

**F/YR15/0865/O**

**Applicant: Mr & Mrs R Johnson**

**Agent : Mr Ted Brand  
Brand Associates**

**Land North Of 118-124, Leverington Common, Leverington, Cambridgeshire**

**Erection of 6 x dwellings (max) (Outline application with all matters reserved)**

**This application is a minor application.**

**Reason for Committee: The applicant no longer wishes to complete the Section 106 and the application was previously granted by Planning Committee Members subject to the completion of a Section 106.**

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## **1 EXECUTIVE SUMMARY**

This is an outline application for a maximum of 6 dwellings with all matters reserved for later consideration. The application was originally submitted in September 2015 and was considered to be acceptable in terms of the principle of development, access, impacts on the character of the area and residential amenity subject to some amendment to the illustrative layout. Under Policy LP5 the application required the provision of 1 affordable home provided on-site plus an off-site contribution of £11,956. The application was originally considered by Members of the Planning Committee on 9<sup>th</sup> December 2015 where it was resolved to approve the development subject to the completion of a Section 106 Agreement for affordable housing. At this time Members' raised no issues in relation to affordable housing provision resulting from the development.

Since this time, the Agent has now advised that the applicant is no longer willing to complete the Section 106 Agreement in light of the recent Ministerial Statement. However, the Council's current position is that the Ministerial Statement provides advice only, and, whilst a consideration in the decision making process, does not outweigh the affordable housing need in the District and therefore Policy LP5 of the Local Plan. Consequently on a site such as this either on site provision of affordable housing or a financial contribution in lieu should be provided through a Section 106 legal agreement.

Due to the applicant's failure to sign the necessary legal agreement the application is being re-presented to Committee with a recommendation to refuse planning permission on the basis of the non-provision of affordable housing contrary to Policy LP5 of the Local Plan.

## **2 SITE DESCRIPTION**

- 2.1 The site is located to the north of Leverington Common and currently comprises land associated with the existing dwelling at 122, Leverington Common. Access to the site is between 122 and 124 Leverington Common and the site is located to the rear of the existing frontage dwellings from 118 to 124 Leverington Common, to the north of the site is open land comprising of a field. To the east and west of the site are existing in-depth developments of Top Field and Donnington Park. The site is located within Flood Zone 1 and Leverington Common is a B Classified road.

## **3 PROPOSAL**

- 3.1 The Agent and applicant are proposing that this site be exempt from any affordable housing provision/contributions due to the recent reinstatement of the Ministerial Statement relating to the provision of affordable housing on small rural sites (11<sup>th</sup> May 2016). The Agent has advised that they appreciate the Council's motivation to encourage as much affordable housing as possible but given the recent stance of the Government, consider the Council's approach to be unreasonable. As such they will not be completing the Section 106.

## **4 UPDATE**

- 4.1 This application was originally considered by the Members of the Planning Committee at the meeting of 9<sup>th</sup> December, where it was resolved to approve the application subject to the completion of a Section 106 for Affordable Housing. The original requirement, in accordance with Policy LP5, was for the provision of 1 dwelling on site plus a financial contribution of £11,956. A copy of the original committee report follows this update as Appendix A and the Minutes from the meeting as Appendix B.
- 4.2 Furthermore, the Government's stance on Affordable Housing for rural areas on small sites has been legally challenged. Following the decision of the Court of Appeal on 11 May 2016 to allow the Secretary of State's appeal regarding the Government's written ministerial statement on affordable housing, published on 28 November 2014, this has had the effect of giving weight to the previously published ministerial statement. Effectively, this reintroduces the government policy which states that redevelopments of no more than 10 homes (with a gross floor space not exceeding 1,000 sq. m) are to be exempted from levies for affordable housing and tariff-based contributions. The Council's current position is that the Ministerial Statement provides advice only, and, whilst a consideration in the decision making process, does not outweigh the affordable housing need in the District and therefore Policy LP5 of the Local Plan. Consequently on a site such as this either on site provision of affordable housing or a financial contribution in lieu should be provided through a Section 106 legal agreement.
- 4.3 Given the Government's current advice the LPA have been notified that the applicant is no longer prepared to complete the Section 106 for affordable housing contributions and as such this fails to comply with the Council's current stance on affordable housing. The Council's current approach is that the recently adopted Local Plan is the statutory plan for the District and is the key basis for the assessment of planning applications. Fenland District Council is continuing to request affordable housing on small sites notwithstanding the Ministerial Statement

& published guidance. Advice on the matter has confirmed that the Council is not tied to that Statement or Guidance if there is a satisfactory justification for not doing so (i.e. the level of housing need and the absence of evidence that the affordable housing request would not make the development unviable). The Ministerial Statement is therefore not capable of being afforded such sufficient weight as to outweigh the non-compliance with Policy LP5 of the Local Plan. As such the application has been returned to the Members of the Planning Committee with an altered recommendation of refusal due to the failure to complete the Section 106 for Affordable Housing.

## **5 RECOMMENDATION**

### **Refuse**

- 1 Policy LP5 of the Fenland Local Plan 2014 requires all housing developments of 5 or more dwellings to provide affordable housing. As such this proposal would generate the need for an off-site contribution towards Affordable Housing for the District. The applicant has failed to complete a Section 106 Agreement to secure this contribution. As such the proposal fails to meet with the requirements of Policy LP5 of the Fenland Local Plan, 2014.**

## **APPENDIX A: ORIGINAL COMMITTEE REPORT AND UPDATE.**

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**F/YR15/0865/O**

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**Land North Of 118-124, Leverington Common, Leverington, Cambridgeshire**

**Erection of 6 x dwellings (max) (Outline application with all matters reserved)**

**Reason for Committee: The Parish Council's comments are at variance with Officer Recommendation.**

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## **1 EXECUTIVE SUMMARY**

This is an outline application for a maximum of 6 dwellings with all matters (scale, layout, access, external appearance and landscaping) reserved for later consideration. This application therefore seeks consent for the principle of development in this location. The site is currently residential garden land. Leverington is classed as a Limited Growth Village in Policy LP3 where a small amount of new development will be supported.

The key considerations for this proposal are:

- Principle of development;
- Character and Appearance
- Residential Amenity;
- Highway Safety and Access
- Affordable Housing
- Health and Wellbeing
- Economic Growth

The proposal has been considered against the relevant local and national planning policies and is considered to comply with these. As such the proposal is recommended for approval subject to the completion of a Section 106 for Affordable Housing.

## **2 SITE DESCRIPTION**

- 2.1 The site is located to the north of Leverington Common and currently comprises land associated with the existing dwelling at 122, Leverington Common. Access to the site is between 122 and 124 Leverington Common and the site is located to the rear of the existing frontage dwellings from 118 to 124 Leverington Common, to the north of the site is open land comprising of a field. To the east and west of the site are existing in-depth developments of Top Field and Donnington Park. The site is located within Flood Zone 1 and Leverington Common is a B Classified road.

## **3 PROPOSAL**

- 3.1 The application is an outline application for the erection of a maximum of 6 dwellings. All matters, namely layout, scale, external appearance, access and landscaping are reserved for consideration at a later date. The indicative layout plan that has been submitted with the application shows one plot to be located to the north of the existing bungalow at 122, with the remaining 5 plots to be located to the northern part of the site. The indicative layout shows the dwellings to be detached with parking and turning areas and areas of residential amenity space to the rear of each dwelling. Access will be via an existing access point off Leverington Common, with a new access proposed to the east for the existing dwelling which will be dealt with under a separate application.

## 4 SITE PLANNING HISTORY

F/YR04/3841/F	Change of use of land to garden land	Granted 13.10.2004
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## 5 CONSULTATIONS

### **Parish Council**

Proposal is backfill and is not in keeping with the core area. It will harm the character and appearance and result in an unnatural density and urban outlook which will harm the views of the dwellings along the main road and result in loss of outlook over the fields. Current electricity supplies are inadequate and blackouts occur. Flooding frequently takes place and this will enhance the problem. The development will not make a positive contribution to the area which is strictly road frontage.

### **FDC Environmental Health**

Note and accept the submitted information and have no objections in terms of local air quality or the noise climate. Require the unsuspected contamination condition be applied.

### **North Level IDB**

No comment to make with regard to this application.

### **CCC Highways**

Would not normally accept 6 dwellings off a private drive however would be unable to substantiate a refusal. No objections subject to conditions relation to the details of layout of the site, access, visibility splays, parking provisions and turning areas.

### **FDC Housing Strategy**

The development should provide affordable housing comprising 1 dwelling on site and a financial contribution of £11,956.

### **Local Residents/Interested Parties**

#### **Objectors**

1 letter of objection received concerning (in summary):

- The development will be out of place as the houses in Leverington Common are road frontage style;
- The development is backfill/tandem development;
- The development will create an urban feel;
- If the dwellings are houses they will result in loss of privacy and overshadowing issues;
- The proposal does not make a positive contribution to the area;
- The application states that the site is not at risk of flooding but the EA say that it is;
- Concerns over the methods for soakaway and increased standing water;
- Concerns over the infrastructure of the village;
- Concerns over highway impacts and the increase in vehicles;
- Exacerbate power outages;
- Concerns over potential detrimental effect on wildlife;

- Loss of views;
- Devaluation of property.

This objection letter was accompanied by a petition signed by 13 signatories from 7 separate addresses.

## **Representations**

1 letter of representation received from a neighbour concerning (in summary):

- Not opposed to the principle of development on the land;
- No concerns with the layout and density which seems to reflect the character of the existing area;
- Concerns over the impact of the development on Top Field.
- Plot 2 would be contrary to LP12 (d) in terms of scale and location;
- Concern over potential for overlooking and loss of privacy from Plot 2;
- Plot 2 would fit in better with the existing pattern of development if it were a bungalow;
- Request a condition preventing windows being installed on the west side of any dwelling of Plot 2 above ground floor ceiling level;
- Would like consideration given to increasing the distance between Plot 2 and the western boundary of the site;
- The existing track to the rear of the existing properties causes concerns over it becoming a permanent access or used for construction;
- Request conditions relating to restriction on hours of working and prevention of the track being used permanently.

## **6 POLICY FRAMEWORK**

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

Paragraph 14: A presumption in favour of sustainable development;

Paragraph 17: Core planning principles;

Section 6: Delivering a wide choice of high quality homes;

Section 7: Requiring good design;

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

Design;

Health and Wellbeing;

Rural Housing;

### **Fenland Local Plan 2014**

LP1: A presumption in favour of sustainable development;

LP2: Facilitating health and wellbeing of Fenland residents;

LP3: Spatial strategy, the settlement hierarchy and the countryside;

LP5: Meeting Housing Need;

LP12: Rural areas development policy;

LP15: Facilitating the creation of a more sustainable transport network in Fenland;

LP16: Delivering and protecting high quality environments across the District.

## 7 KEY ISSUES

- Principle of Development
- Character and Appearance
- Residential Amenity
- Access and Highway Safety
- Affordable Housing
- Health and wellbeing
- Economic Growth
- Other Matters

## 8 ASSESSMENT

### Principle of Development

- 8.1 Policy LP3 identifies Leverington as a Limited Growth Village where a small amount of development will be encouraged and permitted. The policy allows for residential development within the existing village or as small village extension, subject to compliance with Policy LP12 Part A.
- 8.2 Policy LP12 Part A provides that for villages, new development will be supported where it contributes to the sustainability of the settlement and does not harm the wide open character of the countryside. Any proposal needs to satisfy the criteria set out in LP12 (a – k) as well as other policies of the Local Plan.
- 8.3 This development adjoins the existing development along Leverington Common to the west, south and east and is considered to comply with the provisions of LP3. As such the proposed development may be acceptable in principle subject to compliance with the criteria in Policy LP12 A.

### Character and Appearance

- 8.4 Policy LP12 part (d) seeks to ensure that new development is in keeping with the core shape and form of the settlement and will not adversely harm its character and appearance. This part of Leverington Common is characterised by areas of in-depth development coupled with road frontage dwellings. The comments of the Parish Council are noted and whilst it is acknowledged that there are other parts of Leverington Common that are predominantly road frontage, this part has adjoining in-depth development to the east and west (Top Field and Donnington Park). As such it is considered that the proposal is in keeping with the form and character of this part of Leverington Common and therefore complies with part (d) of Policy LP12.

### Residential Amenity

- 8.5 Policy LP16 seeks to ensure development does not have an adverse impact on the amenity of neighbouring users. This application is at Outline stage only with no details committed for consideration at this stage. The application has, however, been accompanied by an illustrative layout plan, which demonstrates that 6 dwellings can be accommodated on the site in some form. The indicative layout shows one plot to the rear of the existing bungalow and the remaining 5 plots to the rear of the site.

- 8.6 There is some concern over the relationship between plot 2 and the existing dwelling to the west (No. 17 Top Field) however it is considered that an acceptable solution could be achieved at Reserved Matters stage. It is considered that the indicative layout shows an adequate level of parking and turning for the properties and sufficient amenity space for both the proposed dwellings and the existing dwelling at 122 Leverington Common.
- 8.7 The proposal is therefore considered to accord with the provisions of Policy LP16 in this instance, and the detailed development within the site would be considered fully at Reserved Matters stage.

### **Access and Highway Safety**

- 8.8 Although access is a reserved matter the illustrative site plan indicates a proposed private drive between 122 and 124 Leverington Common. The access is shown as being 5m in width for the first 10 metres into the site before reducing to 4.1 metres in width for the remainder of the access.
- 8.9 The Local Highway Authority have considered the indicative proposal and have no objections subject to conditions relation to the details of layout of the site, access, visibility splays, parking provisions and turning areas. The application proposes a maximum of 6 dwellings to be served off the private drive. Normally the LPA would prefer to see up to 5 dwellings served off a private drive however the Highways Authority have advised that they would not be able to substantiate a refusal on these grounds. Furthermore, the level of development is in keeping with the form, character and density of the surroundings and as such it is considered that the proposed access is acceptable in this instance.
- 8.10 The access will be fully considered at the Reserved Matters stage. The proposal is considered to accord with LP15 and LP16 of the Local Plan in terms of access and highway safety.

### **Affordable Housing**

- 8.11 Policy LP5 of the Local Plan requires a 20% affordable housing contribution for developments of 5 – 9 dwellings. This application is for a maximum of 6 dwellings therefore in accordance with Policy LP5 the Housing Strategy Officer has identified that this requires the provision of 1 dwelling on site and a financial contribution of £11,956. This will be secured by Section 106 agreement.

### **Health and wellbeing**

- 8.12 Policy LP2 of the Fenland Local Plan seeks to ensure that developments contribute to the health and wellbeing of Fenland residents. This proposal will provide good levels of accommodation and amenity space for further residents. The sites location within Flood Zone 1 will ensure that the development is safe from flooding and as such the proposal is considered to comply with Policy LP2.

### **Economic Growth**

- 8.13 The proposal will result in up to 6 new dwellings for Fenland's housing stock and will also provide opportunities for local employment during the construction period. As such the proposal complies with Policy LP6 of the Local Plan.

### **Other Matters**



#### 8.14 Devaluation of Property

It is noted that one point of objection relates to the devaluation of the existing dwellings however this is not a material planning consideration.

#### 8.15 Flooding and Drainage

The comments with regards to the potential for flooding and drainage issues are noted. The site is within Flood Zone 1 and is also identified as a Flood Warning Area. The IDB have raised no objections to the proposal and as the site is in Flood Zone 1 it is in a low risk flood area where development should be directed to in the first instance. The Agent has assessed the dyke on site and concluded that it is a small disused private dyke which is unlikely to be a source for potential flooding. The proposal is therefore considered to comply with LP14 of the Local Plan.

#### 8.16 Biodiversity

The points of objection are noted in relation to the impact on biodiversity and wildlife. The site is currently laid to lawn and forms residential curtilage for the existing dwelling, as such the site is relatively open with no obvious areas for nesting or roosting. It is considered that the development of the site will have no adverse impacts on wildlife and as such the proposal complies with LP19 of the Local Plan.

#### 8.17 Section 106

As the application is for 6 dwellings it requires a Section 106 Agreement for the provision of affordable housing in accordance with Policy LP5. The requirement for this site is for 1 dwelling on site and a financial contribution of £11,956.

### 9 CONCLUSIONS

- 9.1 The proposal is an outline application with all matters reserved however the illustrative layout is considered to demonstrate that up to 6 dwellings can be accommodated on site whilst remaining in keeping with the form and character of the area and without unduly affecting the amenity of existing dwellings. The proposal is considered to be acceptable in principle and the specific details relating to the layout, access, external appearance, landscaping and scale will be considered fully at a later application stage.

### 10 RECOMMENDATION

Grant Subject to:

- i) Completion of a Section 106 Agreement for Affordable Housing
- ii) Conditions.

1.	<b>Approval of the details of:</b>
	(i) <b>The layout of the site;</b>
	(ii) <b>The scale of the buildings;</b>
	(iii) <b>The external appearance of the buildings;</b>
	(iv) <b>The means of access thereto;</b>
	(v) <b>The landscaping;</b>

	<p>(hereinafter called 'The Reserved Matters') shall be obtained from the Local Planning Authority prior to the commencement of the development,</p> <p><b>Reason – To enable the Local Planning Authority to control the details of the development hereby permitted in accordance with Policy LP16 of the Fenland Local Plan, 2014.</b></p>
2.	<p><b>Application for the approval of the Reserved Matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.</b></p> <p><b>Reason – To ensure compliance with Section 92 of the Town and Country Planning Act 1990.</b></p>
3.	<p><b>The development hereby permitted shall begin before the expiration of 2 years from the date of approval of the last Reserved Matters to be approved.</b></p> <p><b>Reason: To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004.</b></p>
4.	<p><b>Prior to the commencement of development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The construction Management Plan shall include the following:-</b></p> <ul style="list-style-type: none"> <li>• <b>Hours of working</b></li> <li>• <b>Parking, Turning and Loading/Unloading areas for all construction/contractors vehicles</b></li> <li>• <b>Site compounds/storage areas</b></li> <li>• <b>Details of wheel cleaning or road cleaning equipment;</b></li> </ul> <p><b>The development shall thereafter take place in accordance with the approved Construction Management Plan.</b></p> <p><b>Reason: To safeguard the amenities currently enjoyed by the occupants of adjoining dwellings in accordance with Policy LP16 of the Fenland Local Plan, 2014.</b></p>
5.	<p><b>The reserved matters submitted in compliance with condition 1 shall include a refuse collection strategy shall be submitted to and approved in writing by the Local Planning Authority. The refuse collection shall accord with the agreed details and thereafter retained in perpetuity.</b></p> <p><b>Reason: To ensure a satisfactory form of refuse collection in accordance with Policy LP16 of the Fenland Local Plan, 2014.</b></p>
6.	<p><b>The reserved matters submitted in compliance with condition 1 shall include a detailed plan showing the levels of the existing site and the precise floor slab levels of the new dwelling, relative to the existing development on the boundary of the site, is submitted to and</b></p>

	<p>subsequently approved in writing by the Local Planning Authority</p> <p>Reason: To ensure satisfactory development in order to protect the amenities of adjacent properties in accordance with Policy LP2 and LP16 of the Fenland Local Plan (Adopted May 2014).</p>
7.	<p>If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with. The development shall then be carried out in full accordance with the amended remediation strategy.</p> <p>Reason: To control pollution of land and controlled waters in the interests of the environment and public safety.</p>
8.	<p>Prior to the commencement of the development full details in the form of scaled plans and/or written specifications shall be submitted to and approved in writing by the Local Planning Authority to illustrate the following:</p> <ul style="list-style-type: none"> <li>a) The layout of the site, including roads, footways, cycleways, buildings and surface water drainage.</li> <li>b) The siting of the buildings and means of access thereto</li> <li>c) Visibility splays</li> <li>d) Parking provisions</li> <li>e) Turning Areas</li> </ul> <p>Reason: In the interests of highway safety in accordance with Policy LP15 of the Fenland Local Plan, 2014.</p>
9.	Approved Plans

**PLANNING COMMITTEE DATE: 9<sup>th</sup> December 2015**

**APPLICATION NO: F/YR15/0865/O**

**SITE LOCATION: Land North of 118 – 124 Leverington Common, Leverington.**

#### **UPDATES**

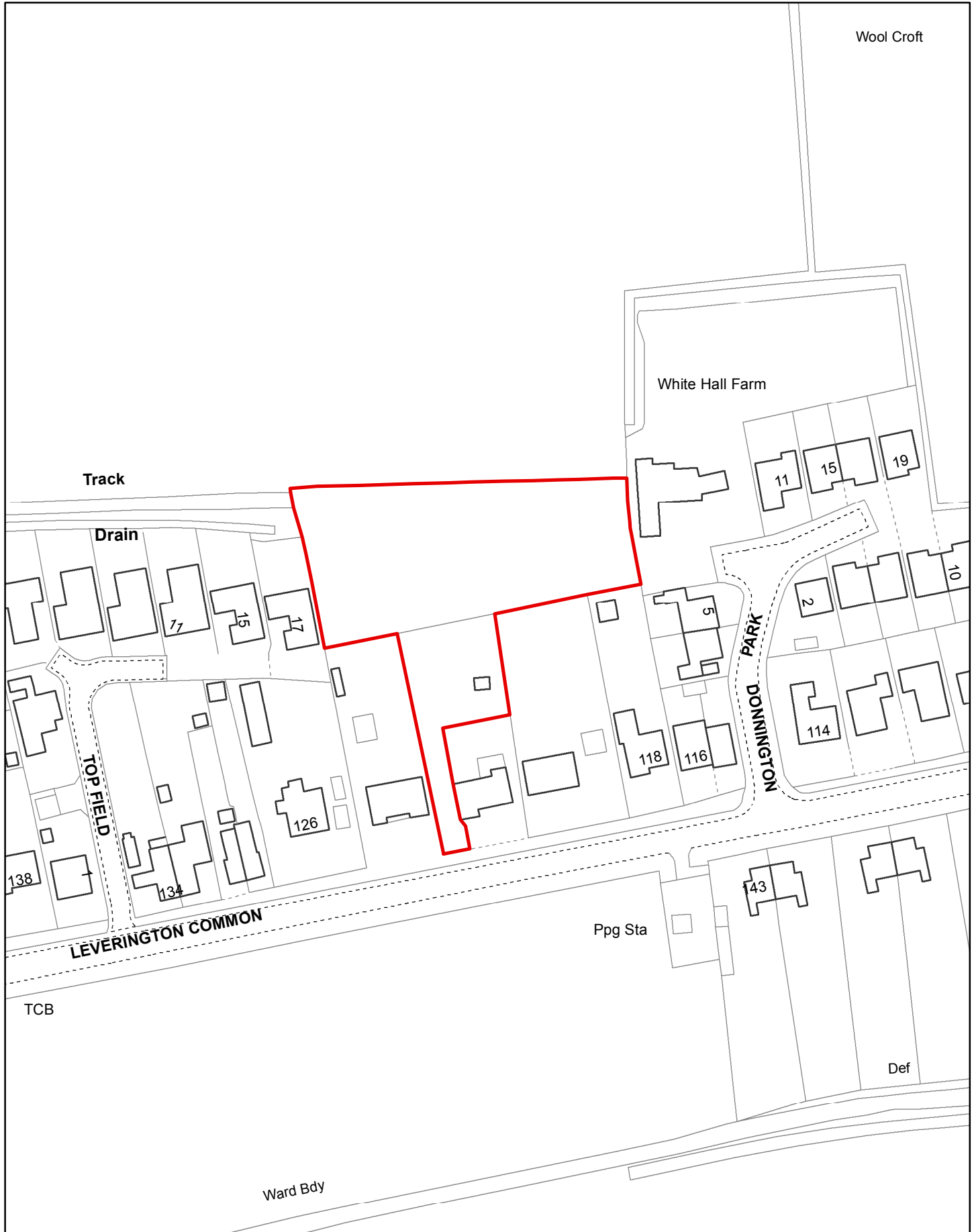
The Agent has clarified that the existing track to the West of the site outside of the red line is within the applicant's ownership however would not be used for any site construction vehicle access.

The existing drain is also in the applicant's ownership and was cut to compensate for the filling of a drain in the middle of 2 fields to allow them to be joined as one field, with the approval of North Level, who now manage the drain.

**Resolution: Grant as recommended on pages 102 - 104 of the Agenda.**

**APPENDIX B: MINUTES FROM ORIGINAL COMMITTEE MEETING**

P58/15	<p><b>F/YR15/0865/O</b> <b>LEVERINGTON - LAND NORTH OF 118-124 LEVERINGTON COMMON</b> <b>ERECTION OF 6 X DWELLINGS (MAX) (OUTLINE APPLICATION WITH ALL</b> <b>MATTERS RESERVED)</b></p> <p>The Committee had regard to its inspection of the site (as agreed in accordance with the Site Inspection: Policy and Procedure (minutes P19/04 refers)) during its deliberations.</p> <p>Officers presented the application to Members and informed them that updates had been received as per the documents handed out (attached).</p> <p>Members made comments, asked questions and received the following responses as follows:</p> <ul style="list-style-type: none"><li>• Councillor Connor commented that officers had addressed his concern with regard to Plot 1</li></ul> <p>Proposed by Councillor Connor and seconded by Councillor Bucknor and decided that the application be:</p> <p><b>GRANTED as per the recommendations set out in the report (attached).</b></p>
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

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**KEY -**

- G = GARAGE PARKING MIN 7m X 3m INTERNAL SIZE
- P = PARKING SPACE MIN 2.5m x 5m
-  = PROPOSED TREES
-  = EXISTING TREES
-  = PROPOSED HEDGES OR PLANTING

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REVISIONS  
A - 24.09.15 - NOTE RE NEW ACCESS TO NO 22 AMENDED

PROPOSED RESIDENTIAL DEVELOPMENT  
NORTH OF 118 - 124  
LEVERINGTON COMMON  
LEVERINGTON  
PE13 5BW

MR & MRS JOHNSON

ILLUSTRATIVE SITE PLAN

1:500 : NEM : SEP.15  
JOH.14 : 1.3 : A