

PLANNING COMMITTEE



WEDNESDAY, 21 AUGUST 2024 - 1.00 PM

PRESENT: Councillor C Marks (Vice-Chairman), Councillor I Benney, Councillor Mrs J French and Councillor S Imafidon, Councillor G Booth (Substitute) and Councillor M Purser (Substitute).

APOLOGIES: Councillor D Connor (Chairman), Councillor P Hicks and Councillor E Sennitt Clough.

Officers in attendance: Matthew Leigh (Head of Planning), Gavin Taylor (Principal Development Officer), Andrew Dudley (Planning Enforcement Officer) and Jo Goodrum (Member Services & Governance Officer)

P29/24 PREVIOUS MINUTES

The minutes of the meeting of the 24 July were signed and agreed as an accurate record.

P30/24 F/YR23/0696/O LAND SOUTH OF BARKERS LANE AND EAST OF WIMBLINGTON ROAD, MARCH OUTLINE PLANNING PERMISSION (ALL MATTERS RESERVED, EXCEPT FOR ACCESS) FOR UP TO 425 DWELLINGS (INCLUDING AFFORDABLE HOUSING), FORMATION OF 2 X ACCESSES, AND A DROPPED KERB (FOR 38 WIMBLINGTON ROAD), SAFEGUARDED LAND FOR GRASS PLAYING FIELDS, PUBLIC OPEN SPACE, LANDSCAPING, COMMUNITY GARDEN, COMMUNITY ORCHARD, CHILDREN'S PLAY AREAS, SUSTAINABLE DRAINAGE INFRASTRUCTURE, RETENTION OF INFORMAL PARKING AREA, ALL OTHER ASSOCIATED INFRASTRUCTURE, AND DEMOLITION OF AN EXISTING DWELLING (40 WIMBLINGTON ROAD)

Gavin Taylor presented the report and drew members attention to the update report that had been circulated.

Members received a presentation, in accordance with the public participation procedure, from Will Hodgson, the applicant. Mr Hodgson explained that Barratt David Wilson Homes already control 65% of the allocated site and he has been in discussions with both of the land owners involved with regards to bringing forward the whole site, which are subject to current separate planning applications, but he is committed to delivering and helping the other two applicants in delivering the whole allocation. He stated that, from the start, his strategy has been to ensure that the whole allocation can be delivered comprehensively and to achieve this he has ensured both of the access points have sufficient capacity to deliver the whole 600 to 650 units across the allocation.

Mr Hodgson explained that the proposal includes a comprehensive drainage strategy and there will be an equitable approach to the land split in order to determine how many dwellings are proposed on each parcel of land. He stated that the site will be delivered with both of the house building brands namely Barratt Homes and David Wilson Homes and the combination will bring forward a greater house type variety and will, therefore, provide the ability to deliver different design traits across the site.

Mr Hodgson made the point that, although subject to approval, the intention is to use Lambs Hill Drove as the construction access point and all construction vehicles would be limited through

March Town Centre and up Wimblington Road, with the show homes and primary access for early parts of the site being off the Wimblington Road accessed at number 40. He added that he has listened to and responded to members, residents and statutory consultees throughout the planning application, and this will continue through the progression of the reserved matters stage.

Mr Hodgson stated that he is now proposing bus infrastructure measures along Wimblington Road and within the site itself along with better pedestrian and cyclist connectivity throughout the site and off-site highway improvements are being proposed along with a drainage strategy which avoids existing infrastructure issues on Barkers Lane. He explained that he is committed to delivering the scheme along with the Council and he sees it as a fantastic opportunity to create a legacy to support the growth of March.

Members received a presentation, in accordance with the public participation procedure, from Andrew Hodgson, the agent, along with George Beevor-Reid, their drainage expert present to answer any questions. Mr Hodgson stated that 425 houses are being delivered as part of the allocation and one of the points raised as part of the consultation with the public and with local members was the issue of foul drainage, which is referred to in the officer's report where mitigation measures have been taken to avoid any further issues along Barkers Lane by implementing a separate pumping station which pumps along to The Avenue. He advised the committee that the other two applications which form part of the allocation will also be able to feed into that system as well and, therefore, that should negate any capacity issues from the scheme.

Mr Hodgson referred to the benefits of the scheme which have been included with the application and they include up to 85 units of affordable housing depending on how many of the 425 they deliver, 1.59 hectares of safeguarded playing fields for Neale Wade College and if they do not go to the college, there is always the option in the future for that to be put as additional open space. He added that there is also 7.47 hectares against a requirement of 5 hectares for public open space across the development as well as a NEAP and a LEAP, Community Orchard and Garden and he made the point that with regards to biodiversity net gain, whilst there is no requirement to deliver it, the figure would be approximately 11%.

Mr Hodgson stated that overall, in addition to the £2,000 per unit and the Section 106 contributions, the applicant is also contributing £1,500 per unit to Peas Hill and Mill Hill roundabout mitigations and those figures equate to double the obligations that are normally found in such sites in terms of viability. He made the point that the scheme has been carefully considered and they have worked closely with the officer to ensure all the issues had been addressed prior to coming before the committee.

Members asked the following questions:

- Councillor Mrs French stated that she is delighted with the contributions being made which exceeds what is requested and she asked whether Section 38 Agreements are being considered for road adoptions? Will Hodgson confirmed that they are.
- Councillor Mrs French stated that the application is only in outline stage, and she is hopeful that when the reserved matters stage is brought before the committee, the enhanced contributions which have been promised today are still going to be viable.
- Councillor Mrs French asked whether the applicant has been in communication with the drainage board as it is very disturbing that they have not provided any input into the application. She added that she is aware that they are not a statutory consultee, but they have been asked to provide something in writing for all larger allocations. Mr Beevor-Reid explained that at the commencement of the application they completed the Middle Level Commissioners pre-application form on 9 February 2023 and despite numerous attempts to chase them with regards to the application, a response has never been forthcoming. Mr Beevor-Reid added that there is no intention to go directly into their network as it will be the greenfield rate and, therefore, there should be nothing to discuss as the natural drainage regime is being maintained.

- Councillor Booth stated that with regards to the use of SuDs on the site, is there the intention for the local Internal Drainage Board to manage it, if they agree or will it be maintained by a private management company? Mr Beevor–Reid stated that the preference would be for the drainage board to assume responsibility if they are willing to do so with the fallback position being a management company.
- Councillor Marks expressed the view that one of the biggest concerns does appear to be that of flooding and he asked what mitigation can be implemented straightaway to clear the dykes when development commences. He added that the dykes to the roadway are full and there have already been flooding issues due to foul and surface water and there needs to be assurance that it will be one of the first things which takes place on the site. Will Hodgson stated that the dykes which are situated on the site and adjacent to the site will be cleared following purchase of the site, with one of the big issues that he saw at the public consultation was with regards to the foul water issue along Barkers Lane which has historically flooded some residents back gardens. He stated that he has had discussions with Anglian Water over the last year or so with regards to the maintenance regime of that and surveys have been undertaken but expressed the view that it is a maintenance issue for Anglian Water to resolve along Barkers Lane in terms of the physical foul water infrastructure there.
- Councillor Marks asked for clarification with regards to the point raised concerning undertaking of surveys of the Anglian Water network there already and it was confirmed that it was no surveying as such, however, the sewers that are there had surveys undertaken in order to ascertain what is already there and what the current condition was. Mr Beevor–Reid explained that as a result of the public consultation where the issue of the foul water was raised in Barkers Lane a discussion took place with Anglian Water in order to find a different solution and, as a result, they have come up with the suggestion of bypassing the foul sewers.
- Councillor Marks questioned whether the reason for the applicant putting their own sewers in is because it is felt that the current Anglian Water system would not be able to cope or because of the state of repair. Mr Beevor–Reid expressed the view it is the state of repair and he added that due to the pipe sizing there would be capacity in the sewers in Barkers Lane and that was the original response provided by Anglian Water. He added that he believes that those issues arise because of the level and the maintenance of those that get blocked up which is why the bypass solution is being used.
- Councillor Booth stated that the officer's report at 10.28 states that the runoff from the current greenfield rate would not increase volume and he questioned that if hard standing is built then there may not be an increase in volume but in general there would be a decrease in time for it to get into the system and then that is where the flooding issues would occur. He added that whilst he understands what will happen in practice, there will be more water at a quicker rate going into the drainage system and he asked how that can be mitigated? Mr Beevor-Reid explained that there are the three large basins on the western boundary of the site and, therefore, the water will go to those effectively unrestricted from the development hardstanding and then from those into the ditches, where the restriction will be. He added that the restriction will be at the greenfield rate and then the ponds will fill up whilst the restriction is in place and then slowly go back into the network, which replicates the existing regime.
- Councillor Booth stated that he was grateful for the explanation but, in his opinion, it highlights that when severe weather events take place such as those which March has experienced it is the time span which becomes a significant factor. He added that if there are ponds and water features for the water to go into then there could be the risk of the water backing up into the residential area which is where a lot of the concern will be. Mr Beevor–Reid stated that the combination of the size of the basins means that they can accommodate a 1 in 100-year storm, plus 40% climate change on top, which is the requirement deemed by the Lead Local Flood Authority (LLFA) for the site. He added that through the detailed design, the water would be part conveyed to those basins through swales as opposed to pipes in some parts of the site which would then help to slow down

the rate in which it would reach the features.

- Councillor Booth made the point that this area has suffered 3 times from 1 in 100-year events over the last five or six years and, in his view, it is not the right standard and he expressed the view that the measures do need to be looked at to make sure that they are further improved.

Members asked officers, including Ben Woolf, LLFA, Hannah Wilson, Anglian Water and Andrew Connolly, Transport Assessment Team at Cambridgeshire County Council, the following questions:

- Councillor Mrs French asked Andrew Connolly how the proposal would affect the March Area Transport Scheme (MATS)? She stated that she was sent an email in June which stated that the County Council had requested that the application should not be determined until further additional information has been submitted and reviewed. She added that she has another email dated 5 August which states that they are now happy with the proposal, and she asked for an explanation to be provided. Andrew Connolly stated that in relation to the first email that Councillor Mrs French refers to, there were still a couple of outstanding points at that time which were related to Peas Hill. He explained that the second email that referred to from August confirms that those outstanding issues had been addressed and, therefore, there are no objections to the proposal.
- Councillor Imafidon asked for elaboration on the point with regards to discussions concerning the railway line leading to further access. Gavin Taylor stated that on 24 October 2023, the Council's Assets and Projects Team stated that they had no comment to make but they had a proposal for CPCA funding to bring the disused railway footpath up to a usable standard which they were currently exploring. He added that the BCP indicates that there may be opportunities to tie into that and it is dependent on how it progresses but there may be opportunities through more detailed matters to create points of access into that to encourage countryside access and more sustainable modes of travel and healthier lifestyles. Gavin Taylor stated that it is something that is in its infancy at the current time and it is dependent on how the Council progresses with future works on the railway line.
- Councillor Mrs French stated that she is a member of the County Council's Highways and Transport Committee and in the officer's report at 10.8 it states that the applicant has undertaken detailed discussions with regards to the supporting travel plan and in particular with regards to securing a new demand responsive bus service. She added that is in operation in the south of the country and it costs £165 per person, and she asked officers whether they are sure that this is definitely not going to happen because it is not feasible. Gavin Taylor referred to the update report and he explained that it is not a new bus service, it is the existing FACT bus service, and the contributions are to go towards financing that. Councillor Mrs French stated that she does not think that it is a permanent arrangement due to the fact that transport is now under the umbrella of the Combined Authority. Andrew Connolly stated that it does fall under the remit of the Combined Authority and discussions have taken place with them and they are happy to route the bus this way with the supporting contribution.
- Councillor Booth stated that a lot of the finer detail with regards to the drainage scheme will be developed at the next stage of the application and, in his view, members have been told previously that there are no drainage issues which could not be overcome without proper design, with water tending to follow gravity which has become evident at times in the local area. He made the point that he would like assurances that, although the commitment has been promised with regards to the minimum standards being implemented, as the local area has suffered over the last few years with flooding events, delivery must be to the right standard for that location. Councillor Booth expressed the view that he would like to see in the recommendation that the SuDs should be managed by a local public body as he believes that the Local Flood Policy from the County Council does state that as the preference. Gavin Taylor stated that the Section 106 Agreement would contain SuDs in terms of the adoption route and if the preference is for Anglian Water to adopt then something could be built into the Section 106, which can cascade that down into the adoption. Councillor Booth added that the Internal Drainage Boards must not be forgotten

as they are the experts in managing these types of facilities.

- Councillor Mrs French asked Hannah Wilson whether there is the intention to deal with the sandbags left in Barkers Lane following the issue with foul water and flooding? She stated that the sandbags have not been removed to date and the issues have been occurring for many years which is not pleasant for the local residents. Hannah Wilson explained that works have been undertaken to resolve issues at Barkers Lane and the Knights End pumping station which have included maintenance works, wet well cleans as well as updating the non-return valves and installation of new sewer monitors which display any issues arising in that network. She made the point that she cannot definitively state that there will be no further issues and that no further instances of flooding will occur. Hannah Wilson explained that when storm events take place that is when the issues arise, and they are caused from the rainwater and surface water getting into the foul network. She explained that new sewer monitors will also be located within the network as well as them being located at the pumping stations. Hannah Wilson stated that with regards to the application, the avoidance of any connections within the Barkers Lane constrained area are going into the 300mm sewer on The Avenue and, therefore, will not be making the situation any worse.
- Councillor Marks stated that he does not know when the monitoring work took place but there has definitely been recent flooding in this area, adding that he undertook a very recent visit to the site and found the area to be disgusting along with broken sandbags. He stated that he has concerns and, after hearing from the applicant today, there are issues which have been identified and he made the point that he would like to know when Anglian Water are going to act, with it not being right for the committee to approve or refuse a planning application especially when there are known issues and he asked Hannah Wilson what time frames have been identified to address the issue? Hannah Wilson stated that a great deal of the work that she has already referred to, especially at the pumping station, has already been undertaken and she agreed to consult with her maintenance team to resolve the mess and issues concerning the sandbags. She explained that as part of the future works there is going to be a CCTV survey undertaken of Barkers Lane and she added that one has been carried out previously, but an updated one is going to be undertaken. Hannah Wilson made the point that the root cause of the situation at Barkers Lane is down to the surface water getting into the foul only network and the shallow gradient of that network makes it very difficult. She added that proactive works need to be undertaken with the local residents and the Town Council to ensure any misconnections which have gone into a sewer network can be resolved in collaboration with the LLFA and other flood management bodies.
- Councillor Marks stated that he would like to see some guarantees from Anglian Water, making reference to the applicants and agents for the application who have given assurances that they will clear the dykes to try and resolve that part of the flooding but he still has concerns with the addition of another 425 homes, finding it surprising that there have not been other recommendations made to cure the existing problems before more houses are added. Ben Woolf from the LLFA stated that as far as the problems on Barkers Lane are concerned there is no reason for the LLFA to object to the development, explaining that the development will not exacerbate the situation and the connection and discharge point is nowhere near where the existing issues are. He stated that the surface water is not coming from the site and, therefore, there are no grounds for objection.
- Councillor Mrs French stated with regards to working with the Town Council, they are only consultees and can only make recommendations. She added that she has been a member of March Town Council for 34 years and the problems are ongoing and have been repeatedly reported over many years. Councillor Mrs French stated that the sandbags need to be removed as they are disgusting and are a health hazard. Hannah Wilson stated that she will feed back to her maintenance team and will report back on the issues raised today. She stated that in terms of the planning application the surface water is being managed on site and they are not connecting to the network as well as bypassing the foul network totally where the issues have arisen.

- Councillor Booth stated that the issue that March has suffered from is that there is so much water going into the whole system is actually backed up and, therefore, there would be nowhere else for the water to go. He added that for the point to be made that the water cannot go into Barkers Lane, in his view, is an incorrect statement to make because water will flow eventually to where it wants to flow. Councillor Booth added that if the outstanding issues can be resolved if the other part of the system is at capacity then there will be no opportunity to divert the water away from Barkers Lane. He added that there must be assurances that this does not happen with this planning application.
- Matthew Leigh stated that the committee can only consider the planning application before them, and he added that as the officer's report clearly states its position with regards to surface water drainage whilst accepting that there may be existing problems outside of this site but as long as the application does not exacerbate them, they cannot be considered as part of the application. He stated that he appreciates the frustration felt by the local residents, but it is not something to be considered as part of the planning application.
- Councillor Booth stated that there have been some extreme weather events where the whole system has been overloaded and for the point to be made that the water is going to discharge into a different point and, therefore, will have no impact, in his opinion, is wrong as there can be no cast iron guarantees. Matthew Leigh explained that the point he was trying to make is that any impact that happens because of extreme flooding would happen now and the evidence states that the application would result in a neutral impact and, therefore, anything that currently happens will be the same.
- Councillor Mrs French stated that she is pleased to see that the sewage and the surface water is not going to be directed down Barkers Lane, however, the problem exists and councillors have to take this into consideration when determining the application due to the number of angry residents who have raised concerns. Matthew Leigh stated that he totally understands the frustrations of the local residents, but the committee are here to determine the application before them and the planning matters with regards to what is before them.
- The Legal Officer stated that whilst she appreciates the genuine concerns of the local residents with regards to the flooding issues in the current situation, she cautioned the committee with regards to the considerations that they are regarding as material on the application when making their decision. She added that the application will not alter the position with regards to foul or surface water drainage in Barkers Lane and it will not exacerbate any existing issues. The Legal Officer reiterated that the application site deals with its own run off and drainage and those are the facts. She added that if members of the committee have regard to existing situations which the application does not impact and then use that as a reason to refuse the application then the Council would lose at any appeal and would most certainly incur costs.
- Councillor Mrs French stated that as there is an officer present from Anglian Water, she has taken the opportunity to raise the concerns with regards to the issue in Barkers Lane to try and assist the disgruntled residents. Hannah Wilson suggested that attends a meeting at March Town Council where members of the District Council's Planning Committee would also be invited to attend.
- Councillor Booth requested clarification from officers with regards to the fact that even if there is a severe weather event then with the drainage from the application site, there will be no issues caused at Barkers Lane. Ben Woolf stated that the system has been modelled extensively using up to date data and in the 1 in 100-year episode plus 40%, there is no flooding on site and the site will continue to discharge at the greenfield qbar rate whereas currently it would be way above that. He added it will slightly improve the runoff going into the Internal Drainage Board ditch. Ben Woolf added that in terms of the IDB capacity, which is down to them as they have been consulted and if they agree to adopt those flows it is not a matter for the development.
- Councillor Marks stated that he has noted from the report that there have been comments with regards to the fact that speeding along the main road is an issue and whilst he would not wish to see a 20mph speed limit, he asked what mitigation measures can be introduced to slow the traffic along that particular stretch of road? Andrew Connolly stated that the

existing speeding situation is not something for the applicant to remedy as it is an existing issue. He added that there is a possibility of considering a signage package but that would need to be discussed with development management officers. Councillor Marks asked what type of signage that would include? Andrew Connolly stated that flashing signage, speed limit signs and markings on the road could be considered.

- Councillor Booth asked whether that would include activated speed signs and speed reduction devices? Andrew Connolly stated that would need to be discussed by officers from Development Management.
- Councillor Mrs French stated that she would discuss this with colleagues at the County Council to ascertain whether there are any funds available under the March Area Transport Scheme to address the issue.

Members asked questions, made comments and received responses as follows:

- Councillor Mrs French stated that she is delighted to hear that the surface water and sewage is not going to impact Barkers Lane. She added that she is completely overwhelmed with the additional Section 106 money which is being included and she also congratulated the applicants on their decision that the £96,000 is not being placed into a halo operation.
- Councillor Imafidon stated that he has never seen such a generous offer from an applicant since he assumed his role on the Planning Committee, and he commended the developer for their Section 106 contributions and for all the additional provisions included within the application.
- Councillor Booth stated that he has read the reports and all of the issues have been addressed at the meeting today including that of flooding. He added that the application has already been agreed in principle through the local development plan, the BCP and March Neighbourhood Plan and the site has effectively been given the green light for development. Councillor Booth made the point that the only aspect he would like to see firmed up would be the management of the SuDs.
- Councillor Mrs French stated that it is looking likely that the application is going to be approved and she added that she had intended to ask the applicant when the likelihood of the reserved matters application would be received. It was confirmed that it would be submitted as soon as is practicable.
- Councillor Marks stated that he would like to see a condition added to the application should it be approved that the ditches should be cleared prior to any development commencing on the site.
- Councillor Booth stated that the conditions do allow for that and, therefore, officers appear to have covered that under the existing conditions.
- Councillor Mrs French stated that she will highlight the issue to the Chief Executive of the IDB and she agreed that the ditches all need clearing out.
- Councillor Booth stated that the IDB will not clear the ditches free of charge and they normally add a levy which they apply to the developer, but he would prefer for it to be managed by the IDB rather than a private management company.
- Councillor Marks stated that if the developer is going onto the site then it maybe something that they do prior to commencement of development and then hand it to the IDB.
- Gavin Taylor explained that with regards to the points made concerning the SuDs and Section 106, he has made a note, however, it is quite a standard entry into the 106. He added that with regards to the clearing of ditches prior to commencement of development, the proposal is for the development to take place in phases and there is a condition requiring a phasing plan to be agreed. Gavin Taylor made the point that it is important to note that from a drainage aspect, it is one of the first aspects of a development to be implemented because not only is the drainage for housing being introduced there is also the requirement to ensure that any drainage that might run off during the construction phase does not enter into the water courses. He stated that in terms of general site arrangements it normally follows that you would set out your drainage as part of the first phase of construction before commencement of works and then you need to ensure that the site

drains properly, and you cannot ask for all of the ditches to be cleared in one go because it would not meet the tests due to the fact that you can only request for works to be carried out on the development that it is going to have an impact on. Gavin Taylor explained that the ditch clearing would be undertaken in accordance with the phases of the development.

- Councillor Marks made the point that as there are already drainage issues there surely the clearing of the site in its entirety would be better from day one. He added that as time goes on it is a known fact that the water needs to go somewhere as clearing the ditches in their entirety is for the betterment of the site.
- Gavin Taylor expressed the view that he would be cautious of adding planning conditions requiring works to be carried out which do not meet the tests of planning conditions, which have to be reasonable, and necessary and related, and he explained that if members are requesting for a ditch to be cleared at the north of the site when it is not going to be touched for another two or three years through the development then it may not meet the test of planning conditions. He stated that he does not want to agree at today's meeting for that condition to be included because it may mean that subsequently it may not be able to be included because it does not meet the tests of those conditions. Gavin Taylor explained that he is happy to consider it as a condition and then through formatting and formulating the final condition which he would hope the committee will delegate to officers to resolve. He made the point that once he has the final schedule of conditions agreed internally and with the applicant as well, he would be content to communicate the conditions to the committee prior to the decision being released which will not be until such a time as to the finalisation of the Section 106.
- Councillor Mrs French stated that she has not heard any members of the committee request for all the ditches to be cleared all at once. She added that she does not want there to be a delay with the Section 106 Agreement as is the case sometimes and it does have an impact on development across the whole of Fenland.

Proposed by Councillor Mrs French, seconded by Councillor Imafidon and agreed that the application be APPROVED as per the officer's recommendation.

(Councillor Mrs French declared that, in accordance with Paragraph 14 of the Code of Conduct on Planning Matters, she is a member of March Town Council but takes no part in any planning applications and she is also a member of eleven Internal Drainage Boards, but she does not discuss planning applications at any drainage board meetings)

(Councillor Purser declared that, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, he had been verbally lobbied on the application but it would not effect his decision making when determining the application)

P31/24

F/YR24/0040/F

THE MANOR HOUSE, 102 ELDERNELL LANE, COATES

CHANGE OF USE OF EXISTING GARAGE/STORE AND ASSOCIATED LAND TO A VENUE FOR CEREMONIES, INCLUDING THE FORMATION OF A CAR PARK (PART RETROSPECTIVE)

Gavin Taylor presented the report and drew members attention to the update report that had been circulated.

Members received a presentation, in accordance with the public participation procedure, from Councillor Alex Miscandlon of Fenland District Council and Whittlesey Town Council. Councillor Miscandlon stated that whilst Whittlesey Town Council objected to the application, they are not against objecting to businesses in the area and actively encourage them, but the reason the Town Council objected to the proposal was due to the number of complaints that the Town Council received from residents of Eldernell Lane and residents residing in properties leading up to the application area. He stated that the application area is at the furthest point from the A605, and he

explained that there are no passing places along Eldernell Lane or in the private road to allow vehicles to pass each other, which is quite dangerous and some vehicles who use the access road do so at significant speed.

Councillor Miscandlon explained that he was alerted to the issue by some of the residents of Eldernell Lane with regards to the attitude of some of the drivers that visit the premises, and the road is not suitable for speeding or heavy goods vehicles although they do use the road. He referred to the officer's report and stated that the recommendation is for a 7.5 tonne lorry, but he is aware that there have been 18 wheeled vehicles with gravel using the roadway and there has also been a 9-metre transport vehicle for visitors using the road, which is 30 ft long and the turning into the private road from Eldernell Lane with a 30ft vehicle would be very difficult and as such in his view is not tenable.

Councillor Miscandlon explained that there is an alternative entrance located off the A605, which leads into the rear of the premises and that would not interfere with any of the residents in Eldernell Lane. He stated that he would like to see the application deferred to allow the outstanding issues to be remedied or refuse the application due to its non-compliance with highway safety.

Councillor Miscandlon made the point that he disagrees with the point made in the report that there are no highway safety issues due to the fact that the residents who live in the road feel that there are and are having to suffer a constant barrage from the vehicles who are using the road. He expressed the opinion that there needs to be a solution to this issue and the health and wellbeing of the resident who live there needs to be considered as they purchased their homes in this location to live a quiet rural life.

Councillor Miscandlon added that they are being interrupted in their leisure time by people coming down the lane, being verbally abusive to them, urinating in their driveways and conducting themselves inappropriately, which is not fair. He made the point that the applicant needs to be wary of who uses the facility and an alternative entrance off of the A605 would be highly desirable and whilst he is aware that the roadway would need to be made up to an appropriate standard that is the responsibility of the applicant to do so and not for the local authority.

Members asked Councillor Miscandlon the following questions:

- Councillor Imafidon stated that he did not think it would be possible to speed along the road due to the speed humps on the road. Councillor Miscandlon explained that he lives in close proximity to Eldernell Lane, and he is aware of the speeding vehicles, and that there have been some very near misses. He added that cars are also using people's driveways in order to allow other vehicles to pass which is not acceptable.
- Councillor Marks stated that there have been a couple of planning applications which have been before the committee over the last two or three years and the issue of speeding vehicles has never been an issue previously and he questioned why this now seems to be causing a concern. Councillor Miscandlon stated that speeding traffic has been an issue which was raised previously and remains an issue.
- Councillor Marks stated that when he visited the site, he counted seven passing places albeit not official passing places. Councillor Miscandlon stated that there are people's driveways, a farm entrance and by the turning for the actual private road there is a section on the left-hand side which allows the lorries to swing into that section. He added that the owners of the private driveways that people use as passing places are perfectly within their rights to install a gate on the end of the driveways to stop that happening. Councillor Miscandlon expressed the view that to make an official passing place is paramount, for safety and highway safety and it would alleviate any issues. He made the point that the alternative road off of the A605 would also alleviate that problem and would lead directly to the application site.

- Councillor Booth stated that it is possible that agricultural vehicles can use the road without any limitations on size of width or length of those vehicles. He added that the view of the County Council is that there can be no restrictions imposed on somebody else if that existing use is there particularly for agricultural purposes. Councillor Miscandlon stated that the agricultural vehicles go into the field on the left-hand side and do a turn in order to go into the private road. He added that the owner of the thatched cottage has stated that on numerous occasions, lorries go up, reverse into the field and then go straight across as they cannot access the private road any other way due to the tight nature of the road layout. Councillor Miscandlon stated that the officer report makes reference to a 9-metre vehicle which is 30 ft and 7.5 tonne, expressing the view that 7.5 tonne lorries are not that big, but it is the weight of the vehicles which needs to be considered.

Members received a presentation, in accordance with the public participation procedure, from Robert Cowsill, an objector to the proposal. Mr Cowsill stated that he has a long association with Eldernell due to his involvement with the bird sanctuary and conservation work on Eldernell Lane. He made the point that the Manor House is a perfect location for a country house for a local businessman, however, as a location for a party and events palace it is totally inappropriate.

Mr Cowsill stated that the applicant appears to be successful in gathering support for the proposal with many of the expressions of support but, in his opinion, many of those supporting comments have a hidden meaning. He made the point that those supporters may not be aware that by supporting the proposal they are going to be damaging one of the factors that they wish to promote.

Mr Cowsill referred to the officer's report and stated that policy LP16 requires the proposal to not adversely effect the landscape character of the surrounding area but expressed the view that the landscape character is the Fens natural character area including the strong presumption of tranquillity and there is no way that the proposal would enhance the tranquil environment. He expressed the view that he finds it strange that the officers' comments do not actually concern the nature of the application and the comments seem to be based on a physical application which it is but only in a very small part and appears to ignore the change of use.

Mr Cowsill made the point that many of the supporters to the proposal appear to be trades people, such as hairstylists, manicurists and stylists and the applicant also explicitly supports these industries but there is no mention of those in the traffic analysis, with the traffic analysis making it appear that all the services are managed from the organisation based at the house and it explicitly calls for support from local trades. He added that there is a huge difference between the nature of the traffic for agricultural activities and people and wildlife in the countryside are quite used to that but that is quite different to an array of cars turning up for an event.

Mr Cowsill added that the officer recognises that there will be some bunching but then appears to dismiss that fact which, in his opinion, is incorrect as he expects that over a one-hour period close to midnight there is bound to be some sort of disturbance. He added that with regards to the red line it appears to include the private road which forms the first part of Eldernell Lane, which the applicant enjoys and has access rights over that road but ,in his view, the access rights do not extend to re-engineering the property that he does not own and designating passing places.

Mr Cowsill stated that within the certificate of ownership on the application it states that the applicant is required to have notified the owner of any part to which the application relates and he stated that this has not been done and, therefore, in his opinion it seems to be quite arrogant to re-engineer somebody else's property without following the correct protocol. He asked the committee to refuse the application and if they choose to approve the proposal, he would like to see the conditions modified to reflect that there be no Sunday working or the number of events to be restricted to 40 days per year.

Members asked Mr Cowsill the following questions:

- Councillor Booth stated that Mr Cowsill has stated that there had been no notice supplied to the neighbouring owner and he asked Mr Cowsill how he is aware of that. Mr Cowsill explained that he spoke to the neighbouring owner earlier that morning who confirmed that fact.

Members received a presentation, in accordance with the public participation procedure, from Mr Heath Thomas speaking on behalf of the applicant and Mr Chris Walford, the agent. Mr Thomas stated that as the committee are aware they are required to determine the application in line with the development plan and it is the applicant's case that the proposed use of the site is supported in policy terms and there appears to be no policy conflict so as to indicate the principles of development cannot be supported. He expressed the view that the proposal accords with both local and national planning policies and the objections and concerns raised are not insurmountable and they can be overcome and can be satisfactorily addressed by the scheme as it stands or by the imposition of planning conditions which are outlined in the officer's report.

Mr Thomas made the point that the same view is supported by the Planning Officer in their report which, in his opinion, is very comprehensive and he also adopts the assessment made by the officer on behalf of the applicant and also supports the final conclusion made that the proposal is considered acceptable and accords with local and national planning policies as it represents no adverse harm in terms of material planning considerations. He added that amenity concerns of traffic disturbance and noise can be mitigated by the use of appropriate planning conditions, with the officer's report indicating that the application is compliant and accords with policies LP2, LP6, LP2, LP15 and LP16.

Mr Thomas made the point that the application has been properly consulted and out of the standard consultees the only objection has been made by the Town Council, with the concerns of the Town Council being addressed both within the report and the proposed conditions. He explained that the principle concerns are of noise from the site and also from traffic and he stated that the applicant has an established right of way for all purposes and at all times which would be the same for any visitor to the site, with any matters raised with regards to access ways and those on the private road not being considerations for the committee as they are about enforcing the rights of way that the applicant has and that would need to be considered in a separate forum.

Mr Thomas explained that the Highway Authority have considered the proposed development and have found it to be acceptable and he added that the impact will be no greater than that associated with other consented uses of the site such as things which have gone before and happened on the site. He made the point that the proposal will have no greater impact than anything else which has happened and the design and access statement which has been updated sets out the previous historical movements along with the attendance records for actual events which have taken place over the last three years, with those figures providing an indication on the number of persons and vehicles which have attended the site.

Mr Thomas added that he has had discussions with both the Police and Highways, and he is confident that there are no highway safety issues which have been reported, explaining that when the premises was discussed by Licensing Committee, the Police raised no concerns with regards to crime, disorder or anti-social behaviour including coming to and from the premises. He explained that the Highways Officers have proposed a condition limiting the size of the vehicles during events and for the purpose of events the applicant would be quite happy to agree with the committee that any vehicles over 9 metres in length would be prohibited.

Mr Thomas stated that there is no legal limit of weight on the road and any sign which has been put up would have been done so by the landowner and not by the Highway Authority, with there being no unacceptable impact on highway safety or cumulative impact on the road network which would mean that the application could be refused on highway grounds. He stated that the

proposed conditions are agreeable with the applicant which means the limitation of the frequency of events to two per week and then limiting the number of occasions in a year to 52 including the start and end times of the events, with the hours as stated in the condition are also what is detailed within the premises licence.

Mr Thomas stated that, with regards to noise levels, the Environmental Health Officer has agreed with the findings of an acoustic and noise report which was commissioned by the applicant and the Environmental Health Team have received no formal complaints but state that there might be the potential for noise which can be mitigated against, and the conditions are set out in 12.5 of the officer's report. He explained that in terms of proposal there was a modification detailed at paragraph 12 in terms of recommendation that the operating hours include Sundays and Public Holidays which was already agreed but the Planning Officer did not mention this.

Members asked Mr Thomas and Mr Walford the following questions:

- Councillor Booth asked for clarity with regards to the neighbour consultation concerning the right of way and he asked whether any consultation has taken place with the neighbours? Mr Walford stated that there was no formal consultation with neighbours, adding that the applicant does not own all of the road but for a valid application there has to be a red line to an adopted carriageway, and in this case the red line is quite long although it is not within the ownership of the applicant. He added that there is no proposal to modify the road in any way and he added that one of the objectors has stated that the applicant is intending to amend a road without permission but that is not the case. Mr Walford explained that Eldernell Lane is a tarmacked road with speedbumps and there are historic passing provisions along the road which has been the same for many years and has never caused an issue before. He made the point that the unrestricted use has enabled a multitude of different usage and size of vehicles and should the proposal be granted there will be a reduction in the number of agricultural vehicles using the road as they are moving away from that and diversifying the site which will mean it will be more reliant on cars. Mr Walford stated that the main objector is the owner of the part of the road that the applicant does not own, and he added that the main objector is more than aware of the application due to the number of comments that they have made in relation to the application.
- Councillor Booth referred to the other access point on the A605 and he asked for the thoughts and possibilities of that being used as access? Mr Thomas stated that the applicant does not own that access way and, therefore, has no right to enforce the use of it. He added that the applicant has a right of way over the roadway for all purposes and at all times from a very historic conveyance which is referred to in the statement that the applicants have submitted.
- Councillor Booth stated that, with regards to the revised condition concerning opening hours, he has interpreted it so that it does not include Mondays at all, and he asked Mr Thomas whether he has understood that correctly? Mr Thomas explained that the applicant was requesting those days which are set out in the officer's report and he explained that the business does not intend to operate every day of the week with it being Wednesday to Sunday and with no more than 52 occasions in the year and no more than 2 events in any week.
- Councillor Booth asked for clarity over Bank Holiday Monday opening. Mr Walford stated that there was an anomaly in the initial paperwork by virtue of the fact that it listed Sunday opening hours and then in the following paragraph it stated that there would be no opening on Sundays or bank holidays, when it was pointed out to the Planning Officer the paperwork was duly amended. He explained that the applicant does want to open on a Sunday and will not be looking to open on a Bank Holiday because that is not one of the proposed working days. Mr Thomas added that not all bank holidays fall on a Monday, however, the applicant does not intend to open on a Monday which is why the proposed opening is Wednesday to Sunday, however, they cannot restrict bank holidays if some fall on a Friday.
- Councillor Booth referred to the revised condition and states that the condition could be

interpreted so that events take place on Easter Friday, and he does not think that is what it was looking to be achieved. Mr Thomas stated that there may be events which the applicant would like to hold on a Friday and the Premises Licence which the applicant holds is from Wednesday to Sunday and closed on a Monday and Tuesday. Mr Walford asked the committee whether they are looking to determine that a Friday Bank Holiday is not an openable day? Mr Thomas stated that the applicant would like the Friday to be a day on which they are open even if it falls on a bank holiday. He added that when it states not on Public Holidays it is not on a Bank Holiday Monday or not on any Monday. Mr Thomas made the point that the applicant is looking for Wednesday to Sundays whether it is a normal day or a Public Holiday.

Members asked officers the following questions:

- Councillor Booth stated that he would like clarity over the bank holiday issue as the way that the current condition reads is if Christmas Day falls on a Friday then the business would be entitled to be open, and he is not sure whether it is something that the committee should be supporting. Gavin Taylor stated that the Planning Officer and applicant have had discussions over the condition which was incorrectly drafted the first time and subsequently corrected and provided in the update report. He explained that there is nothing to suggest that anything other than Monday would not be appropriate but if members wished then it is maybe something that can be included in an update to a condition. Gavin Taylor stated that the applicants have indicated that Good Friday would be agreeable to them and he agrees that other bank holidays may fall on a Friday, however, the premises is an events business and some events do fall over those holiday periods. He expressed the view that he is not sure whether it would fall within the applicant's business case, and he added that he does not know whether officers hold any evidence to suggest that they would not be appropriate either. Councillor Booth stated that, as he has worked within the retail sector, he is aware that Easter Sunday and Christmas Day are days that are prohibited for opening and he asked whether it would be appropriate that the business would be allowed to operate on those days as the revised condition appears to dictate that opening would be permitted now.

Members asked questions, made comments and received responses as follows:

- Councillor Purser stated that he has seen a number of venues sadly close over recent years for various reasons and to see an avenue wishing to expand, in his opinion, is an excellent idea. He added that having listened to Councillor Miscandlon's presentation where he explained the possibility of using the different entry point whether it would be possible to defer the application whilst this was looked into.
- Councillor Marks stated that it was his understanding that the agent had stated that the applicant does not have a right of way across the second access and, therefore, in his view, a deferral would not be suitable.
- Councillor Benney stated that the committee need to consider what is in front of them today and they should not be looking at what the other options and possibilities around the application site are.
- Councillor Imafidon stated that the leisure and entertainment industry is a very difficult industry to work in during the current climate, making the point that Fenland is open for business, and he does not see why the applicant should be discouraged or stifled when they are making efforts to establish and expand their business. He stated that the applicants are running their business from a premises that they own, it is located via a roadway which has been in existence for a long time and when he visited the site, he did not see any issue with speed when he drove down the road due to the very harsh speed bumps on the road and any normal vehicles speeding along the road would most certainly cause damage to their vehicle. Councillor Imafidon added that he is unsure how much land that the applicant owns but it has been there for a long time, but he will be looking to support the application.
- Councillor Mrs French stated that she visited the site and expressed the view that the road is awful, adding that when she was leaving the site she met a refuse freighter from the Council, and she used a passing place and both vehicles were able to pass. She stated that

she cannot see how any vehicle would be able to speed along the road. Councillor Mrs French reiterated the point that Fenland is open for business and the Council should be supporting business, making reference to another business that closed many years ago and became derelict. She explained that the committee gave approval a few months ago for that building to be demolished and for a dwelling to be built in its place. Councillor Mrs French expressed the view that businesses do need support and whilst she appreciates the concerns and views of the Town Council, the applicant has confirmed that they do not have control over the other access point and the committee must determine what is in front of them and nothing else.

- Councillor Booth stated that he has heard the concerns of Whittlesey Town Council, and the highways report answers those comments which the Town Council have made, with the committee needing to give regard to the comments made by the Highway Authority as they are the experts in such matters. He stated that he also lives in a rural area and the tractors at this time of year who are undertaking harvest probably cause a lot more disturbance than cars and he does not see that as a reason for the application to be refused. Councillor Booth added that Fenland is open for business and the business is a rural location where the applicants are trying to diversify in order to make it sustainable and for what is before the committee he can see no reason for it to be refused. He added that he is still slightly concerned over the opening on bank holidays and he added that part of the reason for adding conditions are to consider the amenity of the neighbouring properties and if consideration could be given to the conditions it may go some way of alleviating the concerns of the neighbours. Councillor Booth expressed the view that he would like to see the condition revised further to exclude Easter Sunday and Christmas Day.
- Councillor Marks stated that when he visited the site, he met another couple of cars and both vehicles were able to pass by pulling over to give way, adding that he also met five dog walkers on the road who moved over onto the verge where there was ample space to let vehicles pass. He stated that there is no way vehicles can speed on the private road due to the speed bumps and he made the point that Fenland is open for business and he will be supporting the application.
- Councillor Imafidon stated that he is concerned about imposing conditions onto the application with regards to closing on a bank holiday if it falls on a Friday as that is when many events take place, with some people planning their events to take place on a bank holiday specifically if it falls on a Friday.
- Councillor Booth stated that he is only referring to Christmas Day and Easter Sunday due to the significance of them and other venues have to adhere to closures on those days.
- Councillor Benney expressed the view that as a Planning Committee to put restrictions on any type of trading day, in his view, is wrong. He made the point that there are no issues with it operating on a Sunday at the present time as it is working, and the Licensing Team are in place to deal with any problems or issues that may arise with the premises, with it being a licensing issue rather than a planning issue and he would not be content to add restrictions onto any planning conditions.
- Councillor Marks stated that he is not convinced that there needs to be a restriction on vehicles, limiting them to 7.5 tonnes, as it appears it is only a resident who has added a sign to that effect.
- Councillor Mrs French stated that many very large vehicles use Gaul Road, Burrowmoor Road and Knights End Road who are restricted to 7.5 tonnes, and, therefore, she has no idea how restricting vehicles to that size is going to be achieved.
- Councillor Booth referred to a point made by Councillor Benney with regards to adding restrictions onto an application and he stated that there is a condition that is restricting the premises from operating from Wednesday to Sunday anyway and all he was suggesting was that the business should be closed on those two extra bank holidays in order to ensure residential amenity given the nature of concerns that have been raised.
- Councillor Mrs French asked the Legal Officer to provide some advice with regards to restricting opening on Easter Sunday Bank Holiday and Christmas Day Bank Holiday. The Legal Officer stated that in principle it is permissible to have a condition like that and the

committee would need to be satisfied that it met the six tests for planning conditions, with in planning terms is it necessary, is it reasonably required and is it proportionate. She added that there is a legitimate point which has been made about which of the Council's departments is the proper function to police matters if concerns arise and noise issues would principally be a licensing consideration and whilst she appreciates that there is a condition attached to the draft permission all that the condition actually does is reflect the decision that the Licensing Committee has already made. The Legal Officer cautioned the committee and explained that whilst it is possible for the committee to do it, she is not convinced that the six tests for a planning condition are met for the Christmas and Easter closure.

- Councillor Booth expressed the view that in this case the condition should not be affixed to the permission, and he asked whether the original condition reflected the Licensing Committee decision or is the condition in the update report the actual condition as there has obviously been a change. Matthew Leigh stated that as the agent has stated there was an error in the original condition but what has been proposed by officers in the update report is consistent with the decision made by the Licensing Committee. The Legal Officer was provided a copy of the Premises Licence by Mr Thomas and the Legal Officer confirmed that the planning condition in the update report reflects the Licensing Committee decision and what is contained on the licence.

Proposed by Councillor Imafidon, seconded by Councillor Mrs French and agreed that the application be APPROVED as per the officer's recommendation.

P32/24

F/YR23/1073/F

LAND EAST OF CIRSTON HOUSE, HOCKLAND ROAD, TYDD ST GILES

ERECT 1 X DWELLING (2-STOREY 3-BED) AND GARAGE, INVOLVING THE DEMOLITION OF EXISTING STABLES

Gavin Taylor presented the report.

Members received a presentation, in accordance with the public participation procedure, from Chirs Walford, the agent and Angie Stewart, the applicant. Ms Stewart stated that she was pleased to see the changes that were recognised by the Planning Officer for two of the three reasons for refusal from the previous application have been addressed and are no longer an issue. She added that the current proposed site is located within Flood Zones 2 and 3 and the officer's report refers to the Flood Risk Assessment which states that there is a low risk of flooding.

Ms Stewart made the point that the Council has stated that they have no strong objection to the proposed development on flood risk grounds, explaining that if the application is approved then flood risk mitigation measures will be implemented which have been suggested by the officer which will include finished floor levels to be set no lower than 300mm above ordnance data and the development should here at least two storeys and any future occupants would be requested to sign up to the Flood Line warnings direct and flood resilience and resistant measures to be incorporated into the proposed development. She explained that the reason for refusal for the current application is that the proposal does not pass the sequential exception test and she added that, with regards to the sequential test, officers identified four plots which are currently available within Tydd St Giles village boundary, but it is her understanding that three of the plots are not available, referring to F/YR23/0280/F, which is not on the market and maybe developed by the original applicant, F/YR23/0920/O which has been withdrawn following a Planning Committee refusal and F/YR22/0374/O which was an application which gained planning permission at appeal and has been sold subject to contract.

Ms Stewart advised that with regards to F/YR24/0030/O the application gained planning permission at committee and the land is currently for sale, but the plot has been recorded as being located beyond the built form of the settlement and is, therefore, an elsewhere location. She made

the point that the Cambridgeshire Flood and Water Supplementary Planning Document alongside the Council's approach to the sequential test for housing states that the sequential test should be applied on a district wide basis, and she added that it for this reason that she questions how the two plots can be sequentially compared.

Ms Stewart referred to the NPPF and made the point that it states that development should create spaces that are safe, inclusive and accessible and the plot has access to sustainable footpaths leading to village amenities including a school, park, pub, village hall and golf course. She made the point that as the applicant she has personal experience of specific housing needs that some people have such as wheelchair users, neuro development disorder or parents of children with special educational needs or life limiting illnesses.

Ms Stewart added that this is something that is quite dear to her and it is through this experience that she has come to realise that the plot whilst centrally located offers a safe quiet haven off the main road with plenty of space to make appropriate adjustments to make space for a wheelchair user to get from their car to indoor and a quite low stimulus environment for people with autism and the opportunity to install kitchen work tops at the appropriate height. She stated that this is the reason why she feels that the plot will provide an inclusive housing opportunity in Tydd St Giles.

Members asked the following questions:

- Councillor Mrs French stated that she notes that the site is located in a great crested newt amber zone, and she asked what steps would be taken to relocate the newts if approval is given for the application. She added that she notes from the application site history in 2013 an appeal was won, in 2017 the application was granted, and she asked why development did not take place at that time. Ms Stewart stated that with regards to the newts an assessment was undertaken, and she explained that she would agree to the recommendations given as part of that survey. Councillor Mrs French asked what those recommendations were, but Ms Stewart was not able to provide that level of detail at the current time but added that the persons undertaking the survey did not foresee a problem with the development of the plot. She added that in 2013, it was the previous owners who put forward a planning application.

Members asked officers the following questions:

- Councillor Mrs French stated that in 2023, there was a refusal and she questioned what the difference between that application is and the one before the committee at the present time. Gavin Taylor explained that the actual design of the dwelling has altered, with previously the siting of the dwelling being further north, and it has been brought back into the build line and is now seen to be more appropriate for the location. He added that the design and the location of the dwelling has changed, and the flood risk status of the site has not and the sequential test for flood risk has determined that there are other sites which are deemed to be more appropriate as they are located in areas of lower flood risk. Gavin Taylor stated that with regards to the applicants concerns raised when outlining a site which was deemed as outside of the settlement, however, the committee approved that site recently and deemed that it was inside the settlement and, therefore, on that basis the Council has made the decision that the site is inside the settlement and arguably is a better site for developing out because it is in a lower area of flood risk. Councillor Mrs French asked whether there is any significant change? Gavin Taylor stated that there is no significant change in terms of flood risk and officers consider that there is sufficient change to overcome those further two reasons for refusal.
- Councillor Imafidon asked for clarification when Cirston House was approved, and it was confirmed it was 2017. He questioned what the difference is between Cirston House and the other development as it appears to be just located on the other side of the road? Councillor Imafidon made the point that members are told to be consistent in their decision making and asked for an explanation with regards to why the proposal is recommended for refusal if Cirston House was approved. Matthew Leigh stated that he

agrees that there is a need for consistency and applications need to be determined in accordance with the development plan unless material considerations indicate otherwise. He added that the site has been granted planning permission over 7 years ago and since that the National Planning Policy Framework has been updated at least twice in relation to flood risk by including more stricter and more of a difficult test to pass. Matthew Leigh explained that a year ago a piece of case law was introduced with regards to the sequential test and how that should be approached and how it should be taken into consideration and for those matters the situation in planning terms and the landscaping plan has significantly changed when it comes to flood risk in 2017. He added that there is a need for consistency and that consistency is only if everything is the same and in the case of the application there is now a difference.

- Councillor Booth stated that the main issue with the application appears to be with regards to the sequential test and it is different if it is in the settlement or if it is in the open countryside and he asked officers to confirm whether they consider the application site to be located in Tydd St Giles or the open countryside? Gavin Taylor confirmed that officers consider the application to be located within the settlement. Councillor Booth referred to the other sites which the applicant had made reference to and it appears that most of the sites are not actually available. Gavin Taylor explained that the site which has been identified as potentially available was deemed by the committee a few months ago as to being located in the settlement and is, therefore, on the same level playing field as the proposed site would be and officers would not determine it to be in an elsewhere location. He explained that in terms of both sites being in the settlement that is the starting point for the sequential test in terms of settlement and the scope of settlements, there has been a site identified which is available and at a lower area of flood risk that could accommodate the development in the settlement. Matthew Leigh stated that when it comes down to the sequential test it is not about individuals and, therefore, just because you do not have access to the site it does not mean that it does pass the sequential test. He added that consideration needs to be given as to whether the site has the potential to come forward as a development and the sites referred to have been given planning permission and, therefore, they are likely to come forward for development and in planning terms they are in front of this application proposal for delivering housing. Matthew Leigh made the point that Fenland are well in excess of their five-year land supply.
- Councillor Benney stated that one of the sites which is making the current proposal fail the sequential test was approved by the committee quite recently and he asked officers to clarify that if that previous application had not been approved would it now mean that the application before the committee today would have passed the sequential test. Gavin Taylor confirmed that it would have passed the sequential test.
- Councillor Benney stated that when both of the applications were submitted then either of them could have passed the sequential test. He made the point that this has happened previously and in some ways this can be attributed to the speed of the Planning Department and, in his view, it seems very unfair to penalise the applicant due to the fact that her application has come in a month or two later than the other proposal where they both appear to have started on an even playing field.
- Victoria Searle, the Legal Officer, stated that regardless of members views concerning the fairness of the sequential test and whether they may yield fair or unfair outcomes, the sequential test is laid down in the NPPF and is supported by the adopted Local Plan and policies, with there being significant case law which reinforces its application in practice. She advised members to act with caution when making value judgements on which parts of national planning policy it considers are right or wrong and correct or incorrect. The Legal Officer explained that as members of the committee they should be making decisions in accordance with the Council's development plan, Local Plan and NPPF where the sequential test is robustly fixed. She made the point that great care needs to be taken with regards to the fairness of the national policies when decision making as material planning considerations.
- Matthew Leigh stated that planning applications need to be determined with the information

which is front of members. He added that the application was held back due to the need for a bat survey to be undertaken and applications have to be determined with the information now, with it being inappropriate to try and factor in other considerations and tests which do not follow legislation or case law and he advised members that they need to determine the application with the circumstances as they are now and whether or not members consider it as unjust that the application only fails the sequential test due to the delay in the application but that is the way the planning system operates.

- Councillor Booth stated that he takes on the board the points made and agrees that the planning system is not necessarily fair, and the committee are here to abide by planning policies and legislation, however, there is a role for the committee to take when determining applications. He added that he is also concerned with the fact that the application is recommended for refusal because another application came in first. Councillor Booth stated that with regards to the planning history on the current site and that of the adjacent sites which have granted in the past, in his view, that it a material consideration if it went to appeal. He expressed the view that one of the sites has been through the appeal process previously and he asked officers to explain how that is factored in if was to go before the Planning Inspectorate. Gavin Taylor explained that the house to the left Cirston House of was originally granted in 2013 and predates the Local Plan and the NPPF updates. He added that because that was allowed in 2013 a subsequent application was submitted at a time when it was still a live extant permission and, therefore, it was granted under the Local Plan with significant weight given to essentially a fallback position that it could come forward as a dwelling. Gavin Taylor explained that since that time a Local Plan has been adopted and there have been numerous updates to the NPPF in terms of flood risk, with the Local Plan forming a development plan under which members are legally obliged to determine a planning application unless material considerations state otherwise. He stated that if the members feel that the fact that there is a house next door is a material consideration which outweighs the clear conflict of the policy then that is a consideration for the committee, however, in the view of officers in order to deliver sustainable forms of development and avoid flood risk in the first instance it is considered that they take precedence over the material considerations.
- Councillor Booth asked how it would be viewed if it went to appeal? Matthew Leigh stated that there have been significant changes to the guidance provided by Central Government in relation to delivering housing and, in his view, that would be given significant greater weight by any Planning Inspector than they would of a historic planning decision made seven years ago which was made under a different set of guidance.
- Councillor Booth stated that with regards to the sequential test and the five year land supply, the Government are considering new targets for areas which means that the Council's five year land supply could potentially be reduced and he questioned whether if that is the case could it mean that the application could be approved. Matthew Leigh stated that when considering the suggested figures, Fenland will still have a five-year land supply when the outlined changes are implemented. He added that the NPPF is clear that not having a land supply does not relieve the need for a sequential test and it is not automatically passed if there is not have a five-year land supply. Matthew Leigh made the point that consideration should be given at putting houses into areas which are at lower flood risk than the site being determined today before any consideration is given with regards to granting planning permission for housing in flood zones.
- Councillor Marks asked what proportion of the site is located within Flood Zones 2 and 3? Gavin Taylor stated that the Flood Risk Assessment which has been submitted identifies an area of land which the red line does not fully portrays exactly where the house is going. He referred to the presentation screen and pointed out to members that Cirston House is in Flood Zone 2, and he explained that if a line was drawn southeast from there it would show the footprint of the proposed dwelling. He pointed out that where Cirston House terminates the area then falls into Flood Zone 3 immediately.

Members asked questions, made comments and received responses as follows:

- Councillor Benney made the point that the Local Plan is very out of date, and he expressed the view that the applicant has listened to what they have been told and have moved the proposed dwelling as a result of that advice and if the other application had not been passed in recent months then the application before the committee today would have passed the sequential test. He expressed the view that he can see a lot of reasons to approve the application as mitigation on flood issues can be achieved and, in his view, the applicant has been advised to move the dwelling forwards which they have listened to. Councillor Benney made the point that he feels as a committee decisions are made based on policy but equally as the human face of the Council to work with policy and to take mitigating circumstances into consideration too, adding that the applicant has been led to submit a further application and that has been delayed whilst a bat survey was undertaken which has then led to the application being recommended for refusal which, in his opinion, is very unlucky and that is where the human element of the committee is triggered. He made the point that the committee need to be consistent with their decision making and as the committee approved the application only very recently, he is minded to support the scheme before the committee now.
- Councillor Imafidon stated that there are many areas in Wisbech which fall into Flood Zone 3 and there is still development which takes place in that area. He added that consideration needs to be given to the human element and whilst there has to be consistency, and he appreciates that Cirston House was approved in 2017, there have been other sites where approval has been given far more recently and he will be looking to approve the application.
- Councillor Booth asked officers to clarify how much does the Code of Conduct on Planning Matters allow for the human element when determining applications and also when being consistent there is the need of being consistent with the current policies, making the point that whilst he appreciates that policies do change that would mean that committee would need to change their approach on different applications. He stated that he has heard what other members of the committee have said and he expressed the view that the reason that the NPPF has changed is to try and reduce the mitigation of people being flooded. Councillor Booth added that Councillor Imafidon has mentioned Wisbech, however, in the current Local Plan Wisbech has been given special designation so that development can take place in Flood Zone 3, however, that may be reconsidered in the new emerging Local Plan so based on the information which has been provided, he is unsure whether he can support the proposal. He added that he would like to gain a better understanding of the human factor and how that relates to the role of the Planning Committee and the Code of Conduct.
- The Legal Officer stated that within the Code of Conduct there is a section which deals with approval of applications which have previously been refused as that appears to be relevant to the position members find themselves in with the application before them. She added that the refusal last year was on three grounds of which officers are recommending that two have been resolved but one matter has not. The Legal Officer added that the Code of Conduct borrows and distils from key ombudsman and court findings on these proceedings, and it states that there is perversity and maladministration of a local planning authority which approves an application which has previously been refused where there has not been a significant change in the planning circumstances. She added that as a committee, members need to consider the test of significant change in the planning circumstances and the officer's recommendation is that there has been some significant change of circumstances in respect of the two previous reasons for refusal, but they do not consider that there has in terms of the sequential test. The Legal Officer added that the Code of Conduct also states that the perversity of approving a planning application which has been previously refused where there has been no significant change in the planning circumstances is maladministration if either insufficient weight has been given to officer's recommendations and to Central Government guidance and/or there is a failure to give and record reasons for the authority's change of mind. She advised that the committee need to consider the weight that they give to officer's recommendations particularly in respect of the

sequential test and members need to consider the weight that they are going to give to the national policy around the sequential test and how they apply that. The Legal Officer made the point that if members feel that there are still reasons for taking a different decision this time to that of the decision taken last year, there have to be very clear reasons given as a committee on what the reasons for that decision are. She explained that the Code of Conduct states that this is an area where there is a significant risk of challenge if there is a failure to give and record clear and convincing planning reasons which are proper material planning considerations and not immaterial considerations. The Legal Officer stated that the committee are entitled to make their own decision, having considered those factors, however, she urged caution when deciding on what their reasons might be from departing from the previous decision that they made and also from departing from the officer's advice.

- Councillor Booth stated that the Code of Conduct does not appear to allow for the human face per se as it appears to state that committee need to allow the policy and it appears to him that the sequential test appears to have been strengthened since the last decision.
- Matthew Leigh stated that since 2017 the sequential test has been strengthened and the case law introduced is after the decision. He added that members have stated that they have allowed development against the sequential test previously and he reiterated to the committee that this should not be a reason to go against Government guidance and applications should be determined in accordance with the development plan. The Legal Officer concurred with that fact.
- Councillor Mrs French stated that she has listened to other members, and she expressed the view that fairness is not a material consideration when determining applications. She added that she does not see a way to overcome the issue surrounding the sequential test and the application site has the potential of flooding and, in her view, the officers have made the correct recommendation, and she will fully support them.

Proposed by Councillor Mrs French, seconded by Councillor Purser and agreed that the application be REFUSED as per the officer's recommendation.

**P33/24 ENF/006/24/S215
STRATHMORE HOUSE, 169 FRIDAYBRIDGE ROAD, ELM**

Andrew Dudley, Planning Enforcement Officer, presented the confidential report to members.

Members asked questions, made comments and received responses.

Proposed by Councillor Mrs French, seconded by Councillor Booth and AGREED that prosecution of the owners and occupiers of the land be authorised, under Section 216 of the Town and Country Planning Act 1990 (as amended).

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972)

3.55 pm

Chairman