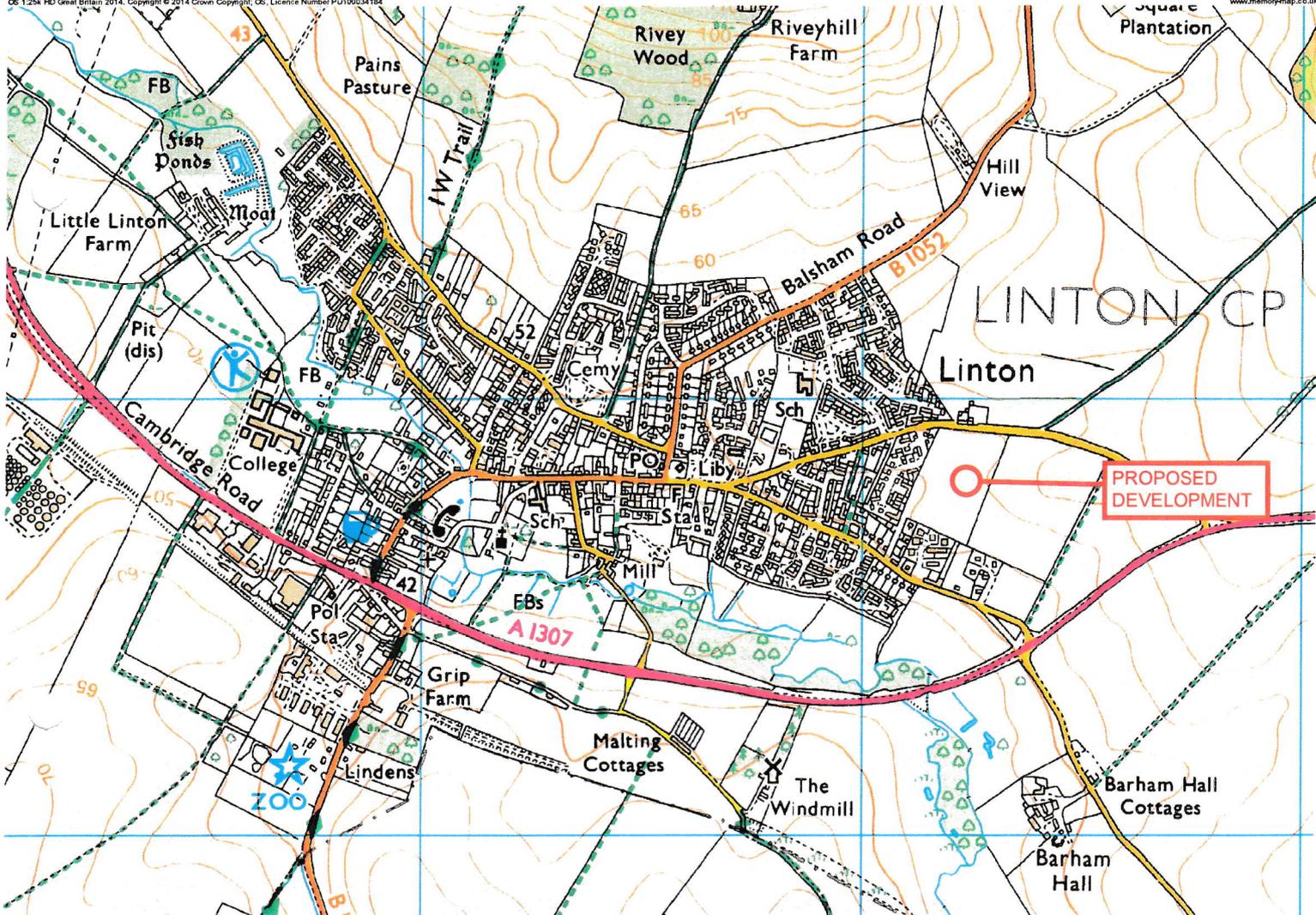
From the desktop assessment carried out using Anglian Water sewerage data it is considered that the extant sewerage should not be further stressed by additional connections.



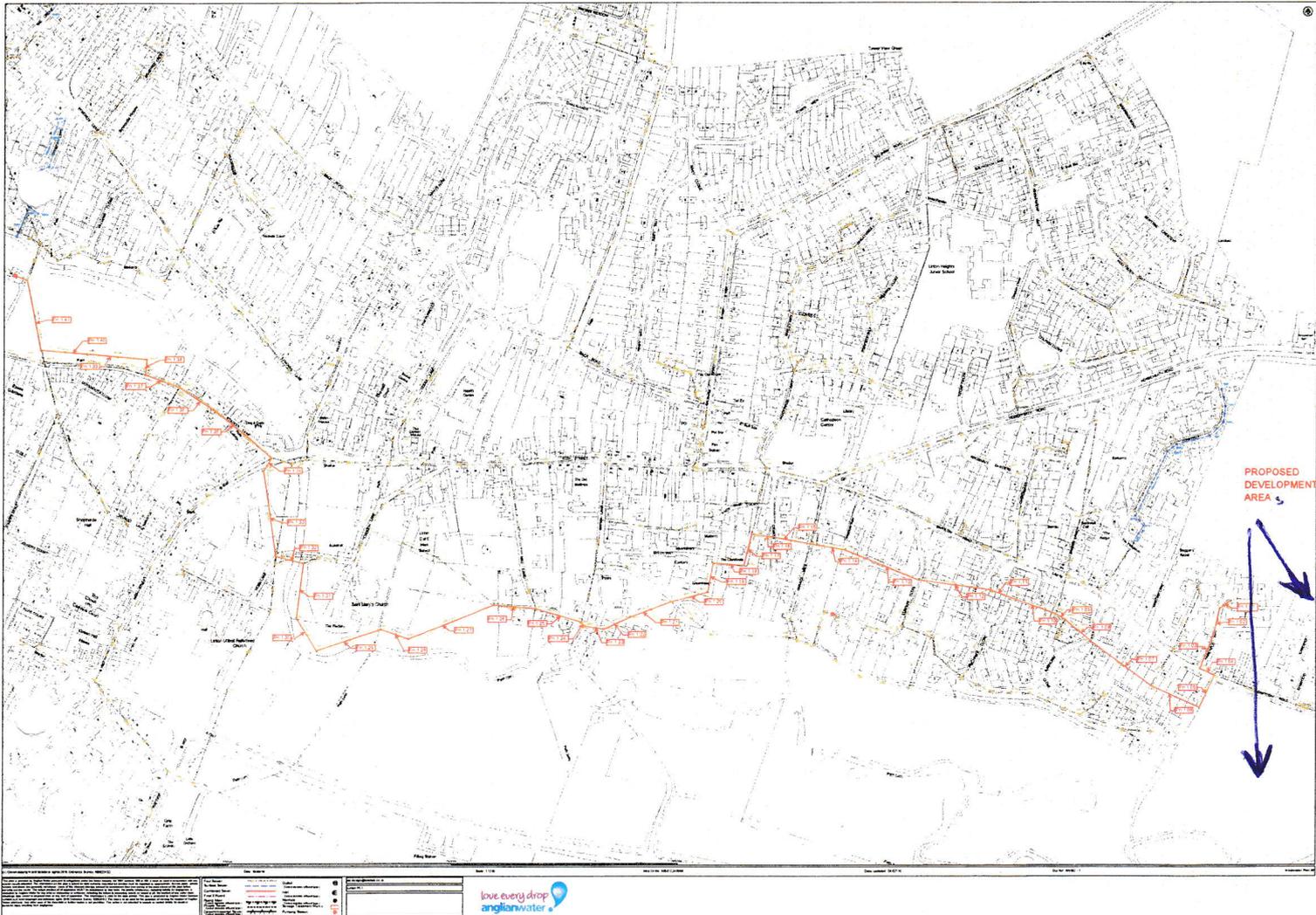
.....A D Rich.

A E Designs Ltd. Ref: 1400 Rpt

# Appendix A



# Appendix B





# Appendix C

FOULWATER SEWERAGE ASSESSMENT OF PRINCIPAL SEWERS (EXTANT)																			A E Designs Ltd	
Client: Linton Parish Council																			Flood Defence and Drainage Engineers	
Job No: 11400																			20, Short Road,	
Address: Linton Village																			Stretham	
																			Combs	
																			CB6 3LS	
Kv = 1500																			Discharge rate taken at 3.5 Discharge Units per dwelling	
Ks = 0.650																				
K <sub>DU</sub> = 0.50																			Flow calculation used Q=K <sub>DU</sub> SQRT(d <sub>DU</sub> )	
																			01353 649002	
																			07708 185915	
Sewer No	U/s to D/s Manholes	Upstream Easting	Coordinates Northing	Downstream Easting	Coordinates Northing	Houses Connected	Cumulative No of DU's	K <sub>DU</sub>	Design flow rate Q l/s	Pipe Diam	Gradient m/m	Gradient 1:P	Sewer Length	Pipe Q capacity	Capacity Check	V m/s	V Check	Sewer capacity % used	U/s Invert Level	D/s Level
Pn 1.01	1605-1604	557148	246663	557136	246655	4	14	0.50	1.87	150	0.0194	52	14.422	24.53	OK	1.386	OK	8	55.520	55.241
Pn 1.02	1604-1603	557136	246655	557130	246626	4	28	0.50	2.65	150	0.0194	52	29.614	24.53	OK	1.386	OK	11		
Pn 1.03	1603-1503	557130	246626	557114	246587	1	31.5	0.50	2.81	150	0.0194	52	42.154	24.53	OK	1.386	OK	11		
Pn 1.04	1503-1501	557114	246587	557130	246579	0	31.5	0.50	2.81	150	0.0194	52	17.889	24.53	OK	1.386	OK	11		47.720
Pn 1.05	1501-1502	557130	246579	557112	246543	45	189	0.50	6.87	150	0.2931	3	40.249	96.12	OK	5.431	OK	7	47.720	45.520
Pn 1.06	1502-0503	557112	246543	557060	246568	22	266	0.50	8.15	150	0.0097	103	57.697	17.29	OK	0.977	OK	47	45.520	44.960
Pn 1.07	0503-9601	557060	246568	556991	246618	22	343	0.50	9.26	150	0.0039	258	85.212	10.84	OK	0.613	FAIL	85	44.960	44.630
Pn 1.08	9601-9609	556991	246618	556999	246635	5	360.5	0.50	9.49	150	0.0039	258	36.235	10.84	OK	0.613	FAIL	88	44.630	
Pn 1.09	9609-9502	556999	246635	556923	246559	5	378	0.50	9.72	150	0.0039	258	84.095	10.84	OK	0.613	FAIL	90		
Pn 1.10	9502-9604	556923	246559	556908	246665	75	640.5	0.50	12.65	150	0.0039	258	107.056	10.84	FAIL	0.613	FAIL	117		44.275
Pn 1.11	9604-8602	556908	246665	556879	246675	7	665	0.50	12.89	150	0.0039	258	30.676	10.84	FAIL	0.613	FAIL	119		44.149
Pn 1.12	8602-8601	556879	246675	556799	246687	12	707	0.50	13.29	150	0.0058	172	80.895	13.34	FAIL	0.754	OK	101	44.149	43.678
Pn 1.13	8601-7702	556879	246675	556717	246721	12	749	0.50	13.68	150	0.0058	172	59.666	13.34	FAIL	0.754	OK	103	43.768	43.192
Pn 1.14	7702-6705	556717	246721	556682	246729	3	759.5	0.50	13.78	150	0.0174	58	35.903	23.22	OK	1.312	OK	59	43.192	
Pn 1.15	6705-6704	556682	246729	556637	246735	1	763	0.50	13.81	150	0.0174	58	45.398	23.22	OK	1.312	OK	59		
Pn 1.16	6704-6703	556637	246735	556614	246738	328	1911	0.50	21.86	150	0.0174	58	23.195	23.22	OK	1.312	OK	94		
Pn 1.17	6703-6702	556614	246738	556605	246703	4	1925	0.50	21.94	150	0.0174	58	36.139	23.22	OK	1.312	OK	94		41.594
Pn 1.18	6702-5703	556605	246703	556571	246706	3	1935.5	0.50	22.00	150	0.0243	41	34.132	27.53	OK	1.556	OK	80	41.594	40.763
Pn 1.19	5703-5601	556571	246706	556565	246673	2	1942.5	0.50	22.04	150	0.0666	15	33.541	45.68	OK	2.581	OK	48	40.763	38.530
Pn 1.20	5601-5602	556565	246673	556524	246662	1	1946	0.50	22.06	150	0.0411	24	42.450	35.83	OK	2.025	OK	62	39.908	38.164
Pn 1.21	5602-4605	556524	246662	556478	246645	1	1949.5	0.50	22.08	375	0.0411	24	49.041	403.35	OK	3.647	OK	5	38.164	
Pn 1.22	4605-4603	556478	246645	556449	246631	7	1974	0.50	22.21	375	0.0125	80	32.202	221.81	OK	2.005	OK	10		38.031
Pn 1.23	4603-4604	556449	246631	556427	246635	7	1998.5	0.50	22.35	375	0.0035	287	22.361	116.48	OK	1.053	OK	19	38.031	37.953
Pn 1.24	4604-4601	556427	246635	556423	246639	0	1998.5	0.50	22.35	375	0.0071	141	5.657	166.46	OK	1.505	OK	13	37.953	37.913
Pn 1.25	4601-3602	556423	246639	556373	246655	4	2012.5	0.50	22.43	375	0.0031	322	52.498	109.82	OK	0.993	OK	20	37.913	37.75
Pn 1.26	3602-3601	556373	246655	556327	246659	3	2023	0.50	22.49	375	0.0025	395	46.174	99.07	OK	0.896	OK	23	37.750	37.633
Pn 1.27	3601-2800	556327	246659			0	2023	0.50	22.49	375	0.0025	395	103.270	99.07	OK	0.896	OK	23		
Pn 1.28	2800-2601					0	2023	0.50	22.49	375	0.0025	395	0.000	99.07	OK	0.896	OK	23		

# Appendix D

FOULWATER SEWERAGE ASSESSMENT OF PRINCIPAL SEWERS (PROPOSED)																			A E Designs Ltd Flood Defence and Drainage Engineers 20, Short Road, Stretham Camb CB6 3LS	
Client: Linton Parish Council																			01353 649002	
Job No: *1400																			07708 185915	
Address: Linton Village																				
'kv' = 1.150 Discharge rate taken at 3.5 Discharge Units per dwelling																				
'ks' = 0.650																				
K <sub>DU</sub> = 0.50 Flow calculation used Q=k <sub>du</sub> SQRT(ān <sub>du</sub> )																				
Sewer No	U/s to D/s Manholes	Upstream Easting	Coordinates Northing	Downstream Easting	Coordinates Northing	Houses Connected	Cumulative No of DU's	K <sub>DU</sub>	Design flow rate Q l/s	Pipe Diam	Gradient m/m	Gradient 1:?	Sewer Length	Pipe Q capacity	Capacity Chek	V m/s	V Check	Sewer capacity % used	U/s Invert Level	D/s Level
Ph 1 01	1605-1604	557148	246663	557136	246655	54	189	0.50	6.87	150	0.0194	52	14.422	24.53	OK	1.386	OK	28	55.520	55.241
Ph 1 02	1604-1603	557136	246655	557130	246626	4	203	0.50	7.12	150	0.0194	52	29.614	24.53	OK	1.386	OK	29		
Ph 1 03	1603-1503	557130	246626	557114	246587	1	206.5	0.50	7.19	150	0.0194	52	42.154	24.53	OK	1.386	OK	29		
Ph 1 04	1503-1501	557114	246587	557130	246579	0	206.5	0.50	7.19	150	0.0194	52	17.889	24.53	OK	1.386	OK	29		47.720
Ph 1 05	1501-1502	557130	246579	557112	246543	45	364	0.50	9.54	150	0.2931	3	40.249	96.12	OK	5.431	OK	10	47.720	45.520
Ph 1 06	1502-0503	557112	246543	557060	246568	22	441	0.50	10.50	150	0.0097	103	57.697	17.29	OK	0.977	OK	61	45.520	44.960
Ph 1 07	0503-9601	557060	246568	556991	246618	22	518	0.50	11.38	150	0.0039	258	85.212	10.84	FAIL	0.613	FAIL	105	44.960	44.630
Ph 1 08	9601-9609	556991	246618	556959	246635	5	535.5	0.50	11.57	150	0.0039	258	36.235	10.84	FAIL	0.613	FAIL	107	44.630	
Ph 1 09	9609-9502	556959	246635	556923	246559	5	553	0.50	11.76	150	0.0039	258	84.095	10.84	FAIL	0.613	FAIL	108		
Ph 1 10	9502-9604	556923	246559	556908	246665	75	815.5	0.50	14.28	150	0.0039	258	107.056	10.84	FAIL	0.613	FAIL	132		44.275
Ph 1 11	9604-8602	556908	246665	556879	246675	7	840	0.50	14.49	150	0.0039	258	30.676	10.84	FAIL	0.613	FAIL	134		44.149
Ph 1 12	8602-8601	556879	246675	556799	246687	12	882	0.50	14.85	150	0.0058	172	80.895	13.34	FAIL	0.754	OK	111	44.149	43.678
Ph 1 13	8601-7702	556879	246675	556717	246721	12	924	0.50	15.20	150	0.0058	172	59.666	13.34	FAIL	0.754	OK	114	43.768	43.192
Ph 1 14	7702-6705	556717	246721	556682	246729	3	934.5	0.50	15.28	150	0.0174	58	35.903	23.22	OK	1.312	OK	66	43.192	
Ph 1 15	6705-6704	556682	246729	556637	246735	1	938	0.50	15.31	150	0.0174	58	45.398	23.22	OK	1.312	OK	66		
Ph 1 16	6704-6703	556637	246735	556614	246738	328	2086	0.50	22.84	150	0.0174	58	23.195	23.22	OK	1.312	OK	98		
Ph 1 17	6703-6702	556614	246738	556605	246703	4	2100	0.50	22.91	150	0.0174	58	36.139	23.22	OK	1.312	OK	99		41.594
Ph 1 18	6702-5703	556605	246703	556571	246706	3	2110.5	0.50	22.97	150	0.0243	41	34.132	27.53	OK	1.586	OK	83	41.594	40.763
Ph 1 19	5703-5601	556571	246706	556565	246673	2	2117.5	0.50	23.01	150	0.0666	15	33.541	45.68	OK	2.581	OK	50	40.763	38.530
Ph 1 20	5601-5602	556565	246673	556524	246662	1	2121	0.50	23.03	150	0.0411	24	42.450	35.83	OK	2.025	OK	64	39.908	38.164
Ph 1 21	5602-4605	556524	246662	556478	246645	1	2124.5	0.50	23.05	375	0.0411	24	49.041	403.35	OK	3.647	OK	6	38.164	
Ph 1 22	4605-4603	556478	246645	556449	246631	7	2149	0.50	23.18	375	0.0125	80	32.202	221.81	OK	2.005	OK	10		38.031
Ph 1 23	4603-4604	556449	246631	556427	246635	7	2173.5	0.50	23.31	375	0.0035	287	22.361	116.48	OK	1.053	OK	20	38.031	37.953
Ph 1 24	4604-4601	556427	246635	556423	246639	0	2173.5	0.50	23.31	375	0.0071	141	5.657	166.46	OK	1.505	OK	14	37.953	37.913
Ph 1 25	4601-3602	556423	246639	556373	246655	4	2187.5	0.50	23.39	375	0.0031	322	52.498	109.82	OK	0.993	OK	21	37.913	37.75
Ph 1 26	3602-3601	556373	246655	556327	246659	3	2198	0.50	23.44	375	0.0025	395	46.174	99.07	OK	0.896	OK	24	37.750	37.633
Ph 1 27	3601-2800	556327	246659			0	2198	0.50	23.44	375	0.0025	395	103.270	99.07	OK	0.896	OK	24		
Ph 1 28	2800-2601					0	2198	0.50	23.44	375	0.0025	395	0.000	99.07	OK	0.896	OK	24		

# Agenda Item 9



29 September  
2021

**Report to:** South Cambridgeshire District  
Council / Cambridge City  
Council Planning Committee

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

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## S/3440/18/OL – Bourn Airfield, Bourn

### Parishes: Bourn, Highfields Caldecote,

**Proposal:** Outline Planning Application (with all matters reserved except for access), for a new mixed use village comprising residential development of approximately 3500 dwellings; mixed uses comprising employment, retail, leisure, residential institutions; education, community facilities, open space including parks, ecological areas and woodlands, landscaping; engineering for foul and sustainable drainage systems; footpaths, cycle ways, public transport infrastructure; associated access and infrastructure. This application is subject to an Environmental Impact Assessment.

**Applicant:** Countryside Properties Ltd

**Key material considerations:**

Principle of development  
Amount, use, indicative layout, and scale parameters  
Access and transport  
Housing delivery  
Social and community infrastructure  
Education  
Environmental considerations  
Financial obligations / section 106  
Other material planning considerations  
Planning balance

**Date of Member site visit:** N/A

**Is it a Departure Application?** No

**Decision due by:** N/A

**Application brought to Committee because:** To up-date Members on the progress of the S106 Agreement, following consideration of the application at the Planning Committee on 19<sup>th</sup> February 2021.

**Presenting officer:** Kate Poyser (Principal Planning Officer)

## **Purpose of report**

1. The purpose of this report is to inform Members of the progress of the S106 Agreement associated with the above proposed development, in accordance with the Planning Committee resolution on 19<sup>th</sup> February. It gives information only and no decisions are required.
2. A minor amendment to the affordable housing provision described in the 19<sup>th</sup> February committee report is to be noted.

## **Background**

3. An application for outline planning permission for a new village at Bourn Airfield was considered at a special meeting of the Planning Control Committee on 19<sup>th</sup> February 2021. Members were minded to grant permission, subject to conditions and the developer first entering into a Section 106 Agreement to secure mitigation for the development.
4. It was recommended and agreed at the Meeting that officers would report back to the Planning Committee in 6 months to advise of progress made on the drafting of the S106 Agreement.
5. The S106 Agreement will be between South Cambridgeshire District Council, Countryside Properties Ltd and the Taylor Family and Cambridgeshire County Council.
6. Members may wish to refer to the 19<sup>th</sup> February officer report to the Planning Committee for further information.

## **Up-date information**

7. Overall, good progress has been made on the negotiations on the S106 Agreement. The target date that the developer and officers have set for completion is mid-September 2021 and this is currently achievable.
8. The developer has yet to make a final commitment to tentatively agree capital contributions and this will be done towards the end of the negotiating process. In brief summary, though and with the above caveat, the Heads of Terms for affordable housing and education are largely agreed. Most highway matters are agreed with discussions continuing on the few remaining items. Progress is being made on sport and recreation. The NHS provision is still under discussion and

waste services is also under discussion. There has been a first draft of the S106 Agreement and work is underway on amendments.

9. It has been noted that there is an error in the 19<sup>th</sup> February report to the Planning Committee. This relates to Affordable Housing in paragraph 527. The figures given were initial figures, rather than those later arrived at following discussions. Negotiations have included SCDC Housing Officers. The correct amounts agreed by officers and the applicant are as follows:

25% Affordable Rent  
35% Shared Ownership  
10% Rent to Buy  
30% Discount Market Sale.

Incorrect figures previously given were: - 30% affordable rent, 30% shared ownership, 20% rent to buy, 20% discount market sale.

10. A summary table of the progress made on the Heads of Terms is attached as Appendix 1. Generally, where it states that matters have been agreed, this is subject to the detailed wording being worked upon in the draft S106 Agreement. There have been no significant deviations agreed to the Heads of Terms that were appended to the 19<sup>th</sup> February report. That table is attached as Appendix 2 of this report.

## **Recommendation**

11. The report on the progress of the S106 Agreement is to be noted.
12. Amendments to correct the Affordable Housing figures in paragraph 9 above are to be noted.

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		<b>Bourn Airfield New Village Heads of Terms up-date Sept 2021</b>	
	<b>Planning Obligation</b>	<b>Detail of the obligation</b>	<b>Current situation with Heads of Terms</b>
1	Affordable Housing	Minimum of 40% of all accommodation on site	agreed subject to detail
2	Self-Build	2% to 3%	detail and phasing to be agreed
3	Early Years	Included within primary provision	agreed in principle
4	Primary Education	Capital contributions for two schools providing 6 – 7 FE	agreed in principle
5	Secondary Education	Capital contribution for 6FE provision	details under discussion
6	Special Needs Education	Financial contribution towards off site school at Northstowe	details under discussion
7	Children and family provision	Delivered as part of community centre	agreed
8	School start-up cost	Revenue funding standard County Council formula	details under discussion
9	Library contribution	Delivered as part of community centre	agreed
10	Sports pavilions x 2	Delivered by developer	agreed

11	Opens spaces, sports pitches, play areas	Delivered by developer	agreed
12	Contribution towards leisure centre/swimming pool in Cambourne	Capital contribution	under discussion
13	Multi-purpose community centres	As one or two buildings to be provided by developer	details under discussion
14	Burial ground	To be provided by developer	agreed subject to details
15	Allotments	To be provided by developer	agreed subject to details
16	CCC social services	Financial contribution by developer	under discussion
19	Community development worker	Financial contribution by developer	under discussion
20	Archaeological finds display	Within community centre	agreed
21	Faith space	Land to be provided by developer	under discussion
22	Health care	Format /contribution	under discussion

23	Strategic public transport (C2C)	Financial contribution by developer	agreed in principle
24	Bus service from Cambourne to Cambridge	Developer to contract directly to provide/maintain required service	agreed
25	Routing Cambourne 4 bus service through site	Developer to contract directly to provide/maintain required service	agreed
26	Free bus travel for 1 year	Finance/vouchers at developer cost	under discussion
27	Better points scheme	Finance/vouchers at developer cost	under discussion
28	Electric charging points	To be provided by developer in public areas	agreed subject to details
29	Support for cycle hire/maintenance	Finance/vouchers at developer cost	agreed
30	Provision of car club	Delivered by developer	agreed

31	Shared cycleway from Madingley Mulch site	Delivered by developer	agreed
32	Cycle crossing at Cambridge crossroads	Delivered by developer	agreed
33	Greenway connection	Delivered by developer	agreed
34	Cycleway links to Bourn, Caldecote and Cambourne	Delivered by developer	agreed
35	Cycle/walking information leaflet	Provided by developer	agreed
36	Provision of work hub	Delivered by developer	Details under discussion
37	Commuter Club	Delivered by developer	agreed
38	Electric cycle vouchers	Provided by developer	Under discussion
39	Traffic calming	Monitoring and issues to be resolved at cost to developer	details under discussion
40	Delivery of busway within the site	By developer	agreed

41	Wider improvements to footpath network		details under discussion
42	Caxton Gibbet roundabout	Financial contribution by developer	agreed
43	Travel Plan and travel plan coordinator	At developer cost	agreed
44	Provision of waste bins/ vehicle etc	Financial contribution by developer	under discussion
45	Jobs Brokerage scheme	No cost involved	agreed
46	S106 monitoring	Financial contribution by developer	agreed

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## Appendix 2

Bourn Airfield – Section 106 Heads of Terms reported to 19<sup>th</sup> February 2021 Planning Committee

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
	Affordable and other housing				
1	Policy requirement H/9, H/10	Minimum of 40% of all accommodation on site to be affordable – tenure agreed.	n/a		Phased throughout the development
2	Self-build H/9	A proportion of the market housing plots should be made available for self-builders - up to 5%	At each phase	Agree that this should mostly be in relatively large locations – requirement for a marketing strategy to deliver	Phased throughout the development
	Education				

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
3	Early years SC/4	See primary schools		Included in primary schools and through the marketing of commercial units where appropriate.	
4	Primary education SC/4, TI/9	Capital contribution and land. 2 x 3FE Primary schools with early years provision.  Community access agreements required	1 <sup>st</sup> school = 10% on commencement; 65% after 12 months; and 25% after 24 months 2 <sup>nd</sup> school = 10% prior to occupation of 900 <sup>th</sup> dwelling; 65% prior to occupation of 1050 <sup>th</sup> dwelling; and 25% prior to occupation of 1200 <sup>th</sup> dwelling	Flat and free serviced sites to be provided. Full specification of school site to be agreed with CCC.  The County Council may want to refresh this prior to agreeing final costs OR Indexation, based on BCIS, to be linked to the date of the costing.	£29,700,000 (4Q17)
5	Primary school expansion	1 x 3FE school to be expanded to 4FE.	tbc		tbc

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
6	Secondary education SC/4, TI/9	6FE school, which is equivalent to 900 pupils.  Community access agreements required	10% prior to occupation of 900 <sup>th</sup> dwelling;  65% prior to occupation of 1050 <sup>th</sup> dwelling; and 25% prior to occupation of 1200 <sup>th</sup> dwelling	Flat and free serviced sites to be provided. Full specification of school site to be agreed with CCC.  The County Council may want to refresh this prior to agreeing final costs OR Indexation, based on BCIS, to be linked to the date of the costing.	£24,657,000 (3Q18)
7	Provision towards special needs education SC/4, TI/9	Financial contribution towards off site school at Northstowe. Requirement is 1% of school yield	1000 occupations - £1,256,330 (4Q17)  2000 occupations £1,256,330 (4Q17)	The Council has a statutory duty to secure appropriate provision for children and young people with SEND from 2-23 years of age. This breaks down	£3,768,990 (4Q17)

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
				as £3,768,990 in capital contributions; and £39,840 in pre-opening revenue costs.	
8	Children and Family Service Provision SC/4	Development in kind	Minimum of 60 sqm. Detailed specification to be set out in the s106.	To be delivered as part of the Community Centre.	Development in kind
9	School start-up costs SC/4, TI/9	Revenue funding standard County Council formula	First payment one term before the opening of the respective school.	Indexation is RPI.	£150,000 secondary school  £50,000 for each primary school
10	Library contribution SC/4	Development provides the space at nil cost to the County Council to agreed specification, as well as a	As part of completion of 1 <sup>st</sup> or 2 <sup>nd</sup> community centre tbc	20 square metres within community centre – see Coneygear Community	£45,000 – Decoration and lighting - £8k I.T. - £5k Fit out - £25k

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
		financial contribution towards fit out/stock of the library.		Centre, Huntingdon, for most recent example	Stock - £5k Hardware - £7k
	Sport / Recreation				
11	2 x Sports pavilions / changing rooms SC/7	On-site delivery of facility	In accordance with agreed phasing	In accordance with agreed Sport England design specification to include ancillary facilities.	Development cost
12	Strategic open spaces with sports pitches SC/7		In accordance with agreed phasing	In accordance with agreed design specification	Development cost
13	Play areas SC/7	NEAP, LEAP and LAP delivery and to include a	In accordance with agreed phasing	In accordance with agreed design specification	Development cost

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
		skateboard facility – location to be agreed			
14	Contribution towards new leisure centre at Cambourne, including swimming pool SC/7	Strategic Leisure Ltd prepared a report (July 2018) for SCDC which indicated a need for new swimming pool and sport facilities. The financial contribution is proportionate to the scale of the estimated population of the site. The scale and nature of facilities have been directly informed by Strategic Leisure report.	In accordance with agreed phasing		Financial contribution tbc

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
	Community governance of open space	To be agreed	Tbc		n/a
	Community				
15	2 x Multi-purpose Community Centres and indoor sports (MpCC):	Direct delivery	In accordance with agreed phasing	Total indoor space excluding ancillary space – 3500 dwellings x 2.8 persons per dwelling = 9800 pop x 111 sq m per 1000 pop = 1087.8 sq m minimum  No. 1 minimum size 330 sqm. No. 2 minimum size of 750 sqm (to include changing rooms and 2 court sports	Development cost

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
				hall and performance space)	
16	Burial ground SC/4	On-site delivery of facility	tbc		Development cost
17	Allotments SC/2 and SC/8	On-site delivery of facility	tbc		Development cost
18	CCC Social Services Children Families and Adults service requests SC/4	The scale has been determined with reference to South Cambridgeshire Local Plan Policy SC/4.	The support worker is considered necessary to meet the needs of the new population generated through the early phases of the development.	To be divided amongst following elements – Mental health kick start Counselling for young people Children’s centre kick start Children’s social care Older people Adult social care Community development Public health	£740,000  £80,000 by 1 <sup>st</sup> occupation  £320,000 by 100 <sup>th</sup> occupation  Balance after 600 <sup>th</sup> occupation

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
19	Community Development Worker and Community Chest SC/4	Financial contribution	tbc	tbc	tbc
20	Archaeological finds display NH/14	Location within the community centre for display of finds	1 <sup>st</sup> community centre	As part of the Community Centre development specification.	Development cost.
21	Faith space SC/4	Land set aside  Not just faith space within community centre – the masterplan needs to be flexible enough to allow for a variety of mixed uses	As part of masterplan	As part of the phasing of the development	

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
		to come forward within the settlement centre			
	Health				
22	Health Care Facility SC/2, SC/5 Health Impact SPD		£145,000 by 500 dwellings  £945,000 by 1250 dwellings  £355,000 by 1500 dwellings		£1,445,000 tbc
	Transport / Infrastructure				
23	Strategic Scheme Contribution		1 <sup>st</sup> payment at 500 dwellings		£20 million financial contribution towards the C2C or equivalent strategic scheme.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
24	Monitoring	Real time monitoring of site entrances/exits and at key points on the network (to be set out in Monitoring Strategy)	Monitoring ongoing from prior to first occupation, throughout the life of the development.	Monitoring results may trigger the need for intervention	Developer cost – cap to be agreed
25	Bus Services from Cambourne to Cambridge city centre, Addenbrookes Hospital and the Cambridge Science Park	Developer to contract directly to provide/maintain required service level	Prior to first occupation	Service levels to be agreed	Developer will implement Shuttle busses until such time as the bus link through the site has been delivered at the 200th dwelling. This is agreed subject to the shuttle buses reflecting the CA service frequency etc.
26	Routing Cambourne 4 Bus Service through Bourn Airfield and increase frequency to 15 minutes in the peak hour.	Developer to contract directly to provide/maintain required service level	Shuttle bus from occupation  Frequency uplift and routing into the site at 200 dwellings (unless CCC agree otherwise)	Developer to provide either until the Strategic Transport Scheme has been delivered to replace it, or until the increased Citi 4 service becomes commercially viable.	Development cost
27	Free bus travel will be provided for 1 year for up to 4		From first occupation and then ongoing throughout development.		

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
	members of each household				
28	Better Points Scheme	An incentives package to encourage sustainable modes from Bourn and Cambourne.	From first occupation and then ongoing throughout development.		Direct delivery
29	Electric Charging Points	Provided in public areas. Number and locations to be agreed	From first occupation and then ongoing throughout development.		Direct delivery
30	Support for Cycle Hire/Cycle Maintenance at the Bourn		From first occupation and then ongoing throughout development.		Direct delivery
31	Provision of a Car Club on Site		30 <sup>th</sup> occupation		Direct delivery
32	Shared Cycleway from Madingley Mulch to the Site		Delivered prior to first occupation	If a CCC/GCP equivalent scheme supersedes the developer scheme prior to the trigger, a S106-equivalent value switch will be triggered, based on cost	Direct delivery

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
				estimates for the developer scheme.	
33	Cycle Crossing at the Cambridge Crossroads		Delivered prior to first occupation		Direct delivery
34	Greenway Connection		Delivered prior to first occupation		Direct delivery
35	Cycle/Walking Information leaflets		Delivered prior to first occupation		Direct delivery
36	Provision of the Work Hub	An on-site hub for home working	300 dwellings		Direct delivery
37	Provision of a Commuter Club		1 <sup>st</sup> occupation of business units		Direct delivery
38	Cycleway links to villages of Bourn, Caldecote and Cambourne		Delivered prior to first occupation		Direct delivery
39	Electric Cycle Vouchers		Delivered prior to first occupation		

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
40	Traffic calming	Cambridge Road/Main Street Long Road Broadway and through Bourn village Highfields Road  and additional locations as identified through the monitoring.		The following roads are to be monitored on an ongoing basis linked to a S106 contribution of (£TBC) to resolve any issues. B1046 (from A1198 to junction with M11, The Broadway, Highfields Road, Hardwick main Street, Long Road to where they meet the B1046. Knapwell High Street.	tbc
41	Delivery of busway within development		200 <sup>th</sup> dwelling		
42	Delivery of wider improvements to the footpath network	Local footway enhancement fund	Pre-commencement strategy		
43	Caxton Gibbet roundabout	Contribution towards improvements to Caxton Gibbet roundabout	Tbc with Highways England		£275,000 tbc

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
44	Travel plan and travel plan coordinator				Development cost
	Waste				
45	Refuse Collection Vehicles SS/6		To be collected at each reserved matters' application.		£61.67 per dwelling, to be collected with each reserved matters' application.
46	Household Waste bins SS/6		To be collected at each reserved matters' application.		Estimated total of £528,750 (based on average of £117.50 per dwelling).  Standard house – 3 bins @ £75 per unit. Flat (Based on 2 bed) - £160 per unit.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost (to be finalised before signing of Section 106)
47	St Neots household waste centre		To be collected at each reserved matters' application.		£181 per dwelling
	Other				
48	Jobs Brokerage scheme SS/6	See description below	tbc		
49	Section 106 Monitoring	The contribution would be directly related to achieving the implementation of the planning obligations.	Prior to occupation of any dwellings		tbc

“Jobs Brokerage Scheme” a scheme which shall:

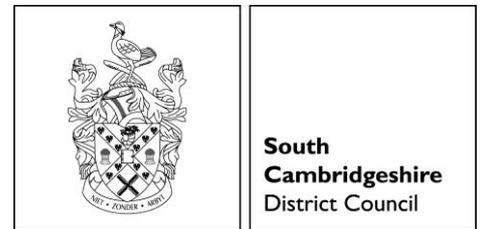
- (a) provide access to job opportunities on the Site by providing links between employers on the Site, the District Council, Jobcentre Plus and other relevant partners;
- (b) set out how the Owner or its subcontractors will work with the District Council and its partners to promote opportunities for employment of local construction workers during the construction of each Phase with the target that at least 20% of the jobs created by that Phase (whether permanent or temporary) shall be taken by persons within the workforce of the District Council's area;
- (c) for each Phase include a list of skills and the number of various types of construction workers estimated as being required for the relevant Phase and how employment opportunities will be advertised throughout South Cambridgeshire including at Jobcentre Plus;
- (d) for each Phase promote education and training opportunities in construction which are linked to the relevant Phase in conjunction with any District Council led initiatives and/or local colleges and schools (e.g. via open days, presentations and marketing); and
- (e) include the principles to be followed:
  - (i) to update the said scheme including as Phases are brought forward; and
  - (ii) to gather information as to the effectiveness of the said scheme;

"Self/Custom Build Scheme" a scheme to be submitted to and Approved by the District Council for the marketing of Self/Custom Build Plots to be consistent with Policy H/9: Housing Mix (and in particular paragraph 2.f.) of the South Cambridgeshire Local Plan adopted September 2018 (or equivalent future adopted policy) and to include:

- (a) an indicative strategy for marketing Self/Custom Build Plots to eligible prospective purchasers (such purchasers to have first registered their interest for the same with the District Council pursuant to the Self Build & Custom Housebuilding Act 2015 (as amended));
- (b) the principles to be applied to the location and distribution of Self/Custom Build Plots within prospective Residential Reserved Matters Areas;
- (c) the principles to be applied to ensure the development of Self/Custom Build Plots for Self/Custom Build Housing is consistent with all relevant approvals, consents, and parameters in connection with the Planning Permission and this Deed; and
- (d) the principles to be applied to reaching an appropriate target for the amount of Self/Custom Build Housing forming part of the Development having regard to the aims and objectives of the said Policy H/9 (such target being no more than 5% of the Dwellings forming part of the

Development shall be Self/Custom Build Housing) but subject always to there being sufficient demand for the same which is to be evidenced to the reasonable satisfaction of the Owner by the District Council.

# Agenda Item 10



29 September  
2021

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

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

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## S/2075/18/OL – Waterbeach new town east

### Parish: Waterbeach

**Proposal:** Outline Planning Application (with all matters reserved) for development of up to 4,500 dwellings, business, retail, community, leisure and sports uses; new primary and secondary schools and sixth form centre; public open spaces including parks and ecological areas; points of access; associated drainage and other infrastructure, groundworks, landscaping and highway works

**Applicant:** Mr Chris Goldsmith, RLW Estates Ltd

**Key material considerations:**

- Principle of development
- Amount, use, indicative layout, and scale parameters
- Access and transport
- Housing delivery
- Social and community infrastructure
- Education
- Environmental considerations
- Financial obligations / section 106
- Other material planning considerations
- Planning balance

**Date of Member site visit:** N/A

**Is it a Departure Application?** No

**Decision due by:** N/A

**Application brought to Committee because:** To up-date Members on the progress of the S106 Agreement, following consideration of the application at the Planning Committee on 29<sup>th</sup> January 2021.

**Presenting officer:** Mike Huntington (Principal Planning Officer)

## **Purpose of report**

1. The purpose of this report is to inform Members of the progress of the S106 Agreement associated with the above proposed development. It gives information only and no decisions are required.

## **Background**

2. An application for outline planning permission for the eastern half of the Waterbeach new town was considered at a special meeting of the Planning Control Committee on 29<sup>th</sup> January 2021. Members were minded to grant delegated approval, subject to conditions and the developer first entering into a Section 106 Agreement to secure mitigation for the development.
3. It was recommended and agreed at the Meeting that officers would report back to the Planning Committee in 6 months to advise of any progress made on the drafting of the S106 Agreement.
4. The S106 Agreement will be between South Cambridgeshire District Council, Cambridgeshire County Council, and the owner.
5. Members may wish to refer to the 29<sup>th</sup> January officer report to the Planning Committee for further information.

## **Up-date information**

6. Overall, good progress has been made on the drafting of the S106 Agreement.
7. There has been a first draft of the S106 Agreement and work is underway on amendments.
8. The summary of progress is attached to this report as appendix 1. Generally, where it states that matters have been agreed, this is subject to detailed wording being worked up on the draft s106 agreement.
9. There have been no significant deviations agreed to the Heads of Terms that were appended to the 29<sup>th</sup> January report.
10. The Heads of Terms from the original committee report is attached to this report as appendix 2.

## **Recommendation** – to be noted.

The report on the progress of the S106 Agreement is to be noted.



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## Waterbeach new town RLW Heads of Terms up-date Sept 2021

	<b>Planning Obligation</b>	<b>Detail of the obligation</b>	<b>Current situation with Heads of Terms</b>
1	Affordable Housing	Minimum of 30% of all accommodation on site	agreed subject to detail
2	Self-Build	Up to 5%	agreed subject to detail
3	Early Years	Included within primary provision	agreed in principle
4	Primary Education	Capital contributions for two schools providing 6 – 7 FE	details under discussion
5	Primary school expansion	Land plus capital contribution	details under discussion
6	Secondary Education	Capital contribution for 8FE provision	details under discussion
7	Secondary school expansion	Land plus capital contribution	details under discussion
8	Post 16 education	Safeguarded site	details under discussion
9	Special Needs Education	Financial contribution towards safeguarded site on U&C site	details under discussion
10	Strategic open spaces and outdoor pitches	Delivered by developer	agreed subject to detail
11	Artificial grass pitch	Delivered by developer	agreed subject to detail

12	Sports pavilions x 2	Delivered by developer	agreed subject to detail
13	Contribution towards leisure centre/swimming pool	Capital contribution	agreed subject to detail
14	Multi-purpose community centres	Two buildings to be provided by developer	agreed subject to detail
15	Interim library	On site	agreed subject to details
16	New library	Financial contribution towards safeguarded site on U&C site	agreed subject to details
17	Community development worker	Financial contribution by developer	details under discussion
18	Denny Abbey improvements	Financial contribution	agreed subject to detail
19	Interim health facility	Financial contribution	agreed subject to detail
20	New Health Centre	Financial contribution towards safeguarded site on U&C site	agreed subject to detail
21	Early community support measures	Financial contribution	details under discussion
22	Traffic monitoring equipment	Financial contribution	details under discussion
23	Junction safety and capacity improvements	Developer cost	details under discussion

24	Environmental improvements in Waterbeach, Milton, Fen Ditton, and Horningsea	Financial contribution	details under discussion
25	Improvements to existing bus stops	Developer cost	details under discussion
26	Improvements to existing bus services	Financial contribution	details under discussion
27	Travel plan and travel plan co-ordinator	Financial contribution	details under discussion
28	Bus stops	Developer cost	details under discussion
29	Lining and signing improvements to Green End at bridge located at Car Dyke Farm	Developer cost	details under discussion
30	Public right of way improvement plan	Financial contribution	agreed subject to detail
31	Upgrade public right of way to Chittering to bridleway	Financial contribution	details under discussion
32	Contribution to other public rights of way towards Lode area	Financial contribution	details under discussion
33	Transport Enhancement Fund	Financial contribution	details under discussion

34	Refuse Collection Vehicles	Financial contribution	agreed subject to detail
35	Household Waste bins	Financial contribution	agreed subject to detail
36	Maintenance of Flood Mitigation Measures	Delivered by developer	details under discussion
37	Delivery/Review Groups	No costs involved	agreed
38	Jobs Brokerage scheme	Delivered by developer	agreed
39	Section 106 Monitoring	Financial contribution	agreed
40	Station Link Road and east/west linkages	No costs involved	agreed
41	Links Protocol	No costs involved	agreed

Waterbeach RLW – Section 106 Heads of Terms

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
Affordable and other housing					
1	Policy requirement H/9, H/10	Minimum provision of 30% of all accommodation on site to be affordable.  Tenure mix as follows – 30% affordable rent (this proportion protected) 30% shared ownership 20% rent to buy 20% discount market sale	Provision to commence after first 300 dwellings.  Phased triggers for each Phase  Triggers for the viability review process will be included.	Subject to review mechanism to take place at the start of each phase or in exceptional circumstances.  30% floor. Any review mechanism can only result in this figure increasing or	n/a

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
				being maintained at this level.	
2	Self-build H/9	A proportion of the market housing plots should be made available for self-builders - up to 5%	At each phase		
	Education				
3	Early years SC/4	See primary schools		Included in primary schools and through the marketing of commercial units where appropriate.	
4	Primary education	Capital contribution and land. 2 x 3FE Primary	Review of school need, timing, and size to be	Flat and free serviced sites to be provided. Full	Land plus maximum total contribution of

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	SC/4, TI/9	schools with early years provision. 4FE core.  Community access agreements required.	undertaken with input from Education Delivery Group, no sooner than – Primary school 1 estimated to be open by occupation of 300 and no later than 700 dwellings;	specification of school site to be agreed with CCC.  Option for direct developer delivery for all schools except the SEN facility.	£28,911,000 (Q3 2018  If contribution option taken spread payments over three years (10%, 65%,25% instalments), linked to earliest call for site notice triggers (TBC) for each facility.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
5	Primary school expansion (up to 2FE) SC/4, TI/9		Reviews to be undertaken with input from the Education Delivery Group, no sooner than occupation of 3,000 dwellings.	Flat and free serviced sites to be provided. Full specification of school site to be agreed with CCC.	Land plus up to £2,866,500 contribution. (Q3 2018) If contribution option taken spread payments over two years (50%, 50% instalments).
6	Secondary education SC/4, TI/9	Capital contribution and land. 1 x 8FE secondary school.  Community access agreements required.	Reviews of school need, timing, and size to be undertaken with input from the Education Delivery Group, no sooner than occupation	Flat and free serviced sites to be provided. Full specification of school site to be agreed with CCC.	Land plus £20,769,000 (Q4 2017)  If contribution option taken spread

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
			of 1,500 and no later than 2,500 dwellings.		payments over three years (10%, 65%,25% instalments), linked to earliest call for site notice triggers (TBC) for each facility.
7	Secondary school expansion SC/4, TI/9		Reviews to be undertaken with input from the Education Delivery Group, no sooner than occupation of 3,000 dwellings.		Land plus up to £9,347,000 (Q4 2017)

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
8	Post-16 education – safeguarded site SC/4, TI/9	Review of school timing.		If contribution option	Land plus maximum £5,525,000 contribution (Q4 2017).
9	Provision towards special needs education SC/4, TI/9	Review of school timing and calculation of needs based on needs based proportional contribution to be undertaken with input from the Education Delivery Group no sooner than occupation of 1350 dwellings and no later than 2350 dwellings.	Safeguarded site on U&C land.	The Council has a statutory duty to secure appropriate provision for children and young people with SEND from 2-23 years of age.	£4,826,000 contribution (pro- rata of total cost) (Q4 2017)

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	Sport / Recreation				
10	Strategic open spaces and outdoor pitches SC/7, SC/8	<p>Definition of Strategic Open Spaces to include Station Approach Park, Fenland Parks, Fenstead Parks, and Cross Drove Gardens.</p> <p>Outdoor sports facilities are necessary to meet the needs of the new population generated by the development. Provision to include sports, children's play space and</p>	Strategic open spaces, outdoor pitches, children's play space and allotments to be provided throughout the development in regular phases to be determined by a strategic open spaces and outdoor pitches strategy to be submitted to an agreed in writing by the LPA.	<p>Provision would be on site.</p> <p>The scale has been determined with reference to SCDC policy requirements (in particular, South Cambridgeshire Local Plan Policies SC/7 &amp; SC/8.</p>	As part of development costs.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
		allotments/community orchards.			
11	Artificial grass pitch, with lighting where appropriate SC/4, SC/7		No later than occupation of 1,500 dwellings.	To Sport England or successor standards	As part of development costs,
12	Two sports pavilions, with changing rooms SC/4, SC/7	A larger changing facility in the northern park area, and a smaller facility in the station quarter area, provided within a community centre (see below)	Triggers to be coordinated with the adjacent U&C site and determined by strategic open spaces and outdoor pitches strategy to be	To Sport England or successor standards	As part of development costs,

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
			submitted to an agreed in writing by the LPA.		
13	Contribution towards new leisure centre, including swimming pool.  4 court sports hall, 4 lane swimming pool with larger learner pool, 60 fitness stations and activity hall	Strategic Leisure Ltd prepared a report (July 2018) for SCDC which indicated a need for new swimming pool and sport facilities. The financial contribution is proportionate to the scale of the estimated population of the site. The scale and nature of facilities have been directly informed by Strategic Leisure report.	Timing of provision and funding to be informed by a strategy to be agreed with the Council with longstop provision of 3500 dwellings.	Location will be within U&C site	£1,789,512 (CPI 13 May 2019)

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	SC/4, SC/7				
	Community				
14	Multi-purpose Community Centres (MpCC)  SC/4	Construct buildings to agreed specification (either full building or shell and core building with contribution for fit out).	To be provided at 1250 and 2750 dwellings		Development cost
15	Space for interim / existing library facility contribution SC/4	Library facilities are necessary to meet the needs of the new population generated by the development.	Prior to occupation of first dwelling	Provision would be on site.  The scale has been determined with reference to CCC guidance.	£20,000

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
16	New library contribution SC/4	Financial contribution towards provision of hub library within one MpCC in U&C site.			£915,000 (check financial indexation date)
17	Community Development Support Worker SC/4	The scale has been determined with reference to South Cambridgeshire Local Plan Policy SC/4.	For first 10 years from first occupation.	The support worker is considered necessary to meet the needs of the new population generated through the early phases of the development.	£277,000 (£27,700 per annum)
18	Denny Abbey improvements SS/6	Financial contribution towards business planning and conservation	By occupation of 1500 dwellings	Financial contribution towards business planning and conservation	£60k total contribution.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
		management plan (£25k) and financial contribution towards site security (£35k). £60k total contribution.		management plan (£25k) and financial contribution towards site security (£35k). £60k total contribution.	
	Health				
19	Interim Health Facility (space made available on site for supplementary health services) SC/5		Prior to occupation of 250 dwellings. If not needed, then roll over to new health centre.		£208,000 (CPI 13 May 2019)

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
20	New Health Centre  SC/5	The facilities would be on the site comprising 1810 square metres.	Prior to the occupation of 1075 dwellings		£1,423,000 pro-rata contribution towards new health centre for Waterbeach New Town  (CPI 13 May 2019)
21	Early community support measures SC/5	Combination of measures and support projects to develop a healthy and resilient community	Fund to be made available over phases.	The support measures have been identified as necessary by CCC, to meet the needs of the new population generated through the early phases of the development, based on evidence of other new	£1,295,000 (to be phased)  Guaranteed phased payment of £250,000 and the balance of £1,045,000 instalments if

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
				communities in the Cambridge area.	needed.
Transport / Infrastructure – first phase					
22	Traffic monitoring equipment, purchase, installation, and maintenance for 20 years SS/6	Needed to monitor traffic around the development in accordance with an agreed scheme and managed through the Transport Review Group.	Provide contribution prior to commencement, together with first 5 years maintenance contribution. Remaining payments at 5year intervals.	Allows an evidence base to be generated to measure development impacts on the network.	£143,000
23	Junction safety and capacity improvements to	Provision of at grade signalized junction with bus priority on Car Dyke	Delivered via a call for works, to coincide with U&C timetable	Provides safety improvements and capacity for this junction as	Developer cost

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	the junction of Car Dyke Road and the A10 SS/6	Road. Includes a toucan crossing to the north of Waterbeach Road.		well as bus priority for the existing bus service	
24	Environmental improvements in Waterbeach, Milton, Fen Ditton, and Horningsea SS/6	Undertake design work for environmental and public realm improvements. Provision of contribution to deliver works.	Delivered via a call for works, to coincide with U&C timetable	Provides opportunity for Parish Councils to input to environmental improvements within villages. To incorporate traffic management measures within the public highway to deter rat running traffic.	£487,000

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
25	Improvements to existing bus stops on Greenside in Waterbeach SS/6	To provide bus stop cage and clearway markings at both bus stops at the Green Side bus stops along with cycle parking on hard standing at the back of the verge on The Green.	50 <sup>th</sup> dwelling	To coordinate with Greenway work on High Street.	Development cost
26	Improvements to existing bus services SS/6	Contribution towards bus service improvements between Waterbeach village and Addenbrookes.	50 <sup>th</sup> dwelling.	The contribution will be directed to whichever service CCC consider appropriate at the time the payment is made.	£46,000
27	Travel plan and travel plan co-ordinator	Elements within the TP wording will need to be the Travel Plan Coordinator role	By first occupation.	The Travel Plan would look to encourage more sustainable travel from the	£200,000

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	SS/6	and the measures for residents / employees. Includes monitoring of travel behaviour and monitor bus journey times for southbound buses on the A10.		development and in surrounding communities. This would reduce the impact on the A10 and enable further development.	Note the cost estimate shall not be capped and ultimately will be the result of the measures necessary to achieve the Travel Plan targets.
28	Bus stops SS/6	Provision of and maintenance cost for up to 12 bus stop shelters (6 pairs) (TBC) within the Development in locations to be approved as part of relevant Reserved Matters.	Relevant Reserved Matters application in which stop is included.	Relevant Reserved Matters application in which stop is included.	£14,000 per pair

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
29	Lining and signing improvements to Green End at bridge located at Car Dyke Farm SS/6	To provide additional advance warning signs and road markings in advance of the bridge over Car Dyke on Green End	Prior to first occupation		Development cost
30	Public right of way improvement plan SS/6		50 <sup>th</sup> occupation		£50,000

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
29	Upgrade public right of way to Chittering to bridleway SS/6	To enable improved sustainable linkages between Chittering and the new town as well as Waterbeach	1000 <sup>th</sup> occupation		tbc
30	Contribution to other public rights of way towards Lode area SS/6	To improve existing and provide additional pedestrian routes and links, for health and wellbeing, as well as mitigating the impact of the development on SSSIs and County Wildlife Sites.	tbc		tbc

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
	Transport Enhancement Fund SS/6	For strategic transport beyond first phase of development.			£17,000,000 starting balance, with potential additional funds generated through viability review.
	Waste				
32	Refuse Collection Vehicles SS/6		To be collected at each reserved matters' application.		£61.67 per dwelling, to be collected with each reserved matters' application.
33	Household Waste bins SS/6		To be collected at each reserved matters' application.		Estimated total of £528,750 (based on

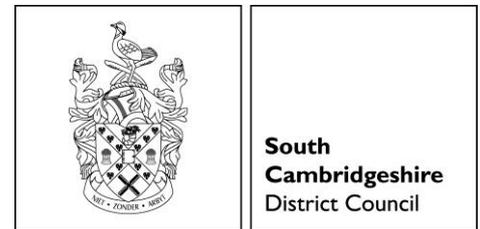
	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
					average of £117.50 per dwelling).  Standard house – 3 bins @ £75 per unit. Flat (Based on 2 bed) - £160 per unit.
	Other				
35	Maintenance of Flood Mitigation Measures SS/6	Setting up of management company with agreed roles and responsibilities to manage and maintain the landscape bund, raised land	Before first occupation	To ensure that the flood mitigation measures that are needed will be maintained for their lifetime.	

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
		area and other related structures.			
36	Delivery/Review Groups SS/6	Establish the Progress and Delivery Group; the Education Review Group and the Transport Strategy Review Group.	Prior to development commencing		
37	Jobs Brokerage scheme SS/6	The parameters allow for and recording	Avoidance Compensation	Design & Planning Condition	
38	Section 106 Monitoring	The contribution would be directly related to achieving	Prior to occupation of any dwellings		£150,000 – payable in 20 instalments of £7.500 per annum.

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
		the implementation of the planning obligations.			
39	Station Link Road and east/west linkages	<p>A mechanism for securing the delivery of the link road to the new station will be included.</p> <p>Such a mechanism shall include timescales and the process for both adjoining landowners to agree appropriate market value to facilitate the provision of the link road (together with other east/west linkages) with</p>		To secure timely provision of infrastructure and comprehensive development in accordance with Policy SS/6.	

	Planning Obligation and Policy basis	More detail on obligation	Trigger	Other comments	Provisional Cost  (to be finalised before signing of Section 106)
		referral to an independent expert.			
40	Links Protocol	To comply with the “Links Protocol” which sets out the process for starting and undertaking discussions with the adjoining landowner to agree the required rights and values.		If agreement cannot be reached the protocol makes provision for the referral to an Expert for determination.	

# Agenda Item 11



29 September  
2021

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

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

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## TPO 0005 (1985) – 10 Burton End, West Wickham

Parish:	West Wickham
Proposal:	To revoke a Tree Preservation Order (TPO) which is no longer current.
Recommendation:	To revoke the Order.
Date of Member site visit:	n/a
Application brought to Committee because:	It is required to under the Council Scheme of Delegation.
Presenting officer:	Miriam Hill (Trees Officer)

### Executive Summary

1. The proposal is to revoke in its entirety TPO 0005 (1985).
2. Local Authorities are advised to reassess existing Orders from time to time to ensure that the protection is still merited, and the Order contains up-to-date information.
3. The existing Tree Preservation Order (TPO) is no longer required as the tree it protected, T1 ash which no longer exists.
4. In accordance with the Council's Constitution, the TPO comes before Planning Committee for permission to revoke the TPO.

### Relevant Law

5. Town and Country Planning Act 1990 Part VIII

## **Consultation**

6. No consultations have taken place as the required actions have arisen out of the cyclical administrative review of the existing Orders.

## **Assessment of the Order**

7. TPO 0005 (1985) was reviewed on the 29 July 2021 by Miriam Hill, Trees Officer.
8. SCDC approved an application to fell the ash tree on 14 February 2013. The application states the tree was showing signs of dieback and extensive deadwood in the canopy. *Inonotus hispidus* fungal fruiting bodies were visible in several areas of the main trunk, a sign of advancing decay.
9. The tree was felled and the Order is no longer required.

## **Recommendation**

10. The Tree Officer recommends that the Committee APPROVES the revocation of the Order.

## **Background Papers**

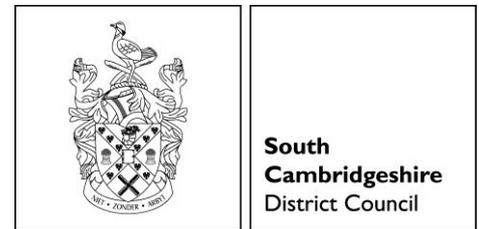
The following list contains links to the documents on the Council's website and / or indication as to where hard copies can be inspected.

- 2021 09 08 - West Wickham 10 Burton End TPO 0005 (1985) Decision Notice 14Feb2013

## **Report Author:**

Miriam Hill – Trees Officer  
Telephone: (01954) 713405

# Agenda Item 12



**REPORT TO:** Planning Committee

29 September 2021

**LEAD OFFICER:** Joint Director of Planning and Economic Development

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## Enforcement Report

### Executive Summary

1. On 31<sup>st</sup> August 2021 there were 225 open cases.
2. Details of all enforcement investigations are sent electronically to members on a weekly basis identifying opened and closed cases in their respective areas along with case reference numbers, location, case officer and nature of problem reported.
3. Statistical data is contained in Appendices 1 and 2 to this report.

### Updates to significant cases

Should Members wish for specific updates to be added to the Enforcement Report then please request these from the Principal Planning Enforcement Officer and they will be added to the next available Planning Committee.

On a further note, if members would like further information to be submitted as part of this report moving forward then please contact the Principal Planning Enforcement Officer.

Amendments are to be considered to be added to Appendix 1 - Enforcement Cases Received and Closed. The extra fields on the submitted document for October Planning Committee will include cases closed as not expedient and resolved. If Members would like others to be considered then please contact the Principal Planning Enforcement Officer.

Updates are as follows:

#### **Croudace Homes Ltd Site, Land off Horseheath Road, Linton.**

The developer has failed to discharge the surface water drainage condition prior to commencement of the development and the latest application to discharge the condition has been refused. A Temporary Stop Notice was served on the site on 24/02/21 and all work had stopped for 28 days.

Planners are in continual discussions with the developer to rectify the issues. The outcomes of the Enforcement visits have been forwarded to the relevant planners and senior management. The site has been monitored and regular visits will continue to be carried out.

Discussions between Planning Officers and the developers to be held on Friday 2<sup>nd</sup> July and verbal update to be provided to Planning Committee. A further meeting between Stephen

Kelly, Joint Director of Planning and Economic Development and local residents was held on 23<sup>rd</sup> August 2021.

Planning Enforcement have not been instructed to take any further action at this stage.

### **Burwash Manor Farm**

Without planning permission, the erection of children's play equipment within land designated as Green Belt. A retrospective planning application, reference S/3494/18/FL had been refused. The size, scale and height of the development is contrary to paragraph 144 of the National Planning Policy Framework (NPPF) 2019. The enforcement notice issued requires the owners to cease the use of the play equipment specifically the adventure tower and remove the play equipment from the land. The compliance period is one (1) month from the date it takes effect on the 21 May 2019 – A Planning Appeal has been submitted to the Inspectorate on the 20th May 2019 – Appeal allowed; Enforcement Notice quashed. Replacement notice to be drafted and served. Enforcement Notice served on 9<sup>th</sup> July 2020. Compliance visit to be carried out after 7<sup>th</sup> October. Late Appeal rejected by PIN's. Stephen Kelly in talks with owner to re-site playground on suitable land. Site visited by Enforcement and Environmental Health Officers 16<sup>th</sup> December. No agreement reached consideration to be given to prosecution for failing to comply with the enforcement notice.

Partial compliance with notice following joint site visit with Environmental Health confirms that the Hobbit House has been removed but the associated wooden chairs remain along with the main playground structures. The playground has been closed over the past year but harm is still being caused by people sitting in the area where the hobbit house was.

The case officer John Shuttlewood has drafted the prosecution file and once complete will be reviewed by Legal.

### **Elmwood House 13A High Street, Croxton, PE19 6SX**

Extension and garage granted permission by S/2126/18/FL, not constructed as approved plans and approved materials not used. Retrospective application S/0865/19/FL to retain as constructed refused. Enforcement Notice requiring garage and extension to be demolished served, 18 December 2019. Enforcement Notice appealed. Appeal process commenced. 29 April 2020.

Appeals resulted,

Appeal A, allowed on ground (f), the appellant now has three options, (i) Demolish completely, (ii) Demolish to brick plinth level and rebuild as S/2126/18/FL or (iii) Remove exterior render finish and replace with brick tiles to match existing and construct roof as approval S/2126/18/FL.

Appeal B, planning permission should be allowed for development as built, dismissed.

Compliance date 30<sup>th</sup> December 2020.

Site visit carried out on 18/01/21, 25/02/21 and 12/04/21 and the notice has not been complied with.

A further application under reference 20/01408/HFUL has been submitted and agreement with Area Manager that all Enforcement action will be held in abeyance pending the outcome of the application.

**Whitehall Farmhouse, 29 Ermine Way, Arrington, Royston, Cambridgeshire, SG8 0AG**

The reported breach of planning control was that without planning permission the erection extension of an existing building (Building 1) and storage containers to the rear including hardstanding.

The developer had instructed a planning agent to submit applications in an attempt to regularise the breaches, but none has been submitted to date. The case was re allocated to an officer, who has since left the Local Authority, but no application has still been submitted. It has now been reallocated to Alistair Funge, Senior Planning Enforcement Officer for a full review.

A planning application has been submitted and has since been validated

**Cottage Nursery, Cardinals Green, Horseheath, Cambridge, Cambridgeshire, CB21 4QX**

The reported alleged breaches of planning control are various from use of the property as a House in Multiple Occupation and also the erection of a building to the rear.

Various departments within the Local Authority have an interest in the address and a joint visit is in the process of being arranged. Further updates to be provided when the visit has taken place.

**Smithy Fen, Cottenham, Cambridge, Cambridgeshire, CB24 8PT**

This is a site with an extensive history of formal Notices being served, injunctions and prosecutions being carried out. Due to the complex nature of the site an outside company Ivy Legal have been tasked with reviewing the site history and providing a detailed report on recommended actions that can be considered by the Local Planning Authority.

The report is in the final draft stage and members will be updated as soon as it is complete.

## **Background Papers**

Planning Enforcement Register.  
Statistical Analysis of Uniform Planning Enforcement Software Program.

## **Appendices**

Appendix 1: Enforcement Cases Received and Closed.  
Appendix 2: Notices Served.

## **Report Author:**

Will Holloway - Principal Enforcement Officer

Date: 31/08/21

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Enforcement Cases Received and Closed

Month – 2021	Received	Closed
July 2021	44	45
1 <sup>st</sup> Qtr. 2021	118	91
2 <sup>nd</sup> Qtr. 2021	92	214
3 <sup>rd</sup> Qtr. 2021	44	45
1 <sup>st</sup> Qtr. 2020	123	84
2 <sup>nd</sup> Qtr 2020	101	60
3 <sup>rd</sup> Qtr 2020	135	33
4 <sup>th</sup> Qtr 2020	114	103
1 <sup>st</sup> Qtr. 2019	135	134
2 <sup>nd</sup> Qtr. 2019	146	155
3 <sup>rd</sup> Qtr. 2019	177	154
4 <sup>th</sup> Qtr 2019	157	198
1 <sup>st</sup> Qtr. 2018	161	148
2 <sup>nd</sup> Qtr. 2018	156	167
3 <sup>rd</sup> Qtr. 2018	176	160
4 <sup>th</sup> Qtr. 2018	177	176
1 <sup>st</sup> Qtr. 2017	122	122
2 <sup>nd</sup> Qtr. 2017	157	165
3 <sup>rd</sup> Qtr. 2017	148	118
4 <sup>th</sup> Qtr. 2017	175	158
2021 - YTD	210	305
2020 - YTD	473	190
2019 - YTD	615	641
2018 - YTD	670	651
2017 - YTD	602	563
2016 - YTD	565	563
2015 - YTD	511	527
2014 - YTD	504	476

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Notices Served

1. Notices Served in July 2021

Type of Notice	Period	Calendar Year to date
	July 2021	2021
Enforcement	0	5
Stop Notice	0	0
Temporary Stop Notice	0	2
Breach of Condition	0	1
S215 – Amenity Notice	0	0
Planning Contravention Notice	1	6
Injunctions	0	0
High Hedge Remedial Notice	0	0

2. Details of Notices served in July 2021

Ref. no.	Village	Address	Notice issued
ENF/0254/19	The Mordens	Low Farm Lower Road Croydon Royston Cambridgeshire SG8 0EE	Planning Contravention Notice – Erection of various structures

Date: 31/08/21

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# Agenda Item 13



**Report to:** Planning Committee

29 September  
2021

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

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## **Appeals against Planning Decisions and Enforcement Action**

### **Executive Summary**

1. This report informs Members about appeals against planning decisions and enforcement action, and proposed hearing and inquiry dates, as of 24 August 2021. Summaries of recent decisions of importance are also reported, for information.

### **Appendices**

Appendix 1: Decisions Notified by the Secretary of State

Appendix 2: Appeals received

Appendix 3: Local Inquiry and Informal Hearing dates scheduled

### **Report Author:**

Ian Papworth  
Telephone Number:

Technical Support Officer (Appeals)  
01954 713406

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## Appendix 1

### Decisions Notified By The Secretary of State

Reference	Address	Details	Decision	Date	Planning Decision
20/05001/HFUL	23 Magna Close Great Abington	Two storey front extension and single and double storey rear extension	Split	09/08/2021	Refused
20/02510/S73	41 Fen Road Bassingbourn	Variation of condition 2 (approved plans) of planning permission S/2256/16/FL	Allowed	19/08/2021	Permitted, appeal against condition 5
20/04975/HFUL	14 Elms Avenue Great Shelford	Two storey front/side extension and single storey front extension including proposed new dropped kerb	Dismissed	19/08/2021	Refused

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Appeals Received

Reference	Address	Details	Date Appeal lodged
21/01485/FUL	2A North Brook End Steeple Morden	Conversion and adaption of an existing building to a Self-Build Dwelling	27/07/2021
21/00782/HFUL	32 London Road Harston	Two-storey side and first floor rear extensions and a garage to the front elevation. Installation of basement and new swimming pool.	29/07/2021
21/00567/FUL	Land At 12 Horningsea Road Fen Ditton	Demolition of existing conservatory and garage and the erection of 3 No. three-bedroom dwellings together with new access onto Horningsea Road	30/07/2021
20/02929/OUT	Land Between Haverhill Road And Hinton Way Stapleford	Outline planning for the development of land for a retirement care village in Use Class C2 comprising housing with care, communal health, wellbeing and leisure facilities, public open space, landscaping, car parking, access and associated development and public access countryside park with all matters reserved except for access.	05/08/2021
20/04431/FUL	The Arches, Schole Road Willingham	Removal of existing mobile chalet unit and erection of new single storey dwelling with new 'link' to existing brick and tile 'medical Unit', with temporary provision for the siting of 2 no static caravans for occupation during construction phase.	13/08/2021

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## Appendix 3

Local Inquiry and Informal Hearing dates scheduled

- **Local Inquiries**

<b>Reference</b>	<b>Name</b>	<b>Address</b>	<b>Planning decision or Enforcement?</b>	<b>Date confirmed/ proposed</b>
20/02929/OUT	Axis Land Partnerships Ltd	Land Between Haverhill Road And Hinton Way Stapleford	Refused	TBC

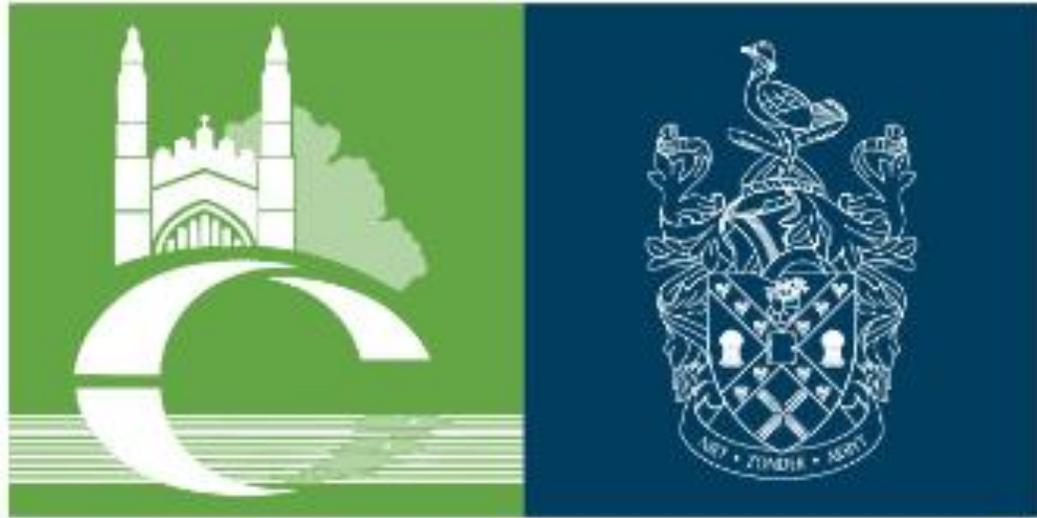
- **Informal Hearings**

<b>Reference</b>	<b>Name</b>	<b>Address</b>	<b>Planning decision or Enforcement?</b>	<b>Date confirmed/ proposed</b>
S/3873/17/OL	Mr A Ashley	Land at Mill Lane, Sawston	Planning Decision	18/10/2021 Provisional TBC
S/1625/18/OL	Mr A Ashley	Land at Mill Lane, Sawston	Planning Decision	18/10/2021 Provisional TBC
S/0913/19/VC	Mr J Hart	Apple Acre Park, London Road, Fowlmere	Non determination	TBC
S/4057/19/OL	Mr Andrew Adams, Axis Land Partnerships Ltd	Tanner And Hall Ltd Station Road Harston	Planning Decision	TBC
20/03254/OUT	Mr Andy Brand, The Abbey Group (Cambridgeshire) Limited	Land At And To The Rear Of 30 & 32 New Road	Non Determination	16/11/2021 Provisional TBC

### Appendix 3

<b>EN/01535/20</b>	<b>Mr Joseph Tidd</b>	<b>Land To The South Of Chear Fen Boat Club, Twentypence Road</b>	<b>Enforcement Notice</b>	<b>TBC</b>
<b>20/04431/FUL</b>	<b>Mrs Julie Brown</b>	<b>The Arches, Schole Road Willingham</b>	<b>Planning Decision</b>	<b>TBC</b>

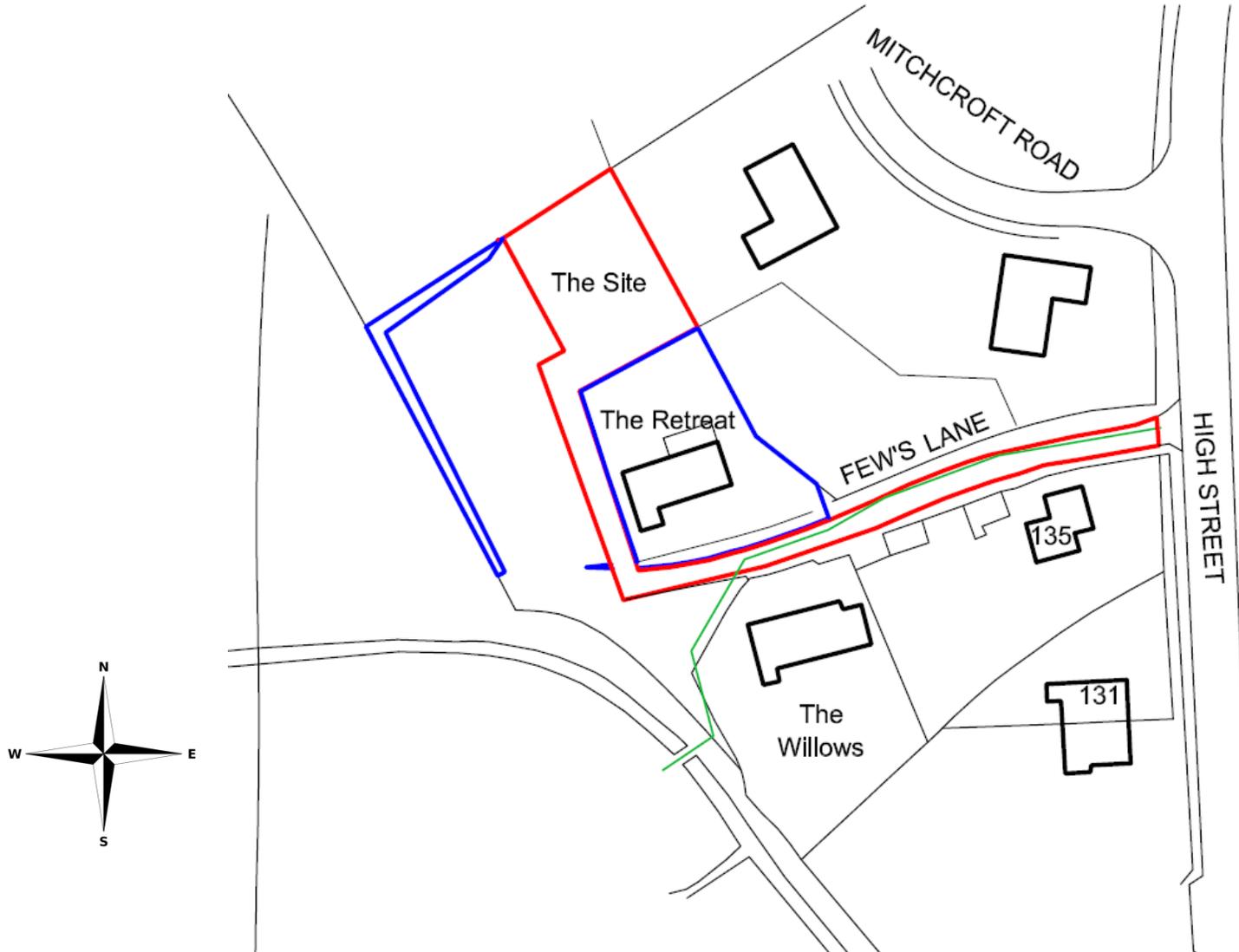
Planning  
Committee



**GREATER CAMBRIDGE**  
SHARED PLANNING

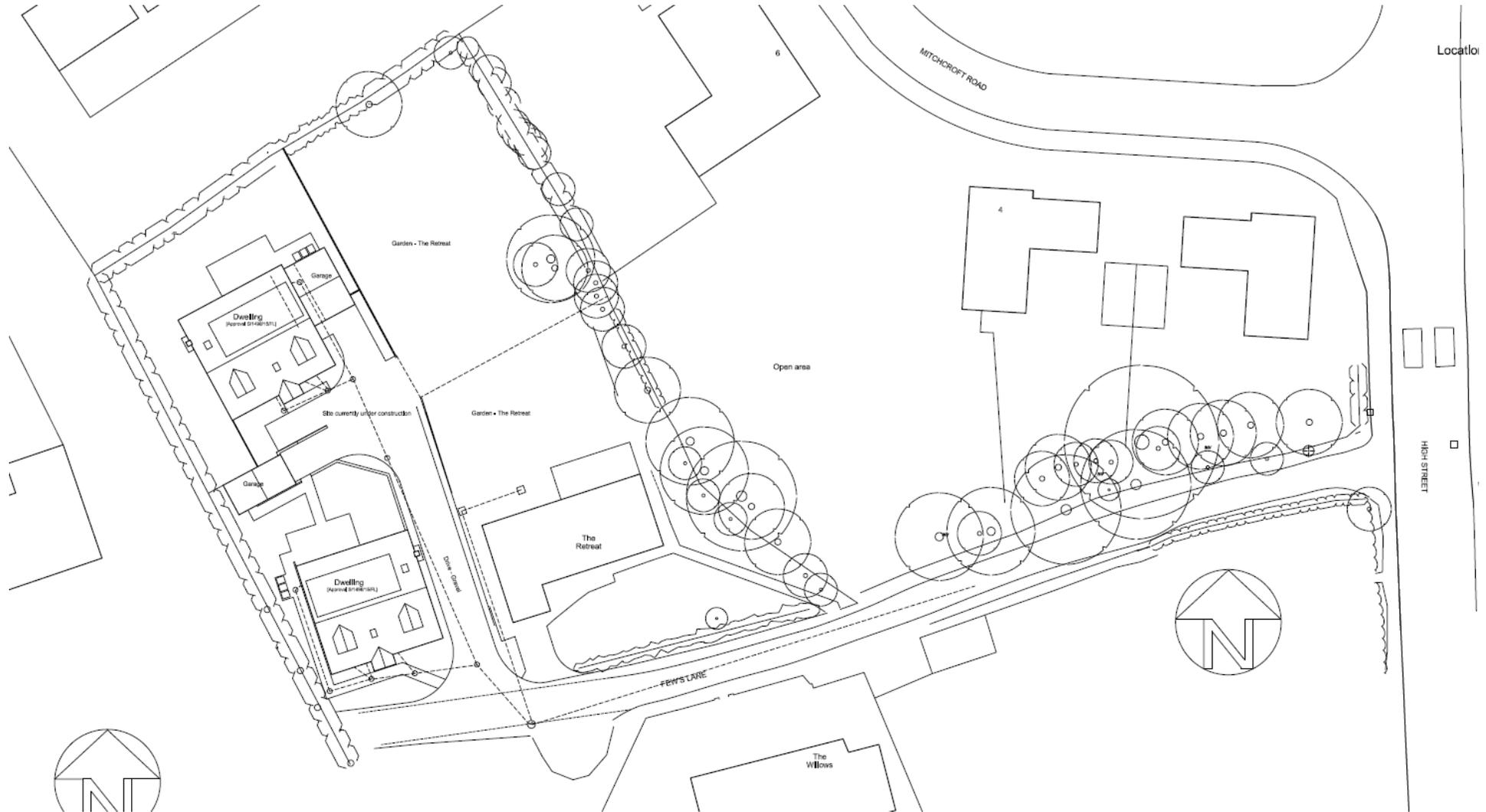
# 20/05101/FUL - Fews Lane, Longstanton

## Site Location Plan



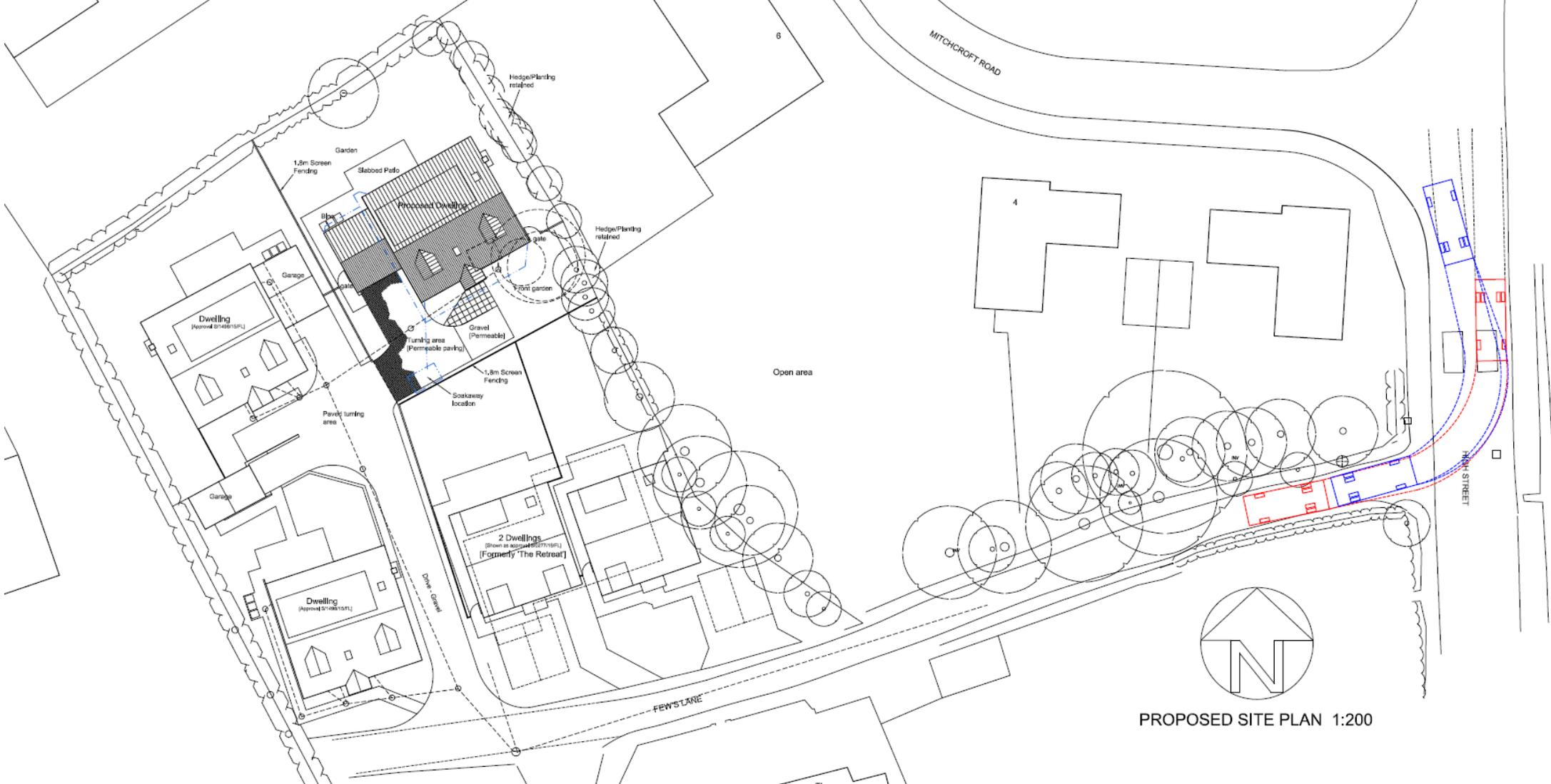
# Existing site plan

Page 639



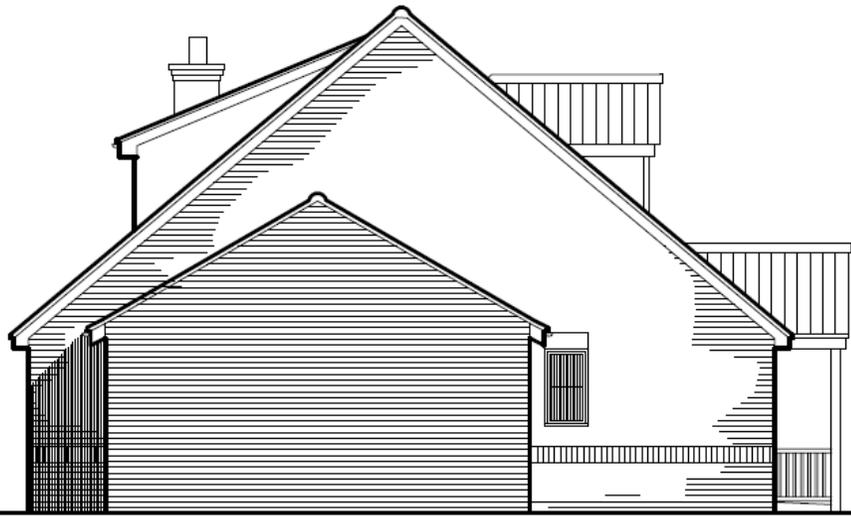
# Proposed site plan

Page 640



PROPOSED SITE PLAN 1:200

# Proposed elevations



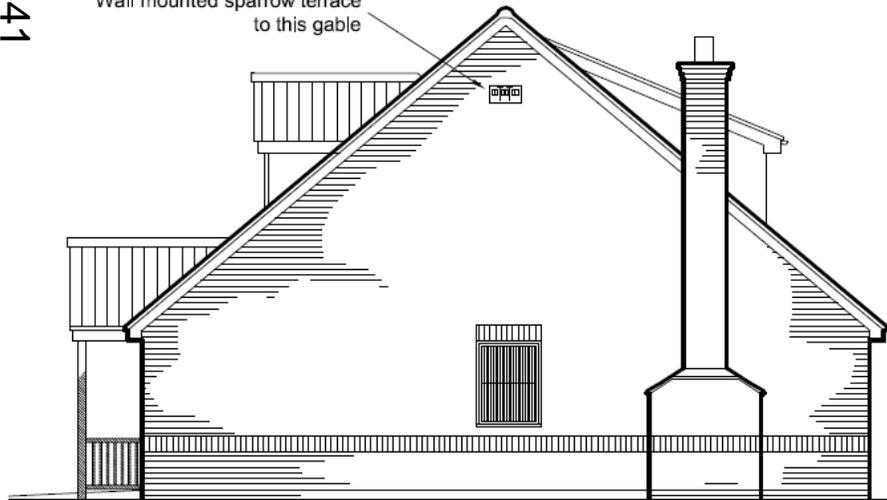
Side Elevation



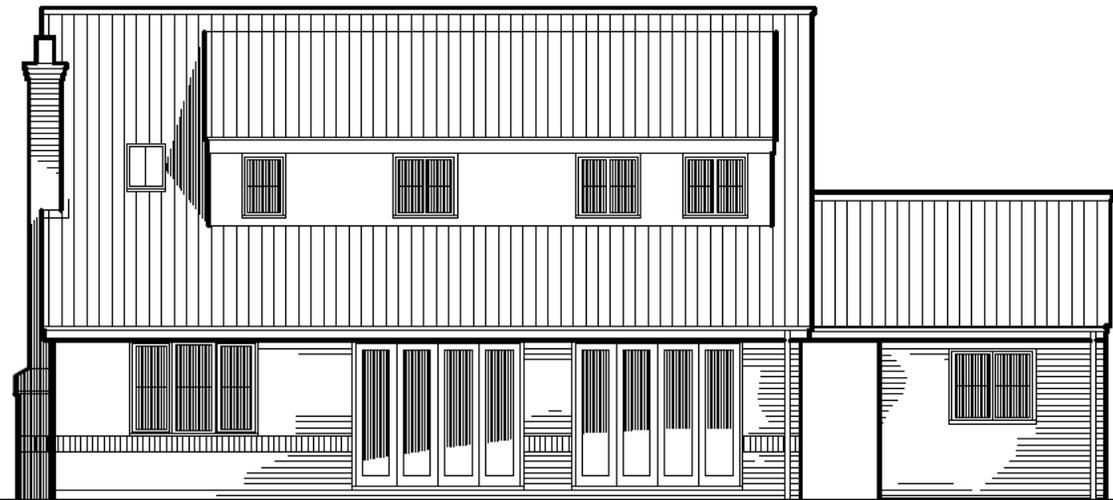
Front Elevation 1:100

Page 641

Wall mounted sparrow terrace  
to this gable

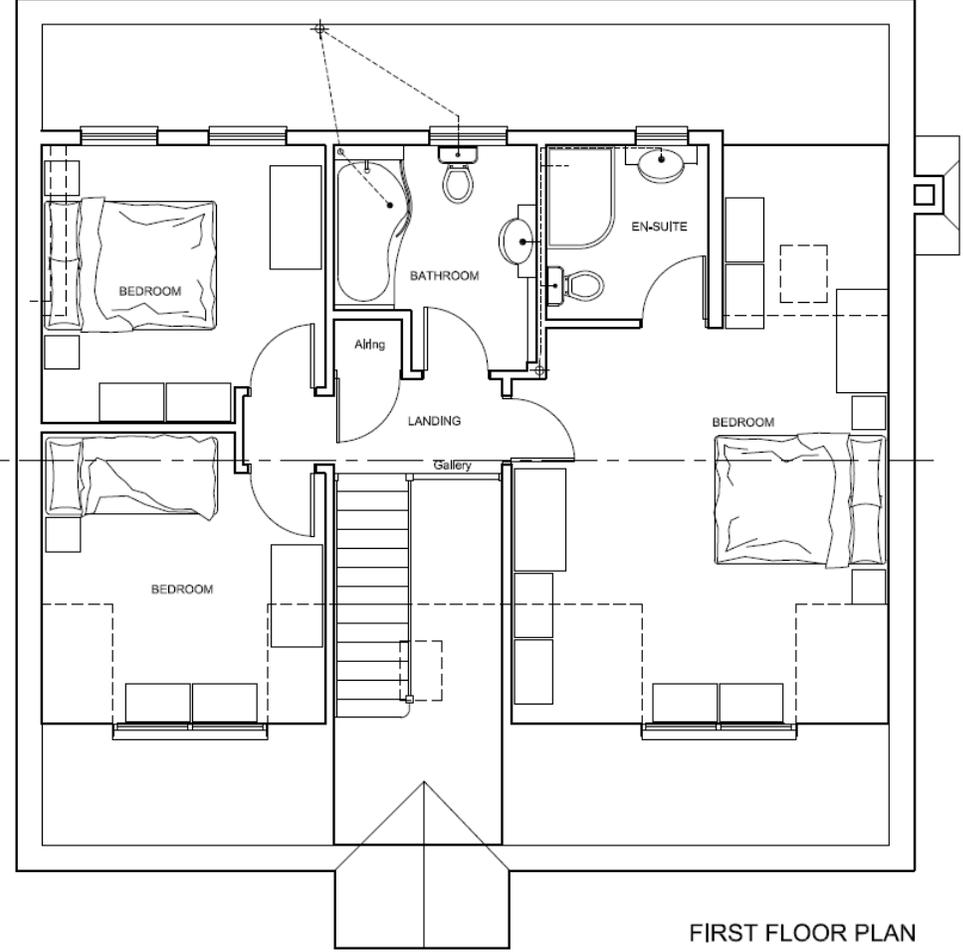
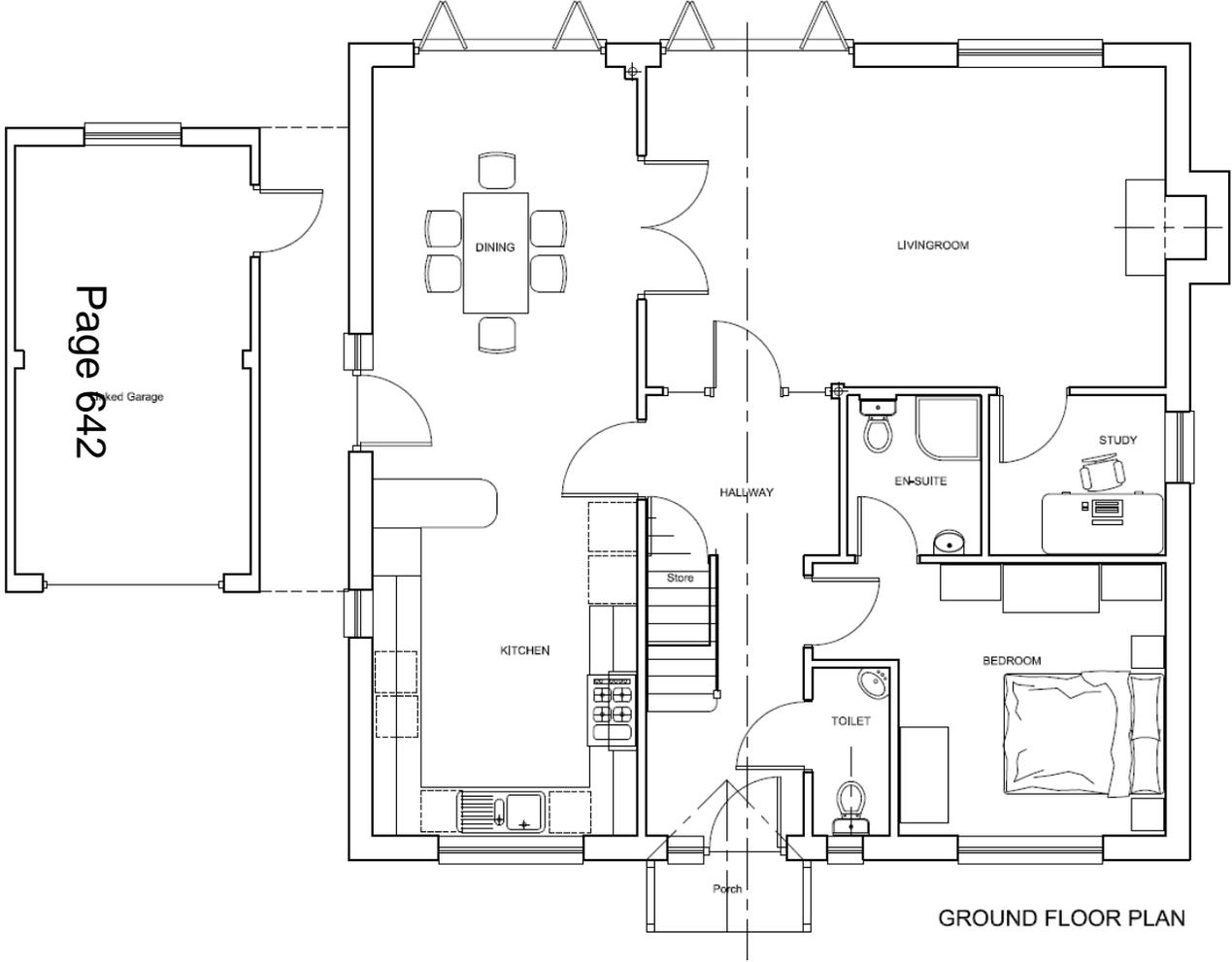


Side Elevation [West]



Rear Elevation

# Proposed ground & first floor plan



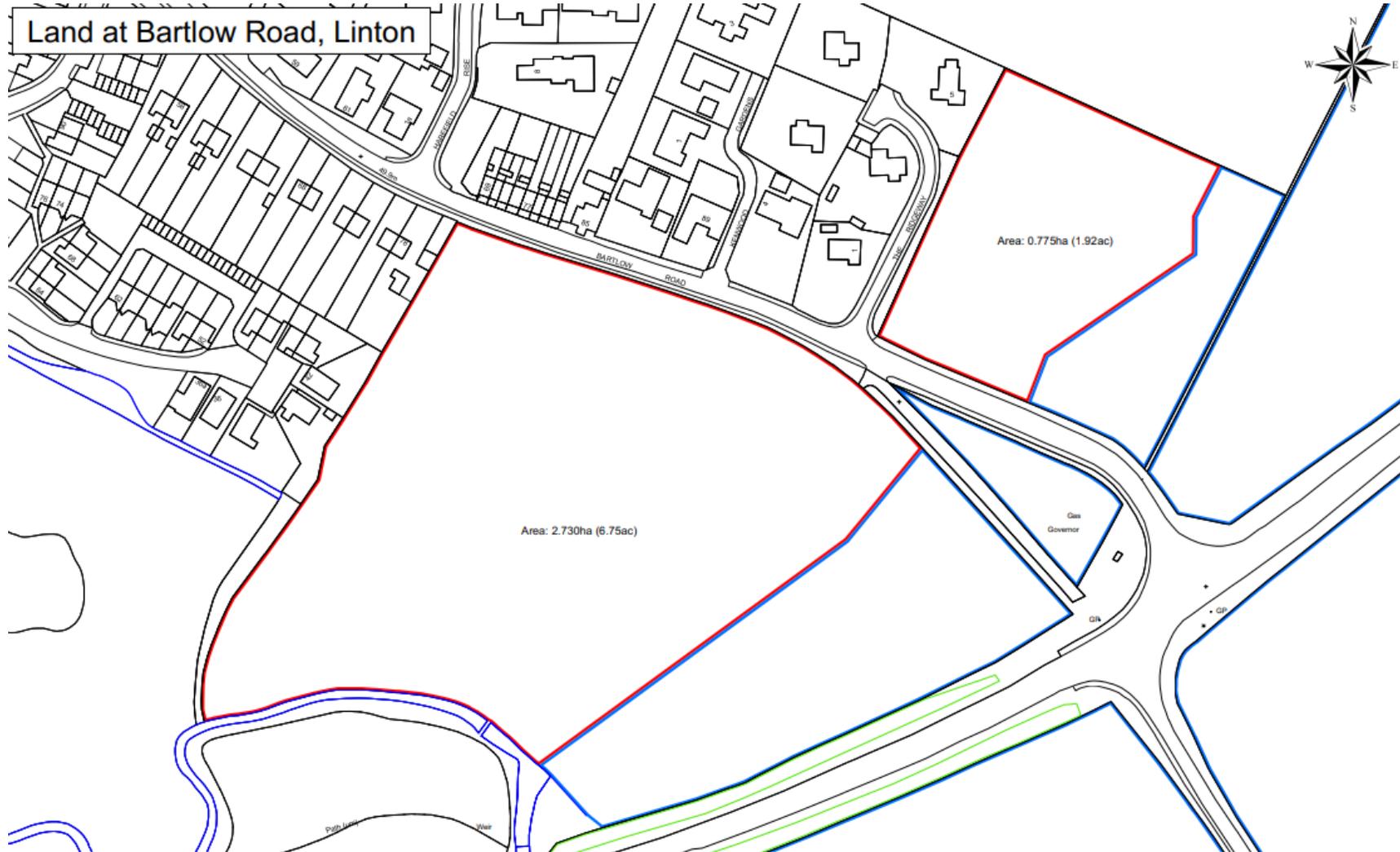






# 21/00629/S73 - Bartlow Road, Linton

## Site Location Plan (S/1963/15/OL)



# Northern Site Drainage Layout

**DRAINAGE KEY**

- SITE BOUNDARY
- ADOPTABLE 500mm DIA. WATER SEWER AND MANHOLE
- ADOPTABLE 500mm DIA. WATER RISING MAIN
- ADOPTABLE 500mm HIGHWAY DRAIN AND FOG RING MANHOLE
- ADOPTABLE 500mm HIGHWAY DRAIN AND 675x250mm BRICK MANHOLE
- ADOPTABLE 500mm HIGHWAY GILLY
- PRIVATE FOG WATER DRAIN AND MANHOLE
- PRIVATE 500mm FOG WATER POLYPROPYLENE INSPECTION CHAMBER
- SOIL & VENT PIPE
- STUB STACK
- PRIVATE SURFACE WATER DRAIN AND MANHOLE
- PRIVATE 500mm SURFACE WATER POLYPROPYLENE INSPECTION CHAMBER
- MANHOLE DOWN PIPE
- PRIVATE SURFACE WATER RISING EYE

**200mm DEPTH**

- FURNISHABLE BLOCK PAVING DRIVEWAY / PARKING AREA
- RETIC. ACC. DOWN TO BE PROVIDED ON PRIVATE DRIVEWAYS THAT FALL BELOW FINISH LEVEL TO RECEIVE ANY RESIDUAL SURFACE RUN-OFF FROM THE FURNISHABLE.

**300mm DEPTH**

- ADOPTABLE 500mm HIGHWAY FOG RING SOAKAWAYS WITH GRASS SURROUNDING SOAKAWAYS TO BE LOCATED A MINIMUM OF 5m FROM ANY STRUCTURE AND THE PUBLIC HIGHWAY.
- PRIVATE CELLULAR CONCRETE SOAKAWAYS LOCATED IN REAR FROM STRUCTURES. CELLULAR CHAINS SHOWN UNDER PERMISSIBLE AREAS ARE THE PERMITTED CHAIN SYSTEM.

**ACC**

- ACC

**PRIVATE MANHOLE TYPE KEY**

- TYPE - L 500mm POLYPROPYLENE NON ENTRY DEEP INSPECTION CHAMBER
- TYPE - M 500mm POLYPROPYLENE INSPECTION CHAMBER
- TYPE - N 500mm POLYPROPYLENE CHAMBER WITH S&T TOP

**NOTE:** MANHOLE COVER LEVELS GIVEN ON DRAWING ARE APPROXIMATE. ONLY MANHOLE COVERS SHALL BE SET TO SUIT THE LEVEL OF ADJACENT FINISH FROSH OR SOFT LANDSCAPE WEDGE.

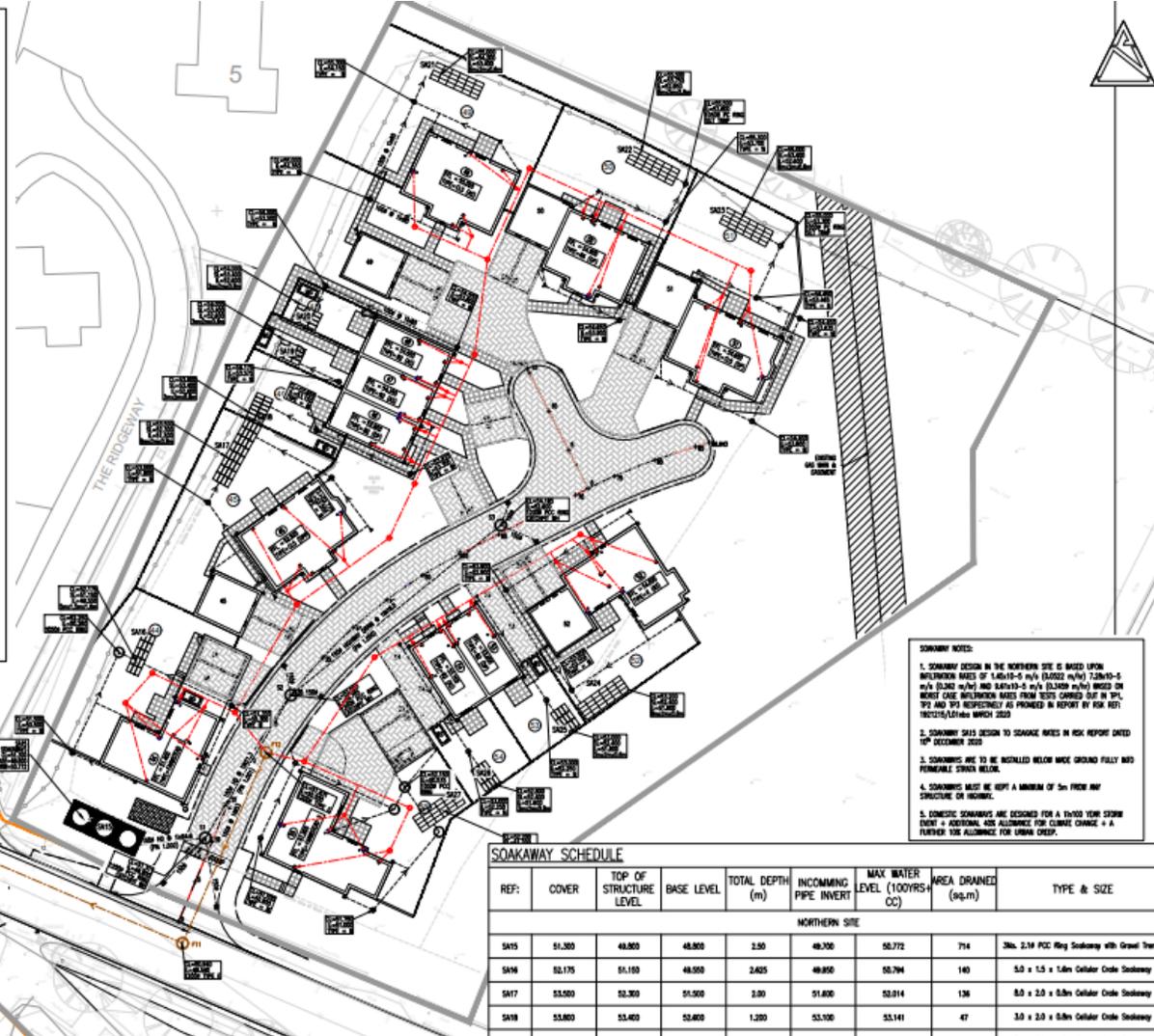
**DRAINAGE NOTES**

ACCESS CHAMBERS SHOWN THIS BUT NOT IDENTIFIED ON DRAWING ARE AS FOLLOWS:

HOLES - MIN ACCESS CHAMBERS (200mm) SET AT 750mm MIN. BELOW FINISHED FLOOR LEVEL ON ADJACENT BUILDING.

IN BATHROOMS WHERE THE ABOVE REQUIREMENTS RESULT IN CHAMBER DEPTH BEING IN EXCESS OF 250mm. BELOW ADJACENT GROUND (i.e. ADJACENT TO FINISH DEPT) POLYPROPYLENE INSPECTION CHAMBER (TYPE M) SHALL BE SUBSTITUTED.

WHERE CHAMBERS ARE LOCATED WITHIN VEHICULAR AREAS THEN POLYPROPYLENE INSPECTION CHAMBER (TYPE M) SHALL BE USED.



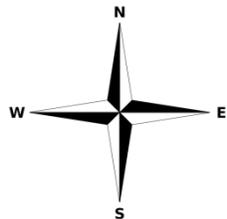
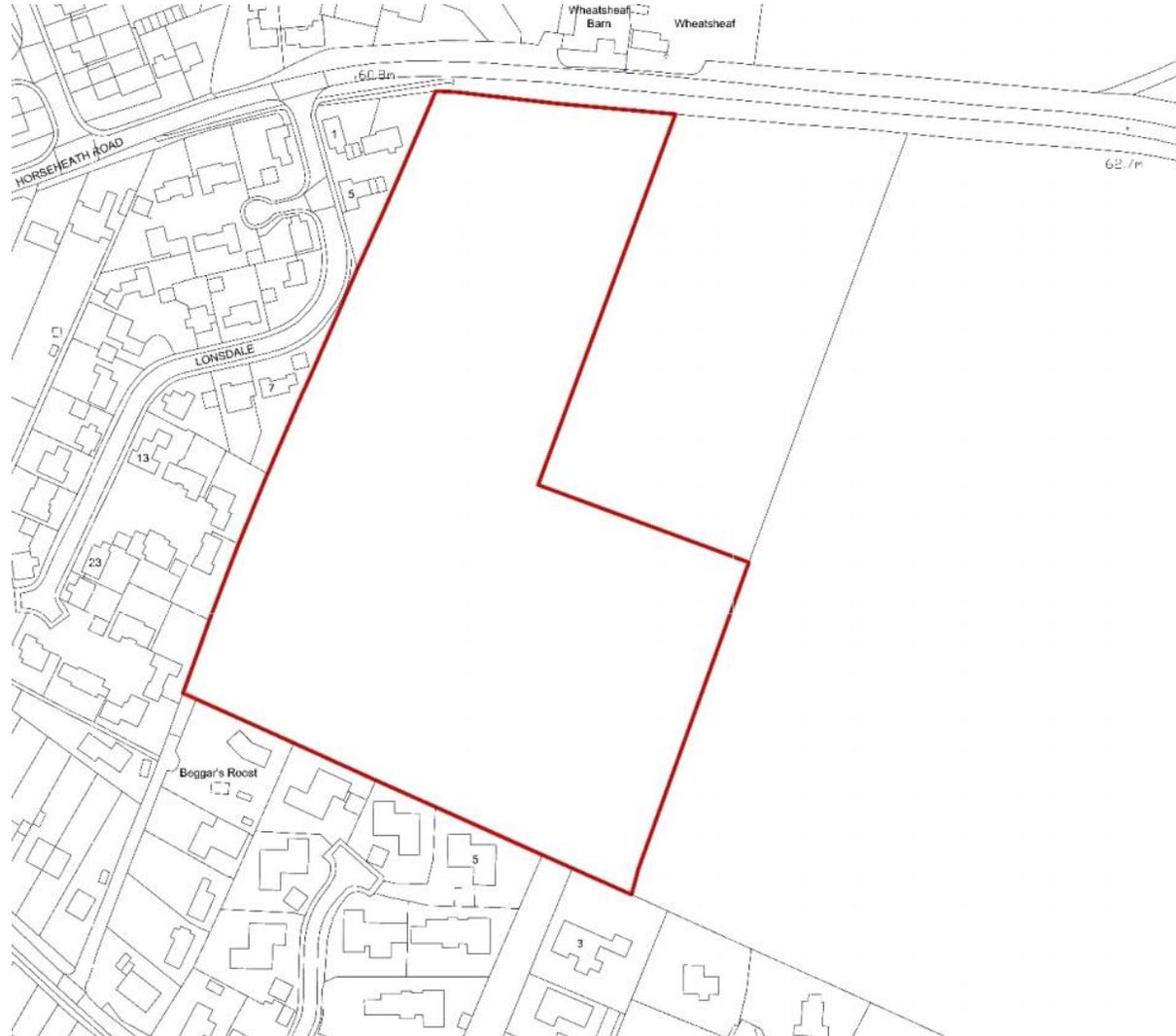
**SOAKAWAY NOTES:**

- SOAKAWAY DESIGN IN THE NORTHERN SITE IS BASED UPON INFILTRATION RATES OF 1.0x10<sup>-5</sup> m/s (0.0001 m/h) (0.0001-0.5 m/s) (0.0001 m/h) AND 0.0001-0.5 m/s (0.0001 m/h) BASED ON WORST CASE INFILTRATION RATES FROM TESTS CARRIED OUT IN SPL 703 AND 974 RESPECTIVELY AS PROVIDED IN REPORT BY ICA 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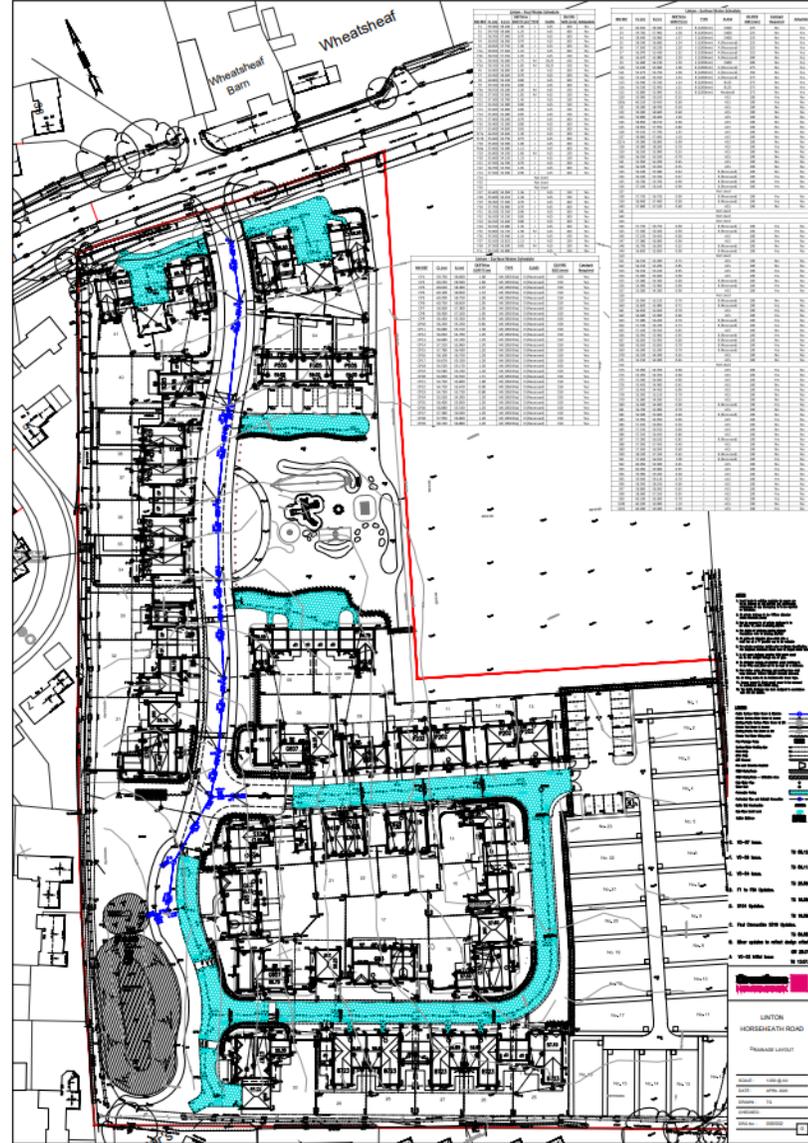


# *S/2553/16/CONDH - Horseheath Road, Linton*

## Site Location Plan

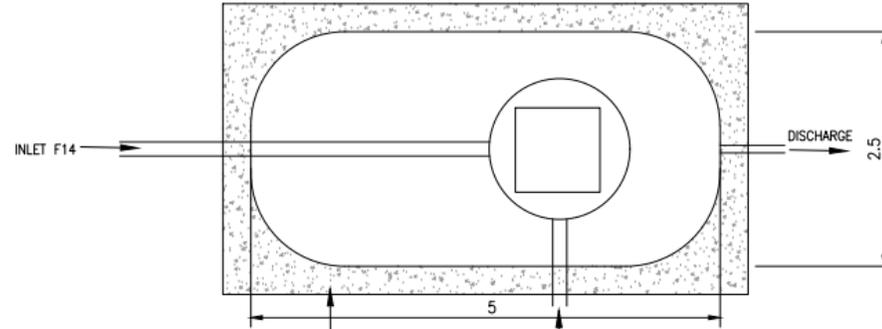


# Foul Drainage Layout



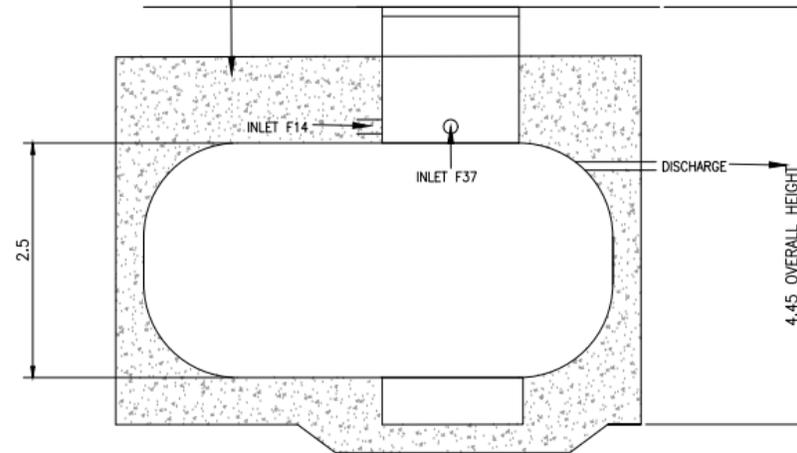


# Pump Detail

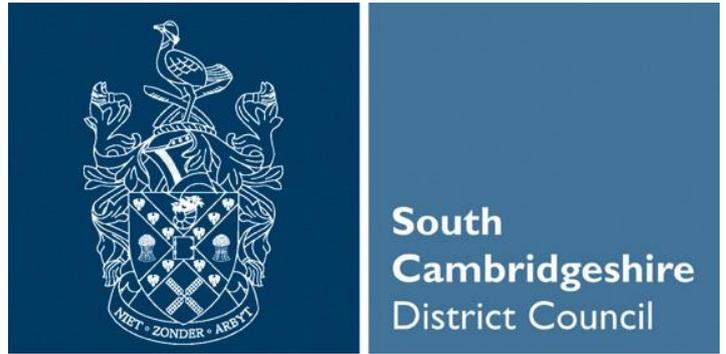


C30 CONCRETE SURROUND TO BE A MINIMUM OF 0.3M TO BASE AND SIDES TO MANUFACTURERS GUIDELINES

PLAN



# Agenda Annex



## **Public Speaking at meetings of the Planning Committee**

May 2020

## **1. What is the Planning Committee?**

- 1.1 South Cambridgeshire District Council's Planning Committee is a Regulatory Committee consisting of elected Councillors. It is responsible for determining matters which cannot be dealt with under powers delegated to officers.

## **2. When and where do Planning Committee meetings take place?**

- 2.1 The Planning Committee meets in the Council Chamber at South Cambs Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA and/or via such remote means as the Council may publicise. Further details, including dates and times of meetings, contacts, directions, variations to dates / venue and web links to remote meetings are available on the Council's website by visiting [www.scambs.gov.uk](http://www.scambs.gov.uk) and following the links from 'The Council', or by emailing Democratic Services at [democratic.services@scambs.gov.uk](mailto:democratic.services@scambs.gov.uk) or telephoning 03450 450 500.

## **3. Can anyone attend Planning Committee meetings?**

- 3.1 Meetings of the Planning Committee are open to the public, so anyone can listen to meetings. Where a meeting is held remotely, members of the public and press may listen to the proceedings at the virtual meeting and a web link will be published on the relevant committee page of the Council's website at least 24 hours before the meeting. A range of people with differing interests in specific applications observe these meetings, whether they are applicants or an applicant's agent, objectors, neighbours or other residents, local District Councillors or members of Parish Councils.
- 3.2 Despite being a public meeting, in some very occasional cases, the law does allow the committee to consider some matters in private. For example, an application may contain information of a personal or commercially sensitive nature that the Council would not be able to publicise. In every case, however, the public interest in excluding the press and public from the meeting room must outweigh the public interest in having the information disclosed.

## **4. Can anyone speak at Planning Committee meetings?**

- 4.1 The Planning Committee welcomes participation from outside of the Committee's membership. All registrations to speak or submissions of written representations must be made direct to Democratic Services in accordance with the procedure set out in paragraph 5.3 below. Other than Members of the Planning Committee and the Council's officers, there are four main categories of other people able to speak at meetings of the Committee: -
- (a) 1 x Community Objector or objector's agent
  - (b) (i) 1 x Applicant (or applicant's agent)  
(ii) 1 x Community Supporter if (and only if) the officer recommendation is refusal, or the applicant or agent forego their right to speak)
  - (c) 1 x Parish Council representative (elected or co-opted Councillor, agent or Parish Clerk)
  - (d) Local District Councillor(s) or another Councillor appointed by them.

- 4.2 Parish Councils and local District Councillors may speak as part of the planning process, regardless of whether they support or oppose an application. Objectors and Supporters speak as part of the specific application. Where more than one objector or supporter requests to speak, they must agree between themselves on a presentation that covers all their concerns. Where the officer recommendation is approval, a Community Supporter will only be allowed to address the Committee if the applicant, or applicant's agent, forego their right to speak.
- 4.3 The same person is not allowed to address the committee in more than one of the speaker categories. Where speakers have competing interests, such as community objector and Parish Council representative, they should choose their dominant interest prior to registering to speak, and delegate the other role to another representative if need be.
- 4.4 In exceptional circumstances, the Committee Chair may opt to make special arrangements, such as where a neighbouring parish is perceived as being significantly affected by a proposal.,
- 4.5 It is impossible to say at what time each application on the agenda will be discussed. Public speakers should therefore be prepared to address the Committee at any time after the beginning of the meeting.

## 5. How may people make representations?

- 5.1 In view of the Coronavirus emergency, Planning Committee meetings may be conducted wholly remotely; or, at a later date if social distancing restrictions permit, in a meeting room with a proportion of the membership participating remotely; or wholly in a meeting room in the traditional manner. The method by which the meeting will be conducted will be indicated on the Council's website.
- 5.2 In order to enable public representations to be managed smoothly, arrangements for participating in committee meetings will operate on the basis indicated below. The operation of the scheme may be further reviewed by the committee from time to time.
- 5.3. Public representations may be made **either** by written representations, **or** by a request to speak by each of the four categories of speakers listed in paragraph 4.1 above. Each written submission, or request to speak, **must** be sent/made to [democratic.services@scambs.gov.uk](mailto:democratic.services@scambs.gov.uk) by no later than 4.00pm, two clear working days before the meeting (ie: on a Friday where a committee meeting is held on a Wednesday), together with details of the person making the representation; which of the categories of speakers they fall into, and contact details, including an email address and a telephone number on which they may be contacted. For the avoidance of doubt, it is not permissible to make written representations **and** to also register to speak at the meeting. However, those registering to speak will be invited to submit written representations which shall only be used as a backup should their connection to speak at the meeting fail. Each such representation must be capable of being read out within three minutes.
- 5.4. Where a person is unable to submit their representations electronically, they should telephone Democratic Services on 03450 450 500, in order that their representations may be transcribed over the telephone.

- 5.5 Where an interested party has opted to submit written representations and to forgo the opportunity to speak at a meeting in accordance with paragraph 5.3 above, copies of such representations submitted by the deadline will be circulated to committee members and published on the Council's website.
- 5.6 Registered speakers will be sent a link to join any meeting to be conducted remotely, normally at least 24 hours before the meeting. Speakers will be invited to join by teleconference, or, as and when the Council's video conferencing platform and a speaker's own IT hardware permits, by video conference. Where a virtual meeting is taking place, the ability to participate in the meeting (as opposed to view it online) will depend upon access to a computer with camera and speakers and software capable of engaging with the Council's systems. The Council cannot be responsible for the provision of such equipment and software and it will be for participants to satisfy themselves that their equipment meets the appropriate requirements (information on such requirements will be published online).

## 6. How are applications considered?

- 6.1 The appropriate planning officer will introduce the item.
- 6.2 Committee members will then hear any speakers' presentations. The Chair shall indicate when each speaker may address the meeting. The order of receiving representations shall be as stated in paragraph 4.1 above. Each speech is limited to three minutes. This applies even when the applicant (or applicant's agent) and a Community supporter both address the Committee, as detailed above – the objector may still only speak for three minutes. The Chair, or an officer designated by the Chair, shall indicate when the allotted time of three minutes has been used up. Speakers should restrict themselves to **material planning considerations**. The Council's website [see link below] contains further information on material planning considerations and issues that cannot be taken into account when considering an application.

Link: [View or comment on a planning application](#)

- 6.3 Committee members will have read the written reports prepared for them, so speakers should try to avoid repeating points that are already explained in that material.
- 6.4 Speakers should be careful not to say anything derogatory or inflammatory, which could expose them to the risk of legal action. Speakers shall be required to observe appropriate meeting etiquette, which shall be shared with them in advance of the meeting. If a speaker does not observe the meeting etiquette, or otherwise interrupts or disrupts the meeting, the Chair shall warn the person concerned. If they continue to fail to observe the meeting etiquette or continue to interrupt or disrupt the meeting, the Chair shall order the removal of that person from the meeting.
- 6.5 If those registered to speak are not present in the meeting at the time the relevant item is considered, the Committee will not be able to wait, and will determine the application – officers will be able to say whether a particular item is at the beginning, middle or end of the agenda, but cannot give an accurate idea of when it will be considered

- 6.6 After the objector and supporter have spoken, exceptionally, the Chair, or Committee members through the Chair, may ask speakers to clarify matters relating to their presentation.
- 6.7 The Committee will then debate the application and vote on either the recommendations of officers in the agenda or a proposal made and seconded by members of the Committee. Should the Committee propose to follow a course of action different to officer recommendation, Councillors must give sound planning reasons for doing so.
- 6.8 In the event that the Chair identifies a failure of the remote participation facility at any meeting involving remote attendance, they will declare a short recess while the fault is addressed.
- 6.9 If it is not possible to address the fault and the meeting is inquorate, the meeting will be adjourned until such time as it can be reconvened. If the fault is addressed and the meeting is quorate it will continue.
- 6.10 If a registered speaker is unable to join a remote meeting at the designated time or loses their connection during such a meeting, the Chair, depending on the circumstances, may declare a short adjournment to assess if the speaker can rejoin. If the speaker is unable to join or reconnect to the meeting, the Chair may still permit the Committee (having regard to overall fairness of all parties) to continue to consider the application. In such circumstances, where a registered speaker has opted to provide written representations as a backup to their verbal statement, as provided in paragraph 5.3 above), the Chair shall arrange for those representations to be read out to the Committee.

## **7. May members of the public submit written information or photographs relating to an application or objection?**

- 7.1 Yes. The absolute deadline for submitting such material to the Democratic Services Officer is 4.00pm, two clear working days before the meeting (ie: on the Friday before the meeting where the committee meeting is held on a Wednesday) (such deadline being brought forward by 24 hours for each Bank Holiday between the day of agenda publication and day of the meeting).
- 7.2 Please send such information, by e-mail, to [democratic.services@scambsgov.uk](mailto:democratic.services@scambsgov.uk) who will circulate the information for you among all interested parties (applicant, objectors, Parish Council, officers). If you are unable to send information by e-mail, please contact Democratic Services on the telephone number below. In the interests of natural justice, such information will not be distributed earlier than five working days (not including Saturdays, Sundays or Public holidays) before the meeting **Please do not supply information directly to members of the Planning Committee because of the need to identify substitute members, key Council officers and other interested parties.**
- 7.3 Speakers will not be permitted to display any documentation or photographs during a virtual meeting and are discouraged from presenting materials to physical meetings.

## **8. Privacy Notice**

- 8.1 The Council will be using third party software to conduct remote Planning Committee meetings. For online meetings, some data will be disclosed to other participants and to meeting or webinar hosts. For instance, when you attend a meeting, your name might appear in the

attendee list. If you participate by video conference, your image will be shown. For more information, the Council will refer you to the appropriate privacy policy of the software provider.

8.2 The Planning Privacy notice may be viewed by following link:

<https://www.scams.gov.uk/your-council-and-democracy/access-to-information/planning-policy-privacy-notice/>

**The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you.**

Further information is available from Democratic Services, South Cambridgeshire District Council, South Cambs Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA – Telephone 03450 450 500.  
[democratic.services@scams.gov.uk](mailto:democratic.services@scams.gov.uk)

Updated: May 2020

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