

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

2 July 2014

## APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION

### Purpose

- To inform Members about appeals against planning decisions and enforcement action, and proposed hearing and inquiry dates, as 20 June 2014. Summaries of recent decisions of importance are also reported, for information.

### Decisions Notified By The Secretary of State

Ref.no	Details	Decision	Decision Date
PLAENF.638	Mr P Fox 56 &56a Park Lane Fen Drayton	Withdrawn	23/05/14
S/2122/12/FL	Stubbins Marketing Ltd Oaktree Road Fen Drayton Commercial Glasshouse	Allowed	03/06/14
S/1966/13/VC	Mr T Deans Deans Farm Shepreth Road Fowlmere Restricting retail use	Allowed	03/06/14
S/1966/13/VC	Mr T Deans Deans Farm Shepreth Road Fowlmere Restricting retail use	Award of Cost Refused	03/06/14
S/2764/13/FL	Mr & Mrs Denton 1 Birch Trees Road Great Shelford Extensions	Dismissed	06/06/14
S/2294/13/FL	Mr R Hays Building off Royston Road Foxton Conversion of vacant building to live/work unit.	Dismissed	16/06/14
S/2439/13/FL	Mr T Rule 18 Pages Lane Histon Two Dwellings	Withdrawn	S/2439/13/FL

### Appeals received

3.

Ref. no.	Details	Decision	Received
PLAENF.1110	Mr R Crotty 146 Cambridge Road Wimpole		28/04/14
S/2647/13/FL	Mrs Corinee Brown 4 Shelford Road WHittlesford Two Storey Extension, new porch & new entrance gates	Refused	6/5/2014
S/2088/13/FL	Mrs T McAteer Land rear of the Shack Little Heath Gamlingay Change of Use to dog agility training	Granted subject to condition no 4	06/05/14
S/2639/13/FL	Mr & Mrs Smith 10 Cinques Road Gamlingay Dwelling	Refused	13/05/14
S/0439/12/F	Eversheds Land at Highfield Farm Royston Road Litlington Wind Farm	Refused	20/05/14
S/1850/12/FL	Mr I Ford Carters Farm House Main Street Shudy Camps Conversion,alteration and extension	Refused	22/05/14
S/2308/12/LBL	Mr I Ford Carters Farm House Main Street Shudy Camps Conversion,alteration and extension	Refused	22/05/14
S/1152/13/F	Mitre Property Development Ltd Former Bishops Hardware Store Old Station Yard Cambridge Road Impington	Non-determination	23/05/14
S/0439/12/FL	Highfield Wind Energy Ltd Highfield Farm Litlington Five wind turbines and associated works	Refused	03/06/14

S/2207/13/FL	Mr H Miles Riverside Barns Frogge Street Ickleton	Refused	17/07/14
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**Local Inquiry and Informal Hearing dates offered or confirmed in the next few months.**

4.

Ref. no.	Name	Address	Hearing
S/1237/13/FL	Ms D Beaver	Haden Way Willingham	Hearing Confirmed 24/06/14
S/0691/13/FL	Mr A Hartwig	Ryders Farm 35 Middlewatch Swavesey	Hearing 20/08/14-21/08/14 Offered
PLAENF.638	Mr P Fox	56&56A Park Lane Fen Drayton	Hearing 9 September 2014 Confirmed

**Summaries of recent decisions**

5. **Mr P Pickering – Change of use of land to provide 3 gypsy pitches – Alwyn Park, Over Road, Willingham – Appeal Allowed. Costs awarded against the Council**

1. Planning Committee refused this application on the grounds that a further site in or close to Willingham village would cause unacceptable pressures on village services and facilities and that the loss of an established touring caravan park as a vital part of the rural economy was undesirable. The appeal was heard by way of written representations.
2. The inspector noted that Willingham is a minor rural centre and is recognised by the Council as being one of the more sustainable settlements in the District. The village has a population of around 4,000 and a dwelling stock of some 1,700 homes. The scale of the proposal would respect and not dominate the nearest settled community, taking account of the small number of pitches and their location and allowing for the existing traveller sites on the eastern side of the village. The village has a wide range of services and facilities. There is no empirical or specific evidence from the local planning authority, the Parish Council or the service providers to show that the school or health facilities are under pressure. Planning obligations have been secured through a section 106 agreement for financial contributions to be made towards improvements to open space and community hall provision in the village.
3. The Council had argued that the relatively secluded location of the site would not assist in easing tensions and improving integration between the settled and travelling community in the village. However, the inspector concluded that

the site is well placed for residents of the pitches to access the facilities in the village and the proposed footway to Haden Way would improve accessibility. The location strikes an appropriate balance in relation to the built-up area of the village and the open countryside. Also, the pitches are part of a site that has settled housing and provision for camping and caravanning for tourist purposes, thereby reducing any sense of isolation.

4. The proposal therefore complies with local plan policies and Planning Policy for Traveller Sites (PPTS) in that it is located near to a settlement, is of an appropriate small scale and would not place undue pressure on the local infrastructure. Officers note that this view is consistent with other appeal decisions for gypsy sites in Willingham where previous inspectors have come to the same conclusion.
5. The LDF identifies a significant demand for tourist accommodation by reason of the proximity of Cambridge and surrounding attractions. A key objective is to support the growth of the tourism industry in the District whilst ensuring new facilities do not have an adverse impact on the built and natural environment. Therefore the focus for new accommodation is the larger villages, where there is access to public transport and local services. However, although the Council rely on Policy ET/10 in the reason for refusal, the inspector found that the policy does not refer specifically to camping and caravan sites or to protecting such forms of accommodation. The location of the site in the countryside, rather than the defined village framework, also reduces the weight to be attached to the Council's argument that the tourist facility is consistent with encouraging accommodation in rural centres, such as Willingham. There was no evidence from the Council to illustrate the role of the holiday caravan site in the supply of such accommodation in the District or to indicate its role in supporting the rural economy. To the contrary, the Appellant's evidence suggested there is no shortage of caravan and camping sites in the Cambridge area.
6. An appeal decision in 2008, concerning the provision of park homes at Alwyn Park, noted that demand had declined for touring caravans and over-winter storage because of competition and a change in the nature of tourism. That Inspector found no obvious indication the site was operational. The Appellant's case remained that demand has declined, with only a small number of visitors in caravans and tents in the summer months. However, there is no intention to discontinue the holiday caravan use. The current proposal would occupy only part (about 25%) of the overall area. In view of the layout of the site as a whole, the inclusion of pitches for traveller occupation would not necessarily be incompatible with the continuation of the tourist use. There was therefore no material conflict with plan policies in this respect.
7. The inspector also addressed the question of need for sites. The Council's case was that the assessed need for traveller sites in the District to 2021 has been exceeded through the grant of planning permissions since 2011. However, the inspector noted there is waiting list for the two existing public sites and there are sites with temporary or an expired temporary permission. In a recent appeal, the inspector had concluded that there was a clear need for additional traveller accommodation in South Cambridgeshire and that the assessed need was likely to have been under-estimated. As such, the unfulfilled need in the District for traveller sites supports the proposal. Furthermore, in accordance with the PPTS sites are intended to provide for

any travellers and not just those with local connections. Even if the identified need has been satisfied, it is appropriate to assess the proposal on its merits, consistent with advice in paragraph 10 of the PPTS.

8. The appeal was allowed subject to conditions including restricting the use of the site to gypsies as defined in PPTS; limiting the number of pitches to three, restricting the number of caravans; limiting commercial activity on the site, landscaping; and provision of a footpath link to Haden Way. A section 106 agreement providing contributions to open space, indoor community provision and refuse receptacles was also secured.
  9. In response to the appellant's application for costs, the inspector found that there was a lack of demonstrable evidence from health and education service providers that undue pressure is being placed on village services. The Council's statement had therefore attempted to argue that the focus of concern in this case is the effect on the ability to create mixed and socially inclusive communities and to promote peaceful and integrated coexistence between travellers and the local community. This distinguished this case from the capacity and physical domination arguments presented in earlier successful appeals. Nonetheless, the inspector found that the reason for refusing the proposal was not clarified or adequately explained. The Council should have been aware of the need for more specific evidence as a result of an appeal decision dated 26 June 2012 for a traveller site in Willingham. It had therefore failed to produce evidence to substantiate the first reason for refusal.
  10. The second reason for refusal was based on the established use of the site as a touring caravan site. The Council had been unable to support the reason for refusal and to explain what it saw as the important role of the site within the context of overall provision of caravan and camping sites in the District.
  11. I conclude that the Council has failed to produce evidence to substantiate each reason for refusal. Therefore unreasonable behaviour resulting in unnecessary expense has been demonstrated and a full award of costs was justified.
6. **Mrs K O'Brien – Change of use of land to provide 6 gypsy pitches at Plots 5, 5a, 6, 10 and 11 Orchard Drive and 15 Water Lane and community garden at 7, 8 and 9 Orchard Drive and 14, 16, 17 and 18 Water Lane, Smithy Fen, Cottenham – Appeal Allowed only for gypsy/traveller pitches at Plots 10 Orchard Drive and 15 Water Lane. Application for costs against the Council dismissed**
1. Prior to the start of the inquiry into this appeal, plots 5, 5a and 6 were excluded from the proposal and did not form part of the appeal. This left three pitches on Plots 10 and 11 Orchard Drive and 15 Water Lane.
  2. The inspector identified the main issues as the effect of the proposal on the character and appearance of the surrounding area; whether the scale of the proposal together with the existing traveller development at Smithy Fen would unduly dominate the settled communities of Smithy Fen and Cottenham; whether the proposal would set a harmful precedent for further development; the effect of the proposal on community infrastructure and public open space; and whether any harm arising from the above is outweighed by other considerations, including the general need for sites, future site provision and

the accommodation needs and personal circumstances of the proposed occupiers.

3. The proposed development was judged to be relatively small scale. It would have a modest adverse impact on the intrinsic character of the surrounding landscape and on public views into the site. There would also be limited harm arising from the lack of open space and community provision with little harm from the physical and social impact on the local settled community.
4. The inspector did not consider it likely the proposals would set a precedent for development in the northern part of the site. Nonetheless, there is an important and well founded concern that allowing the proposal would set a precedent for a further unplanned extension of development in the southern part of the site. This would have a substantial adverse effect on the character and appearance of the surrounding countryside and be of a scale that would be likely to exacerbate tensions with the Smithy Fen settled community.
5. Set against this harm is the significant weight that must be given to the general need for sites and the lack of planned future provision, together with the individual accommodation needs and personal circumstances of the proposed occupiers. The inspector concluded that these considerations would not outweigh the harm that would be caused by granting a permanent permission.
6. There was therefore a need to see if a temporary permission would be appropriate. It would restrict the harm to a limited period and in the long term would not dilute the principle of containing development within the existing site boundaries. The identified accommodation needs of the occupiers of Plots 10 and 15 would justify temporary permission. Nonetheless, this would only be justified if planning circumstances may be expected to change in a particular way at the end of that period. Whilst the Council has no plans for further site provision it has an allocation of funding for improved provision and there is a window of opportunity during the Local Plan examination to review the position. A four year period would give adequate time to identify and bring forward one or more sites and the appellant's circumstances may have changed after this time.
7. If implemented, the community garden would become an integral part of the site and strengthen the precedent argument. It should be resisted on this basis alone although it was also unlikely to be deliverable.
8. Of particular significance in this appeal was the inspector's conclusion on the Council's approach to meeting travellers' needs. He had considerable reservations over the approach adopted by the Council as part of the accommodation and needs assessment carried out in 2011 (and which underpins policy objectives in the emerging Local Plan).
9. This apprehension was based on the lack of a full household survey and concerns about the methodology used. He found fault with the assumption that there is no demand from hidden households doubling up or in overcrowded conditions on existing private sites and the assumption that there will be an annual turnover of 4% of pitches which would then count towards supply. There is no evidence of this level of turnover on privately owned sites but more fundamentally it assumes that there will be no net in-

migration or internal movements within the District. Indeed it assumes there will be out-migration but no immigration.

10. One indicator of demand is the waiting list for the two Council sites. This stands at 49. Whilst there may be some double counting in this figure it represents an element of unmet need which is not currently reflected in the assessment model. Demand from households living in conventional housing is also assumed to be balanced by those wanting to move in the opposite direction. Yet there is no analysis of those travellers on the housing waiting list to understand whether they would prefer caravan accommodation if it were available.
11. The inspector noted that similar findings were identified in recent appeal decisions on four traveller sites in Willingham and by the Inspector examining the East Cambridgeshire Local Plan. Overall he considered the current shortage of traveller sites and the lack of any prospect of future provision weighed significantly in favour of the proposal.
12. In conclusion, the inspector found that South Cambridgeshire has a current unmet need for traveller sites which is unlikely to be resolved in the near future. Taking this into account, he found that the individual accommodation needs and personal circumstances of the proposed occupiers of 15 Water Lane and 10 Orchard Drive are such as to outweigh the limited conflict with countryside protection and community integration planning policies so as to justify a temporary permission. A temporary permission which is tied to specific health, education and accommodation needs would not provide a general precedent for any further incursion into the unconsented area at Smithy Fen.
13. In their application for costs, the appellants argued that the grounds of refusal did not stand up to scrutiny. Landscape harm could be mitigated. No evidence has been produced to show that the scale of Smithy Fen is disproportionate to Cottenham and the effectiveness of the injunctions shows that concern about precedent is misplaced. 3. Furthermore, the needs assessment is inadequate and evidence of the accommodation needs of the travellers and their circumstances has not been heeded. The Council has acted unreasonably in its practice of not accommodating Irish Travellers on its sites.
14. In response the inspector found that the Council was entitled to argue landscape harm. On the issue of scale, the written representations from settled residents of Smithy Fen raised proper concerns that needed to be addressed. In considering the issue of scale and precedent the Council had support from the conclusions of Inspectors in appeals which post-date the injunction on the site. In relation to general needs the Council provided a response to the criticisms identified by others in its approach. While shortcomings in the present assessment were identified, this was only after the underlying assumptions had been tested in cross examination.
15. In relation to alternative sites, the Council was found to be ambivalent about whether its own gypsy and traveller sites are, in practice, available for Irish Travellers but it was not a matter that was central to its case. It relied in particular on the availability of vacant sites within Smithy Fen. It would have been of assistance if the Council had produced its own evidence of availability based on the work it has done to release these sites and on the knowledge of officers working with the traveller community at Smithy Fen. Nonetheless its

approach was by no means an irrational one. In the event the inspector found the first hand evidence from the appellant and potential occupiers more convincing. Finally the Council placed less weight on the personal circumstances of the individual traveller households than the appellant but this is a matter of judgement and did not make its stance unreasonable.

16. Thus the Council had produced adequate evidence to substantiate its grounds of refusal and that this evidence had, where necessary, been supported by appropriate objective analysis. No unreasonable behaviour resulting in unnecessary expense had been demonstrated.

7. **Stubbins Marketing – Commercial glasshouse - Oaktree Road, Fen Drayton – Appeal allowed**

1. The Planning Committee refused this application on the grounds it would have a harmful effect on the policy objectives for the Fen Drayton Former Land Settlement Association (LSA) Estate and on the living conditions of nearby residents, with reference to dominance, light and noise.
2. The inspector concluded that the intention of the former LSA to provide employment and training for unemployed persons is not reflected in the adopted SPD. Moreover, although the appeal site lies within the area of the former estate, it comprises land which now lies outside the boundaries of dwellings and smallholdings and none of the buildings thereon are identified as eligible for development in accordance with the SPD. The land is in the ownership of the Appellant and is not available for residents of the estate. He found that the development would not reduce the amount of land which is currently available for use by LSA residents, nor prejudice existing policy objectives in the SPD.
3. Construction of the glasshouse would represent a significant change in the nature of the appeal site. The presence of the glasshouse would be readily apparent in this part of the former LSA estate. However it would be set further back from Oaktree Road than existing frontage development, and the dwellings and smallholdings would remain an important component of the street scene. In addition to the large glasshouse on the Appellant's existing site to the south, there are other glasshouses nearby to the east of Oaktree Road. He did not consider that the proposed development would introduce a harmful change to the character of the former LSA estate and the surrounding area.
4. As such, the proposed development would not prejudice policy intentions for the former LSA estate contained in the SPD.
5. The proposed glasshouse would extend past the back of adjoining dwellings and be set back between 7.5m and 14m from their rear boundaries. These dwellings have relatively generous garden areas, and having regard to the intended relationship between the proposed and existing buildings, the glasshouse would not appear unduly dominant in the outlook from the rear of the properties on the north side of Oaktree Road. For the same reason the presence of the glasshouse would not result in a loss of light in existing houses, or that neighbours would experience any appreciable loss of privacy.
6. Neighbours had expressed concern about disturbance from the operation of the site. The main access for the Appellant's overall operation would remain



as now. Although there would be vehicle and pedestrian movement across Oaktree Road between the existing and proposed glasshouses, the main access point into the site of the new glasshouse would be set away from the nearest dwellings on the northern side of the road. A secondary access on Springhill Road would be used for a weekly delivery of fertiliser and for maintenance purposes. There would only be occasional movements of vehicles travelling beyond the business's main access along Oaktree Road and onto Springhill Road towards this access.

7. Some neighbours had complained about noise from the operation of fork-lift trucks early in the morning. The inspector anticipated that any external use of fork-lift trucks in connection with the development would involve movement between the existing and proposed glasshouses. The main access to the proposed glasshouse would be centrally positioned on the Oaktree Road frontage, and set away from dwellings which are not in the Appellant's ownership. He did not consider that the movement of vehicles along Oaktree Road and Springhill Road and the use of fork-lift trucks would be likely to cause unacceptable disturbance to local residents.
  8. Similarly concern about a boiler showed there was some noise from outside the building, but this was not loud or characterised by distinct impulses, and therefore is intrusive. No growing lights would be used, and external lighting is intended to be directed downwards: a lighting scheme could be the subject of a condition.
  9. As such, there would be no worsening of living conditions for residents.
  10. The appeal was therefore allowed subject to a comprehensive suite of conditions designed to enhance the appearance of the development and protect residential amenity. However, the inspector declined to accept a planning obligation to restrict the number of goods vehicles using Oaktree Road was necessary. The obligation could not be framed with any certainty and in any event he reached the view that there would only be occasional movements by vehicles travelling directly to and from the appeal site itself. It was not therefore CIL complaint and could not be imposed.
8. **Mr T Deans - Conversion of building (B1 use) to a poultry, pet and equestrian store without complying with a condition attached to a previous inspector's appeal decision dated 13 February 2013 – Deans Farm, Shepreth Road, Fowlmere – Appeal allowed. Application for costs against the Council dismissed**
1. The application had been refused under delegated powers and the appeal related to a lean-to bay in a large portal frame building. The main issue was whether the removal or variation of the condition in dispute would contribute to the sporadic development of retail uses in the countryside, which would result in unsustainable patterns of development that would unacceptably undermine the vitality and viability of surrounding villages.
  2. The basis for the inspector allowing the appeal lies in changes made by the Government to the General Permitted Development Order (GPDO). Changes to the GPDO have come into force since the previous appeal decision and under the present provisions of Schedule 2, Part 4, Class D of the GPDO, an unrestricted retail activity of up to 150 sq m could now take place in the appeal bay for a period of two years. The area involved is some 138 sq m.

3. Given the difference between the area of the appeal bay and that which could now potentially change use the inspector did not think that removing the condition would have any practical effect on the scale of the retail operation taking place on the appellant's land. Moreover, removing the condition would reflect the Government's present more permissive approach. In the light of the provisions of Part 4, Class D, the inspector considered if condition 4 should be deleted for a temporary period only; however this seemed to him to be an unnecessarily restrictive approach given that the appellant has other likely routes to obtaining a permanent A1 use in other nearby buildings.
4. It was acknowledged that the proposal conflicts with policy ET/9 in the Council's Local Development Framework and that the application was not accompanied by a Farm Business Plan. However, he considered that this requirement is out-of-date in relation to the proposal before him given that changes of use with a similar effect can now be carried out without an explicit planning permission. In this particular case similar considerations also applied to policy SF/5 in the same document.
5. The basis for the appellant's cost claim was that the Council had acted unreasonably in ignoring relevant national policy and in particular the recent changes to the GPDO. However, the inspector found that the Council's behaviour could not be classified as unreasonable. He considered that the case for granting permission was not as clear-cut as the appellant suggested. No award of costs was therefore justified.

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

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