

F/YR17/0042/O

Applicant: Mr Mick Hardiman

**Agent : Mr Ted Brand
Brand Associates**

250 Creek Road, March, Cambridgeshire, PE15 8RY

Erection of 4 dwellings involving demolition of existing buildings (outline with matters committed in respect of layout and landscaping only) and the erection of a 3 metre boundary treatment comprising a timber edging, brick plinth and timber acoustic fencing along the eastern boundary of the site

Reason for Committee: The Town Council's comments are in conflict with the Officer's recommendation.

1 EXECUTIVE SUMMARY

This application seeks outline planning permission for the erection of 4 dwellings involving the demolition of the existing buildings on land at 250 Creek Road, March.

The scheme follows a recently refused application for the same development (F/YR16/0770/O) which was refused at Planning Committee in July 2016. The proposed scheme is considered unacceptable for reasons relating to the effect of the proposals on the operation and viability of the adjoining business and on the living conditions of future occupiers of the proposed dwellings, with particular regard to noise and also in relation to flood risk.

The proposal, as submitted, includes a noise assessment which identifies that a 3 metre high fence/bund is required in order to attenuate the noise to an acceptable level within the outdoor amenity areas. Double glazed windows are also identified as being necessary in order to provide an acceptable level of amenity within the properties. There are no details submitted in order to identify whether appropriate ventilation for the properties is available (given that the windows would need to be constantly shut in order to attenuate the noise). This would create an unacceptable impact on the living conditions of the future occupiers. As such the proposed development would be contrary to Policy LP16, criteria (o) of the Local Plan.

The site falls within Flood Zone 3 and is therefore susceptible to a high probability of flooding. The sequential test which has been carried out by the agent is not considered adequate, and therefore the proposal would not be appropriate to its location in relation to Policy LP14 of the Local Plan and national planning policies concerning flood risk.

Accordingly the principle of residential development in this location would be unacceptable and clearly contrary to Policies LP2, LP14 and LP16 of the Fenland Local Plan. The application is therefore recommended for refusal.

2 SITE DESCRIPTION

2.1 The site is currently used as a car repair and sales business. The site adjoins residential dwellings to the west and north with ditches to the western and southern boundaries. The site also adjoins an existing car repair business to the east and further east is the March railway lines and level crossing. The site lies within Flood Zone 3.

3 PROPOSAL

3.1 This application seeks outline planning permission with layout and access now committed for consideration for 4 dwellings involving the demolition of the existing buildings on site. In addition the application also includes the erection of a 3 m boundary treatment along the eastern site boundary.

3.2 The application is accompanied by the following documents:

- Flood Risk Assessment (August 2016)
- Phase 1 Desk Study Report - Contamination (November 2015)
- Background Noise Assessment (March 2016)
- Flood Risk Sequential and Exception Tests by AAH Planning Consultants (November 2016) plus additional information submitted in March 2017.
- Planning Statement (January 2017)

3.3 Full plans and associated documents for this application can be found at: <https://www.fenland.gov.uk/publicaccess/applicationDetails.do?activeTab=documents&keyVal=OJXLBHE0D800>

4 SITE PLANNING HISTORY

F/YR16/0332/O	Erection of 4 dwellings involving demolition of existing buildings (Outline application with all matters reserved) and the erection of a 3 metre high barrier fence along the eastern boundary of the site	Refused 22/07/2016
F/YR15/0770/O	Erection of 4 dwellings involving demolition of existing buildings (Outline application with all matters reserved)	Withdrawn 05/02/2016
F/YR08/0133/O	Residential Development (0.209 ha) involving demolition of existing buildings	Granted 02/04/2008
F/YR07/0844/O	Erection of 5 dwellings comprising 3 bungalows and 2 houses	Refused 24/09/2007
F/YR04/3481/O	Removal of Condition 02 of planning permission F/91/0711/F (Erection of a 3-bed bungalow with detached double garage) relating to 'The dwelling hereby approved shall only be occupied by persons solely or mainly employed in connection with the adjacent business'	Granted 23/12/2004

F/YR04/4070/F	Erection of 4 dwellings involving demolition of existing building	Granted 27/07/2004
F/98/0295/O	Erection of a dwelling in association with, existing workshop	Approved 23/04/1999
F/94/0147/F	Erection of an extension to existing vehicle body repair workshop	Granted 05/08/1994
F/91/0711/F	Erection of a 3-bed bungalow with detached double garage	Approved 12/02/1992
F/91/0584/F	Erection of a flank extension to existing workshop	Granted 16/12/1991
F/0137/88/F	Erection of a workshop and store	Granted 17/03/1988
F/0318/86/F	Additional use of motor vehicle workshop site for motor auctions	Granted 15/10/1986
F/0989/84/F	Erection of a spray booth for the painting of motor vehicles	Granted 02/01/1985
F/0001/83/F	Erection of a bungalow	Granted 17/02/1983
F/0775/80/F	Erection of a workshop for vehicle body repairs	Granted 29/10/1980
F/0892/79/F	Erection of a motor engineering workshop including vehicle sales	Granted 01/02/1980
F/0666/77/O	Erection of a garage for car sales and repairs	Granted 05/01/1978

5 CONSULTATIONS

5.1 March Town Council: Recommend approval.

5.2 Environment Agency: No objection in principle. Although we have raised no objection to this planning application on flood risk grounds this should not be taken to mean that we consider the proposal to have passed the Sequential Test.

5.3 CCC Highways Authority: No objection subject to planning conditions with regard to the internal layout including parking and turning areas and the footway to west of the site on Creek Road should be extended to include a dropped kerb crossover into the application site.

5.4 FDC Environmental Health: Requires further information with regard to the sound barrier qualities – it is unknown what extent the fence would reduce the noise from the road, rail and adjoining business premises. Without this information it cannot be determine if acceptable levels will be achieve in the dwellings

gardens. The desk study also shows that the applicants propose to fit Pilkington double glazing windows –these would need to be installed and proof that this has been done be submitted to discharge the condition. In additional details of any mechanical ventilation systems that may be installed as substitution to residential properties being able to open their windows due to noise would be required.

In terms of ground contamination the desk study / phase 1 investigation has concluded that some further investigation is needed, due to the change in sensitivity of site use and its former land use. Further investigation is required to demonstrate that the site is suitable for use; the contaminated land condition is therefore required.

5.5 CCC Historic Environment Team: No objection, however consider that the site should be subject to a programme of archaeological investigation secured through planning condition.

5.6 Local Residents/Interested Parties: None received.

6 STATUTORY DUTY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted Fenland Local Plan (2014).

7 POLICY FRAMEWORK

7.1 National Planning Policy Framework (NPPF)

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

Paragraph 14: Presumption in favour of sustainable development.

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

Paragraph 32: Development should only be refused on transport grounds where the residual cumulative transport impacts are severe.

Paragraph 47: Supply of housing.

Paragraph 49: Applications for planning permission for housing are determined in accordance with the presumption in favour of sustainable development.

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

Paragraphs 100-104: Development and flood risk.

Paragraph 109: Minimising impacts on biodiversity.

Paragraph 123: Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

Paragraph 128: Archaeological interests in a site.

Paragraphs 203-206: Planning conditions and obligations.

7.2 National Planning Policy Guidance (NPPG)

Flood Risk and Coastal Change

Flood Zone and Flood Risk Tables

Housing and economic land availability assessment

Noise

7.3 Fenland Local Plan 2014

LP1 – A Presumption in Favour of Sustainable Development

LP2 – Facilitating Health and Wellbeing of Fenland Residents

LP3 – Spatial Strategy, the Settlement Hierarchy and the Countryside

LP4 - Housing

LP5 – Meeting Housing Need

LP9 – March

LP13 – Supporting and Mitigating the Impact of a Growing District

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

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

LP16 – Delivering and Protecting High Quality Environments across the District

LP17 – Community Safety

LP18 – The Historic Environment

LP19 – The Natural Environment

Delivering and Protecting High Quality Environments in Fenland SPD (July 2014)
Cambridgeshire Flood and Water SPD (December 2016)

8 KEY ISSUES

- **Principle of Development**
- **Flood Risk and Drainage**
- **Residential Amenity (including Noise)**
- **Design and Impact upon the Character and Appearance of the Area**
- **Highway Safety**
- **Health and wellbeing**
- **Economic Growth**
- **Other (delete as appropriate)**

9 BACKGROUND

9.1 Members may recall that this site was the subject of an application which was due to be heard by the Planning Committee but was withdrawn by the agent in February 2016 (F/YR15/0770/O) and then subsequently re-submitted for the same development (F/YR16/0332/O) and heard by the Planning Committee in July 2016 where members resolved to refuse the application in accordance with the officer's recommendation on the basis of flood risk (sequential test) and the impacts with regard to noise and the mitigations required for residential to be appropriate adjacent to a car repair/sales business.

9.2 This scheme seeks to address these concerns. Principally the agent has submitted a Sequential and Exception Test Report relating to the flood risk reason for refusal and additional information with regard to the acoustic boundary treatment has been submitted.

10 ASSESSMENT

10.1 Principle of Development

Local Plan Policy LP3 defines March as a Primary Market Town where the majority of the district's new housing, employment growth, retail growth and wider service

provision should take place. Therefore, subject to compliance with other relevant policies in the Local Plan, the principle of development at the site may be acceptable.

11 Flood Risk and Drainage

The site lies within Flood Zone 3. A Flood Risk Assessment accompanies the application which has been accepted by the Environment Agency subject to appropriately raised floor levels which could be secured by planning condition.

- 11.1 However, as the site is located within Flood Zone 3 and the approach of the NPPF, NPPG and Policies LP2 and LP14 of the Local Plan is not to rely on mitigation measures in areas at high risk of flooding, but instead to make development safe and therefore direct new development away from such areas. For that reason the proposal is required to be subjected to the Sequential Test to establish whether there are reasonably available sites within Zone 1 (and Zone 2 if no land is available in Zone 1) and the guidance states that the developer should justify, with evidence, what area of search has been used.
- 11.2 The agent has submitted a Sequential and Exceptions Test Report with this application. Officers consider that the information is not sufficient for the following reasons: The Sequential Test refers to the draft Flood and Water SPD – this was adopted in December 2016. Some of the information within the report is out of date and needs to be in line with the adopted SPD which refers to ‘reasonably available’ sites rather than ‘deliverable’ and ‘developable’ sites. The report also defines sites which are comparable in size (20% either way) – the site selection should not be restricted to sites which are comparable in size but should include all sites which could take part of the proposed development, resulting in a combination of smaller sites to provide the development or similarly sites where the development could be accommodated within part of a significantly larger site.
- 11.3 In terms of the analysis undertaken for the the Strategic Allocations and Broad Locations identified within the Local Plan the conclusions that they are not available is not agreed. The analysis is limited to sites that are seemingly for sale on ‘Rightmove’ (and no other local property agents) together with planned sites identified within the Local Plan and those which have been granted planning permission. In general the assessment concludes that those sites are not yet available for development and that the larger sites identified by the Local Plan are too large and as such are not comparable with the application site. Whilst it is acknowledged that there are yet to be any significant housing schemes within the strategic or broad locations it is not reasonable to rule out those sites on the basis suggested above. This demonstrates that the applicant has failed to reasonably assess other sites and has not produced any evidence of being flexible in terms of the selection of the site(s) nor have they considered further potential sites that could be developed. The list of sites which have been assessed have not previously been discussed with the Council.
- 11.4 More importantly the Council is able to demonstrate that it has a 5-year supply of housing and it is therefore in a position where it does not have to accept new housing within inappropriate locations as there is no overriding need to develop such sites. The sequential test was applied as part of the allocation of land within the Local Plan and sufficient housing has been identified within acceptable locations. The scheme therefore is unable to pass the sequential test given the lack of any overriding need for these proposed 4 dwellings.

11.5 On this basis (given that the sequential test is unable to be satisfied) there is no requirement for the site to be subject to the Exception Test. Accordingly the application is contrary to Policy LP14 in this regard.

12 Residential Amenity (including Noise)

The development of the proposed 4 dwellings would be capable (subject to an appropriate Reserved Matters submission) of not having any unacceptable impacts upon the amenity of the occupiers of existing properties nearby. This is mainly due to the distances between the existing and proposed buildings.

12.1 In terms of the potential future occupiers of the site this is of significant concern given the car repair workshop use immediately to the east of the site and the nearby railway line. The National Planning Practice Guidance (NPPG) provides that the potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. Policy LP2 states that high levels of residential amenity shall be provided as part of new development proposals. Policy LP16 of the Local Plan seeks high quality environments across the District and to this end criterion (o) expects that new development will not constrain or threaten the operation or viability of nearby businesses by placing 'sensitive' uses near them. Further advice is provided at Policy DM9 of the SPD Delivering and Protecting High Quality Environments in Fenland. The agent has submitted a Noise Assessment which includes results of a background noise survey.

12.2 The Noise Assessment (unchanged from the previous refused scheme) requires the following mitigation in order for the scheme to provide an appropriate level of amenity for the future occupiers of the proposed dwellings: double glazed windows seemingly across all of the development (i.e. all windows) and a 3 metre high boundary treatment (comprising an earth bund, brick retaining wall and an acoustic fence) along the eastern boundary of the site.

12.3 The Environmental Health Team has reviewed the assessment and have advised that further information with regard to the sound barrier qualities is required. It is unknown what extent the fence would reduce the noise from the road, rail and adjoining business premises and without this information it cannot be determined if acceptable levels will be achieved in the residential gardens. There are also two key factors which require consideration here.

12.4 Firstly the boundary treatment needs to be at least 3 metres in height in order to attenuate the noise. The impact visually upon the character and appearance of the area is considered below. It is though considered that, having regard to residential amenity, a 3 metre high boundary treatment is inappropriate having regard to the resulting impact (including the hemming in) which would result. These conditions are unsuitable to residential occupation.

12.5 Secondly the noise assessment requires that double glazing is employed in order to provide an acceptable level of amenity within the properties. However no regard is then given to ventilation or the need to open windows within the properties at certain times of the day. It would appear from the report that, in order to achieve the mitigation, the windows would need to be permanently shut. It is unreasonable for the Local Planning Authority to expect future occupants to have to live in such conditions. In addition if the site was occupied in this manner then the propensity to open windows may lead to complaints being received due to the noise generated from the adjoining business.

12.6 The reason for refusal in this regard of the previous scheme is not overcome as the same arrangement would occur. Accordingly it is considered that the requirements for the mitigation from the effects of noise from the existing business, road and railway line would create unacceptable impacts upon the living conditions of future occupiers of the proposed dwellings. Therefore the proposal is in conflict with Policies LP2 and LP16 criteria (o) of the Local Plan and to Policy DM9 of the SPD Delivering and Protecting High Quality Environments in Fenland.

13 Highway Safety

The site layout demonstrates an adequate parking and turning arrangement on the site. The Local Highway Authority has no objections to the application; however have confirmed that the footpath along Creek Road should be extended from the west to include a dropped kerb crossover into the application site. They have also confirmed that the vehicle to vehicle and pedestrian visibility appear to be easily achieved within the public highway and is capable of being conditioned at reserved matters stage. Accordingly the application accords with Policy LP15 in this regard.

14 Design and Impact upon the Character and Appearance of the Area

As the application is in outline form, with no details of the dwellings committed, it is not necessary to consider this matter in any detail here (as it would be a Reserved Matter). However it is necessary to consider the mitigation impacts outlined in the noise assessment. The proposed 3 metre high boundary treatment would be required along the eastern boundary of the site. This boundary faces the adjoining car repair business. The presence of a 3 metre high acoustic fence, notwithstanding that the road is higher than the site would result in a visually prominent and alien feature which would be seen in glimpses from the Creek Road frontage from both directions.

14.1 Whilst this would not create significant harm to the character and appearance of the area it is a further indication that the proposed residential development in this location is not considered acceptable.

15 Health and wellbeing

In accordance with Policy LP2 of the Local Plan development proposals should positively contribute to creating a healthy, safe and equitable living environment.

15.1 In doing so development proposals, amongst other things, should create sufficient and the right mix of homes to meet people's needs, and in the right location. The scheme would deliver family housing on a brownfield site within a market town location; however they would be located within high risk flooding area and there would be sub-standard levels of amenity available to future living conditions owing to the noise attenuation features required. As such the proposal does not accord with Policy LP2.

16 Economic Growth

The proposal will boost the supply of housing as sought by Government through the NPPF. However as the Council can demonstrate a 5-year supply of housing this benefit can only carry minimal weight. The development would provide a degree of local employment during construction of a site which is a benefit. Against this though the proposal would see the loss of an existing business and there is not sufficient evidence to conclude that the development could not jeopardise the longevity of the car repair use to the east. Whilst there is no specific planning policy objection to the loss of the existing car repairs use (as it is not a high quality facility which Policy LP6 would seek to protect) the loss does off-set the economic

benefits of the scheme. Overall therefore the scheme would provide very limited economic growth.

17 CONCLUSIONS

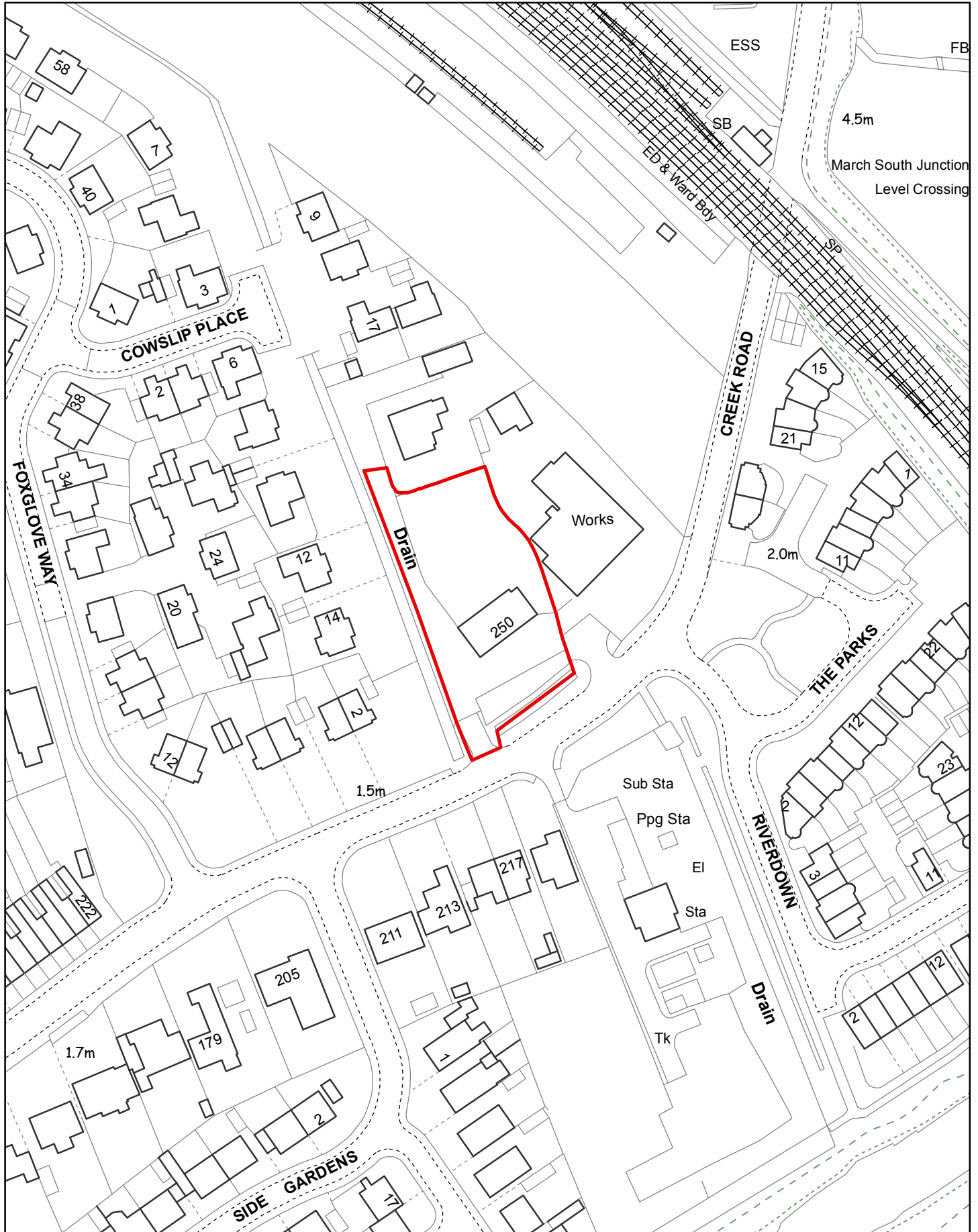
- 17.1 The proposed scheme is considered unacceptable for two reasons (the same reasons as those of the scheme which the Planning Committee found previously).
- 17.2 Firstly the site is located within Flood Zone 3 (high risk area). Officers consider that the information submitted in relation to the required Sequential Test is not sufficient and therefore has not been passed.
- 17.3 Secondly, the impacts of the mitigation which is required in order to attenuate noise impacts to an acceptable level would create unacceptable living conditions for the future occupiers of the site owing to the need for 3 metre high fencing, the requirement for windows to be constantly closed and the lack of any details regarding ventilation of the properties.
- 17.4 Accordingly the principle of residential development in this location would be unacceptable and contrary to Policies LP2, LP14 and LP16 of the Local Plan.
- 17.5 For the reasons given above it is recommended that the proposed development is refused.

18 RECOMMENDATION

Refuse

1.	Policy LP14 (Part B) of the Fenland Local Plan (2014) requires development proposals in high flood risk areas to undergo a sequential test to demonstrate through evidence that the proposal cannot be delivered elsewhere in the settlement at lower risk of flooding. Policy LP2 seeks to deliver high quality environments, ensuring that people are not put at identified risks from development thereby avoiding adverse impacts in the interests of health and wellbeing. The site lies within Flood Zone 3 which is a high risk flood area. The applicant has failed to demonstrate that the development could not be delivered in an area of lower flood risk thereby failing LP14 (Part B). Consequently, the proposal also fails to satisfy policy LP2 of the Fenland Local Plan as it fails to deliver a high quality environment and unjustifiably puts future occupants and property at a higher risk of flooding.
2.	Policy LP2 of the Fenland Local Plan (2014) requires development proposals to positively contribute to a healthy living environment and seeks to promote high levels of residential amenity. Policy LP16 criteria (o) seeks to direct sensitive developments away from existing nearby adjoining businesses or employment sites. The application site adjoins a car repair workshop, road and is close to a railway line. The proposed mitigation in order to attenuate noise impacts to an acceptable level would require the development to include a 3 metre high boundary treatment (to the eastern boundary) and double glazed windows (which could not be opened in order to maintain the required level of attenuation). Insufficient details are provided with regard to the ventilation of the windows and what extent the fence would reduce noise

from the road, rail and adjoining car repair business to the garden areas. The impacts of the mitigation would create an unacceptable and substandard level of residential amenity to the future occupiers. As such the proposed development would not provide a good standard of residential amenity. The proposal is therefore contrary to Policy LP2 and part (o) of Policy LP16 of the Fenland Local Plan (2014) and Policy DM9 of the SPD Delivering and Protecting High Quality Environments in Fenland.



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