



East Cambridgeshire District Council

Meeting: Planning Committee

Time: 2:00pm

Date: Tuesday 9 July

Venue: The Lighthouse, 13 Lynn Road, Ely, CB7 4EG

Please note the change of date and venue

Enquiries regarding this agenda: Leah Mickleborough

Telephone: (01353) 665555

Email: leah.mickleborough@eastcambs.gov.uk

Committee membership

Quorum: 5 members

Conservative members

Cllr Christine Ambrose Smith
Cllr David Brown (Vice-Chairman)
Cllr Lavinia Edwards
Cllr Martin Goodearl
Cllr Bill Hunt (Chairman)
Cllr James Lay

Conservative substitutes

Cllr Keith Horgan
Cllr Julia Huffer
Cllr Alan Sharp

Liberal Democrat members

Cllr Chika Akinwale
Cllr John Trapp
Cllr Ross Trent
Cllr Christine Whelan
Cllr Gareth Wilson (Lead Member)

Liberal Democrat substitutes

Cllr Christine Colbert
Cllr Lorna Dupré
Cllr Mary Wade

Lead Officer: David Morren, Interim Planning Manager

9:45am: Planning Committee members meet at The Grange reception for site visits.

AGENDA

- 1. Apologies and substitutions** [oral]
- 2. Declarations of interests** [oral]

To receive declarations of interests from Members for any items on the agenda in accordance with the Members Code of Conduct.

3. Minutes

To confirm as a correct record the minutes of the meeting of the Planning Committee held on 5 June 2024

4. Chairman's announcements

[oral]

5. 23/01056/VARM

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Proposal: To vary Condition 18 (opening hours) of 18/0173/FUM, relating only to the restaurant and café

Location: Ben's Yard, Soham Road, Stuntney, Cambridgeshire

Applicant: Cole Ambrose Limited

Public access link: <http://pa.eastcambs.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S1JT0IGGFUM00>

6. 24/00300/VAR

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Proposal: To Remove Condition 10 (Occupancy) and Clause 2 (b) of S106 Agreement of previously approved E/91/0367/0 for 1 1/2 storey dwelling and garage for stable owner

Location: Old Tiger Stables House, 22A Northfield Road, Soham, Ely, Cambridgeshire

Applicant: Mrs Webster

Public access link: <http://pa.eastcambs.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SAJXPWGGKJ600>

7. Planning performance report – May 2024

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Exclusion of the Public including representatives of the Press

That the Press and Public be excluded during the consideration of the remaining items because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items there would be disclosure to them of Exempt information of categories 1 and 2 of Part I Schedule 12A to the Local Government Act 1972 (as amended)

8. TPO/E/01/24

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Confirmation of Tree Preservation Order TPO/E/01/24

Location: 56 Commercial End, Swaffham Bulbeck, Cambridge, CB25 ONE

Notes

1. Members of the public are welcome to attend this meeting. Please report to the Lighthouse directly and access for the public will begin 30 minutes before the start of the meeting. The Lighthouse is close to the main Council offices at the Grange, where visitor car parking on-site is limited to 1h but there are several [free public car parks close by](https://www.eastcambs.gov.uk/parking/car-parks-ely) (<https://www.eastcambs.gov.uk/parking/car-parks-ely>). Please be aware that we do allocate spaces at the meeting on a “first come, first served” basis and where necessary may have to limit attendance in accordance with any fire restrictions for the venue. Due to the alternative venue, on this occasion, the meeting will NOT be livestreamed.
2. The Council has a scheme to allow [public speaking at Planning Committee](https://www.eastcambs.gov.uk/committees/public-speaking-planning-committee) (<https://www.eastcambs.gov.uk/committees/public-speaking-planning-committee>). If you wish to speak on an application being considered at the Planning Committee please contact the Democratic Services Officer for the Planning Committee democratic.services@eastcambs.gov.uk, to **register by 10am on Monday, 8 July**. Alternatively, you may wish to send a statement to be read at the Planning Committee meeting if you are not able to attend in person. Please note that public speaking, including a statement being read on your behalf, is limited to 5 minutes in total for each of the following groups:
 - Objectors
 - Applicant/agent or supporters
 - Local Parish/Town Council
 - National/Statutory Bodies
3. The Council has adopted a ‘Purge on Plastics’ strategy and is working towards the removal of all consumer single-use plastics in our workplace. Therefore, we do not provide disposable cups in our building or at our meetings and would ask members of the public to bring their own drink to the meeting if required.
4. If the fire alarm sounds, please follow instructions provided by Council staff or Lighthouse staff. Please make Council staff present at the meeting if you will require additional support in the event of a fire evacuation.
5. Reports are attached for each agenda item unless marked “oral”.
6. If required, all items on the agenda can be provided in different formats (such as large type, Braille or audio tape, or translated into other languages), on request, by calling main reception on (01353) 665555 or e-mail: translate@eastcambs.gov.uk
7. If the Committee wishes to exclude the public and press from the meeting, a resolution in the following terms will need to be passed:

“That the press and public be excluded during the consideration of the remaining item no(s). X because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item(s) there would be disclosure to them of exempt information of Category X of Part I Schedule 12A to the Local Government Act 1972 (as amended).”



East Cambridgeshire District Council

Minutes of a Meeting of the Planning Committee

Held at The Grange, Nutholt Lane, Ely, CB7 4EE at 2:00pm on
Wednesday 5 June 2024

Present:

Cllr Chika Akinwale
Cllr David Brown
Cllr Martin Goodearl
Cllr Julia Huffer (substitute for Cllr Christine Ambrose-Smith)
Cllr Bill Hunt
Cllr James Lay
Cllr Ross Trent
Cllr John Trapp
Cllr Christine Whelan
Cllr Gareth Wilson

Officers:

Maggie Camp – Director Legal Services
Kevin Drane – Trees Officer
Gemma Driver – Senior Planning Officer
Leah Mickleborough – Interim Senior Democratic Services Officer
David Morren – Interim Planning Manager
Cameron Overton – Trainee Democratic Services Officer
Andrew Phillips – Planning Team Leader
Dan Smith – Planning Team Leader
Angela Tyrrell – Senior Legal Assistant

In attendance:

Richard Conroy (Agent, Agenda Item 6)
Neil Pistol (Applicant, Agenda Item 6)
Chris Frost (Agent, Agenda Item 7)

2 other members of the public

Sarah Parisi – Development Services Senior Support Officer
Helen Stratton – Planning Support Officer

11. Apologies and substitutions

Apologies for absence were received from Cllrs Christine Ambrose Smith and Lavinia Edwards

Cllr Julia Huffer was attending as a substitute.

12. Declarations of interest

No declarations of interest were made.

13. Minutes

The Committee received the Minutes of the meeting held on 1 May 2024

It was resolved unanimously:

That the Minutes of the Planning Committee meeting held on 1 May 2024 be confirmed as a correct record and be signed by the Chairman.

14. Chairman's announcements

The Chair welcomed Cllr Ross Trent to the committee and confirmed to the Committee that the meeting scheduled for 3 July will be moving to 9 July in the Lighthouse, due to the timing of the general election.

TPO/E/12/23 3LX Land Adjacent To 104 Broad Street, Ely CB7 4BE

Kevin Drane, Trees Officer presented a report (Z8, previously circulated) recommending confirmation of a Tree Preservation Order (TPO) application for one Himalayan Birch Tree to the side of 104 Broad Street, Ely.

The Trees Officer drew members attention to the representations received, and in particular concerns raised by a neighbour who had received an insurance report which indicated the tree may be causing damage to their property. He confirmed that in addition to representations, the key considerations were the amenity value of the tree, and the visual impact of its loss on the local landscape.

In response to members' questions, the officer confirmed that the Council had received the insurance report, and although queries had been raised about the report, no response had been received. It was also clarified that the roots of the tree had spread laterally but were unlikely to go underneath buildings.

Several members of the Committee expressed their support for the tree which they believed was an attractive addition to the environment. It was proposed by Councillor Brown and seconded by Councillor Wilson to confirm the Tree Preservation Order.

It was resolved unanimously That the TPO/E/12/23 be **CONFIRMED**, for the following reasons: The tree is a prominent feature, visible from the public realm, in good health, it offers a significant visual contribution to the amenity

of the local landscape in this part of Ely where there are a limited amount of trees visible to those using Broad Street.

15. 20/01174/FUM –Mereside Works, 25 Mereside, Soham, Ely Cambridgeshire

Gemma Driver, Senior Planning Officer presented a report (Z9, previously circulated) recommending refusal of an application seeking full planning permission for demolition of existing buildings on the site and the erection of 91 dwelling houses (63 dwelling houses and 28 flats), a ground floor commercial unit for class E use, which includes 193 parking spaces on-site and a children's play area.

The Senior Planning Officer drew members' attention to the update sheets circulated ahead of the meeting and summarised the matters raised within them.

The main considerations for the application were deemed to be:

- **Principle of development** – the site is allocated in the local plan as part of the wider SOH2 allocation. It is within the development framework and the principle of development is considered acceptable. Nonetheless, in accordance with policy SOH2, the site does not appropriately establish a station square setting or relate to the station setting, and does not include have an appropriate building orientation, supply of public open space, landscaping, or allocation of industrial use
- **Market housing mix** - the mix is consistent with policy HOU1 and is considered acceptable
- **Affordable housing** – there is a provision of 13% affordable housing proposed on site, which is below the 30% required by policy HOU3 and below the 20% required by the viability assessment report dated April 2019
- **Design, character and density – overall** the density proposed is not unreasonable, however there are a range of concerns related to the character and design including lack of appropriate frontage to the station and the integration of blocks B and C to the wider public realm.
- **Residential amenity** – the impact on existing neighbouring properties is considered acceptable. However, for future occupiers, there are concerns about overbearing impacts on specific plots, and some inconsistencies between plans as to the impact. Blocks D and E do not provide residents with access to external garden space. Although there are some excessive noise impacts to specific plots from the railway line, these are not deemed sufficient to warrant refusal.
- **Highways, access and movement** – It was confirmed that the internal roads would not be adopted as they do not meet the necessary standards for shared space roads. There is an under provision of parking on the site, which could exacerbate safety concerns if it

resulted in additional on-street parking. There is an unacceptable impact on highway and pedestrian safety.

- **Biodiversity and trees** – there is concern regarding the amount of landscaping proposed to create a high quality public realm, contrary to the natural environment Supplemental Planning Document. Whilst there is biodiversity loss on site, the applicant proposes a net biodiversity gain offsite.
- **Flood risk and drainage** – no objections raised by statutory consultees
- **Historic Environment** – The site is considered to have a neutral impact on the conservation area and is acceptable in respect of policy ENV11
- **Infrastructure and s.106** – a s.106 agreement has not been provided
- **Other matters** – there are inconsistencies between the submitted plans which mean it is not possible to verify if it accords with relevant policies.

The officer concluded their presentation by setting out the reasons why refusal of the application was recommended.

The applicant, Neil Pistol, set out the history of development of the site which received approval for 35 properties in 2017. The agent, Richard Conroy, referred to the history of the current planning application which had been submitted in 2020. Further revisions had been made and submitted to the Council which he felt addressed the concerns with the current proposals before the committee, but had not been accepted by officers. As a result, he requested the committee defer a decision on this application to allow fair consideration of a revised application on the site.

The Chair invited members to ask questions of the applicant and agent.

Councillor Akinwale queried the shortfall of affordable housing on the site and the public space provision. The applicant confirmed the reason for the shortfall in affordable housing was due to following the same guidelines and design parameters used for the previous application allowed on the site. Increasing provision of affordable housing is likely to be unviable. It was expected that the properties would more than exceed the space standards. The agent emphasised the core reason for asking for deferral was the issues with the site limitations which he felt had been addressed through revisions, most notably improvements to open space provision. The applicant identified the limitations including a higher proportion of roadway on site and gas main and waterway course running through the site, and the requirement for flood mitigation. The applicant stated that the later iterations address the concerns in relation to the public space.

Councillor Trapp queried the provision of parking on site, and the agent confirmed it would be possible to provide electric charging points through conditions. The agent also confirmed although provision of industrial space on site had been considered, it was not felt consistent with the site allocation.

Councillor Lay queried the level of affordable housing in the revised application; the agent confirmed that a minimum of 20% affordable housing will be delivered and the applicant was in discussion with a housing developer for the affordable housing provision.

Councillor Huffer asked a query about whether the revised plans addressed the concerns regarding highways adoption, and whether the housing density could be lowered to improve site amenity. The agent confirmed they would assess all options on site

In response to Councillor Wilson, the applicant confirmed that due to the financial costs of submitting a new application, they had elected not to withdraw the application and instead seek deferral by the Committee.

The Interim Planning Manager confirmed that the applicant had been given the option to withdraw and had been asked if the additional plans were to be subject to re-consultation but were not given the affirmative, the last formally submitted set of plans had been reconsulted upon. There is no obligation on the planning authority to accept revised plans. He confirmed that a viability assessment had not been re-undertaken in relation to the affordable housing element as there were other aspects of the application that could not be supported and addressed matters raised by the applicant and agent that were not material planning considerations. He confirmed that the allocation policy provided up to approximately 90 dwellings and 0.5 ha minimum office industrial.

Members asked questions of officers. In response to Councillor Akinwale, officers confirmed that electric and disabled parking could be dealt with through conditions and following a query from Councillor Lay, that the potential impact of the train line on residential amenity had been considered and could be adequately mitigated. Councillor Trapp queried the housing allocation, and it was clarified that the 91 home allocation in policy SOH2 applied to both this site, and the element of the allocation in separate ownership, but that would not prevent further development on either site. The housing service had confirmed the need for affordable housing and were satisfied with the housing mix proposed. If the application was deferred, then there would need to be a clear rationale for doing so.

In debate, members raised a range of concerns about the proposals before them, most notably in relation to the affordable housing provision and the site design and layout. Councillor Huffer proposed refusal for the reasons set out in the report, which was seconded by Councillor Wilson.

It was resolved with 9 votes in favour and 1 abstention

That the planning application 20/01174/FUM is **REFUSED** for the reasons set out in paragraphs 1.2 to 1.9 of the planning committee report

16. 23/01338/OUM - Land At Cambridge Road, Stretham Cambridgeshire

Andrew Phillips, Planning Team Leader, presented a report (Z10, previously circulated) recommending approval of an application seeking outline planning permission for the erection of up to 83 affordable homes with associated access, parking and landscaping with all matters reserved except for access.

The Planning Team Leader reminded members that the site already had planning permission, but this scheme was larger than previous approvals. The committee had previously considered the application in April 2024 but had requested deferral to allow for the conclusions of an independent transport report to be considered. The report, produced by Stantec, had been appended to the agenda and appeared to suggest that a controlled crossing would be more suitable on the site and the footway provision could be improved.

Officers identified the site will require a road safety audit and discussion between the developer, local planning authority and the highways authority to determine the final scheme. As a result, the recommendation was to defer the application to allow an acceptable highways scheme to be agreed, and if it could not, then to delegate officers to refuse the application.

The Interim Planning Manager confirmed members were also being requested to ensure any other concerns they held regarding the application were considered at the meeting to so as not to waste time/resource and expense to all parties should the application be unacceptable in principle further down the line.

The planning agent, Chris Frost, addressed the meeting. He noted that the Stantec report did not conclude the current highways solution is unacceptable, and some of the points raised in the Stantec report, such as land ownership, had been resolved. Cambridgeshire County Council, as highways authority, had indicated the existing highways scheme was acceptable. However, the housing association bringing forward the application was keen to explore the potential of a controlled crossing, and the highways authority had agreed to consider it. As a result, proposals were being worked up and will be submitted if they are supported by the highways authority. He was hopeful that the situation could be resolved by August and would not need the six months.

The chair invited members to ask questions of the Agent. Councillor Wilson queried the siting of the crossing, and whether any restriction could be put in place to ensure those exiting the development could only turn left. The siting was clarified, and the Agent explained the highways authority believed that a right turn was acceptable out of the development, and he could not propose solutions which were unacceptable to the highways authority.

Councillors Lay and Huffer raised concern as to whether the highways authority would support the crossing and ensure approval of the design is progressed on a timely basis. The agent confirmed the applicant was

committed to making the crossing happening but ultimately it was down to the highways authority.

Councillors Akinwale queried whether a speed camera could be placed near the site, and Councillor Trapp confirmed the speed of the road before he queried whether the Agent could request the parish council to support this with the applicants funding the camera. The Agent confirmed there were limitations to what the applicant could do, but ultimately if there was a controlled crossing installed this would be accompanied by other traffic slowing measures. Officers clarified that the road safety audit would look at potential measures.

The Chair noted that many of the letters of support appeared to have very similar content and queried how the social housing need had been calculated. The Agent indicated that social media was used to attract people to supporting the application and confirmed how the social housing need had been determined.

Councillors Goodearl, Lay, Trapp and Huffer made clear their expectation that if the highways authority refused to support the controlled crossing, then they should be expected to come to committee to justify their position. This was widely supported across the committee and officers agreed to strongly urge highways authority officers to attend if this situation arose, and for this position to be reflected in the minutes. It was also confirmed that if the process took longer than six months to resolve then an update report could be presented to the Committee.

In debate, the Chair noted that it was clear that there was concern about the road and the need for a crossing, and the potential implications if a crossing was not put on the site.

Councillors Trapp, Whelan and Akinwale raised concerns about the data used to support traffic assessments on the site, and the need for clarity on traffic movements. Councillor Whelan shared experiences of using the road regularly.

Councillor Trapp proposed, and Councillor Akinwale seconded to defer the application in line with the officer recommendation.

The Interim Planning Manager requested the committee confirm that they were satisfied with other matters material to the outline application. There was consensus across the committee that this was the case, albeit the committee agreed that if the outline application was approved, reserved matters should be brought to it for approval.

It was resolved unanimously:

That the planning application 23/01338/OUM be **DEFERRED** in accordance with the following terms:

- a) In order to allow the submission, formal consultation and presentation of an acceptable highways scheme at Planning Committee within a period of 6 months and
- b) The Committee delegates authority to refuse the application in the event that the Applicant does not agree any necessary extensions to the statutory determination period to enable the completion of the works set out under a) and final determination of the application
- c) That the reserved matters to come back before committee for approval (if the outline application is approved)
- d) That the planning committee do not have concerns relating to other aspects of the outline application before them

17. Planning performance reports – April 2024

David Morren, Interim Planning Manager, presented a report (Z11, previously circulated) summarising the performance of the Planning Department in April 2024.

Councillor Trapp noted that the small text on some presentations made it hard for Councillors and the public to review the information. Officers committed to reviewing how the information could be presented in future.

It was resolved unanimously:

That the Planning Performance Reports for April 2024 be noted.

The meeting concluded at 4:18pm.

Chairman.....

Date.....

23/01056/VARM

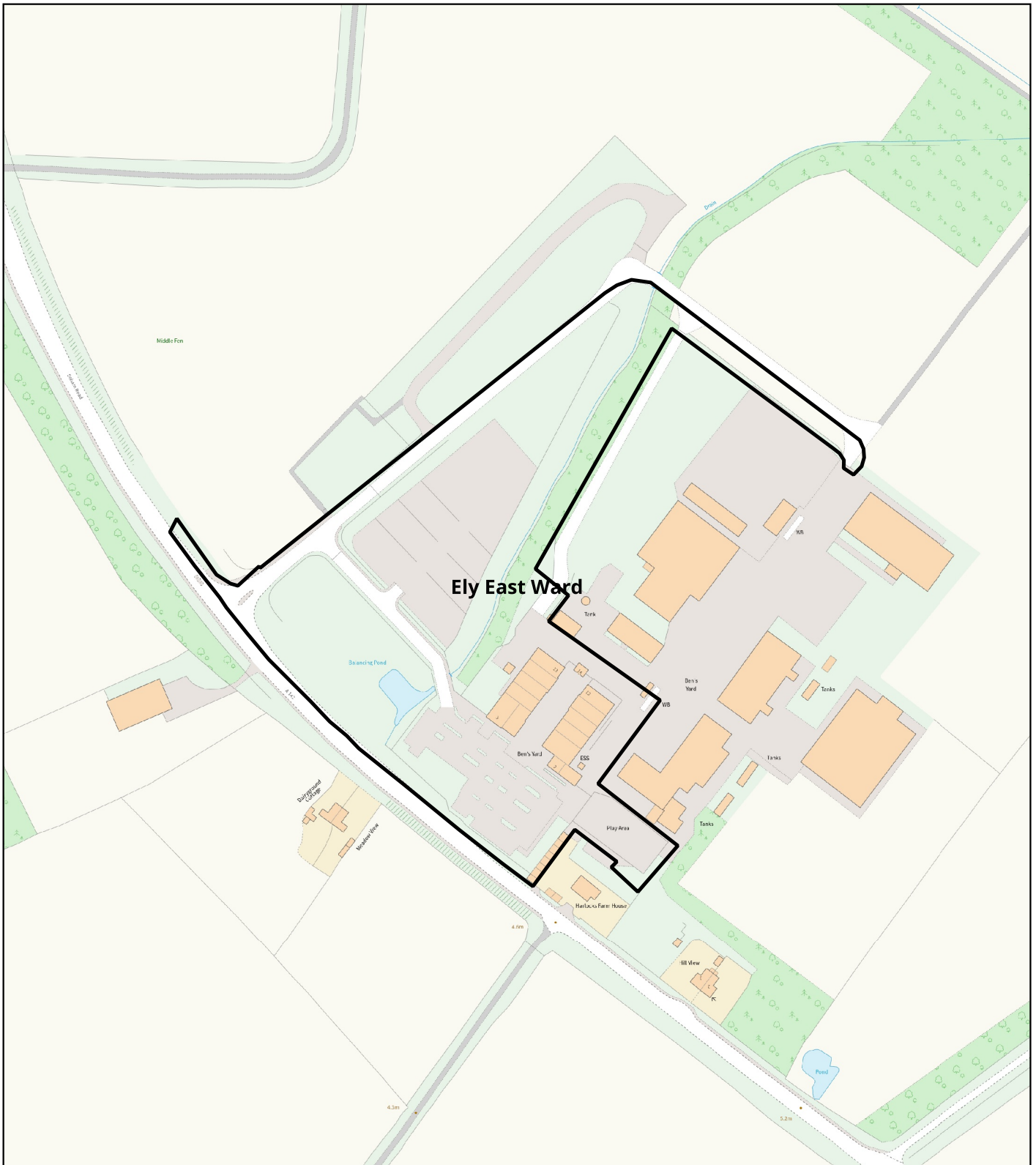
Bens Yard
Soham Road
Stuntney
Cambridgeshire

To vary Condition 18 (opening hours) of 18/01793/FUM, relating only to the restaurant and café

To view all of the public access documents relating to this application please use the following web address or scan the QR code:

<https://pa.eastcambs.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S1JT0IGGFUM00>





23/01056/VARM

Bens Yard
Soham Road
Stuntney



East Cambridgeshire
District Council

Date: 20/06/2024
Scale: 1:3,000



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TITLE: 23/01056/VARM

Committee: Planning Committee

Date: 07.02.2024

Author: Senior Planning Officer

Report No: Z29

Contact Officer: Gemma Driver, Senior Planning Officer
gemma.driver@eastcambs.gov.uk
01353 616483
Room No 011 The Grange Ely

Site Address: Bens Yard Soham Road Stuntney Cambridgeshire

Proposal: To vary Condition 18 (opening hours) of 18/01793/FUM, relating only to the restaurant and café

Applicant: Cole Ambrose Ltd

Parish: Ely

Ward: Ely East

Ward Councillor/s: Kathrin Holtzmann
Mary Wade

Date Received: 25 September 2023

Expiry Date: 16 July 2024

1.0 RECOMMENDATION

1.1 Members are recommended to REFUSE the application for the reason stated below:

1.2 The extension of the opening hours into the evening would result in the restaurant and café that were originally permitted as ancillary elements operating separately and therefore being tantamount to a new evening restaurant facility in the countryside. Policy COM 1 of the East Cambridgeshire Local Plan 2015 (as amended 2023) states that proposals for ‘town centre uses’ outside of town centres may only be permitted providing there would be no adverse effect on the vitality and viability of the nearest town centre, or any other centres. The extended opening hours would create a substantial turnover and has the potential to detract trade from the existing centres of Soham and Ely. The application has failed to identify a need to expand this element of the existing facility in order to ensure its ongoing viability.

The proposal is therefore contrary to the requirements of Policies COM 1 and EMP 7 the East Cambridgeshire Local Plan 2015 (as amended 2023) together with Chapter 7 of the NPPF.

2.0 SUMMARY OF APPLICATION

- 2.1 The application seeks a variation of condition 18 (opening hours) of planning permission 18/01793/FUM under Section 73 of the TCPA 1990. That permission was for the demolition of existing buildings and the erection/ conversion of buildings to provide retail, café / restaurant/ leisure / wellbeing and sui generis uses together with ancillary storage, office & administration space in association with these uses, access, parking, children's play area, landscaping, service yards & associated infrastructure.
- 2.2 Condition 18 of the full permission states:
“The use hereby permitted shall take place only between the hours of 07:00 - 19:00 each day Monday to Saturday and 08:00 - 17:00 on Sundays, Bank Holidays and Public Holidays, with the exception of any seasonal events (up to 8no per calendar year), where said event shall only take place between the hours of 07:00 and 22:00 on any day. Deliveries to the site shall take place only between the hours of 06:30 - 19:00 Monday to Saturday and 07:30 - 17:00 on Sundays, Bank Holidays and Public Holidays.”
- 2.3 The variation to condition 18 seeks to extend the opening times for the restaurant and café units only. The application proposes that the restaurant and café units would close at 23:00 each day, as opposed to the originally approved closing time of 19:00 Monday – Saturday and 17:00 on Sundays, Bank Holidays and Public Holidays. All remaining units would continue to operate in line with the originally approved opening hours.
- 2.4 The application has been called into Planning Committee by Chair and Vice Chair due to the original permission being determined at Planning Committee.
- 2.5 The full planning application, plans and documents submitted by the Applicant can be viewed online via East Cambridgeshire District Council’s Public Access online service, via the following link <http://pa.eastcambs.gov.uk/online-applications/>.

3.0 PLANNING HISTORY

3.1 Site History

18/01793/FUM – original application

Proposed demolition of existing buildings and the erection/ conversion of buildings to provide Class A1 (Retail), Class A3 (Cafe/ Restaurant), Class D2 (Leisure/ wellbeing), Sui Generis (Micro-brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Approved

7 May 2020

23/00367/VARM

To vary condition 25 (floor space limit) of previously approved 18/01793/FUM for the proposed demolition of existing buildings and the erection/ conversion of buildings to provide Class A1 (Retail), Class A3 (Cafe/ Restaurant), Class D2 (Leisure/ well-being), Sui Generis (Micro-brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Withdrawn

11 May 2023

23/00161/VARM

To vary condition 31 (no retail floor space to be occupied by a retail multiple) of previously approved 18/01793/FUM for proposed demolition of existing buildings and the erection/ conversion of buildings to provide class a1 (retail), class a3 (cafe/ restaurant), class d2 (leisure/ well-being), sui generis (micro- brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Withdrawn

2 May 2023

3.2 Adjacent Site History

23/00404/FUL – Building to rear of Ben’s Yard

Change of use of existing agricultural building to flexible B2, B8 & agricultural use, and erection of additional hardstanding and associated infrastructure

Approved

29 August 2023

23/00761/FUL – Land Northeast of Ben’s Yard and Harlocks Farm access road

Development of four tennis courts with external lighting, fencing, clubhouse and associated parking, drainage, utilities and landscaping

Refused

10 October 2023

Pending Decision

24/00323/FUL – Land North West of Harlocks Farm

Change of use of agricultural field to a dog park with fencing, double access gate and proposed footpath

Pending consideration

4.0 THE SITE AND ITS ENVIRONMENT

4.1 The application site, known as ‘Ben’s Yard’, gained consent under application reference no.18/01793/OUM. That permission gave consent for demolition of existing buildings together with erection of new buildings and conversion of existing buildings to provide A1 (retail), A3 (café and restaurant), D2 (leisure) and Sui Generis uses.

- 4.2 The site itself is accessed via a new access off the A142 that was approved under the original application and benefits from a car park to the front of the site. To the West of the units is the 'overspill' car park.
- 4.3 The restaurant unit and café unit are located within units 3, 8 and 9, positioned towards the front of the site. Unit 3 (Café) comprises 125 sqm gross floorspace and Units 8 and 9 (Restaurant) comprises 300 sqm.
- 4.4 For clarity, since the original permission was granted the use classes above have been updated under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 that came into force on 1st September 2020. A1, A3 and D2 (leisure) are all now known as Class E.

5.0 RESPONSES FROM CONSULTEES

- 5.1 Responses were received from the following consultees and these are summarised below. The full responses are available on the Council's web site.

Parish - 10 October 2023

The City of Ely Council has concerns regarding the extension of the opening times and the impact this will have on the nighttime economy in Ely.

Ward Councillors - No Comments Received

Consultee For Other Wards In Parish - No Comments Received

Environmental Health - 2 October 2023

Thank you for consulting us on the above application.

I understand that this application seeks an extension of the permitted opening times for the consented restaurant and café only and that these are proposed to be until 23:00.

I have no concerns to raise concerning this.

Local Highways Authority - 19 October 2023

Upon reviewing the information submitted as part of this application, I do not object to the variation of Condition 18 (opening hours).

Tourism (Visit Ely) - No Comments Received

Design Out Crime Officers - 10 October 2023

I have read the documents, and I have no comment.

Cambridgeshire Fire And Rescue Service - No Comments Received

- 5.2 A site notice was displayed near the site on 20 October 2023 and a press advert was published in the Cambridge Evening News on 5 October 2023.

5.3 Neighbours five neighbouring properties were notified and the responses received are summarised below. A full copy of the responses are available on the Council's website.

6.0 THE PLANNING POLICY CONTEXT

6.1 *East Cambridgeshire Local Plan 2015 (as amended 2023)*

GROWTH 1	Levels of housing, employment and retail growth
GROWTH 2	Locational strategy
COM 1	Location of retail and town centre uses
COM 7	Transport impact
COM 8	Parking provision
EMP 7	Tourist Facilities and Visitor Attractions

6.2 Supplementary Planning Documents

Design Guide

Contaminated Land

Flood and Water

Natural Environment SPD

Climate Change SPD

6.3 *National Planning Policy Framework (December 2023)*

- 2 Achieving sustainable development
- 4 Decision-making
- 6 Building a strong, competitive economy
- 7 Ensuring the vitality of town centres
- 8 Promoting healthy and safe communities
- 9 Promoting sustainable transport
- 11 Making effective use of land
- 15 Conserving and enhancing the natural environment

6.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted East Cambridgeshire Local Plan (2015) (as amended 2023) and the Cambridgeshire and Peterborough Minerals and Waste Local Plan (2021).

7.0 PLANNING COMMENTS

7.1 The original planning permission (18/01793/FUM) the application seeks to vary is extant and has established the acceptability of the principle and detailed impacts of the originally proposed development, subject to conditions.

7.2 This report will only cover the material differences proposed due to the requested changes to Condition 18 (opening hours) for the existing café and restaurant that operate from the site.

7.3 The proposed variation would increase the opening hours of the restaurant (units 8 and 9) and café (unit 3) uses from 07:00 - 19:00 Monday to Saturday and 08:00 -

17:00 on Sundays, Bank Holidays and Public Holidays, to 07:00 - 23:00 seven days a week. All remaining units would continue to operate in line with the currently conditioned opening hours. The proposed change in opening hours would extend the opening by 4 hours Monday – Saturday and by 6 hours on Sundays and bank holidays. This generates an additional 30 hours over the course of a seven day period and would allow evening opening each day of the week where currently there is no evening opening.

7.4 *Relevant background*

7.5 The original application approved the site for a mixed-use development, as outlined above. The previous Officer Report for that application noted how Officers worked diligently on the previous approval to protect the existing local centres of Ely, Soham and Littleport. The original Retail Impact Assessments (RIA) undertaken by the applicant and the reviews from Council’s Retail Consultant at the time advised that the proposal would offer a unique artisan experience that would be different to the services that are on offer within local centres.

7.6 The applicants RIA submitted under the original application noted how the scheme is retail-led and there would be ‘ancillary’ food and drink units. In addition, the original RIAs also emphasised how the suggested opening times were unlikely to be attractive to branded operators nor those seeking to cater for evening diners. This again narrowed the type of food and drink operator that the existing centres would be seeking to attract. It is therefore clear from the original consent that the restaurant and café elements were only permitted to serve the primary retail function of the site during their operating hours.

7.7 Ben’s Yard has been open to the public since 29 June 2023, with the current application submitted three months after its opening on 25 September 2023. Therefore, the Council contend that arguments about viability are limited due to its limited operating period.

7.8 It is important to the determination of this current variation application to note the parameters to which the original application was determined within. A very detailed and careful consideration was given to just how much development could be supported on the site without resulting in impacts to the local centres. It was therefore only accepted on the basis of the original proposals that the site would be unlikely to result in significant effects to nearby local centres.

7.9 **Principle of Development**

7.10 *Applicable policy*

7.11 The overarching aim of Policy COM 1 of the Local Plan is to focus main town centre uses within identified town centres wherever possible. This is in response to the government’s commitment to sustaining and enhancing the vitality and viability of the centres. Policy COM 1 of the East Cambridgeshire Local Plan states:

7.12 Proposals for retail and ‘town centre uses’ outside of the town centres of Ely, Soham and Littleport may be permitted under the following circumstances:

- The sequential approach has been followed and there are no suitable sequentially preferable sites available.
- The site is suitable for the proposed use and the building form and design is appropriate in the local context.
- The scale and type of development is directly related to the role and function of the centre or its locality, in accordance with the hierarchy in Policy GROWTH 2.
- For retail developments of 280m² net floorspace or larger, there would be no adverse effect on the vitality and viability of the nearest town centre, or on any other centres, as demonstrated in a Retail Impact Assessment.
- The development would enhance the character and attractiveness of the centre and its locality, and not adversely affect residential amenity; and
- The development would be accessible by a choice of means of transport (including public transport, walking and cycling), and the local transport system is capable of accommodating the potential traffic implications.

7.13 Policy COM 1 goes on to say, as an exception to this approach, support may be given to:

- Proposals for tourist facilities and attractions which require a rural location, or are associated with the expansion of existing tourist facilities/attractions in the countryside – and which accord with criteria in Policy EMP 7.

7.14 Policy EMP 7 of the East Cambridgeshire Local Plan (as amended 2023) states:

7.15 Proposals for new or extended tourist facilities or attractions will be supported where it can be demonstrated that:

- There is an identified need to create new facilities or to expand or improve existing visitor attractions and facilities to ensure their continued viability.
- The proposal is of an appropriate scale and nature relative to its location, and would not (by itself or cumulatively) have a significant adverse impact in terms of the amount and nature of traffic generated.
- The character & appearance of the area and natural assets would be maintained and enhanced.
- The proposal maximises opportunities for sustainable travel including walking, cycling and public transport; and
- Opportunities to reuse existing buildings have been explored.

7.16 Chapter 7 of the NPPF seeks to ensure that planning decisions support the role that town centres play at the heart of local communities by taking a positive approach to their growth.

7.17 *Assessment of expansion of existing facility*

7.18 It is first necessary to consider the application in connection with the existing Ben's Yard facility, and thus in accordance with EMP 7 of the ECDC Local Plan, as set out above. The policy seeks to support proposals to extend existing attractions where it has been demonstrated that there is an identified need to expand the facility to ensure their continued viability.

- 7.19 A new Impact Assessment (IA) was submitted by the applicant in support of the application. This IA notes that the overheads associated with the café and restaurant are reflective of a 'full time' operation and thus seek to benefit from evening trading periods. The IA outlines that the applicant finds the existing condition to be acceptable in respect of the general retail use of the site, but too restrictive in terms of providing for commercially viable food and beverage operations.
- 7.20 Whilst it is accepted that Policy EMP 7 seeks to ensure continued viability of existing enterprises, the supporting information has not clearly demonstrated how the existing enterprise is unviable. The IA focuses predominantly on the potential impacts to existing centres of Soham and Ely. The submitted IA has not been submitted as a comprehensive viability appraisal relating to the wider Ben's Yard site. The pre-ambule to Policy EMP 7 states that applicants will be expected to submit evidence of genuine need to support the case for the proposal. Without a detailed assessment as to what the existing 'full time overheads' are, details as to how the applicant has sought to investigate reducing the overheads to meet their daytime overheads only, and thus reducing outlays, a vague reference to viability contained within an Impact Assessment cannot be accepted.
- 7.21 Furthermore, in considering the viability and proposed opening hours it is important to note that the applicants are suggesting treating the restaurant and the café as one of the main income generators of the site. However, the original application was supported by a Retail Impact Assessment (RIA) and a series of supplementary notes from their retail consultants that provided an assessment of the proposed café and restaurant units and the impact they would have on nearby local centres. Those RIAs noted that the proposed restaurant and café units were to be 'ancillary' elements to the main functioning of the site:
- 7.22 *"The proposed Harlocks Farm scheme is seeking to include a small amount of A3/A4 offer, which could be in the form of a café/ restaurant and would provide day time dining"* (pg. 12 LSH Letter Dated 11 June 2019).
- 7.23 With the details of the previous application assessed, the conclusion was reached that the restaurant and café units were considered secondary elements to support the primary retail functions of the site.
- 7.24 With this in mind, although the application is to extend the opening hours of an existing out of town attraction, the extension to the opening hours would be catering towards an evening dining experience that the main site does not currently offer. The café and restaurant units would therefore be separated from the wider site in respect of their operation and would expand significantly beyond their permitted ancillary contribution to the main retail facility contrary to the considerations of the original scheme.
- 7.25 As such, the proposal runs contrary to the requirements of Policy EMP 7 that requires a genuine need to be identified to support an existing facility. In addition, it is fundamentally not accepted that the proposal would form an extension to an existing tourist facility as it is concluded that the proposal would be tantamount to a new evening restaurant use in the countryside. Therefore, given that the restaurant and café would extend beyond a time that supports the primary retail role of the site and as the application does not present a persuasive viability argument regarding the

need for the evening use, it is relevant in this instance to consider the impact of this proposal as a stand-alone retail enterprise.

7.26 *New evening restaurant use in countryside*

7.27 As outlined above, as a robust viability argument has not been advanced, and the original application was assessed with the site's main function providing an “*artisan’ experience which is qualitatively different to that typically secured on the High Street*” (LSH Impact Assessment, dated January 2024), it is necessary to assess the proposal as a new restaurant and café in a countryside location and consider the proposal under Policy COM 1 which seeks to focus main town centre uses within identified town centres wherever possible.

7.28 The existing café and restaurant are supporting elements to the functioning of the wider Ben’s Yard development. However, despite the applicant’s assertion in Paragraph 3.11 of the 2024 Impact Assessment that “*the purpose of the on-site food and beverage provision remains the same, i.e. it will principally cater for those already present at Ben’s Yard and those passing along the A142*”. the extension of the opening hours of the restaurant and cafe units beyond those of the retail elements would no longer be serving existing consumers at Ben’s Yard. Instead, the proposal would attract evening trade and new visitors to the site that are not there for the primary shopping function.

7.29 The original RIA noted how “*whilst there may be some competition with existing independent food and beverage operators in Ely City Centre, we do not believe that the provision of ancillary A3/A4 floorspace at Harlocks Farm would prevent new investment in the city’s food and beverage offer*” (pg.14 LSH Letter Dated 11 June 2019). However, the extended hours would no longer facilitate an ancillary use, and this instead would become the primary function of the site in the evenings with the hours extending beyond the retail element of the site.

7.30 After receiving the officer recommendation of refusal due to concerns that the proposal has a potential to impact the existing centres of Soham and Ely the aforementioned January 2024 Impact Assessment was submitted by the applicant in support of the application. The report concludes that 35% of the turnover from the café and restaurant would be secured during the extended hours of operation proposed in this application and this would equate to £0.89million.

7.31 Having considered the results of this report, the Council are of the view that the impact of drawing £0.89 million of trade away from existing centres has the potential to result in a significant impact to the vitality of existing centres in Soham and Ely. The Council consider that this is not an insignificant amount of money that could otherwise be directed towards restaurants in Ely and Soham that already exist and operate at the hours proposed.

7.32 The proposal therefore runs contrary to Policy COM 1 that requires proposals for town centre uses outside of town centres to demonstrate that there would be no adverse effect on the vitality and viability of the nearest town centre, or on any other centres.

7.33 *Summary of principle of development*

- 7.34 The existing functioning of the site with the café and restaurant opening times being in line with the retail opening hours was originally considered reasonable to support the shoppers and visitors to the site's attractions and these forming ancillary uses.
- 7.35 The proposal to extend the opening hours of the café and restaurant beyond those of the main site is considered to detach these uses from the originally permitted facility. The extension of these uses is tantamount to creating a new evening restaurant in the countryside and therefore has the potential to detract trade out of existing centres that currently facilitate such evening/nighttime uses.
- 7.36 The proposal is therefore in conflict with the aims of Policy COM 1 of the ECDC Local Plan which, amongst other things, seeks to focus the location of leisure uses in the town and village centres unless it has been demonstrated that there would be no adverse effect on the vitality and viability of the nearest town centre. In addition, the proposal would be contrary to Policy EMP 7 of the ECDC Local Plan that seeks existing facilities to identify a need to expand or improve their existing attractions. The proposal is therefore in conflict with the development plan and fundamentally unacceptable in principle.
- 7.37 **Highways**
- 7.38 Policy COM7 of the East Cambridgeshire Local Plan, 2015 requires all new developments to, amongst other things:
- Provide a safe and convenient access to the highway network.
 - Provide a comprehensive network of routes giving priority for walking and cycling.
 - Accommodate the efficient delivery of goods, supplies and services.
 - Be capable of accommodating the level/type of traffic generated without detriment to the local highway network and the amenity, character or appearance of the locality.
- 7.39 Whilst the application does not propose changes to the existing access, the proposal would have the effect of exceeding the limits on which the original application was assessed in terms of impacts to highways. It is therefore relevant to consider whether the existing access has capacity for the additional trips that the proposal would generate.
- 7.40 In consultation with the Local Highways Authority, the Highway Development Management Engineer has confirmed they do not object to the variation of the proposed opening hours.
- 7.41 In respect of Policy COM 8, parking provision, as no new floor space is proposed, there is no requirement to provide additional parking provision.
- 7.42 The proposal is therefore considered to be in accordance with Policies COM 7 and COM 8 of the ECDC Local Plan 2015 (as amended 2023).
- 7.43 **Planning Balance**

- 7.44 The proposal would benefit from the creation of 12.6 new full time equivalent jobs based on a 40-hour working week, this would attract additional economic activity and is afforded positive weight, when considered in isolation.
- 7.45 However, the proposal has failed to provide genuine need and viability justification in accordance with Policy EMP 7 of the Local Plan 2015 (as amended 2023) for the extension of the proposed opening hours to the restaurant and café units.
- 7.46 In addition, the proposal, by virtue of the extended opening hours, would result in the café and restaurant operating independently of the main use they were designed to service and would effectively function as a new evening café and restaurant use in the countryside. This would therefore no longer be considered an extension to an existing tourist facility and would be in conflict with Policy EMP 7.
- 7.47 The extended opening hours would be tantamount to a new evening restaurant in the countryside that would create a substantial turnover. As such, the proposal has the potential to detract trade from the existing centres of Soham and Ely and is therefore contrary to the requirements of Policy COM 1 that states proposals for 'town centre uses' outside of town centres may only be permitted providing there would be no adverse effect on the vitality and viability of the nearest town centre, or any other centres.
- 7.48 The proposal therefore has the potential to draw a significant amount of trade out of local centres of Ely and Soham and has the potential to detrimentally harm the viability of these centres, contrary of the requirements of Policies EMP 7 and COM 1 of the Local Plan together with Chapter 7 of the NPPF.

8.0 COSTS

- 8.1 An appeal can be lodged against a refusal of planning permission or a condition imposed upon a planning permission. If a local planning authority is found to have acted unreasonably and this has incurred costs for the applicant (referred to as appellant through the appeal process) then a cost award can be made against the Council.
- 8.2 Unreasonable behaviour can be either procedural ie relating to the way a matter has been dealt with or substantive ie relating to the issues at appeal and whether a local planning authority has been able to provide evidence to justify a refusal reason or a condition.
- 8.3 Members do not have to follow an officer recommendation indeed they can legitimately decide to give a different weight to a material consideration than officers. However, it is often these cases where an appellant submits a claim for costs. The Committee therefore needs to consider and document its reasons for going against an officer recommendation very carefully.
- 8.4 In this case members' attention is particularly drawn to the following points:

- Creation of a new evening restaurant in a countryside location

9.0 **APPENDICES**

9.1 Appendix 1: 18/01793/FUM Decision Notice

Background Documents

- 23/01056/VARM
- LSH Impact Assessment 2024 (found under 23/01056/FUM application file)
- 23/00367/VARM
- 23/00161/VARM
- 18/01793/FUM
- LSH Retail Impact Assessment 2019 (found under 18/01793/FUM application file)
- WYG Retail Impact Assessment 2019 (found under 18/01793/FUM application file)

National Planning Policy Framework -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

East Cambridgeshire Local Plan 2015 -

<http://www.eastcambbs.gov.uk/sites/default/files/Local%20Plan%20April%202015%20-%20front%20cover%20and%20inside%20front%20cover.pdf>



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

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Mr Alastair Morbey
C/O Carter Jonas LLP
FAO Mr Richard Seamark
One Station Square
Cambridge
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This matter is being dealt with by:

Angela Briggs

Telephone: 01353616307
E-mail: angela.briggs@eastcambs.gov.uk
My Ref: 18/01793/FUM
Your ref

7th May 2020

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

PLANNING PERMISSION

Subject to conditions

The Council hereby **approves** the following development:

Proposal: Proposed demolition of existing buildings and the erection/ conversion of buildings to provide Class A1 (Retail), Class A3 (Cafe/ Restaurant), Class D2 (Leisure/ well-being), Sui Generis (Micro-brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Location: Land Opposite Meadow View Soham Road Stuntney Cambridgeshire

Applicant: Mr Alastair Morbey

This consent for planning permission is granted in accordance with the application reference **18/01793/FUM** registered 19th December 2018.

Subject to the additional conditions set out below:

ADDITIONAL CONDITIONS

1 Development shall be carried out in accordance with the drawings and documents listed below

Plan Reference	Version No	Date Received
Transport assessment	A	18th January 2019
17043/P-014		19th December 2018
17043/P-013		19th December 2018

17043/P-012		19th December 2018
17043/P-010		19th December 2018
17043/P-011		19th December 2018
17043/P-008	C	19th December 2018
17043/P-009	C	19th December 2018
17043/P-004		19th December 2018
17043/P-003		19th December 2018
17043/P-015	A	19th December 2018
17043/P-016		19th December 2018
17043/P-017	A	19th December 2018
17043/P-018		19th December 2018
17043/P-019		19th December 2018
17043/P-002		19th December 2018
Phase 1 Geo Environmental Desk Study		19th December 2018
Retail Statement		19th December 2018
Landscape and Visual Impact Assessment		19th December 2018
Flood Risk Assessment		19th December 2018
Ecological Assessment		19th December 2018
Archaeological Desk Based Study		19th December 2018
Arboricultural Impact Assessment		19th December 2018
Utilities		19th December 2018
Energy Statement for Planning		9th January 2019
Breeam		9th January 2019

- 1 Reason: To define the scope and extent of this permission.
- 2 The development hereby permitted shall be commenced within 3 years of the date of this permission.
- 2 Reason: To comply with Section 91 of the Town and Country Planning Act 1990, as amended.
- 3 No demolition/development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI which shall include:
 - a) the statement of significance and research objectives;
 - b) The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
 - c) The programme for the analysis, publication & dissemination, and deposition of resulting material. Part (c) of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 3 Reason: To ensure that any archaeological remains are suitably recorded in accordance with policy ENV14 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted.
- 4 No above ground construction shall take place on site until sample details of all the materials to be used in the construction of the external surfaces of the development, including walls, roofs, windows and doors, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 4 Reason: To safeguard the character and appearance of the area, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
- 5 No development shall commence until a detailed surface water drainage scheme for the site, based on the agreed Flood Risk Assessment prepared by Cannon Consulting Engineers (ref: CCE/W941/FRA-05) dated November 2018 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in full accordance with the approved details before the development is completed.
- 5 Reason: To prevent the increased risk of flooding and to improve and protect water quality, in accordance with policies ENV2 and ENV8 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted and the details need to be agreed before construction begins.
- 6 No development shall take place until a scheme to dispose of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme(s) shall be implemented prior to the commencement of use.
- 6 Reason: To prevent the increased risk of flooding and to improve and protect water quality, in accordance with policies ENV2 and ENV8 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted and the details need to be agreed before construction begins.
- 7 Prior to any work commencing on the site a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the Local Planning Authority regarding mitigation measures for noise, dust and lighting during the construction phase. These shall include, but not be limited to, other aspects such as access points for deliveries and site vehicles, and proposed phasing/timescales of development etc. The CEMP shall be adhered to at all times during all phases.
- 7 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted.
- 8 Prior to the first use of the development, hereby permitted, details of all external lighting, including that to be used in the car park and internal access roads, and their times of use shall be submitted to and approved in writing by the local Planning Authority. Development shall be carried out in accordance with the approved details.
- 8 Reason: To safeguard the residential amenity of neighbouring occupiers and the character and appearance of the area, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 9 Prior to the first occupation of any of the units, details of any play equipment or furniture to be installed on the play area, as shown on drawing number 17043/P-009 Rev C (Coloured Site Plan), shall be submitted and approved in writing by the Local Planning Authority. The works shall be carried out and completed in accordance with the approved details and prior to the occupation of any of the units.
- 9 Reason: To safeguard the residential amenity of neighbouring occupiers and the character and appearance of the area, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 10 The tree protection measures as shown on the Tree Protection Plan within the Arboricultural Impact Assessment, dated 21st November 2018, shall be implemented prior to the commencement of development, site works or clearance (in relation to the development, hereby permitted) in accordance with the approved details, and shall be maintained and retained until the development is

completed. Within the root protection areas the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon. If any trenches for services are required within the fenced areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

- 10 Reason: To ensure that the trees on site are adequately protected, to safeguard the character and appearance of the area, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 11 Prior to first occupation or commencement of use a full schedule of all soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include, planting plans, a written specification; schedules of plants noting species, plant sizes, proposed numbers/densities; and a detailed implementation programme. It shall also indicate all existing trees and hedgerows on the land and details of any to be retained. The works shall be carried out in accordance with the approved details prior to the end of the first planting season following occupation of the development. If within a period of ten years from the date of the planting, or replacement planting, any tree or plant (including retained existing trees/hedgerows) is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 11 Reason: To assimilate the development into its surroundings, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 12 No above ground construction shall commence until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include means of enclosures within the site, car parking layouts, hard surfacing materials, street furniture, signs within the site. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with an implementation programme submitted to and approved in writing by the Local Planning Authority prior to first occupation.
- 12 Reason: To assimilate the development into its surroundings, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 13 No above ground construction shall commence until details of the boundary treatments have been submitted to and agreed in writing with the Local Planning Authority. The boundary treatments shall be in situ in accordance with the approved details prior to the commencement of use.
- 13 Reason: To safeguard the residential amenity of neighbouring occupiers and the character and appearance of the area, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015.
- 14 No amplified music shall be played outside any of the buildings, hereby approved, or anywhere else within the site, until an acoustic management plan is submitted to, and approved in writing by the Local Planning Authority. The control measures agreed within the plan shall thereafter be implemented/adopted for every outdoor event. Any outdoor event on the site shall be restricted to 8no events per calendar year.
- 14 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
- 15 Prior to the first use of the development, hereby permitted, the existing access to Soham Road (A142) shall be permanently and effectively closed and the footway / highway verge shall be reinstated in accordance with drawing number 1690-02 Rev E, dated 12th May 2016.

- 15 Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.
- 16 The new junction and road layout shall be constructed as shown on drawing number 1690-03 Rev B, dated 12th May 2016, and thereafter retained in perpetuity.
- 16 Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.
- 17 Prior to the commencement of use visibility splays shall be provided each side of the vehicular access in full accordance with the details indicated on the submitted plan 1690-03 Rev B, dated 12th May 2016. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.
- 17 Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.
- 18 The use hereby permitted shall take place only between the hours of 07:00 - 19:00 each day Monday to Saturday and 08:00 - 17:00 on Sundays, Bank Holidays and Public Holidays, with the exception of any seasonal events (up to 8no per calendar year), where said event shall only take place between the hours of 07:00 and 22:00 on any day. Deliveries to the site shall take place only between the hours of 06:30 - 19:00 Monday to Saturday and 07:30 - 17:00 on Sundays, Bank Holidays and Public Holidays.
- 18 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
- 19 Construction times and deliveries, with the exception of fit-out, shall be limited to the following hours: 07:30 - 18:00 each day Monday-Friday, 07:30 -13:30 on Saturdays and none on Sundays, Bank Holidays and Public Holidays.
- 19 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
- 20 Prior to the first occupation of the development, hereby permitted, details of any external plant or machinery shall be submitted to and approved in writing by the Local Planning Authority. The works shall be completed in accordance with the approved details.
- 20 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
- 21 No above ground construction shall take place until a scheme for the provision and location of fire hydrants to serve the development to a standard recommended by the Cambridgeshire Fire and Rescue Service or alternative scheme has been submitted to and approved in writing by the Local Planning Authority. The hydrants or alternative scheme shall be installed and completed in accordance with the approved details prior to the occupation of any part of the development.
- 21 Reason: To ensure proper infrastructure for the site in the interests of public safety in that adequate water supply is available for emergency use. This is supported by paragraph 95 of the NPPF.
- 22 Prior to the commencement of use a scheme of biodiversity improvements shall be submitted to and agreed in writing with the Local Planning Authority. The biodiversity improvements shall be installed prior to the first occupation of the hereby approved development and thereafter maintained in perpetuity.

- 22 Reason: To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015.
- 23 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 to the Local Planning Authority within 48 hours. No further works shall take place until an investigation and risk assessment has been undertaken and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken, and following completion of measures identified in the approved remediation scheme a verification report must be prepared, and approved in writing by the Local Planning Authority.
- 23 Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy ENV9 of the East Cambridgeshire Local Plan 2015.
- 24 Prior to the commencement of development, an energy and sustainability strategy for the development, including details of any on site renewable energy technology and energy efficiency measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved strategy.
- 24 Reason: To ensure that the proposal meets with the requirements of sustainability as stated in policy ENV4 of the East Cambridgeshire Local Plan 2015. This condition is pre-commencement as some of the measures may be below ground level.
- 25 The total gross internal floorspace hereby consented shall extend to no more than 1,943sqm gross and notwithstanding the provisions of schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revising, revoking and re-enacting that order), no enlargement by way of extension, installation of a mezzanine floor (unless required for ancillary storage and/or office accommodation for any specific unit and for no other purpose) or other alteration to any building the subject of this permission shall be carried out without express planning permission first being obtained.
- 25 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015
- 26 The total gross internal retail floorspace shall extend to no more than 1,166sq m and the total retail net sales area to no more than 816sqm. The retail floorspace is limited to uses falling within Class A1 (shops) (a), (d), (e) and (g) and for no other purpose falling within Class A1 of the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification.
- 26 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.
- 27 The total gross internal non-retail floorspace shall extend to no more than 777sq m. The non-retail floorspace is limited to:
- uses falling within Class A3 (restaurant and cafes), as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification,
 - a spa/wellbeing and/or fitness studio (Class D2 (assembly and leisure)) and for no other purpose falling within Class D2 of the schedule to the Town and Country Planning (Use Classes)

Order 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification, and
 - as a micro-brewery ('sui generis').

The non-retail floorspace hereby permitted can only operate where at least a single unit (excluding the kiosk) trading as a café/restaurant always includes the use of produce sourced directly from the Harlocks Farm Estate. For the avoidance of doubt, produce sourced directly from Harlocks Farm Estate can include, but not be limited to, potatoes, onions, celery, venison, partridge, pheasant, and/or pigeon. A register shall be kept by the operator of the produce sourced from Harlocks Farm Estate and this register shall be made available for inspection by the local planning authority upon request.

27 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.

28 The maximum unit size of the retail floorspace shall be 185sq m gross internal, save for a single large unit of 287sq m gross internal and excluding the combined retail/workshop space ('maker space') as defined in condition 30 below.

28 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.

29 The minimum unit size for both the retail and non-retail floorspace shall be 45sq m gross internal, save for a single 'kiosk' unit of 30sq m gross internal.

29 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.

30 For so long as a single unit (excluding the kiosk) is used for the sale of convenience goods including always the sale of produce sourced directly from the Harlocks Farm Estate and a minimum net sales floorspace of 200sq m is used for the provision of a combined retail/workshop space ('maker space') to accommodate tenants who make goods for sale on-site, the remainder of units making up the total net retail floorspace as defined in condition 26 above can be used for the sale of convenience or comparison goods, providing the net sales area for the sale of comparison goods outwith the retail/workshop space is no more than 487sq m and shall not be used for the sale of mobile phones and mobile phone accessories, domestic electrical white goods, pharmaceutical and medical goods, and audio visual goods.

For the avoidance of doubt, produce sourced directly from Harlocks Farm Estate can include, but not be limited to, potatoes, onions, celery, venison, partridge, pheasant, and/or pigeon. A register shall be kept by the operator of the produce sourced from Harlocks Farm Estate and this register shall be made available for inspection by the local planning authority upon request.

30 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.

31 None of the total gross retail floorspace hereby consented shall be occupied by a retail multiple whereby the operator is part of a network of nine or more outlets (as defined by Experian).

31 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.

32 For a period of 36 months from the first occupation of the development hereby consented, none of the total gross retail floorspace shall be occupied by any retailer who at the date of such occupation, or within a period of 12 months immediately prior to occupation, trades retail floorspace in the town centres of Ely, Soham and Littleport.

- 32 Reason: In order not to prejudice the primary shopping role of the Local Centres of Ely, Littleport and Soham, in accordance with Policy COM1 of the East Cambridgeshire Local Plan, 2015.
- 33 The proposed development, hereby permitted, shall be completed in accordance with Section 7.2 of the Ecological Assessment by Green Environmental Consultants, dated November 2018.
- 33 Reason: To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015.

INFORMATIVES RELATING TO THIS APPLICATION

- 1 This development involves work to the public highway that will require the approval of the County Council as Highway Authority. It is an offence to carry out works within the public highway without permission of the Highway Authority. Please note that it is the applicants responsibility to ensure that, in addition to planning permission, any necessary consents and approval under the Highways Act 1980 and Street Works Act are also obtained from the County Council.
- 2 The applicant/developers attention is drawn to the guidance notes issued by the Council's Environmental Health on potential nuisance during construction and demolition works which is available on our website <http://eastcambs.gov.uk/planning/guidance-leaflets>. All reasonable measures should be taken to prevent nuisance during demolition and construction works, with reference to those notes.
- 3 Cadent have identified operational intermediate pressure gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadents legal rights and any details of such restrictions should be obtained from the landowner in the first instance. If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadents Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

The entrance road into the land parcel will cross a Cadent intermediate pressure pipeline, the Applicant must contact Cadents Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadents Plant Protection Team for approval before carrying out any works on site and ensuring that Cadent Gas requirements are adhered to.

- 4 The decision to approve this application has been taken, having regard to the policies and proposals in the Local Development Plan and all relevant material considerations, including the NPPF. The proposal is considered to be in accordance with the policies of the Development Plan, that are considered to be up to date, and represents 'sustainable' development in compliance with the provisions of the NPPF. The application has been subject to pre-application advice/extensive discussion and amendments have been made that address officer concerns in regards to retail impact and highway safety
- 5 East Cambridgeshire District Council is a Community Infrastructure Levy (CIL) Charging Authority. All applicants for full planning permission, including householder applications and reserved matters following an outline planning permission, and applicants for lawful development certificates are

required to complete the CIL Additional information Requirement Form - https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy/2

Exemptions from the Levy are available but must be applied for and agreed before development commences, otherwise the full amount will be payable.

For more information on CIL please visit our website <http://www.eastcambs.gov.uk/planning/community-infrastructure-levy> or email cil@eastcambs.gov.uk.

PLEASE ALSO NOTE THAT THIS PERMISSION IS GRANTED SUBJECT TO DUE COMPLIANCE WITH THE BYE-LAWS AND GENERAL STATUTORY PROVISION IN FORCE IN THE DISTRICT AND DOES **NOT** CONSTITUTE APPROVAL UNDER BUILDING REGULATIONS. YOU ARE ADVISED TO CONTACT THE BUILDING REGULATIONS SECTION IF YOU WISH TO DISCUSS THIS FURTHER



Rebecca Saunt

Planning Manager

Dated: 7th May 2020

24/00300/VAR

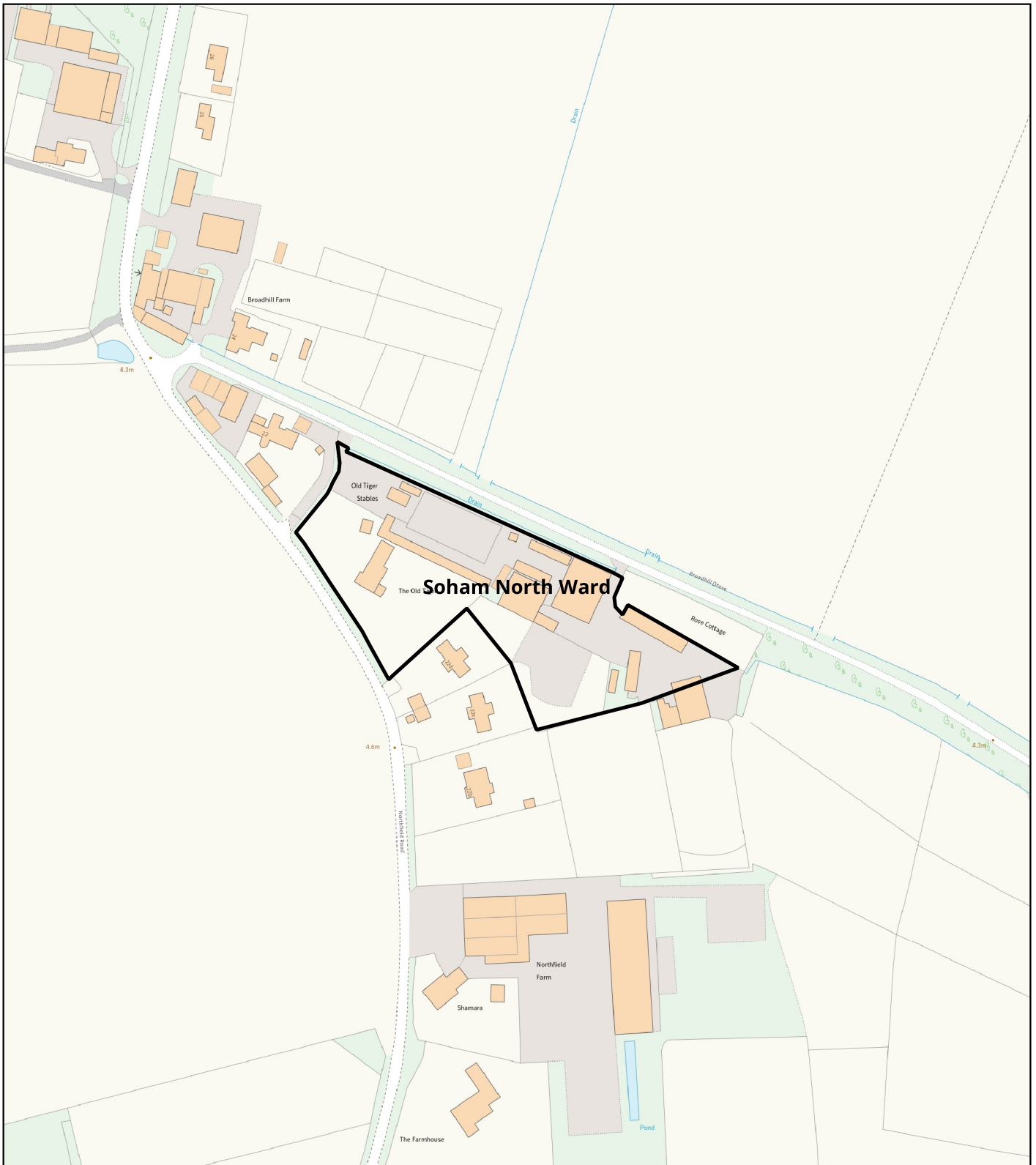
Old Tiger Stables House
22A Northfield Road
Soham
Ely
Cambridgeshire
CB7 5UF

To Remove Condition 10 (Occupancy) and Clause 2 (b) of S106 Agreement of previously approved E/91/0367/0 for 1 1/2 storey dwelling and garage for stable owner

To view all of the public access documents relating to this application please use the following web address or scan the QR code:

<https://pa.eastcambs.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SAJXPWGGKJ600>





24/00300/VAR



Old Tiger Stables House
22A Northfield Road
Soham

East Cambridgeshire
District Council

Date: 20/06/2024
Scale: 1:2,500



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TITLE: 24/00300/VAR

Committee: Planning Committee

Date: 9 July 2024

Author: Planning Officer

Report No: Z30

Contact Officer: Rachael Forbes, Planning Officer
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01353 616300
Room No 011 The Grange Ely

Site Address: Old Tiger Stables House 22A Northfield Road Soham Ely Cambridgeshire CB7 5UF

Proposal: To Remove Condition 10 (Occupancy) and Clause 2 (b) of S106 Agreement of previously approved E/91/0367/0 for 1 1/2 storey dwelling and garage for stable owner

Applicant: Mrs Webster

Parish: Soham

Ward: Soham North

Ward Councillor/s: Mark Goldsack
Keith Horgan

Date Received: 18 March 2024

Expiry Date: 16 July 2024

1.0 RECOMMENDATION

1.1 Members are recommended to REFUSE the application for the following reason:

Policy HOU 5 states that occupancy conditions related to rural workers should only be lifted where there is no longer a need for accommodation relating to the holding or for rural workers in the wider area, where marketing of the property has been undertaken for at least 12 months at a price which reflects the occupancy restrictions and where at least 3 registered social landlords have declined the opportunity to take on the dwelling as an affordable dwelling. The submitted information does not sufficiently justify the removal of the occupancy condition of E/91/0367/O. No marketing has been carried out and therefore there is no evidence that there is a lack of interest in the site with the occupancy condition in place and

the LPA cannot be certain that there is no longer a need for accommodation on the holding/business and in the local area. In addition, there is no evidence that the dwelling has been made available to at least three social landlords. For the same reasons, it is considered that the S106 obligation serves a useful purpose and should remain in place. The application is contrary to the relevant points of Policy HOU 5 of the East Cambridgeshire Local Plan, 2015 (as amended).

2.0 SUMMARY OF APPLICATION

2.1 The full planning application, plans and documents submitted by the Applicant can be viewed online via East Cambridgeshire District Council's Public Access online service, via the following link <http://pa.eastcambs.gov.uk/online-applications/>.

2.2 The application seeks the removal of the occupancy condition and related clause in the S106 agreement of application 91/00367/OUT which was for a '*Proposed 1 1/2 Storey Dwelling & Garage for Stable Owner.*' The occupancy condition states:

'The proposed dwelling shall be first occupied by Miss L Webster and any dependants residing with her and thereafter by a person(s) involved in the management of the adjacent livery business currently known as Old Tiger Stables'

Reason: The dwelling hereby permitted is sited in a rural area outside any established settlement where the Local Planning Authority would not normally grant consent for such a development except to fulfil an essential rural need.

Clause 2(b) of the S106 agreement states:

'That the said 1.5 storey dwelling and garage shall thereafter only be used and occupied by a person or persons wholly or mainly employed in the management of the stables and livery business carried out on the said land (including any dependants of such a person residing with her).'

The request to remove the occupancy condition and Clause 2(b) is so the dwelling can be occupied or sold as market dwelling and would not require those who occupied it to be involved in the management of the business.

2.3 The application has been called in to Planning Committee by Cllr Goldsack for the following reason:

'My call in reason is that officers state that it has to be advertised for 12 months in case there is interest in someone taking on the livery business. However, since the move, access to the then used grassland has ceased availability meaning there is nowhere near sufficient grass for a livery business! The BHA set out guidelines and these are compromised by the site as it is today.

Because of this state of the site a removal of tie and moving forward by the applicant, who has moved the business to a County Farm holding across Soham and allows further development of a much valued and respected local business.'

3.0 PLANNING HISTORY

3.1 **92/00849/RMA**
Proposed Detached Dwelling
Approved
21 December 1992

96/00762/FUL
Proposed double garage, porch and study
Approved
31 October 1996

05/00129/FUL
Erection of indoor riding school arena.
Approved
1 April 2005

91/00367/OUT
Proposed 1 1/2 Storey Dwelling & Garage for Stable Owner.
Approved
4 November 1992

4.0 THE SITE AND ITS ENVIRONMENT

4.1 The application site consists of a dwelling adjacent to Northfield Road with stables, an outdoor arena, an indoor arena and other associated buildings. The application site also includes land on which two dwellings have been built (17/00291/FUL) which are not associated with the livery use of the site. The site is located outside of the development envelope and is therefore considered to be in the countryside.

5.0 RESPONSES FROM CONSULTEES

5.1 Responses were received from the following consultees and these are summarised below. The full responses are available on the Council's web site.

Local Highways Authority - 23 April 2024

'Recommendation

On behalf of the Local Highway Authority, I raise no objections to the proposals.

Comments

None of the proposals included within this application will have any material impact on the public highway.'

Soham Town Council - 1 May 2024

Soham Town Council has the following comments to make on the above-named application: -

The Council has no objections to the removal of Condition 10 (occupancy). The Council is unable to comment on Clause 2 (b) of the s106 Agreement of previously approved E/91/0367/0 as insufficient information is available and inaccessible from the ECDC planning portal.

Environmental Health – 27 March 2024

'The Covering Letter advises –

“The Old Tiger Stables, as a livery yard and riding school does still exist, but no longer in the location of where the restricted house is located. Another equine business will struggle to operate from this site as there is not enough land to be able to run a successful equine business, and this was the direct reasoning behind the stables needing to relocate in the first place.”

I acknowledge that Condition 10 was not attached for amenity purposes but without knowing what the surrounding land will be used for it is difficult to comment on whether any future occupier could be impacted if Condition 10 is removed.'

Waste Strategy (ECDC) – 29 May 2024

'East Cambs District Council will not enter private property to collect waste or recycling, therefore it would be the responsibility of the owners/residents to take any sacks/bins to the public highway boundary on the relevant collection day and this should be made clear to any prospective purchasers in advance, this is especially the case where bins would need to be moved over long distances; the RECAP Waste Management Design Guide defines the maximum distance a resident should have to take a wheeled bin to the collection point as 30 metres (assuming a level smooth surface).

• Under Section 46 of The Environmental Protection Act 1990, East Cambridgeshire District Council as a Waste Collection Authority is permitted to make a charge for the provision (delivery and administration) of waste collection receptacles, this power being re-enforced in the Local Government Acts of 1972, 2000, and 2003, as well as the Localism Act of 2011.'

Ward Councillors – 4th June 2024

See paragraph 2.2 of this report

The Ely Group Of Internal Drainage Board -

No Comments Received

CCC Growth & Development -

No Comments Received

Consultee For Other Wards In Parish -

No Comments Received

- 5.2 A site notice was displayed near the site on 27 March 2024.
- 5.3 Neighbours – five neighbouring properties were notified. Three responses have been received, one in support and two objecting. The responses received are summarised below. A full copy of the responses are available on the Council’s website.

Objector 1:

- Investigation of a breach in planning consent relating to the drainage of properties granted under 17/00291/FUL is currently taking place.
- For this reason, the land is legally contested.
- The current tenants renting the property are doing so in breach of the S106 agreement.
- Statements within the application appear to be incorrect, questioning the validity of the arguments.
- The application withholds information on the plans for the remaining stable land.

Objector 2:

- Lack of information relating to future use of the land and therefore oppose the removal of the restrictions.
- 22A Northfield Road has been rented to non-stable associated occupants for at least 18 months in violation of the occupancy condition.
- There is an ongoing dispute over adherence to planning conditions in relation to waste and storm water drainage.

Supporter 1:

- No objections to the removal of condition 10 and clause 2(b) of the S106 agreement.

6.0 THE PLANNING POLICY CONTEXT

6.1 *East Cambridgeshire Local Plan 2015 (as amended 2023)*

GROWTH 2	Locational strategy
GROWTH 5	Presumption in favour of sustainable development
HOU 5	Dwellings for rural workers
ENV 2	Design
ENV 9	Pollution
COM 7	Transport Impact

6.2 *Soham and Barway Neighbourhood Plan*

The last consultation on the Soham and Barway Neighbourhood Plan has now finished and the plan is currently going through an independent examination. A referendum on the plan is likely in the Autumn. Given the current status of the plan, it is now considered to have moderate weight.

6.3 *National Planning Policy Framework (December 2023)*

- 2 Achieving sustainable development
- 4 Decision-making
- 5 Delivering a sufficient supply of homes
- 6 Building a strong, competitive economy
- 9 Promoting sustainable transport

6.4 Planning Practice Guidance

7.0 PLANNING COMMENTS

7.1 Policy requirements

7.1.1 Policy GROWTH 2 of the ECLP states that outside of the development envelopes, development will be strictly controlled, having regard to the need to protect the countryside and the setting of towns and villages and to direct growth to sustainable locations within the development envelope. Outside of the development envelope, development is restricted to the categories listed in the policy, one of which is HOU 5, dwellings for rural workers.

7.1.2 The dwelling is located outside of the development envelope in a countryside location where unrestricted market dwellings are not supported. For that reason, the initial approval for the dwelling (E/91/0367/O) placed a condition on the permission requiring that the dwelling was first occupied by the applicant (Miss L Webster) and then a person(s) involved in the management of the adjacent livery business. A S106 agreement was also put in place with Clause 2(b) requiring the occupation of the dwelling by a person wholly or mainly employed in the management of the stables and livery business. Given the age of the original application, there is no officer report, however there are some files notes which state that the reason for the condition was that 'The dwelling hereby permitted is situated in a rural area outside of any established settlement where the LPA would not normally grant permission for such development and this permission is granted solely to fulfil an essential need for a rural activity.'

7.1.3 Policy HOU 5 also gives scope for an occupancy condition to be removed. Paragraph 4.6.4 of the ECLP states that proposals to remove an occupancy condition will be considered on the basis of whether a need remains for the accommodation for other rural workers and that this will involve the marketing of property, a demonstration of a general lack of need in the area and that the dwelling has been made available to three Registered Social Landlords and that this option has been refused.

7.1.4 Policy HOU 5 states that applications for the removal of an occupancy condition related to rural workers will only be permitted where it can be demonstrated that:

- There is no longer a need for accommodation on the holding/business and in the local area.

- The property has been marketed for a reasonable period (at least 1 year) and at a price which reflects the existence of the occupancy condition; and
- The dwelling has been made available to a minimum of three Registered Social Landlords operating locally on terms which would prioritise its occupation by a rural worker as an affordable dwelling - and that option has been refused.

7.1.5 *Policy criterion 1 – There is no longer a need for accommodation*

7.1.6 The cover letter submitted with the application sets out that The Old Tiger Stables have outgrown the site at Northfield Road and have therefore relocated to a bigger site at North Angle Farm. It goes on to say that the planning condition and S106 agreement clearly link the occupancy of the house with the livery yard and stables and that given the relocation of the stables, it is now impossible for anyone to comply with the conditions and the restriction. It goes on to say that the wording of the occupancy condition is very specifically linked to the livery yard, known as Old Tiger Stables, which although it does still exist cannot operate from the site, as insufficient land was owned to allow for exercise and grazing of horses associated with the business.

7.1.7 In respect of the wording of the condition, the Local Planning Authority considers that someone else could operate a business from the site within the confines of the condition. The condition states that the house can be occupied by a persons employed in the management of the adjacent livery business ‘currently known as Old Tiger Stables’. In addition, the condition could be varied to allow an alternative rural worker (such as someone employed in agriculture) to occupy the dwelling and, given the aims of policies GROWTH 2 and HOU 5 it would be expected that this option was explored prior to applying to remove the condition. Whether there was somebody who required the dwelling for an alternative rural worker use could have been ascertained through a marketing exercise, which has not been carried out – this will be discussed further in the relevant section of this report.

7.1.8 The application as originally made stated that another equine business would struggle to operate from the site as there is not enough land to run a successful equine business, however, the case officer questioned that conclusion on the basis that the Old Tiger Stables has operated successfully at the site for over 30 years (1987-2022) before moving to a larger premises.

7.1.9 In response to the case officer’s view, information was provided by the applicant which explained that additional land necessary for grazing the horses was rented by the applicant and that as this rental agreement has ended, no business could currently operate from the site.

7.1.10 The additional information sets out that there is variety of types of livery that can be offered but most liveries have to offer grazing. The information sets out that the house and stables subject of this application amounts to 2.5 acres and most of this is covered by built form and garden land and therefore there is one modest turn out paddock which may amount to an acre. It then goes on to state that the British Horse Society guidelines on pasture management recommend 1-1.5 acres per horse. Letters from Rosssdales Veterinary practice and from the Association of British Riding Schools, Livery Yards and Equestrian Centres (ABRS+) have been submitted as part of the additional information. The letters set out that there is an issue with the ‘very

limited grass turnout available to the yard', the grazing needs and the difficulties that equine enterprises are facing in the present economic climate. The letter from ABRS+ states that the site has 30 stables. That letter also states that due to the lack of pasture the retention of the site as a riding school, livery yard or equestrian centre is non-viable. The information further states that when the stables were being run from this location, the applicant rented additional land (between 10 and 11.5 acres) and it is difficult to build a business when you are dependent on others in order for it function. They conclude that without grazing, the site cannot operate as a livery yard.

- 7.1.11 It is accepted that additional off-site turn-out land is required in order to run a commercial livery on the site. However, the site has managed to operate as a commercial livery for decades in the absence of such land being present on site, apparently via rental agreements with neighbouring landowners.
- 7.1.12 While the application has demonstrated that such turn-out land is required for the operation of livery, what it has not done is provide any significant information or evidence as to the location of the previously rented land, why that rental agreement ended and what efforts were made to secure access to other land in the area. It appears entirely possible that a new agreement between a new livery business owner and neighbouring landowner may be able to be negotiated and/or agreements with landowners investigated and established which would allow a livery business to continue to operate from the site in a similar way to how it has done for the last 35 years. The application has failed to address this issue and had marketing been carried out, as required by the policy and discussed in more detail below, potential buyers could have explored and established whether land could have been rented on terms that would have allowed a livery use on the site to continue. The lack of this marketing exercise leaves this possibility entirely unaddressed.
- 7.1.13 On that basis, the application is considered to have failed to establish that there is no longer a need for accommodation on the site which is a requirement of policy HOU 5.
- 7.1.14 ***Policy criterion 2 – The property has been marketed for a reasonable period***
- 7.1.12 Policy HOU 5 requires marketing to be carried out for a reasonable period of at least 1 year and at a price which reflects the existence of the occupancy condition. The cover letter states that as the condition and S106 restriction are very clearly linking the house and this particular business 'so a marketing campaign trying to sell a property with such a worded condition would be pointless, as no one is going to be able to run a business from this house.' An appeal decision has been referenced where an Inspector determined that marketing was not required on a horticultural business as the business was considered to be unviable.
- 7.1.13 As no marketing has been carried out, it has not been evidenced that there is no longer a need for accommodation either on the holding/business or in the local area. The appeal decision reference is not sufficient justification for allowing no marketing and it is not an identical situation. In that appeal decision, the Council and appellant both agreed that the business was not viable and was performing poorly. The Old Tiger Stables has been successful and has outgrown the site. There has been no actual evidence submitted that the operation of a business from the site would be unviable and as noted in the above section, there has been no attempt to vary the

condition or explain why another rental agreement for turnout land would not be possible. Furthermore, there are several appeal decisions (APP/F4410/W/20/3256234, APP/N2535/W/21/3281142, APP/B9506/W/20/3258005, APP/X1118/W/23/3327842) in which the Inspector considers that a lack of marketing prevents them from assessing whether there is a lack of need and that a lack of marketing means there is no evidence that there is no interest in the site.

- 7.1.14 The additional information submitted by the applicant also states, 'it is difficult to build a business when you are dependent on others in order for it to function as it needs to.' However, the applicant ran a business successfully from the site for 35 years and has now moved to a larger site. The letter from Rosssdales Veterinary practice also states that during their last visit the stables had fallen into a state of disrepair and numerous areas of the riding school were only just acceptable for the licence to be renewed and that the yard would need significant refurbishment. Because no marketing has been carried out, the LPA cannot be certain that someone would not come forward who would look to refurbish it.
- 7.1.15 The application provides no information as to whether options for renting grazing land remain or why a new owner could not take off where the previous one ended, renting turnout land from a local landowner and if the site were marketed for a significant period as required by policy, interested parties could explore those options with local landowners and may be able to come to an agreement with one sufficient to service the livery use.
- 7.1.16 Furthermore, in order to address policy HOU 5, marketing ought not to exclusively focus on the use as a livery but on residential accommodation for other rural uses in the area. While the existing occupancy condition would need to be varied to allow residential occupation in association with an alternative rural use, given the aims of the policy GROWTH 2 and HOU 5 which exceptionally provides support for rural accommodation for full-time workers in agriculture, horticulture, forestry, stud and other rural activities, this should be considered as an exception to the normal policies of restraint in the countryside.
- 7.1.17 Even if the applicant had demonstrated that there was no option to secure rented land for equine use, all of the available options for rural use of the dwelling have not been explored prior to applying to completely remove the occupancy condition.
- 7.1.18 As a result, the application is not considered to have adequately addressed criterion 2 of policy HOU 5 or aims of that aspect of the policy.
- 7.1.19 ***Policy criterion 3 – The dwelling has been made available to three Registered Social Landlords***
- 7.1.20 There is no information submitted to address the third point of the policy that the dwelling has been made available to a minimum of three Registered Social Landlords to establish whether it could be suitable for occupation by a rural worker as an affordable dwelling.
- 7.1.21 The pre-amble to policy HOU 5 is clear that applicants need to demonstrate a lack of general need in an area and that as part of that approach, they will need to

demonstrate that the dwelling has been made available to a minimum of three Registered Social Landlords operating locally and that such an option has been refused.

- 7.1.22 As a result of the lack of information that this has been addressed, the Council cannot be convinced that the dwelling could not be repurposed for general rural worker accommodation and the application is therefore not considered to have adequately addressed criterion 3 of policy HOU 5.
- 7.1.23 ***Removal of Clause 2(b) of the S106 agreement***
- 7.1.24 Clause 2(b) of the S106 agreement states: 'That the said 1.5 storey dwelling and garage shall thereafter only be used and occupied by a person or persons wholly or mainly employed in the management of the stables and livery business carried out on the said land (including any dependants of such a person residing with her).'
- 7.1.25 In respect of the S106, it is necessary to consider whether the obligation serves a useful purpose.
- 7.1.26 The cover letter for the application sets out that the Old Tiger Stables, as a livery yard and riding school does still exist, but no longer in the location of where the restricted house is located and 'another equine business will struggle to operate from this site as there is not enough land to be able to run a successful equine business, and this was the direct reasoning behind the stables needing to relocate in the first place.'
- 7.1.27 The additional information submitted states that to say that the planning circumstances of the area have not changed is simply not true, as the two dwellings approved under 17/00291/FUL, neither of which have an agricultural tie on them and on determining that application at Planning Committee, members confirmed that this area should be seen as a sustainable location due to its close proximity to the built up area of Soham. The information states that this is absolutely relevant in proving that the tie no longer serves a useful purpose and that dwellings in this area no longer need to have a tie on controlling their use.
- 7.1.28 The LPA consider that the obligation is serving a useful purpose. The planning circumstances of the area have not changed since the imposition of the condition – the site is still outside of the development envelope, where residential development is not permitted unless it meets one of the exceptions of GROWTH 2. Further to this, it has not been evidenced that the obligation no longer meets a useful purpose as it has not been evidenced that there is no interest in the site due to the lack of marketing. The same lack of explanation regarding the lapsing of the agreement to rent grazing land and the lack of exploration of that as an ongoing possibility via a new agreement also apply to the request to remove the obligation.
- 7.1.29 The application referred to, 17/00291/FUL, was approved at a time when the Council could not demonstrate a five-year housing land supply and housing applications outside of the development envelope were assessed using the presumption in favour of sustainable development. While this did change the planning circumstances at the time of that application, at the present time the Council can demonstrate a five-year housing land supply and would not support a market dwelling in the countryside in

principle and it would need to meet one of the exceptions set out in Policy GROWTH 2.

7.1.30 ***Conclusion on principle of development***

7.1.31 The LPA consider that there is no justification for the removal of the condition and cannot be certain that there is no longer a need for accommodation on the holding/business and in the local area due to a lack of marketing. In addition, there is no evidence that the dwelling has been made available to three social landlords. For the same reasons, it is considered that the S106 obligation serves a useful purpose and should remain in place.

7.1.32 Policy SBNP1 of the Soham and Barway Neighbourhood Plan is relevant insofar as it sets out the spatial strategy and the development envelope boundaries. This site remains outside of the development envelope and the policy states that development may be permitted as an exception in accordance with Policy GROWTH 2 of the Local Plan.

7.1.33 Therefore, the application does not comply with any of the relevant points of Policy HOU 5 of the East Cambridgeshire Local Plan, 2015 (as amended).

7.2 **Other Material Matters**

7.2.1 ***Highway Safety***

7.2.2 The Local Highway Authority have raised no objections to the proposal as it concludes that none of the proposals included in the application would materially impact the public highway.

7.2.3 ***Town Council Comments***

7.2.4 Soham Town Council have commented that they have no objections to the removal of the occupancy condition but are unable to comment on Clause 2(b) of the S106 agreement as insufficient information is available and inaccessible from the ECDC planning portal. The Town Council's comments are noted although the relevant s106 clause was quoted in the agent's cover letter underneath the condition wording.

7.2.5 ***Environmental Health***

7.2.6 The Council's Environmental Health Officer (EHO) initially commented that although Condition 10 was not attached for amenity purposes, without knowing what the surrounding land will be used for it was difficult to comment on whether any future occupier could be impacted if Condition 10 is removed.

7.2.7 Having reviewed the site pictures, the EHO has commented that after seeing the proximity of the stable block to the dwelling (subject of this application), he does have some concerns about noise, odour and lighting if the stable business is to remain. The EHO has commented 'The closest part of the dwelling to the stable block appears to be a garage but it is unknown what is above it. If this includes an amenity space such as a bedroom or relaxation space then this has the potential to be impacted. In addition to this the garden appears to straddle the length of the stables which may

also impact upon amenity.’ He has concluded that at this time he does not wish to raise an objection but the concerns remain and the applicants should be advised that planning permission does not confer immunity from action under statutory nuisance, either by local authority or a private individual.

7.2.8 It is considered that if the occupancy condition were to be removed that anyone purchasing the dwelling would be aware that there is a stables/livery next door and while it is not in operation at present, could become operational at any time and if operating within the scope of the planning permission, would not require further planning permission.

7.2.9 ***Neighbour comments***

7.2.10 Owners of two neighbouring properties have raised a number of concerns. The first is that ECDC are investigating a potential breach of planning consent for another development that relates to the installation of drainage in respect of two properties that reside both on adjacent land and land associated with the Old Tiger Stables and that for this reason, the land associated with the property in the application is legally contested.

7.2.11 The legal status of the land is a civil matter. The drainage issues at the property are separate to this application and cannot be addressed or resolved as part of this application.

7.2.12 It has also been raised that there is no information relating to the future use of the land. As above, if the occupancy condition were to be removed the change it would be granting would be that the dwelling did not have to be occupied by someone involved in the management of the livery/stables. The livery/stables would remain in this use and if someone wanted an alternative use for the land, they would need to apply for planning permission and that proposal would be assessed on its own merits.

7.3 **Planning Balance**

7.3.1 The application does not demonstrate that there is no longer a need for a rural worker dwelling on the holding/business nor in the local area, no marketing has been carried out and there is no evidence submitted that the dwelling has been made available to a minimum of three Registered Social Landlords. There is no substantive evidence submitted to demonstrate lack of need or lack of interest in the site and therefore the Local Planning Authority cannot be certain that there is no interest in the site. Further to this, there has been no substantive information submitted about the land that has been rented previously and why that arrangement ended. There has also been no attempt to vary the condition to allow for a rural worker to occupy the dwelling. There are no material considerations which would outweigh the lack of compliance with Policy HOU 5 and therefore the application is recommended for refusal.

8.0 **COSTS**

8.1.1 An appeal can be lodged against a refusal of planning permission or a condition imposed upon a planning permission. If a local planning authority is found to have acted unreasonably and this has incurred costs for the applicant (referred to as

appellant through the appeal process) then a cost award can be made against the Council.

- 8.1.2 Unreasonable behaviour can be either procedural ie relating to the way a matter has been dealt with or substantive ie relating to the issues at appeal and whether a local planning authority has been able to provide evidence to justify a refusal reason or a condition.
- 8.13 Members do not have to follow an officer recommendation indeed they can legitimately decide to give a different weight to a material consideration than officers. However, it is often these cases where an appellant submits a claim for costs. The Committee therefore needs to consider and document its reasons for going against an officer recommendation very carefully.

9.0 APPENDICES

Appendix 1 – 91/00367/OUT decision notice

Appendix 2 – 91/00367/OUT S106 agreement

Appendix 3 – appeal decision APP/F4410/W/20/3256234

Appendix 4 – appeal decision APP/N2535/W/21/3281142

Appendix 5 – appeal decision APP/B9506/W/20/3258005

Appendix 6 – appeal decision APP/X1118/W/23/3327842

Background Documents

24/00300/VAR
92/00849/RMA
96/00762/FUL
05/00129/FUL
91/00367/OUT

National Planning Policy Framework -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

East Cambridgeshire Local Plan 2015 -

<http://www.eastcamb.gov.uk/sites/default/files/Local%20Plan%20April%202015%20-%20front%20cover%20and%20inside%20front%20cover.pdf>



**EAST CAMBRIDGESHIRE
DISTRICT COUNCIL**

DAVID ARCHER **Appendix 1** MRTPL
Planning Manager

PLANNING DEPARTMENT
THE GRANGE NUTHOLT LANE
ELY CAMBRIDGESHIRE CB7 4PL
Telephone: Ely (0353) 665555 Ext.
Fax: (0353) 665240 DX41001 ELY

Please contact:

Andrew Fleet MBIAT.,
71, Brewhouse Lane,
Soham,
Ely, Cambridgeshire.

Nigel McCurdy
Extension: 263

My Ref: E/91/0367/O
Your Ref:

TOWN & COUNTRY PLANNING ACT 1990

PLANNING PERMISSION
Subject To Conditions

The Council hereby grant permission for: Proposed 1 1/2 Storey Dwelling & Garage for Stable Owner.

At: The Old Tiger Stables, Northfield Road, Soham, Ely Cambs for Miss L. Webster,

In accordance with your application for Outline permission reference E/91/0367/O registered 14th May 1991 and the plans, drawings and documents which form part of the application, as amended by letters received the 8/7/91 and 9/7/91 subject to the additional conditions set out below:

Additional Conditions

- 1 No development shall commence until full details of the following reserved matters have been submitted to and approved in writing by the Local planning Authority: - a) the siting of the building(s); b) design of the building(s) including height and internal layout; c) the external appearance of the building(s) including external materials to be used for external walls and roofs; d) the means of vehicular and pedestrian access to the site and to the building(s) within the site from access roads in the vicinity; e) a scheme for the landscaping of the site including the retention of any existing trees or natural hedgerows on the site, the planting of trees, hedges, shrubs or grass, the formation of any banks, terraces or other earthworks and screening by walls, fences or other means of enclosure; f) application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission. Reason: The application is for outline permission only and gives insufficient details of the proposed development and to comply with Sections 91 and 92 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall be begun on or before whichever is the later of the following dates: a) 5 years from the date of this permission or; b) the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter approved. Reason: To comply with Sections 91 and 92 of the Town and Country Planning Act 1990.
- 3 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. Reason: To safeguard the character of the area and to help to assimilate the development into its surroundings.
- 4 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which 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, unless the Local Planning Authority gives written consent to any variation. Reason: To safeguard the character of the area and to help to assimilate the development into its surroundings.
- 5 Before the development hereby permitted is completed, trees and shrubs of appropriate species shall be planted along all boundaries in accordance with a scheme which shall be submitted to and approved by the Local Planning Authority and any trees or shrubs which die within five years shall be replaced. Reason: To safeguard the character of the area and the reasonable amenities of local residents.
- 6 The permanent space to be reserved on the site for: - a) parking; shall be provided before the use commences and thereafter maintained. Reason: To minimise interference with the free flow and safety of traffic on the adjoining public highway.
- 7 No development shall take place until details of surface water drainage and foul drainage for the site have been submitted to, and approved by the Local Planning Authority. The drainage works shall be constructed in accordance with the approved plans. Reason: To secure satisfactory drainage infrastructure and to prevent pollution.
- 8 Notwithstanding the provisions of the Town and Country Planning General Development Order 1988, any oil storage tank shall be sited on an impervious base and surrounded by oil-tight bunded walls with a capacity of 110% of the storage tank, to enclose all filling, drawing and overflow

pipes. Reason: To secure satisfactory drainage infrastructure and to prevent pollution.

- 9 The proposed septic tank and associated soakaway system must be sited at least 10 metres from any watercourse and 50 metres from any well or borehole. Reason: To secure satisfactory drainage infrastructure and to prevent pollution.
- 10 The proposed dwelling shall be first occupied by Miss L Webster and any dependants residing with her and thereafter by a person(s) involved in the management of the adjacent livery business currently known as Old Tiger Stables. Reason: The dwelling hereby permitted is sited in a rural area outside any established settlement where the Local Planning Authority would not normally grant consent for such a development except to fulfill an essential rural need.
- 11 The development shall be carried out and completed strictly in accordance with the approved details to the satisfaction of the Local Planning Authority unless otherwise agreed in writing with the Local Planning Authority. Reason: To ensure the complete and proper development of the site.

NOTES

- 1 This Decision Notice should be read in conjunction with the Section 106 Obligation of even date with attaches to this consent and the development carried out in strict accordance with the provisions contained therein.

This permission is granted subject to due compliance with the bye-laws and general statutory provision in force in the district and does NOT constitute approval under Building Regulations. To discuss this further you are advised to contact the Building Regulations Section at the District Council.



Dated: 4th November 1992

Planning Manager

See separate sheet for information concerning rights of appeal.

DATED 4th November 1992

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

and

L WEBSTER

PLANNING OBLIGATION

Under (inter alia) Section 106 of the
Town and Country Planning Act 1990
as amended by the Planning and
Compensation Act 1991 relating to
The Old Tiger Stables, Northfield
Road, Soham, Cambridgeshire

THIS DEED is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and is made the *fourth* day of *November* One thousand nine hundred and ninety-two BETWEEN EAST CAMBRIDGESHIRE DISTRICT COUNCIL of The Grange Nutholt Lane Ely Cambridgeshire CB7 4PL (hereinafter called "the Council") of the first part and LORRAINE WEBSTER of

(hereinafter called "the Applicant") of the second part

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the property hereinafter described is situate
- (2) The Applicant is the owner in fee simple in possession of ALL THAT piece or parcel of land at Northfield Road Soham in the County of Cambridgeshire as is shown for the purposes of identification only on the plan attached hereto and thereon edged red (hereafter called "the said land") free from incumbrances
- (3) The Applicant has by written application dated the fourteenth day of May One thousand nine hundred and ninety-one as amended by letters received by the Council on 8th July 1991 and 9th July 1991 applied to the Council for planning permission to develop the said land by the erection of a one and one half dwelling and garage in the manner described in the application form plans and particulars deposited with the Council and numbered E/91/0367/0 (hereinafter called "the Application")

(4) The Council as Local Planning Authority is prepared on the execution of this Planning Obligation to grant conditional planning permission pursuant to the Application

NOW THIS DEED WITNESSETH as follows:

1. THIS Planning Obligation and the covenants hereinafter appearing are made pursuant to Section 111 of the Local Government Act 1972 and with the intent that the covenants shall hereafter run with the said land pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

2. IN consideration of the grant of planning permission in respect of the Application by the issue by the Council of a Decision Notice of even date herewith (a copy of which is attached hereto) the Applicant for herself and her successors in-title as owner of the said land hereby covenant and agree with the Council as follows:

(a) that the proposed 1½ storey dwelling and garage comprised in the Application shall first be occupied by the Applicant and her family and dependants living with her only

(b) that the said 1½ storey dwelling and garage shall thereafter only be used and occupied by a person or persons wholly or mainly employed in the management of the stables and livery business carried out on the said land (including any dependants of such a person residing with her)

(c) Not to sell let underlet or otherwise part with possession of any part of the said land (including the proposed bungalow and garage comprised in the Application) separately from the whole

(d) To carry out the development under the Application in strict conformity with the conditions set out in the Decision Notice hereinbefore referred to or any amendment thereof approved by the Council or approved by the Planning Inspectorate on appeal

3. THE Applicant hereby further agrees that any rights to claim compensation arising from any limitation or restriction on the planning use of the said land under the terms of this Planning Obligation are hereby waived

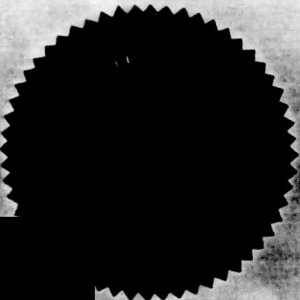
4. IN this Planning Obligation where the context so admits the expressions "the Council" and "the Applicant" shall be deemed to include their respective successors-in-title and assigns and words importing the masculine gender shall include the feminine and words importing the singular shall include the plural and further where there are two or more persons included in the expression "the Applicant" the covenants on the part of the Applicant herein contained shall be deemed to be made by such persons jointly and severally

5. THE Applicant shall be bound by the terms of this Planning Obligation and shall not rely on the terms of any collateral or other agreement made orally or in writing with any officer or member of the Council where the terms of such agreement are inconsistent with this Planning Obligation

6. THIS Planning Obligation is a Local Land Charge and shall be registered as such

IN WITNESS whereof to this Deed the Council has caused their Common Seal to be hereunto affixed and the Applicant has duly executed the day and year first before written

THE COMMON SEAL of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed)
in the presence of:-)



Chairman

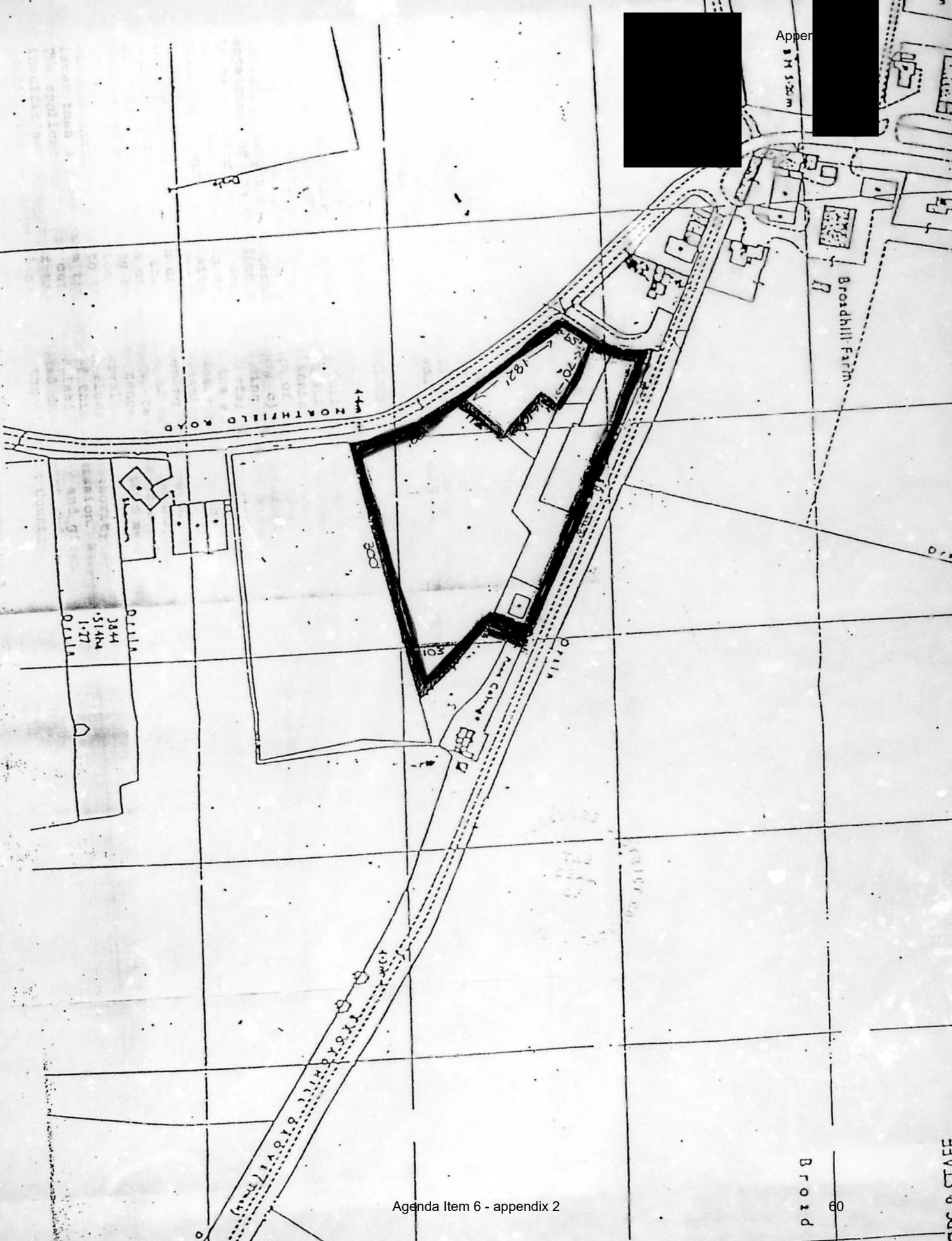


District Solicitor

SIGNED and DELIVERED by the said
LORRAINE WEBSTER as a Deed in the
presence of:-



Witness K. A. Peacock,
Name Kathleen Anne Peacock,
Address 57. WEST DRIVE GARDENS
Occupation Soham
House wife



Appendix

B R O A D H I L L

Broadhill Farm

Northfield Road

Della
3844
5144
1-77
Della



Appeal Decision

Hearing held on 19 May 2021

Site Visit made on 20 May 2021

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/F4410/W/20/3256234

2 Warning Tongue Lane, Cantley, Doncaster DN4 6TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D Shaw of Quick Skips against the decision of Doncaster Metropolitan Borough Council.
- The application Ref 19/02778/FUL, dated 9 November 2019, was refused by notice dated 4 June 2020.
- The application sought planning permission for the 'erection of bungalow' without complying with a condition attached to planning permission Ref. DC.8139, dated 7 November 1967.
- The condition in dispute is condition No 3 which states: "*The occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined in Section 221(i) of the Town and Country Planning Act 1962 or forestry or a dependant of such a person residing with him /but including a widow or widower of such a person*".
- The reason given for the condition is: "*It is the intention of the Local Planning Authority to include the site in a rural zone in which general residential development would not be permitted.*"

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing, the Council confirmed that it no longer contests the issue of the redline boundary which formed the first limb of its reason for refusal. The parties are in agreement that a plan is not necessary given the nature of the proposal. I agree, as the regulations¹ do not require a location plan or any other drawings to be submitted as part of an application made pursuant to section 73 of the Act². I have therefore only referred to the submitted plans as a means of identifying the appeal site's location.
3. The Council are currently in the process of producing the Doncaster Local Plan 2015-2035 (the emerging DLP). This emerging plan is at an advanced stage of production, nearing the end of the examination process with the consultation on the proposed main modifications having recently been concluded. I will therefore consider any relevant policies in the emerging DLP in light of the advice set out in paragraph 48 of the National Planning Policy Framework (the

¹ Part 3, 7(1)(c) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

² The Town and Country Planning Act 1990 (as amended)

Framework) which states that weight can be given to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework.

Main Issue

4. The main issue is whether a condition restricting the occupancy of the dwelling is necessary and reasonable.

Reasons

5. The appeal relates to a derelict dormer bungalow that is accessed via a long narrow track and sits alongside a small cluster of derelict agricultural buildings as part of a larger parcel of land extending to approximately 1.5 hectares. The site lies beyond the settlement of Bessacarr, a residential suburb of Doncaster, within the countryside as defined by the development plan.
6. Planning permission was granted for the dormer bungalow in November 1967 to serve as a rural worker's dwelling for a small poultry farm at the site. The poultry business has long since ceased operating and the dwelling is understood to have been vacant for the last 10 years or so, falling into a state of dereliction, with all of its doors and windows having been removed and a large area of its roof covering missing. The property has also been subject to vandalism and fire damage.
7. The appellant seeks to remove condition 3 attached to the original planning permission which restricts the occupancy of the dwelling to a person employed or last employed locally in agriculture or forestry, or a dependant of such a person and including a widow or widower of such a person. The removal of the condition would in effect provide a new open market dwelling in a rural location. The appellant does not meet the requirements of the condition and has indicated his desire to redevelop the site to provide a home for him to live in.
8. In policy terms, the appeal site lies within an area designated as a Countryside Protection Area (CPA) by Saved Policy ENV2 of the Doncaster Unitary Development Plan 1998 (the UDP) which seeks to, amongst other things, safeguard the countryside from encroachment; provide an attractive setting for towns and villages; to retain land in agriculture, forestry and nature conservation uses; and, to help sustain rural communities and a diverse rural economy. Saved Policy ENV 4 sets out a restrictive approach to development within the CPA, except for certain specific types of development that would not prejudice the purpose of the CPA. Policy CS3 of the Doncaster Core Strategy 2012 (the DCS) reaffirms the protection of the CPA, providing support for development that would be appropriate to a countryside location and would protect and enhance the countryside for the sake of its intrinsic character and beauty.
9. The removal of the condition to allow an unrestricted dwelling at this rural location would not constitute one of the supported types of development within the CPA as set out in Policy CS3 of the DCS or Saved Policy ENV4 of the UDP and thereby would be contrary to these policies. Moreover, in doing so, the proposal would conflict with the Council's overall spatial strategy, undermining the plan-led approach to development. Consequently, the original condition to

restrict the occupancy of the dwelling is therefore necessary and reasonable having regard to relevant local and national policy.

10. It is common ground between the parties, and was confirmed at the hearing, that Saved Policy ENV 4 of the UDP is out of date because it sets out a more restrictive approach to development in the countryside than that advocated by the Framework. I agree that Saved Policy ENV 4 is more restrictive, and therefore is not entirely consistent with the Framework. Accordingly, the weight of this policy is limited and so too is any conflict with it.
11. The appellant is of the view that Policy CS3 of the DCS is also out of date and has drawn my attention to an appeal decision³ to support this view. However, in that case the Inspector gave limited weight to UDP Policy ENV 4, as I have also done in this case, but she did not conclude that Policy CS3 was out of date. I find that the approach to the protection of the countryside as set out in policy CS3 of the DCS is broadly consistent with the Framework which recognises the intrinsic character and beauty of the countryside and that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Accordingly, any conflict with this policy attracts substantial weight.
12. Policy ENV 5 of the UDP states that an occupancy condition will not normally be removed unless it can be clearly demonstrated that that the long term land use need for the condition no longer exists in the locality. The supporting text to the policy advises that in order to justify the removal of such a condition it would need to be demonstrated that the condition has outlived its usefulness and that appropriate and satisfactory measures have been taken to sell or pass on the dwelling with the condition attached.
13. This policy approach is reaffirmed in Policy 8 of the emerging DLP which states that the removal of occupancy conditions on dwellings will only be permitted in exceptional circumstances where it can be demonstrated, via an independent report, that: A) there is no longer a long-term need for the dwelling on the particular enterprise on which the dwelling is located; and, unsuccessful attempts have been made to sell or rent the dwelling at a price that takes account of the occupancy condition. While this policy is yet to be adopted, there are no unresolved objections relating to it. There is no policy equivalent set out in the Framework, but I consider that the approach is not inconsistent with the general trust of national policy regarding rural housing and the countryside. I therefore attach moderate weight to this policy in my consideration of the appeal.
14. The appellant asserts that the use of the dwelling for agricultural occupancy no longer serves a useful purpose as the site is unsuitable for a new farming business because the land holding is too small to sustain an agricultural enterprise, the land is of a poor quality and poorly drained, and the buildings are in a semi-derelict state. To support this view, they have provided a letter from a Chartered Surveyor who suggests that the site does not offer any potential for agricultural use. It was also suggested at the hearing that an intensive agricultural use in such close proximity to residential properties may adversely affect the living conditions of nearby residents, limiting the potential for the erection of new agricultural buildings or facilities.

³ APP/F4410/W/18/3213988

15. However, not all agricultural businesses require a large land holding to establish a viable business, indeed at the hearing it was suggested that the site may be attractive for a horticultural business or a micro-farm enterprise, both requiring a much smaller area of land to sustain their operations. There is no persuasive evidence to suggest that the land quality or drainage issues would hamper the productive use of the land. I accept that the site is likely to require investment from any potential rural enterprise, but I am not convinced that this, nor its proximity to nearby residential occupiers, renders it an unattractive prospect to serve as an agricultural enterprise. Consequently, there is insufficient evidence before me to conclude that there is no longer a need for an agricultural worker's dwelling at this location to support the use of the land.
16. I understand that the appellant does not wish to market the property when he has no intention of selling the site and has aspirations to live at the site. However, in the absence of a marketing exercise at a valuation that reflects the occupancy restriction it is not possible to demonstrate that the condition is no longer necessary or reasonable.
17. The property, including the surrounding land, was independently valued in October 2020 providing a full market valuation in the region of £400,000 to £450,000. In addition, I have been provided with estimates ranging from £280,000 to £300,000 for works required to bring the property back into a habitable state. With a 30% discount to account for the occupancy restriction, the appellant estimates that a potential purchaser would need to have available finance in the region of £580,000 to purchase the property and renovate it to an acceptable standard. In this regard, the appellant submits that the valuation and renovation costs would be beyond the average wages of an agricultural worker or retired agricultural worker to secure a mortgage for the property.
18. However, no evidence has been submitted to substantiate the level of works required to bring the property back into a habitable state and at the hearing the appellant confirmed that the estimates appeared to be excessive. I cannot therefore be sure that the works and their associated costs are the minimum necessary to renovate the property to an acceptable habitable standard. In any case, whether or not the estimated value and cost of works would mean that the property was beyond the means of an agricultural worker or other qualifying person could only be substantiated by placing the property on the open market, at a value to reflect the occupancy restriction, and testing the demand.
19. The appellant has provided a list of other properties in the locality for sale at a lower value than the appeal site, suggesting that they would be a more attractive and affordable prospect for an agricultural worker. Nevertheless, this does not demonstrate that there is no need for an agricultural worker's dwelling at this location.
20. It is also suggested that the neglected state of the property and its prolonged vacant state emphasises the lack of need for an agricultural worker's dwelling. However, I understand that when the appellant purchased the property in 2017 it had not been marketed as an agricultural worker's dwelling and therefore its potential as such was not made known.
21. Overall, insufficient evidence has been put forward to demonstrate that the dwelling is no longer required for an agricultural or forestry worker in the locality and no marketing has been undertaken to indicate whether or not there

is a need for the dwelling for other qualifying persons. It was put to me at the hearing that there is no need for such marketing, due to the information provided above. However, extensive marketing targeted at the farming community would move the exercise away from a theoretical exercise based on assumptions to a more practical and evidence-based exercise.

22. The parties agree that the appeal site is not isolated given its proximity to the residential area of Bessacarr and other nearby properties. It was also acknowledged at the hearing that the site is located within a reasonable distance of a limited number of local services. Furthermore, I accept that the use of the property as an open market dwelling would not result in any harm to the character and appearance of the area as the building is already present within the landscape. However, these are neutral considerations that do not add weight in favour of the appeal.
23. In support of the appeal the appellant has referred me to several appeal decisions⁴ where Inspectors allowed the removal of agricultural occupancy conditions. However, these other cases were in other parts of the country with differing site-specific circumstances and with different policy considerations. Therefore, I consider that these other cases do not provide a direct comparison to the case before me.
24. Consequently, for the reasons given above, and in the absence of cogent evidence to the contrary, I consider that a condition restricting the occupancy of the dwelling remains necessary and reasonable. To remove the condition would be contrary to Saved Policies ENV 4 and ENV 5 of the UDP, Policy CS3 of the DCS and emerging DLP Policy 8, the relevant requirements of which are set out above. The condition also complies with the remaining tests set out in paragraph 55 of the Framework and the advice set out in the Planning Practice Guidance.

Conclusion

25. There are no material considerations that indicate a decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

J M Tweddle

INSPECTOR

⁴ Appeal Ref: APP/D0840/W/19/3329734, APP/D0840/W/18/3207828 and APP/E2734/W/19/3234758

APPEARANCES

FOR THE APPELLANT:

Mr Gareth Stent BA(Hons) Dip TP MRTPI, Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Richards, Principal Planning Officer, Doncaster Metropolitan Borough Council

INTERESTED PARTIES:

None



Appeal Decision

Hearing held on 4 May 2022

Site visit made on 4 May 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/N2535/W/21/3281142

Bleak Farm, Northorpe Road, Scotton, Gainsborough, DN21 3RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Richard Bussell, Executor of the late John Kirman against the decision of West Lindsey District Council.
- The application Ref 143045, dated 26 May 2021, was refused by notice dated 16 July 2021.
- The application sought planning permission for replacement of existing farmhouse with bungalow without complying with a condition attached to planning permission Ref: W89/920/78, dated 21 November 1978.
- The condition in dispute is No 2 which states that: The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, (prior to retirement), in the locality in agriculture as defined in section 290 of the Town and Country Planning Act 1971, or in forestry or a dependant of such a person residing with him (but including a widow or widower of such a person).
- The reason given for the condition is: The site is in a rural area where it is the policy of the district planning authority, in the interests of safeguarding the rural character and appearance of the area, not to permit development unless it is required to meet a local agricultural need. Permission has been granted only in the light of local agricultural need.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Central Lincolnshire Local Plan Review is at an early stage and, having regard to Paragraph 48 of the National Planning Policy Framework (the Framework), I attach limited weight to the policies within it.

Background and Main Issue

3. Planning permission was granted for a detached bungalow as a replacement for an existing farmhouse in 1978 subject to an agricultural occupancy condition in the terms set out in the banner heading above. The appellant seeks to remove the occupancy condition on the basis that the bungalow replaced a previous farmhouse at the site that was not subject to an agricultural occupancy restriction.

4. The main issue is whether condition 2 restricting the occupancy of the bungalow is necessary and reasonable having regard to national and local planning policies and whether there is a demand for an agriculturally tied dwelling associated with the landholding or the local area.

Reasons

Planning Policy

5. The bungalow fronts Northorpe Road, it has a detached garage and a range of agricultural buildings adjacent to it. The property and the agricultural buildings are currently vacant. The appeal site is located beyond the last properties in Scotton village along Northorpe Road and is surrounded by agricultural fields.
6. In 1978 the farm holding consisted of 80 acres of owned land and 80 acres of tenanted land. Since Mr Kirman passed away some of the farmland has been sold, with approximately 9.8 hectares (24.26 acres) being retained and currently farmed under a farm business tenancy.
7. The development plan for the district is the Central Lincolnshire Local Plan (April 2017) (the CLLP) and the Scotton Neighbourhood Plan adopted 28 June 2021. Policy LP2 of the CLLP sets out the spatial strategy and settlement hierarchy for the district. Under Policy LP2, in the countryside development is restricted to, among other things, that which is demonstrably essential to the effective operation of agriculture, horticulture, forestry, outdoor recreation, transport or utility services and proposals falling under Policy LP55.
8. Policy LP55 allows development in a number of circumstances, including part B replacement dwellings provided that the original dwelling has not been abandoned, is not of architectural or historic merit or valuable to the character of the settlement or wider landscape, is a permanent structure, of a similar size and scale and located on the footprint, unless an alternative position would have notable benefits and have no adverse impact on the wider setting.
9. Part D of Policy LP55 supports new dwellings which are essential to the effective operation of those uses identified in Policy LP2 including agriculture. Such applications should be accompanied by evidence of the need for the dwelling having regard to a number of matters and will be subject to a restrictive occupancy condition. Policy 5 of the NP supports residential development outside the developed footprint of Scotton where the criteria in Policy LP55 part D are met.
10. These policies are largely consistent with the Framework where in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Isolated homes in the countryside should be avoided unless one of a number of circumstances apply, including where there is an essential need for a rural worker, to live permanently at or near their place of work in the countryside or the development would re-use redundant or disused buildings and enhance its immediate setting.
11. Further, the Council's spatial strategy and the Framework are broadly consistent with the reason for imposing condition 2 which states that the policy is 'not to permit development unless it is required to meet a local agricultural need'.

12. It was agreed at the Hearing that the bungalow is within the countryside for policy purposes, in an area where dwellings would not normally be permitted except in accordance with Policies LP2 and LP55 and would be termed 'isolated' in the context of Paragraph 80 of the Framework.
13. I acknowledge the appellant's view at the Hearing that Policy LP2 is not relevant to this variation of condition application, because section 73 applications only consider the disputed condition/s and therefore there is no development in the terms set out in section 55 of the Act. However, the outcome of granting a section 73 application would be that a new permission would be created for the same development without the agricultural occupancy condition applied. The effect of removing the condition would be the establishment of an unfettered dwelling in an area of countryside where such development would not normally be permitted. Therefore, as part of the locational strategy for development in Central Lincolnshire, I am satisfied that Policy LP2 is relevant to my considerations here.
14. The appellant contends that as a replacement for the previous farmhouse the bungalow accords with the criteria in Policy LP55 part B and paragraph 80 of the Framework and would be acceptable in principle without the restriction of an agricultural occupancy condition. There are letters of support which set out some of the site circumstances at the time of the 1978 application for the bungalow, and I acknowledge that the description of development refers to the bungalow being a replacement for a farmhouse. Nevertheless, from the limited available information, I cannot establish that the replacement of the farmhouse with the bungalow would have met the requirements of LP55 part B. In addition, the original application was not for the re-use of redundant or disused buildings and therefore could not have met the requirements of Framework Paragraph 80 (c).
15. The appellant has provided recent examples where replacement dwellings have been accepted in the countryside without the imposition of an occupancy condition. However, the criteria of Policy LP55 part B relies on the particular site circumstances. Whilst I accept that there have been sites where replacement dwellings have been supported, and not all these dwellings were on the direct footprint of the original building, as there is insufficient evidence to conclude that the original development at the appeal site would have complied with Part B of Policy LP55, these other decisions are of limited relevance.
16. I saw at my site visit that the bungalow and the surrounding land and buildings associated with it appear appropriate to accommodate an agricultural or forestry worker and any equipment they may own. Further, the appellant confirms that Mr Kirman operated the farm holding until his retirement and always complied with the agricultural occupancy condition. Consistent with the reasons for imposing the original condition, the CLLP sets out that agriculture plays a significant role in the local economy and provision is made in Policy LP55 part D for rural workers who are likely to need to reside in the locality.
17. Consequently, although condition 2 was imposed prior to the publication of the CLLP, the NP and the Framework I am satisfied that, having regard to the available evidence, it still serves a planning purpose in helping to maintain a supply of dwellings for people employed in agriculture and forestry. The existing condition is precisely worded and enforceable. It also remains

necessary and reasonable, as it restricts the occupancy of a dwelling which was permitted having regard to the local agricultural need, as evidenced by the letter from the Agricultural and Development Advisory Service (ADAS)¹, in a location where residential development would not normally be permitted.

Demand

18. The parties agree that there are no policies in the development plan or in the Framework which set out an approach to the removal of agricultural occupancy conditions. Even so, the Council advised the appellant that a marketing exercise for the property would be required to assess whether there is a demand for the agriculturally tied dwelling related to the particular holding or locally. This is an established approach to assessing the demand for such properties.
19. At the Hearing the appellant asserted that the bungalow and associated land and buildings are unsuitable for a new farming business because the land holding is too small to sustain a viable agricultural enterprise. However, little evidence that the land and buildings associated with the bungalow cannot be a viable agricultural proposition has been provided. Given that the site includes 9.8 ha of land and farm buildings, I am satisfied that it is reasonably foreseeable that the land could be used for agriculture. Whilst it may not be a large enough hectareage on its own to support arable farming, there is no evidence that the unit could not operate as a more intensive farm operation or additional land be rented, as per the original farming enterprise.
20. Further, even if the dwelling could not be used in association with the land and buildings for agriculture, in accordance with the terms of condition 2, it is appropriate to consider whether there is a demand for the bungalow with the agricultural occupancy restriction in place in the local area.
21. The appellant considers that it would be unethical to market the bungalow as one of the beneficiaries of Mr Kirman's estate would be occupying the property and there is no intention to sell it. However, as the proposed occupant cannot meet the requirements of the occupancy condition, I see no reason why it would not be appropriate to advertise the property for sale or rent specifying that it is subject to an agricultural occupancy condition. This is not an uncommon practice.
22. Further, in the absence of a marketing exercise, the appellant has not provided any other evidence that the potential for occupation in accordance with the condition has been assessed. The lack of a marketing exercise or any other assessment means that the demand for the property with the occupancy restriction in place remains un-tested.
23. Whilst the Council has no specific policy setting out an approach to the removal of agricultural occupancy conditions, without any evidence, I am unable to conclude that condition 2 is no longer necessary or reasonable.
24. Therefore, overall, I conclude that condition 2 restricting the occupancy of the bungalow is necessary and reasonable and in accordance with national and local planning policies. Further, in the absence of evidence to the contrary, I conclude that it has not been shown that there is a lack of demand for an

¹ Appendix III of the appellant's statement of case ADAS letter dated November 1978.

agriculturally tied dwelling associated with the landholding or the local area. To remove the condition would conflict with Policies LP2 and LP55 of the CLLP and Policy 5 of the NP as set out above. It would also conflict with the Framework.

Other Matters

25. I appreciate that the appellant's remit as the executor of Mr Kirman's estate is to maximise the estate's assets. However, the appellant's role is of limited relevance to the matters before me.

Conclusion

26. For the reasons given above, condition 2 remains necessary and reasonable. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Tori Heaton	DDM Agricultural
David Hardy	Squire Patton Boggs Solicitors

FOR THE LOCAL PLANNING AUTHORITY:

George Backovic	West Lindsey District Council
Martha Rees	West Lindsey District Council
Contanze Bell	Kings Chambers

INTERESTED PERSONS:

Mr Marris
Robert Littlewood



Appeal Decision

Hearing held on 21 April 2021

Site visit made on 26 April 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal Ref: APP/B9506/W/20/3258005

Brock Farm, Football Green, Minstead, Lyndhurst, SO43 7FR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Celia Stanwyck against the decision of New Forest National Park Authority.
- The application Ref 20/00235, dated 24 March 2020, was refused by notice dated 13 May 2020.
- The application sought planning permission for erection of house for agricultural worker with landscaping proposals without complying with a condition attached to planning permission Ref NFR/16013/2, dated 6 July 1970.
- The condition in dispute is No 2 which states that: *the occupier of the dwelling being a person employed or last employed in agriculture, as defined by Section 221(1) of the Town and Country Planning Act, 1962, or in forestry, or the dependant of such a person.*
- The reason given for the condition is: *The site being within the Green Belt is not one where the Local Planning Authority would permit residential development, other than that which is appropriate thereto, such as herein specified.*

Decision

1. The appeal is dismissed.

Preliminary matters

2. The site is not in the Green Belt and the original reason given for the condition is therefore no longer accurate. However, the principle still applies to residential development at this location, given that it is in the open countryside.
3. Future occupancy by commoners would only accord with the permission if they were practicing commoning to an extent that would satisfy the words of the condition. I do not therefore need to consider potential future occupancy of the dwelling by this group separately in my decision, insofar as it might increase the pool of potential qualifying purchasers.

Main issue

4. The main issues are:

- whether or not condition 2 continues to be reasonable and necessary with particular regard to provision of agricultural workers accommodation, and,
- if so, whether there are overriding material considerations, with particular reference to a Certificate of Lawful Development relating to breach of the condition.

Reasons

5. Brock Farm comprises a large, 2-storey, detached house built in the early 1970s. It is set within an agricultural holding of approximately 10 ha on the edge of the small, rural village of Minstead. Beyond the house is a yard surrounded by outbuildings. These included a substantial unused barn, and an open barn, which I observed was used for storage of equipment and hay for the appellant's horse. The holding has direct access to the open forest.
6. Policy DP32 of the New Forest National Park Local Plan (2016 – 2036) (August 2019) (LP) states that an agricultural occupancy condition will only be removed if it has been demonstrated that the long-term need for the dwelling has ceased, and there is no evidence of a continuing need for persons linked to agriculture, forestry or commoning.
7. The purpose of the policy is to ensure that dwellings specifically permitted to meet the needs of the rural economy remain available. The continuation of agriculture in the New Forest is an important contributor to both its cultural heritage and landscape. Paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to the conservation and enhancement of cultural heritage, and landscape and scenic beauty in the National Parks.
8. The LP lists the evidence required to demonstrate that the long-term agricultural need for the dwelling has ceased, which includes marketing that has been targeted, realistic and sustained. The appellant has not provided any of the listed information.
9. The appellant states that marketing could not be undertaken because 'the occupancy condition is not intact'. As discussed below, I consider that the condition would be intact in the event that an agricultural or forestry worker were to come forward and for this reason, I do not consider that the appellant was precluded from marketing it as such.
10. It is not in dispute that the Authority receives planning applications for agricultural worker's dwellings and evidence has been submitted showing that over 20 dwellings for such a need have been approved since 2010. I am satisfied that this demonstrates an on-going need for tied housing.
11. In addition, the fact that the house is attached to an agricultural holding with associated barns and outbuildings leads me to conclude that the long-term need for the dwelling has not ceased through severance from the farm.
12. The appellant suggests that the house, even if discounted, is highly likely to be beyond the means of agricultural and forestry workers. No written evidence to support this has been provided. However, at the hearing it was not in dispute that houses in the New Forest are very expensive and I do not consider it controversial to accept that they are likely to be beyond the means of a typical farm worker's salary.

13. Notwithstanding this, the lack of marketing means that I have no evidence that a farmer or forester, or their dependants, with the means to afford the house could not come forward. The condition also allows occupation by somebody last employed in agriculture or forestry, which increases the chances of finding a person with the financial means.
14. In addition, there is no 'floor' in policy regarding the extent of the discount and, at least in theory, the house could be marketed at a heavily discounted price that would be accessible to workers to fulfil the policy. The lack of marketing and financial information means that I am unable to assess the extent of discount that would be required and whether this would be a prohibitive factor.
15. Turning to the objective of the policy, which is to ensure that a culture of agriculture and forestry can continue to some degree in the New Forest, the fact that houses in the area appear to be beyond the means of typical workers only serves to emphasise the importance of the policy.
16. At the hearing, it was reported that there were numerous less expensive houses on the outskirts of the nearby city. However, I consider that in most cases it would be essential for a farmer to live on the land, which would also reflect the historical pattern of settlement. A situation where those working on the land must commute into the area every day does not reflect the objective of the policy.
17. It has been suggested that the house is too large to be suitable for the purpose of an agricultural dwelling. I am mindful that the house is approximately 26% larger than that permitted in 1970 because it was extended in about 2002¹ in part to meet the requirements of the agricultural holding. The proposal included an additional bedroom for a worker at busy periods, office space and storage to keep the fleeces dry. While I appreciate that the angora goat business was not ultimately realised, the size of the house has therefore been permitted as appropriate for an agricultural enterprise.
18. The viability of the farm has been called into question. However, only oral evidence stating that the land was too wet to be accessed during part of the year was presented at the hearing. At the site visit, I observed that the fields had been cut and that the farm buildings included modern barns, which appeared to have previously been used for dairy farming. I remain unconvinced that the farm would not be a viable proposition.
19. I find that there is a continuing need for houses with an agricultural tie, and it has not been demonstrated that the long-term need for this dwelling has ceased. The requirements of Policy DP32 of the LP have not been fulfilled to justify its removal. In coming to this conclusion, I have had regard to the statutory purposes of the National Park, including to conserve and enhance the natural beauty and cultural heritage of the New Forest.

Other considerations

20. A Certificate of Lawful Development² was issued in 2018 certifying that the breach of condition 2 had become lawful because it had been in existence for at least 10 years.

¹ 02/74357 (12 June 2002)

² Reference 19/00859, 19 December 2019

21. The Authority cannot therefore enforce against the breach of condition while the current use continues. However, if the house becomes unoccupied or is again linked to agricultural or forestry use, then the condition becomes enforceable once more.
22. While I accept that a significant gap in occupancy is unlikely, it is not impossible. However, of greater likelihood is that a future occupier reverts to using the site for agriculture. The lack of a marketing exercise means that I have no evidence before me that this is so unlikely to happen that it can be dismissed. Given that the site includes approximately 10 ha of land and substantial farm buildings, I conclude that it is reasonably foreseeable that this could occur.
23. The appellant has drawn two appeals to my attention^{3,4}, both of which conclude that a Certificate of Lawful Development means that a restrictive occupancy condition no longer serves a purpose. Although I do not have the full details of these cases before me, it appears that both properties had become severed from the land and were no longer required for the purpose of agriculture. In the case of Conifer Lodge, the Inspector was also satisfied that the size of the dwelling meant that it would be unlikely to be suitable for a rural worker in the future, which for the reasons above I do not find to be the case here. I also note that Conifer Lodge is not located in a national park, where the weight given to protection of the culture and landscape is greater.
24. I conclude that there is a greater than theoretical possibility that condition 2 could be enforceable in the future. The condition therefore meets the requirements of the enforceability test outlined in the Framework and the Planning Practice Guidance⁵.

Other matters

25. The site is in the Forest Central (South) Conservation Area, which is characterised by its settlement pattern and buildings. The proposal would not result in any physical changes to the building or land and I am therefore satisfied that there would be not harm to the character or appearance of the conservation area.
26. The site is adjacent to the New Forest SSSI and SAC. No change to land use is proposed through removal of the condition and I am therefore satisfied that there would be no harm to the designated sites.

Conclusion

27. It has not been demonstrated that there is only a theoretical possibility of condition 2 being enforceable in the future. Evidence has not been provided that the long-term need for the dwelling for persons linked to agriculture or forestry has ceased, as required by Policy DP32 of the LP. Continuation of agriculture in the New Forest National Park contributes to the conservation and enhancement of the cultural heritage and landscape, and protection of this therefore attracts great weight.

³ APP/E2001/W/17/3170529 Conifer Lodge, Hull Road, Skirlaugh, Hull (4 July 2017)

⁴ APP/Y9507/W/16/3147251 Copper Beeches, Torberry Farm, Hurst, South Harting (7 September 2016)

⁵ Paragraph: 003 Reference ID: 21a-003-20190723, revised 23 July 2019

28. I conclude that retention of the condition is consistent with the policies of the local development plan when read as a whole, and for this reason, and having regard to all other matters raised, the appeal is dismissed.

B Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs A Whalley BA(Hons) Dip TP MRTPI, planning consultant, Woolley and Wallis

FOR THE LOCAL PLANNING AUTHORITY:

Miss L Young BSc MA MRTPI, Case Officer, New Forest National Park

OTHER INTERESTED PARTIES: None

DOCUMENTS SUBMITTED AT THE HEARING

LPA report relating to one and two storey additions, with alterations to roof (demolish existing conservatory) at Brock Farm, Football Green, Minstead (application 74357), 12 June 2002



Appeal Decision

Hearing held on 5 March 2024

Site visit made on 5 March 2024

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2024

Appeal Ref: APP/X1118/W/23/3327842

North Down Farm, North Lane, Bickington, Devon EX31 2JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Carolyn Bennett against the decision of North Devon Council.
- The application Ref is 77141.
- The application sought planning permission for 'outline application, proposed farmhouse, land at North Lane, Bickington' without complying with a condition attached to planning permission Ref 2/86/258/27/1, dated 15 April 1986.
- The condition in dispute is No 4 which states that: *"The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such a person residing with him), or a widow or widower of such a person."*
- The reason given for the condition is: *"To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as the site is located in open country where residential development would not normally be permitted."*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (Framework) was published on 19 December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.
3. The appellant submitted late evidence¹ on 22 February 2024. Nevertheless, as this was not a lengthy document, the Council had the opportunity to consider it before the hearing. An opportunity was also given to interested parties to consider the document during the hearing. Therefore, my acceptance of it would not prejudice any parties.

¹ GTH Planning appeal – late evidence for North Down Farm, North Lane, Bickington, EX31 2JN, dated 21 Feb 2024

Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable in relation to restricting the occupancy of the dwelling as an agricultural workers or forestry workers dwelling.

Reasons

5. The appeal site is located off North Lane. The site comprises an agricultural dwelling that consists of a detached bungalow and a detached double garage. The agricultural dwelling is sited south of a group of existing agricultural buildings with two intervening dwellings which are currently under construction. The dwelling is sited outside of any defined settlement boundary, and thus is located within open countryside for planning purposes.
6. Planning permission was originally granted for the appeal property in 1986 when the dwelling formed part of Woolmers Farm. The disputed condition was attached to the original planning permission², and it restricted the occupancy of the property to someone employed or last employed in agriculture or forestry. However, since the approval of the original application, the land and buildings which were previously connected to the appeal property are now in separate ownership. Accordingly, the farmstead and agricultural business has become disconnected from the appeal property. This means that the appeal site no longer forms part of the original agricultural enterprise.
7. Policy DM28 of the North Devon and Torridge Local Plan 2011-2031 (adopted 2018) (Local Plan) relates to rural worker accommodation. It states that "applications for the removal of occupancy conditions or ties on dwellings for rural workers will only be permitted where there is compelling evidence to demonstrate that such a restriction is no longer justified."
8. In respect of Policy DM28, it is necessary to consider whether a viable agricultural business could be run from the associated land. At the Hearing, the appellant asserted that the appeal site is too small to sustain a viable agricultural business. They consider that the appeal site's size, which is limited to around 0.38 acres of land, would not be suitable to support an agricultural enterprise without additional land. This was not disputed by the Council. Consequently, due to the site's constrained size, I would agree, there is no real prospect of a viable agricultural business being run from the appeal site.
9. At the hearing, the appellant also indicated that although agricultural operations still exist on land to the north of the dwelling at Woolmers Farm, there is currently no operational need for the agricultural dwelling to be retained to meet the needs of the adjacent farm. I am therefore satisfied that the dwelling is no longer required by the farm. Nevertheless, the disputed condition does not limit the occupancy of the dwelling to a specific holding and therefore, the need for agricultural dwellings in the wider area must also be considered.
10. Although the wording of Policy DM28 does not specifically refer to a marketing exercise, I agree with the Council that the supporting text to the policy is as important as the policy itself, as it gives information on how the policy and criteria within the policy have been formulated. It therefore should be taken into account when applying the policy. The supporting text of the policy, at

² Ref: 2/86/258/27/1, dated April 1986.

paragraph 13.156 of the Local Plan states that “to demonstrate that the dwelling is no longer required to accommodate rural workers, the Council will expect applications for the removal of occupancy conditions to be supported by strong evidence demonstrating no demand for the property in the locality. Applicants will be expected to submit information to show that the dwelling has been marketed, at an appropriate price reflecting the occupancy restriction, for a period of at least 18 months and that there was no demand for the property over that period.” Paragraphs 3.41 and 3.42 of the Council’s Rural Workers’ Dwellings Supplementary Planning Document (adopted 2020) (SPD) also sets out an approach to a marketing exercise. It is therefore entirely reasonable to expect a marketing exercise to be submitted with the application.

11. The appellant argues that Policy DM28 does not explicitly require a marketing exercise to be undertaken in all circumstances. The appellant also considers that it would be unethical to market the dwelling as there is no intention to sell it. However, there is nothing within the Local Plan or SPD to indicate that a marketing exercise would not be necessary in this instance. I also see no reason why it would not be appropriate to advertise the property for sale or rent specifying that it is subject to an agricultural occupancy condition. This is not an uncommon practice and is a robust method for establishing if there is a demand in the local area for such properties.
12. At the hearing, the appellant confirmed that the appeal property had been valued by an experienced chartered surveyor that estimated the value of the property between £300,000 and £350,000, including the agricultural tie. The appellant suggests that this estimated value would mean that it would be beyond the average wages of an agricultural worker to secure a mortgage for the property. Nonetheless, to determine whether the estimated value is genuinely beyond the means of a qualifying individual, the dwelling would need to be placed on the market with a value reflecting the occupancy restriction to test the demand. It is clear from the evidence before me that this has not been done.
13. The appellant has provided a list of other properties in the locality for sale at a similar or lower value than the estimated value for the appeal property, suggesting that they would be a more affordable prospect for an agricultural or forestry worker. Nevertheless, the appellant’s estimated value has not been formally agreed with the Council, as per paragraph 3.42 of the SPD. Moreover, the appellant’s list of other properties does not demonstrate that there is no demand for an agricultural or forestry worker’s dwelling in this location.
14. The absence of a marketing exercise leaves me without evidence that a financially eligible agricultural worker or forester could not come forward. Additionally, the condition also allows occupation by somebody last employed in agriculture or forestry, which increases the likelihood of finding financially capable individuals. However, no targeted marketing efforts toward the farming community have been made to gauge the demand from other qualifying persons. Furthermore, the appellant has not provided any other evidence that there is no local demand for the property as a rural worker’s dwelling. Consequently, without a marketing exercise or alternative assessment, the demand for the property with the occupancy restriction remains untested.
15. It was put to me at the hearing that a marketing exercise is not necessary, due to the dwelling being sited near to the existing urban area of Bickington, and

new residential development being built to the south of the appeal site, following planning approval³. While this brings residential development closer to the appeal site, it does not necessarily mean that there would be no demand for an agricultural or forestry workers dwelling in this location and the appropriate evidence is not before me to fully justify why the condition is no longer necessary.

16. My attention was also drawn to a planning approval⁴ for the two dwellings sited to the north of the appeal site, which were approved during a time when the Council did not have a five-year housing land supply. At the hearing, it was confirmed that the Council now has a five-year housing land supply of 5.18 years, and therefore paragraph 11d of the Framework is not engaged. Moreover, as these other two dwellings were approved as unrestricted open market housing, they do not have an agricultural tie attached to them. This means that, unlike the appeal property, they do not form part of North Devon District's housing stock restricted for agricultural or forestry workers.
17. At the hearing the parties agreed that the appeal site is not isolated given its proximity to the residential area of Bickington and other nearby properties. It was also acknowledged that the site is located within a reasonable distance of local services and facilities. Furthermore, I accept that the use of the property as an open market dwelling would not result in any harm to the character and appearance of the area as the property is already present within the landscape. Nevertheless, these are neutral considerations that do not add weight in favour of the appeal.
18. The appellant has referred me to other appeal decisions⁵ where the Inspector allowed the removal of agricultural occupancy conditions. However, the Inspector noted that there had been 'significant amounts of new housing development such that the farm as it was is now part of the wider urban area and not in a rural area from where any latent demand for agricultural worker accommodation may exist.' Although a specific marketing exercise had not been undertaken, the Inspector concluded that it was not a requirement of planning policy. I therefore consider these other cases do not provide a direct comparison to the case before me, which is sited next to Woolmers Farm that continues to run as an agricultural enterprise. This other appeal site was also in a different planning authority with different development plan policies. Accordingly, I ascribe little weight to these other decisions and have considered the appeal on its own merits.
19. For the above reasons, I find that the evidence before me does not compellingly demonstrate that there is no longer a demand for an agricultural or forestry worker's dwelling in the locality. Removal of this condition would result in an unrestricted dwelling in the countryside. Consequently, the condition restricting the occupancy of the dwelling remains necessary, reasonable, and relevant to planning. To remove the condition would conflict with Policy DM28 of the Local Plan and paragraphs 3.41 and 3.42 of the SPD, the relevant requirements are set out above. The condition also complies with the remaining tests set out in paragraph 56 of the Framework and the advice set out in the Planning Practice Guidance.

³ Planning application ref: 56351.

⁴ Planning application ref: 74253

⁵ Appeal refs: APP/D3315/C/14/2218684 and 2218685.

Conclusion

20. For the reasons given above, condition 4 remains necessary and reasonable. Therefore, the appeal is dismissed.

H Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Laura Polley Planning agent for the appellant (GTH)

Andrew Preston Planning agent for the appellant (GTH)

FOR THE LOCAL PLANNING AUTHORITY:

Peter J. Rowan North Devon Council

INTERESTED PERSONS:

Alistair Miller

Jilda Miller

Alan Capps

Planning Performance – May 2024

Planning will report a summary of performance. This will be for the month before last month, as this allows for all applications to be validated and gives a true representation.

All figures include all types of planning applications.

Determinations

	Total	Major	Minor	Householder	Other	DIS /NMA	Trees
Determinations	103	0	23	31	10	27	12
Determined on time (%)			87% (80% within 8 weeks)	97% (90% within 8 weeks)	100% (90% within 8 weeks)	59% (80% within 8 weeks)	100% (100% within 8 weeks)
Approved	90	0	15	30	8	26	11
Refused	13	0	8	1	2	1	1

Validations – 62% validated within 5 working days (ECDC target is 85%)

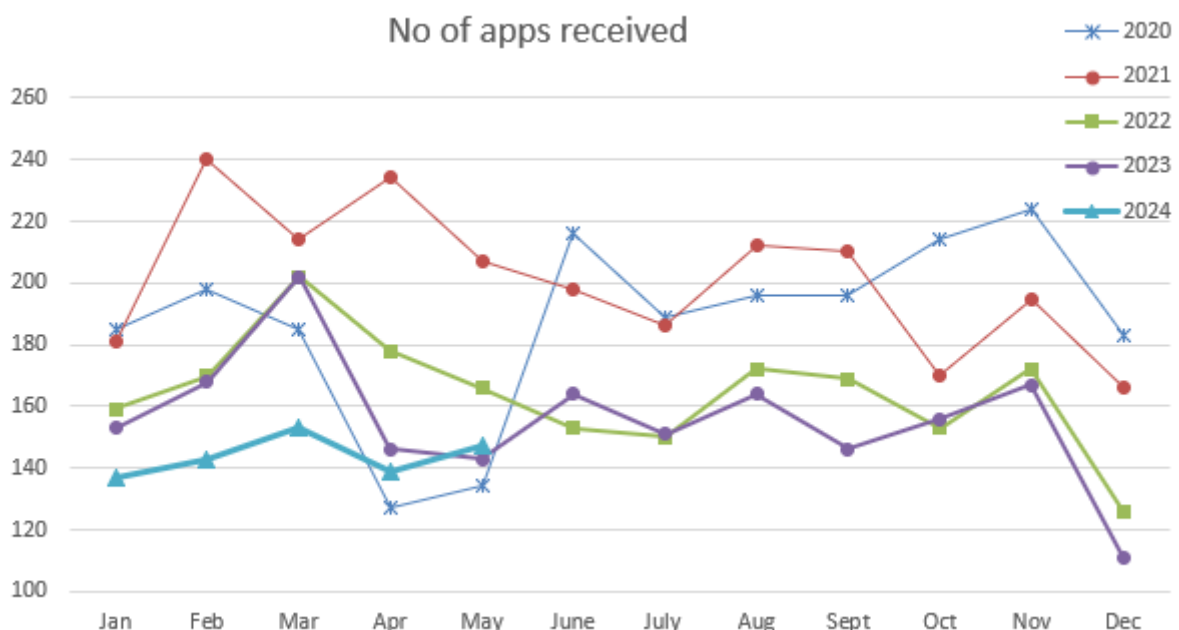
	Total	Major	Minor	Householder	Other	DIS /NMA	Trees
Validations	142	2	25	27	15	51	22

Open Cases by Team (as at 28/06/2024)

	Total	Major	Minor	Householder	Other	DIS /NMA	Trees
Team 1 (3 FTE)	78	8	5	19	21	25	0
Team 2 (3 FTE)	88	8	8	25	14	26	0
Team 3 (3 FTE)	105	11	21	9	19	45	0
Team 4 (2.8 FTE)	113	5	19	19	27	42	0
No Team (3.4 FTE)	34	0	0	0	3	6	25

(No Team includes – Trees Officer, Conservation Officer and Office Team Leader)

The Planning department received a total of 147 applications during May which is 3% increase of number received during May 2023 (143) and 6% increase to the number received during April 2024 (139).



Valid Appeals received – 2

Planning reference	Site Address	Decision Level
23/00894/FUL	Land North West Of 9 Stretham Road Wicken	Committee
23/01003/FUL	Flint Cottage 44 Church Lane Cheveley	Delegated

Appeals decided – 1

Planning reference	Site address	Decision Level	Appeal Outcome
23/01097/FUL	22 Lisle Lane Ely	Delegated	Dismissed

Upcoming Hearing dates – 2

Planning reference	Site Address	Date of Hearing
23/01116/FUL	Pratts Green Farmhouse Pratts Green Farm Malting End Kirtling	06/08/2024
23/01117/LBC	Pratts Green Farmhouse Pratts Green Farm Malting End Kirtling	06/08/2024

Enforcement

New Complaints registered – 24 (2 Proactive)

Cases closed – 20 (0 Proactive)

Open cases/officer (2.6FTE) – 195 cases (15 Proactive)/2.6 = 75 per FTE

Notices served – 0

Comparison of Enforcement complaints received during May

Code	Description	2023	2024
ADVERT	Reports of unauthorised adverts	1	0
COND	Reports of breaches of planning conditions	3	6
CONSRV	Reports of unauthorised works in a Conservation Area	0	0
DEM	Reports of unauthorised demolition in a Conservation Area	0	0
HEDGE	High Hedge complaints dealt with under the Anti-Social Behaviour Act	0	0
LEGOR	Reports of breaches of Legal Obligation (NEW CODE)	1	1
LISTED	Reports of unauthorised works to a Listed Building	0	0
MON	Compliance Monitoring	0	0
OP	Reports of operational development, such as building or engineering works	4	4
OTHER	Reports of activities that may not constitute development, such as the siting of a mobile home	0	1
PLAN	Reports that a development is not being built in accordance with approved plans	0	4
PRO	Proactive cases opened by the Enforcement Team, most commonly for unauthorised advertisements and expired temporary permissions	0	2
UNTIDY	Reports of untidy land or buildings harming the visual amenity	0	1
USE	Reports of the change of use of land or buildings	2	3
TOTAL		11	22