

My ref: H/5002/18/CW
Your ref:

Date: 07 November 2018

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**Place and Economy
Environment and Commercial**

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Dear Mr and Mrs Dunkling

As per my holding response e-mail of 24 October 2018 (attached for ease of reference), I can confirm that we have considered all your concerns set out in your e-mail dated 23 October 2018. Furthermore, I can confirm that your points have also been considered alongside those of the Parish Council and Warboys Landfill Action Group (WLAG) in relation to their pre-action judicial review concerns already raised with the Council.

Taking each of your points in turn, I have set out the view of officers (planning officers and democratic services officers (where appropriate)) to provide an audit trail of our consideration of your concerns:

- (1) You believe that the decision made at the Planning Committee of 6 September 2018 in relation to the Warboys planning application (H/5002/18/CW) was made against the guidelines and spirit of the Huntingdonshire Local Plan and is therefore unlawful. In particular you draw attention to the fact that *"The Huntingdonshire Local Plan states specifically that such development should not be within 100 metres of a dwelling"* before noting that your house *"is within 100 metres of the proposed disposal unit"*.

From a review of the officer report and also the approved minutes of the meeting, it is clear that both the adopted Development Plan (which includes the adopted policy guidance for Huntingdonshire District Council) and the emerging Huntingdonshire Local Plan were considered by both officers and members of the Planning Committee. In relation to the emerging Local Plan document, this is specifically considered in paragraph 7.7 of the officer report. Furthermore, it is noted within the planning minutes that Mr Dunkling spoke directly to Members and it is recorded that **"Anthony Dunkling commented that the application was against the spirit of the written guidelines in the Hunts Local Plan, that stated that such a site should not be within 100m of homes."** As such, I consider that full consideration was given to both adopted and emerging local plan policy.

Although it has never been specifically stated where the reference to the 100 metre distance exists within the emerging Huntingdonshire Local Plan that you refer to, from an electronic review of this document online, the only 100 metre reference that I can find that would fit this assessment is in relation to emerging policy LP 38 for air quality. This effectively requires the submission of an Air Quality Assessment for a number of triggers, where at point (e) it relates to where *“any part of the site is located within 100m of a monitoring site where the annual mean level of nitrogen dioxide exceeds 35µg/m3.”* On the basis that the applicant submitted an Air Quality Assessment and that this was considered by a number of specialists, including the Environmental Health Officer at Huntingdonshire District Council, I cannot agree that the decision was made against the guidelines and spirit of the emerging Huntingdonshire Local Plan, and is therefore not unlawful. Indeed, had this have been the case, the District Council as a statutory consultee would have responded as such and made a formal objection, which they did not. Furthermore, while the interpretation of policy is a matter of law, the application of policy and weight afforded to those policies is a matter for the decision-maker, which has been acknowledged in recent legal case law.

- (2) In addition to the above concerns, you state that you are *“complaining because a proposed site at Fordham was refused because the suggested plant was too near to a dwelling and that a facility at Waterbeach was turned down because of a similar situation. This shows that the council is breaking the terms of its own local plan and its decision to allow the proposed plant at Warboys is inconsistent with decisions taken in other part of the county. We would like the county council to rescind its decision and place any waste facility in a location well away from houses.”*

In order to address your complaint raised in relation to the Fordham site I have researched the background history and I consider that there has been some confusion and misunderstanding in relation to the Fordham site. Planning permission was granted in 2010 for the construction of a materials recovery facility on this site. However, this planning permission was never implemented and so it has lapsed. The site at Fordham is allocated in our Minerals and Waste Site Specific Proposals Plan (adopted February 2012) for waste recycling and recovery uses. The site profile notes that it is close to sensitive receptors and that noise and dust attenuation measures would be needed to protect residential amenity which would be usual in these circumstances.

In the applicant's assessment of alternatives for the Warboys site, they refer to the Fordham site in their Environmental Statement section on site selection (from page 27) and do a direct comparison of the two sites. Under Air Quality and Noise (table on pages 28 and 29) they state that the closest property to the Warboys site is over 100m and at Fordham is circa 20m. In the officer's report at paragraph 3.4 we make clear that Woodview (your property) is 30 metres from the site access and 110 metres from the

proposed waste management area (the walking floor which stores the wood waste before it is used in the biomass plant).

The most important point to note here is that it was the applicant who ruled out the Fordham site, and it was not the County Council as the Waste Planning Authority that refused it. The reasons given by the applicant for ruling out the Fordham site on page 29 of their Environmental Statement were: *“construction issues (being next to an active railway), fuel supply concerns, grid connection costs being over £15 million and having significant environmental impacts”*. Therefore there is no error in the County Council’s handling of this matter with regards to this point.

Moving onto the next point within this section of your complaint, I have assumed for the purposes of this response that your reference to ‘*a facility at Waterbeach was turned down because of a similar situation*’ is made in connection with the Energy from Waste planning application at Waterbeach Waste Management Park (S/3372/17/CW). However, please do let us know if you are referring to a different application. The reasons for refusal set out on the S/3372/17/CW decision notice are as follows:

1. *“Landscape: The scale and massing of the proposed development, in relation to the landscape (being local character and visual impact) and harm to the visual amenity of local residents (particularly those living nearest the development), are considered to have significant adverse effects which cannot be resolved through the proposed mitigation and consequently the development is contrary to Policies CS33 (Protection of Landscape Character) and CS34 (Protecting Surrounding Uses) of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011); and Policies DP/2 (Design of New Development), DP/3 (Development Criteria) and NE/4 (Landscape Character Areas) of the South Cambridgeshire Development Control Policies DPD (2007).*
2. *Heritage: Given the scale and massing of the proposed development, and the significant adverse impact on the local landscape, the harm to the setting of the Denny Abbey Complex heritage asset (comprising the Scheduled Monument; the Grade I Listed Denny Abbey including the remains of the 12th century Benedictine abbey church; the Grade I Listed 14th century Franciscan nunnery; the Grade II Listed 17th century barn to the north of Denny Abbey (The Farmland Museum stone building); and the Grade II listed gate piers at the entrance of the A10) is not outweighed by the benefits of the proposal. Therefore the proposal is contrary to Policy CS36 (Archaeology and the Historic Environment) of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy Development Plan Document (2011), Policy CH/4 (Development Within the Curtilage or Setting of a Listed Building) of the South Cambridgeshire Development Control Policies DPD (2007) and Paragraph 196 of the National Planning Policy Framework (2018)”*.

Whilst the “*local residents (particularly those living nearest the development)*” are referred to within the first reason for refusal, this is in relation to a building structure that is 141 metres long, between 55 and 91 metres wide, and up to 41.7 metres in height; and for a chimney stack that is 4.5 metres in diameter and 80 metres in height; which relates to the landscape character and visual impact on the area. As such, it is not appropriate to suggest that this was refused purely on the proximity of the residential properties as that is simply not the case.

Having assessed both officer reports written for the Warboys proposal (H/5002/18/CW) and the Waterbeach proposal (S/3372/17/CW) there is no justification to say that neither the officers nor the members of the Planning Committee did not assess the adopted Development Plan policies correctly; and as stated above the planning application at Fordham was also approved, albeit never implemented so that was also considered acceptable in relation to planning policy and the distance from sensitive receptors.

Finally, for the avoidance of doubt, as a decision notice has not yet been issued for the Warboys proposal (H/5002/18/CW), on the basis that the Section 106 legal agreement is still being prepared, the Council is not in the position to be able to revoke its decision.

- (3) In your e-mail dated 23 October 2018 you specifically refer to paragraph 8.6 of the Huntingdonshire Local Plan and stated that it “*recognises that planning has a role in controlling the risk of pollution arising from contamination and possible impact on human health, property and the wider environment [which you consider] has plainly been disregarded and we now live in fear of noise and pollution from a plant which would use untried and untested methods of waste disposal anywhere in the UK.*”

As paragraph 8.6 of the emerging Huntingdonshire Local Plan refers to the positive approach given to renewable energy, I consider you may actually have meant paragraph 8.7 that does appear to refer to “*Planning has a role in controlling the risk of pollution arising from contamination and possible impacts on human health, property and the wider environment. ‘Air Quality’ and ‘Ground Contamination and Groundwater Pollution’ set out the Council’s approach.*”

This is once again relevant to emerging policy LP 38 of the Huntingdonshire Local Plan that is covered in point 1 above. Such an approach seeks to protect air quality and ensures that an Air Quality Assessment is undertaken and submitted as part of the planning application to allow this to be assessed. For the reasons set out in point (1) above this requirement was not only met by the applicant, but also assessed by experts to allow the planning officer to comment on such matters in her report. Therefore we agree that planning does have this role and this has been undertaken as required. Finally, in relation to your concerns about the technology methods being ‘*untried and untested*’ this is specifically covered in paragraph 8.50 of the officer report and was also raised by a number of speakers during the

Planning Committee meeting as noted in the approved minutes. Therefore this matter has been duly considered.

- (4) Furthermore, in your e-mail dated 23 October 2018 you state that you are also complaining because *“our submissions and that of our county councillor was ignored by the planning committee. It is not only ourselves that are affected by this proposed development. Other nearby dwellings are affected and the village will be subjected to pollution from lorries grinding through the unsuitable roads to service this plant.”*

Having attended the Planning Committee held on 6 September 2018 I cannot agree with you on this point. I consider that neither officers nor members of the Planning Committee ignored the public submissions and those of the local county councillor. All matters were given full consideration within the officer report and a thorough officer presentation was given at the Planning Committee meeting to ensure that following the site visit, members were given a full briefing of the proposal ahead of listening to public speakers for and against the proposal, including the comments made by the local member (Cllr Terry Rogers). It is my professional opinion that all submissions were carefully considered by members of the Planning Committee and all material planning considerations taken into account before a decision was reached.

Furthermore, in relation to *‘lorries grinding through the unsuitable roads to service this plant’* the issue of traffic and the routes to be taken were also discussed within the officer report. Members noted the imposition of a planning condition to cover the routing arrangements for the proposal (recommended condition 24) and that no objection was received from the Highway Authority. Indeed the Highway Authority was represented at the Planning Committee meeting and members sought guidance from them in relation to the concerns about traffic being raised. As such, I consider that this concern was also given full consideration ahead of a decision being reached.

- (5) Finally you asked us to advise the chief planning officer and chief executive of the council of this complaint to seek their agreement to rescind this decision within 10 days. In the event that this request was refused you stated that *“we shall be referring the matter to the relevant ombudsman.”*

As set out in my holding response dated 24 October 2018, I confirmed that a copy of your complaint was forwarded to both our Chief Executive (Gillian Beasley) and also the Executive Director for Place and Economy (Graham Hughes) as requested. Furthermore, I provided you with a link to our complaints procedure which sets out the stages of complaint ahead of going to the Ombudsman.

Whilst I did not refer to your request to *‘rescind this decision with 10 days’* as part of my holding response, for the reason given in point (2) above, we have not yet issued the decision notice for this planning application (as the

Section 106 legal agreement is still being prepared) and as such cannot revoke our decision before it is made.

For the reasons set out above, we do not consider that the decision made by our Planning Committee on 6 September 2018 was unlawful, or that officers or members of that Planning Committee failed to take account of all the necessary considerations ahead of reaching their final decision. However, in light of correspondence we have had with Warboys Parish Council and WLAG we are looking to refer this matter back to committee on two specific points, namely (i) that relating to potential noise experienced by caravan occupants, and (ii) the effects of water vapour releases on local atmospheric conditions. The points raised in your complaint will not be dealt with at committee as it is the Council's view that these matters have properly been dealt with. However, a copy of your complaint and this response will be made available to members as part of the officer's report and therefore members will be made aware of the concerns you have raised. This further consideration will not involve a full rehearsing of the entire application scheme but only a consideration by the Council as to whether, in the light of that additional information, there should be any change to the decision they have made. This additional information will be reported to committee at the next committee on Thursday 13 December and a short report dealing with the two points set out above will then be considered; this report will be made available in the usual way on the Planning Committee website pages. The agenda and the planning officer's report will be published 6 working days ahead of the meeting.

I hope that this clarifies the situation.

Yours sincerely



Emma Fitch (Miss)
Joint Interim Assistant Director, Environment and Commercial

Enc. E-mail correspondence from 24 October 2018.