## F/YR15/0432/O

Applicant: Mr M Barber Agent : Mr Ken Elener KL Elener Architectural Design

Land North West Of Cedar Lodge, The Old Dairy Yards, Westfield Road, Manea

# **Erection of a dwelling**

Reason before Committee: To allow Members to consider the application in light of the previous decision to approve development to the north of the site (LPA reference: F/YR14/0011/O) contrary to highway advice.

This application is a minor application.

## 1 EXECUTIVE SUMMARY/RECOMMENDATION

The application seeks outline planning permission for the erection of a dwelling on land north-west of Cedar Lodge, The Old Dairy Yards, Westfield Road, Manea.

This site has been the subject of a recent appeal for the same development. That appeal was dismissed on grounds relating to highway safety and biodiversity interests. The appeal decision is attached to this report at Appendix A.

This application, whilst submitted prior to the determination of that appeal, responds to the biodiversity matter in that the application is accompanied by a Preliminary Ecological Appraisal (May 2015).

Whilst the findings and recommendations of that report are accepted, the matter relating to highway safety remains and accordingly the proposed scheme is considered unacceptable for this reason.

The proposal is in conflict with Policy LP15 of the Local Plan 2014 in that it fails to provide a well-designed, convenient and safe access for all.

In addition to the above, there is no evidence within the submission of community support for the development which is a requirement of Policy LP12 Part A for sites which come forward in growth villages where the 15% threshold has already been breached. The Parish Council objects to this proposal and there have been 2 local residents object to the proposal. Accordingly the proposal conflicts with this part of Policy LP12.

The proposed development is therefore recommended for refusal for the reasons referred to above.

## 2 SITE DESCRIPTION

The site is almost rectangular in shape and is located on land north-west of an existing bungalow known as Cedar Lodge and is currently vacant and undeveloped. The site is accessed off a single track known as The Old Dairy Yards which is also a public footpath (no.2) off Westfield Road. The site is currently overgrown with brambles and is bounded by various hedging and fencing.

Further north of the site is a detached dwelling known as Orchard Lodge and further development exists further north-east which is accessed off the track, The Old Dairy Yards.

## 3 PROPOSAL

The proposal is submitted in outline form with all matters reserved for future consideration for 1 dwelling. The application is accompanied by a layout plan for illustrative purposes only.

## 4 SITE PLANNING HISTORY

F/YR14/0757/O	Erection of a dwelling	Refused 13/11/2014.
		Dismissed on
		Appeal 24/07/2015.
F/YR09/0666/F	Erection of a 3/4-bed detached	Refused
	bungalow	14/12/2009.
		Dismissed on
		Appeal 5/8/10
F/YR07/0902/O	Erection of a bungalow	Refused 10/11/07.
	_	Dismissed on
		Appeal 26/03/08.
F/YR06/0570/O	Erection of 2 dwellings and garages	Refused 28/06/06.
F/94/0278/F	Erection of a 5-bed house with	Withdrawn 17/02/95.
	detached double garage	

# **5 CONSULTATIONS**

**Manea Parish Council:** Object on the basis that approval of the application would result in the overdevelopment of the specific part of the village and the access to the site is inadequate in terms of width and condition to accommodate the additional traffic that is likely to be generated by the proposed development (in terms of it accessing Westfield Road).

**Cambridgeshire County Council Highways Authority**: The comments made under planning application F/YR14/0757/O are still applicable – recommend refusal. The concerns raised in this consultation were shared by the Planning Inspectorate reference APP/D0515/W/14/3007606.

Cambridgeshire Countryside Access Team: Public Footpath No.2 Manea shares the site access for this application. This is not going to greatly impact the footpath so we have no objections. Should you be minded to grant planning permission we would request that the points listed below are included as planning informatives.

- Public footpath No.2, Manea must remain open and unobstructed at all times, including during site construction. Building materials must not be stored on the footpath and contractors' vehicles must not be parked on it (it is an offence under s 137 of the Highways Act 1980 to obstruct a public right of way).
- No alteration to the footpath surface is permitted without our consent (it is an
  offence to damage the surface of a public footpath under s 1 of the Criminal
  Damage Act 1971).
- Landowners are reminded that it is their responsibility to maintain hedges and fences adjacent to public rights of way, and that any transfer of land should account for any such boundaries (s154 Highways Act 1980).
- The granting of planning permission does not entitle a developer to obstruct a public right of way (Circular 1/09 para 7.1).

**Middle Level Commissioners**: Will be commenting on the application, however no further comments received within the consultation period.

**The Ramblers Association:** No comments received within the consultation period.

**FDC Scientific Officer (Land Contamination)**: Note and accept the submitted information and have no objections to the proposed development, as it is unlikely to have a detrimental effect on local air quality or the noise climate. From the information provided contaminated land is not considered an issue.

**Ecologist (Peterborough City Council):** No objection to the granting of outline planning permission subject to strict adherence to the recommendations set out in the Ecology Report. Subject to the recommendations being fully incorporated into the approved scheme the development will result in no net loss to biodiversity.

**Local Residents/Interested Parties:** 2 letters/emails of objection received which may be summarised as follows:

- Loss of privacy and overlooking;
- Additional traffic flow in Old Dairy Yard, which at the present time can be quite heavy;
- The access is inadequate and no longer able to maintain boundary along the access road as a result; and
- Concerns in respect of if an emergency occurs where the police, ambulance or fire engine will not be able to gain access.

1 letter received supporting the proposed development.

# **6 POLICY FRAMEWORK**

# **National Planning Policy Framework (NPPF)**

Paragraph 2: Applications must be determined in accordance with the development plan unless other material considerations indicate otherwise

Paragraph 14: Presumption in favour of sustainable development.

Paragraph 17: Seek to ensure high quality design and a good standard of amenity for all existing and future occupants.

Paragraph 47: Supply of housing

Paragraph 64: Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

Paragraphs 100-104: Development and flood risk.

Paragraph 109: Minimising impacts on biodiversity

Paragraphs 203-206: Planning conditions and obligations.

# **National Planning Policy Guidance (NPPG)**

Determining a planning application

## Fenland Local Plan 2014

LP1 – A Presumption in Favour of Sustainable Development

LP2 - Facilitating Health and Wellbeing of Fenland Residents

LP3 – Spatial Strategy, the Settlement Hierarchy and the Countryside

LP4 - Housing

LP12 - Rural Area Development Policy

LP13 – Supporting and Mitigating the Impact of a Growing District

LP14 – Responding to Climate Change and Managing the risk of Flooding in Fenland

LP15 - Facilitating the creation of a More Sustainable Transport Network in Fenland

LP16 – Delivering and Protecting High Quality Environments across the District

LP17 – Community Safety

LP18 – The Historic Environment

LP19 - The Natural Environment

#### 7 KEY ISSUES

The key considerations for this application are:

- Principle of Development:
- Character and Appearance;
- Residential Amenity;
- Access;
- Biodiversity;
- Flood Risk and Drainage;
- Health and wellbeing;
- Economic growth.

## 8 BACKGROUND

The site was the subject of a previous appeal in relation to the refusal of outline planning permission by the Council for the erection of a dwelling. That planning application (F/YR14/0757/O) was refused permission on two grounds which stated that there was insufficient information submitted at that time in respect of biodiversity and the vehicular access was considered to be inadequate to serve the proposed development. An appeal was lodged against the refusal of the application.

The appeal was dismissed (on 24 July 2015) on the basis of highway safety and in the interests of biodiversity.

The application site has also previously had planning permission refused on a number of occasions.

The applications previous to the recent appeal decision (F/YR09/0666/F and F/YR07/0902/F) also dismissed on appeal were refused on the principle of development in light of the development plan which was in place at that time. There has been significant change in policy since the time these decisions were made and this includes the adoption of the Fenland Local Plan (May 2014) which did not take forward 'Development Area Boundaries' and relies on Policy LP12 of the Local Plan amongst other policies. As such the development on this site could not be refused on principle grounds as detailed in the 'Principle of Development' section of this report.

It should also be noted that there have been two developments approved last year within close proximity to the site which would gain access from The Old Dairy Yards. This includes a new dwelling on land east of Orchard Lodge which was approved by Planning Committee in March 2014, contrary to officer's recommendation and the advice from the Highway Authority at the time (F/YR14/0011/O – granted on 7 March 2014) and the siting of 3 caravans to the north-east of Savages Bungalow (F/YR14/0588/F – part retrospective granted on 14 October 2014). The latter granted permission subject to a condition restricting the occupation to one family where no advice was sought from the Highway Authority.

## 9 ASSESSMENT

#### Principle of Development

The site is located within Manea, which is identified as a 'growth village' where development within the existing urban area or as small village extensions will be appropriate (Policy LP3 of the Local Plan refers).

For villages, new development will be supported where it contributes to the sustainability of the settlement and does not harm the wide open character of the countryside. Any proposal needs to satisfy the criteria set out in LP12 (a-k) as well as other policies of the Local Plan.

Policy LP12 also seeks to involve the community in planning decisions by requiring clear evidence of community support for development exceeding the specified threshold. Part A of LP12 of the Local Plan, clearly states that if a proposal within or on the edge of the village would, in combination with other development since April 2011 and committed to be built (i.e. with planning permission), increase the number of dwellings in a growth village by 15% or more, the proposal should have demonstrable evidence of clear local community support for the scheme generated through a proportionate pre-application consultation exercise. The 15% threshold has already been breached given the number of consented dwellings in the village since April 2011.

The Council has taken the approach that the rural growth villages can reasonably accommodate a 15% increase in dwelling stock in order to meet the housing target set and not compromise the character or sustainability of the settlement. Furthermore the Council has demonstrated a 5 year housing land supply, and therefore it has sufficient land to meet the housing requirement and also demonstrate that there is choice and competition in the market (see Five Year Housing Land Supply- Final Report – Published September 2014).

Whilst the matter relating to the village threshold was not raised in the previous application or indeed the appeal, the Parish Council now object to the proposal which makes this materially different to the previous application as Policy LP12 indicates that there will be a requirement for support from the applicable Parish Council in the case of the 15% threshold breach.

There is no evidence before the Council to demonstrate that a community consultation exercise has been undertaken and indeed the scheme does not benefit from support from the Manea Parish Council. It is also noted that there have been 2 objections received in respect of the proposal and whilst there has been 1 letter of support for the proposal, it was received from an address outside of the settlement.

As such the development would be contrary to Policy LP12 of the Fenland Local Plan 2014 for the reasons referred to above.

## Character and Appearance

The site is considered to be within the existing developed footprint of the village (LP12(a)) and would not result in coalescence with any neighbouring village (LP12(b)).

The area surrounding the site is characterised by sporadic development with open fields and enclosed gardens with an overall rural character. Notwithstanding the rural character, a dwelling on this site would not be considered harmful to the character and appearance of the area and would not adversely impact on the surrounding countryside and farmland, as such criteria (c) of LP12 would not be breached.

Whilst no detailed drawings have been submitted at this stage, it is considered possible that a dwelling could be accommodated within the site of an appropriate scale which would be in keeping with the area ((d) of LP12).

The proposed dwelling would not extend existing linear features or result in ribbon development ((e) of LP12). The site plan indicates the retention of the trees along the north-western boundary and the site is capable of retaining further hedging along the other boundaries ((f) of LP12). The site layout plan does not show existing or proposed boundary treatments; however this could be secured via a planning condition and in any case would be assessed as a Reserved Matters application under 'landscaping'.

The proposed dwelling would not result in the loss of an important space within the village or result in the loss of high grade agricultural land ((h) and (i) of LP12). In addition the proposal would not put people or property in danger from identified risks (LP12 (j)).

The proposal would conflict in part with criteria (k) of LP12 due to the existing access situation which is considered in more detail under the heading 'Access' in this report.

# Residential Amenity

Whilst the layout and scale of the development is a reserved matter, it is considered possible to be able to position a dwelling on this site without having any undue impact in terms of overlooking or overshadowing of adjoining residential properties (Policy LP16 (e) refers). This matter would be duly considered as part of any reserved matters application.

# **Access**

Whilst 'access' is not committed as part of the application, the red line is drawn to include the footpath (The Old Dairy Yards) which leads onto Westfield Road and this would appear to be the only option of access in and out of the site.

The Council refused the previous application on highway safety grounds and this has been upheld in the recent appeal decision. The Planning Inspectorate in its appeal decision for this site refers to other decisions which have been taken recently in Old Dairy Yard. In relation to the house further north of the site it concludes that the fact the Council deemed it appropriate in highway terms does not mean further development should be accepted. In relation to the gypsy and traveller accommodation, it concludes that given the length of time the family has reportedly occupied the site the Inspector was not persuaded that the creation of 3 pitches restricted to occupation by the same family would have the same impact on the access road as the proposed new dwelling. Overall the Inspector concludes that the proposed development would exacerbate the cumulative harm to pedestrian and highway safety from the increased vehicular use of a public footpath as a substandard access.

There is no material difference in relation to the access arrangements to that which has been dismissed on appeal. Accordingly the proposal is considered to be unacceptable as it would increase the risk to highway safety contrary to Policy LP15 of the Local Plan and to the NPPF.

# **Biodiversity**

The application is accompanied by a Preliminary Ecological Appraisal which identifies that the site is likely to support roosting bats and nesting birds.

The Council's Ecologist has reviewed the appraisal and has no objection subject to strict adherence to the recommendations set out in the report i.e. retention of the willow trees along the northern site boundary and bird nest boxes being installed which can be controlled through planning condition.

Overall the proposed development will result in no net loss to biodiversity and accordingly complies with Policy LP19 of the Local Plan.

# Flood Risk and Drainage

The site lies within Flood Zone 1 and as such development of this nature in this location is considered appropriate.

In accordance with the NPPF a Flood Risk Assessment is not required as the site is less than 1 hectare in size and lies within Flood Zone 1.

The submission indicates that the surface water is likely to be discharged via soakaways. The precise drainage design would need to comply with Building Regulations.

There are no requirements for flood resistant or resilient construction methods and minimum floor levels do not need to be set. Accordingly there is no flood risk or drainage related grounds in the context of the Local Plan and to the NPPF on which to object to the proposed development.

# Health and wellbeing

In accordance with Policy LP2 of the Local Plan development proposals should positively contribute to creating a healthy, safe and equitable living environment. In doing so development proposals, amongst other things, should create sufficient and the right mix of homes to meet people's needs, and in the right location. The development would not improve the conditions in which people live, work and travel. The proposal would not be a sustainable development in terms of the NPPF and the Planning Inspectorate concurs with this view.

# Economic growth

The development would be likely to provide a degree of local employment during construction which would support the continued sustainability and economic growth of Manea.

# 10 CONCLUSIONS

This site has been the subject of a recent appeal for the same development. That appeal was dismissed on grounds relating to highway safety and biodiversity interests.

This application, whilst submitted prior to the determination of that appeal, responds to the biodiversity matter in that the application is accompanied by a Preliminary Ecological Appraisal (May 2015).

Whilst the findings and recommendations of that report are accepted, the matter relating to highway safety remains and accordingly the proposed scheme is considered unacceptable for this reason.

The proposal is in conflict with Policy LP15 of the Local Plan 2014 in that it fails to provide a well-designed, convenient and safe access for all.

In addition to the above, there is no evidence within the submission of community support for the development which is a requirement of Policy LP12 Part A for sites which come forward in growth villages where the 15% threshold has already been breached.

Whilst the matter relating to the village threshold was not raised in the previous application or indeed the appeal, the Parish Council now object to the proposal which makes this materially different to the previous application as Policy LP12 indicates that there will be a requirement for support from the applicable Parish Council in the case of a 15% threshold breach. Accordingly the proposal conflicts with this part of Policy LP12.

The proposed development is therefore recommended for refusal for the reasons referred to above and as set out below.

## 11 RECOMMENDATION

## **REFUSE**

- 1. The Old Dairy Yard footpath/vehicular access is considered to be inadequate to serve the development in its outline form proposed by reason of its restricted width / lack of passing places / restricted visibility at its junction with Westfield Road. The outline proposal would therefore likely to result in stopping and manoeuvring of vehicles on the highway to the detriment of highway safety and increase the chances of pedestrian /vehicle conflicts along this access. The proposal is therefore considered contrary to the Policies LP15 (C) and LP12 (Part A, criteria k) of the Fenland Local Plan (May 2014) and to the guidance contained in the National Planning Policy Framework.
- 2. Policy LP12 requires that if proposals within or on the edge of a village, in combination with other development built since April 2011 and committed to be built increase the number of dwellings in the village by 15% in growth villages then the proposal should have demonstrable evidence of clear local community support for the scheme and if, despite a thorough pre-application consultation exercise, demonstrable evidence of support or objection cannot be determined, then there will be a requirement for support from the relevant Parish Council.

The proposal, in combination with the number of built and consented dwellings within the village of Manea since April 2011, would exceed the 15% threshold set out in Policy LP12 Part A of the Fenland Local Plan 2014 and there is no evidence within the submission of a thorough or proportionate public consultation to demonstrate that there is public support for the proposal. In addition the Manea Parish Council does not support the proposal. Accordingly the proposed development would be contrary to Policy LP12 of the Fenland Local Plan 2014.



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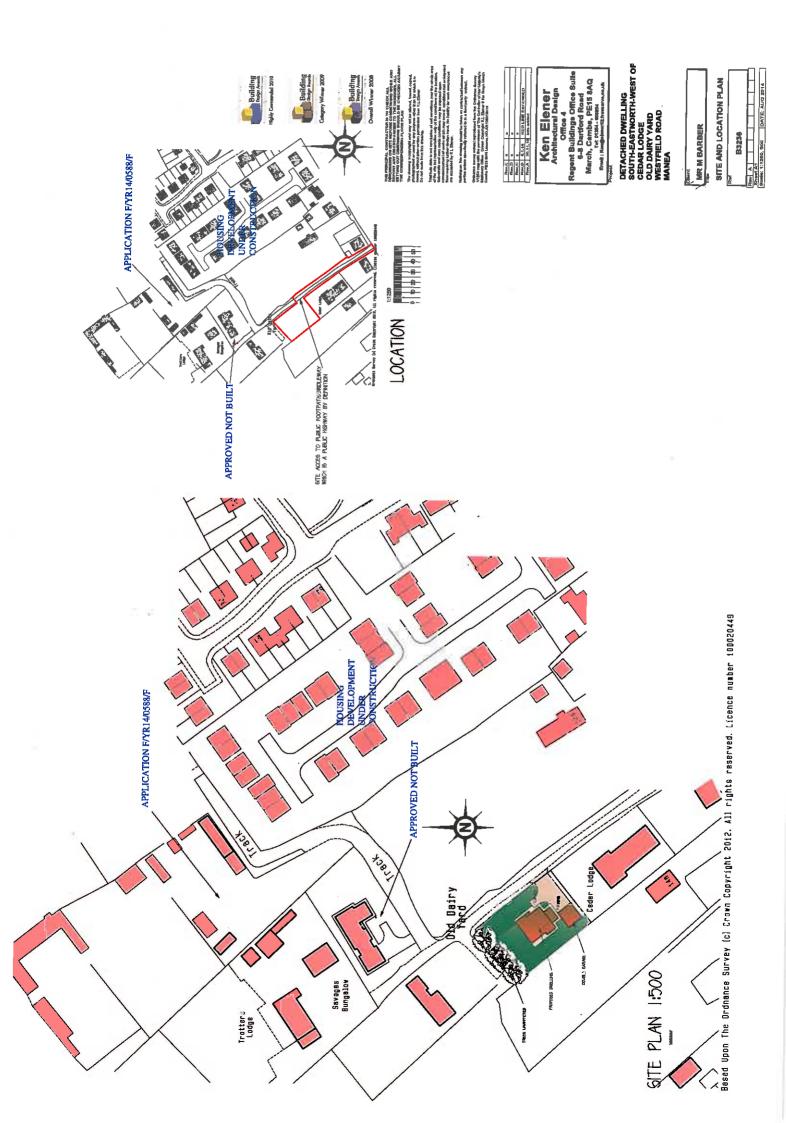
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# **Appeal Decision**

Site visit made on 26 June 2015

# by Peter D. Biggers BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2015

# Appeal Ref: APP/D0515/W/14/3007606 Land North West of Cedar Lodge, Old Dairy Yard, Manea PE15 0GE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr M Barber against the decision of Fenland District Council.
- The application Ref F/YR14/0757/O, dated 19 September 2014, was refused by notice dated 13 November 2014.
- The development proposed is erection of detached two storey dwelling.

# **Application for Costs**

1. An application for costs was made by Mr M Barber against Fenland District Council. This application is the subject of a separate decision.

#### **Decision**

2. The appeal is dismissed.

## **Preliminary Matter**

The application for the proposed development is in outline with all matters
reserved for subsequent approval. However, the application was accompanied by a
sketch layout of the site which I have treated as being for illustrative purposes
only.

# Main Issues

- 3. The main issues are
- whether the proposed development would result in pedestrian and vehicle conflict on Old Dairy Yard and a detrimental impact on highway safety in Westfield Road and
- whether the development would adversely impact on protected species and habitats which may be present on the site.

#### Reasons

- 4. The proposed development of the land NW of Cedar Lodge would take its access off Public Footpath No 2 a Public Right of Way (PROW) which is a metalled single track lane that heads north from Westfield Road. The track serves a small number of residential properties and a small gypsy and traveller site before it heads on as a footpath into the open countryside.
- 5. Policy LP3 of the *Fenland Local Plan* (FLP) setting out the spatial strategy and settlement hierarchy for Fenland District identifies Manea as a growth village. This

policy would allow residential development of the appeal site in principle subject to it complying with other FLP policies in particular the rural areas development policy LP12, the sustainable transport policy LP15 and the high quality environments policy at LP16.

# Highway Safety

- 6. Old Dairy Yard has an effective surfaced width measured and agreed on site as 2.8-3.0 metres along its length and has no passing places. The verges are such that they would not safely allow vehicle over-running. The only opportunity for vehicles to pass each other between Westfield Road and the appeal site some 90 metres up the track would be by use of the entrance gateway to Cedar Lodge.
- 7. During my visit to the site between 14.15 and 14.35, six vehicles used the lane. As a pedestrian using the PROW the restricted width meant that there was no alternative for me but to step off the lane into the verge to let each vehicle pass. Even the construction of one additional house as proposed would increase the incidence with which pedestrians on the PROW would be compromised.
- 8. At the entrance to Old Dairy Yard the effective width was measured on site as 4.2 metres with some ambiguity as to whether even this width would be achieved due to private land and parking for the property on the east side of the junction. The Council's requested 5 metre width at the junction and for the first 10 metres, or even the 4.8 metres suggested in *Manual for Streets* for 2 cars to pass safely, could not be achieved and would require vehicles to manoeuvre on Westfield Road if the lane was blocked by an exiting vehicle. At the time of my visit there was a reasonable amount of mixed traffic passing the junction plus some on street parking taking up carriageway width. I accept that there is no evidence presented of an accident record connected with the junction and that traffic speeds generally will be slow however the additional need for these manoeuvres as a result of the additional dwelling would increase the risk to highway safety.
- 9. In terms of the visibility at the junction the required 'Y' distance of 43 metres for a 30mph area would be achieved eastward from 2.4 metres back from the edge of the highway but the same would not be possible westward due to a telephone pole and shrub planting not within the control of the appellant.
- 10. The net result of these shortcomings is that safe and suitable access to the site for all people as required in paragraph 32 of the *National Planning Policy Framework* (the Framework) would not be achieved. Policy LP15 of the FLP is consistent with the Framework in seeking at section C, well designed, convenient and safe access for all. It has been put to me that paragraph 32 is not relevant to this case. However there is nothing to suggest in the second sentence of the paragraph that the Framework is not referring to all planning decisions and not just development with significant amounts of traffic movement referred to in the first sentence. In any event policy LP15 applies to all development.
- 11. Whilst I acknowledge that access is a reserved matter, the application for outline planning permission must state where access points to the proposed development will be situated. While it is clearly indicated where access is proposed to be achieved, from my observations on site, there did not seem to be the potential for improvement or mitigation, within the control of the appellant, which would realistically resolve the shortcomings of the access linking the site to Westfield Road. The fact that all matters are reserved means that there are no proposals before me which would demonstrate to the contrary.
- 12. I have been referred to other decisions which have been taken recently in Old

Dairy Yard one involving additional pitches on a site occupied by a gypsy and traveller family and one involving a new dwelling further north on Old Dairy Yard which the appellant considers supports the proposed access. In respect of the gypsy and traveller accommodation, given the length of time the family has reportedly occupied the site I am not persuaded that the creation of 3 pitches, restricted to occupation by the same single family, would have the same impact on the access road as the proposed new dwelling. With regard to the house further north on Old Dairy Yard the fact that the Council deemed it appropriate in highway terms does not mean further development should be accepted. The appeal proposal would exacerbate the cumulative harm to pedestrian and highway safety from the increased vehicular use of a public footpath as a substandard access. I have also been referred to a previous appeal decision (APP/D0515/A/07/2060983) on the appeal site where the Inspector considered the proposal would not unduly harm pedestrian safety on the footpath. However this appeal was considered against a different development plan context and, because the main issue related to the principle of development and the impact on rural character and appearance, the matter of access and highway safety was not assessed in any detail. I therefore attach only limited weight to the previous Inspector's conclusion in this respect.

# Protected Species

- 13. Whilst I acknowledge that the site is not part of a designated site of nature conservation interest, the nature and character of the site is such that it is likely to contain biodiversity interest. There is no expert evidence to support the statements in the biodiversity checklist that no protected species or habitats would be affected. Given that all matters are reserved in the application there is therefore little basis on which to state that development would minimise impacts on biodiversity and provide net gains for biodiversity as required by paragraph 109 of the Framework. Policies LP 12, LP16 and LP 19 of the FLP are consistent with the Framework in seeking to protect and enhance biodiversity on and around the proposal site.
- 14. It has been put to me that it is intended to retain perimeter hedgerows and trees the retention of which I accept could be conditioned. However impact from the development of a house on any protected species or habitats present would not necessarily be limited to the perimeters of the site and in the absence of any substantive evidence from a survey it would not be appropriate to allow the appeal and depend on conditions to control mitigation. I note the advice in the *Planning Practice Guidance* regarding ecological surveys but given the likelihood of biodiversity interest it was reasonable to expect a survey would be required. In this case without detailed survey evidence the 'precautionary principle' should apply to safeguard the objectives of FLP policies.

## Other Matters

- 15. I acknowledge that the proposed dwelling would add to the local housing stock, and make best use of land as sought by the Framework and as such should be considered in terms of the presumption in favour of sustainable development.
- 16. However the Framework adopts a wide definition of sustainability. Indeed, it makes clear at paragraph 6 that regard must be had to the document as a whole in determining what the concept means in practice. Paragraph 8 of the Framework states that all economic, social and environmental gains should be sought jointly. In terms of paragraph 9 of the Framework, and for the reasons given above

regarding the access arrangements, the development would not improve the conditions in which people live, work and travel. In this case, the proposal would not be sustainable development in the terms of the Framework and the presumption in favour should not apply. Moreover as the council can demonstrate a 5 year supply of housing land and this has not been challenged, there is no reason to suggest that the need for housing land should outweigh the harm to highway safety and the interests of biodiversity in this case.

## Conclusions

17. I have carefully considered all the matters before me but for the reasons given above I conclude that the appeal should be dismissed.

P. D. Biggers

**INSPECTOR**