

# PLANNING COMMITTEE



**14 OCTOBER 2015 - 1.00PM**

**PRESENT:** Councillor A Miscandlon (Chairman), Councillor S Clark (Vice-Chairman), Councillor M G Bucknor, Councillor A Hay, Councillor D Laws, Councillor P Murphy, Councillor Mrs F S Newell, Councillor C C Owen, Councillor W Sutton.

**APOLOGIES:** Councillor D W Connor, Councillor Miss S Hoy

Officers in attendance: G Taylor (Development Officer), G Nourse (Head of Planning), R McKenna (Senior Solicitor), Sue Reynolds (CCC Highways), Mrs J Webb (Member Services & Governance Supervisor)

## **P37/15      MINUTES OF THE MEETING OF 16 SEPTEMBER 2015**

The minutes of the meeting of 16 September 2015 were confirmed and signed.

**\* FOR INFORMATION OF THE COUNCIL \***

## **P38/15      F/YR13/0879/F MARCH - LAND WEST OF THE 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 A SIGNAL CONTROLLED JUNCTION FOR THE PREVIOUSLY APPROVED ROUNDABOUT SCHEME.**

The committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy and Procedure (minute P19/04 refers)) during its deliberations.

Officers informed members that:

- **Comments had been received from the applicant, Canon Kirk (CK) as follows:**
  - Requests the items are withdrawn from the committee agenda;
  - CK are preparing a planning application for a further 90 units on land adjacent. This application would make the deliverability of the traffic lights viable;
  - FDC have previously accepted that a roundabout was not financially viable on the basis of 135 unit scheme. Questions the logic or merit in seeking enforcement action against CK due to financial viability argument which FDC have previously accepted;
  - Latest traffic counts confirm that the requirement for a signalised junction is not required based on capacity. However CK do recognise the number of serious accidents at the junction and therefore are prepared to deliver the traffic lights subject to the requirement being financially viable;
  - A summarised viability assessment is provided detailing viability of current permissions against proposed future development of a further 90 units;
  - If the forthcoming application for a further 90 dwellings and country park is approved, CK will deliver the signalised junction and highway improvements prior to the commencement of the 90 dwellings and prior to the completion of any further houses

of the 135 units permitted. CK would accept an appropriately worded condition to this effect;

- If the application for 90 units is refused CK would have to consider their position regarding continued development of the site;
- Provides a copy of the masterplan for 90 dwellings including open space, landscaping and drainage attenuation on land to the west of the A141;
- Considers the application is compliant with the Fenland Local Plan in respect of delivering up to 250 dwellings at the market towns;
- Wish to make it clear that CK are not pressurising Members into approving the application. The proposal is the only choice available to CK to make the scheme viable. CK have committed significant funds into the application to ensure they can deliver the development as originally envisaged;
- Advises that a planning application has been submitted.

- **LPA Response to Cannon Kirk's comments:**

- FDC have never agreed that the signal controlled junction is appropriate on viability grounds. Neither the associated Officer Report nor Committee Minutes make any reference to agreeing the viability assessment made and only acknowledge that the signal controlled junction scheme is an acceptable alternative to a roundabout based on highway safety and the completion of the legal agreement;
- Paragraph 6.1 (1) of the original officer report states *"It is considered that the only reasonable consideration can be whether the signalised junction will perform a traffic control function commensurate with the previously approved roundabout and this has been satisfied through modelling."*;
- The officer report concludes *"The proposal has been assessed in line with the Local National Planning policies in relation to highway safety..."*;
- Therefore Officers cannot accept the viability argument presented in this regard and confirm that the LPA has not previously accepted this;
- The LPA would not be able to reasonably impose a condition tying the two separate developments (extant 135 dwelling permission and proposed 90 dwellings) to the timing of delivery the highway improvements as they would form two standalone development proposals;
- Officers still consider that the proposal for a further 90 dwellings is not a material consideration to the application before Members today.

- **Comments received from the Leader of Cambridgeshire County Council, Councillor Steve Count summaries as follows:**

- Considers the junction of Gaul Road and bypass desperately needs the roundabout;
- Considers that CK have let down March residents seeking to realise profit whilst denying obligations on the development;
- Considers no further negotiations should be had;
- Endorses a proposal for enforcement action in considering accident statistics;
- Also enquires as to potential enforcement action against uncompleted cycle ways, footpaths and West End Park enhancements.

- **LPA Response to Councillor Count's Comments:**

- The matters raised in respect of uncompleted works have been referred to the Council's Planning Compliance Team for investigation.

## CONCLUSION:

- Having considered the latest comments received, **the recommendation is to REFUSE the application.**

Members received a presentation in accordance with the public participation procedure, from Mr Hodgson, the applicant's agent. Mr Hodgson stated that Gaul Road has been under the control of Cannon Kirk (CK) for a number of years since they acquired the Council's former depot and CK had always shown the aspiration of 5 phases of development, with the fifth phase being the 90 units which is the submitted application; this final phase was shown on all the previous plans submitted, including the landscaping scheme and country park.

At the time of submitting the application to vary the condition to deliver the traffic light scheme rather than a roundabout; the cost of the roundabout was not viable from a financial point of view; downturn in housing and land values but was viable on the back of the current 135 scheme, the cost of which has since escalated a further £400,000. The position that CK are presently in is that they are unable to deliver a return which is acceptable in terms of viability.

A full viability assessment has been submitted with the latest planning application and Mr Hodgson explained that no developer would deliver an infrastructure where the scheme was unviable; normal returns on a housing scheme would be 20% return on investment but delivering the roundabout scheme currently on the back of 135 units alone only delivers an 11% return on investment and any developer would not entertain this. However CK are committed in trying to seek a solution to deliver the infrastructure onto the A141 and the only way to make this achievable is to deliver more units to the site, the 90 units if delivered, would take the viability for the scheme up towards 20% and make it viable for CK to deliver the traffic light scheme and finish off the other infrastructure and country park. CK realise that this application cannot be linked to the new application and therefore ask for a deferral to such a time that the application now submitted comes to planning committee in order that a decision can be made on all the applications at the same time. This would inform Members of the viability assessments and help them understand CK's position.

In terms of taking enforcement action against CK, if the application for the 90 units does not come forward then CK would have to seriously think about whether to build any more than the 49 units already built. If Members chose to take enforcement action to deliver the roundabout then CK would respond by submitting an application to have the condition removed. The latest transport assessment suggests that in capacity terms there is no requirement on the back 135 units and 90 units for any upgraded works to be carried out at that junction. CK could submit an application and use that latest evidence to have that obligation removed but fully accept there is a safety element and would prefer to deliver the site as originally envisaged. The viability information submitted with the latest application sets out actual figures which gives Members a clear steer on why CK can and cannot deliver the traffic lights on the back of the 135 units; if Members choose to support CK's latest application for 90 unit then CK would be prepared to commit before any further units are built that the traffic lights are installed.

Members asked questions of Mr Hodgson as follows:

Councillor Owen stated he was puzzled and perplexed as previously CK has stated they wished to change from a roundabout scheme to a traffic light scheme as this was viable therefore whatever approvals were given today what guarantee was there that CK will build either a roundabout or

traffic lights? Mr Hodgson replied stating that CK are committed to delivering the traffic lights which is the most viable option at this time, but the scheme only stacks up in terms of viability with the requirement of an additional 90 units, if this is approved then CK would commit to delivering the traffic lights, upgrading Gaul Road, the country park and the riverside park before any further units are built. The Legal Officer explained that it was a fact that if the application was refused today then CK would be obliged to provide a roundabout.

Councillor Miscandlon interrupted stating the application for the 90 houses was not part of this agenda and could not be used as leverage against the traffic lights, to which Mr Hodgson stated he understood and this was why CK were asking for a deferment to such a time that Members have all the information, including the application for the 90 units to which Councillor Miscandlon explained that this was a choice for Members to make and that they respected his request for that deferment.

Councillor Mrs Laws raised the question as to what had changed from when CK had decided that traffic lights were viable opposed to the roundabout? Mr Hodgson stated that the only difference was that the viability submitted with the last application did include another phase of housing, which was 135 and had now been taken down to 90 therefore showing that 270 houses needed to be built to deliver the traffic lights. Councillor Mrs Laws asked officers to confirm that this was taken into account to which Gavin Taylor explained that as mentioned previously, in terms of the officer report and the relevant minutes that viability was not raised or questioned, it was purely on the terms of highway safety as an alternative to the roundabout. Councillor Mrs Laws asked if an extension of the development was mentioned as part of the equation for the approval to which Gavin Taylor responded stating that in terms of the proposal to extend further, this was only an aspiration of CK but in terms of providing pre-application of that going back to 2013, it has been quite clearly conveyed from an early stage that there was not commitment to that phase and the Local Plan allocation could alter its location and as we are in the Local Plan phase and we have site allocations but this falls outside that allocation. Councillor Mrs Laws asked if the country park and the 21 acres was an aspiration to which Gavin Taylor replied stating that the country park did receive permission in 2009 but this expired in 2013. Councillor Mrs Laws asked if Members were now looking at the non-delivery of traffic lights with nothing else involved to which Gavin Taylor confirmed this was correct.

Councillor Sutton stated that CK had stated that the building trade wanted to trade on 20% profit and if CK delivered the traffic lights as promised then this would be reduced to 11% to which Mr Hodgson stated this was correct. Councillor Sutton stated that CK were not saying that it was unprofitable to deliver the traffic lights just that not as much profit would be made; in his opinion CK should deliver and take 11%. Mr Hodgson stated this was not a decision he could make and explained that normally a developer would not have chosen a site for 11% to which Councillor Sutton stated that CK were not building on a green bare field, CK were already on site and have already made a commitment to the town and council and this should not have come to committee, it should have been carried out as promised.

Councillor Murphy stated that Mr Hodgson's presentation had focussed on a roundabout yet the installation of traffic lights had been agreed two years ago therefore why had he continually referred to a roundabout. Mr Hodgson explained that his understanding was that if a decision to refuse was made today then it would revert to a roundabout. The Legal Officer explained that if Members did refuse the application then the fall-back position would be the roundabout and as the officer had explained in his report, when this came before Members previously, the application was approved on the basis that the traffic lights would be delivered by 1 April but as this has not been delivered then the Council would be wrong to issue a decision notice that would automatically put CK in breach; therefore the fall-back position would be to deliver the roundabout. Councillor Owen stated he did not care what the Legal advisor was saying and that Members should state what they wanted and officers should take notice; a fall-back position was referred to. The Legal Officer replied stating that he had noted what Councillor Owen had said that he did not care what

the legal advice was but what he was telling Councillor Owen was fact and if Members refused this application then the fall-back position would be that CK would have to deliver a roundabout; this was a fact. Councillor Owen asked the Chairman to explain why it would return to a fall-back position. Gavin Taylor responded stating that the 2009 application was to deliver a roundabout and a condition was imposed to change that condition from a roundabout to a traffic light system; permission for that was never issued as a Section 106 was not completed in time and therefore to then issue the permission once the 106 was complete would immediately put the applicant in breach of planning control as the 1 April deadline had been and gone. Therefore the officers approached CK to ask for a revised date to deliver the traffic light system in order for it to come back to committee with a revised implementation date to be agreed to tie it all together and this was when CK then advised us that they could no longer deliver the traffic lights. In view of this, it would be unreasonable to issue a permission now given that the actual resolution given by the committee was to deliver the lights by 1 April 2015 and if permission was issued now then the applicant would be immediately placed in breach of planning control as this deadline has passed and this was unreasonable and would fail one of the six tests of the National Planning Policy Framework (NPPF) Paragraph 206. As CK cannot commit to a new timeframe then the Council cannot issue permission with precision in terms of timeframes, again this would fail one of the six tests of planning conditions therefore the resolution is to refuse the application as we cannot reasonably issue permission without any timeframes. Councillor Owen then stated that if at the last meeting the changes to traffic lights were approved then why did officers not make sure the paperwork was signed and settled. Gavin Taylor replied stating that as in the report, unfortunately despite efforts by the Council's legal team to progress the Section 106; there was heavy reliance on the applicant and their solicitors to secure the 106 and the Council only received the completed Section 106 on 1 April 2015 which was the deadline for delivery of the traffic light scheme. Graham Nourse, Head of Planning, added this was the deadline for meeting the provision of the traffic lights and therefore it would be unlawful for the Council to have issued that decision which is why this was at today's planning meeting. The Council had looked for a revised date from the applicant to be brought back to committee, ie it could have been agreed to December 2015 but CK did not want to do that; which is why this matter has been forced back to the planning committee. Graham Nourse explained that there was only one option and that was to refuse the application which then reverts back to the original planning permission which requires a roundabout provision; that was the current position. The Legal Officer reiterated the fact was that if Members refused this application then CK will be obliged to provide a roundabout.

Councillor Mrs Newell stated that in her opinion this would mean that Members were being "blackmailed" and she did not wish to ask any questions.

Councillor Hoy asked Mr Hodgson to clarify her understanding of what had been said in the fact that if Members were to approve traffic lights then CK had already stated they would not carry this out unless they were able to build another 90 dwellings to which Mr Hodgson replied stating that the position CK was presently in regarding viability terms was that there were a number of options open to Members; CK have submitted an application for another 90 units as this was the only way to generate significant returns to make it viable to deliver all the infrastructure and finish off the development of the area. If 90 units are approved then Fenland District Council would receive all the infrastructure including the traffic lights and CK are asking for a deferral to a later date to when the 90 units application would be heard and Members would have all the information in front of them; but if Members were to refuse the application today the CK would be back in the position where it would be expected to deliver a more expensive roundabout rather than traffic lights and CK have already demonstrated through their latest application that it is unviable to deliver the traffic lights and therefore they would certainly not be able to deliver a roundabout. CK are therefore asking Members what is the motive at this stage to take enforcement action as CK want to deliver the scheme but the only option for CK is to submit a planning application for another 90 units to receive the returns to make this happen.

Councillor Miscandlon stated Mr Hodgson had asked what the principal was of delivering either the

roundabout or traffic lights; this was highway safety and that has been duly noted and the Senior Highways Officer was present and today's meeting from Cambridgeshire County Council to reiterate that. This site is the 8th most dangerous junction in Cambridgeshire which is universally agreed by everybody and by you; this is why the fall-back position is highway safety and always will be.

Councillor Sutton commented to Mr Hodgson that on the four years he had sat on the planning committee and Mr Hodgson had been before committee numerous times; he had always delivered a very good presentation and convinced him but today he had not convinced him and Councillor Sutton was not sure Mr Hodgson had really convinced himself. Mr Hodgson replied stating that his job as planning agent was to come before committee to state what CK will and will not do; CK had made a commitment and submitted a planning application for another 90 units and are committed to delivering the traffic light scheme but not on the back of the existing position. If Members chose to refuse the application then CK will make a decision on this but CK have committed funds to another 90 units to try and make the whole scheme work; this is CK's only option and this has been committed in writing to officers in how the traffic lights would be delivered ahead of the 90 units and before any more units are built on the current site. Councillor Sutton commented that CK had stated previously they were committed to the traffic lights, but where were they.

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

Councillor Mrs Laws asked for clarification regarding if the traffic lights could not be moved to the 90 dwellings application to which Gavin Taylor explained that the purpose of today was for the current application regarding delivering the traffic lights; CK have advised they are happy to have a condition imposed to secure both developments but that is not possible as this condition has to refer to this application.

Councillor Mrs Newell asked if Members could hear from the Highways Officer. Sue Reynolds from Highways stated that she could not add much more than what was already in the report; in the last five years there have been 11 serious accidents and in the preceding 5 years there were 7 which means there was an upward trend which was why this needs to be addressed. There is no one particular cause of all these accidents which is expected at this type of junction, there are no capacity issues at this junction; it operates within capacity well. Councillor Mrs Newell stated Gaul Road had been closed frequently to which Sue Reynolds explained this was due to the development on the opposite side to CK.

Councillor Murphy stated that sometime ago Members had given permission for 135 dwellings to be built with a roundabout and as far as he was aware the roundabout had been changed to traffic lights, he was annoyed because 135 dwellings should have been built and finished but there are only 49, CK always stop one short of the cut off to start works for either a roundabout or traffic lights to be built and he thought Fenland needed a policy whereby a certain number of dwellings are not stated, instead they need to commence infrastructure regardless because Fenland were being caught out with this. Regarding the viability, this was not Fenland's problem this was up to CK to be concerned about. This was the second time within three months that Members have had a "gun put to their heads" stating that if permission was given then more work would be carried out and this has got to stop.

Councillor Mr Bucknor asked what the cost of these accidents were as this was not shown in the report; often it was much greater than it looks on paper; the cost of a fatality five years ago to the community was £1.3million, there is a very big cost every time there is an accident to the community and to the services and therefore a solution is needed as soon as possible. Sue Reynolds agreed although she did not have the costs with regard to the accidents and something does need to be done.

Councillor Mrs Laws stated that the land where the pre-app and application have been submitted is on flood risk land and what was the guarantee that this would not cost a fortune to deliver. Councillor Miscandlon stated that application was not part of today's application and cannot be taken into consideration.

Councillor Owen stated that a decision would be made today that would have unforeseen consequences and these would not be yet known. Would the Council be left with an unfinished site or would CK battle on with just 11% profit and what did officers see as the consequences to the decisions made by Members. The Legal Officer stated there was no application before Members today for 90 houses therefore this was not a material consideration. He explained that Members made a resolution to grant traffic lights but obviously in order for that planning permission to be issued there had to be legal agreements signed before this was done and unfortunately due to the delays by the applicant in getting those agreements back to the Council that permission was never able to be issued which is why in refusing this today, it would take away the traffic light aspect and the Council's next report would be to take enforcement action. Councillor Owen stated that if Members refused the application today then CK could come back with a new application which stated traffic lights and not a roundabout and therefore the whole situation would be started again. The Legal Officer stated it was entirely within the gift the applicant to submit whatever application they wished but at that stage the Council would take advice from the Highways Department as this is a Highways Safety issue.

Councillor Murphy stated that when a piece of land has been bought and the owner was unable to afford to continue then surely the decision would be to sell the land on to which Councillor Miscandlon stated this would not be a legal decision but would be a commercial one.

Councillor Mrs Newell thanked Highways for their effort and the terrific amount of work that had been done regarding this.

Proposed by Councillor Sutton, seconded by Councillor Bucknor and decided that the application be:

**REFUSED for the following reasons:**

- 1. The application seeks permission under S73 of the Town and Country Planning Act 1990 to vary Condition 12 of permission F/YR09/0648/F to allow for the provision of a signal controlled junction instead of a new roundabout. Whilst the principle of the variation is acceptable, the Applicant has confirmed that they are unable to confirm or commit to a timeframe for its delivery. For this reason the variation of the condition is considered to be unacceptable in planning terms as it would lack precision in terms of the timeframe for the delivery of the signal controlled junction and could not therefore be reasonably enforced against to ensure its implementation and, as such, would fail the test required under paragraph 206 of the National Planning Policy Framework;**
- 2. Additionally, the applicant, in their application has sought permission to implement the signal controlled junction prior to the occupation of the 50th dwelling or by April 2015. Therefore, to grant permission at this time would immediately place the applicant in breach of planning control which again would fail the test required under paragraph 206 of the National Planning Policy Framework as it would be unreasonable;**
- 3. For this reason the variation of Condition 12 is considered to be unacceptable as it would be contrary to Policy LP15 (C) as it fails to recognise the immediate need for the delivery of the off-site junction improvements in the context of the previously conditioned delivery timeframes and would, furthermore, allow for further development to take place on the site without securing arrangements for the implementation of measures against transport impact resulting in severe harm to the**

**safety and free flow of traffic on the neighbouring highway.**

(Councillor Owen stated that he was a Member of March Town Council, but take no part in planning matters)

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

(Councillors Miscandlon, Murphy, Mrs Newell, Owen and Sutton registered, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, that they had been lobbied on this application.)

**P39/15**

**ENF/211/15/BOC**

**MARCH - LAND WEST OF THE OLD COUNCIL DEPOT, GAUL ROAD**

**BREACH OF CONDITION 12 OF F/YR09/0648/F (ERECTION OF 135 HOUSES**

**WITH ASSOCIATED GARAGES AND PARKING): CONSTRUCTION OF A**

**ROUNDAABOUT.**

The committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy and Procedure (minute P19/04 refers)) during its deliberations.

Officers informed Members that further correspondence has been received from the agent and has been relayed in the updates section of the previous committee item (agenda item 5).

**LPA Response to Cannon Kirk's comments:**

- FDC have never agreed that the signal controlled junction is appropriate on viability grounds. Neither the associated Officer Report nor Committee Minutes make any reference to agreeing the viability assessment made and only acknowledge that the signal controlled junction scheme is an acceptable alternative to a roundabout based on highway safety and the completion of the legal agreement;
- Officers therefore cannot accept the viability argument presented in this regard and confirm that the LPA has not previously accepted this;
- Officers consider that the proposal/submission of an application for a further 90 dwellings is not a material consideration to this matter.

**CONCLUSION:**

- Having considered the latest comments from the developer, the recommendation is to proceed with enforcement action to regularise the breach of planning control as per the recommendations outlined in paragraph 7 of the Committee Report - agenda item 6 in the interests of highway safety.

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

Councillor Hoy asked as to why this had not come back to committee sooner to which Gavin Taylor explained there was a need to confirm the exact date of the commencement of works in order to establish when the two years was breached but certainly officers were confident that it had been more than two years since the development commenced and given the sensitivity of the subject and the gravity of the implications then Fenland needed to ensure a thorough investigation had been carried out before proceeding.

Councillor Owen stated that Part 2 of the Recommendation stating, "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"; if they are already in breach then what can the Council do, what would the enforcement action achieve. Gavin Taylor explained that it was hoped that in the first instance the applicant may actually deliver what is required, if not then the Council would review their options as a local authority which ultimately lay within prosecution or direct action to secure the breach of planning control. It is clear that the condition has always been there and the applicant has sought to secure alternatives to that condition but still aim to honour the commitment to deliver junction improvements however the latest information that has been provided indicates that no such provision will take place and in view of the highway statistics provided it is considered that it is expedient to pursue enforcement action to seek to regularise that breach of planning control ie to deliver the highway improvements. Councillor Owen stated he was concerned that if this goes through the legal route then this Council would be saddled with a bill significantly higher than the cost of supplying a roundabout. Councillor Miscandlon stated that Councillor Owen's concerns were duly noted.

Councillor Hoy stated that she understood Councillor Owen's comments but the Council are criticised by the public that they are not tough on enforcement; therefore she believed Members should be tough on this.

Councillor Bucknor asked if officers had looked at viability in terms of the delivery of the traffic lights in relationship to the site to which Gavin Taylor replied stating that it was originally assessed when the variation to deliver the application was submitted, it was against highway safety and viability was not. Councillor Bucknor stated that the viability assessment was then purely what the applicant had stated to which Gavin Taylor confirmed this.

Councillor Mrs Laws commented stating she could see a breach had taken place but should Members keep "moving the goal posts" because the market fluctuates; this cannot be done.

Councillor Sutton stated he did not see it as not viable, if CK can still earn 11%, albeit not as high as they would like, this does not mean it is not deliverable it means they do not want to deliver it.

Councillor Mrs Newell asked that should this enforcement be taken to court and with Fenland's position being in the right, how would Fenland be charged a lot of money? The Legal Officer explained stating that once an enforcement notice is served if the person on whom the notice was served did not appeal then the Council has to consider the options it could take:

- To do nothing and take no further action;
- To prosecute for failure to comply with the terms of the enforcement notice or;
- To take direct action and place a charge on the land.

Proposed by Councillor Sutton seconded by Councillor Hoy and decided to:

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.**

**It was requested by Councillor Owen that the vote be recorded.**

**In favour of the recommendation : Councillors Bucknor, Mrs Clark, Miss Hoy, Mrs Laws, Murphy, Mrs Newell and Sutton.**

**Against the recommendation: Councillor Owen**

**Abstentions: None**

(Councillor Owen stated that they are Members of March Town Council, but take no part in planning matters.)

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

(Councillors Miscandlon, Murphy, Mrs Newell, Mrs Laws, Owen and Sutton registered, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, that they had been lobbied on this application.)

**P40/15**      **TPO 03/2015 – 1 BLACK LOCUST**  
**WHITTLESEY - BRICKLAYERS ARMS, STATION ROAD**

The committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy and Procedure (minute P19/04 refers)) during its deliberations.

Officers informed members that a further report had been provided by the arboriculture officer as follows:

**Introduction**

- A TPO has been served to prevent the removal of a black locust tree (*Robinia Pseudoacacia*) to make way for development;
- An objection to the TPO has been received including a letter from the developers' arboriculture consultant;
- Members are to decide whether to confirm the TPO.

**Background**

- The Council was requested by members of the public to protect a mature tree in the grounds of the Bricklayers Arms growing on the south boundary adjacent to Hardy's Lane. The reason given was that at a meeting the developers made known their requirement to remove all trees on the site.

**Power to make a TPO**

- If it appears to a local planning authority that it is expedient in the interests of amenity to make a provision for the preservation of trees or woodlands in their area, they may for that purpose make trees, groups of trees or woodlands the subject of a TPO;
- Expedience - If there is a risk of trees being cut down or pruned in ways which would have a significant impact on their contribution to amenity it may be expedient to serve a Tree Preservation Order. In some cases the Local Planning Authority may believe trees to be at risk generally from development pressure and therefore consider it expedient to protect trees without known, immediate threat. Where trees are clearly in good arboricultural management it may not be considered appropriate or necessary to serve a TPO.
- Amenity - While amenity is not defined in the Town and Country Planning Act, government guidance suggests that trees suitable for TPO should normally be visible to the public, at the time of making the TPO or in future. However the Oxford Dictionary defines amenity as the fact or condition of being pleasant or agreeable. Trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore. Consideration should also be given to environmental benefits and historic/commemorative significance.
- Suitability - The impact of trees on their local surroundings should also be assessed, taking into account how suitable they are to their particular setting, the presence of other trees in the vicinity and the significance of any detrimental impact trees may have on their immediate surroundings.

**Suitability of this TPO**

- Expedience - A TPO is expedient because the land has recently been sold to a developer and therefore the potential for the tree to be removed to maximise developable space is high;
- Amenity - The tree contributes to the green backdrop as viewed along Station Road from both the south and north, being particularly prominent from the direct of the Manor Leisure Centre where it is clearly visible above the adjacent houses. There are few mature trees in this part of Station Road and the tree in question contributes to the character and pleasantness of the environment. The provisional design layouts for this site include the removal of all trees and the construction of a terraced block meaning this site will be permanently devoid of prominent trees;
- Suitability - The tree is located adjacent to the boundary wall in Hardy's Lane and there is cracking to the wall adjacent to the tree trunk. Tree roots can damage lightly founded structures by direct physical action. The tarmac footway in Hardy's Lane is also disrupted, possibly by surface root action. However, any disruption in lightly founded structures and paving/surfacing can be the subject of an engineered solution rather than requiring the loss of an important tree. Clarification has been requested regarding the root spread of trees. In an open grown situation eg a field with no obstructions to root spread, the roots may extend to 2.5 times the height of the tree. This is an ideal situation and rarely occurs. In reality, changes in sub-soil conditions can drastically influence root spread. Roots are adventitious and will proliferate where conditions are favourable and quickly die off where they are not. There is no way to accurately predict where roots are and at what distance from the trunk. The Kew Root Survey (Cutler & Richardson) provided some guidance on the potential for trees to cause structural damage and in this respect black locusts are noted as having a maximum tree-to-damage distance of 12.4m, the inference being that roots are rarely found beyond that figure or in such low volume that they do not influence soil moisture conditions. However, it must be noted that damage will only occur where there is a shrinkable clay soil and in many areas of Fenland the soils are silt and of low shrinkage potential; there are no indications on the flank wall of the adjacent property that it is being influenced by tree roots.

## Considerations

- Following the consultation an objection has been received to the TPO from an Arboriculture Consultant on behalf of the developer. The objection is made on the following grounds:
  - The tree has a fungus (*Laetiporus Sulphureus*) and is a hazard;
  - The tree has limited visibility mainly from Hardy's Lane
- Officer's response to the objection:
  - The fungus can cause a brown rot of the wood leading to embrittlement and branch failure. However, the extent of the decay has not been ascertained and may not be at an advanced stage. The Council has requested an internal decay detection report to confirm the extent of the decay. Until the report is forthcoming it is considered expedient to protect the tree until there is evidence that it requires removal;
  - The Planning Committee has visited the site and are aware that the tree is both prominent and makes a significant contribution to the amenity of the area.

**An email received on 13 October from James Cox on behalf of MacCarthy & Stone who are potential developers of the site, stating:**

- McCarthy & Stone have submitted a planning application to develop this site (F/YR15/0716/F);
- McCarthy & Stone commissioned independent tree surveys to assess the condition of the trees on the site and to determine if any were diseased - these surveys identified the Black Locust tree as being in a potentially dangerous condition as a result of infection of the fungus known as *Laetiporus Sulphureus*;
- Further testing is currently being undertaken to understand the extent and severity of the disease;
- The front part of the site lies in a Conservation Area and therefore this tree is already afforded protection, preventing it from being removed without specific approval;
- McCarthy & Stone are surprised at the short notice given for the TPO application, that it is being made prior to the results of the independent tree condition testing being known and that the TPO application pre-empts its own planning application.

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

Councillor Miscandlon asked for confirmation that a TPO does not prevent the removal of a tree if evidence is produced to say that the tree needs to be removed but it can secure the replacement tree being planted elsewhere on the site for future use to which Gavin Taylor confirmed this stating that essentially that if a TPO is placed on a tree then an application would need to be submitted and subsequently approved for those works or for it to be felled providing suitable demonstration of justifications are provided then the local authority may want to approve but it would secure control in terms of a placement tree.

Councillor Bucknor asked if the replacement tree would have a TPO placed on it to which Gavin Taylor stated that it would have.

Councillor Murphy stated that regarding a previous TPO in Chatteris, the Council won an appeal to state that it could not be felled but it could only be pruned up to 30%; would this 30% be in addition to any pruning that was necessary to rid the tree of disease. Gavin Taylor was not sure of the information regarding that particular tree but if there was an urgent works notice if the tree was considered to have a large spread of diseased branches that needed immediate removal then this would be carried out. Councillor Murphy stated his concern was that this did not happen again.

Councillor Owen stated that concrete damping could be added to stop the roots from proceeding further and creating more damage which seems an obvious solution; was this not a condition that could be added. Gavin Taylor stated that arboriculture officer refers to root action and the behaviour of roots and that there are engineering solutions to problems that trees may cause but it lies completely outside TPOs; there are no requirement to add conditions. Anyone carrying out work near a protected tree would need to ensure they do so without damaging the tree and seek permission to do those works. Graham Nourse stated that Members were straying into civil law.

The Legal Officer read from the Planning Practice Guidance on how does the local authority decide whether a tree in a conservation area merits a TPO; "the authority's main consideration should be the amenity value, in addition, authorities must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area; even if the tree's amenity value may merit an order, the authority can still decide it would not be expedient."

Councillor Owen stated that the amenity value is its appearance within the local surroundings and it was agreed that it could be pruned to prevent further damage to nearby/adjacent properties and at that point it could cease to be of amenity value to which the Legal Officer stated that at that stage it could be applied to remove the TPO but that today's application needed to be looked at for the amenity value it has today and the condition that it is in today.

Councillor Miscandlon stated that the tree was afforded some protection as it was in a conservation area but if it also had a TPO placed on it then works can be carried out to the tree with the relevant planning permission and dealt with it accordingly. Gavin Taylor explained that if a tree is in a conservation area then the local authority would need to be applied to have it felled; the local authority would have six weeks to determine the application and if it is not approved then by default the works can be carried out but if the local authority objects to those works then the only way is to place a TPO on the tree; the local authority cannot refuse an application for works to treat a tree in a conservation area, the only way to refuse is by placing the TPO on the tree; therefore this a "fast-track" way of approaching it. There is a proposal submitted to develop the site and this tree was identified to be felled and therefore the local authority have assessed the tree and have considered that it does have high amenity value and should have a protection order placed on it therefore this clarifies the Council's position so that even if the development does not go ahead, if someone wanted to feel the tree then the Council would not support that at this time.

Councillor Mrs Laws asked, as a Whittlesey Town Councillor asked why this tree was not identified earlier. The developer has made it aware and they are employing an independent consultant, how does that affect the situation because if the report challenges Fenland's officers report; what was the next step. Gavin Taylor stated that a TPO was placed in April 2015, with a consultation period needed and from that objections are received and then it comes to committee but he was unsure why it had taken as long as it had and he was unaware of what pre-application discussions had taken place but certainly the assessment was carried out by Fenland's Arboriculture Officer and this would have taken place shortly after the planning application was submitted; at this point it would have been identified that the tree merited protection which would have been April time hence why a TPO was proposed then. In terms of the developer employing a consultant, Fenland are aware of their position and it is evident that they still need to carry out works and tests to the tree to identify the level of decay, if there is any, and how it affects the structure of the tree. If we are in receipt of that information then we could make a more informed judgement as to how to proceed with the tree but at this time there is no justification for it to be felled so Fenland await that level of detail. In terms of the TPO, Fenland have six months to make that order and if it is not made within that timeframe then the TPO in place would fall by the wayside; the tree would still be afforded protection through the conservation area in this case but not through the TPO. The TPO for this tree to be effective therefore needs to be made by Thursday otherwise the time would have lapsed and the process would need to be restarted. Councillor Mrs Laws stated she had spoken to the developer when they met with Whittlesey Town Council whereby she asked if they had taken the trees into consideration and she was told that the developers had stated that no one had highlighted that there were any trees of special interest. Gavin Taylor explained that the Arboriculture Officer is only consulted once an application is submitted and there is no requirement for Fenland to do this during the pre-application stage. Councillor Mrs Laws stated this would be beneficial if done at the pre-application stage to which Gavin Taylor stated it would be but unfortunately the Arboriculture Officer only works one day a week and Fenland are not resourced for further work at this time. Councillor Mrs Laws stated she was concerned this had come about later than it should have done as the developers were not aware of the situation and if they had of been then they may have been able to modify their design of the development. Graham Nourse stated that all Fenland could do was to look at the pre-application to see what had been said and agreed that the tree was in a conservation area and this should have been highlighted therefore this would be looked into.

Councillor Murphy stated that now Fenland were working in partnership with Peterborough then there may be further tree officer resources.

Proposed by Councillor Murphy, seconded by Councillor Mrs Laws and decided that:

**The Tree Preservation Order be confirmed in respect of the specified tree at The Bricklayers Arms Public House, 9 Station Road, Whittlesey, in accordance with the Order TPO 03/2015.**

(Councillors Mrs Laws and Miscandlon stated that they are Members of Whittlesey Town Council, but take no part in planning matters)

(Councillors Bucknor, Miss Clark, Miss Hoy, Mrs Laws, Miscandlon, Murphy, Mrs Newell, Owen and Sutton registered, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, that they had been lobbied on this application.)

## **P41/15      APPEAL DECISIONS**

Officers informed Members of the Appeal Decisions for their information.

Councillor Miscandlon also advised Members that they had been given the Monthly Delegated Decisions; this was a new item and would be received each month. This document should allay fears that decisions are being made "behind closed doors that should not be". Councillor Mrs Laws thanked officers for this document as it will be extremely useful.

Councillor Miscandlon stated that as Members were probably already aware that Graham Nourse was unsuccessful in his application to be the Chief Planning Officer for Joint Services. He introduced Nick Harding who would be the new Head of Joint Services between Peterborough and Fenland.

Nick Harding introduced himself stating he had been the Head of Planning at Peterborough for a number of years and he was really excited to be joining Fenland and working alongside everyone.

2:30pm

Chairman