

**ENFORCEMENT REPORT**

**Enforcement Reference:** ENF/211/15/BOC

**Location:** Land West of the Old Council Depot, Gaul Road, March, Cambridgeshire

**Description:** Breach of condition 12 of F/YR09/0648/F (Erection of 135 houses with associated garages and parking): Construction of a roundabout.

**Reason for Committee:** This report relates to Agenda Item 5 and the permission to which this relates was previously considered by the Planning Committee.

---

**1 EXECUTIVE SUMMARY**

The purpose of this report is to advise members of the current situation regarding the above site and to determine an appropriate course of action.

On 26 April 2011 planning permission was granted for the erection of 135 dwellings comprising 34 x 2-bed, 48 x 3-bed and 53 x 4-bed dwellings with associated garages and parking. Condition 12 imposed therein required a scheme showing full construction details of the new roundabout to be provided on the A141 including the realignment of Gaul Road to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works. Furthermore the approved roundabout scheme was to be delivered prior to either the occupation of the 50<sup>th</sup> dwelling or within 2 years of commencement of development.

The Council's Council Tax records indicate that of the 135 dwellings granted planning permission, 40 are currently occupied and the applicant advises that 49 dwellings of the 135 dwellings granted planning permission have been completed.

The development is believed to have commenced more than 2 years ago. Therefore although less than 50 of the 135 dwellings permitted are occupied, more than 2 years has elapsed since the commencement of development under F/YR09/0648/F and therefore a breach of Condition 12 exists.

The site owner has advised that they are unable to deliver any junction improvement scheme as required by Condition 12 unless planning permission is gained for a further 90 units on adjacent land.

The Local Highways Authority (LHA) have provided accident data which shows a clear upward trend in traffic incidents at the junction over the past 4 years and consider it expedient to pursue enforcement action to regularise the breach in view of this data. In view of the submitted accident data which shows a clear increase in accident rates at the junction and the LHA expressing an opinion that the proposed roundabout as secured through Condition 12 would have a significant effect on both the reoccurrence and severity of the accident types [as provided in the submitted data], it is considered expedient to pursue enforcement action.

The recommendation is therefore to proceed with enforcement action under s.172 of the Town and Country Planning Act 1990 following confirmation of the exact commencement date of the development which is to be secured through a Planning Contravention Notice under s171C of the Town and Country Planning Act 1990.

## 2 SITE DESCRIPTION

- 2.0 The site to which this report relates is the junction of Gaul Road and the A141 in March, Cambridgeshire and is associated to the existing housing development at Gaul Road which is currently under construction (F/YR09/0648/F). The Council's Council Tax records indicate that of the 135 dwellings granted planning permission, 40 are currently occupied and the applicant advises that 49 dwellings of the 135 dwellings granted planning permission have been completed.

## 3 BACKGROUND

- 3.1 Members will recall that application F/YR09/0648/F was previously approved by the Planning Committee on 10 February 2010. The committee report and Minutes are attached for reference.
- 3.2 In summary, the application sought permission for the erection of 135 dwellings comprising 34 x 2-bed, 48 x 3-bed and 53 x 4-bed dwellings with associated garages and parking.
- 3.3 The permission for the above was issued following completion of the relevant s106 on 26 April 2011. The applicant in a subsequent application (F/YR13/0879/F) advises that the development was commenced on 10 September 2010 which pre-dates the date of the decision notice being issued. The Council's Building Control case file indicates that the development commenced in September 2012. It is therefore considered necessary to clarify the commencement date in the first instance.
- 3.4 Condition 12 requires the following;

*Prior to the commencement of any work on site, a scheme showing full construction details of the new roundabout to be provided on the A141 including the realignment of Gaul Road shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out and completed in strict accordance with the approved scheme, prior to occupation of the 50th dwelling on the site or within 2 years of the commencement of development whichever is soonest and thereafter retained.*

*Reason - In the interests of highway safety*

Therefore, the condition requires the roundabout to be delivered either upon the occupation of the 50<sup>th</sup> dwelling or within 2 years of the commencement of development. Prior to this and any works on site commencing, a scheme was to be submitted and agreed by the LPA.

- 3.5 Whilst an application to satisfy this condition was submitted in April 2011 (F/YR11/3027/COND), the scheme for the roundabout has not yet been formally approved by the LPA.
- 3.6 A subsequent application was received in December 2012 (F/YR12/0980/F) to vary the construction timetable of the roundabout as detailed in Condition 12. The application sought a further 2 year time period in which to deliver the roundabout to April 2015. Members resolved to approve the application on 29 May 2013 subject to the following condition;

*Prior to the occupation of the 50th dwelling on the site or within 2 years of the date of this decision, whichever is soonest, the new roundabout on the A141 including the realignment of Gaul Road, as agreed by virtue of F/YR09/0648/F and details submitted pursuant to F/YR11/3027/COND shall be completed in strict accordance with the approved scheme and thereafter retained.*

*Reason: In the interests of highway safety*

- 3.7 This application sought to make the amendment under s.73 of the Town and Country Planning Act 1990 which results in the grant of a new permission incorporating the changes and would also require any pertinent conditions and planning obligations of the original permission to be transferred across to the new permission via a section 106 deed of variation.
- 3.8 The application was not progressed by the applicant and instead a further application under F/YR13/0879/F was submitted (see also agenda item 5). This application sought to amend condition 12 to deliver a signal controlled junction in place of the originally proposed roundabout.

The applicant advised that this application was made primarily in order to strengthen the financial viability of the associated development and in order to provide a design solution that would provide greater flexibility in accommodating future growth.

- 3.9 At the Planning Committee held on 5 March 2014 Members approved application F/YR13/0879/F subject to the conditions as specified on the associated committee report (see agenda item 5). One such condition is that prior to issuing the permission, the completion of the associated section 106 deed of variation was required, to ensure that all existing/ outstanding planning obligations were transferred across to the new permission.

Additionally and of relevance to this report, the aforementioned Condition 12 was agreed to be amended to read as follows;

*The signal controlled junction shall be provided at the A141, including the realignment of Gaul Road, and shall be carried out and completed in strict accordance with Drawing number CS/057368-T-02D dates stamped 21 November 2013 prior to the occupation of the 50th dwelling, or by the 1 April 2015, whichever is sooner and thereafter retained.*

*Reason: In the interest of highway safety.*

- 3.10 Due to significant delays by the applicant and despite efforts by the Council's Legal team to progress the s106 deed of variation, the deeds were signed (by the land owner and mortgagee) and returned to the Council on 1 April 2015. The agreement then needed to be signed by both the District and County Councils.
- 3.11 The s106 made reference to the resolution at the 5 March 2014 Planning Committee. However, as the proposed, approved implementation date of 1 April 2015 had elapsed it would be necessary to re-present the case to the Planning Committee to agree a revised date. The s106 would then be amended to reflect the revised committee resolution date.
- 3.12 Notwithstanding this, it was deemed not appropriate by Officers to issue permission that would have resulted in the applicant being in immediate breach of

the revised condition 12 in that they would not be able to deliver the traffic lights scheme by 1 April 2015 as agreed by Members at the Planning Committee of 5 March 2014. It is unreasonable for an LPA to amend a condition which cannot be complied within the time scale applied for and which places them in breach at the date of issuing the planning permission. (paragraph 206 of the NPPF).

- 3.13 Officers, in trying to be reasonable and negotiating a way forward therefore asked the applicant to amend the application seeking a revised date from them by which they intended to implement to the traffic lights scheme so that an update report with an amended delivery time for the scheme could be presented to the planning committee for consideration.

#### **4 LATEST POSITION**

- 4.1 On 13 May 2015 Canon Kirk's Construction Manager advised that they were not able to provide a revised date for delivery of the traffic lights scheme as the deliverability now relied on a planning permission for a further 90 dwellings on land adjacent to the development site and advised that the reason for this change in position was due to financial reasons.
- 4.2 The Council's Council Tax records indicate that of the 135 dwellings granted planning permission, 40 are currently occupied and the applicant advises that 49 dwellings of the 135 dwellings granted planning permission have been completed. It is understood that the development commenced more than 2 years ago. However, the precise date does require clarification.
- 4.3 Therefore although less than 50 of the 135 dwellings permitted are occupied, more than 2 years has elapsed since the commencement of development under F/YR09/0648/F.
- 4.4 Whilst Officers are mindful that subsequent applications have been approved by the Planning Committee that would have extended the time period for delivering either a roundabout or signal controlled junction scheme by a further 2 years (to April 2015), no subsequent permissions have been issued by the LPA and all extension dates as requested by the applicant have now elapsed and a breach of Condition 12 of permission F/YR09/0648/F exists.

#### **5.0 HIGHWAYS**

- 5.1 The Local Highways Authority (LHA) has been advised of this latest situation and has provided comments and data in respect of the development and the requirement to provide junction improvements.
- 5.2 The LHA have provided the latest accident data in this location and have identified it as being priority number 8 out of 92 sites around the County with 11 injury accidents over a five year period with an accident score rising from 9 in 2013, to 11 in 2014, to a current score of 16 (as of 2 July 2015).
- 5.3 The actual accident details provided are as follows;
- 3 vehicles exiting Gaul Road east colliding with southbound vehicles
  - 2 vehicles exiting Gaul Road east colliding with northbound vehicles
  - 3 shunts on the A141 in the vicinity of the junction

- 1 shunt on Gaul Road
  - A vehicle attempted to 'U' turn in Gaul Road and collided with a south bound vehicle
  - 1 overtaking manoeuvre on the A141 as a vehicle turned right into Gaul Road
- 
- 2014 - 2 serious and 1 slight
  - 2013 - 1 serious and 1 slight
  - 2012 - 1 fatal and 1 slight
  - 2011 - 2 slight
  - 2010 - 2 slight

- 5.4 The LHA Lead Engineer has concluded from this data that “In [their] opinion, on the analysis of the accident types, a signal junction or roundabout would have a significant effect on both the reoccurrence and severity of the accident types displayed. Additionally, “If the capacity were to be increased, into and out of Gaul Road, [the Lead Engineer at CCC LHA] would not be surprised to see an increase in the top 4 accident types above”
- 5.5 In addition, Cambridgeshire County Council’s Highway Development Manager has advised that “The increasing accident statistics at the Gaul Road / A141 junction enable me to suggest that it would indeed be expedient for your Authority to pursue enforcement action. Should the developer appeal the enforcement action the County Council would be prepared to support your Authority.”
- 5.6 In view of the comments and data received from the LHA, it is considered that the delivery of a roundabout to the junction of the A141 and Gaul Road is necessary in order to make the associated development acceptable in the interests of Highway safety as per that originally imposed under F/YR09/0648/F.
- 5.7 It is therefore considered expedient to progress with enforcement proceedings to secure compliance of Condition 12 in permission F/YR09/0648/F, namely the delivery of a scheme for a roundabout which has firstly been agreed by the LHA.

## **6 CONCLUSION**

- 6.1 The Council’s Council Tax records indicate that of the 135 dwellings granted planning permission, 40 are currently occupied and the applicant advises that 49 dwellings of the 135 dwellings granted planning permission have been completed.
- 6.2 It is understood that the development commenced more than 2 years ago. However, the precise date of commencement does require clarification and it is therefore recommended to seek this detail through the serving of a Planning Contravention Notice under s.171C of the Town and Country Planning Act 1990 as set out in paragraph 7 below.
- 6.3 Therefore although less than 50 of the 135 dwellings permitted are occupied, it is understood that more than 2 years has elapsed since the commencement of development under F/YR09/0648/F.
- 6.4 Whilst Officers are mindful that subsequent applications have been approved by the Planning Committee that would have extended the time period for delivering either a roundabout or signal controlled junction scheme by a further 2 years (to April 2015), all extension dates as requested by the applicant have now elapsed and a breach of Condition 12 of permission F/YR09/0648/F exists.

- 6.5 In view of the comments and date received from the LHA, it is considered that a condition requiring the delivery of a junction improvement scheme to the junction of the A141 and Gaul Road of either a roundabout or signal controlled junction, is necessary in order to make the associated development acceptable in the interests of Highway safety and in accordance with policy LP15 of the Fenland Local Plan (adopted May 2014) and as per that originally imposed under F/YR09/0648/F.
- 6.6 It is therefore considered expedient to progress with enforcement proceedings to secure compliance of Condition 12, namely the delivery of a roundabout.

## **7 RECOMMENDATION**

- 1. Seek clarification of the exact date of commencement of the development through the issuing of a Planning Contravention Notice (PCN) under s171C of the Town and Country Planning Act 1990.**
- 2. Subject to the PCN confirming that more than 2 years has elapsed since the development has commenced, to proceed with enforcement action through the issuing of a breach of condition enforcement notice under s172 of the Town and Country Planning Act 1990 to secure compliance with Condition 12 of F/YR09/0648/F.**

# ORIGINAL OFFICER REPORT

AGENDA ITEM NO.8

**Application Number: F/YR12/0980/F**  
**Major**  
**Parish/Ward: March Town Council**  
**Date Received: 18 December 2012**  
**Expiry Date: 19 March 2013**  
**Applicant: Cannon Kirk (UK) Ltd**  
**Agent: Mr D McKenzie, M.T.P.**

**Proposal: Variation of Condition 12 of Planning Permission F/YR09/0648/F**  
**(Erection of 135 houses with associated garages and parking)**  
**in relation to construction timetable of roundabout**

**Location: Land West Of Old Council Depot, Gaul Road, March, Cambridgeshire**

**Site Area/Density: 4 Ha (development site)**

**Reason before Committee: This proposal is before the Planning Committee given that the Committee approved the original scheme and associated conditions.**

## 1. EXECUTIVE SUMMARY/RECOMMENDATION

This application seeks to vary Condition 12 of Planning Permission F/YR09/0648/F to enable a later 'trigger' date in terms of timings for the implementation of the roundabout and associated highway works.

In considering the implications of the variation sought, Officers are mindful of the stance taken in the National Planning Policy Framework which promotes a solution based approach to planning which responds to changing market conditions and facilitates development.

The variance, in essence, maintains the delivery milestone for the roundabout and associated works previously promoted (i.e. by the 50<sup>th</sup> dwelling), albeit moving it in terms of the actual date

As the highway works will still be delivered at an appropriate point in the scheme delivery and in the absence of any material planning considerations to indicate otherwise Officers support this variation and favourably recommend the same.

## 2. HISTORY

Of relevance to this proposal are the following:

- |     |                                |  |                               |
|-----|--------------------------------|--|-------------------------------|
| 2.1 | <b>F/YR11/0860/NON<br/>MAT</b> | Non-material amendment: Alterations to House Type H and alterations to site layout to accommodate changes  | Approved<br>9 January<br>2012 |
|     | <b>F/YR11/3027/COND</b>        | Details reserved by conditions (Phase 1 only) 5,7,8,13,14 and 15 and 16 (finished floor levels for phases 1 & 2 only) of planning permission F/YR09/0648/F | Details<br>agreed             |

<b>F/YR09/0648/F</b>	Erection of 135 Houses comprising 34 x 2-bed, 48 x 3-bed and 53 x 4-bed with associated garages and parking	Granted 26 April 2011	
<b>F/YR05/0944/F</b>	Erection of 135 dwellings comprising: 6 x 6 bed houses, 29 x 5-bed houses, 50 x 4 bed houses, 37 x 3 bed houses, 6 x 2 bed houses, 3 x 2 bed flats, 4 x 1 bed flats and associated garages and parking	Granted 4 <sup>th</sup> April 2008	
<b>F/YR04/3814/F</b>	Change of use of agricultural land to Riverside Park incorporating visitors car park, play area and landscaping	Granted 4 <sup>th</sup> April 2008	
<b>F/R01/0158/O</b>	Residential Development of up to 150 units including road improvements to Gaul Road and extension to West End Park as a public facility	Refused 22 April 2002	(lack information)

### 3. PLANNING POLICIES

#### 3.1 National Planning Policy Framework:

Paragraph 2: Planning law requires that applications for planning permission must be determined in accordance with the development plan.

Paragraph 14: Presumption in favour of sustainable development.

Paragraph 32: Decisions should take account that a safe and suitable access to the site can be achieved for all people.

Paragraph 173: Ensuring viability and Deliverability

Paragraph 187: LPAs should look for solutions rather than problems

Paragraph 205: Where obligations are being sought and revised, LPAs should take into account market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

#### 3.2 Draft Fenland Core Strategy:

CS3: Spatial Strategy & Settlement Hierarchy

CS4: Growth and Housing

CS9: March

CS13: Supporting and Managing the Impact of a Growing District.

CS15: Creation of a More Sustainable Transport Network in Fenland

CS16: Delivering High Quality Environments

#### 3.3 Fenland District Wide Local Plan:

MAR/R1: Allocation of land for POS with the release of housing land to facilitate

H3: Development Area Boundaries/Protection of Character and Amenity/Highway Safety

E8: Landscape and amenity protection



#### 4. CONSULTATIONS

##### 4.1 *Town Council*

Recommend Approval

In addition to this two ward councillors have emailed direct to indicate their support 'in view of current financial austerity locally and national have no objection to an extension of this condition'.

##### 4.2 *Cambs CC Highways*

Initial Comments: Raise no objection provided the completion of the roundabout and off-site works remains linked to the construction of the 50<sup>th</sup> dwelling

Further comments on receipt of Capacity Analysis: For completeness request that the capacity analysis also include the committed development on the south side of Gaul Road in order to present a robust scenario to support their proposed revised build programme.

##### 4.3 *Local Residents:*

None.

#### 5. SITE DESCRIPTION

- 5.1 The site is located to the north of Gaul Road, to the west of No 119 and the development known as Riverbank Close. It covers an area of approximately 4 Ha and is currently under construction as per the approval detailed above. The variation relates to associated highway works, which are primarily at the junction of Gaul Road and the A141.

#### 6. PLANNING ASSESSMENT

##### 6.1 *Background*

This application seeks to vary the condition relating to the implementation date of the roundabout. It is supported by details of the existing build programme on the site and a refreshed transport study, which focuses on junction capacity.

It was originally anticipated by the Developers that by the end of 2012 some 40 units would have been constructed, however, slippages due to external factors have seen the development slow in terms of build out.

The projected completion rates in the current climate are outlined within the submission as follows:

2012 – 4 units (actual)  
2013 – 20  
2014 – 20  
2015 – 20 (6 to the end of April 2015)

The analysis as supplied indicates that the Gaul Road/A141 junction in March has capacity and can accommodate the traffic generated by 50 dwellings when combined with the predicted increase in background traffic due to natural growth to the year 2015 in the build programme.

The application is considered to raise the following key issues;

- Principle and policy implications
- Highways.

## 6.2 ***Principle and Policy Implications***

The related housing site benefits from an extant permission and as such it is solely the issue of roundabout delivery that should be revisited at this time, as the scheme has been found to be previously policy compliant. There are no local plan policies which deal with such submissions specifically, however, there is still an overriding requirement to ensure highway safety. There is a clear national steer within the NPPF to recognise market conditions and ensure Local Planning Authorities focus on facilitating solutions to ensure sustainable development is delivered.

## 6.5 ***Highways***

The proposal relates to a shift in delivery timings for the roundabout and associated highway works. The LHA indicated that they had no objection to the change in trigger in terms of dwelling numbers, however, their later consultation response did request that the refreshed capacity analysis made specific reference to an outline consent given to the south of Gaul Road. Given that each of these developments are stand alone and that the latter consent on the southern side of Gaul Road was supported by its own traffic data it is felt unreasonable to insist on this information; as again the alternative trigger maintains the status quo in terms of extant approvals.

## 7. **CONCLUSION**

- 7.1 The site benefits from an existing extant consent and this variation of conditions application clearly evidences that the changing market has contributed to a slowing of build rates due to a range of factors. A refreshed Capacity Study has been submitted in support of the proposed implementation date now proposed and Officers consider this evidences, together with the supporting information regarding build rates, that the variation in essence maintains the previously agreed position regarding implementation in 'real' terms albeit shifting implementation in terms of 'date'.

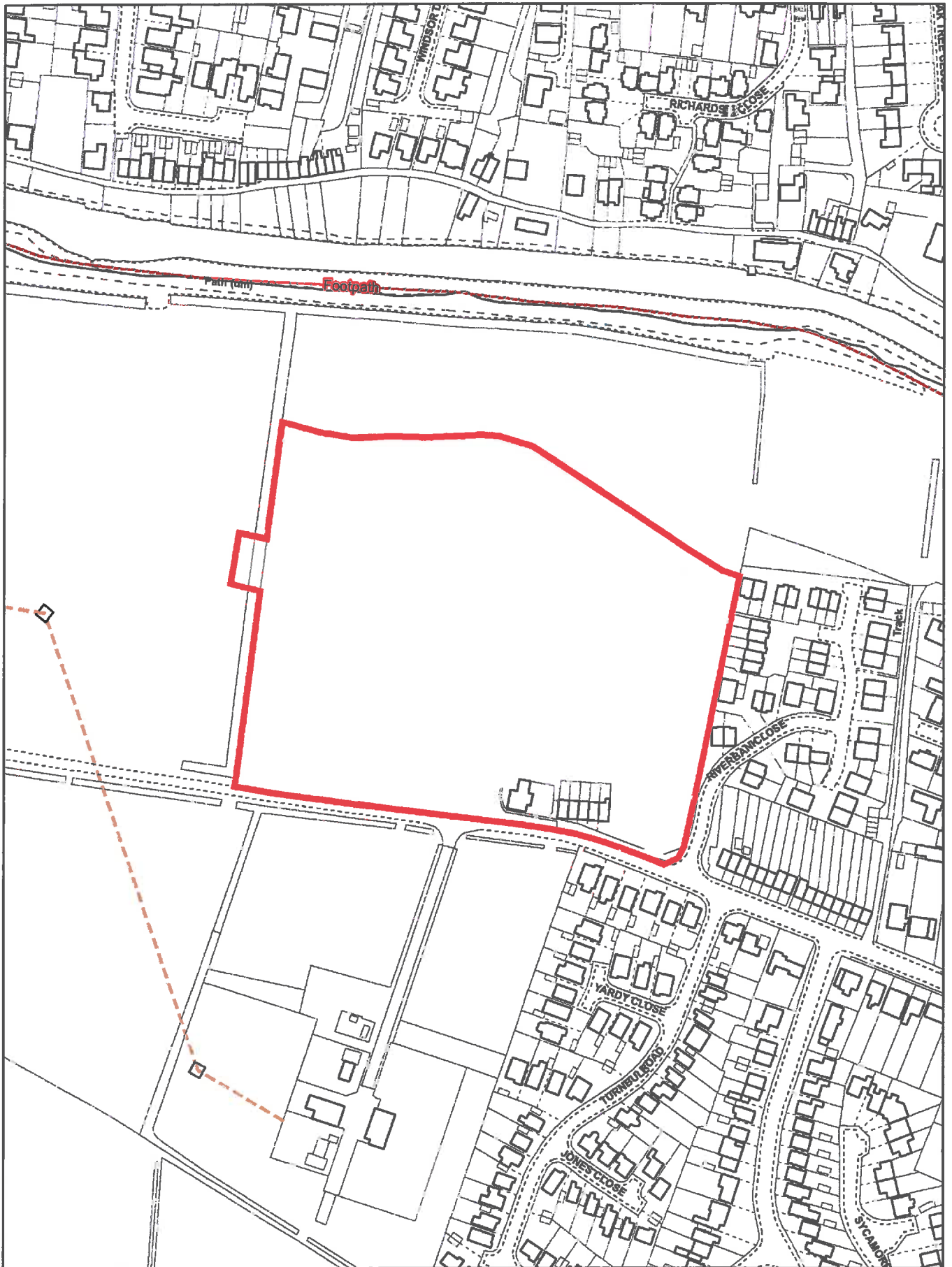
## 8. **RECOMMENDATION**

**Grant subject to variation of original S106 and a condition to re-establish the implementation trigger for the roundabout and highway works**

- 1 **Prior to the occupation of the 50<sup>th</sup> dwelling on the site or within 2 years of the date of this decision, whichever is soonest, the new roundabout on the A141 including the realignment of Gaul Road, as agreed by virtue of F/YR09/0648/F and details submitted pursuant to F/YR11/3027/COND shall be completed in strict accordance with the approved scheme and thereafter retained.**

**Reason - In the interests of highway safety**

**2 Approved Plans.**



Created on: 21/12/2012

F/YR12/0980/F

© Crown Copyright and database rights 2012 Ordnance Survey 10023778

Scale = 1:2,500



 Fenland  
CAMBRIDGESHIRE  
Fenland District Council





**P6/13**

**F/YR12/0980/F**

**MARCH - LAND WEST OF OLD COUNCIL DEPOT, GAUL ROAD, VARIATION OF  
CONDITION 12 OF PLANNING PERMISSION F/YR09/0648/F (ERECTION OF 135  
HOUSES WITH ASSOCIATED GARAGES AND PARKING) IN RELATION TO  
CONSTRUCTION TIMETABLE OF ROUNDABOUT  
(CANNON KIRK (UK) LTD)**

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

- Councillor Mrs Newell asked how many properties have been built on the site to date? Officers advised that in the application it stated 4 units up to Christmas;

- Councillor Cornwell expressed his disappointment in this application as this is the only large live development in March and whilst he acknowledges that roundabouts cost a lot of money, there is development occurring at present and he would be happier if someone counts the amount of development that is taking place as a roundabout is desperately required at this dangerous junction. He feels that update completion figures should be provided before the variation is agreed;
- Councillor Patrick requested clarification that the roundabout should be developed by the building of the 50th dwelling? Officers advised in the affirmative, which maintains the position of the original permission. Councillor Patrick asked that once the 50th dwelling is built there would be no further building until the roundabout is built? Officers advised that it is hoped that the roundabout would be in progress and operational by the 50th dwelling;
- Councillor Sutton stated that in an ideal world the 50th house would have been built and constructed within two years, but the construction industry in Fenland is worse than anywhere else;
- Councillor Mrs Newell referred to previous discussions about traffic lights at the junction and not a roundabout. Officers advised that members have to consider what is before them at this time, there has been muted talk about a different traffic management scheme for this junction, but this would need to come back to committee for consideration if anything was submitted;
- Councillor Cornwell asked how the problem of imbalance is overcome, with the recommendation as it stands being that if the developer gets to the 49th house there could be a wait for a roundabout, which is very much required, and if there is a move away from a time position to a number position how is the momentum maintained? Officers advised that there is still a fall back position for the proposal, with it either being two years from the date of issue of consent or the 50th dwelling;
- Councillor Quince asked if there is any form of bond that can be placed on the permission as a guarantee? Officers advised that there is no such mechanism in planning, but there will be a Section 106 obligation.

Proposed by Councillor Patrick, seconded by Councillor Quince and decided to:

**Grant, subject to**

- **variation of the original Section 106 Obligation**
- **the conditions reported.**

(Councillor Mrs Newell declared a Non-Pecuniary Interest in this application, by residing in close proximity of the application site)

(Councillor Cornwell stated that he is a member of March Town Council, but takes no part in planning matters)

(Councillor Quince registered, in accordance with Paragraph 14 of the Code of Conduct on Planning Matters, that he was present at the meeting of March Town Council at which this application was discussed but takes no part)





This map is reproduced from the Ordnance Survey map by Fenland District Council with the permission of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence No 10023778, 2009

F/YR09/0648/F

Scale = 1:2,500

