

26 May 2021

Report to: South Cambridgeshire District
Council Planning Committee

Lead Officer: Joint Director of Planning and Economic Development

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

Proposal: Variation of condition 7 (Traffic Management plan) pursuant to planning permission S/0277/19/FL to reflect the proposals in the Traffic Management Plan to substitute the current wording in Condition 7 with "The development hereby permitted shall be carried out in accordance with the Traffic Management Plan prepared by SLR Consulting, Version Final_1 and dated December 2019" (Re-submission of 20/01547/S73)

Applicant: Mr Gerry Caddoo, Landbrook Homes Ltd

Key material considerations:

- 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: 16th 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 12th 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 13TH 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 1st March 21 and 14th 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 1st and 14th 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 Fewes 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 Fewes 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 29th 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 1st 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 12th 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 11th 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 13th 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 6th 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. (13th 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. (23rd 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 10th July 2020, 27th July 2020, 20th August 2020, 23rd August 2020, 3rd September 2020, 8th September 2020 and the 28th 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).