



East Cambridgeshire District Council

Minutes of a Meeting of the Planning Committee

Held at The Lighthouse, Lynn Road Ely, CB7 4EG at 2:00pm
on Tuesday 9 July 2024

Present:

Cllr David Brown
Cllr Lavinia Edwards
Cllr Martin Goodearl
Cllr Keith Horgan (substitute for Cllr Christine Ambrose-Smith)
Cllr Bill Hunt (Chair)
Cllr James Lay
Cllr Ross Trent
Cllr Christine Whelan
Cllr Gareth Wilson

Officers:

Kevin Drane – Trees Officer
Gemma Driver – Planning Officer
Rachael Forbes – Planning Officer
Leah Mickleborough – Interim Senior Democratic Services Officer
David Morren – Interim Planning Manager
Angela Tyrrell – Senior Legal Assistant

In attendance:

Cllr Mark Goldsack (Local Member, Agenda Item 6)

Alistair Morbey (Applicant, Agenda Item 5)
Amy Richardson (Applicant's representative, Agenda Item 6)
Richard Seamark (Agent, Agenda Item 5)
Simon Smith (Objector, Agenda Item 6)

3 other members of the public

Melanie Wright – Communications Officer

11. Apologies and substitutions

Apologies for absence were received from Cllrs Chika Akinwale, Christine Ambrose-Smith and John Trapp

Cllr Keith Horgan was attending as a substitute for Cllr Christine Ambrose-Smith

12. Declarations of interest

No declarations of interest were made.

13. Minutes

The Committee received the Minutes of the meeting held on 5 June 2024.

It was resolved unanimously:

That the Minutes of the Planning Committee meeting held on 5 June 2024 be confirmed as a correct record and be signed by the Chairman.

14. Chairman's announcements

The Chair reminded members of their personal responsibility to seek a substitute when they are unable to attend the Committee.

15. 23/01056/VARM – Ben's Yard, Soham Road, Stuntney

Gemma Driver, Senior Planning Officer, presented a report (Z29, previously circulated) recommending refusal of an application seeking to vary condition 18 of application 18/01793/FUM, relating to the opening hours of the restaurant and café on the site.

The Senior Planning Officer reminded members of the history of the planning application on the site and that the variation sought to extend the opening hours of the café and restaurant to 11pm. The current permission allowed the café to operate from 7am to 7pm on Monday to Saturday, and 8am to 5pm on Sunday and bank holidays. The main considerations were the principle of development and highways and parking.

To accompany the original application 18/01793/FUM, a retail impact assessment had been undertaken to understand how the site may affect existing business enterprises. The proposal at the time was for a unique artisan experience, with the café and restaurant being ancillary to the primary retail elements of the site.

Planning Policy EMP7 supports proposals to expand existing attractions where an identified need to ensure continued viability has been demonstrated. The senior planning officer identified that the costs in the current application were based on a full-time operation, and it was not clear how the applicant had worked to reduce costs nor demonstrated how the current café was unviable. The current proposals would not extend the facility, but instead be tantamount to a new restaurant development in the countryside.

The Senior Planning Officer drew members attention to policy COM1 which seeks to focus leisure uses into town and village centres unless it can be demonstrated there would be no adverse impact on the nearest town centre.

A new impact assessment had been undertaken to support the application, which demonstrated that 35% of the turnover from the café and restaurant would be secured during the proposed extended hours, this equates to £0.89 million.

The Senior Planning Officer concluded by confirming that the Local Highways Authority had not objected to the application and noted the benefit of creating 12.6 new full time equivalent jobs. However due to the proposal constituting a new facility in the countryside and the potential impact on local town centres, it was recommended to refuse the application.

The applicant, Richard Morbey, addressed the Committee. He confirmed since opening Ben's Yard had become home to 11 businesses employing over 100 individuals. Analysis of visitors and internet enquiries confirmed the site was attracting many people from outside of East Cambridgeshire.

Mr Morbey explained that when the site opened, his family operated the café but it had now been transferred to a separate provider. As the business developed, they were gaining intelligence on the type of offer required from the café and restaurant, and changes were necessary beyond what the current permission allowed.

The impact assessment for the current application demonstrated that there would be a very low impact on Ely and Soham of less than 1%, and that the £0.89m trade in the report would include from venues outside of East Cambridgeshire. He highlighted that there had been no objections from either neighbours or the Council's own technical officers.

Members asked questions of the applicant. In response to a question from Councillor Horgan, the applicant confirmed the café and restaurant were two separate units but run as one business, and in response to Cllr Lay, that the café could serve 100 covers.

Councillor Horgan asked the Senior Planning Officer how the operating hours had been determined in the original application, the outcome of the impact assessment and whether the size of the café and restaurant would determine whether it would have a significant impact. The Senior Planning Officer explained she had not been the planning officer for the original application, but understood the operating hours had been based on recommended hours from the retail impact assessment and from consultation between the local planning authority and the applicant. Her understanding of the planning policy was that if there were proposals for a smaller restaurant and café, they would not necessarily require an impact assessment but their overall impact on the local economy would still need to be assessed in determining whether to award planning permission. She reminded members of the outcome of the latest impact assessment and that officers had reached their conclusions based on the report received.

Following questions, members debated the merits of the proposal. Councillor Lay felt that now the business was established outside of the town centres, it

would not be advantageous for it to fail. Councillor Wilson highlighted that the licensing committee had recently given permission for a rock festival on site.

The Interim Planning Manager reminded members that there was not evidence available to demonstrate that the business was unviable with this application, and that the existing permission did allow extended operating hours on several occasions each year to support events.

Councillor Goodearl noted that competition to other local businesses could be healthy, and Councillor Horgan felt that the site had a growing local reputation and offered a place to bring the community together.

Councillor Brown believed the application was challenging. He wanted the business to succeed, but developments should accord with planning policy and it wasn't clear if there was sufficient demand for the service or the business viability relied upon it.

Concluding, Councillor Hunt, as Chair, noted the views of other local bodies. He particularly highlighted City of Ely Council, which had concerns but no formal objections, and the destination management organisation, Visit Ely, had no comments. The Council's policies do allow development where there is no adverse impact, and he felt on balance that there was not sufficient adverse impact identified to justify refusal. With that in mind, he proposed approval of the application, which was seconded by Councillor Goodearl.

It was resolved with 7 votes in favour and two abstentions

That planning application 23/01056/VARM be **APPROVED**, contrary to the officer recommendation, on the grounds that the application would not cause significantly detrimental to the vitality or viability of nearby town centres and thus accords with local plan policies COM1 and EMP7

16. 24/00300/VAR

Rachael Forbes, Planning Officer, presented a report (Z30, previously circulated) recommending refusal of an application seeking to remove clause 10 of the previously approved application E/91/0367/0 and clause 2b of the associated s.106 agreement, which required that the premises be occupied by those involved in the management of the adjacent livery business.

In terms of the principle of development, policy GROWTH2 restricts development outside the development envelope unless an exemption applies. The exemption includes development for rural workers under policy HOU5, whereby a restriction would be placed on the property. Policy HOU5 allows for occupation restrictions to be removed in specific circumstances, namely that the restriction is no longer required, it has been marketed for at least a year and at least 3 registered social landlords have been approached to let the property to rural workers as an affordable rent, and this option has been refused by the registered social landlords.

In terms of need, the original livery business has moved to a separate location. Prior to this, the business rented grazing land for horses as the site is not big enough to provide sufficient grazing. The rental agreement for additional land has come to an end. The applicant had not provided further information about why agreement has ended and there could be the possibility to vary the occupancy condition to allow occupation associated with other rural businesses on the site.

The Planning Officer addressed the requirement for marketing. No marketing had been carried out on site. The planning officer noted other sites where, at appeal, it had been determined marketing was not required, however that did not provide sufficient grounds in this case to justify the lack of marketing.

The Planning Officer highlighted no evidence had been submitted to demonstrate the applicant had approached Registered Social Landlords. With this in mind, it was felt that the requirements of criteria 3 of policy HOU5 had not been met.

Turning to the s.106 agreement, the application highlighted there was not sufficient land to operate a livery business, and that two other properties had been given permission on the site without such a restriction. The planning officer reminded members that those properties had been granted permission when the Council did not have a 5 year land supply, which constituted a material consideration at the time. This was no longer the case. With the lack of information on available rental land, the view remained that the s.106 agreement served a useful purpose.

The Planning Officer confirmed that there had been no objections from the Local Highways Authority, and whilst Environmental Health had raised concerns, there were no formal objections. She referred members to the objections raised by local residents.

In concluding, the Planning Officer confirmed that there were no material considerations that would outweigh the lack of compliance with policy HOU5, and therefore it was recommended to refuse permission.

Simon Smith, a local resident, addressed the committee to object to the application. He identified he owned the paddock land which had been rented to the livery stables previously, which was still potentially available to a future operator on the site. He believed the site had not been marketed, and indicated to the committee he would be interested in purchasing the site himself and indicated that he may look to operate a livery yard from the site.

In response to questions from Councillors Wilson and Horgan, Mr Smith confirmed he would be interested in purchasing the whole site, including the house, if made available for sale.

Amy Richardson spoke on behalf of the applicant. She drew members attention to the need to follow policy, unless there are material considerations

otherwise. The present planning condition related to the livery business. The applicant had wanted to purchase further grazing land on the site, but this had not been made available. She highlighted it would be challenging for any livery operator to invest in the site if the grazing land could be at risk of being withdrawn.

Ms Richardson recognised the policy requirement for the site to be marketed, and reminded members of appeal cases where this had been deemed not required. She highlighted that whilst officers had indicated the condition could be varied, there were other properties which had been granted permission on site without this condition, and that the Council itself had allowed a change of use at the applicant's new site to allow for livery. She also refuted the comments made by the objector, highlighting he was not experienced in operating a livery business and potentially was the only individual who may be capable of complying with the existing planning clauses.

In conclusion, she felt given the situation, there was sufficient grounds for the Council to vary from its policy.

The Chair invited members to ask questions of the Applicant's representative. Councillor Horgan referred to the land between the applicant's site and the objector's site, which it was confirmed was owned by a relative of the applicant.

Local ward member, Councillor Mark Goldsack, was invited to speak. He confirmed in his view this application was not straightforward. He drew members attention to a letter submitted by the British Riding Schools Association, which confirmed the site was inadequate for livery stables, and that in granting permission for two other properties on site, the Council had further reduced its viability. He recognised the potential to vary the permission to allow other rural uses of the site, however this could cause other impacts for neighbouring properties. He felt that calling in the application would enable the wider considerations on the site to be debated.

In response to the point raised by Councillor Goldsack, the Chair sought clarity on the extent of the site occupied by the two other residential dwellings. Whilst an exact answer could not be provided, it was felt that the properties did not constitute a significant part of the site.

The Interim Planning Manager reminded members that the main consideration was whether the clause in the permission should be lifted. When the property was built, an agricultural tie would have been required. The two other properties on site were granted permission when the Council did not have a 5 year land supply. He noted that the wording of the condition was unusual, in that it specifically referred to a livery business, but that did not have to be Old Tiger Stables, the previous business on the site, and that there had always been an under provision of grazing land on the site.

Councillor Horgan queried how it is decided whether a s.106 restriction still serves a useful purpose. The Interim Planning Manager emphasised that

members need to consider how the requirement fits to current planning policy. In the view of officers, as the land is still present, and the case to remove the restriction not otherwise proven, the s.106 restriction still has purpose.

Councillor Lay sought confirmation on the size of the stabling and land, and whether, given the site constraints, it was viable to operate a business on the site. In response, it was confirmed that the land totalled between 1 and 1.5 acres with 30 stables. As information on the availability of grazing land had not been provided, and the property not market tested, there was insufficient evidence to confirm the site was not viable.

Councillor Hunt sought clarity on the potential other uses of the site. In response, the Interim Planning Manager confirmed a marketing exercise could test appetite for other business uses, but this would require planning permission.

Members debated the application. Councillor Wilson felt that the planning policy is clear and highlighted the risk that removal of the condition and subsequent market disposal of the property could make the whole site unviable as a business. Councillor Goodearl noted the applicant was satisfied with the restrictions when the property was built, but the change in the applicant's business circumstances does not warrant removal of the restriction. He proposed that the application be refused, which was seconded by Councillor Hunt.

Councillor Brown agreed with Councillors Goodearl and Wilson, and noted that in his experience the site may be suitable for other rural businesses. Councillor Horgan wanted to see the site in use, but the temporary change in material planning considerations when the Council did not have a 5 year land supply was not sufficient justification to allow the restrictions to be lifted now. He confirmed he would have welcomed marketing of the site to support the application.

It was resolved with 8 votes in favour and one abstention

That planning application 24/00300/VAR is **REFUSED** for the reasons set out in paragraph 1.1 of the Committee report

17. Planning Performance Report – May 2024

David Morren, Interim Planning Manager, presented a report (Z31, previously circulated) highlighting the performance of the planning service in May 2024. In presenting, he drew members attention to the changes expected to the National Planning Policy Framework following the change in government the week before, in particular that the government had already changed policy wording relating to on-shore wind turbine applications and announced mandatory housing targets would be re-introduced. It was also expected that

large scale wind turbine development would be treated as a nationally significant infrastructure project moving forwards.

The Committee **NOTED** the planning performance report in May 2024.

18. Exclusion of the Press and Public

Councillor Wilson queried why application TPO/E/01/24 was being considered as a confidential item. The Interim Democratic Services Officer confirmed that the Council was currently reviewing the processes used for handling representations on Tree Preservation Orders and their compliance with the General Data Protection Regulations, as the processes were different to standard planning applications. Until the review is complete, it was considered prudent to withhold the information as it could likely contain information exempt under sections 1 and 2 of Schedule 12A of the Local Government Act 1972.

It was resolved that the press and public be excluded during the consideration of the remaining items because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items there would be disclosure to them of exempt information of Categories 1 & 3 of Part 1 Schedule 12A to the Local Government Act 1972 (as amended).

19. TPO/E/01/24

Kevin Drane, Trees Officer, presented a report (previously circulated) recommending confirmation of a tree preservation order at 56 Commercial End, Swaffham Bulbeck.

The two trees in question had been scored using the Tree Evaluation Method for Preservation Orders (TEMPO) methodology to justify the Tree Preservation Order and there was insufficient information received to justify the Order should be removed. The effect of the Preservation Order would be that anyone wanting to do work on the trees would be required to seek permission and the Council could require replacement of the tree if necessary.

The trees officer drew members attention to representations received from local residents and an insurance report received which raised concern the trees may be causing damage to other local properties.

The Chair requested the Interim Senior Democratic Services Officer read a statement which had been received from local ward member, Councillor Trapp. Councillor Trapp felt that the trees were not clearly visible from the public highway, and given the potential for damage to nearby properties, he supported the lifting of the Tree Preservation Order.

Councillor Whelan queried the extent to which the insurance report had considered the damage was being caused by the specific trees subject to the

Tree Preservation Order versus other trees within the vicinity. The Trees Officer outlined the work that had been performed but highlighted other trees which had not clearly been considered in the insurance report, and therefore could be contributing to property damage.

In response to a question from Councillor Lay, the Trees Officer confirmed the Council would not have a financial liability to any party if the Tree Preservation Order was confirmed.

In response to questions from Councillors Wilson and Horgan, the Trees Officer explained the TEMPO scoring methodology used. Public visibility is one feature, as well as factors such as its age, potential lifespan, span and biodiversity. He highlighted that the trees were both native species and therefore likely to have some positive biodiversity impact. He confirmed that three trees had been identified in the insurance report but only two justified a Tree Preservation Order.

In debating the item, Councillor Horgan noted that the trees were well established and there was no clear reason to justify removing the Tree Preservation Order. For this reason, he proposed confirming the Tree Preservation Order which was seconded by Councillor Wilson.

Before the Chair called the vote, Councillor Lay confirmed he would be abstaining as he had not been able to visit the site.

It was resolved with 10 votes in favour and 1 abstention that
TPO/E/01/24 be **CONFIRMED**

The meeting concluded at 3:47pm

Chairman.....

Date.....