

Agenda Item No:	14	
Committee:	Planning Committee	
Date:	15 October 2025	
Report Title:	Update on Planning Application F/YR25/0084/F and Relevant Statutory Duties	

## **1 Purpose / Summary**

- 1.1 This report is presented to provide Members with a formal update in respect of planning application F/YR25/0084/F, which was considered by the Planning Committee on 30 April 2025. At that meeting, Members resolved to grant planning permission, subject to conditions, contrary to the Officer recommendation as set out in the published committee report (reproduced at Appendix 1).
- 1.2 The purpose of this report is to address recent legal correspondence received on behalf of a third party which raises a pre-action indication of potential judicial review proceedings in relation to the Committee's resolution and the lack of weight given to the previous appeal decision (appeal decision is attached at Appendix 2).
- 1.3 Given the seriousness of the matters raised and the potential legal and procedural consequences of proceeding to issue a decision notice the Council has not issued the decision notice.
- 1.4 Where a resolution to grant planning permission has been made by a Committee but no formal decision notice has yet been issued, the Council has not, in law, determined the application. Until the decision notice is issued, the authority retains jurisdiction to reconsider the matter. The Courts have confirmed that, in such circumstances, if there is a material change in circumstances, Officers must consider whether it remains lawful and appropriate to proceed to issue the decision or whether the matter should be referred back to Committee. This principle was clearly established in *R (Kides) v South Cambridgeshire DC* [2003] 1 P&CR 19.
- 1.5 The Committee is invited to consider whether, in light of the issues now set out, it would be appropriate to revisit the resolution to grant planning permission in order to

ensure that the Council's position is legally robust, clearly reasoned, and compliant with its statutory duties as the Local Planning Authority.

## **2 Key issues**

- Members resolved to grant planning permission contrary to Officer recommendation due to impacts on the character and appearance of the area and residential amenity.
- The building currently on the site has been the subject of enforcement action, with an Enforcement Notice previously served requiring its removal. This Notice was subsequently appealed, and the appeal was dismissed by the Planning Inspectorate.
- The Council has received legal correspondence challenging the lawfulness of the Committee's resolution to grant planning permission contrary to Officer recommendation.
- Independent legal advice has been sought, which raises concerns about the robustness of the Committee's reasoning to grant planning permission and the risk of judicial review if the decision is not revisited.
- The Committee may still lawfully conclude that planning permission should be granted, provided that any such decision is underpinned by clear, well-reasoned, and publicly defensible justifications that fully address the relevant legal requirements, development plan policies, and material considerations.
- Failure to address these legal and policy requirements risks significant financial costs to the Council if the decision is subject to judicial review, costs ultimately borne by the local community through Council Tax.
- The Committee is invited to reconsider the application, applying the relevant statutory duties, policies, and material considerations, to ensure a lawful and robust decision.

### 3 Recommendations

- 3.1 The recommendation is to refuse planning permission for the reason set out in section 11 of this report.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	Cllr Mrs D Laws
Report Originator(s)	Matthew Leigh
Contact Officer(s)	Matthew Leigh - Head of Planning <a href="mailto:mleigh@fenland.gov.uk">mleigh@fenland.gov.uk</a>
Background Paper(s)	N/A

### 4 Decision-Making Framework and Member Responsibilities

- 4.1 In determining planning applications, the Planning Committee exercises the Council's functions as the Local Planning Authority under the Town and Country Planning Act 1990 (as amended), together with any relevant subordinate legislation. In doing so, Members are legally obliged to operate within the statutory framework that governs all planning decisions.
- 4.2 In particular, Members of the Committee:
- Must determine planning applications in accordance with the development plan for the area (in this case, the Fenland Local Plan (2014) the Cambridgeshire and Peterborough Minerals and Waste Local Plan (2021) and the Wimblington and Stonea Neighbourhood Plan (Pre-Submission Draft October 2024)), unless material considerations indicate otherwise, as required by section 38(6) of the Planning and Compulsory Purchase Act 2004.
  - Are required to have proper regard to the Officer's report, including its assessment of the development plan policies and all other relevant material

considerations. This includes giving due weight to matters of planning judgement, technical advice from consultees and any legal context or implications referred to in the report.

- Are entitled to form a different conclusion from Officers, provided their reasons are rational, evidence-based, and capable of withstanding scrutiny. Members may give differing weight to material considerations, but must ensure that the reasons for doing so are clearly explained, relevant, and defensible.
- Must also have regard to all other relevant statutory duties beyond the planning acts. This may include, where applicable, obligations under the Planning (Listed Buildings and Conservation Areas) Act 1990, the Environment Act 2021 and the Natural Environment and Rural Communities Act 2006. These place additional legal duties on the decision-maker and must be read alongside the planning legislation.

4.3 The law is clear that failure to have regard to these legal requirements, or a failure to articulate robust and lawful planning reasons for departing from policy or technical advice, may render a decision unlawful and liable to legal challenge.

## **5 Application History**

5.1 On 30 April 2025, the Planning Committee considered planning application reference F/YR25/0084/F for the change of use of land to domestic land, erection of a shed and formation of hardstanding at 6 Bridge Lane, Wimblington. The Officer's Report, along with the Members Update, sets out the relevant planning policy context, detailed assessment, and recommendation, is attached at Appendix 1 to this report.

5.2 The planning application was recommended for refusal for the following reasons:

*"The development by virtue of its scale and appearance would harm the character and appearance of the area, and conflicts with the relevant parts of Fenland Local Plan (2014) Policies LP12 and LP16. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area"*

*“The development by virtue of its scale and position would have a detrimental impact on the amenity of the adjoining residents at 10a and 10b Bridge Lane due to the consequent overshadowing and the overbearing impacts. This is contrary to Policies LP2 and LP16 of the Fenland Local Plan (2014) which seek to protect the amenity of residents and promote good design.”*

- 5.3 Despite the Officer’s recommendation, Members resolved to approve the proposal subject to conditions. Following this, the Planning Agent engaged in discussions with the Council to explore whether certain details could be agreed in advance, thereby addressing requirements through the conditions at an early stage rather than necessitating future submissions.
- 5.4 While Members are of course entitled to depart from Officer advice, any such decision must be based on sound planning grounds, supported by evidence, and capable of clear articulation. This is particularly important where such a decision engages policies of recognised importance, such as those relating to neighbour amenity.
- 5.5 It is well established in case law that, in such circumstances, a general common law duty to give reasons will arise, particularly where permission is granted in the face of substantial public opposition, contrary to Officer recommendation, and involving a significant departure from the development plan or other policies of national importance.
- 5.6 Following the Committee’s resolution, an interested third party wrote to the Council on 1 August 2025. In their correspondence, they alleged that the Council had failed to lawfully determine the application in accordance with the Development Plan. They further contended that the decision was in contradiction of the Inspector’s earlier decision without proper basis, that undue reliance had been placed on immaterial considerations, and that the resolution lacked clear and convincing justification.
- 5.7 In view of the seriousness of the issues raised, and recognising the legal and procedural complexities associated with developments affecting neighbouring amenity and the previous Inspector’s decision, the Council obtained independent legal advice. This advice considers the legal robustness of the Committee’s decision, including whether the resolution to grant planning permission was made lawfully, particularly in light of the Planning Inspector’s findings of harm to the amenity of adjoining residents

when dismissing the enforcement appeal. The full advice is appended at Appendix 3 to this report.

- 5.8 The independent legal advice concludes that there are concerns regarding the Committee's treatment of the Inspector's decision on the Enforcement Notice appeal. This primarily relates to the Inspector's findings on the adverse amenity impacts for 10B Bridge Lane and on the limited scope for landscaping to mitigate those harms, were not given significant weight.
- 5.9 As currently recorded, the Committee's justification for granting permission does not explain how the Inspector's findings were addressed, or why the amenity impacts on 10B Bridge Lane were considered acceptable in light of that recent decision. This lack of reasoning is said to leave the decision vulnerable to challenge on grounds of irrationality and/or a failure to provide reasons capable of public scrutiny.
- 5.10 The independent legal advice obtained by the Council concludes that the most appropriate and legally robust course of action would be for Officers to refer the application back to the Planning Committee for further consideration. This recommendation does not imply that the Committee is incapable of reaching a lawful decision to approve the development; rather, it reflects the legal adviser's view that the reasoning underpinning the resolution, as presently recorded, does not sufficiently demonstrate how the Inspector's decision was taken into account. Without further clarification, the decision is vulnerable to legal challenge.

## **6 Considerations**

- 6.1 In light of the matters raised in this report, Members are required to reconsider whether, having regard to the statutory and policy framework, the resolution to grant planning permission remains appropriate and lawful. Specifically, Members must consider whether the development would give rise to harm to the residential amenity of 10B Bridge Lane, and if so, whether such harm has been properly identified, weighed, and justified. This assessment must include consideration of the findings of the recent Enforcement Notice appeal, the effectiveness of proposed landscaping in mitigating harm, and whether the reduced scheme adequately addresses the concerns within the Officer's report and outlined in the Inspector's decision letter. In doing so, Members must ensure that the reasons for their decision are clear, robust and capable

of public scrutiny, as required to maintain consistency in decision-making and public confidence in the planning system.

- 6.2 Reason for Refusal One, which related to impact on the character and appearance of the area, is not being challenged and therefore remains unaffected. Any independent legal advice and assessment of the planning balance in this case focuses on the identified harm to the amenity of 10b Bridge Lane. As there has been no change in circumstances or new material considerations relating to other matters, this report does not revisit or seek to alter the position in respect of those issues.
- 6.3 To assist Members in undertaking this reassessment, this section sets out a summary of the relevant statutory duties and policy requirements, the material considerations arising from the recent Enforcement Notice appeal and the relevant provisions of the National Planning Policy Framework relating to good design, residential amenity, and decision-making (Chapter 12, paragraphs 126–134, and Chapter 16, paragraphs 38–42 on decision-making). These provisions collectively establish the legal and policy framework for assessing the impact of development on the character and appearance of an area and on the living conditions of neighbouring occupiers, and must be applied rigorously when determining applications where such considerations are engaged.

#### Section 38(6)

- 6.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 imposes a statutory duty on local planning authorities when determining planning applications. It states: *“In making any determination under the planning Acts, the authority shall determine the application in accordance with the development plan unless material considerations indicate otherwise.”*
- 6.5 This statutory duty is at the heart of the plan-led system and establishes a presumption that decisions should be made in line with the development plan when read as a whole. Departure from the development plan is only lawful where there are sufficiently weighty material considerations to justify doing so.
- 6.6 The primacy of the development plan has been repeatedly affirmed by the Courts. The development plan is the starting point for decision-making and that departures from it require cogent reasons.

- 6.7 The Planning Encyclopaedia (Commentary to As noted in the Planning Encyclopaedia (Commentary to P38.06), the duty under section 38(6) is a legal obligation rather than a discretionary exercise:

*“It is a mandatory requirement that decisions on planning applications are taken in accordance with the development plan unless material considerations dictate otherwise. Failure to follow this approach will render a decision vulnerable to challenge as unlawful.”*

#### Material Considerations

- 6.8 Decision-makers must consider any other material considerations that are relevant to the application. Material considerations are those which relate to the use and development of land and may include national policy, appeal decisions, planning history and the impact of the proposed development on neighbouring properties and the character of the area.
- 6.9 The Courts have emphasised that material considerations must be genuinely relevant to the planning merits of a proposal. In *Stringer v Minister of Housing and Local Government [1971] 1 WLR 219*, it was held that a factor will only be material if it fairly and reasonably relates to the development and use of land. Factors which do not relate to land use planning, or which are immaterial, cannot lawfully be taken into account.
- 6.10 The Supreme Court in *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13* confirmed that the weight to be attached to material considerations is a matter for the decision-maker, but the consideration must be rational and properly reasoned. The Court also stressed the importance of transparency, requiring that decision-makers provide clear reasons demonstrating how material considerations have been assessed and weighed in reaching a conclusion.
- 6.11 Consistency is a fundamental aspect of decision-making. While each application must be determined on its own merits, recent and relevant decisions, including appeal decisions on the same site or for similar development, are material considerations of significant weight. Departures from prior material decisions must be fully explained to ensure the rationale is transparent and capable of public scrutiny.



## LP16 – Delivering and Protecting High Quality Environments across the District

6.12 Policy LP16 of the Fenland Local Plan (2014) sets out the Council's approach to design and amenity considerations in new development. The policy seeks to ensure that proposals are of a high standard of design, respect local character, and integrate positively with their surroundings. A key aspect of the policy is the protection of residential amenity, requiring developments to avoid unacceptable impacts on neighbouring properties, including overbearing, overshadowing, overlooking, or loss of privacy. The policy therefore balances the need for sustainable development with the importance of safeguarding the living conditions of existing and future residents.

6.13 The policy is explicit in its requirements. It states that:

*“(e) does not adversely impact on the amenity of neighbouring users such as noise, light pollution, loss of privacy and loss of light.”*

### The NPPF

6.14 The National Planning Policy Framework (NPPF) is clear that planning law requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise (paragraph 2). Beyond that acknowledgment, the NPPF does not attempt to define what constitutes a material consideration. Instead, it establishes a framework of national policies which themselves will generally be material to decision-making, alongside other site-specific and local factors.

### PPG

6.15 The Planning Practice Guidance (PPG) provides further clarification. At paragraph 008 (Reference ID: 21b-008-20140306), it explains that the scope of what may constitute a material consideration is “*very wide*” and will depend on the circumstances of each case. It emphasises that it is for the decision-maker, subject to legal challenge, to determine what considerations are material and the weight to be attached to them. The PPG also reiterates that considerations must relate to the development and use of land in the public interest, rather than to purely private interests.

## Appeal Decision

- 6.16 An enforcement notice was issued on 25 January 2023 in relation to unauthorised development at 6 Bridge Lane. The Council alleged that the land had been used, without planning permission, for the storage and dismantling of vehicles, that a building had been erected to store vehicles, and that extensive hard surfacing had been laid within the curtilage of the dwelling in excess of what could reasonably be regarded as incidental to domestic enjoyment. The notice required the cessation of the unauthorised uses, the removal of the building, and the breaking up and removal of the hardstanding not approved under earlier permissions.
- 6.17 The notice was appealed (Reference APP/D0515/C/23/3317077), with the appellant seeking permission for the mixed use and associated structures under grounds (a) and (b), that the breach of planning control alleged in the notice has not occurred as a matter of fact. In a decision dated 16 September 2024, the Inspector dismissed the appeal, refused planning permission on the deemed application and upheld the enforcement notice in full. This confirmed that the unauthorised activities were unacceptable in planning terms and that the Council's approach to enforcement was both proportionate and justified.
- 6.18 In relation to living conditions at 10B Bridge Lane the Inspector stated:
- “From 10b Bridge Lane more limited screening means the building is a substantial, if not the dominant, feature in the garden, and to some extent from the house. At a height to the eaves of nearly 5m and a length of around 30m it appears not dissimilar to an industrial building in this rural setting. Consequently, it is harmful to outlook for occupiers of the dwelling, notwithstanding the separation between the building and the rear of the dwelling.”*
- 6.19 When concluding the appeal the Planning Inspector found that *“the development harms the character and appearance of the area and the living conditions of residential occupiers of the adjoining land. The development conflicts with development plan policies, and there are no other material considerations that require a decision to be made other than in accordance with the development plan.”*

## 7 Assessment and Application of the Statutory and Policy Tests

- 7.1 Having regard to the legal, policy and procedural framework set out above Members should approach the decision-making process by sequentially addressing the following considerations:

**Whether the previous appeal decision is a material consideration**

The Planning Inspectorate's decision on the enforcement notice appeal forms an important part of the planning history of this site. Members must consider the extent to which the Inspector's findings are a material consideration in determining this application.

In that decision, the Inspector concluded that the building, by reason of its scale and appearance, was a substantial and intrusive feature when viewed from 10b Bridge Lane. It was found to be harmful to the outlook of neighbouring occupiers and appeared not dissimilar to an industrial building in a rural setting. Those findings were central to the dismissal of the appeal.

While Members are not bound to reach the same conclusion, the Inspector's decision carries significant weight. If the Committee chooses to depart from those findings, clear and reasoned justification will be required in order to demonstrate that the decision is sound and capable of withstanding legal scrutiny.

**Whether there are any new material considerations since the appeal**

In determining this application, Members must consider whether there are any new or different material considerations that have arisen since the Inspector's decision on the enforcement notice appeal. Material considerations could include changes in planning policy, alterations to the physical circumstances of the site, or new evidence that was not before the Inspector at the time.

In this case, the retrospective application proposes some physical alterations to the building, but these do not relate to the living conditions of the residents at 10B Bridge Lane.

Any new material considerations must be relevant to the application before the Committee and to planning. This means they must relate to the use and development of land, rather than to private, personal, or non-planning matters. Furthermore, such

considerations must be capable of carrying weight in the decision-making process, with their relevance judged in the context of national policy, the development plan and the planning merits of the case.

### **Whether the development would result in harm to the amenity of 10b Bridge Lane**

A central consideration in determining this application is the effect of the building on the residential amenity of 10b Bridge Lane. Members must consider whether the development results in an unacceptable degree of harm to the living conditions of neighbouring occupiers, with particular regard to outlook, sense of enclosure, and the character of the view from the property.

### **Whether proposed mitigation measures can address any identified harm**

If Members accept that the development could result in harm to the amenity of 10b Bridge Lane, the next step is to consider whether that harm can be adequately mitigated. At the time of the last Committee meeting, Members indicated that a landscaping condition could be imposed to help reduce the visual impact of the building and protect neighbouring amenity.

In considering this, Members should weigh the potential effectiveness of any mitigation against the findings of the Planning Inspector at the previous appeal, particularly if the Committee considers that decision to be a material consideration. Any mitigation measures should therefore be scrutinised to determine whether they could realistically address any harm identified.

For further guidance, an assessment of the appropriateness and potential effectiveness of imposing a landscaping condition is provided at Appendix 4.

### **Whether the statutory and policy duties are properly engaged and applied**

Where harm to the amenity of neighbouring occupiers is identified, Members must ensure that the Council's statutory duties and relevant planning policies are correctly engaged and applied. This includes giving appropriate weight to the findings of the Planning Inspector in the previous appeal, particularly if the Committee considers that decision to be a material consideration.

Members should assess the proposal against the relevant policies in the Fenland Local Plan, including those relating to residential amenity, design, and development in the countryside, alongside any applicable national planning policy in the NPPF. This is not a procedural exercise: properly engaging and applying the statutory and policy framework ensures that any decision is lawful, reasoned and defensible.

### **Whether the proposal complies with the development plan when read as a whole**

Finally, applying section 38(6) of the Planning and Compulsory Purchase Act 2004, Members must determine whether the proposal accords with the development plan taken as a whole and, if it does not, whether there are other material considerations that indicate that planning permission should nevertheless be granted. In this case, if Members conclude that the proposal conflicts with Policy LP16 and identify harm to the amenity of the adjoining residents and this harm is not outweighed by material considerations including public benefits, then the appropriate and lawful conclusion would be that planning permission should be refused.

## **8 Effect on corporate objectives**

8.1 The granting of planning permission in conflict with guidance within the NPPF, and the potential for resultant legal challenge, would impact of the following corporate objective:

- a) Promote and enable housing growth, economic growth and regeneration across Fenland.

## **9 Community impact**

9.1 Should the Council proceed to issue planning permission on the basis of a resolution that is open to legal challenge, there is a real risk that it may be required to defend those proceedings in the High Court. The legal advice obtained indicates that the current reasoning is insufficiently robust, which exposes the authority to a heightened risk of judicial review. In such circumstances, the Council could incur significant legal costs, both in preparing its defence and, if unsuccessful, in meeting the claimant's costs as well.

- 9.2 These financial implications would inevitably be borne by the local community, as the Council's activities are ultimately funded by residents through Council Tax. The potential diversion of resources to defend a legally vulnerable decision represents not only a financial risk but also a reputational one. It could erode public trust in the planning system and the Council's decision-making processes.

## **10 Conclusions**

- 10.1 In making planning decisions, it is essential that Local Planning Authorities adhere not only to the policies of the development plan and the National Planning Policy Framework, but also to the statutory duties imposed by planning law. Where harm to neighbouring amenity is identified, the legal and policy framework requires decision-makers to give proper weight to that harm and to consider whether any proposed mitigation is sufficient to address it.
- 10.2 In this case, the Planning Inspector previously concluded that the building results in harm to the outlook and residential amenity of 10b Bridge Lane. The Council must therefore, when determining the planning application, undertake a lawful and reasoned balancing exercise, having full regard to relevant policies in the Fenland Local Plan and the NPPF, and to any material considerations that have arisen since the appeal. Members must be satisfied that any mitigation measures, such as landscaping, are capable of adequately addressing the identified harm.
- 10.3 Independent legal advice obtained in response to third-party representations confirms that, given the Inspector's findings, the decision to grant planning permission may not currently be sufficiently robust to withstand a legal challenge. This does not prevent the Committee from approving the application, but any approval must be supported by a clear and defensible planning rationale that properly engages statutory and policy duties.
- 10.4 Given the risks identified, including the potential for legal challenge, the appropriate and prudent course of action is to return the application to Committee for further consideration. This will enable Members to revisit the planning balance in light of all relevant legal and policy duties and to reach a decision that can be lawfully issued and robustly defended.

## **11 Recommendation**

11.1 It is recommended that Planning Committee REFUSE the application for the following reason:

1. The development by virtue of its scale and position would have a detrimental impact on the amenity of the adjoining residents at 10a and 10b Bridge Lane due to the consequent overshadowing and the overbearing impacts. This is contrary to Policies LP2 and LP16 of the Fenland Local Plan (2014) which seek to protect the amenity of residents and promote good design.

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**F/YR25/0084/F**

**Applicant: Mr N Bowers**

**Agent : Mr J Scotcher  
Morton & Hall Consulting Ltd**

**6 Bridge Lane, Wimblington, March, Cambridgeshire PE15 0RS**

**Change of use of land to domestic land, erection of a shed and formation of hardstanding involving the demolition of existing garage (retrospective)**

**Reason for Committee: Number of representations contrary to Officer recommendation.**

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**Government Planning Guarantee**

**Statutory Target Date For Determination: 2 April 2025**

**EOT in Place: No**

**EOT Expiry: 8<sup>th</sup> May 2025**

**Application Fee: £1734**

**Risk Statement:**

**This application must be determined by the 8<sup>th</sup> of May 2025 otherwise it will be out of time and therefore negatively affect the performance figures.**

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**1 EXECUTIVE SUMMARY**

- 1.1 This is a partly-retrospective full planning application at 6 Bridge Lane, Wimblington, seeking a change of use from domestic land, the erection of a shed and the formation of hardstanding involving the demolition of an existing garage.

1.2 An enforcement appeal was dismissed on this site on the 16<sup>th</sup> of September 2024 under reference APP/D0515/C/23/3317077. Following this appeal, this application has been submitted with a reduced area of hardstanding, and the storage building reduced in length.

1.3 It is considered that a material character and amenity impact remains from the amended area of hardstanding and storage building. The development is alien and incongruous to the semi-rural character of the Bridge Lane to the visual detriment of the surrounding area. It also considered that a material overbearing impact remains for the properties at 10a and 10b Bridge Lane which has not been adequately addressed by this application. This is contrary to Policies LP2 and LP16 of the Fenland Local Plan (2014) which seek to protect the amenity of residents and promote good design.

1.4 As such it is recommended that the application is refused.

**2 SITE DESCRIPTION**



- 2.1 Bridge Lane serves residential dwellings and agricultural fields to the north of the main built-up area of Wimblington and is now linked to it by new residential development under construction. It nevertheless retains much of its rural character and is considered to remain in a semi-rural setting, especially towards its eastern end. In the vicinity of the site housing runs along the southern side of the road, with small arable and grazed fields remaining beyond the residential uses, and larger fields to the north of Bridge Lane with the A141 to the north and east. The residential area of the application site extends behind three dwellings to the north, and others to the east on account of a curvature in the road. To the south of the application site, behind a 2.1 metre high brick wall is an agricultural field in the appellant's ownership, accessible only through the residential land. The northern boundary with 6a, 8a and 8 Bridge Lane is bordered by 2.1 metre high brick wall. The north-eastern and eastern boundary with 10, 10a and 10b Bridge Lane is bordered by 1.8 metre high timber fence.
- 2.2 The entirety of the site and surrounding area is in Environment Agency Flood Zone 1. The dwelling, vehicular access and part of the agricultural field is in an area of low surface water flood risk. The site is not within a conservation area and there are no listed buildings in the vicinity.

### **3 PROPOSAL**

- 3.1 Full planning permission is sought for the change of use of land to domestic land, the erection of a shed and formation of hardstanding involving the demolition of the existing garage at 6 Bridge Lane, Wimblington. It should be noted that the application is partly retrospective in nature. This application seeks to retain the shed and hardstanding albeit reduced in scale following the dismissal of an enforcement appeal for their retention in 2024.
- 3.2 The proposed storage building is shown on the plans as measuring 17.9 metres wide and 9 metres in depth, with an eaves height of 4.77 metres and a ridge height of 5.7 metres. The materials of construction for the building are listed as navy cladding, a grey roof and grey roller shutter doors. The present building on site has a grey roof and navy blue cladding on the frontage. However, at this time the sides and rear of the building are a mixture of green and brown colouring.
- 3.3 The existing size of the hardstanding within the application site is 1181.6 square metres, the proposed area of hardstanding is 781.6 square metres with 400 square metres changed to grassed land. It has been agreed with the applicant prior to submission of the application that the area of hardstanding to the south of the boundary wall does not form part of the proposal and therefore is located outside of the red line application boundary.
- 3.4 The existing building on site measures 270 square metres with the amended building measuring 161.1 square metres. No material amendments are proposed to the residential boundary treatment and no planting is proposed between the building and the boundaries.
- 3.5 Full plans and associated documents for this application can be found at:  
<https://www.publicaccess.fenland.gov.uk/publicaccess/>

## 4 RELEVANT SITE PLANNING HISTORY

Reference	Description	Decision
F/YR20/0338/F	Erect 1 dwelling (2-storey 5-bed) with attached triple garage/plant room/enclosed swimming pool, 2.0m high (approx height) wall with railings and gates to front and the temporary siting of 2 x static caravans involving the demolition of existing dwelling and garage	Granted – 09 June 2020

## 5 CONSULTATIONS

### 5.1 Wimblington Parish Council – 14<sup>th</sup> March 2025

*There have been a number of previous applications, an appeal, an enforcement notice and now another planning application with retrospective inclusions.*

*A large 'agricultural warehouse', (not a garden shed) that has been built to house large heavy vehicles, has been erected in the grounds of the dwelling, No. 6 Bridge Lane, (the property itself already houses three double brick-built garages), it is out of character with the historic countryside environment of the lane, as is the dwelling itself. The size and design of the agricultural building and the dwelling are not in keeping with the built form of the village or the linear layout of Bridge Lane. There is already an Enforcement Notice (raised in 2022) with regard to the removal of the 'agricultural building' which, after a dismissed appeal in 2023, was put into force in September 2024.*

*This agricultural building imposes on the homes in Bridge Lane, the view from some of the neighbours rear windows and their gardens is now that of a metal wall and roof. Stated, in previous granted planning applications, was the fact that this dwelling would not compromise the amenities of neighbouring occupiers but this is not the case both with the size of the dwelling and the size of the agricultural warehouse.*

*Therefore, we feel this application does not complying with LP12 Part C, LP16 (d), DM3 - Delivering and protecting high quality environment and Chapter 12 of the NPPF*

### 5.2 Fenland District Council – Environmental Health – 07 April 2025

*I confirm receipt of the above application details and have considered the implications of the proposed development in terms of:*

*Noise, Air pollution, Contaminated land or Artificial light*

*I conclude that there are no 'No Objections' to the proposal from an Environmental Health standpoint.*

### 5.3 Local Residents/Interested Parties

#### **Objectors**

Objections have been received from five properties on Bridge Lane, Wimblington raising the following issues (summarised):

- No justification for the loss of agricultural land.
- The building should be reduced in size to that of a domestic garage.
- The building is visible from the lane, fields and A141.
- Bridge Lane is a single track road.
- The building and yard are better suited an industrial estate.
- The building and yard should be completely removed from the site.
- The reduction in size of the building and hardstanding does not address the enforcement appeal dismissal reasons.
- The building is domineering.
- Surface water has not been adequately addressed.
- Not like for like replacement.
- Devaluation of property.
- Loss of view.

### **Supporters**

Fifteen communications of support have been received. The respondents are from Chapel Gardens and Heron Way in Benwick, Curf Terrace x2, Curf Fen Drove, Delve Terrace, High Street and Pound Road in Chatteris, Church Road in Emneth, Calvary Drive x2, Coldham Bank and Station Road in March, Spencer Close in West Walton, and Eastwood End Industrial Estate in Wimblington. They have given the following reasons for supporting the proposal (summarised).

- Previous buildings in disrepair
- Lack of visual impact
- The site has plenty of space to accommodate the building.
- Benefits of the building housing steam engines
- The whole area is in the future development building line.
- The house is high quality and spacious.

## **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) and the Wimblington and Stonea Neighbourhood Plan (Pre-Submission Draft October 2024).

## **7 POLICY FRAMEWORK**

### **National Planning Policy Framework (NPPF) 2024**

Chapter 2 - Achieving sustainable development

Chapter 11 – Making effective use of land

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Chapter 15 – Conserving and enhancing the natural environment

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

Determining a Planning Application

## **National Design Guide 2021**

Context

Identity

Built Form

Nature

Uses

Homes and Buildings

Resources

## **Fenland Local Plan 2014**

LP1 – A Presumption in Favour of Sustainable Development

LP3 – Spatial Strategy, the Settlement Hierarchy and the Countryside

LP12 – Rural Areas Development Policy

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

LP16 – Delivering and Protecting High Quality Environments across the District

LP19 – The Natural Environment

## **Delivering and Protecting High Quality Environments in Fenland SPD 2014**

DM3 – Making a Positive Contribution to Local Distinctiveness and character of the Area

DM6 – Mitigating Against Harmful Effects

## **Cambridgeshire Flood and Water SPD 2016**

## **Wimblington and Stonea Neighbourhood Plan (Pre-Submission Draft October 2024)**

Wimblington & Stonea Parish Council has carried out a pre-submission consultation on the draft plan, as required by Regulation 14 of the Neighbourhood Planning (General) Regulations 2012. The draft plan has not yet been submitted for examination. Given the very early stage which the draft plan is therefore at, it is considered, in accordance with Paragraph 49 of the NPPF, that the policies of this should carry very limited weight in decision making. Of relevance to this application are policies:

Policy RE 1: Rural Character

Policy NE 1: Protecting the Landscape

Policy SD 1: Development and the Settlement Boundary

Policy HD 3: High-Quality Design

Policy SD 5: Flood Risk

## **Emerging Local Plan**

The Draft Fenland Local Plan (2022) was published for consultation between 25th August 2022 and 19 October 2022, all comments received will be reviewed and any changes arising from the consultation will be made to the draft Local Plan. Given the very early stage which the Plan is therefore at, it is considered, in accordance with Paragraph 49 of the NPPF, that the policies of this should carry extremely limited weight in decision making. Of relevance to this application are policies:

LP1: Settlement Hierarchy

LP5: Health and Wellbeing

LP7: Design  
LP8: Amenity Provision  
LP18: Development in the Countryside  
LP22: Parking Provision  
LP24: Natural Environment  
LP25: Biodiversity Net Gain  
LP27: Trees and Planting  
LP32: Flood and Water Management  
LP33: Development on Land Affected by Contamination  
LP34: Air Quality

## 8 KEY ISSUES

- **Principle of Development**
- **Layout and Design**
- **Impact on Residential Amenity / Land Users**
- **Highway Safety and Parking**
- **Flood Risk and Drainage**
- **Other Considerations**
- **Biodiversity Net Gain (BNG)**

## 9 BACKGROUND

9.1 Planning permission was granted for a dwelling on this site under reference F/YR20/0338/F. Subsequently an enforcement complaint was received regarding the provision of a storage building, concrete hardstanding, car storage and change of use of land. An enforcement notice was served on the 25<sup>th</sup> of January 2023 with a compliance period of six months. The requirements of the notice were:

- (a) Cease the use of the land for the storage and dismantling of vehicles, including HGV's, cars used in conjunction with stock car racing, steam engines and any other vehicles which are not reasonably connected to the lawful uses of the domestic and agricultural uses of the site respectively.
- (b) Break up any areas of hardstanding not shown on plan 1000B of planning approval F/YR20/0338/F and remove any resultant material from the site.
- (c) Dismantle the building located on the eastern boundary of the site and remove any resultant material from the site.

9.2 The Applicant decided to appeal (reference APP/D0515/C/23/3317077) the Council's decision to serve an enforcement notice. The appeal in part was under Ground (a) and therefore, looked to regularise the alleged breach of planning control. The appeal was dismissed, on the 16<sup>th</sup> of September 2024, and a summary of Inspector observations in the Appeal Decision and the relevant paragraph numbers are shown below:

9.3 Character and appearance

*24 - In conclusion, the development harms the character and appearance of the area, and conflicts with the relevant parts of Fenland Local Plan (2014) ("FLP") policies LP12 and LP16. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area.*

9.4 Living conditions

*31 - In conclusion, the development harms the living conditions of residential occupiers of the adjoining land, and conflicts with the relevant parts of FLP policy LP16, which requires that development must not adversely impact the amenity of neighbouring users.*

#### 9.5 Drainage

*36 - In conclusion, with the information before me, subject to a suitable planning condition, the development would make adequate provision for surface water drainage and would accord with the relevant parts of FLP policy LP16, which requires development to provide hard and soft landscaping incorporating sustainable drainage systems where appropriate.*

#### 9.6 Other matters

*44 - Therefore, even if limited to the residential land, the use of the Land for the storage of vehicles associated with the appellant's hobbies would not be incidental to the residential use of the land as a dwelling. Consequently, the exemption from development afforded by Section 55(2) does not apply, and there is no fallback position in relation to the use.*

## 10 ASSESSMENT

### Principle of Development

10.1 The principle of development for residential development on this site incidental to the enjoyment of the dwelling is agreeable subject to permitted development guidelines. Permitted development rights for domestic outbuildings were not removed at the time of construction.

10.2 Whilst the principle of development for domestic purposes on the application site is therefore not disputed, given that it was within the red line boundary for residential use when the dwelling on site was approved under reference F/YR20/0338/F, it is considered that the scale, design and dominance of the proposed building and hardstanding exceeds what could be considered to be normal domestic use storage buildings. Therefore, the proposal is not considered to be domestic and the principle of development in this instance has not been established.

10.3 The principle of development for the loss of agricultural land is also of relevance. Regardless of whether or not the land on which part of the storage building is sited is in active agricultural use, this land remains in an agricultural use class. No supporting information has been submitted to justify the loss of 24.03 square metres of agricultural land to facilitate the positioning of the storage building. When assessing the loss of agricultural land Paragraph 38 of the appeal decision states: *Even if the building were moved entirely onto the residential area, its height gives rise to effects significantly greater than those which would arise from a building which could be constructed as 'permitted development'.*

### Layout and Design

10.4 To address the reasons for the enforcement appeal dismissal, the Applicant is proposing to reduce the size of the storage building currently on site through reducing the length of the building from 30 metres to 17.9 metres. The depth of the building remains at 9 metres, whilst the eaves and ridge heights will remain at 4.77 metres and 5.7 metres. The Applicant has stated that the building cannot be made

lower in height due to the need to accommodate the height of the chimneys of the steam engines to be housed.

- 10.5 The planning merits of the building subject of this application, has previously been considered at appeal. When dismissing the appeal, the Inspector considered this matter in detail (paragraphs 14-24) and concluded that “the development harms the character and appearance of the area, and conflicts with the relevant parts of Fenland Local Plan (2014) (“FLP”) policies LP12 and LP16. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area.” It is not considered that the relatively limited reduction in length, when compared to the height and scale of the remaining structure can be considered to have overcome the harm identified by the Council when serving the enforcement notice or by the Planning Inspector when dismissing the appeal.
- 10.6 Whilst it is noted that application forms indicate that the Applicant may be proposing to alter the appearance of the structure in situ to blue cladding, this is not considered to alter the overall appearance of the structure or the impact to the character and appearance of the wider area to such a degree as to mitigate the harm of the character and appearance of the area.
- 10.7 The existing storage building is in close proximity to the boundaries of 8, 10, 10 and 10b Bridge Lane. The relocated building would be the following distances from the existing boundaries: 8 Bridge Lane – 12.75 metres, 10 Bridge Lane– 12.82 metres, 10a Bridge Lane 2.2 metres and 10b Bridge Lane 2.2 metres. A new 1.8 metre high timber boundary fence is shown on the proposed plans that is located 0.68 metres from the east facing rear of the storage building and proposed grassed area. This fence was not present on site at the time of the officer site visit. It is considered that the location of this fencing will lead to an area to the rear of the fenced boundaries of 10a and 10b Bridge Lane that would be in the ownership of the applicant and would be difficult to maintain.
- 10.8 With regard to the location of the proposed storage building in relation to the neighbouring dwellings, the distances are as follows:  
8a– 27.4 metres  
8– 28.6 metres  
10a – 29.5 metres  
10b – 31 metres  
6 (applicant’s dwelling) – 39.85 metres.  
6a– 40.3 metres.  
10 – 45.6 metres
- 10.9 No justification has been given by the applicant as to why the visually prominent location of the storage building is adjacent to residential boundaries. The location is considered to generate a material impact on the character and amenity of the surrounding area.
- 10.10 When dismissing the Enforcement Appeal the Inspector stated that:  
*“The former stable building along the eastern boundary was only slightly shorter in length than the garage building constructed, but was narrower and significantly lower, being a shallow flat roofed structure not much taller than the adjacent domestic fencing. The building which replaces it is a substantial 260sqm steel framed structure of a size and style more commonly seen in industrial areas or farmyards.”*

- 10.11 The changes to the appearance of the building, particularly as there is no reduction in the design ethos or the height of the building, are not considered to overcome the harm, due to the industrial appearance of the building, highlighted by the Inspector when dismissing the appeal.
- 10.12 The hardstanding currently present on site is 1181.6 square metres, however, it must be noted that this is currently unauthorised. As part of the development the area of hardstanding is to be reduced to 781.6 square metres and for the other 400 square metres to be removed and returned to grassed land. Whilst it is accepted that there were areas of concrete within that part of the site historically, these were over a significantly smaller area than the concrete hardstanding proposed. It is considered that this level of hardstanding further exacerbates the harm to the character and appearance of the area outlined above. This conclusion is similar in nature to that of the Planning Inspector when determining the appeal. The area beyond the 2.1 metre high boundary wall at the southern boundary is agricultural in use. Part of the amended storage building (24.03 square metres) and an area of hardstanding (418.4 square metres) are positioned on the land. It has been agreed with the applicant prior to submission of the application that the area of hardstanding to the south of the boundary wall does not form part of the proposal and therefore is located outside of the red line application boundary.
- 10.13 There is no landscaping proposed to mitigate the impact of the proposed building and hardstanding. The proposed site layout plan shows areas of what is described as “vegetation” to the rear of 6a, 8a, 8, 10a and 10b Bridge Lane. Photographs taken on site show that there is no vegetation to the rear of 6a and 8a Bridge Lane. There is vegetation on the rear boundary of 8 Bridge Lane, as well as sparse vegetation at 10a and 10b Bridge Lane. However, this vegetation does not sufficiently address the visual dominance and material overbearing impact that the amended building will generate.
- 10.14 To conclude, the proposed layout, materials of construction and scale of development is considered to detrimentally impact on the site and the semi-rural character and appearance of the wider area. This is considered to be consistent with the findings of the Planning Inspector at the time of dismissing the previous appeal.
- 10.15 The proposal is therefore, contrary to Policies LP12 and LP16 of the Fenland Local Plan. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area.

### **Impact on Residential Amenity / Land Users**

- 10.16 Efforts have been made to reduce the amenity impact on 8 Bridge Lane by reducing the length of the building. The reduction in the length of the building has resulted in the northern elevation of the storage building now being some 12.75 metres from the northern boundary and 28.6 metres from the dwelling. The resultant increase in separation distance is now considered to mitigate the harm from the building currently in situ in relation to overshadowing and overbearing upon the occupiers of the dwelling. This also applies to the dwellings at 6a, 8a and 10 Bridge Lane. Whilst it is accepted that the storage building will still be visible from these properties, it is not considered that this would have a



detrimental impact upon the amenity of the residents of these properties to such a degree as to warrant a reason for refusal.

10.17 Notwithstanding the above, amenity concerns remain with regard to the impacts on the amenity to the properties at 10a and 10b Bridge Lane, primarily in relation to overshadowing and the overbearing nature of the development. The storage building is 2.2 metres to the west of the fenced boundary. 10a Bridge Lane is located 29.5 metres from the building and 10b Bridge Lane is located 31 metres away. The submitted proposed site plan shows vegetation at the rear boundaries of 6a, 8a, 8, 10a and 10b Bridge Lane. It is not considered that the height or density of the trees and hedging in this location mitigates the dominance of the storage building. This is especially the case for 10a and 10b Bridge Lane given the 2.2 metre separation distance to the residential boundary. It must be noted that at the time of the appeal a similar landscaping solution was offered. However, the Planning Inspector considered, that the provision of landscaping *“would have only limited effects.”*

10.18 To conclude whilst attempts have been made to reduce the impact on the amenity of some of the neighbouring properties, impacts in relation to overshadowing and overbearing are considered to remain for the dwellings at 10a and 10b Bridge Lane.

10.19 Given the above considerations, despite the reduction in the length of the storage building a material overbearing concerns remains for the properties of 10a and 10b Bridge Road. This is contrary to Policies LP12 and LP16 of the Fenland Local Plan. These policies require development to make a positive contribution to the local distinctiveness and character of the area, as well as minimising the impact on residential amenity and adjacent land uses.

### **Highway Safety and Parking**

10.20 The proposal seeks to utilise the existing vehicular access at the site frontage to the north, which is located behind electric gates. This access leads to the block paved residential driveway then to the concrete hardstanding to the east of the dwelling

10.21 When serving the Enforcement Notice no harm was identified in relation to highway safety or the free flow of traffic. Furthermore, when dismissing the appeal, no concerns on these matters were raised by the Planning Inspector. Whilst it is noted that there is a reduction in hard standing proposed this is not considered to materially alter the considerations of the development when compared to the development considered under the previous appeal.

10.22 Therefore, no objection is raised to the development based on car parking or highway safety.

### **Flood Risk and Drainage**

10.23 The entirety of the site and surrounding area is in Environment Agency Flood Zone 1. The dwelling, vehicular access and part of the agricultural field is in an area of low surface water flood risk. Foul water provision is not impacted by this proposal. Surface water is to be addressed via a soakaway.

- 10.24 The area of concrete hardstanding and the storage building are impermeable, and there is a need to ensure that the site and neighbouring gardens are not subject to surface water flooding.
- 10.25 At the time Enforcement Appeal Inspector the Inspector observed: *The hardstanding on the residential land has been designed with a central gully system with 3 drains. Plans available to me, but not to the Council at the time the Notice was served, show each drain feeds into a solid underground pipe into the field. An interconnecting perforated pipe then runs diagonally across the field, terminating in an outflow into the ditch which runs along its western boundary on the appellant's land. He advises that discharge into the ditch only occurs in the event of a heavy downpour in a major storm event. It was dry weather at the time of my visit, but I have seen no evidence that the drainage installed is inadequate to meet the demands put on it.*
- 10.26 In relation to drainage provision for the rear of the building, Paragraph 34 of the appeal decision states: *There is guttering along the front of the building, but I saw no downpipes, and there was none at the rear. Were I to allow the appeal and grant planning permission for the building, these could be required by a planning condition with discharge into the field away from residential properties.* At the time of the officer site visit no downpipes were observed on the rear of the building and none are shown on the proposed elevational drawings. Additionally, no surface water drainage provision information has been supplied, and there is no evidence provided that drainage pipes have been installed underneath the hardstanding.
- 10.27 Whilst such provision may adequately address surface water on the site and adjacent land, none has been provided within the submitted information. Therefore, it is considered that at the present time surface water flood risk on this site has not been sufficiently addressed. This is contrary to Policy LP14 of the Fenland Local Plan and Chapter 14 of the National Planning Policy Framework, which seek to ensure that development does not increase flood risk on a proposal site and adjacent land uses. It is however, acknowledged that surface water drainage could be potentially addressed by a time limited condition given the retrospective nature of the proposal and therefore, this is not considered to warrant a reason for refusal.

### **Other Considerations**

- 10.28 Communications from members of the public have raised a number of issues. Whilst most matters are broadly covered in the assessment above it is considered that a number of comments require a specific comment.
- 10.29 The age, rarity of and need to keep the steam engines indoors has been raised. Whilst it is acknowledged that it may be beneficial for the steam engines to be kept indoors there is no reason before the Council as to why they need to be kept on this site, other than in the interest of ease of the Applicant. Whilst the benefit to the individual is noted, this is not considered to be of any demonstrable weight and does not overcome the harm highlighted above.
- 10.30 It has been raised that the house and its grounds are a credit to architectural design and building and that this kind of housing is what Fenland needs, high quality and spacious. These points are not considered to relate to the application as the proposal does not relate to the dwelling.

- 10.31 Comments have been received that the whole area is in the future development line. The area where the hardstanding and building is positioned could have been developed for domestic purposes by virtue of the permission F/YR20/0338/F for construction of the dwelling. However, the land beyond the 2.1 metre high southern boundary wall remains in agricultural use. The current Fenland Local Plan does not provide defined settlement limits and therefore does not automatically preclude or encourage development on the site or the wider area. The Emerging Local Plan appears to exclude the area from the settlement boundary for Wimblington.
- 10.32 With regard to comments of objection, the devaluation of a property and a loss of view of land outside of your ownership are not matters which carry material planning weight.

### **Biodiversity Net Gain (BNG)**

- 10.33 The Environment Act 2021 requires development proposals to deliver a net gain in biodiversity following a mitigation hierarchy which is focused on avoiding ecological harm over minimising, rectifying, reducing and then off-setting. This approach accords with Local Plan policies LP16 and LP19 which outlines a primary objective for biodiversity to be conserved or enhanced and provides for the protection of Protected Species, Priority Species and Priority Habitat.
- 10.34 There are statutory exemptions, transitional arrangements and requirements relating to irreplaceable habitat which mean that the biodiversity gain condition does not always apply. In this instance, one or more of the exemptions / transitional arrangements are considered to apply and a Biodiversity Gain Condition is not required to be approved before development is begun. This is because the application is retrospective, and therefore the development is *de-minimis* for the purposes of BNG.
- 10.35 Furthermore, matters relating to Biodiversity Net Gain (BNG) were not identified as weighing against the development at the time of the previous appeal decision. As such, to now raise an objection on the basis of BNG would be considered unreasonable and inconsistent with the previous decisions.

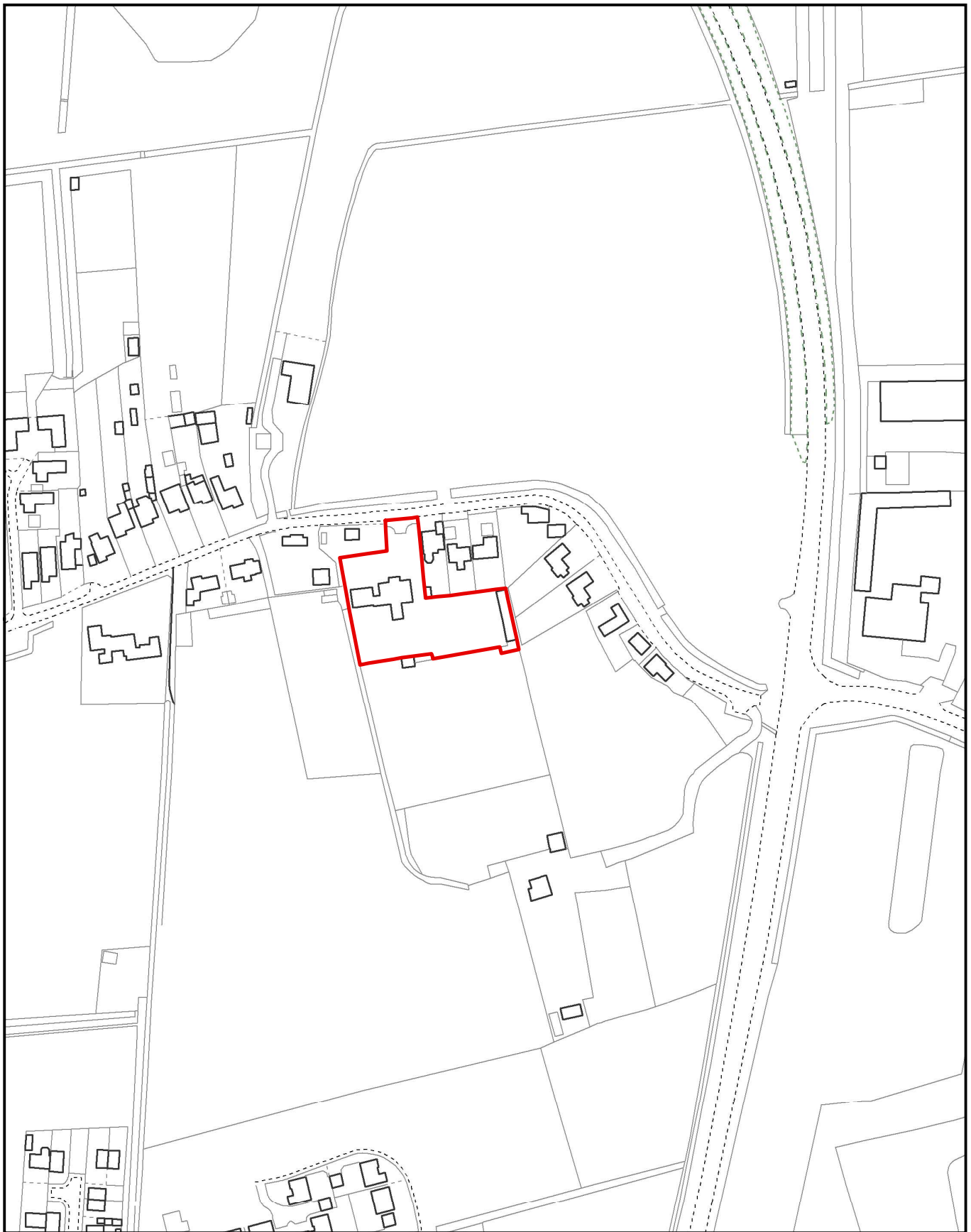
## **11 CONCLUSIONS**

- 11.1 Whilst it is acknowledged that the both the building and the hard standing would be reduced it is considered that the development would still appear as an alien and incongruous feature in the semi-rural character of the Bridge Lane to the detriment of the site and the character and appearance of the surrounding area. It also considered that a material overbearing impact remains for the properties at 10a and 10b Bridge Lane which has not been adequately addressed by suggested amendments to the existing building. Therefore, material harm remains in relation to the character and appearance of the area and impacts on amenity of the adjoining residents.
- 11.2 The proposal is therefore, contrary to Policies LP2 and LP16 of the Fenland Local Plan (2014).

## **12 RECOMMENDATION**

12.1 **Refuse**; for the following reasons:

1	The development by virtue of its scale and appearance would harm the character and appearance of the area, and conflicts with the relevant parts of Fenland Local Plan (2014) Policies LP12 and LP16. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area.
2	The development by virtue of its scale and position would have a detrimental impact on the amenity of the adjoining residents at 10a and 10b Bridge Lane due to the consequent overshadowing and the overbearing impacts. This is contrary to Policies LP2 and LP16 of the Fenland Local Plan (2014) which seek to protect the amenity of residents and promote good design.



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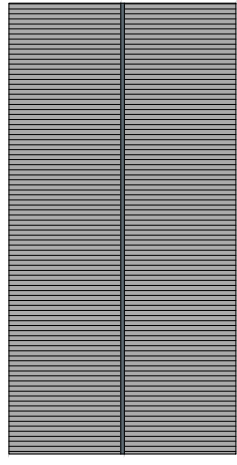
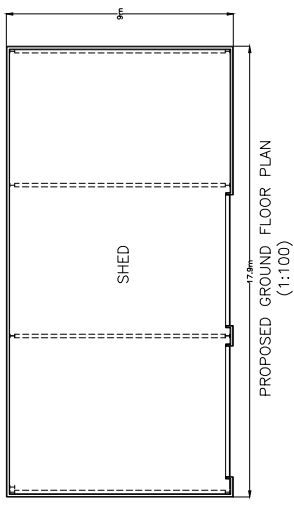
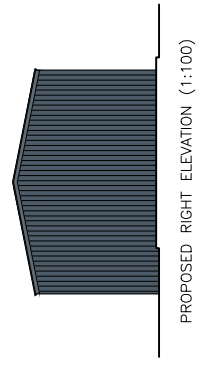
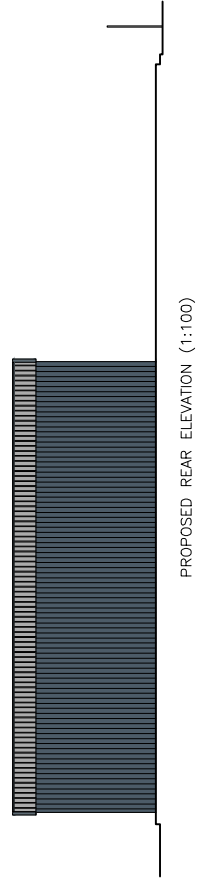
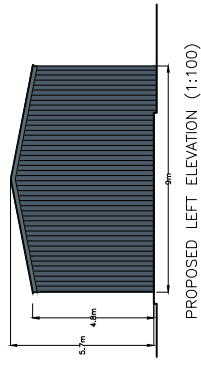
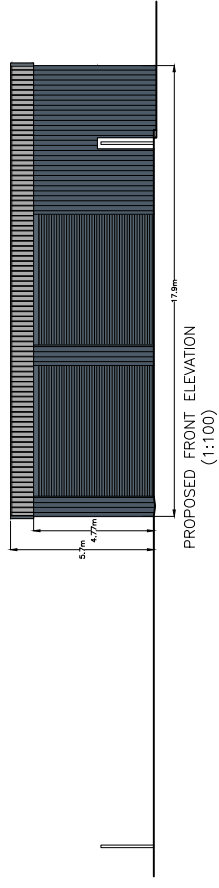
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**F/YR25/0084/F**

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**PLANNING COMMITTEE DATE: 30<sup>th</sup> April 2025**

**APPLICATION NO: F/YR25/0084/F**

**SITE LOCATION: 6 Bridge Lane, Wimblington**

**UPDATE – Councillor Taylor comments not included in Officer report**

Councillor Taylor had requested that the application be reported to Committee and also made comments in support of the application:

- This application enhances its setting as it is being reduced in size. This does not adversely affect the street scene as it cannot be seen.
- Increases amenity area to the dwelling allowing greater than a third amenity area of the plot as the curtilage is being increased.

**Officer comment:** It is considered that these matters are appropriately assessed within the report.

**Recommendation: Refusal** - The above update does not alter the original recommendation in the Committee Report.





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# Appeal Decision

Site visit made on 2 July 2024

**by Peter White BA(Hons) MA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 September 2024**

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**Appeal Ref: APP/D0515/C/23/3317077**

**6 Bridge Lane, Wimblington, March, Cambridgeshire PE15 0RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Mr Neil Bowers against an enforcement notice issued by Fenland District Council.
- The notice was issued on 25 January 2023.
- The breach of planning control as alleged in the notice is:  
Without planning permission, the material change of use of land from agricultural land and domestic garden land to a mixed use of domestic garden land and land used for the storage and dismantling of vehicles.  
Without planning permission, the erection of a building used to store vehicles.  
Without planning permission, the laying of a hard surface within the curtilage of a dwelling of a scale which goes beyond that which is considered to be ordinarily incidental to the enjoyment of a dwelling house and is being used to facilitate the above unauthorised use of the land.
- The requirements of the notice are:
  - (a) Cease the use of the land for the storage and dismantling of vehicles, including HGV's, cars used in conjunction with stock car racing, steam engines and any other vehicles which are not reasonably connected to the lawful uses of the domestic and agricultural uses of the site respectively.
  - (b) Break up any areas of hardstanding not shown on plan 1000B of planning approval F/YR20/0338/F and remove any resultant material from the site.
  - (c) Dismantle the building located on the eastern boundary off the site and remove any resultant material from the site.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made ("the DPA") under section 177(5) of the Act.

**Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.**

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## Applications for costs

1. An application for costs was made by Mr Neil Bowers against Fenland District Council. That application is the subject of a separate decision.

## The appeal on ground (b)

2. Appeals on ground (b) are made on the basis that the breach of planning control alleged in the notice has not occurred as a matter of fact.
3. The appellant's case on this ground is that the dismantling of vehicles has not occurred, notwithstanding the Council's evidence of cars being stored with elements missing.

4. One of the appellant's hobbies is stock car racing. He advises that some stock cars are stored on the land during the season and are taken away to be raced as the season progresses. He states there is no workshop and there are no tools or facilities for dismantling on the land, and that all works of dismantling and conversion for stock car racing, such as the removal of windscreens, are undertaken off-site at end-of-life vehicle dismantling facilities he owns.
5. Although there is evidence of the storage of partially dismantled vehicles, I have seen no evidence that dismantling has occurred on the land.
6. Consequently, as neither the appellant nor the Council would be prejudiced were I to correct Section 3 of the Notice and vary Section 5(a) by deleting the words, "and dismantling", I shall do so in my Formal Decision.
7. I also have a duty to ensure the Notice is in order in respect to the breach of planning control alleged. Although the Notice alleges the material change of use from agricultural and domestic garden land to a mixed use, it fails to acknowledge the agricultural element in the mix alleged. Neither party has suggested that agricultural use of the land has ceased, and the Notice should acknowledge it. "Domestic garden land" is also not in itself a use of land, but is part of the "residential use" of the land as a dwelling. In neither case would correcting the Notice cause injustice to the appellant or the Council, and I will correct it accordingly.
8. The appeal on ground (b) therefore succeeds to the extent it is made.

### **The appeal on ground (a)/the DPA**

9. Appeals on ground (a) are made on the basis that planning permission should be granted for what is alleged in the notice.
10. The description of development for the DPA is derived from the alleged breach of planning control in Section 3 of the Notice, and is therefore the alleged breach as corrected.

### *Background and Main Issues*

11. The appellant has constructed a building ("the building") for the storage of his two steam engines and associated vehicles, a concrete hardstanding area within the residential land, and a concrete hardstanding area within the field. He also keeps stock cars on the land for his, and his family's, personal use throughout the stock car racing season.
12. The appellant does not seek consent for the ongoing storage of vehicles in the agricultural field, but within the residential area only; and with stored cars stacked to a height not exceeding the height of the boundary walls.
13. The main issues are:
  - The effects of the development on the character and appearance of the area;
  - The effects of the development on the living conditions of residential occupiers of the adjoining land, with particular regard to outlook and light; and
  - The adequacy of the surface water drainage.

## *Reasons*

### *Character and appearance*

14. Bridge Lane serves residential dwellings and agricultural fields north of the main built-up area of Wimblington and is now linked to it by new residential development under construction. It nevertheless retains much of its rural character, and is described by the Council as being in a semi-rural setting. In the vicinity of the Land housing runs along the southern side of the road, with small arable and grazed fields remaining beyond the residential uses, and larger fields on its northern side.
15. The residential area of the Land extends behind three dwellings to the north, and others to the east on account of a curvature in the road. Beyond that is a field in the appellant's ownership, accessible only through the residential land.
16. The residential land is L-shaped in form, and the principal area of the Land for the purposes of the appeal is its eastern projection, between the rear gardens of dwellings to the north and east, and the field to the south. It is a sizable area, over which a concrete surface has been laid, and which the Council describes as a yard. At its eastern end a steel framed building has been constructed which runs north to south, continuing marginally into the agricultural land. It replaces a stable building in a similar location.
17. The concrete yard is a substantial one in terms of its area, and in the context of residential use. Photographs provided by the appellant, and a plan submitted in association with the appellant's new dwelling, demonstrate there were areas of concrete within that part of the site, but over a significantly smaller area than the concrete hardstanding constructed. I have not seen convincing evidence that the entire area was a mixture of concrete hardstanding and compacted brick through which grass had grown, as the appellant suggests.
18. The former stable building along the eastern boundary was only slightly shorter in length than the garage building constructed, but was narrower and significantly lower, being a shallow flat roofed structure not much taller than the adjacent domestic fencing. The building which replaces it is a substantial 260sqm steel framed structure of a size and style more commonly seen in industrial areas or farmyards. It is of a comparable height to the eaves of dwellings in the vicinity, being 4.9m high to its eaves and 6m to its ridge.
19. Buildings of this design and scale would be a part of the landscape and streetscape in many rural areas, where their scale and design would be a typical part of a working agricultural landscape. However, in this location, with its small-scale field pattern, and its location abutting residential gardens, the building's scale and utilitarian design conflicts with the domestic and semi-rural character of the area. Although visibility of the building from the road, and from further afield, is limited, it is prominent from adjoining residential land.
20. The substantial concrete hardstanding is also of a scale and character more akin to that of an industrial estate or a modern working farmyard. Despite its limited visibility from public areas, it will be prominent from the upper floors of adjacent dwellings, and harms the rural character of the area.
21. A relatively large area of hardstanding has also been constructed within the field, which the appellant states is to serve agricultural vehicles accessing it. However, hardstanding areas are not a feature in all agricultural fields, and the

field is small in scale and can only be accessed directly through the dwelling's access from Bridge Lane. The piped drainage from the hardstanding within the domestic area drains across much of the field in four pipes. Although I have not been advised of the depth of the drainage pipes, its use for drainage, and the small size of the field, is likely to limit the scale of agricultural activities which may take place on the field, and I have seen no convincing evidence of a need for a hardstanding area within it. The hardstanding within the agricultural land further harms the character and appearance of the area, and I have not seen a clear justification for it in this location.

22. In relation to use of the land, the Council advises that vehicles have been stacked, and the appellant expressly seeks storage for stock car vehicles stacked up to the height of the boundary walls. Correspondence from the appellant shortly after the Notice was issued advised there were 20 stock cars on the land at the time. Even those not exceeding the boundary walls may well be seen from the upper floors of adjacent buildings, and the storage of stock cars in these numbers, and the stacking of any vehicles in this area is harmful to its character. Use for the storage of steam traction engines may not in itself harm the character of the area, but the building of industrial scale and design required to store them, and the extensive hardstanding area facilitating their transport, is harmful particularly considering the residential and small-scale agricultural character of the area.
23. The appellant states landscaping could be provided within both the residential and agricultural areas. He also states that one of the five bays of the steel-framed building could be removed and landscaped bunds could be constructed along the boundary between the building and 6A, 6B and 8A Bridge Lane to the north and along the rear of the building to the east. There is only very limited space for landscaping along the northern and eastern boundaries of the building and the concrete hardstanding, and landscaping in the field would have only limited effects. Removal of the northern bay of the building and a 1m strip of concrete along the northern boundary to allow for landscape planting would reduce the visual effects from the north to a limited degree, but I have seen no evidence that landscaped bunds are characteristic of the area. Even if these measures were carried out, with or without a bund, a narrow strip is unlikely to provide landscaping with native species suitable for a rural setting, and sufficient to mitigate the effects of the scale of the building.
24. In conclusion, the development harms the character and appearance of the area, and conflicts with the relevant parts of Fenland Local Plan (2014) ("FLP") policies LP12 and LP16. These policies require development to make a positive contribution to the local distinctiveness and character of the area, without adverse impacts due to design or scale on the settlement pattern or landscape character of the area.

#### *Living conditions*

25. The building runs parallel, and in close proximity, to the eastern boundary of the land, adjacent to the end of the gardens of 10A and 10B Bridge Lane. It's gable end stands adjacent to the northern boundary of the land, at the end of 8a Bridge Lane's garden, and 8 and 6a Bridge Lane face the hardstanding area, from which the gable end and front of the building are visible.
26. From the rear of No 8a, and its garden, the gable end of the building is a dominant feature which extends across more than half of the rear garden

boundary. At 6m high, and 4.9m to its gable ends, the building is similar in height to a two-storey dwelling, but industrial in character, and the green colour of the profile sheeting is insufficient to mitigate its impact. The appellant advises the building is around 18m from the rear of the dwelling, but the building is not a residential one in an urban area. In this rural setting it is an incongruous feature, and harmful to outlook from No 8 and its garden. The building also stands south of the garden close to the boundary and reduces the amount of daylight at the end of the garden, including a patio area.

27. From Nos 6a and 8 the building will be a notable presence, but its position, as a peripheral element in the aspects from these dwellings and their gardens, does not give rise to unacceptable harm to outlook.
28. At the rear of the building, deciduous trees screen the views of the building from the garden of No 10a in the summer months, but the height of their canopies means it is a broad and solid feature from much of the garden, and across the entire width of the garden and the neighbouring one. In the winter months, without the foliage afforded by the trees, the prominence of the building will be increased for users of the garden and the dwelling, and will be harmful to outlook despite the separation distance between the building and the rear of the dwelling<sup>1</sup>.
29. From 10b Bridge Lane more limited screening means the building is a substantial, if not the dominant, feature in the garden, and to some extent from the house. At a height to the eaves of nearly 5m and a length of around 30m it appears not dissimilar to an industrial building in this rural setting. Consequently, it is harmful to outlook for occupiers of the dwelling, notwithstanding the separation between the building and the rear of the dwelling<sup>2</sup>.
30. The appellant's offer to remove a bay of the building closest to No 8a would reduce the effects on that property to some extent, but not sufficiently to overcome the harm arising to outlook. Bunds would be likely to further harm the character and appearance of the area, being an alien and industrial feature, as would coniferous planting. Landscape planting in narrow strips along the boundaries is unlikely to adequately mitigate the harm, and native planting of a kind likely to be suitable in a rural area would require broader margins than the 1m or so available at the rear of the building and proposed by the appellant elsewhere.
31. In conclusion, the development harms the living conditions of residential occupiers of the adjoining land, and conflicts with the relevant parts of FLP policy LP16, which requires that development must not adversely impact the amenity of neighbouring users.

### *Drainage*

32. The extensive size of the concrete hardstanding on the residential land generates a need for surface water drainage, and the building's roof will generate further surface water run-off.
33. The hardstanding on the residential land has been designed with a central gully system with 3 drains. Plans available to me, but not to the Council at the time

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<sup>1</sup> Which the appellant reports to be around 25m

<sup>2</sup> Which the appellant reports to be around 30m

the Notice was served, show each drain feeds into a solid underground pipe into the field. An interconnecting perforated pipe then runs diagonally across the field, terminating in an outflow into the ditch which runs along its western boundary on the appellant's land. He advises that discharge into the ditch only occurs in the event of a heavy downpour in a major storm event. It was dry weather at the time of my visit, but I have seen no evidence that the drainage installed is inadequate to meet the demands put on it.

34. There is guttering along the front of the building, but I saw no downpipes, and there was none at the rear. Were I to allow the appeal and grant planning permission for the building, these could be required by a planning condition with discharge into the field away from residential properties.
35. The concrete apron in the agricultural land is further from other properties and likely to drain largely into the field. Where it meets the hardstanding in the residential area surface water will be collected as described above.
36. In conclusion, with the information before me, subject to a suitable planning condition, the development would make adequate provision for surface water drainage and would accord with the relevant parts of FLP policy LP16, which requires development to provide hard and soft landscaping incorporating sustainable drainage systems where appropriate.

#### *Other Matters*

37. The planning permission for the appellant's dwelling provided him with a large curtilage. I have seen no evidence that householder 'permitted development' rights<sup>3</sup> have been removed relating to the erection of outbuildings or the construction of hard surfaces for purposes incidental to the enjoyment of the dwellinghouse.
38. The appellant acknowledges that the building exceeds the parameters for buildings that can be erected as 'permitted development'. That is the case as part of it is outside the residential land associated with the dwellinghouse, it exceeds 4m in height (having a dual pitched roof), and its eaves exceed 2.5m. Even if the building were moved entirely onto the residential area, its height gives rise to effects significantly greater than those which would arise from a building which could be constructed as 'permitted development'.
39. The appellant also acknowledges that only hard surfaces made of porous materials, or those which direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse may be 'permitted development'. It is likely that any alternative hard surface which did meet those requirements would therefore be smaller in area than that constructed, on account of the area required for drainage.
40. There is therefore no comparable fallback position in relation to the building or hardstanding areas.
41. In relation to use, the appellant considers the keeping of his steam engines and associated vehicles and his stock cars would be incidental to the use of the land as a dwelling if contained solely within the residential land. Section 55(2) of the Act provides exemptions from development, including the use of any buildings

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<sup>3</sup> Under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).



or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such. Whether any particular use is incidental to another is a matter of fact and degree.

42. In isolation, and given the extent of the residential land area, the appellant's two steam traction engines, along with a caravan for use at events, would not necessarily be incompatible with use incidental to the enjoyment of the dwellinghouse. At the same time, given the height of their chimneys, their significant weight, and the practicalities of moving them by low-loader, the appellant advises that the building at its current height and the current extent of concrete hardstanding are a necessary part of keeping them on the Land. Despite the large size of the residential land associated with the dwelling, the extent, scale and character of these elements materially changes the character of the use occurring and are indicative of a material change of use of the land.
43. Similarly, the keeping of a small number of stock cars at the appellant's dwelling for his own personal use, would not necessarily constitute a material change of use. However, the storage of a large number of partially dismantled vehicles stacked on the land differs from the examples considered in the appeals provided by the appellant, and is not reasonably and ordinarily ancillary to the enjoyment of the dwellinghouse.
44. Therefore, even if limited to the residential land, the use of the Land for the storage of vehicles associated with the appellant's hobbies would not be incidental to the residential use of the land as a dwelling. Consequently, the exemption from development afforded by Section 55(2) does not apply, and there is no fallback position in relation to the use.

#### *Conclusion on ground (a)/DPA*

45. I have found the development would make adequate provision for surface water drainage were a suitable planning condition imposed on any grant of planning permission. Nevertheless, the development harms the character and appearance of the area and the living conditions of residential occupiers of the adjoining land. The development conflicts with development plan policies, and there are no other material considerations that require a decision to be made other than in accordance with the development plan.
46. The appeal on ground (a) therefore fails, and the DPA is refused.

#### **Conclusion**

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

#### **Decision**

48. It is directed that the enforcement notice is corrected by the deletion of the following words from Section 3:

- "Without planning permission, the material change of use of the land from agricultural land (hatched blue on the attached plan) and domestic garden land (the remaining unmarked land edged red on the attached plan) to a

mixed use of domestic garden land and land used for the storage and dismantling of vehicles"

and their substitution with the words:

- "Without planning permission, the material change of use of the land from agricultural use (hatched blue on the attached plan) and residential use (the remaining unmarked land edged red on the attached plan) to a mixed use of agricultural, residential and the storage of vehicles".

And varied by:

- the deletion of the words "and dismantling" from Section 5(a).

49. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Peter White*

INSPECTOR



## **Building at land rear of 6 Bridge Lane, Wimblington**

### **Assessment on the effectiveness of a landscaping planning condition to mitigate adverse visual amenity and character impacts**

#### **1 Brief**

- 1.1 The purpose of this report is to assess whether the proposal to impose a planning condition requiring a landscaping scheme would be effective in overcoming the harm identified to occupiers of 10a and 10b Bridge Lane, caused by the erection of a building along the rear boundary.

#### **2 Relevant planning references**

- Planning Enforcement Appeal: APP/D0515/C/23/3317077.
- Planning Application: F/YR25/0084/F

#### **3 Summary of the proposed development (see application F/YR25/0084/F)**

- 3.1 Building details;
- Width: 9m
  - Length: 17.9m
  - Eaves height: 4.77m
  - Ridge height: 5.7m
- Style: Dual pitch roof with gable ends
- Appearance: Corrugated steel walling and roofing finished in dark grey

#### **4 Background**

- 4.1 Having regard to the recent enforcement appeal decision, the existence of the current building (at its full length of 30m) is concluded to cause harm to the living conditions of the occupiers of 8a, 10a and 10b Bridge Lane. A reduction in its length by around 6m (one bay) and removal of some hardstanding, proposed during the appeal, was acknowledged to provide some improvement to living conditions of 8a, but not sufficient to completely avoid adverse impact on outlook (para.30). Furthermore, despite the reduction proposed, this was not sufficient to overcome concerns of amenity injury to occupiers of 10a and 10b (paras. 28 and 29) through outlook and general character harm.
- 4.2 The recent planning application F/YR25/0084/F proposes to reduce the building by around 12m. This was considered at a planning committee meeting on 30 April 2025. The officer assessment of the revised scheme concluded that whilst the amenity harm previously identified to occupiers of 8a had been resolved through the general size reduction (including reduction in hardstanding), the impacts to 10a and 10b had not been sufficiently overcome and was recommended for refusal, repeating the previous findings of the Planning Inspector.

- 4.3 Having regard to the minutes of the committee meeting; Members concluded that a landscaping condition could be imposed to secure a scheme which would address the visual impact of the building and protect neighbouring amenity of 10 and 10b, thereby enabling a resolution to approve the development, subject to such a landscaping condition. Conditions were delegated to officers to address this matter.
- 4.4 Having regard to the nature and aims of any such condition, it would need to secure the following;
- Details of landscaping scheme including, species of trees and/or hedgerow: to ensure appropriate species are used;
  - The standard (size) of each plant: to ensure adequate coverage and thereby almost immediate positive impact;
  - Planting method statement: to ensure said plants have the best potential to thrive;
  - Long-term management plan for the lifetime of the development, (generally considered to be a minimum of 75 years<sup>1</sup>): to ensure the long-term effects of the planting on amenity.

## **5 Potential mitigation options**

- 5.1 The potential opportunities for soft landscaping to mitigate the impact have been discussed with a Landscape consultant and the Council's Planning Enforcement team, to understand the feasibility of established planting along the western elevation, what planting this may comprise, how effective this is likely to be at addressing the amenity harm identified, and measures that could be put in place to ensure that it is maintained for the lifetime of the development (enforceable).
- 5.2 The western flank wall which extends along the full width of the garden serving 10b and most of 10a will require planting along its full length, in order to ensure its uncharacteristic industrial appearance is screened. The western wall of the building is set back approximately 1m to 1.2m from the boundary fences of 10a and 10b.
- 5.3 The landscape consultant has advised that the limited area will mean that the scope for meaningful planting in this location will be heavily constrained, likely requiring significant investment in, for example; raised beds along this section to raise any planting to a height where its impact will be notable from the onset; and, a sophisticated irrigation system to ensure adequate feed to the plants is maintained.

1 Planning Practice Guidance, Paragraph: 006 Reference ID: 7-006-20220825, Revision date: 25 08 2022)

- 5.4 Furthermore, in order to ensure that screening is constant throughout the year, they would need to be an evergreen species, whilst noting that Coniferous planting is deemed to be out of character and inappropriate, in-line with the conclusions of the Inspector (para.30).
- 5.5 Due to the need to screen the entire height of the building to disguise its 'alien' and 'industrial' features, it would be necessary to ensure that any planting covered the entire wall of the building. The landscape consultant has advised that trees would be necessary to ensure scale. However, due to the planting bed limitations, standard trees would not be appropriate, as they would require a deeper area to grow and would likely result in significant encroachment over the neighbouring land.
- 5.6 Whilst pleached trees (ones that are trained to grow across walls via trellis system) are a potential option, there are limited evergreen options in this regard, notwithstanding that they would take a number of years to fully establish and even then, their height and density is not necessarily guaranteed. Should the trees become ineffective at screening the building at any time e.g., become dead, diseased or stunted, they would be expected to be replaced. A cursory review of companies selling such trees (Barcham primarily used for comparison) indicates that trees could cost in the region of £500.00 to £1,425.00 per tree (it is calculated that around 10 to 12 trees would likely be required to cover the flank wall) notwithstanding that there are no known options to secure anything that would provide almost immediate relief from the physical appearance of the building.
- 5.7 Furthermore, any such trees planted would need to have Tree Protection Orders placed on them, to ensure that any pruning works to them is controlled, notwithstanding any long-term management plans in place. Whilst this would be a justified burden on the applicant or any future occupier of the host property, it may become problematic for the neighbouring occupiers, as they would require consent to prune back any overhang that may occur in their garden. And finally, as already noted, the management of the trees would need to be for the lifetime of the development (c.75 years).
- 5.8 It should also be recognised that even if planting were to be successful, creating a wall of green covering over 100m<sup>2</sup> in area would also be out of character and therefore likely still to result in an oppressive and uncharacteristic outlook for the occupiers of 10a and 10b. Therefore, it is unlikely to address the amenity issues currently experienced and as identified by the Inspector, rather simply changing the physical appearance from a wall of grey corrugated panel to a wall of leafy green panel. Soft landscaping schemes are most effective where it results in changing tones, textures, densities and scales. Given the limited depth of the planting area and the unnatural way the trees will need to be trained, the landscaping would likely appear an unnatural and alien feature,

thereby not necessarily addressing the character issue identified, or removing an oppressive continuous wall.

- 5.9 In summary, to effectively screen the building would likely be at considerable expense to the applicant, with likely ongoing costs to manage, maintain and potentially replace any planting, notwithstanding potential burden borne by neighbouring occupiers. Notwithstanding this, should the scheme succeed in becoming established, this would likely result in a screen of leaf which is out of keeping with the rural surroundings and would appear an unnatural but dominant feature, which would likely still result in harm to outlook and general amenity to the neighbouring occupiers.

- 5.10 The Inspector at paragraph 30 of their report notes;

*Landscape planting in narrow strips along the boundaries is unlikely to adequately mitigate the harm, and native planting of a kind likely to be suitable in a rural area would require broader margins than the 1m or so available at the rear of the building and proposed by the appellant elsewhere.*

- 5.11 Having considered the options and opportunities for meaningful soft landscaping to mitigate the harm as assessed above, it is concluded that the concerns of the Inspector were well founded.

## **6 Planning Conditions**

- 6.1 Section 100ZA (2) of the Town and Country Planning Act 1990 sets out that all planning conditions must be;

- (a) necessary to make the development acceptable in planning terms,
- (b) relevant to the development and to planning considerations generally,
- (c) sufficiently precise to make it capable of being complied with and enforced, and,
- (d) reasonable in all other respects.

- 6.2 Furthermore, Local Planning Authorities are required to give reasons for the imposition of each condition (Town and Country Planning (General Development Procedure) Order 1995, Article 22).

- 6.3 The landscaping planning condition is deemed by the Planning Committee to be necessary to make to the development acceptable, specifically in order to avoid the amenity harm currently experienced by occupiers of 10a and 10b in respect of poor outlook caused by an uncharacteristic and sizeable structure, having regard to policy LP16 of the Fenland Local Plan.

- 6.4 Such a condition would need to ensure therefore that the building becomes completely screened in order to overcome the concerns over its alien and uncharacteristic appearance.
- 6.5 As noted above, it is unlikely that any amount of planting (if successful) would overcome the uncharacteristic appearance of the structure per se, only change its surfacing from grey industrial panelling to green leaf. Notwithstanding, the outcomes of such a condition through the effectiveness of the planting are not guaranteed, placing a potentially onerous and very long-term burden on the applicant, of having to try to grow planting to a sufficient scale and density to ensure it complies with the aims of the condition, notwithstanding the potential burden on neighbours where it comes to any pruning that may be required. In essence, it could be reasonably argued that such a planning condition, given the uncertainty over its ambitious outcomes, is unrealistic and therefore, unreasonable.
- 6.6 It would also be difficult to ensure that such a condition could be precise enough to ensure that it was enforceable. The most it could reasonably require is for planting and long-term management to be carried out but would have no realistic control over the actual growth of each plant and therefore the effectiveness of any planting.

## **7 Conclusions**

- 7.1 In conclusion, it is considered that a landscape condition could not be realistically relied upon to mitigate the specific harm identified in this instance. Therefore, any such condition would fail to meet the legal tests as it would be unreasonable and unenforceable.
- 7.2 Paragraph 56 of the NPPF sets out that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 of the NPPF advises that planning conditions should only be imposed where they meet all of the tests [of Section 100ZA (2) of the Town and Country Planning Act 1990].
- 7.3 Due to the failure to meet at least two of the tests as set out above, such a planning condition should therefore not be imposed. Having regard to NPPF paragraph 56 therefore, it is not possible to adequately address the unacceptable impacts of the development through planning condition.