



# Planning Committee

## Agenda

Monday, 4th November, 2024  
at 11.15am

in the

Assembly Room  
Town Hall  
King's Lynn  
PE30 5DQ

Also available to view at:

<https://www.youtube.com/user/WestNorfolkBC>

Please note – the Committee will visit the site of the major applications 21/01842/FM & 24/00141/FM prior to the meeting. It is aimed to commence the meeting at approximately 11.15 am.



King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX  
Telephone: 01553 616200  
Fax: 01553 691663

**PLANNING COMMITTEE AGENDA**

Please note that due to the number of applications to be considered it is proposed that the Committee will adjourn for lunch at approximately 12.30 pm and reconvene at 1.10 pm.

Please ensure that all mobile phones are switched to silent

**DATE:** Monday, 4th November, 2024

**VENUE:** Assembly Room, Town Hall, Saturday Market Place, King's Lynn PE30 5DQ

**TIME:** 11.15 am

**1. APOLOGIES**

To receive any apologies for absence and to note any substitutions.

**2. MINUTES**

To confirm as a correct record the Minutes of the Meeting held on 7 October 2024 (previously circulated).

**3. DECLARATIONS OF INTEREST (Page 5)**

Please indicate if there are any interests which should be declared. A declaration of an interest should indicate the nature of the interest (if not already declared on the Register of Interests) and the agenda item to which it relates. If a disclosable pecuniary interest is declared, the Member should withdraw from the room whilst the matter is discussed.

These declarations apply to all Members present, whether the Member is part of the meeting, attending to speak as a local Member on an item or simply observing the meeting from the public seating area.

Councillor appointed representatives on the Internal Drainage Boards are noted.

**4. URGENT BUSINESS UNDER STANDING ORDER 7**

To consider any business, which by reason of special circumstances, the Chair proposes to accept, under Section 100(b)(4)(b) of the Local Government Act, 1972.

**5. MEMBERS ATTENDING UNDER STANDING ORDER 34**

Members wishing to speak pursuant to Standing Order 34 should inform the Chairman of their intention to do so and on what items they wish to be heard before a decision on that item is taken.

**6. CHAIR'S CORRESPONDENCE**

To receive any Chair's correspondence.

**7. RECEIPT OF LATE CORRESPONDENCE ON APPLICATIONS**

To receive the Schedule of Late Correspondence received since the publication of the agenda.

**8. INDEX OF APPLICATIONS (Pages 6 - 7)**

The Committee is asked to note the Index of Applications.

**9. DECISION ON APPLICATIONS (Pages 8 - 126)**

The Committee is asked to consider and determine the attached Schedules of Planning Applications submitted by the Assistant Director.

**10. DELEGATED DECISIONS (Page 127)**

To receive the Schedule of Planning Applications determined by the Executive Director.

**11. QUARTERLY APPEALS REPORT (Page 128)**

To consider the attached report.

**To: Members of the Planning Committee**

Councillors B Anota, T Barclay, R Blunt, A Bubb, R Coates, M de Whalley, T de Winton, P Devulapalli, S Everett, D Heneghan, S Lintern (Vice-Chair), T Parish (Chair), S Ring, C Rose, Mrs V Spikings, M Storey and D Tyler

**Major Applications**

Please be advised that the Committee will visit the site of the major applications, 21/01824/FM and 24/00141/FM, as listed on the agenda, prior to the meeting. The meeting will then commence at 11.15 am.

**Site Visit Arrangements**

When a decision for a site inspection is made, consideration of the application will be adjourned, the site visited, and the meeting reconvened on the same day for a decision to be made. Timings for the site inspections will be announced at the meeting.

If there are any site inspections arising from this meeting, these will be held on **Thursday 7<sup>th</sup> November 2024** (time to be confirmed) and the meeting reconvened on the same day (time to be agreed).

**Please note:**

- (1) At the discretion of the Chairman, items may not necessarily be taken in the order in which they appear in the agenda.
- (2) An Agenda summarising late correspondence received by **5.00 pm** on the **Wednesday before the meeting** will be emailed, and tabled one hour before the meeting commences. Correspondence received after that time will not be specifically reported during the Meeting.
- (3) **Public Speaking**

Please note that the deadline for registering to speak on the application is before **5.00 pm** two working days before the meeting - **Wednesday 30 October 2024**. Please contact [borough.planning@west-norfolk.gov.uk](mailto:borough.planning@west-norfolk.gov.uk) or call (01553) 616818 or 616234 to register. Please note that you must have previously made representations in writing on the application that you wish to speak on to be able to register to speak.

**For Major Applications**

Two speakers may register under each category: to object to and in support of the application. A Parish or Town Council representative may also register to speak. Each speaker will be permitted to speak for five minutes.

**For Minor Applications**

One Speaker may register under category: to object to and in support of the application. A Parish or Town Council representative may also register to speak. Each speaker will be permitted to speak for three minutes.

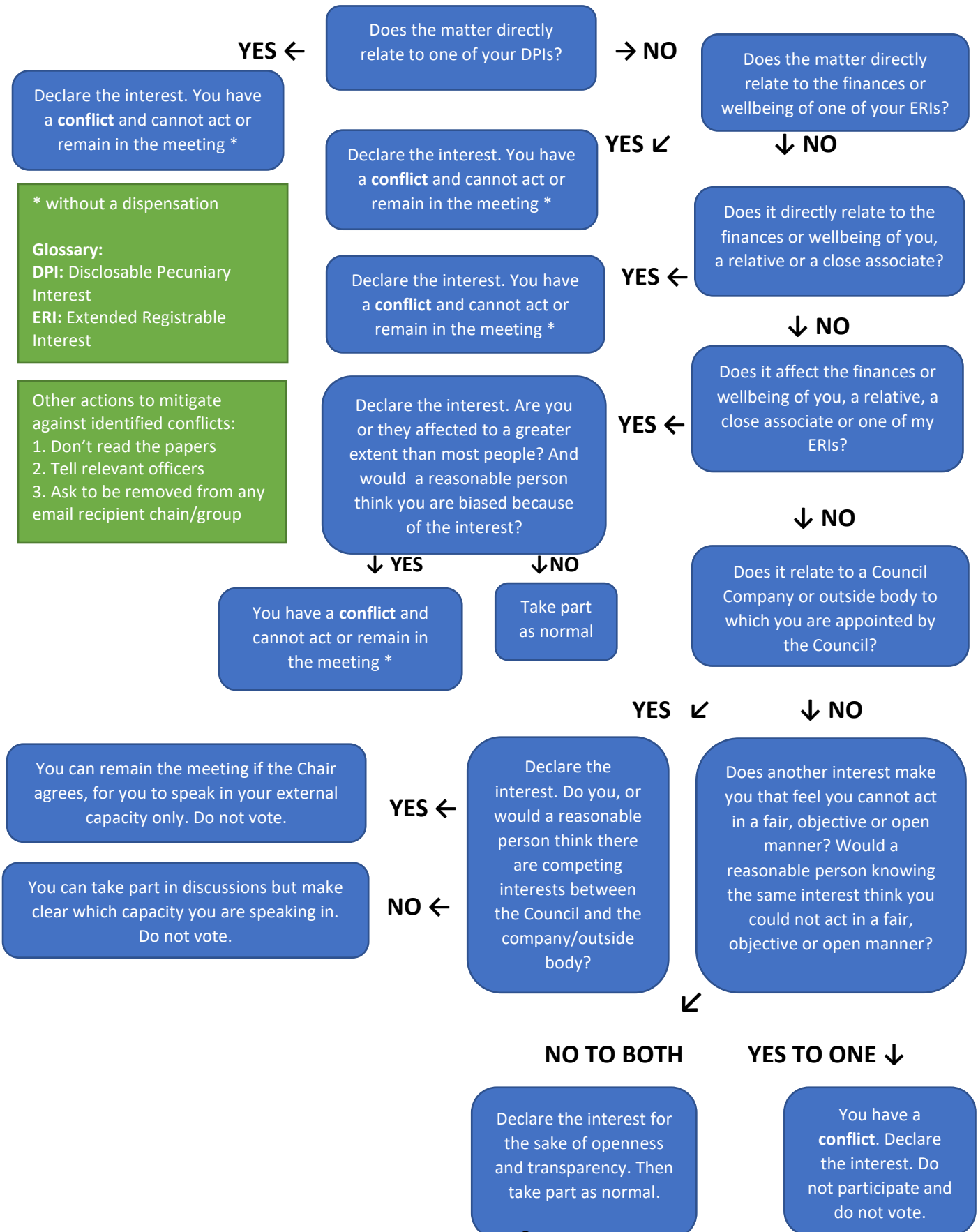
For Further information, please contact:

Kathy Wagg on 01553 616276  
kathy.wagg@west-norfolk.gov.uk

**DECLARING AN INTEREST AND MANAGING ANY CONFLICTS FLOWCHART**



**START**



**INDEX OF APPLICATIONS TO BE DETERMINED  
BY THE PLANNING COMMITTEE AT THE MEETING  
TO BE HELD ON MONDAY 04 NOVEMBER 2024**

Item No.	Application No. Location and Description of Site Development	PARISH	Recommendation	Page No.
<b>DEFERRED ITEMS</b>				
<b>MAJOR DEVELOPMENTS</b>				
9/1(a)	<b>21/01824/FM</b> Pentney Woods Common Road Pentney Norfolk PE32 1LE <b>Change of Use of Woodlands to Holiday and Recreational Site; Including the Siting of Portable Eco Holiday Lodges; Woodland Centre and Reception, Health and Wild Swimming Centre, Car Parking and Associated Works</b>	<b>EAST WINCH PENTNEY</b>	<b>APPROVE</b>	<b>9</b>
9/1(b)	<b>24/00141/FM</b> Elme Hall Hotel 69 Elm High Road Emneth Wisbech Norfolk PE14 0DQ <b>Conversion of Hotel and associated Ballroom to 19 No. Flats</b>	<b>EMNETH</b>	<b>APPROVE</b>	<b>33</b>
<b>OTHER APPLICATIONS/APPLICATIONS REQUIRING REFERENCE TO THE COMMITTEE</b>				
9/2(a)	<b>24/01589/F</b> 3 Ingoldsby Avenue Ingoldisthorpe King's Lynn Norfolk PE31 6NH <b>Rear single storey extension and alterations including garage.</b>	<b>INGOLDISTHORPE</b>	<b>APPROVE</b>	<b>49</b>
9/2(b)	<b>23/01121/F</b> Barn E of Crown Farmhouse Middle Drove Marshland St James Norfolk PE14 8JT <b>The erection of 3 x single-storey dwellings involving the demolition of the existing buildings.</b>	<b>MARSHLAND ST JAMES</b>	<b>APPROVE</b>	<b>57</b>
9/2(c)	<b>24/01061/F</b> Still Meadows, River Road, West Walton PE14 7EX <b>Change of use of previously developed land to stand two residential static caravans for Gypsy / Traveller use (Retrospective)</b>	<b>WEST WALTON</b>	<b>APPROVE</b>	<b>76</b>

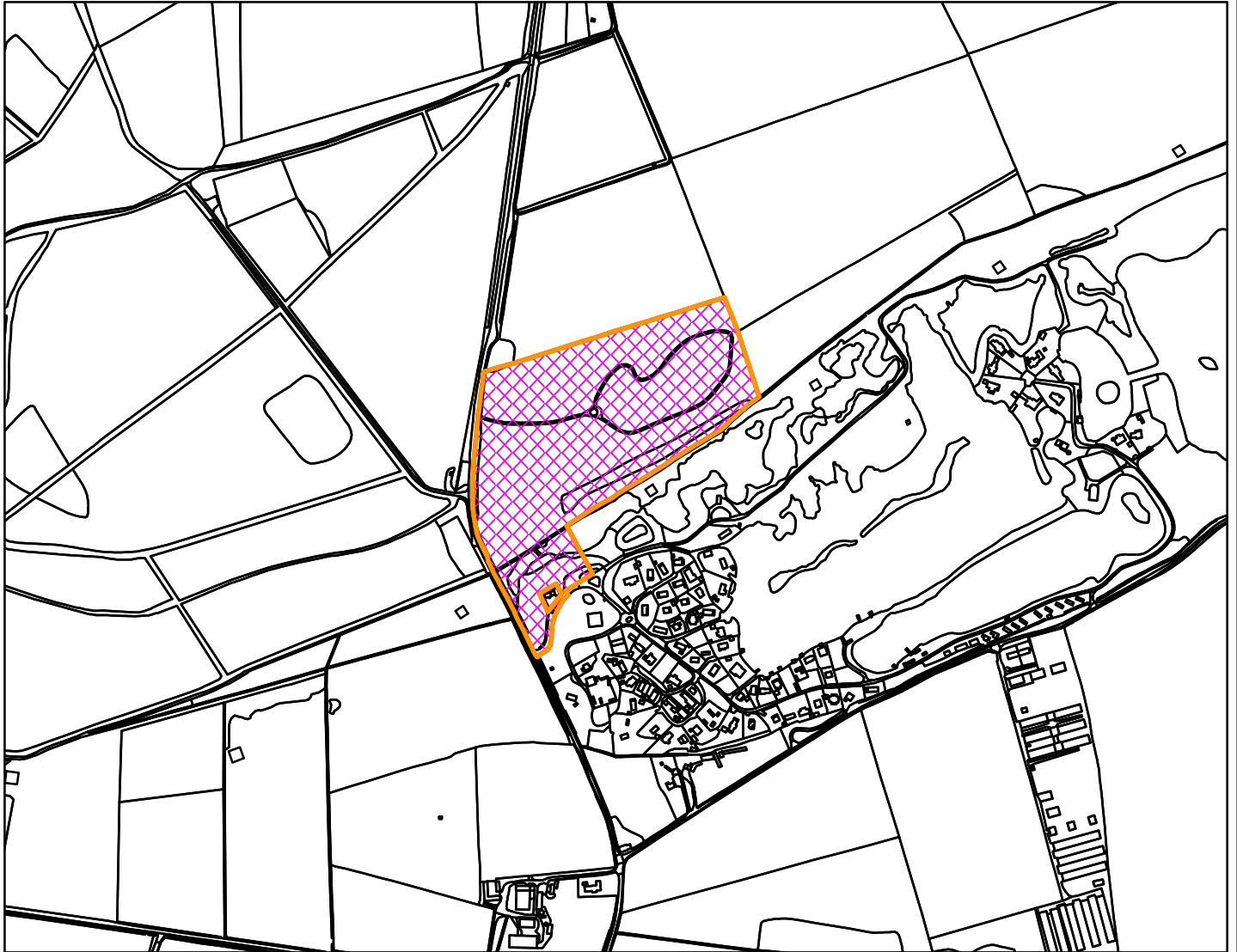
**TPOS REQUIRING REFERENCE TO THE COMMITTEE**

9/3(a)	<b>2/TPO/00685</b> 2 Crow Hall Farm Cottage Nightingale Lane Downham Market Norfolk PE38 9FD	<b>DOWNHAM MARKET</b>	<b>CONFIRM ORDER WITHOUT MODIFICATION</b>	<b>116</b>
9/3(b)	<b>2/TPO/00684</b> Silvertrees Manor Road North Wootton King's Lynn Norfolk PE30 3PZ	<b>NORTH WOOTTON</b>	<b>CONFIRM ORDER WITHOUT MODIFICATION</b>	<b>129</b>





Pentney Woods Common Road Pentney Norfolk PE32 1LE



**Legend**

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**Scale:** 1:10,000

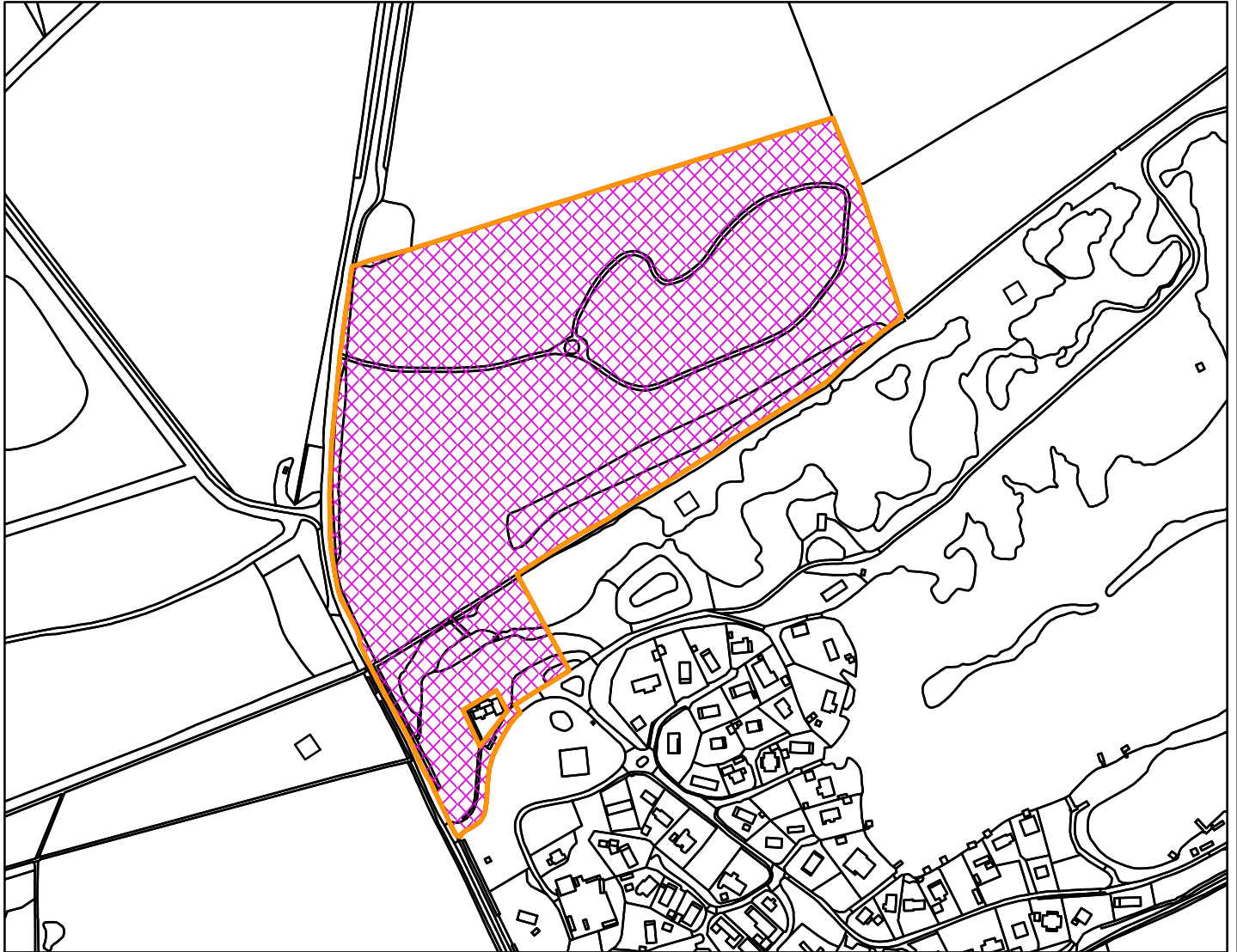
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Organisation	BCKLWN
Department	Department
Comments	
Date	22/10/2024
MSA Number	0100024314



Pentney Woods Common Road Pentney Norfolk PE32 1LE



### Legend

**Scale:** 1:5,000

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Organisation	BCKLWN
Department	Department
Comments	
Date	22/10/2024
MSA Number	0100024314

<b>Parish:</b>	<b>Pentney East Winch</b>	
<b>Proposal:</b>	<b>Change of Use of Woodlands to Holiday and Recreational Site; Including the Siting of Portable Eco Holiday Lodges; Woodland Centre and Reception, Health and Wild Swimming Centre, Car Parking and Associated Works</b>	
<b>Location:</b>	<b>Pentney Woods Common Road Pentney Norfolk PE32 1LE</b>	
<b>Applicant:</b>	<b>Forestscape Ltd</b>	
<b>Case No:</b>	<b>21/01824/FM (Full Application)</b>	
<b>Case Officer:</b>	<b>Lucy Smith</b>	<b>Date for Determination: 4 February 2022 Extension of Time Expiry Date: 8 December 2023</b>

**Reason for Referral to Planning Committee** – called in by Cllr Moriarty & Cllr Devulapalli, and the recommendation is at odds with the views of both Pentney and East Winch and West Bilney Parish Councils

**Neighbourhood Plan:** No

**Case Summary**

The application seeks full planning permission for the siting of 36 holiday lodges, a reception area and car park and a health centre and wild swimming facility on land north of Pentney Lakes, known as Pentney Woods. The site is plantation woodland with self-seeded trees spanning approximately 11.7ha and is accessed via the existing Pentney Lakes holiday site, adjacent to the existing restaurant and bar.

The part of the site within the Pentney Lakes boundary (the car park and reception buildings) is within the County Wildlife Site however is not within any SSSI SAC or SPA.

The site is outside of any defined development boundary and within the wider countryside for the purposes of planning policy.

**Key Issues**

- Principle of Development
- Asset of Community Value & Community Facilities
- Impact on Landscape, Form and Character
- Arboricultural Implications
- Ecology & Biodiversity
- Drainage
- Highway Safety
- Other material considerations

## Recommendation

**A. APPROVE** - subject to completion of a s106 legal agreement to control the provision and management of all communal facilities (the Reception buildings and Health Centre and Open Water Swimming Centre (Plots 9 & 10), open spaces and landscaped areas, the leasehold arrangements for each holiday lodge, the current GIRAMS fee, and the associated monitoring fees. If the agreement is not completed within 4 months of the committee resolution, but reasonable progress has been made, delegated authority is granted to the Assistant Director/Planning Control Manager to continue negotiation and complete the agreement and issue the decision.

**B.** If in the opinion of the Assistant Director/Planning Control Manager no reasonable progress is made to complete the legal agreement within 4 months of the date of the committee resolution, the application is **REFUSED** on the failure to secure appropriate control of the holiday lets and the management of communal facilities.

## THE SITE AND APPLICATION

The proposal is for the change of use of the area of woodland for the siting of 36 holiday lodges falling within the definition of a caravan, alongside reception buildings and a health and open water swimming centre and the construction of a car park. All lodges would be car free, with the car park providing spaces for each plot to the south of the site, adjacent to the existing restaurant at Pentney Lakes.

The application site is an irregular shaped parcel of manmade woodland totalling approx. 11.7 hectares. The woodland is primarily pine trees and self-sewn silver birch trees however other specimens are existing, including a row of large oak trees along the north boundary. The trees on site are protected by a group Tree Preservation Order.

The site is bordered by wider countryside to the north, to the west is West Bilney Woods (approx. 270 acres of woodland managed by the forestry commission) and to the south is the existing tourism and recreational leisure park known as Pentney Lakes.

The site features a large pond that runs along part of the southern boundary and is fed by a ditch which also connects the pond to the series of fishing lakes to the south. This pond is proposed to be utilised for open water swimming, whilst nature walks & new pathways using natural materials will be provided across the site. New bridges would be constructed over the pond to provide additional access points to the County Wildlife Site and towards Pentney woods.

The site would be split into a total of 37 plots, 36 for residential holiday lodges and one larger plot, towards the centre of the site to be utilised as the health and wild swimming centre (wellness centre). To the south of the site, the reception area and car parking facilities would be situated adjacent to the existing Pentney Lakes restaurant.

An EIA screening has taken place during the course of this application under Part 12(c) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 which determined that this application is not EIA development.

The holiday lodges are intended to be car free, with visitors parking in the dedicated parking area at the entrance to the site. An emergency access is provided straight to Common Lane,

for emergency vehicles only, and internal one-way roads are proposed to allow for maintenance and cleaning etc. The roads would also encompass underground services and utilities, with the central biodigester located in the southwest corner of the site.

Each plot would be sold on a long lease, in order to allow long term management company control and responsibility over the site. Plot owners would be expected to design lodges to a strict performance specification and the accommodation would be controlled to be occupied for holiday purposes only and shall be made available for rent or as commercial holiday lets.

## **SUPPORTING CASE**

None received at time of writing.

## **PLANNING HISTORY**

23/00353/CAMP: CAMP NO Objection: 15/03/23 - CONSULTATION FOR AN EXEMPTED CAMP SITE - Land N of Pentney Lakes

22/01721/AG: AG Prior Approval Approved: 24/11/22 - Prior Notification: Office, workshop and storage building for forestry use - Land N of Pentney Lakes

15/00456/CU: Application Withdrawn: 11/06/15 - Change of use (forestry) to standing of 20 large camper vans and caravans with own facilities. For the period April - October each year to support the water-based activities already provided by Pentney Lakes - Land At Common Road West Bilney

## **RESPONSE TO CONSULTATION**

### **Consultations:**

**East Winch And West Bilney Parish Council: OBJECT**, with the following comments:

'Make the following observations having met with the applicant for discussions.

Rather than seeing this as a holiday and recreation site, Council is concerned that it will turn into another residential development with potential for unchecked growth.

Any such development here would lead to loss of woodland, increased level of traffic, be an additional disproportionate development relative to the size of the local community and would set precedents for further woodland loss in the immediate locality.

Without serious enforceable occupancy restrictions, the likelihood of it becoming another permanent residential site, such as Pentney Lakes, is high. This, in itself, will lead to additional pressure on local services to supervise any such controls which may be introduced. Self-regulating measures by the management of the site would need to be supervised by the local authority if it was to be in any way plausible.'

**Pentney Parish Council OBJECTION**, on the following grounds (summarised):

1. Impact on current infrastructure including foul drainage into the River Nar
2. The impact of local wildlife including loss of habitat and creeping urbanisation, impact on the River Nar chalk stream
3. The environmental impact from removal of trees and increased light pollution.
4. The lack of amenities for example no village shop.

5. Out of character with the village
6. Unsustainable location with low water pressure, no mains gas, limited bus services, no mains sewage, no shop and no mention of how rubbish will be collected.
7. Archaeological implications
8. Noise, Odours and Light Pollution
9. Scale of proposal is overdevelopment and would overprovide holiday accommodation
10. Safety of Common Lane & adjacent footpaths for all users and lack of public transport
11. Impact on Asset of Community Value
12. Flooding and drainage impacts and flood risk
13. Effect on listed building the Grade II Listed Pentney Abbey
14. Impact on Crime and Disorder, landscaping and lighting schemes should enhance security and natural surveillance
15. Requesting consideration of Pentney's Emerging Local Plan

**Local Highway Authority: NO OBJECTION**, summarised as follows:

- The existing access is acceptable for the proposed use
- The increased traffic along Common Road would not substantiate an objection on highway safety grounds
- Recommended conditions relating to the upgrading of the emergency access gateway.

**Ecologist: NO OBJECTION** in principle, provided detailed advice on the submitted ecology reports & recommended conditions relating to CEMP, LEMP and Ecological Design Strategy.

**Arboricultural Officer:** Recommended conditions, with summarised comments as follows:

- The additional information does not include details of the many new service runs that will be required for foul sewerage. Service runs should be routed to avoid the RPAs of trees. If this is not possible, special techniques must be employed to place the services within the RPA of the trees.
- Detailed information should be secured preferably as part of the application, but if not then at least by condition before any work commences on site.

**Environment Agency: NO OBJECTION** in principle, an EA permit would be required.

**LLFA: NO OBJECTION** to additional information, provided detailed comments on the suitability of proposed drainage strategy and impacts on water quality.

**CSNN: NO OBJECTION** in principle, defer to relevant consultees on drainage. Raised concern over ongoing management of tree roots near drainage systems.

**Environmental Quality - Land:** - requested phase 1 addendum

**Environmental Quality - Air:** - recommended car charging conditions.

**Norfolk Wildlife Trust:** Provided detailed comments, neither supporting nor objecting to the application however recommending consideration of a CEMP and LEMP if the development is to be approved & controls over non-native species planting. The NWT raised concern over the scale of the development in the open countryside and potential for impacts on habitats, in particular the habitat disturbance of an area of grassland and heathland in the south west corner of the site, which should be safeguarded.

**Internal Drainage Board: NO OBJECTION** - subject to the Board's Byelaws being complied with.

**Natural England: NO OBJECTION** - referred to GIRAMS tariff and need for a Habitats Regulations Assessment to rule out recreational impacts.

**Historic Environment Service: NO OBJECTION** subject to standard archaeology conditions

**Norfolk Fire and Rescue: NO OBJECTION** - the application should comply with Building Regulations in regards to access/facilities etc.

**Designing Out Crime Officer:** Provided advice regarding secured by design and cycle storage options.

**Open Spaces Society: OBJECTION**, on the grounds of impacts on countryside, walking routes in area, raising concern over wildlife and safety along Common Road.

## **REPRESENTATIONS:**

**NINETY-ONE** letters of **OBJECTION**, from four consultation periods.

- Impact on traffic movements along Common Road
- Impacts on habitats and wildlife, directly and through increased disturbance (Otters, Birds, Bats, Badgers, Reptiles, Water Voles, Deer, Invertebrates etc). Concern over quality of ecology reports submitted.
- Controls unlikely to be complied with, as per Pentney Lakes
- No need for additional tourism uses
- Insufficient infrastructure to cater for new uses
- Loss of woodland which is an Asset of Community Value and is important for the local community
- Impacts on the countryside and rural character
- Noise and disturbance
- Drainage and Impacts on water quality
- Lack of engagement with surrounding community at Pentney Lakes or living along Common Lane
- Light pollution
- Concern of impacts on retained trees during construction and need for more detailed plans
- The application does not comply with Biodiversity Net Gain (Note – the application was submitted before BNG became mandatory)
- Site abuts a County Wildlife Site and is within a SSSI Impact Risk Zone
- Impacts on existing bar garden and car park
- No historic planning consent for camping and static caravan use
- Concern over practicalities of wild swimming use
- Unsustainable location with no formal footpath routes to villages/services
- No benefits to the local community
- Impacts during construction
- Lodges are unlikely to truly be eco-friendly
- No need for second homes
- Loss of trees

## **LDF CORE STRATEGY POLICIES**

**CS01** - Spatial Strategy

**CS02** - The Settlement Hierarchy

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS10** - The Economy

**CS11** – Transport

**CS12** - Environmental Assets

**CS13** - Community and Culture

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM1** – Presumption in Favour of Sustainable Development

**DM2** – Development Boundaries

**DM3** - Development in the Smaller Villages and Hamlets

**DM11** – Touring and Permanent Holiday Sites

**DM15** – Environment, Design and Amenity

**DM19** - Green Infrastructure/Habitats Monitoring & Mitigation

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2021

## **PLANNING CONSIDERATIONS**

The key issues are:

Principle of Development

Asset of Community Value ·& Community Facilities

Impact on Landscape, Form and Character

Arboricultural Implications

Ecology ·& Biodiversity

Drainage

Highway Safety

Other material considerations



## **Principle of Development:**

The site lies outside of any development boundary and thus in the countryside for planning policy purposes. As such Policy CS10 of the Core Strategy 2011 and Policy DM11 of the Site Allocations and Development Management Policies Plan 2016 (SADMPP) apply, supporting new holiday accommodation provided certain criteria, including an acceptable impact on the landscape, heritage assets, highway safety etc. are met.

The Core Strategy when read as a whole seeks to protect the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife. It is therefore important to ensure that there is a correct balance between encouraging tourism and other policy aims of controlling development in the countryside.

The proposal for 36 holiday units, with associated health centre/wild swimming facilities and reception buildings would provide economic benefits through tourism, supported by Policies CS08 and CS10 of the Core Strategy (2011) and is located immediately adjacent to an existing large holiday park site and would therefore be viewed as an extension to an existing use.

An appeal decision on the Pentney Lakes site in 2014 (13/00281/F) supported the principle of additional holiday accommodation on site, stating that the Planning Practice Guidance notes that there are some occasions where development for tourists is sought at locations where it is difficult to meet the objectives of access by sustainable modes of transport due to the location being determined by a functional need. In this case, the woodland setting and the open water facilities, as well as how these relate to the existing water activities at Pentney Lakes facilitates a need for the development to be in this position.

Considering the support from the PPG in regard to supporting tourist and visitor facilities in appropriate locations as well as the scale of the adjoining use which would be expanded by this proposal, it is considered that the principle of holiday accommodation in this position would be acceptable.

The application has been supported by a business plan which illustrates how the holiday lets are intended to be managed and controlled and the local opportunities for future visitors.

Whilst countryside protection policies such as Policy CS06 and CS08 of the Core Strategy (2011) apply and must be considered alongside and balanced against policies CS10 and DM11, it is considered that the principle of new holiday accommodation in this location is acceptable. Impacts on the landscape, highway safety, ecology, trees & heritage are discussed and considered in more detail throughout this report.

### *mechanism for controlling the proposed use*

In planning law a dwelling remains within Use Class C3 whether it is occupied as a principal residence, as a second home or is let as a self-catering holiday home.

In cases where holiday accommodation is to be permitted in an area where normal housing would be restricted, some form of condition, or in this instance a S106 legal agreement, preventing conventional year-round occupation is necessary. If no controls were applied, a later change from holiday accommodation to permanent accommodation would not be a material change of use and thus controls are necessary to ensure that the development remains in a tourism-led holiday let use which accords with the Local Plan's spatial strategy and avoids homes in the countryside in areas remote from services. Considering the scale of this development and the position of the site in the wider countryside as well as the stated intention to individually lease plots, it is considered that a S106 is the most appropriate way to ensure that the site is occupied and utilised as approved.

The LPA consider that a s106 agreement would be necessary to control both that the plots are sold as leasehold units as per the proposed business plan and management plan and that the communal spaces (the health centre, wild swimming centre, reception, open spaces, and landscaped areas) are provided for and maintained as available throughout the lifetime of the development.

Conditions would be applied to ensure that the holiday lets are short stay accommodation only and not any persons' sole or main place of residence, in line with Policy DM11.

### **Asset of Community Value and Community Facilities**

The woodland was recently designated as an Asset of Community Value as a result of an application by East Winch and West Bilney Parish Council. In accordance with section 88(1)(a) of the Localism Act 2011, it is considered that the primary current use of the land furthers the social well-being of the local community. It is noted that the Agent has requested a review of this status, however assessment of this application has taken place based on the current designation as an ACV. The request for review is understood to be ongoing with no decision made as of the date of writing this report.

The ACV status simply means that prior to the sale of a community asset (the woodland in this case), that the owner does not have the ability to dispose of the site without the community having the 'right to bid' for the site. The ACV status lasts for 5 years.

It is important to state that the ACV status is not a planning policy to protect against change of use, rather local authorities can use their local plan or an Article 4 direction to do that. Furthermore, in the determination of planning applications it is for the decision-making authority to determine the weight given to an ACV status.

There is no clear direction in case law as to the amount of weight given to Assets of Community Value in the planning balance. In the case of R(OAO Loader) v Rother DC (2015) EWHC 1877 (Admin) Mrs Justice Paterson said 'planning applications have to be determined in the normal way in accordance with the development plan unless material considerations indicate otherwise.'

The status of an Asset of Community Value recognises that the community places value on the use of the land as a community asset, which is supported by the number of objections received from local residents as well as the Open Spaces society.

Community facilities are protected by policy DM9 of the SADMPP which states:

'The Council will encourage the retention of existing community facilities and the provision of new facilities, particularly in areas with poor levels of provision and in areas of major growth. Development leading to the loss of an existing community facility will not be permitted unless it is demonstrated that either:

- a) the area currently served by it would remain suitably provided following the loss, or if not
- b) it is no longer viable or feasible to retain the premises in a community facility use'

The proposed scheme would alter the current use of the woodland by adding holiday units to the site, which would increase visitor numbers. Whilst this alteration in use would increase the number of people utilising the site, and impact on parts of it through the siting of lodges, parts of the application site are proposed to be set aside as habitat zones & as no works zones which limits the intrusion into the woodland to a degree. Secondly, as per Policy DM9, the area currently served by the woodland would be suitably provided for by alternative woodlands and open spaces in the immediate locality.

It is not therefore considered that the status of the land as an Asset of Community Value would outweigh the planning policies which support the development of new economic drivers and tourism uses in the location, as discussed above. The change to the community facility is considered to comply with the overarching aims of Policy DM9 of the SADMPP (2016).

### **Impact on Landscape, form and character**

The stated intentions are for each lodge to be a uniquely designed unit which follows a certain design remit to allow a sense of cohesion across the site but allows bespoke designs and architectural features. The holiday lodges would conform to the definition of a caravan provided by the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act (as amended) and this can be conditioned and defined within the S106 legal agreement.

The design and access statement provided as part of this application sets out a plot design brief which includes reference to the Caravan Act requirements (max dimensions 20m x 6.8m, with an internal height of 3.05m), use of sustainable materials, building to Passivhaus standards, restrictions of decking areas to no larger than the footprint of the lodges etc. The documents also sets out that no electric hot tubs or gas heating will be allowed, and sets out specific distances which must be met – at least 10m from the water's edge & no more than 45 from service road for fire engine access. A more detailed design code or brief would be controlled via condition. Piling foundations would be used to avoid the use of large expanses of concrete foundations on site.

Conditions are recommended to ensure that a design code is submitted prior to works above slab level, in order to ensure that appropriate designs come forward which are suitable for the character of the area and the intentions of the site. The design code should also control boundary treatments, hardstanding etc.

For the avoidance of doubt, separate conditions are suggested to control the external finish of the proposed reception offices and the central health centre/open water swimming centre.

The proposed use would be visually linked to the existing development at Pentney Lakes which limits its overall impacts on the landscape and the countryside. Furthermore, the ecological reports submitted include proposed additional hedgerows and planting which would soften the views of the site from within. The plots are proposed positioned set back from site boundaries and therefore, the majority of viewpoints of the holiday lodges would be well-screened and softened by the existing mature vegetation.

Conditions are recommended to control external lighting across the site to ensure that visual impacts of lighting are adequately considered.

Impacts on the woodland and loss of trees are considered in additional detail below.

Subject to conditions, it is considered that the proposed siting of holiday lodges and associated infrastructure would not lead to adverse impacts on the countryside and subject to aforementioned conditions controlling a detailed design code etc. the proposal would comply with Policies CS06, CS08, DM11 and DM15 of the Local Plan in regards to visual impacts on the countryside setting and general design.

### **Arboricultural Implications**

A total of 87 woodland trees are proposed for removal (category C and U, primarily Pine trees with smaller numbers of Rowan, Spruce, Birch, Pine and Cypress), this represents a small proportion of the total number of trees previously agreed for removal as thinning by the

Forestry Commission in the Felling Licence prior to the serving of the TPO. The trees earmarked for removal are primarily within the central part of the site and therefore their loss would not impact on the wider landscape setting.

Minimal excavation techniques are proposed for the construction of the foundations for the lodges, with ground screws and mini-piles used in place of traditional foundations. Each lodge is to be individually designed and any trees that would be affected that are not shown in this report would require individual consent and consideration and can be dealt with under the supervision of an arboricultural consultant in consultation with the council's Arboricultural Officer on every occasion. Conditions are recommended to ensure that the Applicant is aware that this application grants consent only for the removal of trees specifically outlined on the approved plans.

There is a service road proposed for cleaning and maintenance purposes along which the services infrastructure is to be laid. The retained trees along the rides will be avoided so that there is no encroachment into the Root Protection Areas (RPAs) of the retained trees. Roads will be permeable 'grasscrete' road surface for maintenance and fire access only which is considered appropriate given the limited distances between the road and RPAs of adjoining trees.

The row of oak trees along the northern boundary and the broadleaved trees along the frontage of Common Road would be protected from direct works. Furthermore, there would be a large area of unaffected retained woodland and an ecological protection zone to the east of the site and along boundaries, as well as retained grassland to the west of the site, which would be managed by the retained arboricultural and woodland consultant for the continuous improvement of its biodiversity and habitat. These areas total around 4.2ha out of the 11.7ha site, around one third of the site.

Whilst it is acknowledged that the proposal would lead to loss of a number of trees, to allow the siting of the holiday lodges and the creation of the access track, the overall impact on trees given the scale of the application site is limited. It is considered that suitably worded conditions can adequately control the development to ensure that access tracks, service runs, soakaways and foundations can be constructed with minimal amounts of damage to the woodland as a whole. The proposal therefore complies with the requirements of the NPPF and Local Plan in regards to impacts on trees, in particular paragraph 180 of the NPPF and Policies CS08 and CS12 of the Core Strategy (2011).

### **Ecology and Biodiversity:**

The application was submitted before biodiversity net gain became mandatory and the BNG Requirement for 10% gain does not therefore apply.

The ecological information has been updated throughout the course of this application to reflect in-depth surveys which took place after submission. The information provided within the ecological surveys and reports resulted in changes to the site layout, retaining a 'habitat zone', a vegetation buffer zone and a dark wildlife corridor on site to provide for benefits to the overall biodiversity of the site.

### *Protected Sites*

The woodland as existing is well-connected to other valued habitats and the proposed car park and main access point are within the Pentney Lakes County Wildlife Site, a non-statutory protected site designated mainly due to the system of lakes which are spring fed. The protected site contains areas of marshy and dry grassland and abundant aquatic flora.

These habitats are not present within the woodland or pond onsite and therefore no impacts on these habitats are predicted.

The River Nar SSSI is a statutory protected site located approximately 1.1km south and is designated for its chalk stream and East Anglian fen features. The application site is within the Impact Risk Zone for this SSSI, however due to the lack of suitable habitat for the bird species within the SSSI any significant direct impacts on those species are unlikely. Although some increased visitor pressure could be expected, it is unlikely to be at a scale which would cause adverse impacts. There are numerous available walks around the site and in adjoining woodland which would limit the number of visitors specifically to the River Nar.

The applicant would also be expected to pay the current GIRAMS fee as part of any approval and this can be controlled via the S106 agreement. The River Nar SSSI is not scoped into that study, however the GIRAMS fee would cover in combination recreational impacts on the following habitats sites:

- Breckland Special Protection Area (SPA) and Special Area of Conservation (SAC)
- North Norfolk Coast SPA, SAC and Ramsar
- The Wash and North Norfolk Coast SAC
- The Wash SPA and Ramsar
- Roydon Common and Dersingham Bog SAC
- Roydon Common Ramsar
- Dersingham Bog Ramsar
- Norfolk Valley Fens SAC

### *Protected Species*

The Council's Ecologist and the Case Officer have visited the site to confirm the scope for the submitted ecological surveys and in October 2024 to verify results in regard to Otters following additional neighbour representations. The submitted protected species reports are considered to adequately address the key issues and set out suitable mitigation and enhancement opportunities. The council's ecologist has confirmed that they do not object on the grounds of protected species or habitats, subject to conditions.

Otters and Water Voles - The Ecology Report sets out that Otter and Water Vole surveys took place on site and within 200m (where accessible), with surveyors searching for otter spraints and potential holts. The length of river was also searched for water vole burrows, feeding remains and

latrines as well as other signs such as footprints. Five trail cameras were deployed in suitable habitat for two-week intervals in April, June and August 2023.

Some fish/clam remains and a potential holt were identified through the field survey. A camera trap was set to observe the potential holt but no otter activity on these or any of the other camera was recorded. These results accord with what the Council's Ecologist noted within their walk over survey in October 2023.

Otter holts are protected. Whilst no holts were encountered on the survey, it is evident that there are otters in the surrounding locality and the mitigation and enhancements set out within the ecology survey are considered suitable to control harm to this species as a result of the development. The ecology survey's precautionary approach has been applied to ensure that, in the event that holts are existing within the site boundaries, the ecological mitigation works are sufficient to prevent adverse impacts.

Reptiles – Seven reptile surveys were conducted between April 2022 and May 2023. Artificial refuges, consisting of 63 felt mats, were set out across the site in locations that were deemed suitable for reptiles. A maximum count of one grass snake and one slow worm were identified, with no signs of adders or common lizards.

A precautionary method statement is outlined for this group and must be included within the Construction and Ecology Management Plan to be controlled via condition.

Bats – Bat activity surveys took place and transect surveys resulted in a total of 601 bat passes, with eight different species recorded foraging or commuting in close proximity (Common Pipistrelle, Soprano Pipistrelle, Brown Long-Eared, Myotis Species (Most likely Daubenton's and Natterers), Noctule, Barbastelle, Serotine).

The report concludes that the woodland is primarily used by common species of bats (common and soprano pipistrelle) with rarer species only occasionally passing through. The results did not indicate large roosts within close proximity. However, the north and east of the site were identified as important for commuting bats and providing a connection to adjacent woodland habitat. The lake was also highlighted as a foraging resource for myotis.

The report outlines lighting requirements and wildlife corridors which would maintain connectivity across the site and to adjoining woodland. The planting of new hedgerows would enhance connectivity and provide additional commuting and foraging habitat for bats.

Badgers – Two walkover surveys were undertaken between 16th January and 6th February 2023 to identify evidence of badger. Setts were monitored between January and March 2023 and evidence was additionally collected during bat walk over transects in May.

One main sett, one annex sett, one subsidiary sett and one outlier sett were identified. Evidence of badger digging under the rabbit poof fencing to the east of the site and snuffle holes were also found.

Upgrading of the footpaths and direct mortality during construction activities were identified as potential impact pathways. Other impacts through loss of foraging habitat are also noted.

As a result of the findings, plans have been amended to reduce the numbers of cabins, removing those within the sett footprint. A habitat buffer zone has been recommended and is reflected within the proposed plan.

A preconstruction badger check is required to provide an up-to-date assessment of where setts are prior to any works taking place.

Other species – neighbour comments referred to the site being important for Invertebrates (Important Invertebrate Area). The acid grassland, which is perhaps of particular interest for invertebrates is being protected as part of the scheme. Whilst no specific invertebrate surveys have taken place as part of the proposal, the mitigation and compensation measures set out within the survey, controlled via this condition, would avoid, mitigate, and compensate for harm against invertebrates on site. This approach has been agreed by the council's Ecologist.

#### *Licensing requirements*

A license would be required from Natural England for any works within 30m of a badger sett. Whilst the plans have been amended to provide a separation between the lodges and known setts, the internal road will be positioned within this radius and therefore, the tests of

derogation are required to be undertaken to ascertain whether Natural England would be likely to grant a license for the proposed works.

1 - There is an overriding public interest.

The proposal is considered to comply with this test. The application complies with the policies of the development plan, providing tourism/economic benefits in line with Policy CS10 of the Core Strategy (2011).

2 - There is no satisfactory alternative.

The application has been amended to reposition the proposed lodges and minimise, where possible, direct impacts on the badger setts. There are no more suitable alternatives that would allow the development to take place.

3 - The resulting permitted actions will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status within their natural range.

The proposal is unlikely to be detrimental to the maintenance of the species, with the works having been appropriately planned and designed to mitigate impacts.

It is the LPA's opinion that an EPS license is likely to be granted on the above basis. The development complies with the NPPF (2021) and Policies CS08 and CS12 of the Core Strategy (2011).

#### *Ecological Mitigation and Enhancements*

The Ecology Reports set out various mitigation to avoid impacts on habitats. This includes the information shown on an associated Biodiversity Landscape Plan, including the retention of a dark wildlife corridor, the deciduous woodland along the west boundary, the tree line along the north boundary, the creation of a no works zone in an area of heathland, and retention of an eastern habitat zone to limit disturbance on associated species.

Conditions are recommended to ensure that all ecological works take place in line with best practice and the recommendations of the associated reports. This includes the erection of Heras fencing around habitat and buffer zones prior to the commencement of works and limitations on storage of materials, as well as a scheme for informing visitors of the site's sensitivities. A Construction Environmental Management Plan, a LEMP and an Ecological Design Strategy would also be controlled via condition in order to control specific impacts on ecology both throughout construction and for the lifetime of development.

Subject to conditions, it is considered that direct impacts on ecology during construction, and impacts as a result of the proposed use can be adequately controlled and would not substantiate a reason for refusal of this application. The proposal is considered to be in line with Paragraph 180 of the NPPF (2023) in regards to protected sites & species and biodiversity, Policies CS08 and CS12 of the Core Strategy (2011) and Policy DM19 of the SADMPP (2016).

#### **Drainage**

Paragraphs 173, 175 and 180 refer to flooding and preventing adverse risk from flooding and surface water drainage etc which must be appropriate for the lifetime of the development.

Various amendments were made to the proposed drainage scheme during the course of this application to meet the requirements of the LLFA, the EA and Natural England. The proposed approach includes the installation of two package treatment plants to serve the site and this has been agreed as the most suitable option by the EA and Natural England due to the lower maintenance risks. An environmental permit would be required under separate legislation.

Each lodge would be provided with its own geo-cellular soakaway system for surface water drainage, positioned in close proximity to the lodge to prevent undue impacts on the surrounding RPAs. The drainage statement has been compiled based on indicative plans showing the maximum possible footprint of the holiday lodges (as per the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) and therefore would be considered suitable to cater for the proposed uses.

The application is considered to comply with the NPPF and Local Plan in regards to flood risk and providing satisfactory drainage, in particular Paragraph 173 of the NPPF and Policy CS08 of the Core Strategy (2011). Conditions are recommended to control the completion of the foul and surface water strategy as approved.

### **Highway Safety**

Access to the site is proposed via Common Road through the existing Pentney Lakes entrance. The loosely surfaced existing car parking area for the restaurant would be used for car parking for the proposed uses and this has not drawn objections from the Local Highway Authority. A secondary access for emergency vehicles only would be provided direct to Common Road and this has also been agreed.

Norfolk fire and rescue raised no objection with regard to access for emergency vehicles.

Overall, the highway implications of the development are considered acceptable. Whilst the proposal may result in an increase in use of Common Road, the application has not drawn objections from the Local Highway Authority and the principle of development is therefore acceptable and accords with Paragraph 110 of the NPPF (2023) and Policies CS11 and DM15 of the Local Plan. Conditions are recommended to ensure the development is carried out in accordance with the agreed details.

### **Other material impacts**

Lighting – Conditions are recommended to control details of external lighting. This is considered necessary to control off-site light pollution as well as impacts on sensitive protected species, including bats as discussed above.

Residential Amenity – separation distances to adjoining uses are sufficient to limit adverse impacts on the nearest unrelated residential occupiers. As each lodge is intended to be custom designed, this provides a degree of flexibility per plot, however within the site, each plot is also sufficiently positioned to mitigate adverse impacts in regard to overlooking, overshadowing, or overbearing.

Archaeology - The proposed development lies within an area rich in archaeological finds and remains. In 1959 a Bronze Age gold torc was found within the proposed development area. The proposed development area also lies partly within an area where a significant amount of Roman pottery has been found in 1935, c.1960 and 1975, suggesting Roman settlement in the immediate area. Consequently, there is potential that heritage assets with archaeological interest (buried archaeological remains) may be present at the site and that their significance will be affected by the proposed development. Conditions are therefore recommended to



ensure that archaeological works take place in accordance with agreed schemes as part of this development, in line with the requirements of Paragraph 206 of the NPPF and Policy CS12 of the Core Strategy (2011). In this instance, the recommended works include monitoring of ground works, which would not have an impact on the ecological or arboricultural implications discussed above.

Pentney Abbey – Pentney Parish Council objected to this application and amongst their concerns was the impact on the setting of Grade II Listed Pentney Abbey. The proposal is located a minimum of 1km from Pentney Abbey, with the main Pentney Lakes complex positioned in between the application site and the abbey. Whilst the proposal is development in the countryside, the overall setting of Pentney Abbey will not be impacted by this proposal and no demonstrable harm to the setting of any heritage asset is likely to occur as a result of this proposal.

Neighbourhood Plan – Pentney Parish Council also commented in regard to the Neighbourhood Plan, requesting that those policies are applied to this scheme. The Neighbourhood Plan currently is not at a sufficient stage of submission or consultation to have any weight in planning decisions.

Neighbour Objections – the majority of points raised within neighbour representations have been discussed in depth within this report. Whilst comments on the suitability of adjoining infrastructure to cater for additional uses are noted, the proposal is considered to comply with the development plan in regard to the location of tourism uses. As a holiday let site, there would be very limited impact on surrounding facilities such as schools or doctors surgeries and the road links themselves have not drawn objections from the Local Highway Authority on highway safety grounds.

In relation to the practicalities of the wild swimming use, this is part of the proposal set out by the Applicant as part of the facilities to be provided on site. It is for the applicant to determine the practical arrangement for such a use.

Whilst comments surrounding impacts on the existing bar garden and car park are noted, it is considered that sufficient parking is available on site to negate any impacts from reuse of the existing car parking area. The footprint of the restaurant/bar will not be impacted by this proposal.

Landscaping details – conditions are recommended to ensure that details of bin storage, cycle parking and EV chargers are provided via condition. This will ensure that these details are appropriate for the character of the area and not detrimental to the visual amenities of the locality and will also ensure consideration is given to the detailed comments from the Designing Out Crime officer in regard to secure cycle storage.

## **Conclusion**

The NPPF reiterates the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

The proposed holiday lodges would be positioned on land which is within the wider countryside for the purposes of planning policy, however it is considered that given proximity to the existing Pentney Lakes holiday site as well as the short distance along Common Road to the A47, the location of the development would comply with the locational criteria for holiday lets set out within Policy DM11 of the SADMPP and the economic policies set out by

Policy CS10 of the Core Strategy (2011). The location of the development is considered to accord with the overarching aims of the NPPF and Local Plan in regard to sustainable development.

Controls are recommended in the form of both a S106 legal agreement and appropriately worded planning conditions in order to ensure that the lodges are used for short term holiday let purposes only, providing economic benefits to the wider area, without becoming a typical permanent housing estate in the countryside which would be at odds with the requirements of the local plan. The s106 will control the leasehold arrangements as well as ongoing maintenance and provision of the communal facilities and spaces.

The Local Highway Authority raise no objections on highway safety grounds. Issues such as arboricultural and ecological impacts on the woodland have been addressed during the course of this application to ensure that all impacts can be appropriately mitigated, and the use of appropriate conditions can ensure that the recreational impacts on the ecological features on site can be mitigated throughout the lifetime of the development. The ecological survey in particular sets out parameters, no work zones, habitat zones etc to prevent direct damage to habitats.

Subject to appropriately worded conditions relating to the submission of a detailed design code for each holiday lodge, compliance with appropriate ecological and arboricultural mitigation mechanisms and other associated conditions, the proposal is considered to comply with the overarching aims of the NPPF (2023) and in particular, Policies CS01, CS02, CS06, CS08, CS10, CS11 and CS12 of the Core Strategy (2011) and Policies DM1, DM2, DM11 and DM15 of the SADMPP (2016).

## RECOMMENDATION

**A. APPROVE** - subject to the imposition of the following conditions and completion of a s106 legal agreement to control the provision and management of all communal facilities (the Reception buildings and Health Centre and Open Water Swimming Centre (Plots 9 & 10), open spaces and landscaped areas, the leasehold arrangements for each holiday lodge, the current GIRAMS fee and the associated monitoring fees. If the agreement is not completed within 4 months of the committee resolution, but reasonable progress has been made, delegated authority is granted to the Assistant Director/Planning Control Manger to continue negotiation and complete the agreement and issue the decision.

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:
  - P2102-SP02 Revision L
  - P2102-SP Rev C
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 Condition: Notwithstanding the details submitted in support of this application, no works above slab level shall occur on any holiday lodge shown on dwg No. P2102-SP02 Revision L until a detailed design code has been submitted to and approved in writing by the Local Planning Authority. The design code should include:
- Details of the proposed material palettes to be used for each holiday lodge
  - Details of fenestration
  - Details of proposed plot boundary treatments, to accord with Page 4 of the Preliminary Ecological Appraisal by Greenlight Ecology dated 23 April 2021.
  - Details of any external decking/hard surfacing materials and how these will be designed around existing trees
  - Details of how each holiday lodge will meet the definition of a caravan provided by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (As amended) and how PassivHaus standards will be incorporated into each design.
  - Detailed design of the Health Centre, Wild Swimming Centre and Reception Buildings

The development shall be carried out and each lodge shall be sited on the land in full accordance with the agreed design code and retained as such thereafter.

- 3 Reason: For the avoidance of doubt and in the interests of proper planning, to ensure a suitable final external appearance of the scheme in line with Policies CS08 and DM15 of the Local Plan.
- 4 Condition: No works that impact badger setts shall in any circumstance commence unless the Local Planning Authority has been provided with either:
- a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or;
  - b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
- 4 Reason: The Habitats Directive requires a system of 'strict protection' for certain protected species. It is a criminal offence to consciously harm European protected species without a licence, which would only be issued if the statutory licensing body is satisfied that the derogation criteria are met. However, the risk of criminal prosecution might not prevent harm from taking place. This condition therefore helps to ensure that a developer will apply for an EPS licence and, if they do not, can be prevented in advance from undertaking the activities that might jeopardise the protected species, before the species is harmed. This condition can be enforced by a temporary stop notice or by injunction. This condition ensures that the Local Planning Authority is complying with its statutory obligations with respect to the Habitats Regulations. In the interests of protecting protected species in the locality in accordance with Paragraph 180 of the NPPF and local planning policy CS12.
- 5 Condition: Prior to the first use of the development hereby permitted, full details of a scheme providing information regarding the importance of the environmental sensitivities of the site and surroundings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision of a leaflet to all site guests regarding:
- The correct disposal of litter
  - Due regard to breeding birds
  - Prohibition of entering fenced off areas
  - Information on the local wildlife and how to minimize disturbance

- Restrictions on off-lead dog walking on site, due to potential conflicts with local species
- information on water quality impacts from open water swimming

The details should also include provision of permanent signage in suitable locations on site to inform visitors of the requirements.

5 Reason: In the interests of protecting ecologically sensitive features of the locality in accordance with Paragraph 180 of the NPPF and local planning policy CS12.

6 Condition: No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

- Risk assessment of potentially damaging construction activities;
- Identification of `biodiversity protection zones`.
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction ;
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communications;
- The roles and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- Use of protective fences, exclusion barriers and warning signs, in particular around all habitat zones and no works zones; for the duration of works
- Details proposed lighting strategy for the construction phase of the development

The approved CEMP: Biodiversity shall be adhered to and implemented through the construction phases strictly in accordance with the approved details, unless agreed in writing by the local planning authority.

6 Reason: In the interests of protecting ecologically sensitive features of the locality in accordance with Paragraph 180 of the NPPF and local planning policy CS12.

7 Condition: No works shall commence on site until a Landscape and Ecology Management Plan and Ecological Design Strategy document has been submitted and approved by the Local Planning Authority. The document should include the following:

- Details of any habitat proposed to be created, enhanced or protected, in line with the submitted Ecological Surveys, in order to provide measurable biodiversity gains.
- How the aforementioned habitats will be managed, maintained, and monitored for the lifetime of the development.
- Details of barriers to be constructed around the lowland acid grassland no-works zone in order to prevent recreational use.
- No non-native species shall be used in any planting on site.
- Details of proposed lighting strategy for the lifetime of the development

The agreed details shall be completed as approved prior to the first occupation of any plot and retained and maintained as such thereafter.

7 Reason: In the interests of protecting ecologically sensitive features of the locality in accordance with Paragraph 180 of the NPPF and local planning policy CS12.

- 8 Condition: The holiday lets shown on dwg No. P2102-SP02 Revision L hereby approved shall be used for short stay accommodation (no more than 28 days per single let) only and shall at no time be occupied as a person's sole or main place of residence. The owners shall maintain an up-to-date register of lettings/occupation and shall make the register available at all reasonable times to the Local Planning Authority.
- 8 Reason: The site lies within in an area in which the Local Planning Authority would not normally permit permanent residential development. This permission is granted because accommodation is to be used for holiday purposes only in accordance with the NPPF and supported by Policy DM11 of the SADMPP (2016).
- 9 Condition: Plots 9 & 10, as shown on dwg No. P2102-SP02 Revision L shall only be utilised for communal purposes as a health centre and open water swimming centre and shall at no time be used for residential purposes.
- 9 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF and Policy DM11 of the SADMPP (2016).
- 10 Condition: Notwithstanding the detail provided with the Arboricultural Report and Method statement submitted in support of this application, prior to the commencement of works, full details of the proposed position of service runs on each plot as well as below the access track hereby approved shall be submitted to and approved in writing by the LPA.

The details shall include routes of the service runs to avoid any root protection areas wherever possible and where necessary, which alternative techniques will be put in place to place services without damage to retained trees. The detailed plans should be produced in conjunction with an arboriculturist and include allowance for the space needed for the installations, as well as details of levels. The information should be plot specific and identify the individual trees likely to be impacted by the proposed development.

The development shall be completed wholly in accordance with the details agreed.

- 10 Reason: To ensure that the existing trees are properly surveyed and full consideration is made of the need to retain trees in the development of the site in accordance with the NPPF.

This needs to be a pre-commencement condition given the potential for trees to be lost during development.

- 11 Condition: The development shall be carried out in full accordance with the recommendations and mitigation measures proposed within the Arboricultural Report, written by BH Trees and Woodland dated 13th May 2024. In particular, the report states:
- No construction activities should take place within identified root protection areas, except as indicated in the method statement unless written approval has previously been granted under Condition 10
  - Protective measures as outlined in the method statement must be in place prior to any ground or construction works taking place.
  - Any overground services including CCTV must also be positioned to avoid the need for any regular or detrimental pruning to the trees.

- The movement of plant in proximity to retained trees should be conducted under the supervision of a banksman to ensure adequate clearance from the branches of the trees. Hydraulic cranes, forklifts, excavators or piling rigs (other than small rigs used for mini piling) must be avoided in the immediate vicinity the crown of the trees.

- 11 Reason: To ensure that the existing trees are properly surveyed and full consideration is made of the need to retain trees in the development of the site in accordance with the NPPF.
- 12 Condition: The development shall be built in accordance with the submitted Drainage Strategy (Surface Water Drainage Statement | Pentney Woods, Common Road, Pentney, Norfolk, PE32 1LE | BLI Consulting Engineers Ltd | Report Ref: BLI.2022.10 | Rev: 02 | Dated: 25 October 2023) and the following additional supporting documents:
- Flood Risk Assessment for Recreational Development at Common Road, Pentney | Ellingham Consulting Ltd | Ref: ECL0553 | Rev: N/A | Dated: August 2021
  - Surface & Foul Water Drainage Statement Addendum | Pentney Woods, Common Road, Pentney, Norfolk, PE32 1LE | BLI Consulting Engineers Ltd | Report Ref: BLI.2022.10 | Rev: 02 - Addendum | Dated: May 2024

The schematic drainage layout adopted must be that demonstrated in the final submitted drainage strategy drawing (Surface Water Drainage Layout / Strategy (Sheets 1 to 3) | BLI Consulting Engineers Ltd | Project No.: BLI.2022.10 | Drawing No.: PL 06 | Rev: P3 | Dated: 27 May 2024).

The approved scheme will be implemented prior to the first use of the development.

- 12 Reason: To prevent flooding in accordance with National Planning Policy Framework paragraph 173, 175 and 180 by ensuring the satisfactory management of local flood risk, surface water flow paths, storage and disposal of surface water from the site in a range of rainfall events and ensuring the SuDS proposed operates as designed for the lifetime of the development and to ensure that drainage from the sewage from the site is treated and discharged appropriately and to minimise impacts on the local environment, in accordance with the NPPF (2023) and Policies CS08 and CS12 of the Core Strategy (2011).
- 13 Condition: Prior to the commencement of the use hereby permitted the 'Pentney Woods (to be emergency use only) vehicular access' indicated for improvement on Drawing No. P2102-SP02 Revision L shall be upgraded, widened and gated in accordance with the Norfolk County Council Field Access construction specification for the first 5m metres as measured back from the near channel edge of the adjacent carriageway and in accordance with details to be agreed in writing by the Local Planning Authority. The upgraded access shall only be used in the case of emergencies.
- 13 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety and traffic movement in accordance with the NPPF (2023) and Policies CS11 and DM15 of the Local Plan.
- 14 Condition: Prior to the first use/occupation of the development hereby permitted, full details of both hard landscape works shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include hard surface

materials, refuse or other storage units, street furniture, structures and other minor artefacts including cycle parking, bin storage and EV charging points.

- 14 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF and Policy DM15 of the Local Plan.
- 15 Condition: 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 or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation
- 15 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF and Policy DM15 of the Local Plan.
- 16 Condition: Prior to the first occupation/use of the development hereby permitted the proposed access/on-site car parking areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 16 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety and traffic movement in accordance with the NPPF (2023) and Policies CS11 and DM15 of the Local Plan.
- 17 Condition: No trees other than those expressly noted for removal within the Arboricultural Report, written by BH Trees and Woodland dated 13th May 2024. shall be removed unless otherwise approved in writing by the Local Planning Authority.
- 17 Reason: To ensure that existing trees and hedgerows are properly protected in accordance with the NPPF. In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
- 18 Condition: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
- 18 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 the NPPF.

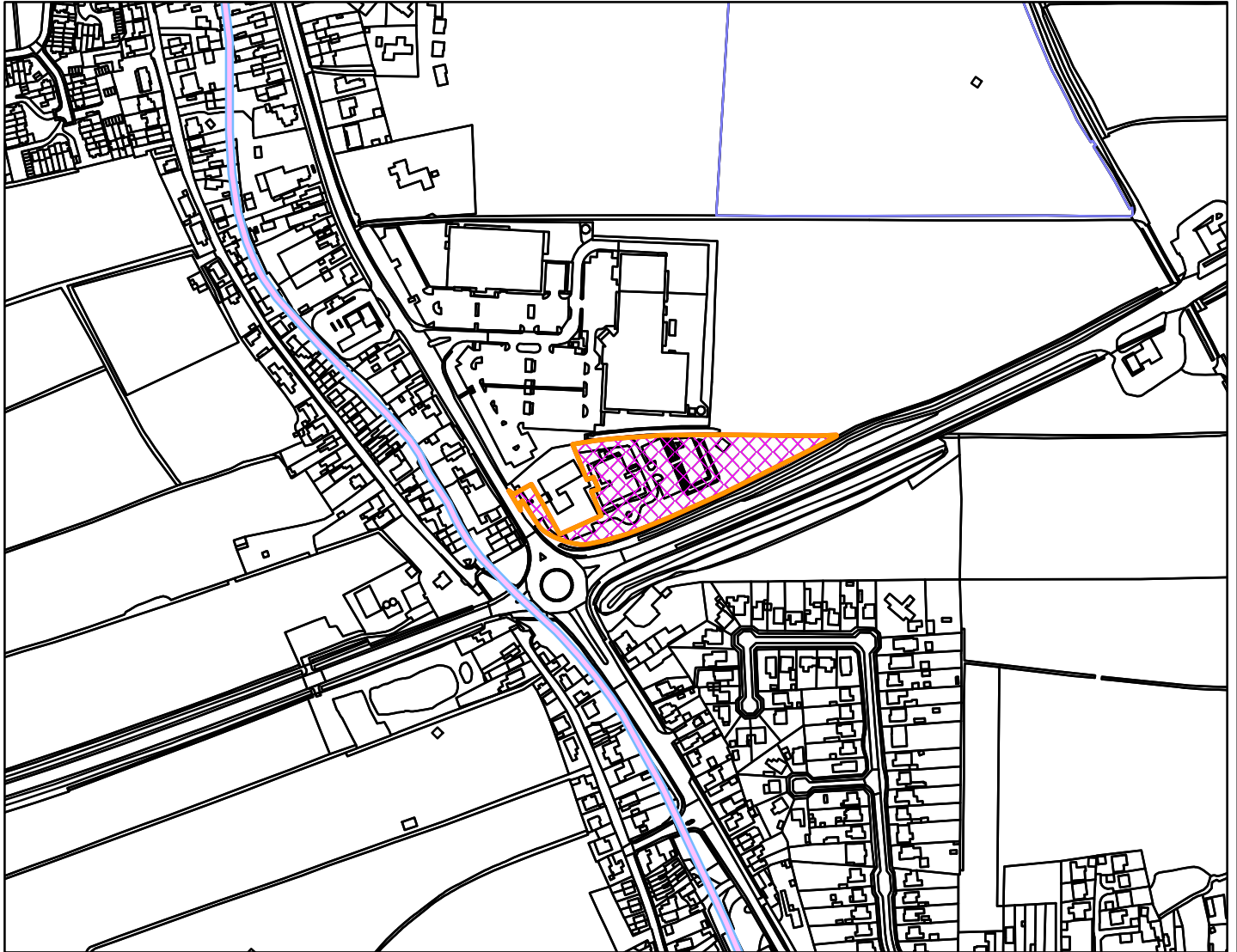
- 19 Condition: No more than 36 holiday lodges should be positioned on the site outlined in red on dwg No. P2102-Sp Rev C at any one time. Each caravan shall be positioned within its associated plot as indicated on the approved plan, dwg No. P2102-SP02 Revision L only and in full accordance with the design code which is to be agreed under Condition 3.
- 19 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF and Policy DM11 of the SADMPP (2016).

Or **B.** If in the opinion of the Assistant Director/Planning Control Manager no reasonable progress is made to complete the legal agreement within 4 months of the date of the committee resolution, the application is **REFUSED** on the basis of failure to secure appropriate control of holiday let usage.





Elme Hall Hotel 69 Elm High Road Emneth Wisbech PE14 0DQ



**Legend**

**Scale:** 1:5,000

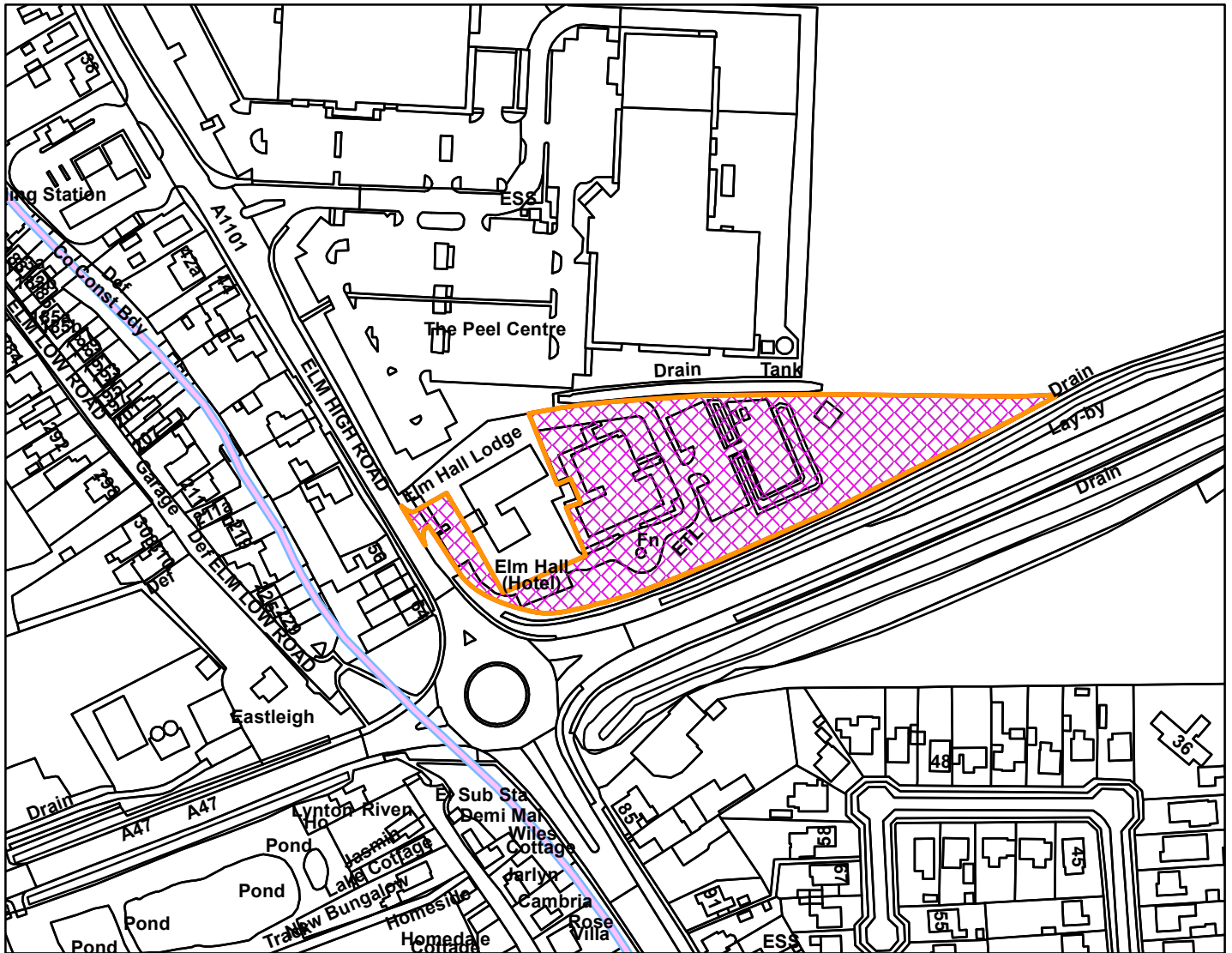
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Organisation	BCKLWN
Department	Department
Comments	
Date	24/10/2024
MSA Number	0100024314



Elme Hall Hotel 69 Elm High Road Emneth Wisbech PE14 0DQ



**Legend**

[Empty legend box]

**Scale:** 1:2,500

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Organisation	BCKLWN
Department	Department
Comments	
Date	24/10/2024
MSA Number	0100024314

<b>Parish:</b>	<b>Emneth</b>	
<b>Proposal:</b>	<b>Conversion of Hotel and associated ballroom to 19 No. Flats</b>	
<b>Location:</b>	<b>Elme Hall Hotel 69 Elm High Road Emneth Wisbech PE14 0DQ</b>	
<b>Applicant:</b>	<b>Mr D Conetta</b>	
<b>Case No:</b>	<b>24/00141/FM (Full Application - Major Development)</b>	
<b>Case Officer:</b>	<b>Mrs C Dorgan</b>	<b>Date for Determination: 17 September 2024 Extension of Time Expiry Date: 8 November 2024</b>

**Reason for Referral to Planning Committee** – Referred by Sifting Panel at their meeting on 4 September 2024.

**Neighbourhood Plan:** No

**Case Summary**

The application seeks full planning consent for the conversion of the hotel and associated ballroom to 19 flats. The flats are a mix consisting of 12 one bedroom flats (with a maximum occupancy of 24 people) and 7 x 2 bedroom flats (with a maximum occupancy of 22 people) over three floors.

The application site is 0.86ha and is part of a larger site (approximately 1.2ha in total), the remainder of which has been granted consent for the change of use from a motel to a House of Multiple Occupancy (HMO) under ref 22/01014/F. The external form of the building would largely remain unchanged aside from the subdivision of the hotel and ballroom and some changes to door and window openings at ground floor, there would be changes to the site to accommodate the cycle parking and area of amenity space.

The application site is located to the northeast of the A47, with access via the existing entrance off Elm High Road. The site is 1.3 miles to Wisbech town centre and abuts the built extent of the town. However, it is located within the parish of Emneth and the site is within the development boundary for the village of Emneth as detailed on Inset Map G34 of the Site Allocations and Development Management Policies Plan (SADMPP) (2016).

**Key Issues**

- Principle of Development
- Highways / Access
- Form and Character
- Residential Amenity and Site Management
- Other Material Considerations

## Recommendation

**A) APPROVE** subject to the imposition of the following conditions and completion of a s106 legal agreement to cover the current GIRAMS fee and the associated monitoring fees. If the agreement is not completed within 4 months of the committee resolution, but reasonable progress has been made, delegated authority is granted to the Assistant Director/Planning Control Manger to continue negotiation and complete the agreement and issue the decision.

**B)** If in the opinion of the Assistant Director/Planning Control Manager no reasonable progress is made to complete the legal agreement within 4 months of the date of the committee resolution, the application is **REFUSED** on the failure to secure the GIRAMS fee.

## THE APPLICATION

The application seeks full planning consent for the conversion of the hotel and associated ballroom to 19 flats. The flats are a mix consisting of 12 one bedroom flats (with a maximum occupancy of 24 people) and 7 x 2 bedroom flats (with a maximum occupancy of 22 people) over three floors.

The application site is 0.86ha and is part of a larger site (approximately 1.2ha in total), the remainder of which has been granted consent for the change of use from a motel to a House of Multiple Occupancy (HMO) under ref 22/01014/F. The external form of the building would largely remain unchanged aside from the subdivision of the hotel and ballroom and some changes to door and window openings at ground floor, there would be changes to the site to accommodate the cycle parking and the area of amenity space.

The application has been amended through the planning application process resulting in a reduction in the number of units overall and in some cases the reduction in bedroom numbers per unit.

The application site is located to the northeast of the A47, with access via the existing entrance off Elm High Road. The site is 1.3 miles to Wisbech town centre and abuts the built extent of the town. However, it is located within the parish of Emneth and the site is within the development boundary for the village of Emneth as detailed on Inset Map G34 of the Site Allocations and Development Management Policies Plan (SADMPP) (2016).

## SUPPORTING CASE

Following the success that our client has experienced with his conversion of the motel style building at the front of the site, which is nearing 90% occupation, we bring this application to create additional affordable accommodation before you.

Whilst it was hoped that the subdivision of the site would make the hotel a more viable purchase for prospective buyers, this has not proved to be the case, with no interest being shown in the now 3.5 years that it has been marketed individually, and as such this application now involves the conversion of the main building and associated ballroom to create a mix of one and two bedroom flats (19 in total). The main building has continued to decay in this time and it is becoming an unsightly proposition upon the entry to Wisbech, this, coupled with the success of his motel conversion, has prompted our client to act.

Since the last application and works, property prices have continued to rise and availability of this type of accommodation is not readily available which is fuelling a gap in the market. We have worked attentively to ensure the design of the units fits well within the envelope of the existing building, thus making very minimal changes to the existing aesthetics of the building. We feel that this will create a series of attractive, high quality mix of marketable and rental properties.

Once again, our client is committed to a site wide improvement. Together with the introduction of a 400m<sup>2</sup> communal garden space it is also planned to repair and reinstate the existing fountain to the frontage and improve all existing screening and grounds. Following completion of these works, the areas will be managed by a third party landscaping firm. Interior communal areas will benefit from CCTV and will be cleaned and maintained by a third party. The client will ensure that the local constabulary are furnished with sufficient access should this ever be required.

We are very pleased to have support of the Parish Council as well as support from Wisbech Town Council. We also have the recommendation of approval from your officers and we hope that members agree as we look forward to a positive outcome.

## **PLANNING HISTORY**

22/01014/F: Application Permitted: 21/11/22 - Proposed Change of Use from Hotel (C1) to large HMO (Sui Generis). - Elme Hall Hotel

21/01569/F: Application Refused: 16/05/22 - Proposed Change of Use from a Hotel to a Large HMO (Sui Generis) - Elme Hall Hotel

2/98/1336/CU: Application Permitted: 15/12/98 - Change of use from office to 8 bed hotel - De-Regle Hall

2/00/0490/F: Application Permitted: 17/08/00 - Erection of marquee from 1st May to 31st August inclusive each year to be used for functions (revised proposal) - Elme Hall Hotel

2/01/0549/A: Application Refused: 05/06/01 - Erection of flag pole and non-illuminated banner - Elme Hall Hotel

2/03/2501/F: Application Permitted: 30/11/04 - Construction of two storey block of motel rooms - 69 Elm High Road

2/00/0079/A: Application Permitted: 25/02/00 - Erection of flag pole and flag banner - Elme Hall Hotel

2/03/2501/NMA\_1: Application Permitted: 06/08/10 - NON-MATERIAL AMENDMENT FOR PLANNING CONSENT 2/03/2501/F: Construction of two storey block of motel rooms - Elme Hall Hotel

2/01/0989/F: Application Permitted: 12/09/01 - Construction of ballroom - Elme Hall Hotel

## **RESPONSE TO CONSULTATION**

**Emneth Parish Council: SUPPORT**

**Wisbech Town Council: SUPPORT**

**Planning Committee  
04 November 2024**

**Fenland District Council:** Elm Hall Hotel which lies to the east of Elm Hall Lodge was constructed in the 1980's, and subsequently extended to include ballroom facilities. Elm Hall Lodge was approved under 2/03/2502/F in 2004 and the works completed around 2010's.

Permission was refused to change the Lodge to a Large HMO under application 21/01569/F on grounds of adverse impact in tourism. Subsequently, permission was granted to a large HMO under 22/01014/F on the basis that the proposal was policy compliant as the hotel use at Elm Hall Hotel would be retained.

The planning application form (24/00141/FM) describes the proposal as conversion of Elm Hall Hotel to 20 No Flats, and specifies 5 x 1 bed, and 15 x 2 bed under the section of the form titled Residential/Dwelling units. The description does not match with the accompanying Planning Statement which refers to 24 residential units comprising a mix of 1 and 2 bed units. A further discrepancy arises as the proposed floor plans indicate 22 units (10 on the ground floor, 8 on the first and 4 on the second).

Where the previous application was justified on the basis that a change to an HMO at Elm Hall Lodge would enable the applicant to then invest back into Elm Hall Hotel, the Council in reaching a decision will need to be satisfied that the proposed loss of hotel accommodation would not have an adverse impact on tourism. The scale is not annotated on the submitted drawings, and therefore compliance with the Nationally Described Space Standards (NDSS) cannot be assessed. Dedicated car/cycle parking, private amenity space or bin storage provision is not indicated.

**Highways Authority: NO OBJECTION subject to conditions**

The cycle parking numbers proposed would accord with the adopted guidelines. It does not appear evident however how these cycle spaces would be secured and enclosed as per the requirements for residential use, but give that the intension is offered we would suggest that a condition is attached so that the specific cycle details can be later agreed. Also request a condition is attached to ensure the proposed access / on-site car parking / servicing / turning areas are in accordance with the approved plan.

**Internal Drainage Board: NO OBJECTION**

The site is within the Internal Drainage District (IDD) of the King's Lynn Internal Drainage Board (IDB) and therefore the Board's Byelaws apply. Whilst the Board's regulatory process (as set out under the Land Drainage Act 1991 and the Board's Byelaws) is separate from planning, the ability to implement a planning permission may be dependent on the granting of any required Land Drainage Consents. The Board's Officers have reviewed the documents submitted in support of the above planning application. Officers have noted works which may require Land Drainage Consent from the Board (nb. These are detailed within the letter).

Please be aware of the potential for conflict between the planning process and the Board's regulatory regime. Where consents are required, the Board strongly recommends that these are sought from the Board prior to determination of this planning application.

**Environmental Health & Housing – Environmental Quality: NO OBJECTION subject to conditions**

In terms of air quality the NPPF states under para 180(e) that unacceptable levels of air pollution are to be prevented, but also and wherever possible for developments to improve air quality. For larger major developments as in this case, core policy CS08 requires high standards of sustainable designs that result in a proportion of the building emissions to be

derived from low carbon / renewable energy sources. There is no information submitted on this matter. Further information is requested, subject to condition for an energy report to satisfy core policy CS08 and the NPPF.

In terms of air pollution, as the Hotel has been closed for some while, the conversion will generate additional traffic and its associated pollution. When based on background air quality levels, this additional amount would not be considered a significant change and reason not to object on this aspect. However, this should still be minimised through a design that favours more sustainable transport options. This is however unclear, as 40 parking spaces that were previously offered for the Hotel, are to be provided for the occupants of the proposed Flats. It must be noted that the extent of parking to number of bedrooms for residential accommodation (flats) is much lower than that of a hotel. Nor are there any secure cycle spaces shown in accord with the relevant guidelines. Electric vehicle charging infrastructure may also need to be confirmed. Please note, by reducing the amount of allocated parking spaces can result in a larger landscaped area.

### **CSNN: NO OBJECTION subject to conditions**

Foul drainage - No information has been provided and whilst it is accepted that the hotel would have had foul drainage provision it is important that, for a development of this size, we have clear information about the foul drainage methods. If there is time for this to be provided and assessed prior to determination that would negate the need for this to be conditioned. If there is not time for this, a condition should be attached.

Air Source Heat Pumps – The positioning of the ASHP's is satisfactory and has been placed in the most considerate location. Details of the dB levels for the units would still need to be provided to ensure they will not cause an adverse impact so I would recommend that a condition still be imposed to cover this.

Layout/internal sound insulation - It would be good practice to ensure that potentially noisy rooms such as kitchens and living rooms do not adjoin bedrooms in neighbouring flats and are not directly above or below them. Also, communal stairwell areas adjoining bedrooms should also be avoided. From the proposed layouts it seems that there are a few instances where there are some occurrences of the above scenarios. However, it is also acknowledged that in a situation where a premises is being converted as opposed to being purpose-built, it may be challenging to prevent such conflicts between quiet and noisy spaces. It is important that future residents of the flats are protected from adverse impacts from internal noise.

Construction phase – we have considered the need for a restriction on site hours and a construction management plan but the fact that the conversion work appears to be internal changes only, it will not be necessary for this project. However, an informative should be added if permission is granted in order to make the applicant aware that action can be taken outside of the planning process if there are adverse impacts on nearby residents during the construction phase under the Environmental Protection Act 1990 and Control of Pollution Act 1974.

### **Emergency Planner: NO OBJECTION.**

Because of its location in an area that during an extreme flood event could become isolated from safe access and egress routes (i.e. become a dry island), those running the site:

- Should sign up to the Environment Agency flood warning system (0345 988 1188 or [www.gov.uk/flood](http://www.gov.uk/flood) )
- A flood evacuation plan should be prepared (more details at [www.gov.uk/flood](http://www.gov.uk/flood) ):

- This will include actions to take on receipt of the different warning levels.
- Evacuation procedures e.g. isolating services and taking valuables etc
- Evacuation routes.

**Norfolk Constabulary: NO OBJECTION**

Information is provided including measures to design out crime. These refer to shared access arrangements, external lighting, security measures etc.

**Norfolk Fire and Rescue: NO OBJECTION subject to condition**

Norfolk Fire & Rescue Service requirement will be a sufficient number of fire hydrants to ensure there is one, within 90 metres of the access point of every building, comprising multiple residential accommodation or buildings of non-residential provision. If the overall height of any building exceeds 18m the provision of a dry fire main will be required. Fire appliance access and hydrant provision for this fire main must comply with Building Regulations. The total number of hydrants required will need to be assessed when the mix and type of proposed buildings for the development area and the final layout is made clear. The hydrants could be delivered through a planning condition.

**Strategic Housing: NO OBJECTION**

The conversion of existing buildings does not require an affordable housing contribution therefore no affordable housing will be sought here.

**REPRESENTATIONS**

**NONE** received.

**LDF CORE STRATEGY POLICIES**

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS10** - The Economy

**CS11** – Transport

**CS02** - The Settlement Hierarchy

**SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM17** - Parking Provision in New Development

**DM2** – Development Boundaries

**DM15** – Environment, Design and Amenity

**NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)



## **PLANNING CONSIDERATIONS**

The issues for consideration of this application include-

Principle of Development  
Highways / Access  
Form and Character  
Residential Amenity and Site Management  
Other Material Considerations

### **Principle of Development**

The application site is within the development boundary for Emneth as detailed on Inset Map G34 of the SADMPP. While the village of Emneth is designated a Key Rural Service Centre, the site itself also abuts the built extent of the town of Wisbech. The application seeks a change of use of an existing building from hotel use to 19 flats and therefore, the physical building and parking area are existing. Policy DM2 states that development will be permitted within the development boundaries providing this is in accordance with the other policies of the Local Plan. Broadly speaking the principle of development is acceptable.

The NPPF states-

‘123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.’

‘124. Planning policies and decisions should:..

- c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;
- d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)...

and in paragraph 127 it states –

‘Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular they should support proposals to:

- a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework’

The development would utilise an existing developed (brownfield) site for the provision of additional homes, making an effective use of land. This is subject to the development providing acceptable living conditions and not having a detrimental impact, in terms of the economy or tourism, on the town of Wisbech.

The proposed change of use of the site does mean the loss of 14 hotel rooms, which is classed as an employment use, to a residential use. Therefore, consideration should also be given to Policy CS10 of the Core Strategy which seeks to-

'...retain land or premises currently or last used for employment purposes unless it can be demonstrated that:

- \* continued use of the site for employment purposes is no longer viable, taking into account the site's characteristics, quality of buildings, and existing or potential market demand; or.....

- \* an alternative use or mix of uses offers greater potential benefits to the community in meeting local business and employment needs, or in delivering the Council's regeneration agenda.'

Historically planning applications on the wider site were refused as would result in the loss of existing tourist accommodation, impacting on the tourism industry in the locality. However, the applicant addressed these concerns and gained planning consent for the conversion of the motel building to an HMO (House of Multiple Occupation) back in 2022. A similar case is made for this application.

Members may recall that previously, as part of the planning application for the neighbouring HMO, the applicant stated that while that scheme would result in a reduction in the amount of employment land/ hotel accommodation, planning consent would not result in the complete loss because the applicant would be able to reinvest in the hotel. Unfortunately, this has not been the case.

The applicant argues that tourism in West Norfolk is declining, with the Office of National Statistics detailing that consumer spending on the hospitality sector is less than 70% of the pre-pandemic levels (2021).

The applicant states that the main building of Elme Hall Hotel has not been open to the public for a number of years. Figures have been provided from the hotel showing 15% and 21% fall in profit over the three years pre-covid. Therefore, there is not the demand for hotel rooms, and the hotel in its current form is not viable.

The applicant refers to a search which identifies there are five established hotels within 5 miles of the site which have continued to trade.

The applicant concludes that there has been a clear decline in tourism within West Norfolk, which has resulted in the hotel being unviable. Should the application be approved there would remain an adequate range of accommodation for tourist visitors to West Norfolk. On the basis of the above, the applicant has provided sufficient information to demonstrate that there would be limited impact on tourism and as a result the proposal would comply with the NPPF and Policy CS10 of the Local Plan.

The applicant has also supplied marketing information for the application site. This states that the hotel has been marketed for sale as a hotel since early 2021. The current owner completed the sale on the wider site following the recent planning consent for the change of use of the motel to an HMO in 2022. The owner hoped that by removing the motel style accommodation the hotel would then sell but there has been no interest in purchasing this building. Given the hotel has not been open for visitors for a number of years, the financial information supplied dates back to 2017-2019. The applicant argues that the demand post-Covid is far lower than previously.

In terms of a loss of jobs for staff, the hotel has not employed any staff for some time and the applicant argues that the conversion of the building to flats would generate some low level employment of staff in the caretaking and management of the site.

Whilst carrying limited weight, the applicant also makes the case in their planning statement that the hotel building is showing serious signs of decay and becoming unsightly in appearance on the entrance to the town. Whereas the motel conversion to the HMO has been successful with many rooms let.

In summary, the applicant has sought to provide evidence that the hotel in its current form is not viable by demonstrating the lack of interest in purchasing the site, the condition of the building and the decline in demand. Should the application be approved there would remain an adequate range of accommodation for tourist visitors to West Norfolk.

Whilst the loss of tourism accommodation is acknowledged, this has to be balanced against the need for providing new homes across the Borough for which there is an identified need. On balance it is considered that the scheme is in accordance with the NPPF (paragraphs 123, 124 and 127), policy CS10 and DM2 of the adopted Local Plan.

### **Highways / Access**

The proposed development would continue to utilise the existing access to the site, via the Elm High Road, and past the HMO. The Local Highway Authority has no objections to this proposal, subject to conditions to secure cycle parking and the access, parking and turning areas as per the approved plans. The proposed parking area will remain as is, a gravel car parking area and the scheme will also provide secure cycle storage for residents for 40 cycles. The proposed development is in accordance with the NPPF, Policy CS11 of the CS (2011) and Policy DM15 of the SADMPP (2016).

### **Form and Character**

There will be minimal changes to the application site as a result of the development proposed. The physical appearance of the building will remain largely unchanged from public viewpoints. Alterations include changes to the doors and windows at ground floor to the ballroom building and the rear of the hotel. The link between the hotel and ballroom will be removed to create two separate buildings and in the ballroom the roof space will be utilised and rooflights will be inserted into these first floor rooms. There are no changes proposed to the front of side elevations of the hotel building. The shared parking area, and the existing boundary treatments are to be retained. The scheme does include an area of amenity space for residents which is to be located to the east of the building and this will enhance the appearance of the site from the public highway.

The amenity space will include benches, picnic tables and a timber gazebo. Planting and ground finishes will also be provided to improve the outside spaces. The landscaping details proposed will be conditioned accordingly, alongside a condition requiring further information to be submitted and agreed to confirm the planting scheme. The existing boundary treatments are to be retained.

The proposal is in accordance with Policy CS08 of the CS (2011) and DM15 of the SADMPP (2016).

### **Residential Amenity and Site Management**

The development is neighboured by an existing retail development and car park to the north, the associated hotel to the east, and then the A47 to the south and Elm High Road to the

west. There are no immediate residential neighbours, the closest being the dwellings approximately 35m away on the other side of Elm High Road, and it is not considered the change of use would have a detrimental impact on the neighbour amenity of these residents.

The building is already used for holiday accommodation, and it is not considered that the change of use to permanent residential accommodation is incompatible with the application site itself or in the wider context of the neighbouring HMO.

Careful consideration has been given to the quality of accommodation proposed. All the flats now meet the minimum national space standards and all habitable rooms include a window to provide natural light and ventilation. Where the ball room and hotel building are within close proximity the conversion has been designed to ensure there are no close window-to-window relationships.

In terms of the management of the site, the applicant has confirmed the property will be closely managed by a local ARLA qualified property Manager, and a local company will be used for regular cleaning and grounds maintenance. CCTV will be installed to all communal areas. The waste will be stored in large wheeled bins for general waste and recyclable waste, and will be stored within a specific timber fenced area the location of which is to be agreed via condition.

In terms of the amenity of the proposed residents CSNN require a number of conditions to be attached to the planning consent, should permission be granted. This includes details of the foul drainage arrangements given the size of the development. They request details of the air source heat pumps prior to the commencement of use, and a condition is requested to provide details of sound proofing within the building, to ensure neighbour amenity between flats can be protected.

A Morrisons store is located to the north of the application site, and the company has previously raised concerns about the change of use to residential accommodation given the fact that the neighbouring business does not have any restrictions on trading/ delivery times. Reference is made to paragraph 187 of the NPPF which states that 'existing businesses should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development (including change of use) in its vicinity, the applicant should be required to provide suitable mitigation before the development is completed.'

Previously development on the site has required a Noise Assessment to be submitted to and agreed by the LPA. Also, that any mitigation measures recommended as part of the Noise Assessment are implemented/ constructed prior to occupation of the HMO. While CSNN has not requested this, it is considered necessary to request this information via condition to ensure the development is in accordance with policy.

The development is considered acceptable in terms of residential amenity in line with policies CS08 of the CS (2011) and DM15 of the SADMPP (2016).

### **Other Material Considerations**

Affordable Housing contribution – The conversion of an existing building does not require an affordable housing contribution in line with policy CS09 of the Core Strategy.

Flood Risk – The application site lies within Flood Zone 1 of the Council's SFRA and is therefore at the lowest risk of flooding. As the site is within a large area identified as a 'dry

island' on the SFRA mapping, the Emergency Planner has provided guidance for the owner of the building and residents.

The Flood Risk Planning Practice Guidance Note states that changes of use are not typically subject to the sequential or exceptions tests. This approach is reiterated in Flood Risk Design Guidance - Conversion of Existing Buildings to Residential Use (within the Site Allocations and Development Management Policies Plan).

Fire Safety – In order to meet the requirement of the Building Regulations fire hydrants are required to be provided on site. The details of which can be submitted and agreed via condition prior to the commencement of development on site.

Secured by Design - The comments received from Norfolk Constabulary have been addressed where possible with the condition for secure cycle storage. Door entry systems, CCTV etc are not for consideration as part of this application.

Environmental Quality – The comments received draw attention to policy CS08 and the intention to support high standards of sustainable designs. While further information was requested, it is not considered necessary given the development is for the reuse of an existing brownfield site, and the development will be required to meet Building Control standards in terms of energy efficiency. The point is also raised about the need for Electric Charging Stations, and again this will be delivered through Building Control requirements.

GIRAMS – The change of use from hotel accommodation to residential flats requires a GIRAMS payment of £3,686.19. A shadow habitats regulations assessment has been submitted with the application and has been adopted by the LA as the formal appropriate assessment. The applicant wishes to secure the GIRAMS payment via a Section 106 legal agreement. This demonstrates that subject to the payment of the appropriate GiRAMS fee (and £500 per clause monitoring fee), this will have mitigated against any adverse effects of the proposal on the integrity of internationally designated wildlife sites in relation to increased visitor pressure.

## **Conclusions**

The application seeks consent for the change of use of an existing hotel to 19 flats.

The application site consists of an empty former hotel building and ballroom which has been closed for a number of years. The NPPF refers to the need to promote an effective use of land, giving substantial weight to the value of using suitable brownfield land within settlements for homes (paragraphs 123 and 124).

The applicant has considered the potential impact of the loss of the hotel rooms on the impact of tourism locally as required by Policy CS10. Figures are provided to show the decline in tourism, alongside information regarding the range of alternative accommodation within the locality. Therefore, making the case that the tourism sector is in decline which has resulted in the hotel being unviable. The applicant has also supplied information showing turnover of the business, and the marketing of the site, to illustrate the viability of retaining the site for hotel accommodation. Based on the information provided it is suggested that the need for residential accommodation outweighs any potential impact on tourism.

There will be minimal changes to the physical appearance of the site from the public highway, with alterations confined to the rear elevation of the hotel and the ballroom, aside from the proposed area of open space which will enhance the site, and the entrance to the town.

Careful consideration has been given to the amenity for residents, with all habitable rooms having a window for natural light and ventilation and all units meet the national minimum space standards for accommodation.

In summary the development is in accordance with the NPPF, Policies CS08, CS10 and CS11 (of the CS 2011), and Policies DM2, DM15 and DM17 (of the SADMPP 2016) and as such the officer recommendation is that of approval.

## **RECOMMENDATION:**

**A) APPROVE** subject to the imposition of the following conditions and completion of a s106 legal agreement to cover the current GIRAMS fee and the associated monitoring fees. If the agreement is not completed within 4 months of the committee resolution, but reasonable progress has been made, delegated authority is granted to the Assistant Director/Planning Control Manger to continue negotiation and complete the agreement and issue the decision.

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans. Drawing Nos -  
295-00 Proposed Location Plan  
295-02 B Proposed Site Plan  
295-06 C Proposed Ground Floor Plan  
295-07 C Proposed First Floor Plan  
295-08 C Proposed Second Floor Plan  
295-10 A Proposed Elevations
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: Prior to the first occupation of the development hereby permitted the proposed access / on-site car parking / servicing / turning areas shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 3 Reason: To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety in accordance with the NPPF and policy CS11.
- 4 Condition: Prior to first occupation of the development hereby permitted a scheme for the enclosed parking of cycles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.
- 4 Reason: To ensure the provision of adequate cycle parking that meets the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport in accordance with the NPPF and policy CS11.

5 Condition: No development shall commence until full details of the foul water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.

5 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF.

This needs to be a pre-commencement condition as drainage is a fundamental issue that needs to be planned for and agreed at the start of the development.

6 Condition: Prior to the occupation of the building a scheme to protect the residents of the development from noise associated with the trading estate to the north shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before the development is brought into use and retained in perpetuity.

6 Reason: To ensure that the amenities of future occupants are safeguarded in accordance with the NPPF.

7 Condition: Prior to the first occupation of any of the flats hereby approved, a plan shall be submitted to the Local Planning Authority in writing identifying the location of the fenced waste storage area. The plan shall implemented as agreed by the LPA in writing and retained as such in perpetuity.

7 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.

8 Condition: Prior to the commencement of development a detailed scheme for the sound insulation of the building shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before the development is brought into use and thereafter maintained as such.

8 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the residential amenities of the locality in accordance with the NPPF.

9 Condition: Prior to the first occupation of any of the flats hereby approved, full details of the Air Source Heat Pumps identified on Drawing No 295 - 06 C shall be submitted and agreed in writing by the Local Planning Authority. The plan shall implemented as agreed and retained as such in perpetuity.

9 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the residential amenities of the locality in accordance with the NPPF.

10 Condition: Prior to the first use or occupation of the development hereby approved, full details of the soft landscape works including planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment) schedules of plants noting species, plant sizes and proposed numbers and densities where appropriate shall have been submitted to and approved in writing by the Local Planning Authority.

10 Reason: To ensure that the development is properly landscaped in the interests of the visual amenities of the locality in accordance with the NPPF.

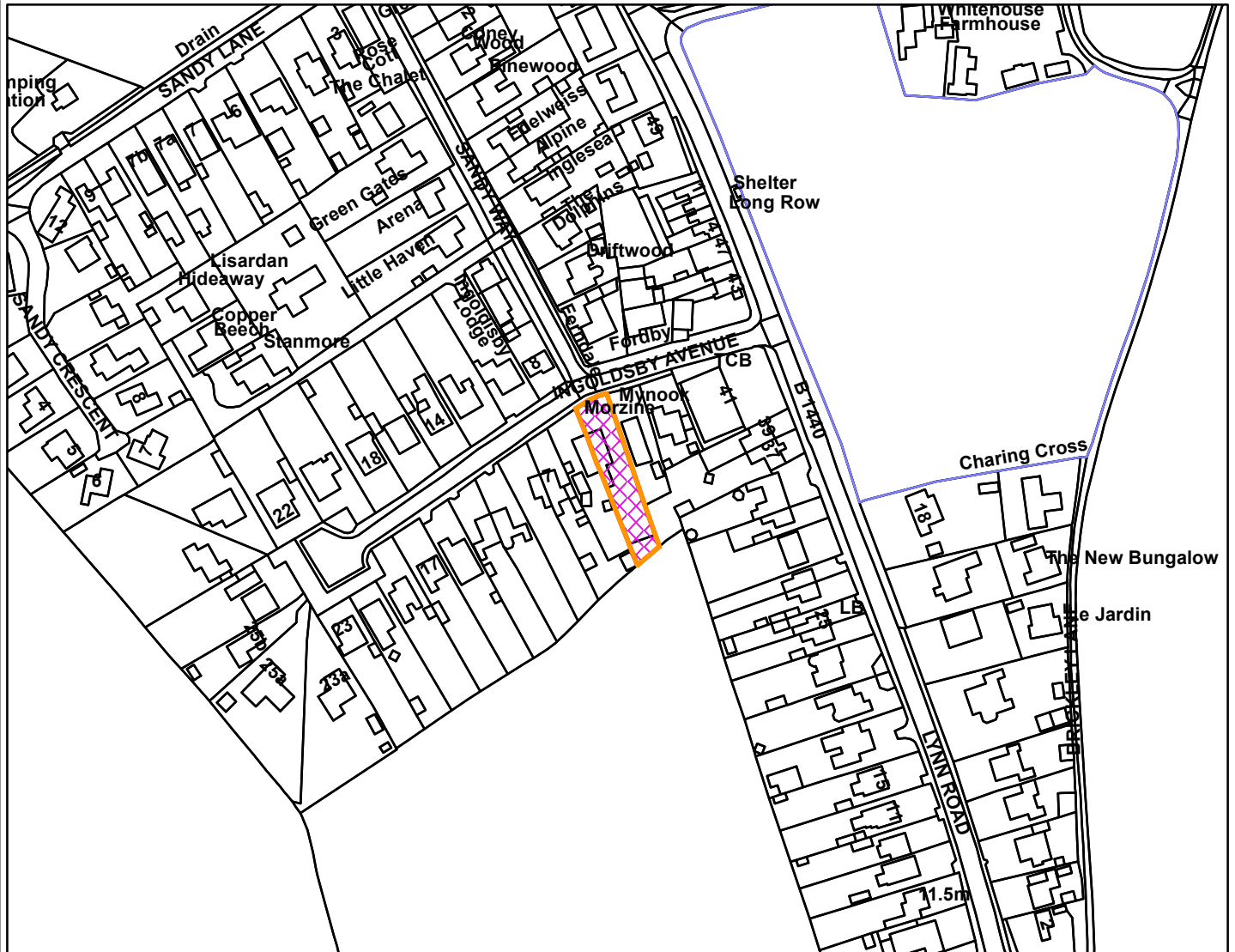
- 11 Condition: All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
- 11 Reason: To ensure that the work is carried out within a reasonable period in accordance with the NPPF.
- 12 Condition: The development shall not be brought into use until a scheme for the provision of fire hydrants has been implemented in accordance with a scheme that has previously been submitted to and approved in writing by the Local Planning Authority.
- 12 Reason: In order to ensure that water supplies are available in the event of an emergency in accordance with the NPPF.

**B)** If in the opinion of the Assistant Director/Planning Control Manager no reasonable progress is made to complete the legal agreement within 4 months of the date of the committee resolution, the application is **REFUSED** on the failure to secure the GIRAMS fee.





3 Ingoldsby Avenue Ingoldsthorpe King's Lynn Norfolk PE31 6NH



**Legend**

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**Scale:** 1:2,500

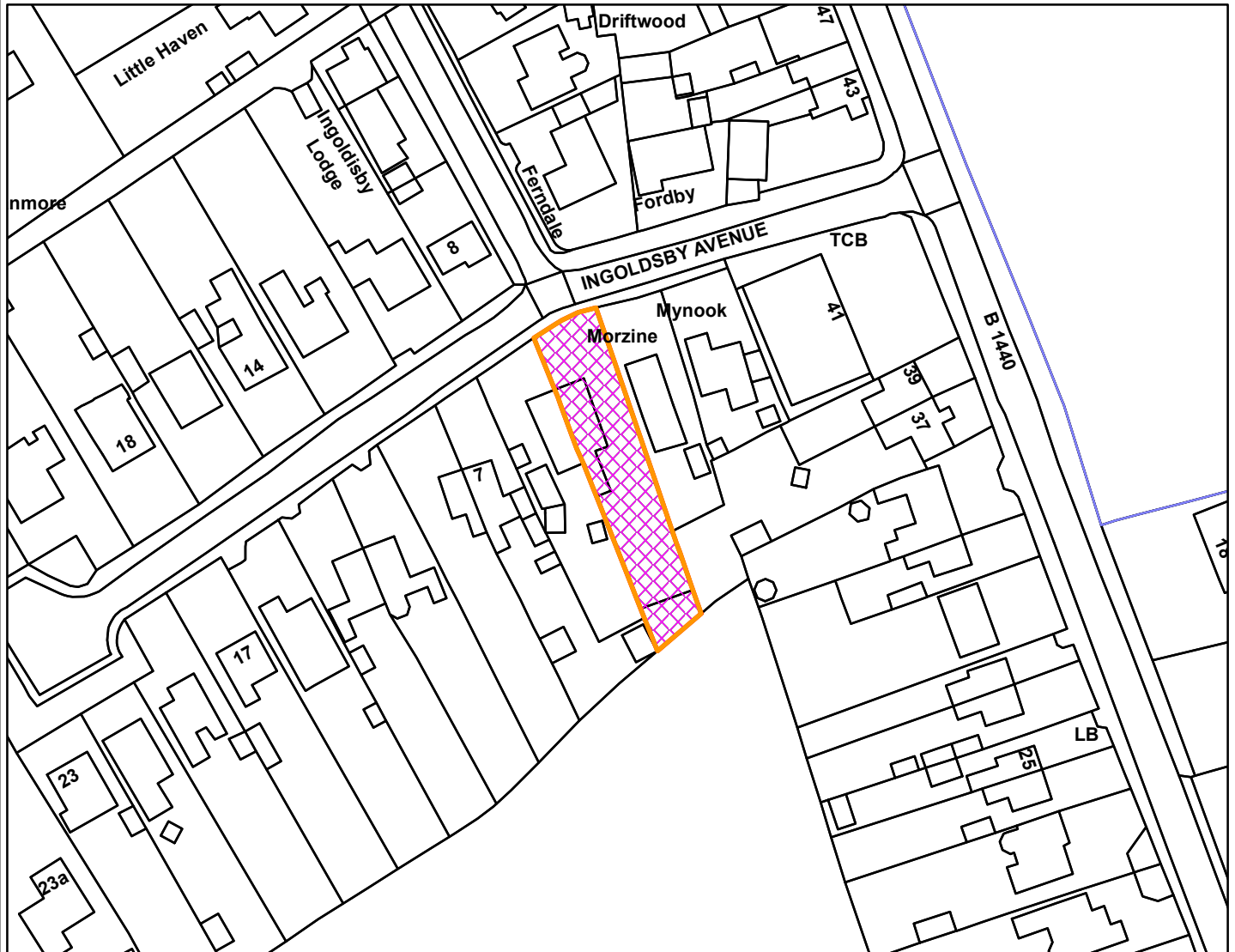
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Organisation	BCKLWN
Department	Department
Comments	
Date	24/10/2024
MSA Number	0100024314



3 Ingoldsby Avenue Ingoldisthorpe King's Lynn Norfolk PE31 6NH



**Legend**

**Scale:** 1:1,250

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Organisation	BCKLWN
Department	Department
Comments	
Date	24/10/2024
MSA Number	0100024314

<b>Parish:</b>	<b>Ingoldisthorpe</b>	
<b>Proposal:</b>	<b>Rear single storey extension and alterations including garage.</b>	
<b>Location:</b>	<b>3 Ingoldsby Avenue Ingoldisthorpe King's Lynn Norfolk PE31 6NH</b>	
<b>Applicant:</b>	<b>Mr &amp; Mrs Clark</b>	
<b>Case No:</b>	<b>24/01589/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mrs Rebecca Bush</b>	<b>Date for Determination: 29 October 2024 Extension of Time Expiry Date: 7 November 2024</b>

**Reason for Referral to Planning Committee** – Called in by Cllr Bubb.

**Neighbourhood Plan:** No

**Case Summary**

The application relates to 3 Ingoldsby Avenue, Ingoldisthorpe and the applicant is seeking full planning permission for a proposed side and rear single storey extension with alterations to the dwelling, including a garage.

The dwelling is two storey, semi-detached, has a hipped roof and is set back from the Ingoldsby Avenue.

It is located within the rural village of Ingoldisthorpe, but, not within the development boundary, and therefore falls within the countryside for the purposes of the Local Plan. The area accommodates a mixture of properties from detached bungalows to semi-detached two storey dwellings in a residential area.

The site is located within flood zone 1.

**Key Issues**

- Principle of Development
- Design and Impact
- Impact on Neighbour Amenity
- Other Material Considerations

**Recommendation**

**APPROVE**

## **THE APPLICATION:**

The site lies to the north of the village of Ingoldisthorpe which is a rural village classified in Development Plan Policy CS02. The site is situated between semi-detached dwellings with bungalows adjacent and is located within a cul-de-sac that lies to the north of the development boundary for Ingoldisthorpe.

3 Ingoldsby is a two storey dwelling which is constructed in brick with clay pantiles and white upvc windows and doors. The property has an existing extension to the rear along with an attached shed which already has been demolished. The dwelling has a large garden to the rear and garden to the front, with a wide driveway.

The front of the dwelling is screened by high hedging and mature trees to the front boundary (north) and to the west and east. To the west is also a high fence of approx. 1.8m which separates No 3 and the property named as Morzine.

The proposal is for a rear single storey extension and side extension which extends to the rear, a garage and alterations to the dwelling.

## **SUPPORTING CASE**

No supporting case has been received at time of writing.

## **PLANNING HISTORY**

2/88/4874/F/BR - Two storey extension to dwelling. Refused 29/03/1989.

## **RESPONSE TO CONSULTATION**

**Parish Council:** No response to date.

**Highways Authority: NO OBJECTION**

## **REPRESENTATIONS**

**ONE** public comment received **OBJECTING** to the proposed development. The comments can be summarised as:

- Sun path to the neighbour's western windows will be an issue. Sun will be blocked out in the afternoon and will be worse throughout the winter.
- Both direct and ambient light will be affected.
- Western side of neighbour bungalow and gardens will be persistently impacted by the proposal.
- Extension too large and too wide of this dwelling.

## **LDF CORE STRATEGY POLICIES**

**CS01** - Spatial Strategy

**CS02** - The Settlement Hierarchy

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM15** – Environment, Design and Amenity

**DM2** – Development Boundaries

**DM5** – Enlargement or Replacement of Dwellings in the Countryside

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2021

## **PLANNING CONSIDERATIONS**

**The main considerations in the determination of the application are:**

- Principle of development
- Form and character
- Impact of neighbour amenity
- Any other matters requiring consideration prior to determination of the application

### **Principle of Development:**

The proposal is for a rear single storey and side single storey extension, a garage and alterations.

The Development Plan comprises the Core Strategy (CS) 2011 and The Site Allocations and Development Management Policies Plan 2016 (SADMPP). There is no neighbourhood plan.

Whilst the site is not located within the development boundary, the principle of extending dwellings within their curtilage is acceptable in principle in accordance with Policies CS01, CS02, CS06, CS08 and DM2, DM5 and DM15 of the Development Plan.

### **Form and Character:**

Section 12 of the NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Policy CS06 of the Core Strategy states that development must maintain local character and a high-quality environment. Additionally, Policy CS08 and DM15 promotes good design and Policy DM5 specifies that development in the countryside should preserve the character or appearance of the street scene of the area in which it sits and should reflect the scale and character of their surroundings.

The proposal is to restructure the rear of the ground floor of the property and to replace the existing extension with a new single storey rear/side extension and garage. The extensions would be constructed in red brick and clay pantiles (to match the existing dwelling), with timber cladding and anthracite frames.

The layout of the existing property would alter to create a kitchen/utility area and open plan living room/garden room with a study and bathroom and integrated garage.

The new extensions would protrude from the original rear wall of the dwellinghouse by 10.5m (0.3m longer than the extensions). The extension would have a flat roof and be to 3m high with a lantern over the kitchen/utility area. Two proposed rooflights would be installed on the original roof plane (a retained element of the existing extensions) where the kitchen is currently.

The proposed rear elevation would measure 9.7m in width (3m wider than the existing extensions.)

A garage would be constructed to the side (east) of the property with the extension behind. The garage would extend beyond the existing side (east) elevation by 4.3m and would have a pitched roof to a height of 4.3m (ridge). The front of the proposed garage would face north to the road and would be linked to the side elevation by a flat roof. It would be constructed in brick and timber which is consistent with other properties in the area.

In terms of design and appearance, the site is set back from the road and the proposal is set back from the front elevation of the main dwelling. As such, there would be minimal impacts on views and the street scene as a whole. Additionally, the extension would be subservient to the main dwelling and in combination with materials to match the existing dwelling, this would appear acceptable.

The scale, materials and layout are appropriate with the local setting and would respond sensitively and sympathetically to the locality and would preserve the appearance of the street scene. As such, the application would accord with Policy CS06 and CS08 of the Core Strategy and Policy DM5 and DM15 of the SADMPP.

### **Impact on Neighbour Amenity:**

Para 135(f) of the NPPF 2023 requires development to have a high standard of amenity for existing and future users. Policy DM15 of the SADMPP states, "Proposals will be assessed against their impact on neighbouring uses and their occupants as well as the amenity of any future occupiers of the proposed development.

From a site visit and information received, there is a door and 5 windows on the western elevation of Morzine (the neighbour to the east) which serve a bedroom, bathroom, and kitchen. The four bathroom and kitchen windows are obscurely glazed. One window to Morzine (at the southern end of the west elevation) serves a bedroom which would be classed as a habitable room and has no obscure glazing.

In terms of the impact of the proposed development on Morzine, it is acknowledged that the extensions would have a bigger footprint than the existing extension from approx. 87m<sup>2</sup> to

151m<sup>2</sup> (ground floor) and would be 2m off the eastern boundary (an approx. 1.8m high panelled fence). The distance between the proposed garage/extension and Morzine would be 3.7m. However, in assessing any impact, it has to be noted that 3 Ingoldsby Avenue benefits from permitted development rights under the Town and Country (General Permitted Development) Order 2015 (as amended) and significant alterations in close proximity to the boundary could occur with planning permission subject to the relevant criteria being met.

The ridge of the garage (highest point of the extension) would be 4.3m high and 2.3m to the eaves. The ridge would be 5.6m from the western elevation of Morzine. The roof would then slope down towards Morzine to 2.3m. This, in turn, would cause minimal overbearing issues.

The single storey extension behind the garage would have a flat roof of 3m. The proposed extension would be slightly longer compared to the rear of Morzine but would be partially screened by the fence and the existing hedging. There is a patio area to the rear of Morzine however there would be minimal overlooking due to the proposed window serving a bathroom and the door with no glazing.

With regards to overlooking, the proposal is single storey and the fence separating the site from Morzine would largely screen the hallway door (which is not glazed but could be in the future) and the window to the proposed bathroom (which is likely to be obscurely glazed), therefore the impact would be minimal. The proposed dining room window (east elevation) would be permitted development as it is an alteration to the existing dwelling.

Due to the orientation of the proposal (being to the south and east of the existing dwelling) overshadowing may occur later in the day to Morzine including the bedroom window. However, the height of the existing house (8.7m) would already overshadow this part of Morzine and due to orientation, any day light issues would be to the end part of the day. The proposal would be just over 1m higher than the fence however the proposal would be 3.7m from the boundary.

In terms of the impact on the adjoining semi (No 5) the proposed development would be located adjacent to the existing extension at No 5, would be 3m high, just 0.3m higher than the current extension and would therefore have a minimum impact on this neighbour.

There are no proprieties to the south; the rear elevation would be 32m from the rear boundary where there are mature trees and hedging.

Given the above, there would be no adverse impacts to the neighbour amenity. The application would therefore comply with Policies CS08 and DM15 of the Development Plan and para 135(f) of the NPPF 2023.

#### **Other Material Considerations:**

The proposed development would not result in any additional bedrooms and therefore sufficient parking remains on site.

#### **Crime and Disorder:**

There are no specific crime and disorder issues arising from the proposed development.

## CONCLUSION:

Overall, the proposed extension and garage would be to an acceptable layout and scale with appropriate materials for the locality. Parking is sufficient. The proposal is single storey and modest in height and whilst the floor space is increased significantly, the proposal would not give rise to conditions detrimental to neighbour amenity particularly when considering development that could be undertaken under permitted development rights along the boundary with the neighbour.

Given the above the application is considered to accord with Policies CS06 and CS08 of the Core Strategy and Policy DM5 and DM15 of the SADMPP, and Para 135(f) of the NPPF 2023. The proposal is therefore recommended for approval subject to the imposition of appropriate conditions.

## RECOMMENDATION:

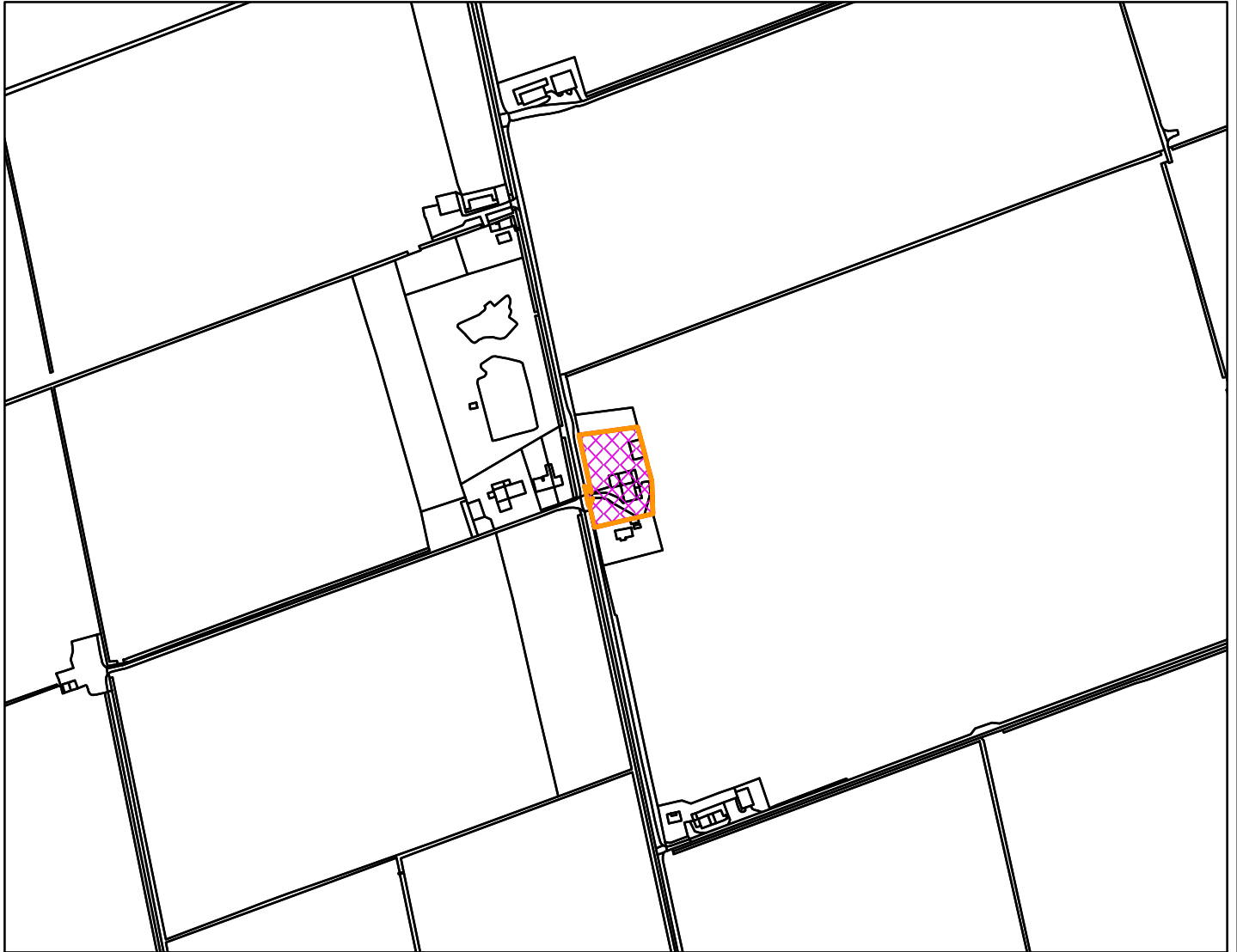
**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
Location Plan.  
Existing Plans - CLAR I PL 1.1 (to be approved as includes the proposed site plan.)  
Proposed Elevations - CLAR I PL 2.1.  
Proposed Roof Plan, Section and Floor Plan - CLAR I PL 3.1.
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.





Barn E of Crown Farmhouse Middle Drove Marshland St James Norfolk PE14 ...



**Legend**

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**Scale:** 1:5,000

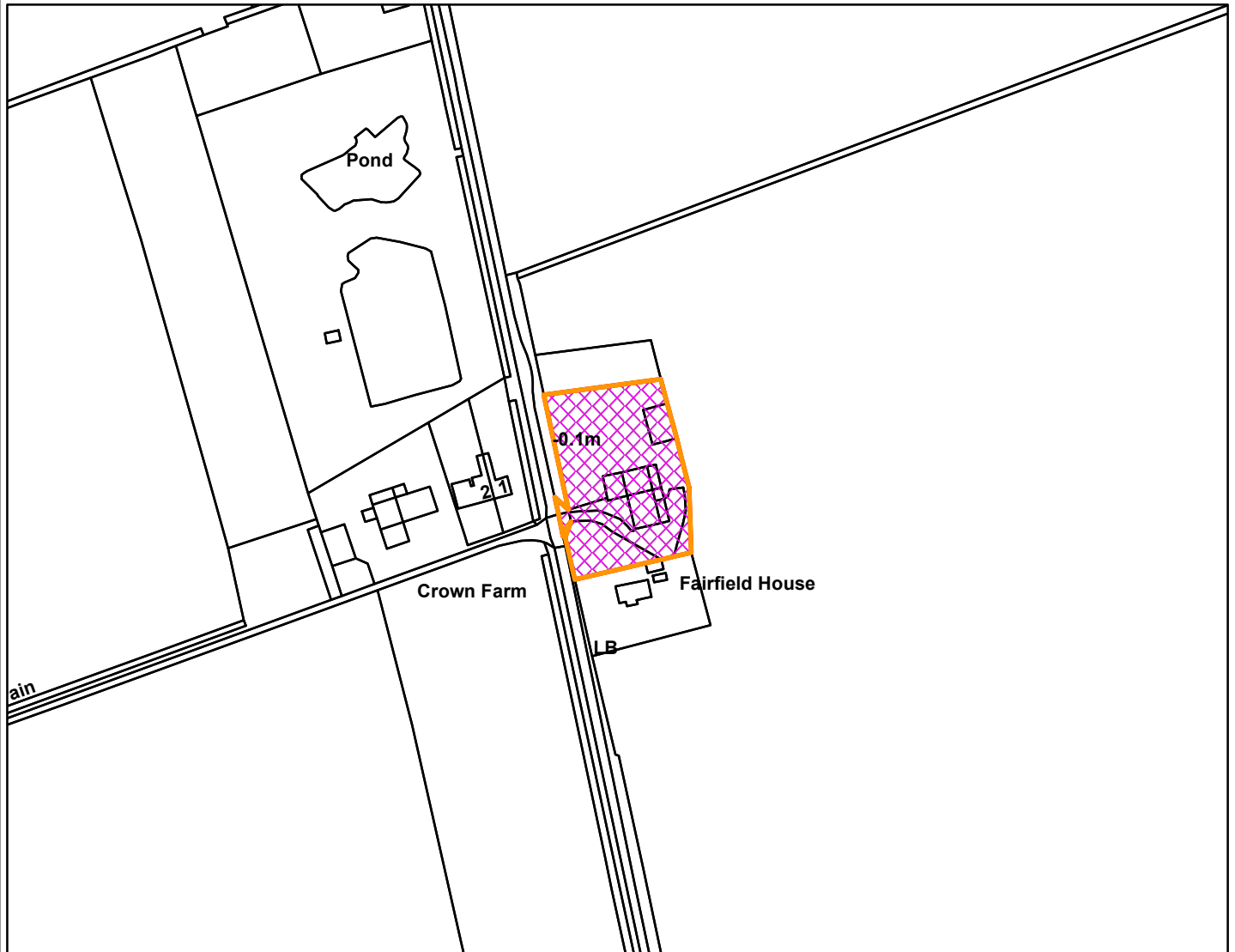
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Organisation	BCKLWN
Department	Department
Comments	
Date	22/10/2024
MSA Number	0100024314



Barn E of Crown Farmhouse Middle Drove Marshland St James Norfolk PE14 ...



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**Scale:** 1:2,500

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Organisation	BCKLWN
Department	Department
Comments	
Date	22/10/2024
MSA Number	0100024314

<b>Parish:</b>	<b>Marshland St James</b>	
<b>Proposal:</b>	<b>The erection of 3 x single-storey dwellings involving the demolition of the existing buildings.</b>	
<b>Location:</b>	<b>Barn E of Crown Farmhouse Middle Drove Marshland St James Norfolk PE14 8JT</b>	
<b>Applicant:</b>	<b>Mr &amp; Mrs Allen</b>	
<b>Case No:</b>	<b>23/01121/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Clare Harpham</b>	<b>Date for Determination: 26 September 2023 Extension of Time Expiry Date: 11 November 2024</b>

**Reason for Referral to Planning Committee** – The Parish Council object which is at variance with the officer recommendation. The Sifting Panel resolved on 9<sup>th</sup> October that the application be determined at Planning Committee.

**Neighbourhood Plan:** No

**Case Summary**

The application site is located within the countryside and to the east side of Middle Drove. The application is for the demolition of the existing two agricultural buildings and the construction of three single-storey dwellings (one detached, two semi-detached). The site has previously had prior approval permission under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, for the conversion of the existing agricultural buildings into three dwellings and this fall-back position is a material consideration in the determination of this application.

**Key Issues**

- Planning History
- Principle of Development
- Design, Character and Appearance
- Neighbour Amenity
- Highways Issues
- Flood Risk
- Crime and Disorder
- Other material considerations

**Recommendation**

**APPROVE**

## **THE APPLICATION**

The application site is located on the eastern side of Middle Drove, Marshland St James, to the north of the dwelling known as Fairfield House and opposite Crown Farm. It would be accessed from the existing point of access, which serves the existing agricultural use. Currently on site are two relatively large agricultural buildings, one of which is constructed of bricks and profiled fibre cement sheets and the other which is a steel framed building clad in profiled metal sheeting.

This application seeks the demolition of the agricultural buildings and their replacement with three similar 'barn style' dwellings, one of which will be detached in place of the smaller barn to the north (albeit re-sited in a more linear position), and two which will be semi-detached in place of the larger barn.

The smaller detached dwelling to the north would have a similar footprint to that of the existing barn measuring 14m x 9.2m (existing barn is 14m x 9.25m). It would be 6.2m in height which is approximately 0.8m greater in height and would have the appearance of many typical modern barn conversions with vertical cladding and a vertical panelled roof (materials are proposed to be conditioned).

The larger building incorporating two dwellings is of a similar design and materials and would measure 23.5m in length with a max width of 14.5m and min width of 10.0m (the existing barn has a similar footprint with a length of 22.9m with a width of 14.5m). It would be 6.4m in height which is an increase of 2.0m.

## **SUPPORTING CASE**

The proposed three dwellings will replace the barns which both benefit from prior approval for change of use to three residential dwellings under applications 20/00896/PACU3 and 20/00897/PACU3.

The Court of Appeal in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 confirmed that development under Class Q of the GDPO is a fallback position ie that it is a material consideration for planning applications that permitted development rights under Class Q can be exercised. It confirmed that the fallback position can be given material weight in determining subsequent planning applications.

In order for a fallback position to be realised, the development must be a 'real prospect' and it was confirmed in the 'Mansell' case that Class Q permitted development rights constitute a real prospect. On the basis that the existing barns on site benefits from prior approval under class Q under reference 20/00896/PACU3 and 20/00897/PACU3, the potential to convert the buildings to residential use is a real prospect and therefore a material planning consideration. The proposal will replace the barns with the same number dwellings as approved under 20/00896/PACU3 and 20/00897/PACU3 and in accordance with the above case law, the principle of the development can be supported.

Noting that the proposed dwellings will be the same in terms of the scale and design as those approved under 20/00896/PACU3 and 20/00897/PACU3, the visual impact of the proposal will be negligible given that the development will be entirely reflective of the current situation on site. Plot 1 will however be repositioned towards the front of the site, which is considered to be a benefit both in visual terms and in terms of future residential amenities. This is because Plot 1 will now address the street scene, rather than being positioned in a cluttered arrangement towards the rear of the site, and it will now result in a less contrived

private amenity area whereby the potential for overlooking and loss of privacy between the plots has been eliminated.

A previous application for a similar proposal was previously refused on site. The reasons for refusal have been noted and addressed within this submission. Owing to the reduced scale of the proposal the development will not appear prominent. Accordingly, the benefits of providing new housing can be realised and in turn the flood risk Exception Test is passed. The previous concerns with regards to ecology have now also been resolved as confirmed by the Council's Ecologist.

The principle of new housing on this site is already established and the submission demonstrates that the proposal is technically acceptable and accords with Policies of the Development Plan. It is therefore respectfully requested that planning permission is granted.

## **PLANNING HISTORY**

23/00029/F: Application Refused: 21/04/23 - Proposed demolition of existing barns and proposed 2 No. Dwellings - Barn E of Crown Farmhouse, Middle Drove, Marshland St James

20/00897/PACU3: Prior Approval - Approved: 09/10/20 - Prior approval for a change of use from agricultural building to a dwelling house (Schedule 2, part 3, Class Q) - Crown Farm, Middle Drove, Marshland St James

20/00896/PACU3: Prior Approval - Approved: 08/10/20 - Notification for Prior Approval for change of use of agricultural building to two dwelling (Schedule 2, Part 3, Class Q) - Barn E of Crown Farmhouse, Middle Drove, Marshland St James

## **RESPONSE TO CONSULTATION**

### **Parish Council: OBJECT**

The prior approval was for conversion, not demolition and the prior approval has expired.

The location is not suitable for additional traffic.

The application is for single-storey dwellings despite the site being in Flood Zone 3a. The site does not pass the sequential test as there are sites elsewhere that could be developed with a lower risk of flooding. The site does not pass the exception test regarding safety under flood resilient measures. The properties are single storey dwellings which should be built in flood zone 3. The site is on a low-lying single-track road which would be impassable in a flood and there is no safe refuge within 15 miles at the village.

The development would conflict with the stated aims of the Borough Council's sustainable development plan, contrary to the design and access statement, the development is 15 miles from the nearest village and a car will be required for journeys to the village amenities.

The site is within a marshland zone of influence listed in the Norfolk Green Infrastructure Plan and the Parish Council considers there are no mitigating circumstances for development to be allowed on this site. It will have a likely significant effect on the species and habitat features of this fen and designated site.

## **Highways Authority: NO OBJECTION**

Ultimately accesses would be safe and parking and turning for vehicles would accord with the parking standards for Norfolk.

The proposed development site is however remote from schooling; town centre shopping; health provision and has restricted employment opportunities with limited scope for improving access by foot and public transport. The distance from service centre provision precludes any realistic opportunity of encouraging a modal shift away from the private car towards public transport. It is the view of the Highway Authority that the proposed development is likely to conflict with the aims of sustainable development and you may wish to consider this point within your overall assessment of the site.

Should the Local Planning Authority seek to approve the application conditions to secure and retain the vehicular/pedestrian access/crossing over the verge in accordance with the highways specification; that no gates/bollard/chain or other means of obstruction are erected across the approved access unless approved in writing by the LPA and that the access and on-site car parking/turning area is secured and retained in accordance with the approved plan and an informative in relation to works within the public highway are recommended.

## **Environment Agency: NO OBJECTION**

The Flood Risk Assessment appears to relate to a previous version of the scheme. However, we have no objection to the proposed development, but strongly recommend the mitigation measures in the submitted flood risk assessment are adhered to.

**Environmental Health & Housing – Environmental Quality: NO OBJECTION** subject to conditions.

The application is for the demolition of existing barns and the construction of three dwellings. The applicant has provided a screening assessment indicating that there may be asbestos present, and that soil is to be imported onto site. A design and access statement has been submitted providing information on the proposed development. The site is on land that is seen with structures present for the duration of our records, the larger of the current barns is first seen in historic maps dated 1945 - 1970, the other is first seen in aerial photography from 1999. The surrounding landscape is largely agricultural.

Due to the previous use of the barns for agricultural machinery storage and the more sensitive change of use, conditions are recommended in relation to site characterisation, submission of remediation scheme, implementation of approved remediation scheme and reporting of unexpected contamination. Owing to the age of the property on site there is the potential for asbestos containing materials to be present, an informative is therefore recommended in relation to asbestos.

## **Natural England: NO OBJECTION**

The application site falls within a Zone of Influence of one or more of the European designated sites scoped into the Norfolk GIRAMS. It is anticipated that certain types of development in this area are likely to have a significant effect on the sensitive interest features of these European designated sites, through increased recreational pressure. The GIRAMS has been put in place to ensure this additional recreational pressure does not lead to an adverse effect on European designated sites in Norfolk.

Natural England's advice is that this proposed development, and the application of GIRAMS will need to be formally checked and confirmed by the LPA as the competent authority via an

appropriate assessment in accordance with the Conservation of Habitats & Species Regulations 2017, as amended. Additional Standing Advice also provided.

### **LPA Ecologist: NO OBJECTION**

No objection to the submitted Ecology Report. If you are minded to grant consent then please condition bat licence and Mitigation in accordance with Section 6 of the Ecology Report.

The application is not subject to the statutory Biodiversity Net Gain Plan condition because it is exempt as the planning application was submitted prior to the statutory requirement for minor applications.

Regarding comments relating to the Marshland designated zone. The Parish Council have clarified that they are referring to the comments from Natural England which are referring to the Norfolk Green Infrastructure and Recreational disturbance Avoidance and Mitigation Strategy (GIRAMS). As recreational disturbance (when considered in combination only) is the only impact identified a GIRAMS tariff payment is considered acceptable to mitigate this impact. The GIRAMS is a country wide strategic approach to offsetting this type of impact which allows a common 'pot' to be used to mitigate impacts on European sites from development across Norfolk. This approach is agreed with Natural England.

A shadow HRA was submitted by the applicant on 2nd August 2023. This assessment has been completed by the case officer on 23rd January 2024. This is our record of the HRA which concludes the development is acceptable under the Habitat Regulations and on further assessment s required for potential impacts to European protected sites.

### **Emergency Planning: NO OBJECTION**

Due to the location in an area at risk of flooding it's advised that the occupants' sign up to the EA FWD service and prepare a flood evacuation plan.

## **REPRESENTATIONS**

**TEN** letters of **OBJECTION** four objectors raising the following issues:

### Ecology

- Proposal has little regard for wildlife. Owls and bats live in the sheds.
- There should be a biodiversity and protected species report.
- Development is in a habitat zone of influence.
- Middle Drove is not to be disturbed, it is designated under a natural habitat of assessment as providing valuable ecological infrastructure for the protection of rare, endangered or vulnerable habitats

### Sustainability / highway safety

- No shop or pub in the village and lack of school places and doctors surgery places in the area.
- Development would be reliant on vehicles to travel, no public transport
- Concerned that construction traffic may block road
- Middle Drove is poorly maintained condition and no passing places
- Middle Drove struggles to handle existing traffic levels

- Lorries use Middle Drove as cut-through so its busy and dangerous

#### Other matters

- Demolition of barns will set a precedent
- Noise and disturbance during construction
- Proposal is not in keeping with the area
- There has been no attempt to start the Class Q prior approval
- Barn E is capable of being converted without being re-built
- Development boundary line is unclear
- Due to demolition the proposal amounts to new dwellings in the countryside
- Possibility of asbestos containing materials
- Single storey dwelling should not be located in Flood Zone 3a

### **LDF CORE STRATEGY POLICIES**

**CS01** - Spatial Strategy

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS11** – Transport

**CS12** - Environmental Assets

### **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM2** – Development Boundaries

**DM5** – Enlargement or Replacement of Dwellings in the Countryside

**DM15** – Environment, Design and Amenity

**DM17** - Parking Provision in New Development

### **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2021

National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF



## **PLANNING CONSIDERATIONS**

### **The main considerations are:**

- Planning History
- Principle of development
- Design, Character and appearance
- Impact on neighbour amenity
- Highway safety
- Flood risk
- Ecology
- Any other matters requiring consideration prior to determination of the application

### **Planning History:**

The application site previously benefitted from prior approval under 20/00897/PACU3 for the change of use of the northern (smaller) barn from an agricultural building to a dwellinghouse. This was granted on 9th October 2020. The larger barn to the south was granted prior approval under 20/00896/PACU3 for the change of use from an agricultural building to two dwellings. This was granted on 8th October 2020.

These approvals were granted under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

Applications under Part 3 of the GPDO allow for the change of use of certain buildings (following detailed regulations and conditions) and in the case of Class Q allows for the conversion of agricultural buildings which may be redundant for agricultural purposes into residential dwellings, which would not otherwise be permitted.

Paragraph Q.2(3) (at the time of the prior approval) stated that 'development under Class Q is permitted subject to the condition that development under Class Q(a) and under Class Q(b), if any, must be completed within a period of three years starting with the prior approval date.' As such both of the previous consents granted prior approval have now lapsed and not extant.

Notwithstanding this, while the conversion of the barns was not carried out, the principle of a residential use and conversion to two dwellings was established under class Q and the applicant could apply again under Class Q, Part 3, Schedule 2 of the GPDO for prior approval of the barns to a residential use.

While recent Statutory Instrument 2024 No.579 has made changes to the regulations since the previous prior approvals were granted, there are transitional arrangements which means that until 20th May 2025 applicants can choose whether to apply for prior approval under the new regulations (which came into effect on 21st May 2024) or the previous regulations immediately prior to the 21st May 2024 under which the previous prior approvals were granted. Either way, the existing agricultural buildings could be granted prior approval again.

Whilst there are strict criteria within the regulations governing what can be granted approval under Class Q, Part 3 this does not preclude an application for planning permission being submitted for building works which do not fall within the scope of permitted development to be made either at the same time, or after a prior approval application in respect of the change of use of the same building. There are objections to the proposal as it is considered the demolition of the barns and redevelopment of the site will set a precedent, however each application is considered on its own merits.

This application does not involve building works to the existing buildings but involves the demolition of the existing agricultural buildings and their replacement with two new buildings forming three dwellings which will emulate the agricultural buildings, albeit with the northern barn (smaller) being sited in a different position to provide for improvements in layout for residential use.

### **Principle of Development:**

The application site is within an area designated as countryside within the Site Allocations and Development Management Policies Plan (SADMPP) 2016. Consequently, development is restricted to that which is identified as suitable in rural areas by other policies of the local plan. There are a number of objections, including from the Parish Council regarding the fact that the proposal would conflict with the principles of sustainable development and is within an area where housing would not normally be approved unless there was justification in accordance with para. 84 of the NPPF or Policy DM6 (Housing needs of rural workers) of the SADMPP 2016.

Notwithstanding the above, it is material consideration that there has been prior approval permission at the application site for the conversion of the existing buildings to three residential properties. The applicant has a 'fall-back' position should this application be refused and in practical terms it means that the existing buildings could be converted into three dwellings, albeit a further application for prior approval under Class Q of the GPDO would be required.

The status of a fall-back development as a material consideration is not a new concept and has been applied in court judgements such as 'Samuel Smith Old Brewery v The Secretary of State for Communities & Local Government, Selby District Council and UK Coal Mining Ltd'. This decision states that for a fall-back position to be a 'real prospect', it does not have to be probable or likely: a possibility will suffice.

The concept of 'fall-back' is also considered more recently in 'Michael Mansell v Tonbridge & Malling Borough Council' where approval was given for the redevelopment of the site of a large barn and a bungalow to provide four dwellings. The judgement covers more than one aspect of the decision but makes reference to Class Q of the GDPO as a 'fall-back' position.

Consequently, taking the above into account it is considered that there is a 'real prospect' of the applicant implementing the fall-back position of converting the existing buildings given that consent was previously granted, albeit that they would have to reapply for prior approval under Class Q. This is therefore a material consideration of some weight in the determination of this application, although its significance is reduced given it does not have extant consent.

The main issue therefore with regard to the determination of this application is whether the proposal would materially harm the character and appearance of the countryside. If prior approval was again sought and implemented, and the applicant then decided to replace the buildings with three new dwellings, Policy DM5 of the SADMP would be relevant which states that proposals for replacement dwellings or extensions to existing dwellings will be approved where the design is of high quality and will preserve the character or appearance of the area in which it sits.

A previous application 23/00029/F (for two dwellings) at the site was refused as one of the proposed dwellings, due to its excessive height and scale would have appeared overly prominent in the landscape and vastly out of scale with the adjacent development. The proposal was 22.5m in length which was similar to the existing building, however it was 2 ½

storeys in height, measuring 10.8m; with excessive glazing and a large rear balcony with an additional projecting wing that incorporated a swimming pool. The proposal was refused for three reasons; that it was not sympathetic to the surrounding development and would be overly prominent in the landscape; that the limited benefit of development within flood zone 3a was overshadowed by the visual harm the development would have on the landscape; and that the site has the potential to support roosting bats and nesting barn owls and an ecology survey had not been carried out. It is considered that this application has overcome these reasons for refusal, and these will be set out within the relevant sections below.

The proposed development also includes increasing the size of the residential area beyond that approved under 20/00897/PACU3 and 20/00896/PACU3. The approved dwellings have a very limited residential curtilage due to the restrictions imposed by Class Q. Policy CS06 of the Core Strategy 2011 indicates that development should usually be refused where it encroaches onto greenfield land unless essential for agriculture. However, the area of land proposed to be changed to residential garden lies immediately behind and beside the proposed dwellings and is considered sufficient to allow the dwellings a reasonable amount of external amenity space.

It is considered the change of use of this land is justified because the approved dwellings had insufficient amenity space following the prior approval and that the use of the land as garden is not considered to have any significant harm on the character or appearance of the surrounding countryside.

Consequently, taking the above into consideration the proposal is considered acceptable in principle.

#### **Design, Character and Appearance:**

The existing buildings are not considered to have a positive impact on the street scene, nor do they have any architectural merit which would be important to preserve. They are constructed of profiled steel and a mix of bricks and profiled cement board.

It is considered that the proposed dwellings are acceptable in terms of their design which emulates the design of the previous prior approval applications which retained the existing built form and had vertical timber board cladding and a dark grey tin roof. Full details of the materials, other than vertical cladding and vertical roof cladding, has not been provided within this application but can be conditioned.

In addition, a condition would also be attached removing permitted development rights for the erection of extensions and outbuildings in order to retain control over development which if not controlled may have an adverse impact on the character and appearance of the countryside.

The northern building (which is relocated closer to the road) would be increased in height from approximately 5.4m to 6.2m (an increase of 0.8m) and the southern barn would be increased in height from approximately 4.4m to 6.4m (an increase of 2.0m). It is considered that these relatively small height increases would not have any significant adverse impact on the character and appearance of the area. The resulting scheme would have the appearance of many typical modern barn conversions which would enhance the character and appearance of the site and its impact on the locality.

As the proposal includes relocating the smaller northern barn a condition will be placed on the decision notice to ensure that this barn is demolished prior to the occupation of the proposed dwellings.

This proposal, whilst taller due to flood risk mitigation, is similar in scale to the existing buildings and the design approved under 20/00896/PACU3 and 20/00897/PACU3 and consequently is not considered to materially harm the character or appearance of the surrounding countryside. Consequently, the refusal reason given within the decision for 23/00029/F is considered to have been overcome as the proposed dwellings will not be overly prominent in the landscape.

Subject to the conditions referred to above, the proposed development is considered acceptable having regard to the provisions of the NPPF, in particular para. 135, Policy CS06 and CS08 of the Core Strategy 2011 and Policies DM5 and DM15 of the SADMPP 2016.

### **Impact on Neighbour Amenity:**

The impact on the neighbour to the south has been considered. While the proposal is single storey it is of note that the finished floor levels will be set at 0mAOD which is approximately 0.6m above the existing ground levels. Therefore, there will be a raised patio area to plot 3 and this is approximately 12m from the southern boundary which is hedging approx. 2.3m in height. The dwelling is a further 7.8m from the boundary and further forward within its plot. The overall distance from the raised patio to the neighbouring dwelling being 19.8m and 20.8m from the proposed dwelling. It is therefore considered that given the distance of nearly 21m and the existing screening that there will be no material overlooking to this neighbour. Given the orientation, distance and scale of the proposal there will be no material impact with regard to being overbearing or overshadowing.

There is a neighbour to the western side of Middle Drove, however the distance between the proposal and this neighbour is in excess of 30m and therefore there will be no material impact on this neighbour.

The interrelationship between Plot 1 and 2 has also been considered. The proposed dwellings would be located 13.1m apart and there would be windows facing each other. Again, given the necessity to increase finished floor level this would have the impact of elevating these windows and therefore the boundary treatment between the two dwellings which is shown as 1.8m in height would be insufficient. This could be resolved by raising the height of the proposed boundary treatment and a condition can be added to provide details of an alternative boundary treatment prior to occupation of the dwellings. Therefore, the relationship between the two plots would not have any adverse impacts with regard to overlooking, being overbearing or overshadowing.

There would be no adverse impacts upon amenity and the proposal would comply with para. 135 of the NPPF and Policy DM15 of the SADMPP 2016.

### **Highway Safety:**

Middle Drove is a narrow road, with passing provision in places and there are objections from third parties that the road is poorly maintained, not suitable for construction traffic and that the development would mean future occupants are reliant on private vehicles to travel.

The remoteness of the location is acknowledged, however as mentioned above it is a significant material consideration that the existing barns could gain prior approval for conversion under Class Q, Part 3, Schedule 2 of the GPDO. One of the considerations within Class Q are highways issues and there are no objections to the proposal from the Local Highways Authority with regard to highway safety, although conditions are recommended to upgrade the access, remove permitted development rights regarding gates or other means of obstruction across the access, and the provision of the parking and turning within the site prior to occupation.

Overall, the proposal complies with para. 114 of the NPPF, Policy CS11 of the Core Strategy 2011 and Policies DM15 and DM17 of the SADMPP 2016.

### **Flood Risk:**

The application site is located within flood zone 3 and a tidal hazard mapping area where parts of the site could flood up to 1.0m in the event of a breach of the tidal defences.

It is the responsibility of the LPA to steer development to areas at least risk of flooding. In this case the application is based upon the fact that a fall-back position applies as the existing barns could be converted to residential dwellings under different legislation (Class Q), where the sequential test does not apply.

There are objections from the Parish Council and third parties based upon the fact that the proposal is for single storey dwellings within flood zone 3. However, there are no objections to the proposal from the Environment Agency as finished floor levels are raised above the potential flood levels and so the application can be made safe for its lifetime provided the mitigation measures within the flood risk assessment are conditioned.

As stated above the sequential test has not been carried out due to the fall-back position. However, the proposal would pass the exception test as it has been demonstrated that the proposed development could be made safe for its lifetime and the existing barns could be converted to a residential use by utilising permitted development rights for a very similar scheme.

It is considered the proposal has overcome the previous reason for refusal on flood risk grounds within application 23/00029/F which was refused as it was considered that the limited benefit of approving a dwelling in this location was overshadowed by the harm caused on the landscape by the very substantial dwelling which was proposed.

Overall, given the fall-back position, the proposal would comply with paras. 169 and 170 of the NPPF 2023 and Policy CS08 of the Core Strategy 2011.

### **Ecology:**

#### **Protected Species:**

There are third party objections to the proposal regarding the existing ecology on site, i.e. bats and owls within the existing barns. In addition, the previous application was refused as the conditions on site made it possible that there were protected species (EPS) which could be impacted by the proposal and an ecology survey had not been carried out.

Within this application the applicant provided an ecology report during the application process, which has identified the presence of two day-roosts for common pipistrelle bats within the existing brick-built barn. Therefore, it is a legal requirement that the demolition of the barn will require a licence from Natural England and relevant mitigation. There was evidence of barn owls present within both barns, however no nests were present, and the pellets found were old. It was concluded that there were more suitable sites for roosting in the locality and that the loss of the barns as infrequent roosting sites would have a minor impact. There are no objections from the Ecology officer provided the proposed mitigation and licence provision is conditioned.

The three "derogation tests" have been considered which must be applied by Natural England when deciding whether to grant a licence to a person carrying out an activity which would potentially harm an EPS. For development activities this licence is normally obtained

after planning permission has been obtained, however in line with the Wooley court judgement they are now considered. The three tests are that:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

The application site is not within an internationally designated or nationally designated site. Whilst the proposal is not essential for reasons of overriding public interest, the provision of three dwellings can contribute to the housing supply of the borough. In addition, the ecology survey submitted states how the favourable status of the species would be maintained. Due to the nature of the application where the approval is reliant upon the 'fall-back' position, there are no alternative sites where the proposed development could be relocated.

There are no objections from the Ecology officer provided the proposed mitigation within the ecology report and the provision of an EPS licence prior to the commencement of development is conditioned.

#### GIRAMS:

There have been objections from the Parish Council and third parties regarding the site being within the Marshland Zone of Influence.

This has been clarified as to what is meant by 'the proposed site falls within a marshland - Zone of Influence listed in the Norfolk Green Infrastructure Plan. This refers to the Norfolk Green Infrastructure and Recreational disturbance Avoidance and Mitigation Strategy (GIRAMS). The response from Natural England dated 17th August identifies that the development is within the Zone of Influence of European designated sites. As recreational disturbance (when considered in combination only) is the only impact identified a GIRAMS tariff payment is considered acceptable to mitigate this impact. The GIRAMS is a county wide strategic approach to offsetting this type of impact which allows a common 'pot' to be used to mitigate impacts on European sites from development across Norfolk. This approach has been agreed with Natural England.

A shadow Habitats Regulation Assessment (sHRA) was submitted by the applicant on 2 August 2023 and has been completed. The HRA has concluded a no likely significant effect on the integrity of the European sites within scope (The Wash, North Coast and The Brecks). In legislative terms this development is therefore acceptable under the Habitats Regulations and no further assessment is required for potential impacts to European protected sites.

#### Biodiversity Net Gain (BNG):

This proposed development is not subject to the statutory Biodiversity Gain Plan as BNG is not applicable as the planning application was submitted before the statutory requirement for minor applications came into force.

#### **Other matters requiring consideration prior to the determination of this application:**

It is considered that the proposal would not give rise to any issues relating to Section 17 of The Crime and Disorder Act 1998.

The application states that foul drainage arrangements are unknown, however this can be dealt with via condition.

The proposal involves the demolition of existing barns where there is the possibility of contamination due to prior use, and also the potential given their age to have asbestos. There are third party objections on the basis that there could be asbestos on site. There are

no objections from the Environmental Quality Team provided conditions are placed on any decision ensuring contamination is identified and remediation is carried out as necessary.

Pre-commencement conditions relating to the EPS Licence, Contamination and the foul drainage have been agreed in writing by email dated 17th October 2024.

## Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that an application must be determined in accordance with the development plan unless material considerations indicate otherwise.

While the proposal constitutes the residential re-development of a parcel of countryside which would be contrary to the development plan, it is a material consideration that the applicant has had prior approval permission (albeit lapsed) for the conversion of the existing buildings into three dwellings. The fact that the prior approval consent has lapsed weakens the fall-back position, however there is a prospect that the barns could be converted utilising permitted development rights as set out within Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended if prior approval was sought again.

This is a finely balanced decision and when weighing up the planning balance Members are requested to have due regard to this position.

Regarding other matters the proposal is considered to have no material harm on the character and appearance of the countryside, neighbour amenity, highway safety, flood risk or ecology within the locality and therefore the application is duly recommended for approval.

## RECOMMENDATION:

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Drawing No. PP1000 Rev D 'Site and Location Plan';
  - Drawing No. 1527-0000-001 'Topographical Survey'; and
  - Drawing No. PP1100 Rev A Floor Plans, Elevations and Sections.
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: Prior to the first use on site full details of the type, colour and texture of all materials to be used for the external surfaces of the development shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 3 Reason: To ensure that the design and appearance of the development is appropriate in accordance with Policy DM15 of the Site Allocations and Development Management Policies Plan (2016) and the principles of the National Planning Policy Framework.
- 4 Condition: Prior to the commencement of groundworks, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination;
  - (ii) an assessment of the potential risks to:
    - human health,
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
    - adjoining land,
    - groundwaters and surface waters,
    - ecological systems,
    - archaeological sites and ancient monuments;
  - (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with the Environment Agency's Land Contamination Risk Management (LCRM).
- 4 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. This needs to be a pre-commencement condition given the need to ensure that contamination is fully dealt with at the outset of development and to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 5 Condition: Prior to the commencement of groundworks, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 5 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. This needs to be a pre-commencement condition given the need to ensure that contamination is fully dealt with at the outset of development and to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.



- 6 Condition: The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of groundworks, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
- 6 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. This is also to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 7 Condition: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 4, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 5, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 6.
- 7 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. This is also to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 8 Condition: Prior to the first occupation of any of the dwellings hereby permitted the vehicular/pedestrian access/crossing over the verge shall be constructed in accordance with the highways specification TRAD 5 and thereafter retained at the position shown on the approved plan. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.
- 8 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 9 Condition: Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order (2015), (or any Order revoking, amending or re-enacting that Order) no gates/bollard/chain/other means of obstruction shall be erected across the approved access unless details have first been submitted to and approved in writing by the Local Planning Authority.
- 9 Reason: In the interests of highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.

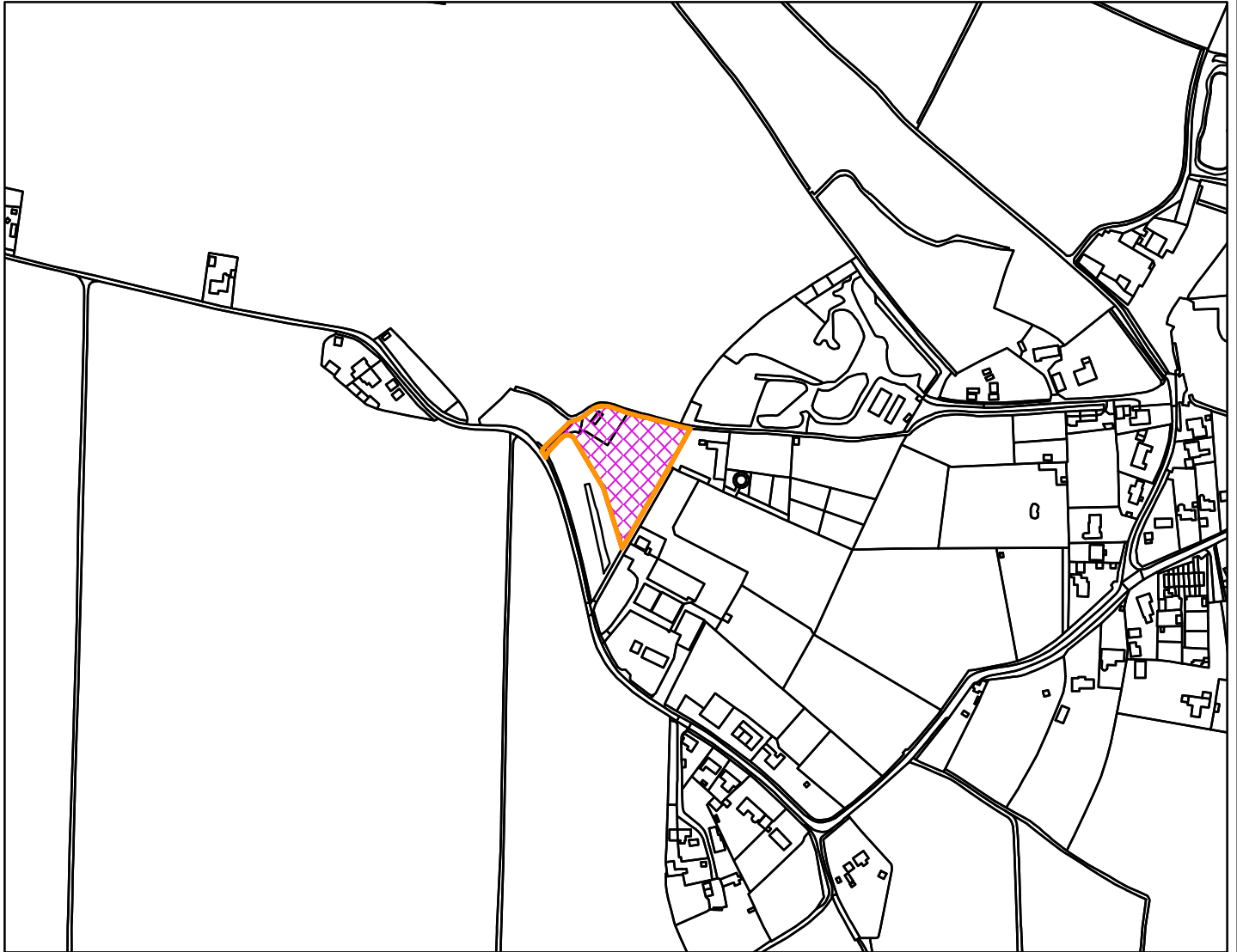
- 10 Condition: Prior to the first occupation of the development hereby permitted the proposed access /on-site car parking / turning area shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 10 Reason: To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 11 Condition: The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment (FRA) dated January 2023 by Ellingham Consulting Ltd. In particular, the FRA states:
- Finished floor levels will be set no lower than 0.0 m AOD.
  - Flood resilient measures will be incorporated up to 300 mm above finished floor levels.
- 11 Reason: To ensure the development will be reasonably safe from the risks of flooding for its lifetime in accordance with Policy CS08 of the Core Strategy 2011 and the NPPF 2023.
- 12 Condition: Notwithstanding the provisions of Schedule 2, Part 1, Classes A, AA, B, D and E 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), enlargement of a dwellinghouse by construction of additional storeys, the enlargement, improvement or other alteration of a dwellinghouse, the enlargement of a dwelling house consisting of an addition or alteration to its roof, or the erection or construction of a porch outside any external door of a dwellinghouse, or the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool shall not be allowed without the granting of specific planning permission.
- 12 Reason: In order that the Local Planning Authority may retain control of development which might be detrimental to the amenities of the locality if otherwise allowed by the above mentioned Order. In order to comply with Policy CS06 and CS08 of the Core Strategy 2011 and Policy DM5 of the SADMPP 2016 and the provisions of the NPPF.
- 13 Condition: The demolition of the buildings identified within the Ecological Appraisal as Barns A and B shall not in any circumstances commence unless the Local Planning Authority has been provided with either:
- a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or;
  - b) a statement in writing from the relevant licensing body or the Local Planning Authority to the effect that it does not consider that the specified activity/development will require a licence.
- 13 Reason: The Habitats Directive requires a system of 'strict protection' for certain protected species. It is a criminal offence to consciously harm European protected species without a licence, which would only be issued if the statutory licensing body is satisfied that the derogation criteria are met. However, the risk of criminal prosecution might not prevent harm from taking place. This condition therefore helps to ensure that a developer will apply for an EPS licence and, if they do not, can be prevented in advance from undertaking the activities that might jeopardise the protected species,

before the species is harmed. This condition can be enforced by a temporary stop notice or by injunction. This condition ensures that the Local Planning Authority is complying with its statutory obligations with respect to the Habitats Regulations. In addition to comply with Policy CS12 of the Core Strategy 2011 and the provisions of the NPPF.

- 14 Condition: The development hereby permitted shall be carried out in strict accordance with the Ecology Report dated July 2024 by Wild Frontier Ecology. In particular in relation to Section 6 of the report relating to 'Mitigation Measures.'
- 14 Reason: In order to comply with the provisions of the NPPF, Policy CS12 of the Core Strategy 2011 and the Habitat Regulations.
- 15 Condition: Prior to the first occupation of the dwellings hereby permitted the northern barn, shown on drawing 1527-0000-001 with a ridge height of 5.2 and eaves height of 3.9, shall be demolished and the resulting materials shall be removed from the site.
- 15 Reason: To ensure that the development is compatible with the amenities of the locality and that the building does not remain, given the justification for this approval. In line with the principles of the NPPF, Policy CS06 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 16 Condition: No development shall commence until full details of the foul water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.
- 16 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF, and Policy CS08 of the Core Strategy 2011.  
  
This needs to be a pre-commencement condition as drainage is a fundamental issue that needs to be planned for and agreed at the start of the development.
- 17 Condition: Notwithstanding the information submitted, prior to first occupation/use of the development hereby permitted, a plan shall be submitted to and approved in writing by the Local Planning Authority indicating the positions, heights, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the occupation/use hereby permitted is commenced or before the building(s) are occupied or in accordance with a timetable to be approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 17 Reason: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF and Policy DM15 of the SADMPP 2016, in particular to ensure that there is no overlooking between plots 1 and 2.



Still Meadows River Road West Walton PE14 7EX



**Legend**

**Scale:** 1:5,000

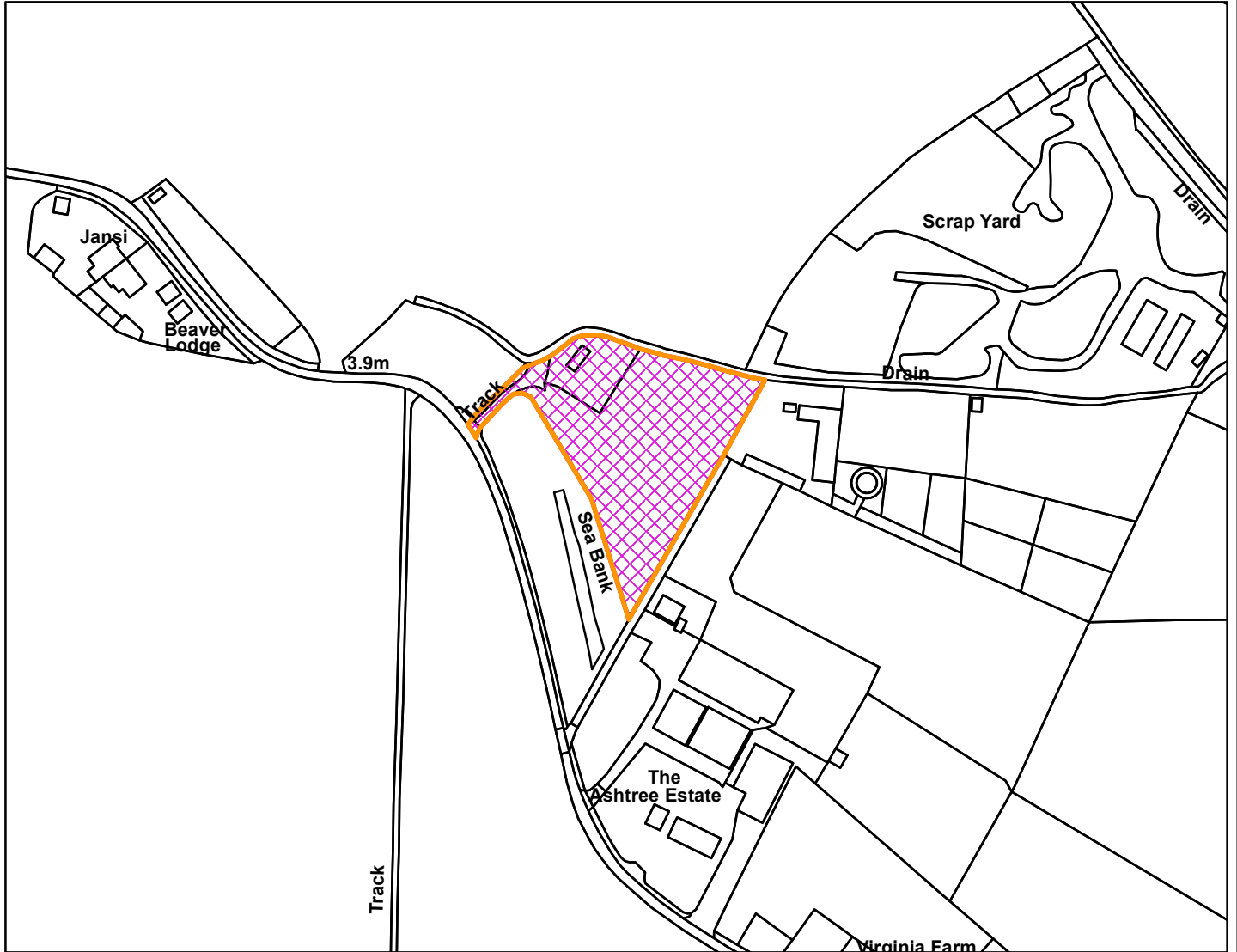
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Organisation	BCKLWN
Department	Department
Comments	
Date	23/10/2024
MSA Number	0100024314



Still Meadows River Road West Walton PE14 7EX



Legend	

**Scale:** 1:2,500

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Organisation	BCKLWN
Department	Department
Comments	
Date	23/10/2024
MSA Number	0100024314

<b>Parish:</b>	<b>West Walton</b>	
<b>Proposal:</b>	<b>Change of use of previously developed land to stand two residential static caravans for Gypsy / Traveller use (Retrospective)</b>	
<b>Location:</b>	<b>Still Meadows River Road West Walton Norfolk PE14 7EX</b>	
<b>Applicant:</b>	<b>Ms Smith</b>	
<b>Case No:</b>	<b>24/01061/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mr K Wilkinson</b>	<b>Date for Determination:</b> <b>19 August 2024</b> <b>Extension of Time Expiry Date:</b> <b>8 November 2024</b>

**Reason for Referral to Planning Committee** – The views of the Parish Council, Environment Agency and IDB are contrary to the officer recommendation.

**Neighbourhood Plan:** No

**Case Summary**

The application site is located on the north-eastern side of River Road to the west of West Walton. The site is approximately 400m as the crow flies from the development boundary of West Walton (which is presently combined with Walton Highway to form a Key Rural Service Centre); however, by road it is approximately 620m from the development boundary and within the countryside as defined by the Site Allocation and Development Policies Plan (SADMPP) 2016. River Road is a virtually single-track road in this location and is a no-through road leading to the River Nene with a few sporadic properties along the road which terminates at the Anglian Water sewage works.

The application site comprises an irregular shaped parcel of land approx. 0.5ha in size with an existing access off River Road. To the north lies agricultural land beyond a land drain, further fields and allotments to the west on the opposite side of River Road and an agricultural enterprise plus equestrian use to the east.

This application seeks retrospective planning permission to use the land to stand two residential static caravans for gypsy/traveller use.

**Key Issues**

- Background
- Principle of development
- Need for pitches
- Impact upon appearance of the countryside
- Access and highway implications
- Flood risk
- Other material considerations

## **Recommendation**

**APPROVE**

### **THE APPLICATION**

The application site is located on the north-eastern side of River Road to the west of West Walton. The site is approximately 400m as the crow flies from the development boundary of West Walton (which is presently combined with Walton Highway to form a Key Rural Service Centre); however, by road it is approximately 620m from the development boundary and within the countryside as defined by the Site Allocation and Development Policies Plan (SADMPP) 2016. River Road is a virtually single-track road in this location and is a no-through road leading to the River Nene with a few sporadic properties along the road which terminates at the Anglian Water sewage works.

The application site comprises an irregular shaped parcel of land approx. 0.5ha in size with an existing access off River Road. To the north lies agricultural land beyond a land drain, further fields and allotments to the west on the opposite side of River Road and an agricultural enterprise plus equestrian use to the east.

This application seeks retrospective planning permission to use the land to stand two residential static caravans for gypsy/traveller use.

The site lies in Flood Zone 3a of the Council-adopted Strategic Flood Risk Assessment plus Tidal Hazard Mapping Zone of Environment Agency's mapping. The application is accompanied by a Design & Access Statement, a site-specific Flood Risk Assessment, Biodiversity Net Gain Metric, shadow Habitat Risk Assessment and Personal Circumstances statement.

### **STATEMENT OF SUPPORT**

The agent has submitted the following statement in support of the application:

- “1. Kings Lynn and West Norfolk Council faces serious challenges to meet the accommodation needs of its Gypsy / Traveller population. This is unlikely to change in the short term.
2. The Smith family purchased the land as they had no alternative accommodation available. They moved onto the land as they were required to leave the site that they occupied.
3. Members of the family face challenging health conditions. These are identified in the confidential personal circumstances report provided with the application.
4. A secure base for the family is yielding benefits. Children are accessing education and health services are now accessible.
5. The site should be safe for occupation. Caravans are to be anchored, and the family have signed up to the Environment Agency flood alert system. It is my belief that should the planning application be refused that it would be granted on appeal by the Secretary of State.”

## PLANNING HISTORY

05/00433/UNAUTU: Enforcement Notice issued 19.09.2007

21/00013/UNAUTU: Enforcement investigation logged – Alleged unauthorised use

21/00602/LDE: Not Lawful: 22/06/21 - Lawful Development Certificate: Equestrian use, erection of stable block and siting of residential caravan

01/02/2022: Injunction granted at High Court of Justice (Claim No. QB-2021-004603)

## RESPONSE TO CONSULTATION

**Parish Council: OBJECT** - because West Walton Parish Council notes that a number of supporting documents and photographs submitted on behalf of the applicant in support of the application are not available for viewing on the planning portal. This clearly prevents the veracity of this material from being tested and immediately places all respondents at a great disadvantage.

In view of this the current period for response should be extended, and the entire body of the application documentation made available to the public. Failure to do this is prejudicial to all respondents and the BCKLWN is failing in its duty.

In view of this, West Walton Parish Council reserves the right to make further and additional submissions once the entire body of the application documentation made available.

On the basis of the documentation available for consideration to date, objections are raised on the following grounds:

- **Objection 1**

The owners of the site, presumably the current applicant Ms Smith, are subject to an injunction which prevents development of the site, this includes the siting of caravans. In view of this, any planning application or any request for a consent for development should not be considered.

- **Objection 2**

The current application documentation includes incorrect and false information.

- **Objection 3**

Premature occupation.

**Local Highways Authority (NCC): NO OBJECTION** - Having visited the site in connection with this application it is evident that the road conditions are not ideal as the carriageway width can be narrow in parts in combination with the matter that forward visibility around bends can be restricted by hedging. However, on balance it is observed that this application is for a small number of vans/occupancy and the traffic flow on this part of the network has been observed to be low. Therefore, in relation to highway safety considerations on balance of the above we would not recommend an objection subject to condition implementing the access to an acceptable standard plus an informative note added to any permission.

**Environment Agency: OBJECTION** – (Initial response) - We object to the proposed development as it falls into a flood risk vulnerability category that is inappropriate to the flood zone in which the application site is located. The application is therefore contrary to the



National Planning Policy Framework (NPPF) and its associated planning practice guidance (PPG). We recommend that planning permission is refused on this basis.

(Subsequent additional comments) - It is for the LPA to decide whether the proposed development is acceptable in principle in this location.

If the LPA is minded to approve this application, we strongly recommend that the caravans are securely anchored to the ground and a Flood Warning & Evacuation Plan is prepared and approved by their Emergency Planner.

We also recommend that a time limitation condition is included in any planning permission so that if new flood risk information becomes available or planning policy changes, the development can be reconsidered.

**King's Lynn Internal Drainage Board: OBJECTION** – noted that the applicant intends to plant a new hedge line within 9 metres of a Board maintained watercourse. Also, advice offered on byelaw matters.

**District Emergency Planning Officer: NO OBJECTION** – recommends signing up to EA's flood warning system and preparation of a flood evacuation plan.

**Housing Standards Officer: NO OBJECTION** – The arrangement of units appears to be in compliance with the requirements for fire separation. However, in the absence of greater detail regarding services etc. unable to comment further. Request informative note regarding licensing requirements.

## REPRESENTATIONS

A total of **SIX** items of correspondence received raising **OBJECTION** to the proposal on the following summarised grounds:

- The site is the subject of an injunction and it must be adhered to;
- Site is not previously developed land – it has not been lawfully developed and historically part of Virginia Farm in 1986;
- Precedent for additional land/units;
- River Road not suitable to take additional traffic;
- Within a flood zone and no further development should be allowed;
- Inaccuracy of statements in support of the application;
- Anti-social behaviour concerns; and
- Devaluation of properties in locality.

**Cllr Julian Kirk:** “I object this application as with other sites within West Walton and Walton Highway. This as other sites had an enforcement order on it but caravans moved in one night, immediately the next day enforcement was lifted, totally ridiculous.

The enforcement order said the site should have been returned back to agriculture, it wasn't, hundreds of tons of hard core have been left, as has the fence.

It's a single track dead end road, my constituents properties will become worthless.”

## **LDF CORE STRATEGY POLICIES**

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS09** - Housing Distribution

**CS11** – Transport

**CS12** - Environmental Assets

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM2** – Development Boundaries

**DM15** – Environment, Design and Amenity

**DM17** - Parking Provision in New Development

**DM19** - Green Infrastructure/Habitats Monitoring & Mitigation

## **NATIONAL GUIDANCE**

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

National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

Planning Policy for Traveller Sites – sets out the Government’s planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework.

## **PLANNING CONSIDERATIONS**

In assessing this application, the following key issues are identified:

- Background
- Principle of development
- Need for pitches
- Impact upon appearance of the countryside
- Access and highway implications
- Flood risk
- Other material considerations

### **Background**

It will be noted from the History section above, that this site has been the subject of a previous planning application and enforcement investigations.

On 1st February 2022 an injunction was granted in the High Court of Justice (Claim No. QB-2021-004603) relating to this site at Still Meadows – the provisions are summarised as follows: preventing bringing onto the land any further caravans or mobile homes for the purposes of human habitation or residential occupation; bring in any hardcore to create hardstandings or hard surfaces in association with that aforementioned use; infrastructure or further preparation works associated with that use; or selling on all or part of the site without informing of the existence of the injunction.

A copy of the injunction is appended to this report for ease of reference.

The introduction of caravans onto the site is in breach of the injunction; however, it would not be expedient to pursue legal action until this current application has been determined. If permission is granted the Council would apply for the injunction to be discharged.

### **Principle of development**

The site is approximately 400m as the crow flies from the development boundary of West Walton (which is presently combined with Walton Highway to form a Key Rural Service Centre); however, by road it is approximately 620m from the development boundary and within the countryside as defined by the Site Allocation and Development Policies Plan (SADMPP) 2016.

Paragraph 8 of the NPPF identifies an environmental objective in order to achieve sustainable development. Planning should ‘protect and enhance our natural, built and historic environment...’

National planning policy is clear that the countryside should be protected for its intrinsic character and beauty and should only be developed in exceptional circumstances.

Policy CS06 of the Core Strategy 2011 clearly states that “beyond the villages and in the countryside, the strategy will be to protect the countryside for its intrinsic character and beauty... The development of greenfield sites will be resisted unless essential for agricultural or forestry needs.” Policy DM2 of the SADMPP 2016 defines development boundaries and supports this approach.

Reference to Gypsy & Traveller (G&T) sites is contained in Core Strategy Policy CS09, which states:

“Sites for gypsies, travellers (or travelling show people) will be given permission where they:

- Are capable of being serviced by basic utilities;
- Meet an identified need;
- Avoid environmentally sensitive areas and areas at risk of flooding;
- Afford good access to main routes (including the A47 (T), A17, A10, A148/9 and A134); and
- Are located within reasonable distance of facilities and supporting services (such as school or health provision).”

These criteria will be addressed within this report.

### **Need for pitches**

Previously anyone coming forward with a planning application for a new pitch or a site for use by G&Ts, or a plot for Travelling Showpeople, would need to demonstrate that the intended occupants meet the planning definition, i.e., they currently travel or have ceased

travelling temporarily and that they comply with the criterion specified in Policy H of PPTS (2015 now updated 2023) and Core Strategy Policy CS09 (above). This was considered to be important as it ensured that the local authority could control any future occupancy to meet the needs of travellers who comply with the national definition and considerations in light of the fairly recent 'Lisa Smith' case.

The King's Lynn and West Norfolk Local Plan is emerging. The policies in the emerging Local Plan in themselves, because of the stage of preparation of the plan (main modifications consultation), should be attributed little weight. Existing Policy within the Core Strategy (Policy CS09) has no site allocations for Gypsy and Traveller accommodation to meet the identified need. The Core Strategy also pre-dates the National Planning Policy for Gypsy and Travellers.

However, to identify current needs, the Council have produced an updated Gypsy and Traveller Accommodation Assessment (GTAA June 2023). It provides up-to-date information and evidence on the accommodation needs of Gypsy, Traveller and Travelling Showpeople over the plan period to 2039.

The 2023 GTAA explains that many of the traveller sites in the Borough are occupied by extended family groups which contain concealed or doubled-up adults and/or occupied by teenagers. This helps to demonstrate elements of the underlying level of unmet need for pitches within the Borough. The GTAA identifies a local need for an additional 76 pitches within the period 2023-2027, and a total future need to 2039 of 102 pitches.

So, the recent updated GTAA (June 2023) and an appeal decision (APP/V2635/W/22/3294180 – copy attached to this report) has indicated that there is a significant unmet need for sites. It was conclusive that the Council has failed to have a 5-year supply of deliverable sites, so there is significant weight afforded to the need for additional sites/pitches.

The PPTS (paragraph 27) states that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of planning permission.

The Council, as part of the examination of the Local Plan Review process, is seeking to address this matter/shortfall by issuing a Gypsy & Travellers and Travelling Showpeople Potential Sites and Policy Consultation (January 2024). This has been followed up by the Gypsy & Travellers Travelling Showpeople Proposed Site Allocations and Policy Consultation (May 2024) and the most recent Main Modifications Consultation Part 2 commenced on 17th October 2024 and runs for 6 weeks. This site was not put forward for consideration in the 'call for sites' and therefore has not been allocated as part of this process. As stated above, it constitutes a windfall site.

However, this policy change is still at a premature stage and in determining this application significant weight must be attached to the unmet need identified above.

### **Impact upon appearance of the countryside**

Paragraph 15 of the NPPF is quite clear in promoting a genuinely plan led system, empowering local people to shape their surroundings requiring up-to-date plans which provide a practical framework for which decisions on planning applications can be made. It seeks to ensure high quality development and a good standard of amenity seeking ways to enhance and improve places in which people live and recognises the intrinsic character and beauty of the countryside (Paragraph 180).

As stated above, the existing site is located adjoining development on River Road and is not an 'isolated' site in the countryside as defined in the Braintree DC case (2016).

The site contains an old stable building in the northern section which has been there for decades. There are substantial areas of hardstanding within the site much of which, with the passage of time, has become exempt from enforcement action. The site is enclosed by close-boarded wooden fencing approx. 2m in height which constitutes permitted development. There is a sporadic hedge alongside the road frontage which helps to partially screen the site from the south; but there is an opportunity to introduce additional hedgerow planting to the roadside of the screen fencing to soften the visual impact and integrate the development into its setting. This could be controlled via condition. The site also has a backdrop to the east of established equestrian and agricultural buildings.

At the time of site visit, there were two twin-axle touring caravans, a lorry body and container within the site just visible over the containing fenceline.

Whilst the introduction of two slightly elevated static caravans plus domestic paraphernalia would have an impact upon the appearance of this locality from the immediate vicinity, both established screening and proposed planting would be effective in assimilating it into its countryside setting.

It is concluded that the impact upon the appearance of the countryside would not be so significant that it would outweigh the established need identified above.

The proposal therefore is capable of complying with Policies CS06 and DM2 of the Development Plan.

### **Access and highway implications**

There is an existing access to the site off River Road with appropriate visibility to meet current standards.

Whilst local concerns have been raised regarding the suitability of this road to serve the proposed development, the Local Highway Authority raise no objection to this scheme subject to the access being formed to an acceptable standard. This can be secured via condition.

There is ample parking and turning space within the site to serve the intended pitches.

The proposal accords with Policies CS08, CS11, DM15 & DM17 of the Development Plan.

### **Flood risk**

The application site is identified as falling within Flood Zone 3a of the Council-adopted Strategic Flood Risk Assessment and that of EA's mapping. The site is also within a Tidal Hazard Mapping area relating to the River Nene to the west.

The application is accompanied by a site-specific Flood Risk Assessment and the EA indicate that the site could potentially flood up to 0.5m above existing ground level. Mitigation measures are recommended of Finished Floor Levels (FFLs) above 0.6m and the caravans to be anchored down to prevent movement if flooded. These measures could be secured via condition.

Our Emergency Planning Officer plus the EA recommend signing up to the Environment Agency's Flood Warning System and the preparation of a flood evacuation plan – this can be covered via condition.

The proposal passes Sequential testing as there are no other available comparative sites in a lower flood zone in this area.

The NPPF identifies caravans as 'highly vulnerable' to flood risk and Policy CS09 seeks to avoid sites in areas at high risk and should not be permitted in FZ3. Nonetheless, Paragraph 169 of the NPPF recognises that development may be necessary in areas of high risk and risks can be managed through suitable adaption measures. Certain cases were quoted in the Marshland St James appeal attached to this report where the Inspector considered that the mitigation measures similar to this proposal were acceptable (i.e. floor level of caravan raised by 600mm above current land level).

Exception testing is also considered to be passed in that the development can be made safe for its lifetime with the above mitigation measures and there are wider sustainable benefits by an additional two pitches going towards redressing the significant shortfall in supply of G&T sites.

Whilst caravans are not usually acceptable in areas at risk of flooding, a recent example of need outweighing flood risk at Wisbech St Mary was also tabled as part of the case against the Council in connection with the aforementioned informal inquiry. Albeit in adjoining Fenland DC the issues were similar and the Inspector concluded that need outweighed flood risk subject to appropriate mitigation measures being secured (PINS ref: APP/D0515/C/18/3196061).

The EA's additional comments recommend that the caravans are securely anchored to the ground, signing up to their Flood Warning System and preparation of an Evacuation Plan. This has been covered above.

They also recommend that a time limitation condition is included in any planning permission so that if new flood risk information becomes available or planning policy changes, the development can be reconsidered. In light of recent appeal decisions for the same type of accommodation in the same flood risk zones this course of action is not considered to be reasonable.

The proposal is therefore compliant with Policies CS08 & CS09 of the Development Plan notwithstanding the EA's initial 'in principle' objection.

### **Other material considerations**

#### *Previous enforcement history and action*

As indicated above in the History section, this site has been the subject of enforcement investigation and action in the past. However, in the interim there has been a significant and material change in that the Council has been deemed at appeal to have failed to provide a 5-year supply of sites. This has to be taken into consideration when determining this current application.

#### *Service by utilities*

The site is presently served by water and electricity.

### *Drainage*

Surface water disposal is indicated to be achieved via soakaways. With regards to foul water disposal, there is an existing septic tank serving the toilet within the stable block, but the agent has indicated that a treatment plant would be needed to provide appropriate capacity to serve the intended mobile homes. This can be secured via condition.

### *Byelaw matter*

The IDB raised objection to the intention to plant hedging within 9m of their maintained drain to the immediate north of the site. Amended plans now show this section of hedging removed.

### *Accessibility*

The site is reasonably well located to local services and facilities that the Key Rural Service Centre and beyond has on offer:

- Walton Highway shops and PO 3.1km
- North Cambs Hospital 5.3km
- West Walton Village Hall, Church, Public House and bus stop approx. 1km
- West Walton Primary 1.8km & Marshland High School 1.7km
- Wisbech Town centre 5km

All are relatively accessible to this type of development and given the identified need in this locality.

It is also concluded that the site has reasonable access to main routes being 4.4km by road from the A47.

### *Design and layout*

The indicative site plan shows two pitches with a static caravan situated centrally and the stable block in the northern-most one. No reference is made to dayrooms but that could come forward under a separate planning application. There is adequate space on each pitch to accommodate a static caravan plus a touring caravan and parking for at least 2 vehicles. A site licence would be required under separate legislation from Environmental Health, and it is expected that this may be achievable.

This proposal therefore would accord with the former Designing G&T Sites – Good Practice Guide (2008) and Policies CS08, DM15 & DM17 of the Development Plan.

### *Amenity of neighbours*

Whilst concerns from Cllr Kirk and neighbours have been raised with regards to amenity, given the separation distances involved and boundary treatments, there would be no justification to refuse this proposal on those grounds.

Lighting can be secured via condition to ensure no adverse implications. It would also control impact upon wildlife. This would accord with Policy DM15 of the Development Plan.

### *Impact upon ecology*

The site lies within an impact zone for designated conservation sites: the Wash, Brecks and North Coast.

A shadow Habitats Regulations Assessment has been undertaken and GIRAMS payment has been secured. On similar proposals in this locality Natural England have confirmed that providing appropriate mitigation is secured there should be no additional impacts upon the European sites.

The proposal therefore accords with Policies CS12 and DM19 of the Development Plan.

### *Biodiversity Net Gain*

Biodiversity Net Gain is addressed in the submission with grassed areas and 155m of new native species hedge along the eastern and central/common pitch boundaries. Its implementation and monitoring will be secured in the usual manner

### *Crime and Disorder*

Whilst concerns have been raised about anti-social behaviour, there are not considered to be any tangible concerns regarding crime and disorder associated with this proposal.

### *Human Rights*

Information regarding the proposed occupiers of the site has been submitted. The recent appeal decision indicated that the occupation of sites could be controlled via condition.

The interference with Article 8 of the European Convention on Human Rights (ECHR) rights of any proposed occupiers to respect for private and family life and the home is a qualified right and must be weighed against the wider public interest in the upholding of the law, including planning law for example which aims to protect the countryside by restricting inappropriate development. However, in this instance there is no conflict given the officer recommendation.

The applicants have children with educational and medical needs which officers also consider weighs in favour of the proposal.

### *Devaluation of property*

The difference in terms of valuation of adjacent property, be it either up or down, is not a material planning consideration.

### *Procedural issue*

Given the conflict of opinion with the views of the Parish Council and inconsistency with the EA (earlier objection), the application was referred to the Planning Committee Sifting Panel on 04 September 2024. It was decided to refer the application to the Planning Committee for determination.



## CONCLUSION

This site was not put forward for consideration in the 'call for sites' exercise earlier this year. The proposal therefore constitutes a 'windfall site' which would contribute towards the significant shortfall of sites required to meet the needs of the Gypsy and Traveller community identified in the recent Gypsy & Traveller Accommodation Assessment (June 2023).

The PPTS (paragraph 27) states that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of planning permission.

The Council, as part of the examination of the Local Plan Review process, is seeking to address this matter/shortfall by having issued a Gypsy & Travellers and Travelling Showpeople Site Allocations and Policy Consultation (May 2024) followed by the Main Modifications Part 2 consultation. This clearly demonstrates a significant need in this parish by the proposed allocation of 10 pitches as an extension to West Walton Court (Site GT14). However, that is still at an early stage and in determining this application significant weight must be attached to the unmet need identified above.

The proposal compares favourably when judged against the criteria of Policy CS09 of the Core Strategy and Policy 2 a)-l) of the new policy contained within the Main Modifications Part 2 to the Local Plan (Gypsy, Travellers and Travelling Showpeople policies) consultation. Indeed, the flood risk implications are lesser on this site, in terms of flood depth and inundation rates, compared to Tall Trees allocation GT65 at Salters Lode/Downham West.

There are no insurmountable technical objections that cannot be secured via condition.

The proposed development is capable of complying with Policies CS06, CS08, CS09, CS11 & CS12 of the Core Strategy (2011), Policies DM2, DM15, DM17 & DM19 of the SADMPP (2016) plus the emerging policy contained in the Main Modifications Part 2 to the Local Plan (Gypsy, Travellers and Travelling Showpeople policies) consultation (October 2024). The application is therefore recommended for approval subject to certain conditions stated below.

## RECOMMENDATION:

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development is hereby permitted in accordance with the following approved plans: LOCATION PLAN Plan 1 (received 12/06/24), HABITATS plan and BLOCK DIAGRAM Plan 2 (both received 27/08/24).
- 1 Reason: For the avoidance of doubt and in the interests of proper planning.
- 2 Condition: The site shall not be occupied by any persons other than Gypsies and Travellers, defined as: persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2 Reason: To define the terms of the permission, as the site lies within the countryside where the Local Planning Authority would not normally grant permission for new

dwellings. This permission is granted in recognition of the special need for the pitch in accordance with Policy CS09 of the Core Strategy (2011).

- 3 Condition: On the site hereby approved (and defined by the red line on Drawing: LOCATION PLAN Plan 1 received on 12/06/24) there shall be no more than two pitches, each of which will contain no more than one static caravan and one touring caravan (as defined in the Caravan Sites & Control of Development Act 1960 and the Caravan Sites Act 1968) stationed at any time.
- 3 Reason: To define the terms of this permission in accordance with the provisions of the NPPF and Policy CS09 of the Core Strategy.
- 4 Condition: No commercial activities shall take place on the land, including the storage of materials.
- 4 Reason: To define the terms of this permission as commercial use would engender additional traffic implications on this rural road network plus parking implications and in the interests of the amenity of adjoining residences; in accordance with Policies CS08 & CS11 of the Core Strategy (2011) and Policies DM15 & DM17 of the SADMPP (2016).
- 5 Condition: The development shall be implemented in accordance with the following flood risk mitigation measures:
  - Finished floor level of the permanently sited static caravans shall be set at no lower than 600mm above existing ground level;
  - Securely anchored to concrete ground bases;
  - Residents to sign up to the Environment Agency's Flood Warning Service; and
  - Prepare an Evacuation Plan (to be agreed in writing by the Local Planning Authority).

These measures shall be maintained thereafter.

- 5 Reason: To protect occupants and prevent movement of the caravans at times of increased risk of flooding in accordance with the provisions of the NPPF, Policy CS08 of the Core Strategy (2011) and Policy DM15 of the SADMPP (2016).
- 6 Condition: Prior to installation of any external lighting scheme, it shall have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented as agreed.
- 6 Reason: In the interests of the amenity of the locality and to accord with Policy CS06 of the Core Strategy (2011) and Policy DM15 of the SADMPP (2016).
- 7 Condition: Within 6 months of the date of the development hereby permitted the vehicular access shall be upgraded in accordance with the Norfolk County Council residential access construction specification TRAD 5. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 7 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety and traffic movement and accord with Policy DM15 of the SADMPP (2016).

- 8 Condition: Within 3 months of the date of this decision, full details of the foul water drainage arrangements for the site have been submitted to, and approved in writing by, the Local Planning Authority. The drainage details shall be constructed as approved within 3 months of that approval.
- 8 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF and Policy DM15 of the SDAMPP (2016).
- 9 Condition: Notwithstanding the submitted plans, to the roadside of the south-western boundary of the southern-most pitch there shall be a new native species hedge planted to correspond with those shown on the Block Diagram Plan 2. The new hedge planting shall be carried out in the first planting season following the date of this decision or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any plants that within a period of 5 years from the initial planting, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
- 9 Reason: To ensure that the work is carried out within a reasonable period in accordance with the NPPF.

**QUEEN'S BENCH DIVISION**

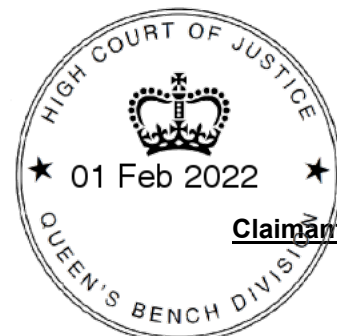
**DATED 1<sup>st</sup> day of February 2022**

**MR DEXTER DIAS QC (sitting as a Deputy Judge of the High Court)**

**IN THE MATTER of an application for an injunction under the Town and Country Planning Act 1990, section 187B**

**B E T W E E N:**

**THE BOROUGH COUNCIL OF KING'S LYNN  
AND WEST NORFOLK**



**QB-2021-004603**

**-and-**

**(1) LEO SMITH (SENIOR)  
(2) LEO SMITH (JUNIOR)**

**Defendants**

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**ORDER**

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**PENAL NOTICE**

***IF YOU THE WITHIN NAMED DEFENDANTS DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED.***

***ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.***

**IMPORTANT**

1. This Order prohibits you from doing the acts set out in this Order. You should read terms of the Order and the guidance notes very carefully. **You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge the Order.**
2. If you disobey this order you may be found guilty of Contempt of Court and may be sent to prison or fined.

On 1 February 2022, Mr Dexter Dias QC considered the Application for a Final Injunction brought by the Borough Council of King's Lynn and West Norfolk ("the Claimant") supported by the Witness Statements listed in Schedule A.

UPON hearing Counsel for the Claimant and the Defendants not appearing

IT IS ORDERED that:-

1. In relation to the Land which known as "Land at Still Meadows, River Road, West Walton, Wisbech PE14 7EX" registered at HM Land Registry under Title Number NK491258 ("the Land") as shown edged red on Plan MWB1 annexed to this order, the Defendants, whether by themselves or by

instructing, encouraging or permitting any other person by whatever means (including upon the sale or other disposal of the Land), must not:-

- (i) Bring onto the Land any further caravans or mobile homes for the purpose of human habitation or residential occupation;
  - (ii) Bring onto the Land any further hardcore and/or like materials for any purpose, including the creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation;
  - (iii) Carry out any further works in relation to the formation of paths, roadways or any works including the provision of sewerage, water and electricity infrastructure; the installation, laying or running of any service media including any drain, pipe, wire or septic tank or treatment plant associated with the use of caravans and/or mobile homes for the purpose of human habitation or residential occupation
  - (iv) Carry out any further works to the Land associated with or in preparation for its use for stationing caravans and/or mobile homes for human habitation or residential occupation
  - (v) Sell or dispose of any interest in the Land (which phrase shall be deemed to include the grant of a licence) or any part thereof without first bringing to the attention to any person interested in acquiring such interest the terms of this order by providing them with a full and legible copy thereof.
2. The Defendants do pay the costs of the Claimant of the claim in the sum of 13,000, such sum to be paid within 28 days of the date of this Order.
  3. Service of this Order on the First Defendant shall be effected by email to the following email address lsmith1956@outlook.com. Notice of this Order to the Second Defendant and third parties may be effected by affixing a copy of this Order (in a weatherproof see-through cover) to the gate or to the fence in a conspicuous position at the entrance to the Land.

Dated 1 February 2022

## **GUIDANCE NOTES**

### **Effect of this Order – The Defendants**

A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

### **Effect of this Order - Parties other than the Claimant and Defendants**

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

### **Interpretation of this Order**

1. In this Order, the words “the Land” means land known as, “Land at Still Meadows, River Road, West Walton, Wisbech PE14 7EX” registered at HM Land Registry under Title Number NK491258, edged red on Plan MWB1 annexed to this order.
2. In this Order, where there is more than one Defendant (unless otherwise stated) references to “the Defendants” means each or all of them.
3. A requirement to serve on “the Defendants” means on each of them. However, the Order is effective against any Defendant on whom it is served and any person who has notice of it.
4. An Order requiring “the Defendants” not to do anything applies to all Defendants.

### **Communications with the Court**

All communications to the Court about this Order should be sent to Room WG07, Royal Courts of Justice, Strand, London, WC2A 2LL (020 3936 8957). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday except holidays.

## **SCHEDULE A**

### **Evidence**

The Judge read the following written evidence before making this Order:-

1. Witness Statements of Michael Wilfred Bates dated 17<sup>th</sup> December 2021, Stuart John Ashworth 20<sup>th</sup> December 2021 and Michael Wilfred Bates dated 18 January 2022.



Borough Council of  
**King's Lynn &  
West Norfolk**  
Tel. 01553 616200  
Fax. 01553 691663

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16/12/2021



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## Appeal Decision

Hearing held on 22 and 23 June 2023

Site visit made on 22 June 2023

**by Katie Child B.Sc.(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 December 2023**

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**Appeal Ref: APP/V2635/W/22/3294180**

**Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY**

- 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 Laurence Manning against the decision of the Borough Council of King's Lynn and West Norfolk.
  - The application Ref 20/01246/FM, dated 19 August 2020, was refused by notice dated 3 September 2021.
  - The development proposed is described as 'the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable.'
- 

### Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable at Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY in accordance with the terms of the application Ref 20/01246/FUM, dated 19 August 2020, subject to the conditions in the attached schedule.

### Application for costs

2. At the hearing an application for costs was made by Laurence Manning against the Borough Council of King's Lynn and West Norfolk. This application is the subject of a separate decision.

### Preliminary matters

3. The site address on the application form and decision notice are different. The application form refers to 'land west of Moyse's Bank, School Road, Wisbech, Cambridgeshire PE14 8EY' whilst the decision notice refers to 'Orchard south of School Road, Marshland St. James, Norfolk.' At the hearing the main parties agreed that the address in the banner above should be used. I concur that it represents an appropriate description of the site location.
4. A Tree Preservation Order on the orchard which adjoins the appeal site was confirmed by the Council on 14 June 2023. An opportunity for verbal comments on the matter was provided at the hearing session. No objections



- were made by the appellant. The designation does not include the appeal site and there is no evidence before me that the proposal would necessitate works to these trees or cause harm.
5. A recent Court of Appeal decision in the case of Lisa Smith<sup>1</sup> has held that the definition of Travellers within Planning Policy for Travellers Sites (2015) (PPTS) is unlawfully discriminatory. The parties were provided with an opportunity to comment on the case prior to the hearing, and the definition was discussed at the hearing itself. The implications of the judgement are addressed later in my decision.
  6. The Council has submitted a new Local Plan for examination. However, the hearing stage has been suspended pending further work by the Council, including on the matter of Gypsies and Travellers. Accordingly, I have attached little weight to the policies in the emerging Plan and have determined this appeal with regard to relevant policies in the Council's adopted Core Strategy (2011) and the Council's Site Allocation and Development Management Policies Plan (2016) (SADMPP) as well as national policy.
  7. The appellant contends that Policies CS06 and CS09 in the Core Strategy are inconsistent with the National Planning Policy Framework (NPPF) (2021) and PPTS. I deal with these in turn below.
  8. Policy CS06 states that the strategy in the countryside is to protect intrinsic character and beauty. The NPPF no longer contains this wording and the policy could be seen as inconsistent with national policy in this regard. The requirement in Policy CS06 for housing to be located 'in close proximity' to rural service centres is also more onerous than Policy C in PPTS. The Courts have held that Traveller accommodation is 'housing' as it provides homes<sup>2</sup>. Nevertheless, other aspects of Policy CS06 including the requirement to 'maintain local character and a high quality environment' and to protect the diversity of landscapes are consistent with the NPPF and are relevant to this appeal.
  9. The last part of Policy CS09 deals with provision for Gypsies and Traveller and Travelling Showpeople. Both parties accept that the identified needs in the policy are outdated, with subsequent Gypsy and Traveller Accommodation Assessments (GTAA) produced in 2016 and 2023. The criterion requiring that sites meet an identified need is also inconsistent with paragraphs 11 and paragraph 24 in the PPTS, which indicate that an identified need is not necessary and that local planning authorities should 'consider' the existing level of provision and local need when determining proposals. However, other criteria in this section of Policy CS09 are still relevant.
  10. The parties agree that Policy CS02 in the Core Strategy on the settlement hierarchy is no longer critical to the case, on the basis that the Council now accepts the proposal is for Traveller accommodation, as set out below. However, I concur with the Council that Policy CS02 is still relevant to the case in relation to sustainability, insofar as it confirms the status of the nearby village of Marshland St. James.

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<sup>1</sup> Lisa Smith v SSLUHC [2022] EWCA.

<sup>2</sup> Wenman v Secretary of State for Communities and Local Government [2015] EWHC 925 (Admin)

11. The Council's updated Gypsy and Traveller Accommodation Assessment (GTAA) (2023) was made available in the week prior to the hearing. The appellant submitted a written response to the document and the GTAA was discussed at the hearing. The implications of the document are covered later in this decision.
12. Following the site visit it was confirmed by the appellant that the red line boundary was incorrectly plotted. Amended proposed block plans 19\_1072\_004 and 19\_1072\_003 Revision E have been submitted which exclude the ditch along the site frontage and shift the developed part of the site slightly south. The changes are small and the Council confirmed at the hearing that they were content to accept these as minor changes. I concur with this position as I am satisfied that interested parties would not be prejudiced.
13. Plan 19\_1072\_003 Revision E also shows an alternative access point into the site, from the east. The parties agreed at the hearing that if the access point was moved to this position, sufficient visibility could be achieved to meet the Council's standards and provide safe vehicular access to the site. Having observed the altered access position on my site visit, I concur with this. It would be dependent on other access points being stopped up, but this could be secured via a planning condition. The Council confirmed they are content to accept the amended access as a minor change to the planning proposal. Other aspects of the internal site layout would be unaffected and I am satisfied that the interests of other parties would not be prejudiced. On this basis I conclude that adequate visibility splays can be achieved to ensure highway safety and refusal reason 5 is resolved.
14. The parties disagree on the degree to which the road to Marshland St James is suitable for walking and cycling and occupiers would be reliant on the use of a car. However, the Council confirmed at the hearing that it no longer considers the appeal site to be an unsustainable location overall for the proposed development, as cited in refusal reason 3. The Council now accepts the proposal is for Traveller accommodation, as set out below. PPTS recognises that Traveller accommodation can be appropriate in rural areas and Policy CS09 in the Core Strategy implicitly supports Traveller accommodation in the countryside providing certain criteria are satisfied. Taking account of the modest distance to the village and nearby facilities in other settlements, I concur that the appeal site is a sustainable location for Traveller accommodation. The site would also help to provide a settled base which would enable a Traveller family to access health care and education and reduce the need for long distance travel, in line with paragraph 13 in PPTS.

### **Main issues**

15. The remaining main issues are as follows:
  - 1) Proposed Gypsy and Traveller use and which planning policies should apply.
  - 2) Whether the site is in an acceptable location for the proposed development in terms of flood risk.
  - 3) The effect of the proposal on the character and appearance of the surrounding area.

- 4) Whether there are any other considerations indicating that planning permission should be granted. This includes the need for and supply of Gypsy and Traveller sites, policy failure, animal welfare and reduction of traffic movements, and potentially the personal circumstances of the intended occupants.

## Reasons

### Proposed Gypsy and Traveller use and which planning policies should apply

16. The Council determined the planning application as caravans for general residential use in the countryside, rather than Gypsy and Traveller accommodation (as set out in refusal reason 1). The Council has stated that this is because details of the intended occupants and their personal circumstances were not provided.
17. The appellant has subsequently submitted additional information with the appeal which confirms that he, his wife and their dependents are the intended occupants and outlines details of a nomadic lifestyle and personal circumstances. At the hearing the Council concurred that the appellant and his family are cultural Gypsies and Travellers with a history of travelling for work and I see no reason to disagree with this. On the basis of this evidence the Council now agrees that national and local planning policies relating to Travellers are relevant to the proposal.
18. Nevertheless, the Council still maintains that information on Traveller status and personal circumstances was necessary to allow the application and appeal to be determined as Gypsy and Traveller accommodation. The Council has referred to the Wheatley Bank decision<sup>3</sup> in support of its position. Paragraph 19 in that decision states that *'in relation to those who are not currently Gypsies and Travellers as defined by PPTS, proposals for residential development should be assessed primarily in accordance with general housing and other plan policies, though their personal circumstances will also be material.'*
19. However, reading the appeal decision as a whole, it is apparent that the Inspector is looking at the Traveller status and personal circumstances of the specific intended site occupants, within the context that the proposed level of provision is greater than identified pitch needs. As such the decision does not suggest that all applications from non-Travellers or those not meeting the PPTS should primarily be determined against general housing policies or that all applications should identify specific occupiers.
20. Policy CS09 in the Core Strategy sets out criteria for determining Gypsy and Traveller proposals. It does not specify that applicants should be Gypsies and Travellers or distinguish between Travellers who meet and do not meet the PPTS definition. Furthermore, although paragraph 24 in PPTS refers to the personal circumstances of the applicant, it is part of a range of factors to consider. The paragraph does not specify that all criteria should apply or preclude applications coming forward where the identity of occupants is not known.

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<sup>3</sup> APP/V2635/W/17/3180533.

21. The Council's position is not supported by case law or policy. Planning permission normally runs with the land and it is not necessary for an applicant to be a Traveller or have a nomadic habitat of life to apply for permission for use of land as a Traveller site. Planning conditions can be used to limit occupancy to Gypsies and Travellers and enforce any breaches. The wording of any condition would need to take account of the aforementioned Lisa Smith judgement, as it has held that the PPTS definition of Travellers is unlawfully discriminatory and excludes those who may cease to travel permanently. This issue is dealt with in the Conditions section below.
22. Personal circumstances are capable of being a material planning consideration and it is possible to use personal occupancy conditions if such matters are critical to the decision and outweigh harm. But if a scheme is acceptable in terms of its planning merits it may not be necessary to have recourse to them. This is the position I have reached in relation to this appeal, as set out later in my decision.
23. In summary, I consider that it is possible to determine the proposed development as Gypsy and Traveller accommodation and against Traveller policies, without requiring details of the intended occupant or their personal circumstances.

#### Flood risk

24. The appeal site lies within Flood Zone 3a, as shown in the Council's Strategic Flood Risk Assessment (2018). As such the site is categorised as having a high flood risk, with 0.5% or greater annual probability of tidal flooding from the River Great Ouse and a 1% or greater annual probability of flooding from the drainage system within the King's Lynn Internal Drainage Board (IDB) area and the Middle Level Main Drain.
25. The southern part of the site also lies within the Environment Agency's Tidal Mapping Zone and is therefore within an area where there would be inundation following a breach. The appellant's site-specific Flood Risk Assessment (FRA) indicates that the site could be affected to a depth of between 0 and 0.6 metres.
26. Where development is proposed in Flood Zone 3a the NPPF requires application of a sequential test, with the aim of steering development to areas with the lowest risk of flooding. The Council's appeal statement outlines two potential alternative sites within Marshland St. James that are allocated in the SADMPP. However, the Council confirmed at the hearing that this application of the sequential test was based on the scheme being for general residential development, rather than accommodation for Travellers. As outlined above, this position has altered. At the hearing neither party was able to identify any other suitable and available alternative sites for Travellers, let alone in areas with a lower risk of flooding. Consequently, based on the evidence before me I am satisfied that the sequential test has been met.
27. However, the NPPF identifies caravans and mobile homes as 'highly vulnerable' to flood risk and Table 2 in the Planning Policy Guidance (PPG) on Flood Risk states such development should not be permitted within Flood Zone 3a. The need to avoid development in areas at risk of flooding is also highlighted in Policy CS01 in the Core Strategy whilst Policy CS09 states that sites for

- Travellers should be given permission where they avoid areas at risk of flooding.
28. Nonetheless, paragraph 159 in the NPPF recognises that development may be necessary in areas of high flood risk. The appellant has also submitted a number of appeal decisions which indicate that there are circumstances in which highly vulnerable development in Flood Zone 3 can be permitted<sup>4</sup>. Policy CS01 in the Core Strategy also recognises that exceptions may exist. Further detail is provided in Policy CS08 which states that 'if the development vulnerability type is not compatible with the flood zone as set out in PPS25<sup>5</sup>, proposals will need to demonstrate that the proposal contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities'. The policy also requires in such cases that 'flood risk is fully mitigated through appropriate design and engineering solutions'.
29. The site is in a rural area and there would be benefits to the local Gypsy and Traveller community from the provision of additional permanent accommodation. I have found above that the site is in a sustainable location and would provide sustainability benefits linked to paragraph 13 in PPTS. Although the number of additional pitches is small in numerical terms, the significant shortage of pitches in the borough, as identified in the need/supply section below, means that even the provision of one additional pitch would be an important gain.
30. The appellant's FRA also highlights that the site benefits from existing flood defences and is shown in the Council's Level 2 Strategic Flood Risk Assessment 2019 as being within a 'Low Risk Area of Flooding'. The defences are designed to protect against a 1 in 200 year tidal event and a 1 in 100 year fluvial event. The FRA sets out that the likelihood of flooding due to overtopping or failure of flood defences and embankments is small, whilst taking account of climate change; that significant upgrades have been carried out to pumping stations in the area; that flood defences and drainage systems in the area are subject to a routine maintenance programme and maintenance standards are good; and that in a very extreme event the rise of water on the site would not be sudden and there would be time to take precautionary action.
31. The FRA concludes that residual flood risk is low due to the current standards of drainage and flood defence in the area and that development would be safe for its lifetime. It advises that any risks could be mitigated by requiring finished floor levels to be 600 millimetres above ground level with flood resilient construction up to 300 millimetres and stipulating that the static caravan is securely anchored to concrete ground bases.
32. Neither the Environment Agency nor the King's Lynn IDB have objected to the scheme. However, the Environment Agency recommends that the mitigation measures referred to in the FRA should be adhered to.
33. Taking account of all evidence before me, notwithstanding that the proposal is for highly vulnerable land use within Flood Zone 3a, in this case I am satisfied that flood risk on the site is low and the site is capable of being made safe for

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<sup>4</sup> Including APP/A2525/C/20/3258547 and APP/D0515/C/18/3196061

<sup>5</sup> Planning Policy Statement 25. Although this document has been superseded, it has the same vulnerability classification for caravans and mobile homes and flood zone compatibility as current Government guidance.

its lifetime without increasing flood risk elsewhere. The scheme would bring wider community benefits that outweigh the flood risk, and residual flood risks could be mitigated by using planning conditions to secure the measures referred to above.

34. In conclusion, the proposal therefore accords with paragraph 159 in the NPPF and Policy CS08 in the Council's Core Strategy insofar as it relates to flood risk. Although the 'exception test' in the NPPF is not normally applicable to highly vulnerable uses in Flood Zone 3a, as set out above it is also apparent that both limbs of the test would be satisfied. Overall, I conclude the site is an acceptable location for the proposed development in terms of flood risk.

#### Character and appearance

35. The appeal site is located within the 'Fens - Open Inland Marshes' area as defined in the Council's Landscape Character Assessment (2007). The area is characterised by a flat fenland landscape, mainly comprising regular sized fields separated by low dykes and ditches, with some farmsteads located along minor roads running through the area. It is identified as having inherent landscape sensitivities with a strong sense of openness and tranquillity and recognisable sense of place.
36. The appeal site is an open flat field that was overgrown at the time of my site visit. The site is bounded by ditches on several sides and by an orchard to the east. The site contains a small number of orchard trees close to the eastern boundary. On my site visit I observed that the site has a rural and tranquil character.
37. The site forms part of an area of intensively farmed land to the east of Marshland St James. It mainly consists of agricultural fields, although there are some pockets of trees and planting in the area, including the adjoining orchard and planting along the boundary of the field to the west. As seen on my site visit and highlighted in the appellant's evidence, there are also a number of scattered dwellings and farm buildings in the local area.
38. The absence of boundary treatment on the frontage means that there are clear views across the site from the adjoining section of School Road. However, the orchard to the east and planting to the west restricts views from other parts of the road and from Moyse's Bank. As you travel east from the village along School Road the site is not observed until close by due to the vegetation and also the angle of the road. From the other direction, the site frontage can be seen further away but views into the site are restricted by the orchard. My site visit took place in Summer and it is likely that views are less filtered by foliage during other periods of the year. However, based on the size and depth of the orchard I consider that this would still provide a significant visual barrier in all seasons.
39. The site can also be seen along the track which adjoins the western side of the site. The Council indicated that this route is an unadopted highway and is used by local people for walking/cycling and provides vehicular access to stable buildings to the rear. There are also some views of the site from more distant vantage points, to the north and south. However, given the flat topography of the area and the distance, the site is not prominent in these views.

40. The proposal involves the stationing of a caravan and mobile home and erection of a day room and stables. At the hearing the appellant indicated that the standard mobile home height is about 4 metres. The Council did not dispute this figure. Mobile homes are elevated above the ground and therefore the flood risk mitigation measure of 600mm would already be partly satisfied. Accordingly, I conclude that the maximum roof height of the mobile home on the site is likely to be slightly above 4 metres but less than the figure of 5 metres suggested in the Council's appeal statement. The parties agreed at the hearing that the height of the day room and stables would respectively be some 3.6 metres and 3.7 metres above the ground.
41. The Council contend that the structures would be seen from a considerable distance away and over treetops due to their height and the pale metal colour of caravans and mobile homes. However, the extent and height of proposed built form on the site is modest. Furthermore, the tall trees to the west and the bulk and positioning of the orchard to the east, as described above, provide a significant amount of screening from School Road and Moyse's Bank. The amended plans show that existing trees on the site would be retained and additional frontage planting is proposed. The amended red line boundary indicates there is scope to achieve this. The appellant has also agreed to submit a landscaping scheme by condition.
42. Taking account of these factors and my observations I consider that any views of structures above treetops or between trees would be limited and largely restricted to points on School Road close to the site. Other vantage points, notwithstanding aspects of road elevation, are more distant. As such, despite the potential pale colour of the caravans/mobile homes, the development would be seen from elsewhere against a wide backdrop of fields and farmsteads and would not be overly prominent.
43. The proposal would introduce built form into the northern part of the site. There would also be hardstanding and parked vehicles. The rural and open character of this part of the site would alter. However, the extent and height of built form and amount of hardstanding would be modest. The plans shows that a sizable part of the frontage would remain as open land. The site also benefits from screening, as described above. Furthermore, there are other scattered farmsteads and stables elsewhere in the local area. Therefore modest development on the site would not be wholly out of keeping with the character of the area.
44. Therefore, overall I conclude that the proposal would not adversely affect the character and appearance of the surrounding area. As such, it would accord with Policy CS06 in the Core Strategy insofar as it seeks to protect the character of the countryside and local landscapes, and Policies CS08 and CS12 in the Core Strategy and Policy DM15 in the SADMPP insofar as they require development to respect local setting and character.

#### Need for and supply of Gypsy sites

45. The Councils GTAA 2016 identifies a need for 45 pitches for Gypsies and Travellers between 2016 and 2036, comprising 5 pitches for those who meet the PPTS definition and 40 for those who do not. It also identifies a need for up to 35 pitches linked to need arising from the significant number of Gypsy and Traveller families who were not interviewed as part of the GTAA work.

46. The new GTAA, dated June 2023, identifies a need for 156 additional Gypsy and Traveller pitches between 2023 and 2039. This consists of 102 pitches for households who meet the PPTS definition, 6 pitches for undetermined households and 48 pitches for households not meeting the PPTS definition.
47. The GTAA 2023 is due to be published and assessed as part of the on-going examination of the Local Plan. The examination process has been paused to facilitate this and enable reflection on the overall strategy for Gypsy and Traveller site provision. As part of this the Council will need to take account of the aforementioned Lisa Smith case, which has held that the PPTS definition is unlawfully discriminatory.
48. Nonetheless, the updated GTAA figures before me show a significant level of unmet need in the borough, which is considerably higher than the level in the GTAA 2016. Both parties agreed at the hearing that the GTAA 2023 represents a more accurate up to date assessment of current and future need, albeit the appellant has some concerns that the figures are an under-estimate.
49. The Council has also confirmed that it does not have a five-year supply of sites. The submitted Local Plan does not identify any proposed allocation sites and at the hearing the Council were unable to identify any further potential windfall sites in the pipeline. The Statement of Common Ground confirms that both parties agree that there is a lack of suitable, acceptable and affordable sites for the appellant or any other Gypsy and Traveller family within the borough.
50. Overall, the evidence before me indicates that there are current and future identified needs for additional Gypsy and Traveller pitches in the borough. If new windfall proposals have come forward since the hearings, given the short passage of time I consider this is likely to be modest and would not affect my overall conclusions regarding need. A new pitch on the appeal site would provide additional Traveller accommodation to meet current unmet needs in the area. This is a benefit to which I attribute significant weight. I also attach significant weight to the absence of five-year supply.

#### Policy failure

51. Policy CS09 in the Core Strategy (2011) refers to an identified need for 146 pitches between 2006 and 2011 and an annual compound increase of 3% for the period 2011-21. The Council confirmed at the hearing that this equates to a total need figure of 202 additional pitches.
52. The Council sought to address these needs by establishing a criteria-based framework in Policy CS09 for determining windfall proposals. Neither the Core Strategy or the SADMPP identify Traveller allocation sites. The exact degree to which this policy-based approach was successful and identified needs were met is not wholly clear, given the passage of time and changes in Council personnel. The Council's hearing statement indicates that 12 pitches were approved between 2016 and 2021 and there was reference at the hearing to a small number of more recent pitch approvals. However, the Council were unable to confirm how many pitches were permitted between 2011 and 2016 or delivered between 2011 and 2021. The Council were also unable to confirm the level of needs or the Council's policies prior to 2011.
53. The GTAA 2016 and 2023 both show on-going need for additional pitches. They also identify current authorised pitch numbers of 174 and 172



respectively that are below the need figure of 202 and which appear to have declined. The GTAA 2023 also shows high levels of current need for additional pitches within the next five years, linked to families living on unauthorised sites or where households are concealed, doubled up or displaced.

54. The evidence before me shows significant levels of current unmet need and suggests that the criteria-based windfall approach has not delivered sufficient recent pitch completions in the borough to fully satisfied the accommodation needs of the Gypsy and Traveller population. However, the extent of under-delivery is not clear and there is a lack of information relating to unmet needs and pitch completions in earlier parts of the Plan period. As such, based on the evidence before me it is difficult to reach a firm conclusion regarding the length of time that needs may have been unmet.
55. The adopted Plan set out a strategy and criteria-based Traveller policy. The Council has sought to periodically re-assess the need for pitches, as set out in the GTAA 2016 and 2023. The GTAA 2016 only identifies a need for 5 additional pitches for Travellers meeting the PPTS definition and a further 40 for those who did not, albeit it also identifies a need for up to 35 pitches relating to Gypsy families who were not interviewed. However, the evidence before the Council at that time showed only a modest confirmed pitch requirement and predated the Smith judgement. The current examination of the Local Plan will provide an opportunity to appraise the latest evidence on unmet need, take account of the Smith judgement and determine the most appropriate strategy for delivering sites.
56. Therefore, based on the evidence before me I am not persuaded that policy failure has occurred.

#### Animal welfare and reduction of traffic movements

57. The proposal includes provision of a stable block and land for keeping of horses. The appellant has indicated this set-up would aid animal welfare and reduce travel, as his horses are currently stabled at a number of locations owned by other people. However, I have concluded below that the proposal is acceptable on its planning merits and have not have not had recourse to personal circumstances or applied a personal condition. Not everyone owns horses and these circumstances may not apply to other Traveller households. As such I do not consider these factors weigh in favour of the proposal.

#### Other matters

58. Local residents have raised concerns that the proposal would increase the amount of traffic in the local area and cause safety issues. However, notwithstanding the recent construction of a number of houses on the edge of the village and presence of the primary school in this area, Norfolk County Council's and the appellant's survey evidence both indicate that School Road has modest levels of traffic. Furthermore, the County Council's estimate of six movements per weekday from the site, albeit with some additional movements if the paddocks are rented out, is modest and was accepted by the appellant at the hearing. Accordingly, notwithstanding the narrow width of parts of School Road, I am satisfied that the proposal would not cause a significant worsening of traffic or result in severe cumulative impacts on the road network.

59. The proposal is land 'for the keeping of horses' rather than grazing. At the hearing the appellant confirmed that kept horses rely on imported feed rather than grass, and the paddock would be used for turning out horses rather than as a means of feeding. As such there is no evidence that the size of the paddock is insufficient for its intended purpose.

### **Planning balance**

60. The proposed development is for use of the land for Gypsy and Traveller accommodation and a planning condition could be used to ensure occupancy is limited to Gypsies and Travellers. As set out above, I conclude that the site is an acceptable location for the proposed development in terms of flood risk and the proposal accords with Policy CS08 in the Core Strategy insofar as it relates to flood risk. I also conclude the proposal would not adversely affect the character and appearance of the surrounding area and accords with various policies in the Core Strategy and SADMPP which relate to protecting the character of the locality and the countryside.
61. At the hearing the appellant confirmed he already has permanent settled accommodation. His family is currently residing on a pitch with planning permission which is owned by his family and located in the neighbouring authority of Fenland. It is intended that the vacation of that pitch would enable his sister and partner to gain a secure and settled base. They are currently doubling up on the appellant's parent's site in Fenland.
62. Nonetheless, the evidence before me indicates high levels of unmet current need and future need for additional pitches in King's Lynn and West Norfolk. There would be clear benefits associated with provision of an additional pitch for use by Gypsies and Travellers in the borough. I have attached significant weight to this matter along with the absence of five-year supply.
63. As I have found the development to be acceptable on the basis of its planning merits and identified accommodation needs in the borough, there is no need for me to go on to consider the significance of the appellant's personal circumstances or those of his family. There is also no need for me to determine whether paragraph 11d of the NPPF is engaged as I have already determined that the planning balance is acceptable.
64. The appellant has also cited benefits linked to a reduction of unauthorised development in Fenland, following the re-location of his sister. However, there is no specific evidence before me relating to the need for and supply of sites in Fenland and the occupation of the appellant's current site is not within my jurisdiction. As such I afforded limited weight to this matter.

### **Conditions**

65. The Council has suggested conditions which I have considered against advice in the NPPF and PPG. In addition to the standard implementation condition, I have imposed a condition to ensure the proposal is carried out in accordance with the approved plans, in order to provide certainty and protect the character and appearance of the local area.
66. The Council has proposed a planning condition which refers to occupants needing to accord with the definition of Gypsies and Travellers in Annex 1 of the PPTS. However, the Court of Appeal in the Lisa Smith case held that the exclusion of Travellers who have ceased to travel permanently is discriminatory

and has no legitimate aim. It is not possible to foretell whether any occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission. Imposing the suggested condition would be liable to result in unlawful discrimination, with family members being unable to live on the site. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently. I have not found it necessary to impose a personal condition, for reasons already outlined.

67. The number and type of caravans and size of vehicles kept at the site and the extent of commercial activities on the site are restricted through condition in order to limit visual impact and protect the character and appearance of the area. For the same reasons, conditions seeking details and implementation of landscaping, external lighting and materials are imposed.
68. Conditions relating to flood risk mitigation and surface water drainage are necessary in order to deal with flood risk.
69. Conditions relating to vehicle access and the closure of other access points are imposed in the interests of highway safety.

### **Conclusion**

70. I therefore conclude that the proposal would accord with the development plan as a whole, and as other material considerations do not indicate a decision to the contrary, that the appeal should be allowed.

*Katie Child*

INSPECTOR

### **APPEARANCES**

#### FOR THE APPELLANT:

Matthew Green      Planning consultant  
Geoff Beel              Flood Risk consultant  
Jeremy Hurlstone    Transport consultant  
Laurence Manning    Appellant  
Laurence Manning    Appellant's father  
Rhiannon Manning    Appellant's sister

**FOR THE LOCAL PLANNING AUTHORITY:**

Keith Wilkinson      Senior Planning Officer, King's Lynn and West Norfolk Borough Council

Sandra Horncenko      Technical Support Officer, King's Lynn and West Norfolk Borough Council

Jonathan Hanner      Highways, Norfolk County Council

Steve Jarman          ORS

**INTERESTED PARTIES:**

Carol Coleman          Member of Marshland St. James Parish Council

Brian Long              King's Lynn and West Norfolk Borough Councillor

**DOCUMENTS RECEIVED AT THE HEARING**

1. Signed Statement of Common Ground between the Council and the appellant (dated 22 June 2023).
2. Signed version of Witness Statement of Laurence Manning (dated 22 June 2023).
3. Letter on Gypsy and Travellers from the Inspectors examining the submitted Local Plan, dated 20 June 2023.
4. Proposed block plan 19\_1072\_004
5. Proposed block plan 19\_1072\_003 Revision E

**DOCUMENTS RECEIVED AFTER THE HEARING**

1. Email from appellant dated 23 June 2023 confirming it is acceptable for the landscaping condition to be a pre-commencement condition.

**SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans. Drawings Nos. 19\_1072\_001, 19\_1072\_003 Revision E, 19\_1072\_004, 19\_1072\_005 Revision A, 19\_172\_006 and 19\_1072\_007.
3. Finished floor levels will be 600mm above existing ground level with flood resilient construction up to 300mm above finished floor level. The static caravan will be securely anchored to concrete ground bases. These measures shall be maintained thereafter.

4. All surface water drainage from the development will be by soakaway to BRE365 design requirements and Building Regulations approval.
5. No development shall take place until a scheme of landscaping and schedule of maintenance for the establishment of planting for a minimum period of five years has been submitted to, and approved in writing, by the Local Planning Authority. Development shall be carried out in accordance with the approved details and schedule.
6. Prior to occupation details of an external lighting scheme shall be submitted to, and approved in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
7. On the pitch hereby approved there shall be no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravans Sites Act 1968, stationed at any time (of which no more than one shall be a static caravan or mobile home).
8. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of Travelling Showpeople or circus people travelling together as such.
9. Except for the breeding and sale of horses, no commercial activities shall take place on the site, including the storage of materials.
10. Except for one vehicle up to 7.5 tonnes used for the transport of horses, no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
11. Vehicle access to and from the adjoining highway shall be limited to the access shown on Drawing 19\_1072\_003 Revision E only. Any other access/egress shall be permanently closed and the footway/highway verge shall be reinstated in accordance with the detailed scheme to be agreed with the Local Planning Authority concurrently with bringing the new access into use.
12. No development above slab level of the dayroom shall be undertaken until details of the facing bricks and roof tiles have been submitted to, and agreed in writing by, the Local Planning Authority. The dayroom shall be built in accordance with the materials agreed.

-END-



## Costs Decision

Hearing held on 22 and 23 June 2023

Site visit made on 22 June 2023

**by Katie Child B.Sc.(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 December 2023**

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### **Costs application in relation to Appeal ref: APP/V2635/W/22/3294180 Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14 8EY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Laurence Manning for a partial award of costs against the Borough Council of King's Lynn and West Norfolk.
  - The hearing was in connection with an appeal held against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable.
- 

### **Decision**

1. The application for a partial award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant contends that the Council acted unreasonably by requiring that the applicant provide information on personal needs and their Gypsy and Traveller status, and in the absence of this information refusing the proposal on the basis of inappropriate new residential development in the countryside (refusal reason 1) and the locational sustainability of the site (refusal reason 3).
4. The appellant subsequently provided more detail regarding status and personal circumstances in the Witness Hearing Statement. The Council accepted at the hearing that the appellant and his family are Gypsies and Travellers and that national and local policies relating to Gypsies and Travellers are relevant to the proposal. As such it was agreed that the principle of the development was acceptable in a countryside location. In the context of this new policy position

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the Council also indicated at the hearing that it considered the site to be a sustainable location for the proposal.

5. However, the Council maintains that it was appropriate to seek information on the applicant's Traveller status and personal circumstances, and in the absence of this to determine the application on the basis of general housing use. In support of this approach the Council refers to an appeal at Wheatley Bank, Walsoken. Paragraph 19 in this appeal decision states that *'in relation to those who are not currently Gypsies and Travellers as defined by PPTS [Planning Policy for Traveller Sites 2015], proposals for residential development should be assessed primarily in accordance with general housing and other plan policies, though their personal circumstances will also be material.'*
6. However, as set out in my appeal decision, I disagree with the Council's view on this. The Inspector in this appeal concludes that proposed provision exceeds identified needs and is assessing the Traveller status and personal circumstances of the various specific intended occupants. There is nothing in the Wheatley Bank case to suggest that all applications from non-Travellers or those not meeting the planning definition should be determined against general housing policies or that applications should identify specific occupants. Planning permission normally runs with the land and it is not necessary for an applicant to be a Traveller or have a nomadic habit of life to apply for permission for use of land as a Traveller's site. Planning conditions can be used to limit occupancy to Gypsies and Travellers and enforce any breaches. This position is supported by a number of appeal decisions referred to by the appellant<sup>1</sup>.
7. Furthermore, as set out in my appeal decision, Policy CS09 in the Council's Core Strategy (2011) does not specify that applicants should be Gypsies and Travellers or distinguish between Travellers who meet and do not meet the planning definition. Paragraph 24 in PPTS refers to the personal circumstances of the applicant, but as part of a range of factors to consider. The paragraph does not specify that all criteria should apply or preclude applications coming forward where the identity of occupants is not known.
8. Personal circumstances are capable of being a material consideration and personal occupancy conditions can be used if such matters are critical to a decision and outweigh harm. But if a scheme is acceptable in terms of its planning merits it may not be necessary to have recourse to them. As set out in my appeal decision, I have concluded that the proposal would be acceptable in terms of its planning merits and therefore the latter approach applies.
9. In support of their case the Council has also highlighted the covering letter submitted with the planning application which states that 'the application seeks permission for a wooden stable and 1 no. residential pitch to meet a recognised need and personal need for such facilities in the area to facilitate a gypsy lifestyle.' The Council states that it sought to obtain information on the personal needs/status of the applicant via a series of emails but did not secure further information. This fact was not disputed by the appellant. However, at the hearing the appellant explained that, as they considered the proposal to be acceptable in planning terms, they did not consider it necessary to provide details of personal circumstances.

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<sup>1</sup> Cost decisions Henry Janes v Bridgend County Borough Council (APP/F6915/A/2205366) and M Jones v Pembrokeshire County Council (APP/N6845/11/2151750/WF)

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10. Nonetheless, the covering letter also refers to general 'recognised need' for Gypsy and Traveller accommodation in the area. It is not clear why the Council decided that it was unable to determine the application as general accommodation for Gypsies and Travellers, having regard to evidence on local needs. In my decision I outline clear evidence of unmet needs for Gypsy and Traveller accommodation in the borough. As outlined above, it is also feasible to use a planning condition to control occupation to Gypsies and Travellers.
  11. The Council's approach does not appear to be supported by policy or case law. The appellant had clarified that the application was for use by Gypsy and Travellers. The Council's failure to fully address this matter in line with case law and its assessment of the proposal against general housing policies amounts to unreasonable behaviour.
  12. The PPG specifically states that a Council is at risk of an award of costs being made against them if they refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
  13. In my appeal decision I have concluded that the proposed scheme is acceptable on its planning merits and would provide additional Gypsy and Traveller accommodation to meet identified needs in the area. As set out above, the use of planning conditions to secure Gypsy and Traveller occupancy is feasible and the Council could have elected to take this approach. This would have allowed the proposal to be assessed as Gypsy and Traveller accommodation and determined against national and local planning policies which provide implicit support for the general principle of Gypsy pitches in the countryside. I therefore conclude the Council has acted unreasonably in this regard.
  14. In summary, I conclude that unreasonable behaviour by the Council has been demonstrated in relation to its failure to assess the proposal as a Gypsy and Traveller site in the absence of information on the status/personal circumstances of the intended occupant, or to deal with the contested issue and secure occupancy for Gypsies and Travellers through a planning condition.
  15. The Council's actions have resulted in unnecessary expense to the appellant relating to the cost of addressing refusal reasons 1 and 3 within the appellant's appeal statement and in preparations for the hearing. Although the Council had conceded by the time of the hearing that refusal reason 1 no longer applied, the question of whether it is necessary to demonstrate Traveller/personal circumstances to enable an application to be determined for general Gypsy and Traveller use was fully discussed at the hearing, as the Council still maintained their position on this related aspect. Some discussion on refusal reason 3 also took place at the hearing as the Council did not confirm it was satisfied with the locational sustainability of the proposal until the hearing itself. A partial award of costs is therefore justified.
  16. I am not persuaded that the Council failed to review their case promptly following the lodging of the appeal. The Council submitted a statement of case as part of the appeal process. They subsequently altered their position with regards to refusal reasons 1 and 3 in response to evidence submitted by the appellant as part of the appeal. Other key evidence, in the form of the Council's updated Gypsy and Traveller Accommodation Assessment (June 2023), was not available until just prior to the hearing. The Council has responded to new evidence as it has arisen.



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17. An additional note from the Council received prior to the hearing suggested that there may be grounds for the appeal not to be heard, on the basis of evidence that the appellant had gained planning permission for a pitch elsewhere. I determined that the appeal should still be heard as it was necessary to explore the planning merits of the case, including general provision for Gypsy and Traveller use. However, I am not persuaded that the note amounts to unreasonable behaviour by the Council as it is a suggestion and the note also states that 'the Council hopes the matter will be explored at the hearing.' Furthermore, I promptly determined that the hearing should proceed and there is no evidence that the note resulted in unnecessary expense for the appellant.

**Costs Order**

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Borough Council of King's Lynn and West Norfolk shall pay to Laurence Manning the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with refusal reasons 1 and 3 as described above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to the Borough Council of King's Lynn and West Norfolk, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Katie Child*

INSPECTOR



Ruth Redding  
King's Lynn and West Norfolk Borough  
Council  
Kings Court  
Chapel Street  
King's Lynn  
Norfolk  
PE30 1EX

Your Ref: 20/01246/FM  
Our Ref: APP/V2635/W/22/3294180

14 December 2023

Dear Ruth Redding,

**Town and Country Planning Act 1990**  
**Appeal by Mr Laurence Manning**  
**Site Address: Land West of Moyse's Bank, School Road, Wisbech,**  
**Cambridgeshire**

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

***Neil Devereux***

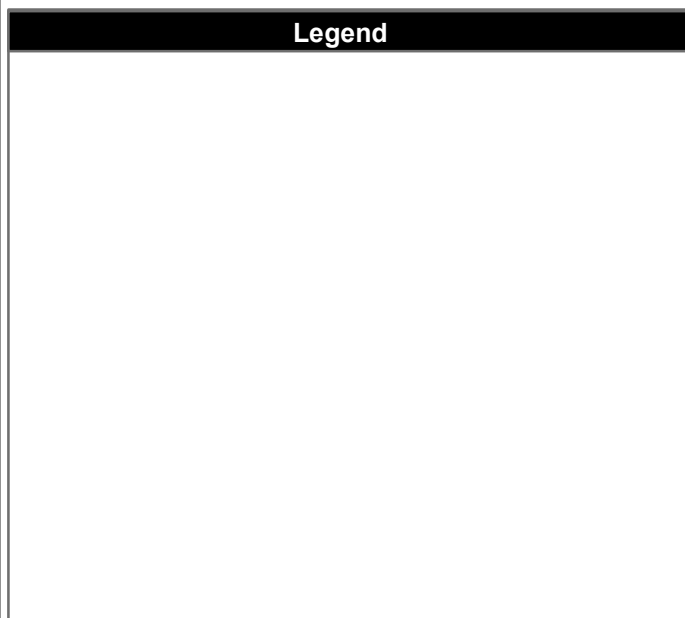
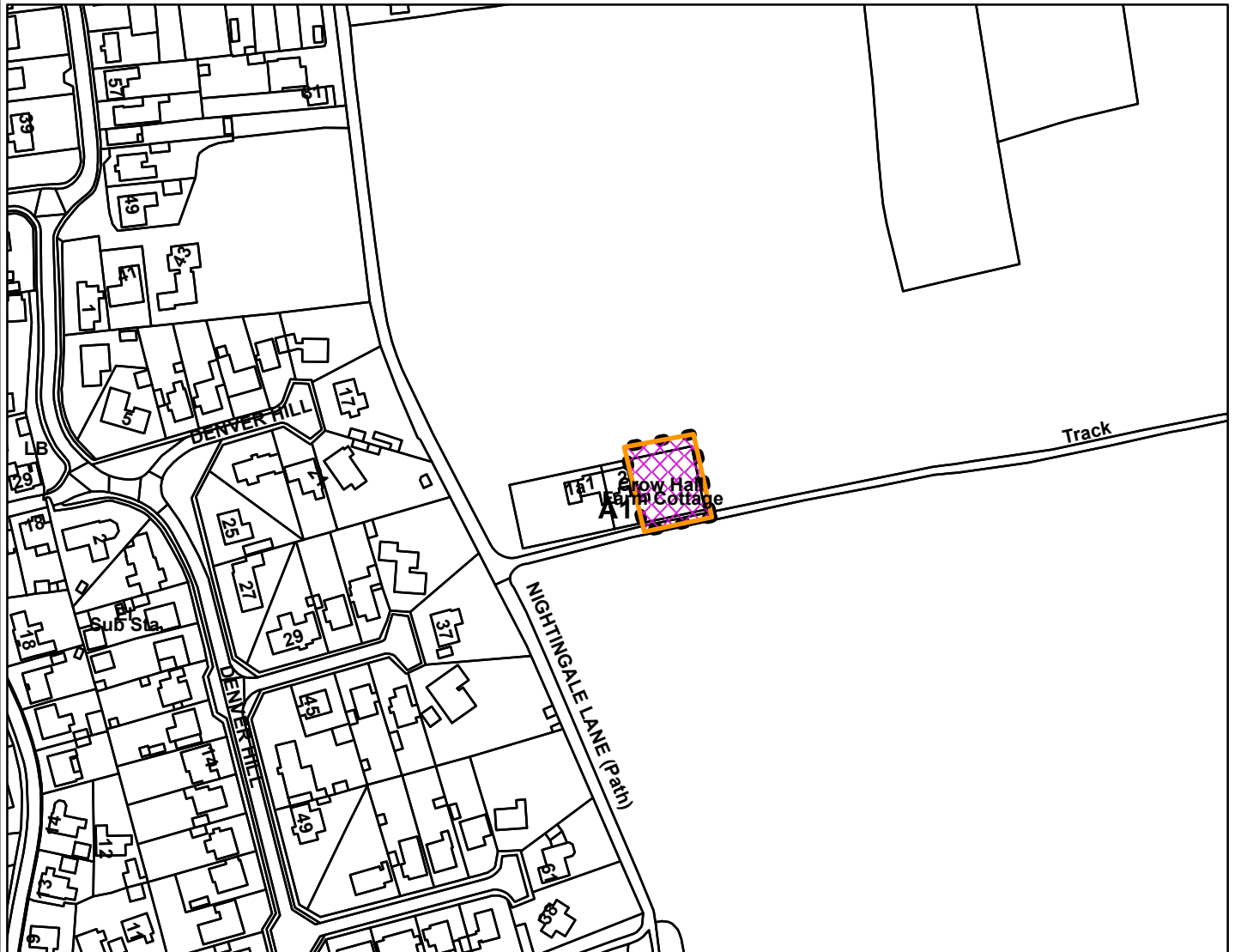
Neil Devereux

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***Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>***



2 Crow Hall Farm Cottage Nightingale Lane Downham Market Norfolk PE38 9F \_



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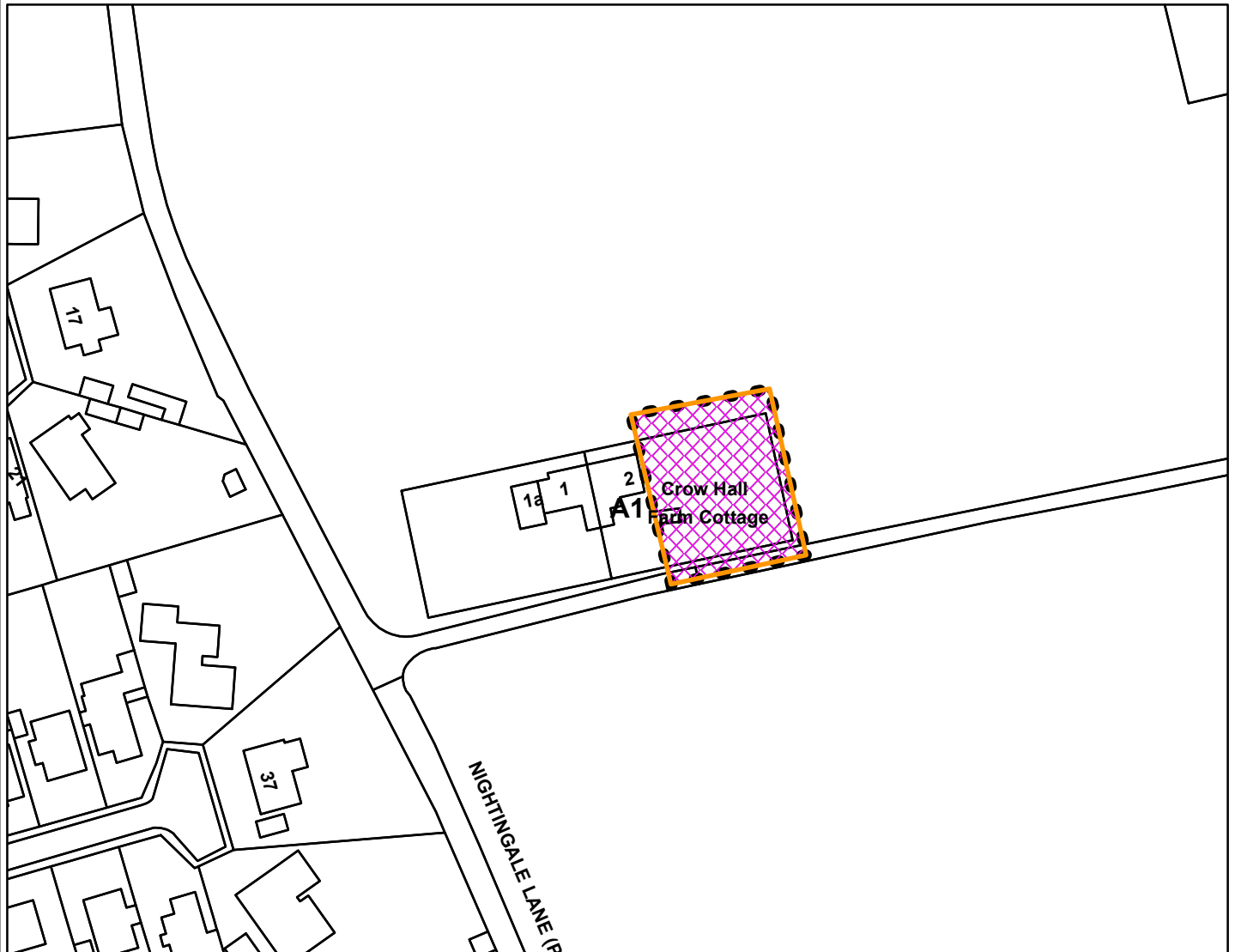
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2 Crow Hall Farm Cottage Nightingale Lane Downham Market Norfolk PE38 9F \_



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Date	22/10/2024
MSA Number	0100024314

## AGENDA ITEM NO: 9/3(a)

<b>Parish:</b>	<b>Downham Market</b>	
<b>Purpose of report:</b>	<b>To consider objections to the Tree Preservation Order (TPO) 2/TPO/00685, 2 Crow Hall Farm Cottage, Nightingale Lane, Downham Market, and determine if the order be confirmed, making it permanent, confirmed with modifications, or not confirmed.</b>	
<b>Location:</b>	<b>Within the existing garden of: 2 Crow Hall Farm Cottage, Nightingale Lane, Downham Market, PE38 9FD</b>	
<b>TPO number:</b>	<b>2/TPO/00685</b>	
<b>Grid Ref:</b>	<b>561629</b>	<b>302477</b>

**RECOMMENDATION** - That the committee confirms Tree Preservation Order 2/TPO/00685 without modification.

### Introduction

Tree Preservation Order 2/TPO/00685 was made on Thursday 9<sup>th</sup> May 2024, and is provisional for the first 6 months following its making. This provisional period allows the Council to consider any representations and objections received as part of our consultation before a decision is reached as to its future permanency. Under the Council's scheme of delegation, where objections are received, its confirmation is deferred to the Planning Committee

### Description

The protected trees are Pine, Birch Sycamore, and Hornbeam. These mature and semi mature trees are all situated within the existing garden of 2 Crow Hall Farm Cottage, adjacent to public footpath Downham Market RB20, and just to the north of the BroadOaks development site. The trees are clearly seen in public views from two public footpaths, Downham Market RB20, and footpath Downham Market RB 19, along Nightingale Lane itself and the from the rear of gardens along Ryston Lane. The trees will also be clearly seen from new dwellings built to the south of the site in the Broad Oaks development.

### Reason for the Tree Preservation Order

In March 2024 a full planning application was received for the construction of one dwelling in the garden to the east of 2 Crow Hall Farm Cottage. Although the applicant stated on the planning application form that there were trees on this land that could influence the development, they did not provide any supporting information about the trees for the application.

When looking at the information presented for the planning application, it was difficult to see how the development could be carried out without significant loss and harm to trees on the site.

The applicant did not demonstrate satisfactorily that the proposed dwelling would not have a significant detrimental impact on the existing trees.

The planning application has not yet been determined. The applicant has still to provide Arboricultural information in support of their proposal.

Because of the potential threat to the trees, a Tree Preservation Order was made on Thursday 9<sup>th</sup> May 2024.

### **Outline of Objection**

A site visit was carried out on Wednesday 15<sup>th</sup> May in response to an enquiry about the TPO, in which the owner appeared to have no objection in principle to the Order.

However, an objection to the Tree Preservation Order in the form of an e-mail sent by the owner and was received on Thursday 6<sup>th</sup> June.

The outline of the objection is that the tree owner feels it is unreasonable for him to have to apply to the council to have permission, to carry out work to trees in his own private garden.

To resolve the objection, two site meetings have been carried out, where discussions included the process for making a tree works application and works that are likely to be approved to the trees if an application is made.

The objection seems to be with the legislation itself and not in relation to the justification for making the order to protect the trees.

### **Response to Objection**

Permission is needed to carry out all work on trees protected by a Tree Preservation Order, as outlined in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

This process is effectively the same for all trees across the UK protected by TPO's and in Conservation Areas. Requiring landowners to apply to the Council for permission to carry out work on protected trees is a reasonable and necessary measure.

This regulation has been in law since 1947 and balances the rights of the landowner with broader public amenity interests. In the last 12 months alone, here in Kings Lynn & West Norfolk we received and determined 108 applications from tree owners to carry out works to trees protected by a Tree Preservation Order and 237 for Trees protected by standing in a Conservation Area. These are typical numbers for this Planning Authority.

The process of making an application is not unduly onerous and does not prevent trees being managed.

Not all landowners have the necessary expertise to assess the condition of a tree or the impact or suitability of tree work on its longevity. TPO applications allow for expert Arboricultural input to ensure any work carried out is necessary, appropriate and conducted in a way that protects the tree's health. Without this oversight, well-intentioned but misinformed work could cause unnecessary damage to trees and result in their premature loss.

## **Conclusions**

The making and confirming of this Tree Preservation Order will not be unduly onerous to the tree owner and will not prevent the trees being reasonably managed.

## **RECOMMENDATION**

That the committee endorses the officer recommendation to confirm Tree Preservation Order 2/TPO/00685 without modification.

## **BACKGROUND PAPERS**

## **SUPPORTING INFORMATION**

1. Tree Evaluation Method for Preservation Orders - TEMPO



# TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

## SURVEY DATA SHEET & DECISION GUIDE

Date: 8/5/2024 Surveyor: BRIAN OGDEN

**Tree details**  
 TPO Ref (if applicable):        Tree/Group No: AREA A1 Species: MITCD  
 Owner (if known):        Location: 2 CROW HALL FARM COTTAGE

**REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS**

**Part 1: Amenity assessment**

**a) Condition & suitability for TPO**

- 5) Good Highly suitable
- 3) Fair/satisfactory Suitable
- 1) Poor Unlikely to be suitable
- 0) Dead/dying/dangerous\* Unsuitable

\* Relates to existing context and is intended to apply to severe irremediable defects only

**Score & Notes**  
 (3) Trees are in fair condition & suitable to the locality -

**b) Retention span (in years) & suitability for TPO**

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 2) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10\* Unsuitable

\* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

**Score & Notes**  
 (4) All trees have min retention span of between 40 - 100 years.

**c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- 5) Very large trees with some visibility, or prominent large trees Highly suitable
- 4) Large trees, or medium trees clearly visible to the public Suitable
- 3) Medium trees, or large trees with limited view only Suitable
- 2) Young, small, or medium/large trees visible only with difficulty Barely suitable
- 1) Trees not visible to the public, regardless of size Probably unsuitable

**Score & Notes**  
 (4) Large trees clearly seen in public views.

**d) Other factors**

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

**Score & Notes**  
 (12)

**Part 2: Expediency assessment**

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

**Score & Notes**  
 (3) Planning application 24/00523/F + threats all trees.

**Part 3: Decision guide**

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-15 TPO defensible
- 16+ Definitely merits TPO

**Add Scores for Total:**  
 15

**Decision:**  
 TPO defensible.



Silvertrees Manor Road North Wootton King's Lynn Norfolk PE30 3PZ



**Legend**

**Scale:** 1:2,500

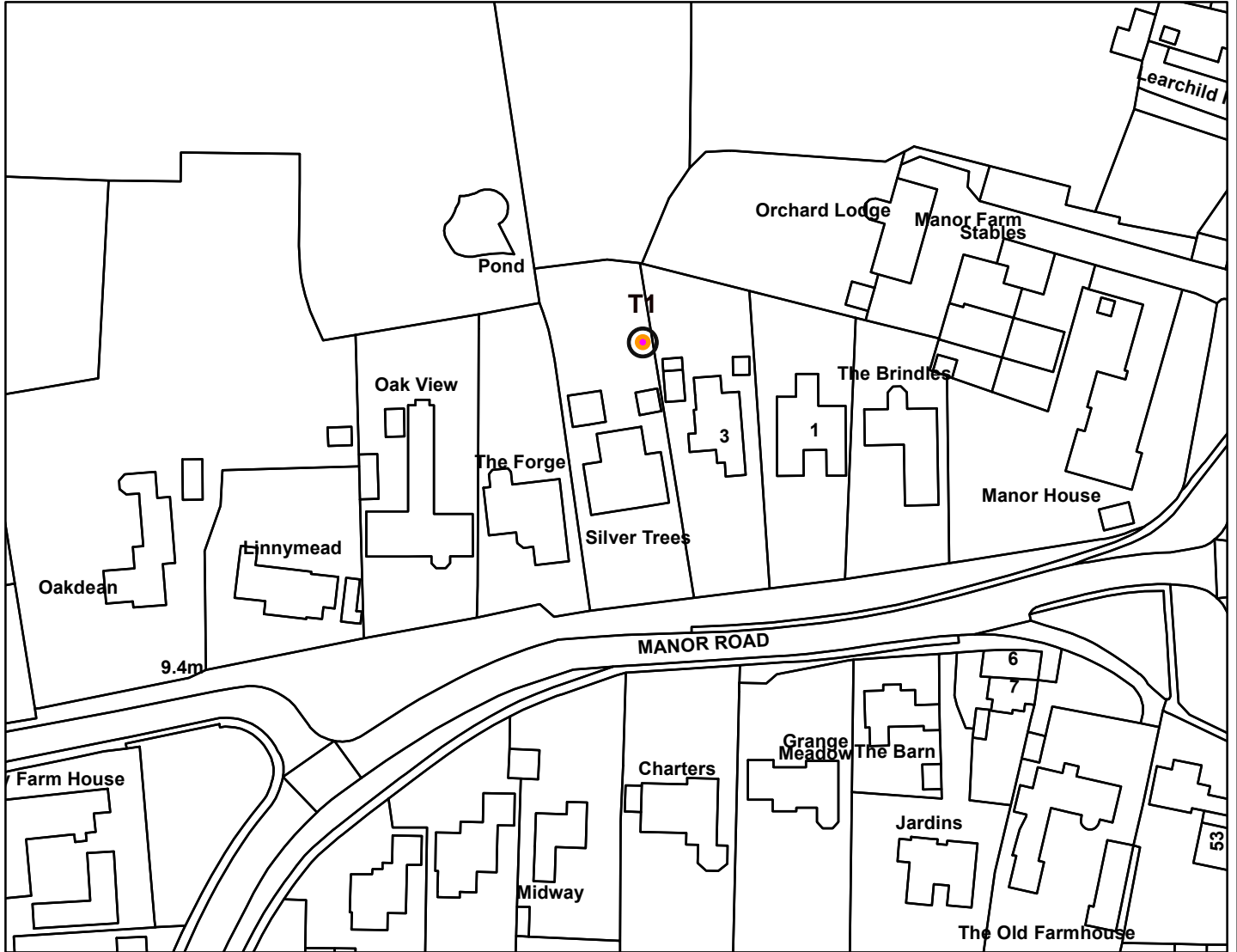
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MSA Number	0100024314



Silvertrees Manor Road North Wootton King's Lynn Norfolk PE30 3PZ



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## AGENDA ITEM NO: 9/3(b)

<b>Parish:</b>	<b>North Wootton</b>	
<b>Purpose of report:</b>	<b>To consider objections to the Tree Preservation Order (TPO) 22/TPO/00684, Silvertrees, Manor Road, North Wootton, and determine if the order be confirmed, making it permanent, or not confirmed.</b>	
<b>Location:</b>	<b>Silvertrees Manor Road North Wootton King's Lynn Norfolk PE30 3PZ</b>	
<b>Case No:</b>	<b>2/TPO/00684</b>	
<b>Grid Ref:</b>	<b>564269 324416</b>	<b>Date of service of Order: 9 May 2024</b>

**RECOMMENDATION** - That the committee confirms Tree Preservation Order 2/TPO/00684 without modification.

### Introduction

Tree Preservation Order 2/TPO/00684 was made on Thursday 9<sup>th</sup> May 2024, and is provisional for the first 6 months following its making. This provisional period allows the Council to consider any representations and objections received as part of our consultation before a decision is reached as to its future permanency. Under the Council's scheme of delegation, where objections are received, its confirmation is deferred to the Planning Committee

### Description

The protected tree is a mature Beech. This tree is situated within the rear garden of Silvertrees a detached property to the north of Manor Road. The tree is close to the garden boundary with the neighbouring property 3 Manor Road, and the crown of tree extends over the boundary.

Although the tree is at the rear of the property it can be seen in public views from Manor Road above the rooftops of the single-story dwellings and provides an attractive backdrop in views to the north as it stands to the front of Pine trees. It contributes to the landscape and amenity value of the area in which it stands, brining seasonal interest to the backdrop of evergreen Pine trees.

### Reason for the Tree Preservation Order

The tree owner contacted the Council with concerns about the tree being pruned harshly leaving the tree with an unbalanced looking crown. The tree owner is concerned that the neighbour may carry out further works to the tree that could be harmful and impact the trees longevity.

The owner requested the TPO be made to ensure that any work carried out to the tree by the neighbour is necessary, appropriate and conducted in a way that is not harmful to the tree's health.

Because of the potential threat to the tree, a Tree Preservation Order was made on Thursday 9<sup>th</sup> May 2024.

## Outline of Objection

An objection to the Tree Preservation Order in the form of a letter was received on 27<sup>th</sup> May 2024.

The objection is made on four grounds:

1. The tree does not make a visual contribution to the amenity value of the area, and it cannot be seen in public views from Manor Road.
2. The tree is excessively tall, estimated at 60-70ft in height, and there are concerns that it could fail and cause damage to property.
3. The tree has not been pruned or maintained properly for many years.
4. In autumn the tree sheds seeds which cover the garden and path.

## Response to Objection

1. The beech tree can be seen in public views. In making any new TPO an amenity evaluation checklist is used, which provides a systematic approach of determining whether or not a Tree Preservation Order is justified.  
The beech tree was assessed on 8<sup>th</sup> May 2024. The tree was found to be a mature tree in good structural and physiological condition, suitable for the location and with a retention span of at least 40 years. The tree was visible in public views from the front of the property and there was a foreseeable threat to the continued wellbeing of the tree by lateral crown reduction work to the boundary line. A copy of the checklist is appended for your information.
2. During the site inspection to assess the suitability of the tree for a new TPO, the tree appeared to be in sound physiological and structural condition, and not excessively tall for a typical beech tree of this species and location. The tree does not appear to pose any threat to property or safety.
3. The tree has been pruned, the lack of low branches indicates that the tree has been subject to regular crown lifting work and the neighbours have already carried out some lateral reduction. At the time of the inspection the tree did not appear to be in a neglected state.
4. While the natural shedding of seeds may create some garden maintenance work for the neighbours, which is seen as a nuisance, leaf and seed fall along with other natural characteristics of broadleaved trees is a normal part of a tree's life cycle, and is not considered to be grounds for harsh pruning that may be harmful to the otherwise healthy tree.

## Conclusions

The beech tree in the rear garden of Silvertrees contributes positively to the amenity value of the area in which it stands. The tree appears to be structurally and physiologically sound, and there is no evidence that it is not well maintained.

It is the Arboricultural Officer's view that the objections raised are not substantiated or sufficient to outweigh the benefits of confirming this TPO, and accordingly recommends that the Order be confirmed.

## **RECOMMENDATION**

That the committee endorses the officer recommendation to **confirm** Tree Preservation Order Order 2/TPO/00684.

## **BACKGROUND PAPERS**

## **SUPPORTING INFORMATION**

1. Tree Evaluation Method for Preservation Orders - TEMPO

# TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

## SURVEY DATA SHEET & DECISION GUIDE

Date: 8/5/2024 Surveyor: BRIAN OGDEN

**Tree details**  
 TPO Ref (if applicable): ✓ Tree/Group No: 71 Species: Beech  
 Owner (if known): \_\_\_\_\_ Location: Rear garden of Silver trees

### REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

#### Part 1: Amenity assessment

##### a) Condition & suitability for TPO

- |                          |                         |
|--------------------------|-------------------------|
| 5) Good                  | Highly suitable         |
| 3) Fair/satisfactory     | Suitable                |
| 1) Poor                  | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable              |

\* Relates to existing context and is intended to apply to severe irremediable defects only

##### Score & Notes

3 Beech tree is mature & in fair condition.

##### b) Retention span (in years) & suitability for TPO

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

\*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

##### Score & Notes

4 This tree is suitable for its location & has a retention span of at least 40+ years.

##### c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- |   |                     |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees  | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public       | Suitable            |
| 3) Medium trees, or large trees with limited view only              | Suitable            |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size              | Probably unsuitable |

##### Score & Notes

3 Large tree with views from the front of the property.

##### d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

##### Score & Notes

1

#### Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

##### Score & Notes

3

#### Part 3: Decision guide

- |              |                       |
|--------------|-----------------------|
| Any 0        | Do not apply TPO      |
| 1-6          | TPO indefensible      |
| 7-11         | Does not merit TPO    |
| <u>12-15</u> | <u>TPO defensible</u> |
| 16+          | Definitely merits TPO |

##### Add Scores for Total:

14

##### Decision:

TPO defensible

**Planning Committee - 4 November 2024**

<b>Previous Committee:</b>	07/10/2024
<b>Upcoming Committee:</b>	04/11/2024

**APPLICATIONS DETERMINED UNDER DELEGATED POWERS**

**PURPOSE OF REPORT**

(1) To inform Members of the number of decisions issued between the production of the 7 October 2024 Planning Committee Agenda and the 4 November 2024 agenda. There were 145 total decisions issued with 138 issued under delegated powers and 7 decided by the Planning Committee.

(2) To inform Members of those applications which have been determined under the officer delegation scheme since your last meeting. These decisions are made in accordance with the Authority's powers contained in the Town and Country Planning Act 1990 and have no financial implications.

(3) This report does not include the following applications - Prior Notifications, Discharge of Conditions, Pre Applications, County Matters, TPO and Works to Trees in a Conservation Area.

(4) Major applications are assessed against a national target of 60%. Failure to meet this target could result in applications being dealt with by Pins who will also receive any associated planning fee.

**RECOMMENDATION**

That the reports be noted

**Number of decisions issued between 17 September 2024 and 24 October 2024.**

	Total	Approved	Refused	Under 8 Weeks	Under 13 Weeks	Performance %	National Target	Planning Committee Decision	
								Approved	Refused
<b>Major</b>	2	1	1		2	100.0%	60%	0	0
<b>Minor</b>	58	44	14	53		91.4%	80%	4	1
<b>Other</b>	85	80	5	81		95.3%	80%	2	0
<b>Total</b>	<b>145</b>	<b>125</b>	<b>20</b>	<b>134</b>	<b>2</b>			<b>6</b>	<b>1</b>

**Planning Committee made 7 of the 145 decisions (4.8%)**



**PLANNING COMMITTEE – 04 November 2024**

**QUALITY OF DECISIONS**

This measure calculates the percentage of the total number of decisions made by the Authority on applications that are then overturned at Appeal.

The Assessment period for this measure is the two years up to and including the most recent quarter plus 9 months.

Therefore, the performance for Q3 (end of September) is calculated as follows:

Planning applications determined between 01/01/2022 to 31/12/2023 plus 9 months = 30/09/2024.

The threshold for designation for both Major and Non-Major is **10%** - this is the figure that should not be exceeded, otherwise there is a risk the Authority being designated by MHCLG.

Performance at 30 September 2024

<b>MAJOR</b>			<b>NON-MAJOR</b>		
No. of Decisions Issued	No. Allowed on Appeal	% Overturned	No. of Decisions Issued	No. Allowed on Appeal	% Overturned
97	5	<b>5.15%</b>	2949	24	<b>0.81%</b>