F/YR22/0755/O

Applicant: Mr D Upton Agent: Mr R Papworth Morton & Hall Consulting Ltd

The Piggeries, Flaggrass Hill Road, March, Cambridgeshire

Erect up to 4 x single storey dwellings involving demolition of existing buildings (outline application with matters committed in respect of access) (part retrospective)

Officer recommendation: Refuse

Reason for Committee: Referred by Head of Planning on advice of Committee

Vice-Chairman

1 EXECUTIVE SUMMARY

The site lies outside the settlement area of March and outside of any other settlement area identified within policy LP3 of the Local Plan. The principle of residential development on this site is not supported by Policy LP3 of the Local Plan in that the site is located in the open countryside. The proposal would also unacceptably impact the character and appearance of the area owing to the location of the proposed dwellings in a back land setting where this does not fit with the pattern of development at the locality and would be unsustainably linked to nearby services and facilities.

It is well established case law that previous planning decisions are capable of being material considerations, meaning that they may need to be considered by those determining subsequent planning applications. Recent case law has established that;

"a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision- making." (R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050)

The Council has refused planning permission for this development on three previous occasions, all under the current Local Plan. Whilst some of the previous issues have been overcome, there remains an in principle issue with allowing development at this location and whilst the proposed bungalows are preferable to two storey dwellings, this does not completely overcome the character and appearance issues raised in previous reasons for refusal.

The previous refusals of permission are material considerations which should be afforded significant weight. There are no material circumstances which lead to an alternative conclusion being acceptable.

- 2.1 The site comprises approximately 0.25 hectares of agricultural land situated northeast of March but outside of the main settlement. The site was last in use as a Piggery and had been partially covered with dilapidated buildings and vegetation, however, the buildings and vegetation have recently been cleared from the site. At the time the case officer made the site visit there were piles of rubble and vegetation on the site but otherwise it comprised bare earth. The site is accessed via a single track from the eastern side of Flaggrass Hill Road. This road connects to Creek Road approximately 130 metres south of the proposed site access.
- 2.2 The area of Flaggrass Hill Road and Creek Road which encompass the site is characterised by relatively modest single storey dwellings which front onto the highway.
- 2.3 The site lies within Flood Zone 1 having regard to the latest Environment Agency Flood Maps for Planning. There is a drain which runs along the east boundary of the site.
- 2.4 The site is crossed by the Fen Causeway, an important Roman road in an area exceptionally rich in archaeology.

3 PROPOSAL

- 3.1 The application seeks outline planning permission to erect up to four single storey dwellings with all detailed matters reserved for subsequent consideration except for the access which would be via the existing vehicular access into the site. The application is part restrospective because the existing buildings at the site have already been demolished.
- 3.2 An indicative site layout plan has been submitted with the application which shows four dwellings laid out within the site two towards the front of the site and two set to the rear, however this drawing is not for consideration but is for illustrative purposes only.

Full plans and associated documents for this application can be found at: Planning
- Fenland District Council

4 SITE PLANNING HISTORY

4.1 F/YR21/1057/F Erect 2 x 2-storey 4-bed dwellings with covered parking involving demolition of existing outbuildings – refused 02.11.2021

F/YR17/1230/F Erection of 2 x 2 storey 4-bed dwellings with attached double garages involving demolition of outbuildings – refused 01.03.2018

F/YR16/0999/F Erection of 2no x 2-storey, 4 bed dwellings with attached double garages involving demolition of existing outbuildings - refused 21.12.2016

5 CONSULTATIONS

5.1 **FDC Environmental Health** – No objections subject to contaminated land condition being imposed should permission be granted

- 5.2 CCC Archaeology Records show the site lies in an area of high archaeological potential. The proposed development area is crossed by the Fen Causeway, an important Roman Road in an area exceptionally rich in archaeological remains. If approved, the development should be subject to a condition requiring archaeological investigation and a programme of work secured through a Written Scheme of Investigation (WSI)
- 5.3 CCC Highways have not responded at the time of writing. Previously did not object subject to conditions but requested FDC to consider sustainability of the site in terms of its situation.
- 5.4 March Town Council no response received.

Local Residents/Interested Parties

5.5 **Objectors**

Six letters of objection have been received from neighbours who all live on Creek Fen Road except one on Flaggrass Hill Road. They raise the following concerns;

- We were told this application was to be for 2 dwellings which we would accept but not for four.
- If this is approved there should be a stipulation that the dwellings are single storey only.
- Four previous applications have been refused by Planning Committee
- Should remain agricultural/horticultural or equine use of the land
- Doesn't comply with policy. The site is not within March and housing on this site is not necessary. Even the towns upgraded broadband stopped at the junction of Creek Road/Estover Road
- There are no streetlights or footpaths to the town of March from this site
- Design/appearance
- Loss of view/outlook
- Traffic and highways
- Would set a precedent
- Parking
- Drainage and flooding
- Loss of privacy
- Light pollution
- Density
- Wildlife concerns the site has been cleared to avoid need for a full ecology report
- There would not be access to the ditch as this is on my property

5.6 **Supporters**

Letters of support have been received from 38 individuals from 37 households from various addresses across March . However, 34 of these letters were submitted prior to the Council undertaking the statutory consultation and therefore the validity of these is perhaps somewhat questionable. For this reason the representations were not considered in relation to the triggers for reporting to Committee set out in the Council's Scheme of Delegation.

The comments received are summarised as follows:

- If left undeveloped, the site would become overgrown again attracting vermin and rubbish to be dumped on the ground
- The new dwellings will occupy a poorly used and derelict plot and development would improve the area
- As there are already a number of other dwellings nearby, this development would not create a precedent
- As the project is small there should be no issue with services such as water, drainage, sewage and traffic
- As a developer, more plots of land are needed in March. Need more executive type homes on plots like this
- Four bungalows would fit with the properties already in this area and would be aimed at people of retirement age
- One property owner comments that he owns three other properties near to the site and urges a sensible decision be made
- Children have had to be deterred from entering the site over the years
- It would improve the street scene
- It will provide jobs for the building trades
- Will improve the view of residents who live in the area (officer note: this resident does not live in the area)
- There are not enough larger houses to keep families here. It will allow families looking for a larger home to have space and the feel of living in the countryside
- This part of March is out on a limb, a little neglected though not right off the beaten track as a good local walking and cycling route

6 STATUTORY DUTY

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).

Section 40 of the NERC Act places a duty to **conserve biodiversity on public authorities in England**. It requires local authorities and government departments to have regard to the purposes of conserving biodiversity in a manner that is consistent with the exercise of their normal functions such as policy and decision-making.

7 POLICY FRAMEWORK

7.1 National Planning Policy Framework (NPPF)

Paragraph 79 to 80: Rural developments Paragraph 120: Brownfield land

Chapter 8: Healthy and safe communities

Chapter 9: Sustainable Transport Chapter 15: Natural Environment

Chapter 16: Conserving and enhancing the historic environment

7.2 Fenland Local Plan 2014

LP1 – A Presumption in Favour of Sustainable Development

LP2 – Facilitating Health and Wellbeing of Fenland Residents

LP3 – Spatial Strategy, the Settlement Hierarchy and the Countryside

LP4 – Housing

LP5 – Meeting Housing Need

LP12 - Rural Areas Development Policy

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

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

LP16 – Delivering and Protecting High Quality Environments across the District LP19 – The Natural Environment

7.3 March Neighbourhood Plan 2017

H2 – Windfall Development

H3 – Local Housing Need

8 KEY ISSUES

- Principle of Development
- Impact on character and appearance of area
- Residential amenity
- Ecology/Biodiversity
- Access and highway safety
- Flood risk and drainage
- Historic Environment

9 BACKGROUND

9.1 From the site history set out above, it can be seen that development proposals have recently been refused at this site. The applications were refused for the following reasons (in summary);

16/0999 1. Countryside location

2. Biodiversity

3. Character and appearance

17/1230 1. Unsustainable location

2. Biodiversity

3. Character and Form

21/1057 1. Outside Settlement

2. Biodiversity

3. Character/harm

9.2 The above applications were for full planning permission and were all for two storey dwellings. Of note, however, is that every application was refused planning permission due to the site being outside of the settlement in an unsustainable location. The 2017 application was also refused at a time when Fenland could not demonstrate a 5-year housing land supply and so the tilted balance was engaged in favour of the development and yet it was still refused. None of the previous refusals by FDC have been tested at appeal.

10 ASSESSMENT

Principle of Development

10.1 Policy LP3 of the Fenland Local Plan, 2014 sets out the settlement strategies for the district and is an important part of the delivery of sustainable development in the area. LP3 identifies March as one of the main areas for growth. However, as with the previous conclusions of the Council, the site is considered to fall outside

of the main settlement of March and sits within a small outlier of development served by a section of single track, unlit road. By virtue of the site location and characteristics, it is considered to fall in the countryside where policy LP3 dictates that development should be strictly limited, primarily to land-based enterprises. As the proposal does not propose any kind of land-based enterprise, there is clear conflict with LP3.

- 10.2 Paragraphs 78 to 80 of the NPPF address rural housing, noting that where there is an identified need to support rural communities, Local Authorities should support opportunities to locate housing where it will enhance or maintain the vitality of rural communities (Para.79), whilst avoiding isolated development in the countryside unless special circumstances apply (para.80).
- 10.3 The site would not be considered as 'isolated' having regard to NPPF paragraph 80, given the 20 or so dwellings in the immediate vicinity. With regards to paragraph 79 of the NPPF however; whilst the future occupiers of the development would likely support the existing facilities and services of March and would add to the existing outlier community at Flaggrasshill Road and Creek Fen, March town's facilities and the local community do not appear to be under any kind of threat to justify an exception to policy LP3 in this case, notwithstanding that this benefit would be very modest through the introduction of just 2 dwellings.
- 10.4 The applicant opines that the site does not lie in the countryside due to the surrounding residential dwellings, however, this is does not reflect the policy position which is set out above and has been reported on and accepted by Committee in the previous decision which was made only 9 months ago. Neither the policy position nor anything in terms of geography has changed in this time, therefore the proposed site, in terms of its location has not become more sustainable during this period.
- 10.5 There are no development plan policy reasons or other material considerations which would warrant a different decision being made in this case with regard to the principle of development as to do so would make for inconsistent decision making by FDC.

Brownfield Land

- 10.6 It is acknowledged that the NPPF (para. 120 (c)) sets out that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs, supporting appropriate opportunities to remediate despoiled. Degraded, derelict, contaminated or unstable land.
- 10.7 In this regard, the NPPF defines Brownfield Land in its Annex 2: Glossary (p.65), setting out that this is defined as 'Previously Developed Land' (p.70) as ;

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built- up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

- 10.8 Given the last known use of the site was as a Piggery, which is an agricultural use, the site cannot be classed as brownfield land. Furthermore, and notwithstanding this, as the site sits outside of the settlement the substantial weight implied by NPPF para. 120 is not applicable, as its focus appears to be on sites within settlements. As such, the development cannot be given the substantial weight referred to under NPPF para.120.
- 10.9 As noted, the site comprises agricultural land and the development would result in the loss of this. However, given the overall scale of the development, the loss of agricultural and would not be so significant to warrant refusal on this ground.

March Neighbourhood Plan (MNP)

- 10.10 Policy H2 (Windfall Development) of the MNP sets out that proposals for residential development will be supported where they meet the provisions of the Fenland Local Plan plus additional criteria a) to g) covering amenity, open space retention, flood risk, highway safety, infrastructure, design and retention of community facilities.
- 10.11 Whilst the criteria are nonetheless considered through policies of the FLP, the principal element of H2 sets out that all windfall development should accord with FLP polices. As such the proposal also appears to conflict with the principle of policy H2 of the MNP, in view of its conflict with the FLP policy LP3.
- 10.12 In conclusion, there is neither local nor national support for the principle of the development in regard to the spatial location of the development.

Five Year Housing Land Supply

- 10.13 At present, the Council is able to demonstrate a 6.69 year supply of housing land and therefore the 'tilted balance' does not apply, as it is considered that the housing policies of the FLP are up to date and should take precedent over the determination of planning applications for housing proposals.
- 10.14 The comments received by supporters which state that this housing is needed and such sites are needed is not borne out by the evidence gathered by the Council concerning housing land supply in the district.

Character and Appearance

- 10.15 The area is characterised by single-storey, generally modest and traditional dwellings that align the highway along the eastern edge of Flaggrasshill Road and wrap around the northern part of Creek Road, forming a relatively tight-knit row of single-storey properties, extending to countryside (with sporadic, modest structures) to the rear, which is a distinct part of the area's character. This is also distinctly different to the single, large 2-storey dwelling and farmstead associated structures opposite on the western side of Flaggrasshill Road and the linear arrangement of 2-storey dwellings c.300m west along Creek Road. Whilst it is acknowledged that one comment refers to the adjacent dwelling, Wood Paddock incorporating a dormer in its roof space, its overall scale is still generally that of a single storey structure, in keeping with the distinctive character of the area.
- 10.16 The submitted design and access statement refers to the proposals being for single storey dwellings ie bungalows only. The description of development as submitted just referred to "dwellings" therefore for clarity, the case officer requested that the description be altered to refer to single storey dwellings, which the planning agent agreed to.

- 10.17 The proposed single storey dwellings would be sited to the rear of the existing frontage development on Creek Fen and Flaggrass Hill Road. If the dwellings are to be genuinely single storey ie not dormer bungalows, then they would not be highly visible beyond the existing dwellings from the street and would only be glimpsed through the access. However, development of the site for residential purposes is not in keeping with the pattern of development in the locality which comprises all frontage development. There are no residential addresses within this location that sit to the rear of other properties. Although the provision of bungalows is an improvement upon the previously submitted large two storey dwellings in previous applications, the proposal still fails to reinforce local identity which includes a frontage development settlement pattern in this outlying area. Therefore, the proposal is contrary to policy LP16 (d) in this regard and DM3 of the Delivering and Protecting High Quality Environments In Fenland SPD.
- 10.18 It is noted that comments have been received which state that the development will tidy up the site and will improve the street scene. This is not good enough reason to permit development on a site that is not acceptable for residential development in principle. The site is not highly visible from the street and secondly, if this were a standard by which development should be allowed it would encourage deliberate neglect of land and in addition the Council possesses powers to ensure that land considered "untidy" is tidied up.

Residential Amenity

10.19 It is considered that the proposal could likely be built to ensure that good levels of amenity are retained for neighbouring occupiers, particularly as the proposed development now refers to single storey dwellings only. The indicative site layout plan shows that reasonable levels of private amenity space could be provided for the future occupiers of the development if permission were being recommended to be granted. As such the proposal is likely to comply with Policy LP16 of the Local Plan in this regard and matters of the detailed design and position of windows etc would be assessed as reserved matters.

Ecology/Biodiversity

- 10.20 Previous applications were refused due to a lack of a suitable ecological investigation at the site. The applicant previously advised that an ecology report was awaited from a consultant, but applications were submitted without such report and were therefore refused for lack of information upon which to assess a determination of such issues. Policies LP16 (b) and LP19 require decisions to be taken on the basis of having reliable up to date ecological information.
- 10.21 During the time since the previous refusal and submission of the current application, the site has been cleared of practically all growth and structures that could have provided ecological habitat. There are retained hedgerows to some of the boundaries but little left within the site that would provide ecological value. It is not known whether there would have been any breach of other legislation, such as the Wildlife and Countryside Act 1981. The site clearance would unlikely have been preventable from a planning perspective, had the local planning authority known it was to take place. As there will be little ecology left to evaluate, it is considered that the application could not be refused for lack of a suitable ecological assessment. If permission were being recommended, then a condition would be imposed requiring an ecological enhancement scheme to be submitted for approval.

Access and highway safety

- 10.22 The Highway Authority has not commented on the current application and previously not objected to the other proposals but had requested conditions securing the access arrangement (with suitable drainage) and the provision of the parking prior to first occupation. Subject to these measures therefore, the development is not anticipated to result in any highway safety issues, in-line with Policy LP15 of the FLP and NPPF para. 11.
- 10.23 It is noted that there are no footpaths or street lighting available for around 300m from the site, until you reach the row of terraced dwellings along Creek Road to the west. This means that occupiers would have to navigate highway which does not prioritise pedestrian movements, taking safe refuge on the highway verge when vehicles pass and would have poor visibility during darker periods, due to the lack of streetlighting in conflict with the aims of NPPF para. 112 and LP15 of the FLP. This further reinforces the unsustainable location of the site for new housing and provides an example for the rationale for the Council's settlement strategies under LP3 in terms of placing people and property in the most sustainable location to safely access services and facilities and improves accessibility for everyone by all modes of travel.
- 10.24 Therefore, whilst the unsustainability of the site is highlighted through the limitations of the highway network which serves it, the development itself is unlikely to have a significant adverse impact on the highway network.

Flood risk and drainage

- 10.25 Despite the fact that there is no mains sewage system to connect to, and policy LP15 advises against foul drainage structures managed by residents, previous applications have not been refused for drainage issues. Similarly, the applicant states that surface water will be collected on site via soakaways and discharged into the drain on the western boundary if consent is granted. If the application were to be recommended for approval, then a condition requiring submission of a foul and surface water drainage strategy alongside submission of the first reserved matters application would be required in order to ensure compliance with policy LP 15 of the Local Plan.
- 10.26 The site lies within flood zone 1 which is at lowest risk of flooding, therefore flood risk is not an issue.

Historic Environment

- 10.27 Paragraph 194 of the NPPF states that where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 10.28 Policy LP18 (a c) requires development proposals to assess the significance of the heritage asset to determine its archaeological interest, assess the impact of the works upon the asset and provide a justification for the works.
- 10.29 The application has provided no information about the archaeological interest of the site and the fact that the Fen Causeway (Roman road) runs through the site.

Nevertheless, CCC Archaeology has responded and requires a condition to be attached to any permission granted which requires submission of a Written Scheme of Investigation (WSI) for an archaeological evaluation of the site. It is already known that the site has high potential for archaeological remains and therefore s field evaluation of an appropriate type and scale to be set out in a WSI is necessary in order to comply with the requirements of the NPPF and policy LP18. If the application were being recommended for approval, such a condition would need to be imposed.

11 CONCLUSIONS

- 11.1 The site lies outside the settlement area of March and outside of any other settlement area identified within policy LP3 of the Local Plan. The principle of residential development on this site is not supported by Policy LP3 of the Local Plan in that the site is located in the open countryside. The proposal would also unacceptably impact the character and appearance of the area owing to the location of the proposed dwellings in a back land setting where this does not fit with the pattern of development at the locality and would be unsustainably linked to nearby services and facilities.
- 11.2 It is well established case law that previous planning decisions are capable of being material considerations, meaning that they may need to be considered by those determining subsequent planning applications. Recent case law has established that:
 - "a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision- making." (R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050)
- 11.3 The Council has refused planning permission for this development on three previous occasions, all under the current Local Plan. Whilst some of the previous issues have been overcome, there remains and in principle issue with allowing development at this location and whilst the proposed bungalows are preferable to two storey dwellings, this does not completely overcome the character and appearance issues raised in previous reasons for refusal.
- 11.4 The previous refusals of permission are material considerations which should be afforded significant weight. There are no material circumstances which lead to an alternative conclusion being acceptable.

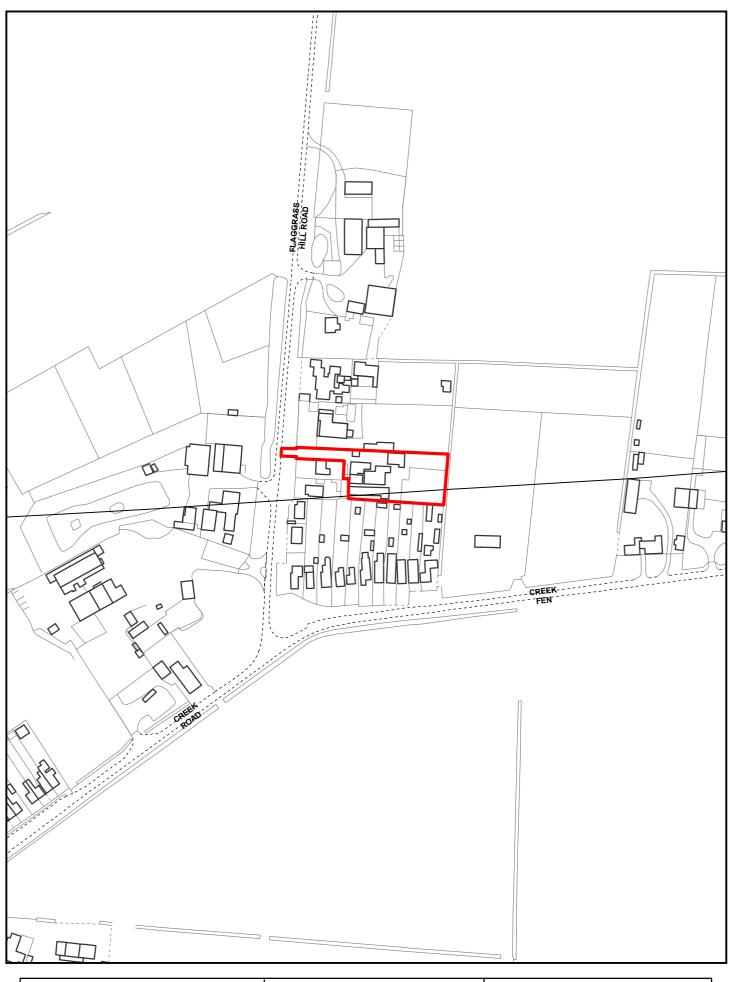
RECOMMENDATION

Refuse; for the following reasons;

1. The proposed development is located in an unsustainable location outside the settlement limits of March where residential development is not normally supported unless justified. Development in this location would introduce additional development into an area that is currently open and has a strong relationship with the adjoining countryside. Furthermore, the site by virtue of the lack of illuminated footpaths and single-track road would limit opportunities for sustainable modes of travel. The proposal is therefore contrary to Local Plan Policy LP3 and LP15 of the Fenland Local Plan 2014 and to the guidance contained in the National Planning Policy

Framework, in particular; Chapter 9.

2. Policy LP16 (d) of the Fenland Local Plan 2014 requires all new development to make a positive contribution to the local distinctiveness and character of the area and to respond to and improve the character of the local built environment and to reinforce local identity, not adversely impacting on, amongst other things, the settlement pattern. The proposed back land development is at odds with the frontage only development along Flaggrass Hill Road and Creek Fen and therefore unnecessarily departs from the pattern of development in this outlying area. Furthermore, it would unnecessarily extend built development into the open countryside which would unacceptably harm the rural character of the area. As such, the proposal is contrary to criteria (d) of Policy LP16 of the Fenland Local Plan 2014 and Chapter 12 of the NPPF in respect of achieving well-designed places.



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Fenland

CAMBRIDGESHIRE
Fenland District Council



