

PLANNING COMMITTEE



22 JUNE 2016 - 1:00PM

PRESENT: Councillor A Miscandlon(Chairman), Councillor S Clark(Vice-Chairman), Councillor M G Bucknor, Councillor D W Connor, Councillor M Cornwell, Councillor M Davis, Councillor A Hay (from 1:45pm), Councillor D Laws, Councillor P Murphy, Councillor Mrs F S Newell, Councillor W Sutton, Councillor Mrs V M Bucknor(Substitute), Councillor D Hodgson(Substitute).

Officers in attendance: Sheila Black (Senior Development Officer), Hannah Edwards (Legal), Gavin Taylor (Senior Planning Officer), Jennifer Thomas (Senior Planning Officer), Jane Webb (Member Services & Governance)

P8/16 **TO SIGN AND CONFIRM THE MINUTES OF THE MEETING OF 25 MAY 2016.**

The minutes of the meeting of 25 May 2016 were confirmed and signed.

P9/16 **F/YR15/1002/F**
LAND SOUTH OF ROSEMARY COTTAGE, NEW ROAD, MANEA
CHANGE OF USE OF LAND TO A TRAVELLERS SITE INVOLVING THE SITING
OF 3 X CHALET HOMES AND RETROSPECTIVE PERMISSION FOR A SHED,
DAY ROOM AND STABLES.

The Committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy & Procedure (minute 19/04 refers)) during its deliberations.

Officers presented the application to Members and informed them that updates had been received as per the documents handed out (attached).

Members received a presentation in accordance with the public participation from Adam Tolfree, neighbour.

Mr Tolfree stated he was speaking on behalf of his mother and also Nicola Robertson. Mr Tolfree read his mother's statement as follows:

"I live with my husband next to the site of this planning application in a small hamlet of the Toll close to Manea; because of the effects of multiple sclerosis I am no longer able to use any part of my body and I have difficulty speaking and easily become distraught by noise and disturbance - for this reason I have asked my son Adam to read out my feelings to you.

When I was only partially paralysed my husband would take me to meditation classes because it helped me to feel peaceful and emotionally at rest. One of the care organisations who have assessed my needs have prepared a report explaining that my principle need was for peace.

The location in which we live is ideal for my needs in that it is an agricultural environment enjoying complete quietness except for the sound of undisturbed wildlife. However, the house we lived in was not suitable for my needs, we therefore decided that instead of moving me to a care home, we would demolish our existing house and replace it in the same peaceful location with a new house specially designed with facilities that allow me to continue to live at home with my husband and with the help of carers.

We had our garden professionally designed with an area set aside for quietness and meditation, the house and garden are specially constructed so that there is level access enabling my wheelchair to be moved outside directly from the living areas and so that in the Summer I can be in the meditation area and enjoy listening to audio books and to my husband reading to me. You can imagine my distress when lorries started arriving in the unspoilt agricultural field next to us, with what a delivery driver told my husband, was 100 tonnes of hard core followed by caravans and builders constructing various buildings.

Since then the peace I had hoped to enjoy has been spoilt; I and my family have been disturbed by the noise of shouting, dogs barking which are caged and fighting. My husband who is now 70 years old has suffered threatening behaviour from a former resident on the site and my next door neighbour has told me that she was intimidated by one of the present residents because of her opposition to this planning application. I feel that disturbances of one sort or another are inevitable from a Gypsy Travellers' site and all this is very distressing to me. I therefore ask this committee which has kindly approved the original plans for me to have a suitable home in this tranquil location, should have regard to my interest as an established resident and reject the present proposals to destroy the little peace and pleasures that I still have in my life. If you are looking for legal justification for this, I am told that it exists in the Government Planning Policy for Travellers Sites, first issued in March 2012 and updated on 31 August 2015 which sets out as an overarching aim respecting the interests of the settled community."

Mr Tolfree read from Nicola Robertson's statement:

"The main thing she wished to convey was that of the five current properties in The Toll, four have submitted objections and the fifth property witnessed the applicant blocking me in my property when they decided to confront me about the fact that I had submitted an objection to this planning application. Also with regard to the 40 representations, I think it is appropriate to point out that a large number are from the individual and immediate family members of the individual that sold the property to the applicant and as such they have a vested interest in ensuring success of this application. In reality, the closest person who provided support is someone that only works 0.5miles away from the applicant's site but is not a resident; the nearest inhabitant is actually over 1 mile away and eight are signed by people who are outside of the village. As such, none of the individuals submitting positive representations are actually affected by this planning application; it would therefore be fairer to say that no attempt has been made by the applicant or his family to integrate with the immediate settled community rather than the position that is currently stated, that they already have.

There were no questions asked of Mr Tolfree.

Members received a presentation in accordance with the public participation from Paul Jolley, supporter.

Mr Jolley stated he supported Mr Tolfree's application at the time as he thought it was needed for his mother and he also supported today's application. He stated:

- At the Parish Council meeting it was made quite clear they did not want to be seen as not supporting Travellers;
- There must be a need as the applicant had bought the site, developed it and moved onto it;
- He believed they were mixing in with the village and everything should not be blamed on the Travellers as it was not always their fault;
- He understood Mr Tolfree's comments but did not believe the occupants of the site had caused that much trouble;
- If the site flooded then the whole of Manea would be flooded - living in this area everyone was liable to flood risk as the area was below sea level. This could be overcome by

- building up a further 20 inches and therefore he did not see this as a problem;
- These Travellers were trying to make a life better for themselves and asked if they should be helped or moved on to cause more problems because in his opinion it was better to leave them in the vicinity as it was a decent site that was close to the village;
- He would not object to the site if it were next to him;
- The Officers report was very fair and mentioned two things - the need; which he thought there was a need and they would probably appeal if they did not get the permission and secondly; the flood risk which could be overcome but in his opinion the whole of Fenland was a flood risk area.

No questions were asked of Mr Jolley.

Members received a presentation in accordance with the public participation from Geoff Beel, Environmental consultant on behalf of the Agent.

Mr Beel stated that the Planning Practice Guidance to the National Planning Policy Framework states the proposed development is classed as highly vulnerable which is entirely acceptable to him as a consultant within a natural upland river with fast flows as experience in Cumbria last year and in other areas of the country during the last ten years; caravans and cars can be washed away in these flood events and residents rescued from their properties by the emergency services.

However, in the Fens there is a managed river and drainage system of slow flowing channels, raised embankments, wash land storage reservoirs and pumping stations, it is therefore necessary for a more detailed site specific local interpretation of the flood risk implications to be carried out. The majority of the Council's area is protected by the North Level and the Middle Level Drainage systems with strategic pumping stations at Tydd and St Germans respectively discharging the flood waters to the tidal river Nene and the tidal Great Ouse.

The level of protection is against a one in one hundred year fluvial flood event plus climate change although the Middle Level Commissioners still have to consider the raising of some embankments. Furthermore the tidal river Nene between Wisbech and the Dog and Doublet sluices offers protection against a one in 200 tidal flood event at least for the next 50 years. Finally, we have two flood storage reservoirs in the River Nene Washes and the River Great Ouse Washes, both are designated structures within the Reservoirs Act 1975 which requires the Environment Agency as statutory obligation to manage and maintain the Middle Level Barrier Bank to each of the reservoirs to a standard of safety under Section 10 of the Act. The Nene Washes Embankment has recently been improved at a cost of £25million to protect one in a 1000 year storm and similarly the Ouse Washes have some works to be carried out in the next couple of years. As Fenland District Council has not carried out a Level 2 Flood Risk Assessment, the sequential test is based on the Environment Agency flood maps and consequently the site is shown in defended Flood Zone 3 whereas if the strategic Flood Risk Assessment was available it would be shown in Flood Zone 1 protected to one in 1000 years and only a residual flood risk if a breach occurred to the Ouse Washes which is highly improbable because of the standard of protection and the statutory obligation placed on the Environment Agency.

No questions were asked of Mr Beel.

Members received a presentation in accordance with the public participation from Peter Humphrey, Agent.

Mr Humphrey stated he was pleased this application was before committee because he was looking for consistency of decisions. The Travellers' site is a tolerated site which has been there a number of years and has passed through many hands before Mr Smith. There was no dispute by Fenland District Council that Mr Smith is of Traveller descent as this had been proven. The application is welcomed by the local people of Manea and supported by the Parish Council.

The Planning Officers' report confirms that weight must be given to the availability or lack of suitable sites within the area. He had been presented with The Gypsy Traveller Need Assessment Survey dated June 2016 and there was no way he could have presented anything from that Survey when the application was made in October 2015. It states there are 13 pitches available and he asked that maybe someone from Fenland District Council should try and buy some of these sites that could be available because Mr Smith had tried and no-one wants to dispose of them.

There was a need to be realistic with what could and could not be done; this committee approved an application at North Brink, Wisbech which was not dissimilar to this one which was next to the River Nene in a Flood Zone 3 and supported; this one is much further from any risk of flooding. Travellers needs space and to settle and this yard is large enough, even the planning officers' report states that given the site is adjacent to a small hamlet of properties and farming enterprises, it relates more to the hamlet than the open countryside, given its immediate surroundings, existing building, the site sits comfortably within the landscape with appropriate soft landscaping which would not be harmful to the character and appearance; it complies with Policy LP12, considered suitable in terms of sustainability, peaceful and integrates with co-existence, 40 letters of support; it is clear this is a much needed site and supported by the locals, Parish Council and there was overkill with regard to the flood risk.

Questions were asked of Mr Humphrey:

Councillor Mrs Laws asked for clarification as to whether any medical reports or documentation had been sent in with regard to Mrs Smith's and his son-in-law's health issues. Mr Humphrey stated he had advised the planning department that Mr Smith's son-in-law needed to travel to Addenbrookes quite frequently and was not sure if medical reports had been included to confirm but these could be available if needed.

Members received a presentation in accordance with the public participation from Eli Smith, applicant.

Mr Smith stated he was here with his wife to represent his planning application and Jenny Loaker accompanied him as she had been supporting his family with their literacy. He explained they were a Romany Gypsy family and had travelled most of their lives, however due to reasons and society's behaviour and attitudes towards Travellers, the time had come for them to settle down. Unfortunately the Romany way of life was coming to an end. Since being settled his wife has a job at the local children's centre and his grandchild attends the local school.

In the Fenland Planning Policy regarding Gypsy and Travellers and Travelling Show People, it states that the Council would be prepared to grant permission for sites in the countryside providing there is evidence of need. As identified in the Local Assessment, occupants must meet the definition of Gypsy and Travellers and Travelling Show People as set out in the Government guidance and providing that the criteria is met. Mr Smith stated his family met that criteria as follows:

- A - The existing site is located in Flood Zone 3 and an appropriate flood risk assessment has been done by Geoff Beel who has spoken about this. He had also made contact with Flood Line and registered with them;
- B - His family had lived at the property since April 2015 and it has provided his family with a base and this has meant they have been able to register the children at the local primary school, access local doctors and all the local community resources;
- C - This site was already established prior to him purchasing it, photos are available dated 2007 showing the existing stables, shed and amenities. Prior to his purchase of the site it was previously owned by three other Travelling families and this site is as it was and would

be of no detriment to the local area and community. He had never had any dispute with local authority whilst living at the site and he also had fully support from the local parish council and over 40 letters of support from local residents.

- D - The site already has a curved vehicle access to and from the public highway and has plenty of off road parking:
- E - He would like permission for a private Travellers site to accommodate the Gypsy needs for his family and would be happy if permission was granted;
- F - The site already has services such as water, electric and waste facilities. He had been to the local council to pay council tax to get his bins emptied but was refused as it was not a registered property hence why he was here today.

Members received a presentation in accordance with the public participation from Jenny Loaker, on behalf of the applicant.

Ms Loaker explained she was not a Gypsy Support Officer; she worked as a private tutor for the family and county council. She had known the family since 2015 and they were a lovely family who want nothing more than to settle down in their home together with their children. This site would meet their needs; it has everything including a paddock for their horses. Mrs Smith has always wanted to work and now does; she is working towards a literacy level 1 and her daughter Roxanne who is looking to pass her theory test. She felt this family met all the criteria with the only stumbling block being the flood risk, but this had been covered by the previous speaker. She asked that this application be granted as they would be a wonderful integration and part of the diversity of Manea and be a compliment to the village.

Questions were asked of Eli Smith and Jenny Loaker as follows:

Councillor Mrs Laws asked if there were children from the family at school. Mr Smith explained he had one granddaughter at school and one who was a baby, nearly 2 and would be going to play school in the future.

Members asked questions of Environment Agency Representative, Elizabeth Mugova as follows:

Councillor Bucknor asked if the flood risk could be mitigated against on the site. Ms Mugova explained they had made comments to the application and had objected and stated that when they determine planning applications, they take into account and are governed by the National Planning Policy Framework (NPPF) and according to this, this type of development is considered as highly vulnerable as it is in Flood Zone 3 which is a high risk area. There is a table within the NPPF Technical Guidance which states that highly vulnerable developments in Flood Zone 3 should not be permitted. As to whether this could be mitigated, according to the NPPF, it is very clear that mitigation measures should not be relied upon to overcome flood risk in high flood risk areas and development should be directed away from high risk areas to lower flood risk areas. The Technical Guidance to the NPPF is very clear that for developments in Flood Zone 3 for Travellers Sites, the Local Planning Authority, which is Fenland District Council, should apply the sequential test and look for lower risk areas elsewhere within the area and they should also apply the exception test for it to pass to be granted permission. Councillor Bucknor stated he presumed that it could actually be mitigated against. Ms Mugova explained that it was an objection in principle because it should not be permitted as it is flood zone 3.

Councillor Mrs Davis stated that the committee had heard that a similar application was approved in Flood Zone 3. With regard to mitigation, she stated that Fenland was a somewhat different area and the sequential test had shown that whilst there were other sites around no-one wants to sell those sites therefore the applicant really has nowhere else to go. Ms Mugova stated that in terms of the sequential test the environment agency rely on the local planning authority to consider whether the site passes the sequential test and then move onto the next stage of an exception test.

Members made comments and asked questions as follows:

Councillor Mrs Laws stated she sympathised with the housing and medical conditions and with anyone who wished to settle but her fear was with regard to the flood zone 3. The Environment Agency from Brampton were at committee and they were the experts and although one in one hundred year floods had been talked about, she had seen North Bank Road and the B1040 flood consistently and it had been closed 69 days between 2012 and 2013 therefore it was not once in a hundred years therefore there was a need to look at suitable sites away from Flood Zone 3 because we are already aware these are potentially at risk as the landscape and water levels had changed within the last 30-35 years.

Councillor Mrs Newell stated she disagreed with Councillor Mrs Laws as she commented that three quarters of Fenland was in Flood Zone 3 and she had never seen some of these sites flood and the committee had approved past applications similar to this one and therefore a precedent has already been set and as far as she was concerned, as the Parish Council were 100% supportive and the Council were supposed to be considering localism and people and she thought this was a worthy application to be approved.

Councillor Sutton stated he agreed with Councillor Mrs Laws and he was sure that all Members had sympathy with the applicant but to approve this application would land the Council in trouble; the site was in flood zone 3, has been refused and upheld at appeal and to go against an appeal Inspector recommendation was a step too far and therefore he could not support the application.

Councillor Mrs Laws stated she appreciated Fenland was in a low lying area but if the experts have pointed out a definite risk then Members have to take that into consideration and her fear was that what was approved now and the impact in 30 years; the mitigation concerned her as where would the surface water end up.

Councillor Cornwell stated he thought the real problem regarding this site was that there had been a previous appeal and the Inspector found in a particular way and this would lay Fenland open to a serious problem in trying to deal with a similar issue in relation to the particular point the Inspector found at the original appeal. He had lots of sympathy and understood why the application was at committee but Members were tied by that appeal decision and did not think Members had an alternative choice.

The items was proposed by Councillor Sutton and seconded by Councillor Mrs Laws and resolved that the application be:

REFUSED as per the recommendations within the report (attached).

**P10/16 F/YR15/0991/O
LAND EAST AND WEST OF ISLE OF ELY WAY SOUTH OF RIVER NENE, GAUL
ROAD, MARCH
ERECTION OF 90 DWELLINGS (MAX) INCLUDING OPEN SPACE AND AN
ATTENUATION AREA (OUTLINE APPLICATION WITH MATTERS COMMITTED IN
RESPECT OF ACCESS)**

The Committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy & Procedure (minute 19/04 refers)) during its deliberations.

Officers presented the application to Members and informed them that updates had been received as per the documents handed out (attached).

Members received a presentation in accordance with the public participation from Andrew Hodgson, Agent.

Mr Hodgson stated he would like to set out the position in respect of the Gaul Road junction improvements from Cannon Kirk's point of view. Since the last time he had addressed the committee when the decision was taken to take enforcement action for the delivery of the roundabout, Cannon Kirk had been extremely proactive in ensuring that before this committee was held that all outstanding issues were resolved in respect of that junction to allow Members to make the decision today on the merits of this residential planning application knowing that whatever decision is made the junction upgrade works would be completed within the timescale defined by Fenland District Council, 17 April 2017.

Since the previous committee Cannon Kirk has secured internal funding to deliver the traffic light solution, which is their preference without reliance on the previously committed scheme. In order to ensure this is achieved an independent planning application was submitted as a stand-alone application to deliver these works. They are hopeful this would be approved under delegated powers before this committee, however, County Council came up at the eleventh hour asking for additional data and this has been updated, of which planning officers are aware and should be completed this week to allow that application to be approved under delegated powers.

If the planning application is approved today then this application will deliver an identical traffic light solution with the condition that requires these works are completed before any further housing is constructed on the Gaul Road site; this effectively therefore adds a secondary pressure on Cannon Kirk to complete the works as soon as possible.

In respect of the planning application in front of Members today, this represents the final phase of development for a final 90 units and a large country park; the application is supported by March Town Council. The applicant worked with key stakeholders and the planning officers to ensure that all issues were addressed and there are no outstanding objections to the planning application, other than the one reason for refusal outlined in the report. This reason for refusal is a bone of contention for both planning consultants and planning officers alike; flood risk sequential test which is undertaken by the Council and not the Environment Agency which requires the applicant to demonstrate that there is no other available land within March within Flood Zone 1 in which the scheme could be delivered, clearly we would not be able to achieve this as there are no other areas. The legislation does not allow that for areas like Fenland where there is a managed system by the IDB; there is no flexibility within that National legislation to allow officers to state this area is not affected by flooding and is actually effectively in Zone 1, the fact that there were no objections from the Environment Agency or Internal Drainage Board on this application shows they are more than happy with the application. The attenuations measures with the IDB have been agreed in advance of submitting the application therefore in terms of flood risk it is only really a technicality that is has been recommended for refusal as there is no flexibility within the legislation. Members will be aware that the existing phase of development that his client is currently building is in exactly the same flood risk zone 3 and also the affordable housing on the opposite side of Gaul Road is in flood zone 3 and it makes no sense therefore to apply the failure to meet the sequential test on this site when it is exactly the same on the other two sites already approved. He therefore hoped that Members would recognise this position as being unique and that they take the opportunity to support Cannon Kirk and March Town Council to secure this final phase of development which would deliver 90 units of much needed housing and much larger country park and would finally resolve the junction upgrade works within a satisfactory timeframe.

Questions were asked of Andrew Hodgson as follows:

Councillor Mrs Newell stated Cannon Kirk had permission to build 135 houses and they built 49 and then they did not complete that application and asked as to why Cannon Kirk were now applying for 90 houses when the first was not finished. Mr Hodgson stated Councillor Mrs Newell

was correct, the previous application was for 135 and there was an obligation to build a roundabout at 50 units; that was not viable for his clients to do so at the time but they now have the funds and are committed to completing the traffic works by submitting a stand-alone planning application to deliver the lights as soon as possible irrespective of whether this application is approved or not.

Councillor Mrs Laws asked for clarification that Cannon Kirk would deliver the traffic lights regardless of this application. Mr Hodgson stated that following the decision by the committee to take enforcement action, Cannon Kirk decided they should make the commitment as they would continue to build houses in Fenland for the foreseeable future, they took the decision to make a stand-alone planning application for those traffic lights therefore if this application was refused then the application would still be there to deliver the traffic lights. Also there is enforcement action that they have not appealed against in the background and this kicks in to state that a roundabout has to be delivered by April 2017; they have made a commitment and he hoped that showed that Cannon Kirk were committed to continuing to work with Fenland District Council.

Councillor Cornwell asked where the country park was to which Mr Hodgson pointed it out on the slides stating it was a much larger country park than what was approved under the 135 units.

Members asked questions and made comments as follows:

Councillor Mrs Laws asked for clarification that the land that has the 49 units on; what land level or flood risk zone was this. The Planning Officer confirmed it was Flood Zone 3 when it was approved in 2005 and another in 2009. Councillor Mrs Newell stated the Sanctuary Housing had built a number of houses on the opposite side of the road and this too was in Flood Zone 3. Councillor Mrs Laws asked when the Sanctuary Housing application was approved, Planning Officers stated in 2012.

Councillor Connor stated Members needed to be consistent as the last application had been refused due to being in Flood Zone 3 and Fenland's Policy states at LP2 and LP14 - that you should reflect on other sites to see if they are available in either Flood Zone 1 or 2. Secondly, he asked for clarification with regard to paragraph 3.6 of the report whereby it stated that Fenland District Council were to adopt the future maintenance of the lagoon. The Planning Officer stated the plans that were submitted for the attenuation area indicated that the intention was for Fenland District Council to adopt the lagoon, although this has not been agreed yet, likewise with the open space, as the report states, there is no agreement at this time to adopt that; in that instance the onus would be back on the developer to manage in the future. Thirdly, he noted that the £625,000 contribution was subject to a viability assessment and queried how many times Members had been promised these large sums of money only to be disappointed that it had been considerably less on some sites; if this application is approved maybe the Council will leave itself open. Planning Officers clarified stating that the applicant had undertaken a viability assessment based on the requirements which include education, affordable housing etc and this resulted in the amount they felt they would be able to contribute to the scheme; this was currently with Fenland's Section 106 Officers to assess whether that viability assessment was robust enough but at this time the developer is proposing that that was the amount they could contribute towards infrastructure etc. Councillor Connor asked if this was "cast in stone" and the Council would receive £625,000 if the application was approved. Planning Officers explained that was the amount of contribution the developer was proposing but Fenland's Section 106 Officers have yet to verify whether the assessment was robust enough; also in terms of allocating those funds that is yet to be agreed as there are various sectors that have asked for contributions.

Councillor Cornwell asked for clarity that £625,000 was a minimum figure. Planning Officers explained it was a figure that was being proposed at this time but confirmation was being awaited from Fenland's Section 106 Officers. Councillor Cornwell stated that if the developer had already offered this figure then it should be viewed as a minimum figure.

Councillor Murphy stated he had heard discussions on viability numerous times and he was concerned as to the methodology because if a profit cannot be made on something that has been bought then it is sold on; developers should not drop out if they are unable to make any money. Councillor Murphy asked what was to prevent Cannon Kirk seeking a reduction in the agreed contribution in the future on the basis of viability. Planning Officers stated they did not have the exact figures in terms of what contributions were initially requested but these could be made available. For example, the education contribution was close to £900,000 and there was about £700 per unit coming from March Transport Study Group, plus the affordable dwellings which would be 25% on that site, therefore there would have been a substantial figure originally required and the applicant has now undertaken a viability assessment and demonstrated through the assessment that at this time and subject to approval from Fenland's Section 106 Officers, that they could still turn a profit on the site and also deliver that £625,000 contribution. Councillor Murphy asked what would happen in two years' time if the developer then states they cannot pay. Planning Officers explained there would be a Section 106 obligation that would tie them into contributions however there is provision to vary Section 106 obligations but they would certainly need to be based on a viability study; it is acknowledged that circumstances do change but the Council are only able to work on what is proposed.

Councillor Murphy asked if the County Park was where they cannot build because of the electricity pylons. Planning Officers explained there is guidance about delivering any development underneath overhead power lines but that does not rule out delivery of open space underneath pylons, it just needs to be done sensitively and the applicant has provided indication that they would landscape it appropriately to avoid as much conflict as possible, notwithstanding that, Fenland's Open Space Officer have raised concerns over the potential adoption for that open space because of the potential liability of having to display signs and making sure those signs are on show and maintained. Councillor Murphy commented it was worrying that you cannot build under the overhead power lines as it is bad for you but children can play under them.

Councillor Sutton stated he agreed with the comments regarding viability but he thought this was taking the issue one step ahead as viability can only be concerned about once an applicant has received planning permission, which they do not yet have. Councillor Sutton stated it concerned him and he was uncomfortable that huge pylons would be over public open space but ultimately it was in Flood Zone 3 and the policy states development should be placed in Flood Zone 1 areas first.

Councillor Mrs Hay stated her understanding was that the previous application was approved and when 50 units were built there was a commitment to build a roundabout and they stopped at 49 units; therefore they could not be trusted then to fulfil the conditions and how do we know that the £625,000 would not be a similar issue. She also had concerns about children playing under pylons and for that reason alone she would not recommend the application.

Councillor Mrs Laws asked the EA representative from Brampton for clarification as they had not objected to this application. The EA Representative (Ms Mugova) explained that this type of development, dwellings, was classed as 'more vulnerable' in the NPPF whereas the previous planning application for Travellers sites was 'highly vulnerable'; the table within the NPPF explains which types of developments are appropriate or could be permitted in different flood risk areas. In respect of The Travellers' site, which was highly vulnerable, the table is very clear that development should not be permitted, for the more vulnerable developments, it states that the site should pass the sequential and exception tests that are required therefore although the EA did not object to this application it did not mean to say that they approve the sequential test that was submitted with the planning application; it is for Fenland District Council to apply and be satisfied and once it had passed the sequential test it then needs to pass the next stage of the exception test. The site is located about 6km from the main river and flooding from the main river is considered to be low, however the site is located around IDB Watercourses and the risk from these

is considered to be high, unfortunately the EA is not able to comment on the level of risk from IDB Watercourse, it is for the IDB to comment as it is outside of the EA's remit. Councillor Mrs Laws stated there seemed to be a lack of Members' confidence of this developer delivering and not only was the flood risk an issue but it was the delivery of a traffic calming system or safety measure with the flow of traffic which indicates why March Town Council wishes to look at approving this application because they are in dire need of a safety measure at that junction. Councillor Mrs Laws felt that Members did not want to add to statistics of fatalities or serious injuries and her consideration was that as there was development on the adjacent site and the sequential test; the developer needs to put confidence back into Fenland District Council and deliver the traffic lights first.

Councillor Cornwell stated that there was plenty of land available for building in March which was not in Flood Zone 3, he would never condone creating an open space or suggest that the Council adopt any open space that has pylons running through it as he saw well-being as being an important issue and therefore he could not support the application. As for March Town Council, if the only reason they supported this application was because of the junction improvement, he did not know why because action had already been taken to solve the junction improvement issue and would be completed by April 2017.

Councillor Mrs Newell stated that as they already had planning permission for 135 units of which they only built 49 could they go ahead and build those remaining 86 units. Planning Officers explained that planning permission did exist for 135 units to be built and Condition 12 of that permission does require the roundabout to be delivered before the 50th occupation therefore technically they could build all the units but they could not occupy them until the roundabout was in place.

The Legal Officer reminded Members regarding the discussions that had taken place concerning their confidence in the developer to deliver the scheme; that a developer's action or inaction in respect of previous applications is not a material consideration in respect of the application Members were deciding. Members have also heard that enforcement action is being taken in respect of the earlier site and also representations from the agent as to the new application for the traffic lights.

The item was proposed by Councillor Cornwell and seconded by Councillor Mrs Hay and resolved that the application be:

REFUSED as per the recommendations within the report (attached).

(Councillors Mrs Clark, Cornwell, Mrs Davis, Connor, Bucknor, Sutton, Mrs Laws and Murphy, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, declared that they have been lobbied on this application.)

P11/16 **F/YR16/0115/F**
LAND WEST OF, 450 MARCH ROAD, TURVES
ERECTION OF 7NO DWELLINGS COMPRISING OF 4 X 2-STOREY 4-BED WITH
INTEGRAL GARAGES, 2 X 3-STOREY 5-BED WITH DETACHED GARAGES
(STORE OVER) AND 1 X 2-STOREY 4-BED WITH 1-BED ANNEXE AND
INTEGRAL GARAGE AND THE FORMATION OF 2NO VEHICULAR ACCESSES

The Committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy & Procedure (minute 19/04 refers)) during its deliberations.

Officers presented the application to Members and informed them that updates had been received as per the documents handed out (attached).

Members received a presentation in accordance with the public participation from Adam Cobb, the Applicant.

Mr Cobb stated he felt compelled to speak as this was a development for his family. His parents moved to their marital home in March Road, Turves, just down the road from this site, 40 years ago and had lived there ever since. His grandparents also moved to Turves to be close to the family 30 years ago and are still there. He unfortunately had to move out the village 6 years ago due to no available housing and was now looking to return. The application is a family project that would offer family housing for himself, wife and children and the development for his parents, grandparents and his sisters with their families. The reason the land became available to the family was due to the farmer wanting to round their boundary off as it had become unprofitable to farm due to the size of machinery and overhead power lines on the site.

Mr Cobb had personally compiled and submitted a pre-application to Fenland District Council in December 2014 and the feedback he received from the Planning Officer was that it was in keeping with the Fenland Local Planning Policies with particular comment that "it nicely rounded off the front and rear development boundaries". All stakeholders have either supported or not objected to this application; he had liaised with Middle Level Commissioners and will continue with formalities pending today's decision. He contacted the relevant ward councillor last week who highly recommends this development and the community consultation gained support by 90% return. He had read the officers report that Members had received and strongly refute the reasons for refusal:

- Paragraph 9.1 - 9.3 - Questions infill development for LP3 and LP12 and stated his application was infill development and was within development, form, scale and character of the village; as can be seen, the application mirrors that of the neighbouring development of School Close. Chapel Lane does not only have houses built fronting the carriageway but also within the southern part of the site. It also has an approved application to add additional housing to its rear. The three most recent applications in Turves since the adoption of the Local Plan by Fenland District Council were back land development.
- Paragraph 9.9 - Comments about visual amenities - This development is within keeping of existing housing in March Road and Turves as a whole. Turves is made up of a mixture of bungalows, chalets, two storey and three storey properties all mixed within one another, not consistent.
- Paragraph 9.10 - Raises concerns for future residents of Plots 6 and 7 - these direct ones are owned by himself and his parents and have been custom designed to fit their needs and approved within the family. Plot 7 has an annex which will accommodate his grandmother and is no different to the existing housing stock layout of School Close with the orientations being the same due to the planning boundaries.
- Paragraph 9.12 - Shows issues of highway safety - There is no issue with highway safety; he discussed this with the highway Authority on Monday and they are embarrassed this point has been included in the report and suggest it is a typo; they give their absolute assurance there is no safety issues and wish to discuss this with Fenland District Council planning officers following this meeting.
- Paragraph 9.13 - 9.15 - Regarding flood risk - The report by its own acknowledgement confirms that everything has been address besides the Community Benefit Agreement which is "chicken and egg" with gaining planning permission and once again a null point as it has already met the sequential test.

Members asked questions and made comments as follows:

Councillor Mrs Laws stated she was concerned that waste bins would have to be collected by a private company because the drag was 80m. Councillor Mrs Laws stated there was a mix of developments in Turves but she was concerned about the street scene and the overlooking on Plot 7, Plot 1 and 2 side elevations and Plot 5 is likely to result in an area of overbearing and dominate

impact; personally she thought there were too many properties on that site resulting in over-intensification. Councillor Mrs Laws commented that Mr Cobb seemed to have received a different opinion from the planning officer as to what Members now had and asked if a different planning officer was involved in the pre-application. Planning Officers explained that the officer who had provided the pre-application response was different to the officer who had dealt with the final application.

The item was proposed by Councillor Mrs Laws and seconded by Councillor Mrs Davis and resolved that the application be:

REFUSED as per the recommendations within the report (attached).

(Councillor Miscandlon and Mrs Laws stated they were Members of Whittlesey Town Council, but take no part in planning matters.)

(Councillor Miscandlon, in accordance with Paragraph 2 of the Code of Conduct on Planning Matters, that he had been lobbied on this application.)

P12/16 **APPEAL IN RELATION TO APPLICATION REF F/YR15/0489/F, ANAEROBIC DIGESTER AND ASSOCIATED DEVELOPMENT, LAND EAST OF FENGRAIN, HOOK LANE, WIMBLINGTON**

Planning Officers informed Members that this item related to the impending appeal by Fengrain relating F/YR15/0489/F and informed Members of the following:

The purpose of the report is to allow the Planning Committee to consider whether it wishes to contest all the reasons for the refusal of planning permission given in relation to planning application F/YR15/0489/F which was for an anaerobic digester facility; there is an appeal against this refusal.

The key issue that has been identified is that there is a risk of an award of costs as the planning application was refused for reasons which would be difficult for officers to defend at the appeal. The recommendation to Members is that the refusal reasons relating to odour, noise and highway transport are not contested. The background to this is set out in the report and the following information from the Head of Planning.

The digester proposal at Hook Lane has been the subject of two planning applications. In relation to the first application there was no objection to the proposal by the County Council in relation to highway impact and no objection by FDC Environmental Health in relation to noise or odour. Committee accepted the advice and only refused the first application on the grounds of "landscape impact". The refusal of planning permission was the subject of a planning appeal but at the same time a revised application by Fengrain was submitted in an attempt to overcome the committee's one reason for refusal.

The second application came before Planning Committee before the outcome of the appeal for the first application. With regard to the second application, Committee was presented with a recommendation for approval by officers and with no objections to the scheme from either Cambridgeshire County Council Highways or FDC Environmental Health. Committee however remained concerned about the landscape impact of the scheme but went on to identify concerns regarding highway impact, noise and odour. Prior to Committee, going on to resolve to refuse the applications for all four reasons officers advised Members that the highway, noise and odour reasons should not be reasons for refusal as they were not grounds for refusal in relation to the first application and there were no objections from the consultees in relation to those matters.

Since the issue of the refusal on the second application the Council has received the Inspector's

decision and report into the appeal and we are aware that an appeal has now been lodged in relation to the second application. In relation to the anticipated appeal of the second application, officers are recommending that the refusal reasons relating to highway impact, noise and odour are not contested by the Council for the following reasons:

- Highways - the second application is no worse than the first in respect of highway impact. There was no objection from the County Council Highways to either the first or second application. The committee did not raise highways as a reason for refusal in relation to the first application and the Inspector considered highway impact and saw that the County Council had no objection to the scheme.
- Odour and Noise - it is considered that the second application is no worse than the first in terms of impact. The second application has less of an odour impact than the first and that has been considered by FDC Environmental Health team. The committee did not raise odour or noise as reasons for refusal in relation to the first application. The Inspector however did consider noise and odour and saw that the impacts were not unacceptable and did not raise these during the first appeal.

It is therefore considered that the appeal should only be contested on the landscape related reason for refusal. A decision to not contest the appeal on highway, noise or odour grounds will reduce the risk of an award of cost against the Council.

The Chairman explained there were two speakers present, Arthur Lamb and Angela Johnson and invited them to speak stating they had five minutes between them.

Mr Lamb stated he was representing a huge number of objectors to the AD and has now on three occasions been able to prove the concerns of residents from within the local area and further afield, that they are not unfounded. Their request was simple - "Would the Committee please stand by their discussions and decisions for the refusal of the second Fengrain AD application and contest all points raised and at least defer this decision until the relevant statements have been received and there has been time to look at the appeal documentation provided." The report issued to Members regarding this decision states "even if the committee decides not to contest some of the reasons for refusal it is anticipated that a partial award of cost against the Council may be applied for and could be successful". Indeed, within the appeal documentation there is a letter from Fengrain inviting the Council to reconsider its position on the revised schemes in relationship to highways, odour and noise prior to them submitting their appeal on the second application. As the appeal has now been submitted and is now live, we fail to see the benefit in not contesting these issues as Fengrain have already incurred costs in placing their appeal on these points in addition to visual impact. Local residents, Fenland District Council and committee Members have all united and put in a lot of time, effort and resource to deal with these AD applications. It has also cost a lot financially, an expensive drain on rate payers money as well as local residents' personal contributions to address the ongoing issues and they urge the Council to appeal for costs against Fengrain when defending this appeal. Regarding previous appeals, the Inspectorate has stated that these do not set a precedent and each application is assessed on its own merits therefore the first appeal decision, which relevant, should not be used as a reason not to contest these points of refusal on Fengrain's second application. The application for costs from Fengrain citing what unreasonable behaviour they deem the Council to have committed has not yet been received, would it not be deemed more appropriate to see this documentation first rather than making an un-informed decision in haste. The overwhelming feeling amongst residents is that we are already a step closer to losing this appeal if the Council decide not to contest all of the reasons for refusal.

Ms Johnson stated the Council's decision to go against the planning officers' recommendations and refuse both AD applications is applauded by local residents and upheld by the Inspectorate in regard to the first application. The second new application contained various changes, a new site plan surrounding both the east and north side of Fengrain existing site, the relocation of certain

pieces of plant and equipment, the addition of another massive 34m diameter x 14m high tank, an increase in the site capacity, installation of a surface water lagoon to the eastern boundary all raise further issues and further concerns. This means that the second appeal has a material difference to the first. The assessments and the report refer to, in the new application, did not allude to a more accurate forecast of the effect of odour, noise and traffic incurred by these alterations and amendments or the affect that they would have on the local residents' life style; it was still all directed to the visual impact. The 19 items in the appeal document dated from 26 May to 21 June include assessments and reports making such statements as " the acoustic fence is not needed for noise mitigation" this type of bold statement and various other comments need to be thoroughly investigated before any decisions are made. Most committee members live locally and are fully aware of the instances that have occurred on local roads, of the negative impact on the ADs in the local area; they have based their decisions on concerns from residents, local knowledge and common sense. Those present at the Planning Meeting in December will remember that under scrutiny expert information was refuted; that all said, we would ask that the committee have time to read all relevant documents and do two things - support all reasons for refusal to the second application, request that the planning department at FDC appeal for this to be heard as an informal hearing. There is an immense amount of local opposition in residents' interests which is why Fengrain have adopted the written representation and solidarity of both the local community, FDC and our councillors will be shown to the Inspectorate at an informal hearing adding incredible strength to your decisions and our objections.

No questions were asked of Mr Lamb and Ms Johnson.

Members asked questions and made comments as follows:

Councillor Cornwell asked if this appeal would be done via written representation rather than a hearing. Planning Officers explained that the questionnaire from the Planning Inspector only arrived at Fenland this week and has not yet been returned; they always start by asking for written representations therefore the request has come by PINS and Fenland has the opportunity to complete the questionnaire stating yes or no to written representation and this would be completed by the Head of Planning before Monday.

Councillor Cornwell asked if a decision as to the format of the appeal could be taken today to state which Fenland prefers. The Legal Officer explained that today's report concerned Members' opinion solely on whether or not all of the reasons for refusal will be contested, how the appeal is actually heard, written representations, informal hearing or an Inquiry; this will be a matter for the Head of Planning that when he reviews the documentation, completes and returns the questionnaire. Councillor Cornwell asked if the Head of Planning had the delegated authority to do this or can the planning committee express a preference. Planning Officers explained that they would need to check the Constitution; but the report does not ask Members specifically about that point, Members could make a recommendation but that would not binding on Mr Harding. Councillor Cornwell commented that although Members could take a decision on one element of the appeal that they could not take all decisions relating to the appeal. The Chairman stated this situation had not occurred before and therefore the Constitution would need to be referred to as to whether Members have the authority but Members could express an opinion and put forward a recommendation.

Councillor Mrs Newell stated she only received the paperwork at the meeting as she had been unable to download it therefore she asked if this could be deferred and she did not think this should be left to Mr Harding to make a decision of the Planning Committee. Planning Officers explained that the Head of Planning was making Members aware of any financial risk to the Council and Officers have a duty to try to protect when there is a financial implication; Mr Harding was making a recommendation that perhaps the Council should not defend three of the reasons for refusal; this was what the report was asking Members. Councillor Mrs Newell stated the second application that went to appeal was a different application and Members had been told at

the first application that only one reason was needed to be given and therefore the Highways reasons were not followed through. Councillor Mrs Newell thought the Council should continue with the objections that have already been made on the second application.

Councillors Mrs Davis pointed out that as an individual and also as Chairman of Wimblington Parish Council, she had received correspondence from Sarah Hardy at the Planning Inspectorate that states "the appeal will be determined on the basis of written representation". On one hand Members have been told it has already been agreed but on the other told that nothing has been signed and sealed. Planning Officers explained that when the District Council is notified by the Planning Inspectorate that there is an appeal, the majority of those are written representations to start with because that was the basis that the Planning Inspector will start at therefore when the first notification is received, it comes through stating PINS is looking at written representations; the Council then has the ability to agree with the Planning Inspectorate that written representations will be taken or not but the starting point is always written representations. There is the ability for the Council to go back to the Planning Inspectorate stating that an informal hearing is wanted but it will still be down to the Planning Inspectorate to decide whether they agree. Councillor Mrs Davis stated she fully understood but she had a letter stating that it was already pre-determined. Planning Officers stated this was not the case but it was the first notification. Councillor Mrs Davis asked if they would write every single objector to state that it was not by written representation but now by hearing; Planning Officers confirmed that they would have to write to everyone. Councillor Mrs Davis stated there was a vast amount of documentation that had been added to the planning portal on the Council's website and she would have appreciated it if someone had contacted her as a Planning Member to make her aware of this before the meeting; she was disappointed this had not happened.

Councillor Connor reiterated Councillor Mrs Davis' comments and added that irrespective of what decisions are made today, it was his view, it would have serious consequences if Members' views were vetoed by Mr Harding. The Legal Officer explained in relation to the written representations or hearing point, as advised by the Planning Officer, PINS will assess all the applications and determine how they are most appropriately to be dealt with and if the Council did decide that it felt that it was more appropriate to deal with it as a hearing, it would need to put reasons forward in respect of that and PINS would need to approve that. As always with appeals, one of the key considerations is costs for all parties; the applicant, local authority, objectors and PINS themselves and simply because Members wanted a hearing it did not mean that it could be justified and did not mean that PINS would be agreeable to such an approach and certainly she was sure that Mr Harding will be using his experience of these matters when considering whether a written representation or an informal hearing was more appropriate. If the Council suggest a hearing and PINS were not happy with that approach they would continue on with written representations.

Councillor Connor stated he was astounded that the Council did not make an application for costs at the first appeal, he hoped that the second appeal the Council would go for costs as it was not fair that a second appeal was submitted, and in his view, have a free ride as to whichever way the decision went; the council had a duty to taxpayers to get the best value for money. The Legal Officer stated, in relation to the costs point; costs in planning appeals are quite different to other litigation, an application for costs from either party can only be made if it is deemed that the other party has acted unreasonably, accordingly the Council could only make an application for costs against Fenragrain if any of their approach to the appeal was deemed to be unreasonable. The National Planning Practice Guide does provide examples of unreasonable behaviour therefore the Council could not simply submit an application for costs as a routine process, it would have to be demonstrated that Fenragrain had acted unreasonably. Putting in a second appeal is not unreasonable and Fenragrain are entitled to do so.

Councillor Mrs Laws stated with regard to a particular application in Whittlesey, the initial approach for the appeal was written representations, but the then Head of Planning, fully appreciated the voice of the people in the parish of Whittlesey and the strong objections that had been raised and

a recommendation was sent by the Mayor to ask for a public Inquiry where everyone could see the open planning processes, visibility, transparency; the Town Council and about 80 residents wrote stating they wished to have the appeal and have their say. Councillor Mrs Laws stated as with this appeal, the Whittlesey one had started as written representations but on the Chief Planning Officer's recommendation and also the request by the Town Council and members of the public it was deemed to be of interest to such a degree that the appeal was heard at Fenland District Council. Councillor Miscandlon added that the Inspector went to Whittlesey to see presentation by the public who were unable to attend Fenland Hall.

Councillor Murphy stated he had fought both of these applications and he was still against the AD in Wimblington. He commented that on the second occasion when Members voted against and the reasons why, he had stated visual impact but when it was finalised, all four reasons were stated and in his opinion, by doing all four then the Council were setting themselves up as they would not win three and officers could not be expected to fight them when nobody else has gone against it. The only thing the Inspector was against last time was visual impact and that was the way to go this time. Nick Harding was right by stating just one reason should be used.

Councillor Cornwell stated the report made no comment or reference to the minutes of 13 January and these refer to the non-compliance of the application with LP3, there had been a debate and the Chairman had stated, "Councillor Miscandlon stated the situation was not that there was an additional reason of LP3 reason not being mentioned but should an appeal be lodged it would be something that could be used by the Council in defence of that applications decision." This comment was based around the provisions of LP3 but it came back to what he saw as noncompliance with LP3 and he believed other Members did; based around the specialist that the applicant put on and the statement about "essential to the effective operation of local agriculture" to which they had stated it was not. Also, the fact that the application was not a utility service in the meaning of the act and in actual fact a utility is an organisation supplying the community with electricity, gas, water or sewage and that application did not do that; it fed its gas to a utility and was not itself a utility. He stated he made these points at the time but they were not reflected in the papers and asked why. Councillor Sutton stated the minutes had been approved at the next meeting and therefore why had it not been brought up then to which Councillor Cornwell stated he had and it was totally relevant as they were reasons for refusal.

Councillor Sutton stated that reason had not been proposed as a reason, four reasons were recorded and both the Planning Officer and Head of Planning had advised strongly against going with anything other than the visual impact and this had been minuted clearly. Members were now here with a second chance and he believed this appeal should be held on the strong reason of visual impact and not on the other three reasons. The Legal Officer explained on the point of LP3 and whether or not it was relevant; it was not something that was included on the decision notice so certainly if that was something that was brought up at appeal then the Council would be deemed to be acting unreasonably by attempting to add other reasons for refusal at such a late stage and in fact it was not something legally that was particularly easily done in terms of varying or modifying decision. There are the reasons for refusal that were recorded at that meeting and were included in the decision notice, are the ones that Members are considering today and whether or not we contest all of those or only the ones in relation to visual impact. Councillor Cornwell asked if the statement made in the minutes of the 13 January was incorrect to which Councillor Miscandlon stated that Officers had considered those and found them not to be relevant at the time.

Councillor Mrs Hay stated her heart told her to go with all four reasons but her head stated that the Council would lose on three of them because the Inspector's report on the last one had stated that the issue of noise, transport and odour can be mitigated by condition therefore he has not objected it on the previous one on these, just on visual impact.

Councillor Connor asked if Members were satisfied they had read all the reports on the website.

The Planning Officer explained this was the early stage of the appeal and the Council has not done a statement, the questionnaire has not been completed, the only thing on the planning portal was the appellant's documents. The Legal Officer asked if Councillor Connor was asking if Members had read the appellant's appeal statement to which Councillor Connor said yes. The Legal Officer went on to explain that Members did not need to have read that in order to determine the matter before them today, the question today was whether or not all of the grounds are contested and that is based on previous officers' advice in respect of the planning application that was determined last time and as Members have heard from Planning Officers that there were no objections from Highways or from Environmental Health. In addition, in respect of the Highway point, a second opinion was sought from Peterborough Highways to confirm whether or not they were in agreement with Cambs County Highways on the highway impact issues and they were in agreement; this is why the point of costs arises in that the Council does have two opinions that Highways are acceptable, accordingly, defending that would prove very problematic for the Council and if it is an unsustainable argument then that could give rise to costs being awarded against the Council for trying to substantiate an argument that there is no evidence to do so.

Councillor Bucknor stated he had listened to all Members comments and he agreed with Councillors Murphy and Sutton and felt that the safest approach would be to go for visual impact and the Council would have more chance to get the outcome that everyone desired.

The Legal Officer explained that this was not a planning application but because there was a recommendation and in order to determine how Members wished to proceed with the appeal, that is whether or not all the reasons are contested then the most appropriate way is by a vote and she proposed that Members proposed the recommendations that was that the refusal reasons relating to odour, noise and highway are not contested and a seconded would be needed and then a vote; of course it may well be that a Member does want to propose contrary to the officer recommendation.

The item was proposed by Councillor Sutton and seconded by Councillor Murphy and resolved that:

The refusal reasons relating to: odour, noise and highway/transport are not contested.

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

(Councillor Mrs Davis declared a non-pecuniary interest by virtue of attending the WAD meetings in an advisory capacity, being Chairman of Wimblington Parish Council and having objected to both applications.)

(Councillor Mrs Davis declared a non-pecuniary interest by virtue of attending the WAD meetings in an advisory capacity and having objected to both applications.)

3:32pm

Chairman