

**Reference:** 06/18/0173/F

**Ward:** Great Yarmouth  
**Officer:** Mrs Gemma Manthorpe  
**Expiry Date:** 14<sup>th</sup> May 2018

**Applicant:** Mr B Vyas

**Proposal:** Erection of a single storey building for mixed A3/A5 (restaurant and hot food takeaway) use, incorporating a 'Drive-Thru' lane, car and cycle parking and associated landscaping and boundary treatment

**Site:** Mitchell Drive and Jones (GC) Way (Land off) Plot 3

## **1. REPORT**

- 1.1 The application is full application for the erection of a single storey building for a mixed use as a restaurant and hot food takeaway with drive thru and advertisements to be displayed on site. The site area comprises 0.29 hectares of undeveloped land which is currently vacant land.
- 1.2 The land is accessed to the south of the application site off Mitchell Drive, the south eastern boundary of the site adjoins the car park of Frankie and Benny's restaurant (use class A3). On the other side of Mitchell Drive is a public house serving food named The Grayling. The Grayling and Frankie and Benny's were built following two separate planning approvals as referenced at 1.4 of this report.
- 1.3 The site is located within food zone 3a and in planning policy terms out of town centre location.
- 1.4 There is varied planning history on the site which is documented and available to view within the planning file. The most relevant applications are as follows:
  - 06/13/0744/F – Full application for pub/restaurant access, parking and associated works and an outline application for coffee drive thru with all matters reserved.
  - 06/14/0021/F - The erection of a single storey (Class A3) restaurant, with servicing, car and cycle parking, landscaping and associated works.
- 1.5 Recently and close by the application site and fronting Pasteur Road, planning application 06/16/0332/F was granted for 'Demolition of the existing warehouse and redevelopment to provide a 68-bed hotel and an associated family pub/restaurant (class A3/A4), two drive-thru restaurants (class A3/A5), together with associated access, parking, landscaping and servicing' at land to the east of the application site identified on the planning permission as 'Jones (GC) Way (Land adjoining to the East)' referred to as Pasta Foods Ltd off Pasteur Road.

## **2. Consultations :-**

**2.1 Neighbours** – There have been representations received from agents on behalf of two interested parties, Williams Gallagher on behalf of Market Gates Shopping Centre and Indigo on behalf of Pasteur Retail Park. The full responses are attached to this report and the objections are summarised below:

- The development as proposed is contrary to policy CS6 of the adopted Core Strategy which seeks to safeguard employment land (the land is so identified)
- Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- The previous consent on the site pre-dates the adoption of the Core Strategy.
- The development does not pass the sequential test.
- There has been no commercial marketing of the site for 18 months as required by the Core Strategy policy CS6 and noted by the inspector at appeal APP/U2615/W/15/316604 at an adjacent site (Pasta Food).
- There is no benefit to a larger employer which sets this site away from other sites.
- The previous appeal decision notes that a Costa Coffee and Burger King would contribute to making this (Pasta Food site) an out of town destination and would not support the Town Centre.
- There are empty shops with road frontages available.
- Members will need to satisfy themselves that flood risk can be managed taking into account the comments of the Environment Agency.
- Due weight should be given to representations.
- It is an axiom of good planning that there is consistency in decision making.
- The land was re-allocated as safeguarded employment land in following the adoption of the Core Strategy in December 2015.
- Undue weight is relied upon by the applicant for the previous outline planning permission for a coffee drive thru on the site. This is no longer a material consideration as the permission has now lapsed.
- Non B class employment opportunities could be off-set by the closure of the KFC in Great Yarmouth, Regent Road outlet or KFC Marine Parade outlet.
- The applicant has offered no guarantee that the existing outlets in Great Yarmouth would not close. The potential closure should be a material consideration.

**2.2 Norfolk County Council as Highway Authority** – The Highways Authority raise no objection to the proposals subject to conditions.

**2.3 Highways England** – No objection.

- 2.4 **Environmental Health** – No objection to the application, but conditions are requested for contamination, hours of work, and advisory notes for local air quality and an informal noise assessment for the development phase.
- 2.5 **Internal Drainage Board** – Byelaw consent will be required from the Board. We can confirm that we are in correspondence with the applicants consultants regarding this planning application.
- 2.6 **Broads Authority** – No objection.
- 2.7 **Police Architectural Liaison Officer** – Full comments provided including noting that the area suffers from a high level of retail crime and recommendations for the doors and windows. The Liaison Officer does not agree with the proposed location of the cycle bays and it is recommended that these are moved to where they can be readily and directly seen and closely monitored by their owners.
- 2.8 **Town Centre Manager** – No response received.
- 2.9 **Anglian Water** – No comments received.

### 3. **National Planning Policy Framework**

- 3.1 The presumption in favour of sustainable development is set out under paragraph 11.
- 3.2 Paragraph 12: The National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
- 3.3 Paragraph 80: Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation<sup>40</sup>, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.
- 3.4 Paragraph 82: Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or

high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

- 3.5 Paragraph 120. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:
- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
  - b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.
- 3.6 Paragraph 85. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:
- a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;
  - b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;
  - c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;
  - d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;
  - e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and
  - f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.
- 3.7 Paragraph 86: Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an

existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

- 3.8 Paragraph 87: When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 3.9 Paragraph 89: When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace). This should include assessment of:
- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
  - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
- 3.10 Paragraph 90: Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.
- 3.11 Paragraph 2: Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.
- 3.12 Paragraph 155: Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 3.13 Paragraph 157. All plans should apply a sequential, risk-based approach to the location of development – taking into account the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:
- a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development to reduce the causes and impacts of flooding (where appropriate through the use of natural flood management techniques); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

3.14 Paragraph 158: The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

3.15 Paragraph 54: Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

#### **4. Saved Great Yarmouth Borough-Wide Local Plan Policies (2001)**

4.1 Local Policy - Saved Great Yarmouth Borough-Wide Local Plan Policies (2001):

4.2 Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the Local Plan is to the policies in the NPPF the greater the weight that is given to the Local Plan policy. The Great Yarmouth Borough Wide Local Plan was adopted in 2001 and the most relevant policies were 'saved' in 2007. An assessment of policies was made during the adoption of the Core Strategy December 2015 and these policies remain saved following the assessment and adoption.

#### **5. Core Strategy:**

5.1 **Policy CS1:** This policy promotes sustainable communities and development which would complement the character of an area.

5.2 **Policy CS6:** The Borough of Great Yarmouth has a diverse local economy. It is the main service base in England for the offshore energy industry and has a thriving seasonal visitor economy. To ensure that the conditions are right for

new and existing businesses to thrive and grow, there is a need to continue to strengthen the local economy and make it less seasonally dependent. This will be achieved by:

a) Encouraging the redevelopment and intensification of existing employment sites, particularly those sites with good access by a variety of transport modes

b) Safeguarding existing local employment areas identified in Table 10 and future local employment areas allocated in other Local Plan Documents for employment use. Alternative uses will only be allowed where it can be demonstrated that:

- There is a satisfactory relationship between the proposed use and any pre-existing neighbouring uses, without significant detriment to the continuation and amenity of existing or proposed uses
- There is no commercial interest in the re-use of the site for employment, demonstrated by suitable marketing at an appropriate price for at least 18 months
- A sequential viability test has been applied following the unsuccessful marketing of the site, based on the following sequence of testing: mixed use of the site that incorporates an employment-generating use, then non-employment use

c) Allocating approximately 10-15 hectares of new employment land at Beacon Park Extension, South Bradwell, through Policy CS18

d) Exploring the potential for up to 22 hectares of land reclamation to the north of the Outer Harbour at South Denes

e) Supporting port-related development proposals relating to the Outer Harbour and existing river port, in particular encouraging cargo handling and other port-reliant activities

f) Encouraging a greater presence of higher value technology and energy-based industries, including offshore renewable energy companies, in the borough

g) Supporting the local visitor and retail economies in accordance with Policies CS7 and CS8

h) Encouraging the development of small scale business units, including those that support the rural economy and rural diversification

i) Supporting the provision of development essential to sustain a rural workforce, including agricultural workers' dwellings and rural community facilities

j) Minimising the potential loss of the best and most versatile agricultural land by ensuring that development on such land is only permitted if it can be demonstrated that there is an overriding sustainability benefit from the

development and there are no realistic opportunities for accommodating the development elsewhere

k) Supporting the delivery of high speed broadband and communications technology to all parts of the borough

l) Encouraging flexible working by:

- Allowing home-working where there is no adverse impact on residential amenities
- Allowing the development of live-work units on residential and mixed-use sites, subject to the retention of the employment element and safeguarding of residential amenity
- Allowing the development of relevant ancillary facilities, such as childcare facilities and eateries, in local employment areas, where appropriate

m) Improving workforce skills by:

- Working with local education and skills agencies and local business organisations to establish training facilities to enhance workforce skills
- Encouraging the provision of new training facilities on employment sites

5.3 **Policy CS7:** Overall, the majority of town, district and local centres within the borough are performing well, despite the national economic downturn. To enable them to continue to compete with centres outside of the borough, out-of-town retailers and the internet, the Council will:

a) Focus future development and investment using the retail hierarchy in Table 12 below

**Table 12: Retail**

<b>Hierarchy Classification</b>	<b>Location</b>
Main Town Centre	Great Yarmouth
Town Centre	Gorleston-on-Sea
District Centres	Bradwell (Proposed) and Caister-on-Sea
Local Centres	Well defined groups of shops and services in the borough's villages and main towns, such as The Green, Martham; Bells Road, Gorleston and Northgate Street, Great Yarmouth

b) Seek to allocate in accordance with the retail hierarchy and the sequential approach between 2,152sqm (net) and 4,305sqm (net) of new 'food' shopping



floorspace, and up to 8,865sqm (net) of new 'non-food' shopping floorspace, in identified opportunity sites in the borough, up to 2031.

c) Promote the extension of the Great Yarmouth's centre to include The Conge and parts of North Quay as a mixed-use development scheme through Policy CS17 and the Great Yarmouth Waterfront Supplementary Planning Document

d) Aim to improve the vitality and viability of our town and district centres by:

- Safeguarding the retail function and character of each centre. Primary, Secondary and Holiday Shopping frontages will be identified in the Development Policies and Site Allocations Local Plan Document where appropriate
- Enhancing the appearance, safety and environmental quality of the centres
- Encouraging a diversity of uses within each centre, enabling a wide range of retail, leisure, social, educational, arts, cultural, office, commercial and where appropriate, residential uses
- Supporting small and independent businesses, including retaining and enhancing important local markets
- Promoting the short and long-term reuse of vacant buildings
- Enhancing the early evening economy
- Improving access to the centre by sustainable modes of transport and encouraging multi-purpose trips

e) Maintain and strengthen the role of local centres and local shops in the borough to better serve the day-to-day needs of local communities

f) Ensure that all proposals for town centre uses outside defined centres demonstrate that there are no sequentially preferable sites available and that the proposal can be accessed by sustainable transport. Proposals over 200sqm (net) will also be required to submit a Retail Impact Assessment demonstrating that there will be no significant adverse impact on existing designated centres, including those beyond the borough boundary, such as Lowestoft.

#### **5.4 Strategic Planning**

Further to my comments made on the 11th May 2018, I am now satisfied that a sequential appraisal of alternative sites relating to the proposal has been adequately undertaken, fulfilling the requirements of Core Strategy Policy CS7(f).

- 5.5 It is noted that whilst the applicant has acknowledged that a full 18 month marketing assessment has not been undertaken (as per the requirements of CS6(b)(ii)) the applicant has provided further supporting information which provides some narrative as to why it is considered that there is no reasonable prospect of the site being used for the allocated employment use. The narrative provides a useful comparative view on a similarly constrained adjacent site and should be regarded as a material consideration when

coming to a view on the application of Policy CS6(b) (ii) with respect to this planning proposal.

## **6. Assessment**

6.1 The application is a full application for the erection of a mixed use A3 and A5 unit with advertisements. The gross floor area is 240sqm with comprising of approximately 117 sqm customer area and the remaining kitchens and staff area. The building is proposed to be single storey and will incorporate a drive-through lane, associated car and cycle parking, landscaping and boundary treatment. The applicant has stated that the design of the building will accord with the surroundings and be visible from Jones GC Way without being unduly prominent. The application is accompanied by the following documents:

- Plans x 8
- Planning statement incorporating Design and Access Statement, Sequential Assessment and Retail Impact Assessment.
- Transport Assessment
- Delivery and Servicing Plan
- Level 2 Flood Risk Assessment
- Site Investigation Report
- Planning Consent Information – Mechanical Ventilation and Environmental Control Equipment
- Noise Impact Assessment
- External Lighting CALCULATIONS
- KFC Good Neighbour Guide.

A further statement in the form of a detailed letter was submitted in support of the application as additional information by the applicant's agent.

6.2 All planning applications should be determined against the development plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, unless material considerations indicate otherwise. The local retail planning policy has been set out above.

6.3 The National Planning Policy Framework (NPPF) referred to above is an important material consideration in this case. At its heart is the presumption in favour of sustainable development, which is seen as "a golden thread running through both plan-making and decision-taking" (paragraph 14).

6.4 "For decision-taking this means approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted (for example those policies designated as Sites of Special Scientific Interest; land designated as Green Belt; designated heritage assets; etc.)"

- 6.5 With regards to decision-taking, the NPPF directs local planning authorities (LPAs) to "...approach decision-taking in a positive way to foster the delivery of sustainable development" (paragraph 186) and to "...look for solutions rather than problems" (paragraph 187). In order to deliver sustainable development, the NPPF sets out thirteen core tenets to inform both plan-making and decision-taking, including 'ensuring the vitality of town centres'. In planning terms the application site is considered an out of town location.
- 6.6 In summary, the primary objective of national and local plan policies is to maintain and enhance the overall vitality and viability of existing centres, principally through new sustainable investment and development. Proposals for retail and main town centre uses that are not in an existing centre and not in accordance with an up- to-development plan, as is the case with the current applications, will therefore need to satisfy both the sequential test set out in the NPPF and the criteria of the Core Strategy.
- 6.7 Since the previous applications on this and adjacent site the main significant difference in local planning policy terms has been the adoption of the Core Strategy in December 2015.
- 6.8 Policy CS6 of the Core Strategy, at b) seeks to safeguard existing employment land and requires that in order to demonstrate that there is no commercial reuse of the land for employment the site must be marketed for a period of not less than 18 months. This point in particular was highlighted by the Planning Inspector in the decision to refuse on appeal the application for a larger retail development on the Pasteur Road site appeal. The site also forms part of the same employment land designation in the Local Plan. The objectors to the application state that this has not occurred and as such the application should be refused.
- 6.9 The applicant states that if the land were ever used for employment use this use was in excess of 25 years ago, evidenced by the undeveloped condition of the land. The applicant goes on to assert that the surrounding uses within Use Class A (retail, restaurant, drinking establishment) makes the likelihood of an industrial (Use Class B) use being introduced unlikely.
- 6.10 In further support of the application the applicant has provided details of existing units within near proximity to the site (units off Jones GC Way) which are currently vacant. At the time of submission of the additional details, 6-8 out of 16 are stated to be vacant. Paragraph 22 of the NPPF states that the long term protection of sites should be avoided and where there is no realistic prospect of the site being used for allocated employment use and applications for alternative uses should be treated on merit.
- 6.11 The additional information is not evidence of marketing for 18 months as stated by Policy CS6 b) of the Core Strategy, but provides an understanding of the local market conditions and the alternative available employment sites which are already constructed. When assessing the weight to be applied and whether this satisfies the criteria of Policy CS6 b) of the Core Strategy, it

should be noted that the Strategic Planning Officer has removed his objection to the application.

- 6.12 Strategic Planning originally objected to the application on the grounds that the applicant failed to comply with Policy CS6 and CS7 of the Core Strategy. Following the submission of the additional details the objection was removed and comments were received which are at 2.10 of this report. From a policy perspective it is accepted that the marketing has not been carried out; however, it is noted that the commentary and additional information as submitted is useful when assessing the application against policy CS6.
- 6.13 Policy CS7 of the Core Strategy requires that a sequential test is carried out for developments that are over 200sqm (net) and are a Town Centre Use are required to submit a retail impact assessment to demonstrate that there will be no significant detrimental impact on existing centres. A Town Centre Use is defined within the NPPF as:
- 'Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).'
- 6.14 The objections to the application state that the creation of the proposed unit, a KFC, will have a significant detrimental impact on the town centre and could cause the closure of the two units currently in operation in Great Yarmouth located at Regent Road and Marine Parade.
- 6.15 As part of the additional information submitted, the applicant has stated that they are willing to enter into a legal agreement to keep open two of the existing KFC businesses these being Regent Road and High Street Gorleston for a period of five years. KFC would also need to be party to the agreement and have indicated that they are willing to do so.
- 6.16 By offering to enter into a legal agreement to keep the two units in both Great Yarmouth and Gorleston, it would help to mitigate any adverse impact on the town centres. It is considered that to request a longer period would put an unreasonable hardship on a private operator, which would be contrary to the NPPF. The retention of the two units also goes some way towards mitigation of the objection point put forward that the additional jobs created could be offset against job losses should the other KFC units close.
- 6.17 Strategic Planning are satisfied, following the submission of additional information, that the sequential test has been satisfied in accordance with policy CS7 of the adopted Core Strategy and have removed their objection to the application. Should the application be approved, it is recommended that prior to issuing the decision notice the legal agreement is signed.

- 6.18 It is agreed that the previous outline approval on the site for a drive-through coffee shop has elapsed. The previous approval was given prior to the adoption of the Core Strategy, as noted by the objectors. Although the outline approval was not implemented the full part of the application, the pub/restaurant, was implemented. In addition, a further restaurant has been erected in close proximity as detailed above. The proposal is therefore assessed as having a satisfactory relationship with the surrounding uses in accordance with policy CS6 of the adopted Core Strategy.
- 6.19 The objectors to the application note the previous appeal decision which was dismissed at a nearby site (Pasta Foods). The objectors liken the applications and therefore note that the appeal is a material consideration.
- 6.20 The appeal site was subsequently granted planning permission for non-employment use with a legal agreement requiring investment into a large employer within the town. The appeal decision also notes that out of town development would not support the Town Centre.
- 6.21 When applying weight to the appeal decision it must be noted that the appellant, although not successful at appeal, was granted planning approval on the appeal site by the Council. The approved application was subject to a legal agreement for investment in the nearby Pasta Food factory. The applicants also put forward similar reasoning to the current application for not advertising the site for employment purposes for 18 months.
- 6.22 In the current case, the objection by Strategic Planning has been removed on the basis that they are satisfied that there is conflict with current planning policy and thus, while taking into account the inspector's comments, there is not a policy reason to recommend refusal of the application.
- 6.23 The application states that the development will result in the creation of 60 jobs, which they state cannot be ignored as a material consideration. Given that it is accepted that there is little likelihood of the land being utilised for employment land and the creation of an additional 60 jobs, 25 full-time and 35 part-time, with the agreement that the other two units will remain open for the following five years, along with the size of the unit a material consideration of the application. The weight to be applied to the creation of the additional employment is for members to decide as part of the deliberation.
- 6.24 As part of the objections, the empty units within the Town Centre have been stated as viable alternatives to the proposed out of town site. Additional information has been submitted by the applicant detailing further reasoning for other units not being suitable for the proposed use, and also described 11 properties that were looked at and the reasons that they are not acceptable. The reasoning includes the proximity to the existing town centre KFC.
- 6.25 The site is located within flood zone 3a and the response to the application consultation from the Environment Agency has been considered. The development as proposed is classified as 'less vulnerable' in the Planning Practice Guidance and the application is required to pass the sequential test.

The Local Authority is satisfied that the sequential test has been adequately addressed and that this development in this location is appropriate. The application is accompanied by a Level 2 Flood Risk Assessment.

- 6.26 The advertisements have received no objections and, if consent is granted, will not cause a proliferation of advertisements in a single location.

## **7. Recommendation**

- 7.1 Following the submission of the additional information and the removal of the objection by Strategic Planning the policy reasons for refusal are sufficiently answered. When weighing the material considerations the National Planning Policy Frameworks approach to make best use of land with specific reference previously developed land and the compliance with the Core Strategy the application, on its merits, is in accordance with the current and local planning policy.
- 7.2 The application is recommended for approval subject to conditions as requested by consulted parties and the signing of a legal agreement. The legal agreement shall, in accordance with the additional information submitted in support of the application on the 18<sup>th</sup> June 2018, be drafted to ensure that the KFC located at Gorleston High Street and the KFC located at Regent Road Great Yarmouth shall remain open for a period of five years with the time taken from the date that the new unit is opened.



4 May 2018

Mr G Clarke  
Planning Officer  
Great Yarmouth Borough Council  
Town Hall  
Hall Plain  
Great Yarmouth  
Norfolk  
NR30 2QF

Sent by Email

Dear Graham

**Proposed KFC Drive Thru  
Mitchell Drive and Jones (GC) Way (Land off) Plot 3  
Application Ref: 06/18/0173/F**

I write on behalf of Baymount Overseas Ltd (c/o Ellandi LLP), owners of the Market Gates Shopping Centre in Great Yarmouth Town Centre, to object to the abovementioned planning application on grounds of the proposal's non-compliance with the recently adopted Great Yarmouth Core Strategy Local Plan (CSLP) (December 2015).

CSLP Policy CS6 is of particular relevance to the application proposal as the application site falls within an area that has been safeguarded as a local employment area.

We note that a series of concerns regarding the application's non-compliance with CSLP Policy CS6 have already been articulated by the Planning Agents for Pasteur Retail Park Ltd (Indigo) in their letter dated 1 May 2018. Whilst we disagree with some of the points raised in respect of their own site, they are correct in pointing out that the Applicant - DPKBV - has failed to address a key criterion of Policy CS6 (b) which states that alternative uses within existing local employment areas will only be allowed where it can be demonstrated that:

- there is a satisfactory relationship between the proposed use and any pre-existing neighbouring uses, without significant detriment to the continuation and amenity of existing or proposed uses;
- there is no commercial interest in the re-use of the site for employment, demonstrated by suitable marketing at an appropriate price for at least 18 months;
- a sequential viability test has been applied following the unsuccessful marketing of the site, based on the following sequence of testing: mixed use of the site that incorporates an employment-generating use, then non-employment use.

The work undertaken by the Applicant to date is simply insufficient to demonstrate that this up to date Policy has been complied with. In fact, the Applicant's submission has categorically failed to address Policy CS6 to the extent that it even fails to provide up to date commentary as to why the site should be given over to an alternative non-B Class Use.

It instead refers to the the previous outline consent for the site (now lapsed) and other consents which were granted prior to the adoption of the CSLP. No evidence has been submitted to demonstrate that there has been no commercial interest in the re-use of the site for employment (demonstrated by suitable marketing at an appropriate price for at least 18 months).

WILLIAMS.  
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Allied to the above comment, it is worth noting that the application site has only just been re-allocated as a safeguarded local employment site following the adoption of the CSLP in December 2015.

Had the Council / Inspector presiding over the Local Plan Examination at the time considered the site more appropriate for the uses now proposed, then it would have been removed from this safeguarding area. It was not removed however and, to the best of our knowledge, no representations were put forward at the time on behalf of landowner in an attempt remove the site from the safeguarding area. The onus is therefore on the Applicant to demonstrate compliance with Policy CS6 and / or to set out material considerations which would override non-compliance with this Policy (in accordance with planning law which requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise).

A review of the application material confirms that the Applicant has failed to demonstrate compliance with Policy CS6, moreover, it places undue weight on the previous outline planning permission for a coffee drive thru restaurant on site. The fact that outline permission for a coffee drive thru restaurant was previously granted on this site is no longer a material consideration as the permission has now lapsed.

In addition to the above, it is worth highlighting that whilst the application proposal has the potential to bring about additional non-B Class employment opportunities, these benefits could very well be offset by the closure of existing KFC operations in the Great Yarmouth area. Indeed, it is worth noting that KFC currently occupies a unit within Great Yarmouth Town Centre (114a Regent Street, opposite Market Gates) and that it also has an outlet on Marine Parade.

The Applicant has offered no guarantee that the application proposal would not result in the closure of either one of these outlets – something which would have a clear and perceptible impact on the vitality and viability of the Town Centre and / or the main tourist area of Great Yarmouth. The closure of either one of these outlets would also effectively negate any of the job creation benefits of the proposed development.

The very real threat of closure of existing KFC operations in Great Yarmouth as a result of the proposal must be a material consideration if the job creation benefits of the proposal are to be relied upon as part of the balancing exercise.

As a final point, we wish to highlight the Inspector's comments in respect of the Pasteur Retail Park Ltd Appeal (APP/U2615/W/15/3136604) and in respect of the NPPF sequential test. This concluded that whilst the drive thru elements of the fast food outlets of the Pasta Foods scheme could not be directly accommodated, there were many vacant premises with a road frontage that could accommodate this size of unit and vehicular access (Para 24). Further work is required by the Applicant to address this particular point which remains as relevant today as it is was when the Inspector's Report was issued on 22 September 2016.

The same conclusion regarding the suitability and availability of sequentially preferable sites was also drawn by officers in respect of the recently approved Pasteur Retail Park Ltd application (06/16/0332/F) albeit there were material considerations in this case to weigh in the balance (namely the commitment to invest £500,000 in the Pasta Foods factory).

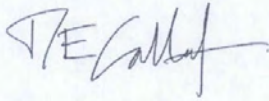
In this case, there are no material considerations which would outweigh the proposal's clear non-compliance with the adopted development plan (both in terms of Policy CS6 and Policy CS7).

The application must therefore be refused.



I trust that these comments are of assistance and look forward to your confirmation that they have been received.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H. Gallagher', with a stylized flourish at the end.

Heather Gallagher  
**Williams Gallagher**

25 June 2018

Mr G Clarke  
Planning Officer  
Great Yarmouth Borough Council  
Town Hall  
Hall Plain  
Great Yarmouth  
Norfolk  
NR30 2QF

Sent by Email

Dear Graham

**Proposed KFC Drive Thru  
Mitchell Drive and Jones (GC) Way (Land off) Plot 3  
Application Ref: 06/18/0173/F**

Thank you for advising of the further information provided by the applicants, DPKBV and their consultants, in relation to the above application.

We have reviewed the new documentation which comprises:

- Letter from Beamish Planning Consultancy dated 18<sup>th</sup> June 2018 (BPC);
- Letter from JPC Environmental Services dated 13<sup>th</sup> June 2018 (JPC); and
- Letter from Bidwells which is undated. The version we have seen also includes a number of comments/tracked changes which appear to have been added by Mr Beamish.

On the basis of this review, we write to advise that our client, Baymount Overseas Ltd (c/o Ellandi LLP), owners of the Market Gates Shopping Centre in Great Yarmouth Town Centre, continues to object to the abovementioned planning application, on grounds of the proposal's non-compliance with the recently adopted Great Yarmouth Core Strategy Local Plan (CSLP) (December 2015), and in particular Policy CS6.

As set out in our earlier letter of the 4<sup>th</sup> May, Policy CS6 (b) states that alternative uses within existing local employment areas will only be allowed where it can be demonstrated that:

- there is a satisfactory relationship between the proposed use and any pre-existing neighbouring uses, without significant detriment to the continuation and amenity of existing or proposed uses;
- there is no commercial interest in the re-use of the site for employment, demonstrated by suitable marketing at an appropriate price for at least 18 months; and
- a sequential viability test has been applied following the unsuccessful marketing of the site, based on the following sequence of testing: mixed use of the site that incorporates an employment-generating use, then non-employment use.

The latest submissions appear to recognise the need to comply with this policy (BPC, page 3) and seek to address the policy requirements. However, in our view, they fail to do so for the following reasons:



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- It is clear from the letters provided by Bidwells and BPC that the application site has **NOT** been marketed at all, or at least for a very considerable time (BPC, page 4 and Bidwells, pages 2 & 4). As a result, the fact that the site has remained vacant for a long period is not surprising but it does not mean that the site is unsuitable for employment uses. Similarly, the fact that surrounding uses are now predominantly within the 'A' Use Classes does not make the site unsuitable for, or unlikely to be developed for employment uses;
- It would appear that KFC's interest has been longstanding (Bidwells, Page 3) and thus no attempt has been made to try to market for employment purposes, at least since the adjoining development by Marstons and Frankie & Benny was secured i.e. pre December 2014;
- The applicant appears to be relying on the fact that marketing was unnecessary, given the proximity of other vacant industrial properties in the area (Bidwells, page 2) and the fact that the site has a number of constraints (JPC, Bidwells & BPC). However, in the absence of any marketing of the site, this is purely conjecture and any reasonable marketing price would need to factor in existing constraints;
- Reliance on the Bidwells Business Space Team being aware of the site's availability (Bidwells, page 1) is not a substitute for the proper marketing of the site, as a potential occupier may not speak to Bidwells about their requirement;
- There is no evidence to suggest that some form of industrial/employment uses could not be secured on the site. The property details attached to the submission from Bycroft Commercial only relate to a single property which is described as:
  - A starter unit;
  - Only provides 149 sqm of space; and
  - Is indicated as available to let.

This appears to be consistent with the other properties available off Jones Way (Bidwells, page 2). However, whilst the application site is considered to be constrained by the applicant's consultants, it is still said to provide around 1,800 sqm (JPC, page 2) or 0.44 acres (Bidwells, page 1) of developable land. This is more than 10 times the size of the advertised unit. As such the site could be attractive for a business seeking a larger employment unit, or a freehold acquisition; and

- This appears to be consistent with the advice from the Bidwells Business Space Team who have "advised on the potential for employment uses" (Bidwells, page 1). This does not suggest that the site is unsuitable for such purposes and the subsequent text only suggests that speculative development may be commercially unrealistic for lower value employment. This does not discount all employment uses.

Despite the submission of additional material therefore, it remains the case that the applicant has:

- Failed to show that there is no commercial interest in the re-use of the site for employment, demonstrated by suitable marketing at an appropriate price for at least 18 months; and
- Failed to follow the sequential viability approach to the development of the site, as set out in the third bullet of Policy CS6(b). This requires that, following the unsuccessful marketing of the site for employment uses, the mixed use of the site incorporating an employment-generating use should be considered before a non-employment use.

We consider that this failure to comply with the recently adopted Core Strategy Policy CS6 is sufficient justification for the refusal of the current application, given there are no material considerations which

would outweigh the proposal's clear non-compliance with the adopted development plan (both in terms of Policy CS6 and Policy CS7).

However, should the Council be minded to approve the application, our client welcomes the confirmation that the proposed KFC unit would be in addition to that currently trading in the town centre. Ensuring this remains the case in the future is essential to long term health and vitality of the town centres that would otherwise be affected. Therefore, we consider that the proposed legal agreement to secure the continued trading of this and the Gorleston store would be an essential requirement for any planning consent, as, contrary to what BPC suggest (page 3), the proposed development will have an adverse impact on Great Yarmouth town centre, as any loss of trade to the new outlet will be both a direct and indirect loss of expenditure in the town centre. However, we accept that, provided the unit remains trading, such an impact will not be significantly adverse. This does not however address or outweigh non-compliance with CS6 / CS7.

I trust that these comments are of assistance and look forward to your confirmation that they have been received.

Yours sincerely



Heather Gallagher  
**Williams Gallagher**

S

## Graham A. Clarke

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**From:** Anna Stott <anna.stott@indigoplanning.com>  
**Sent:** 01 May 2018 16:44  
**To:** Graham A. Clarke  
**Cc:** Kim Balls; Sean McGrath  
**Subject:** Representations to application 06/18/0173/F  
**Attachments:** Indigo Representations to KFC Application\_Final.pdf  
  
**Importance:** High

Dear Graham

Please find attached representations on behalf of our client, Pasteur Retail Park Ltd, to planning application 06/18/0173/F at Plot 3, Land off Mitchell Drive and Jones (GC) Way, Great Yarmouth.

We trust that these representations will be taken into consideration in the determination of this application.

Should you have any queries on the attached, please do not hesitate to get in contact.

Kind regards

Anna

**Anna Stott | Planner**

**T:** 020 3848 2500 **M:** 07391 735 936 **E:** anna.stott@indigoplanning.com

**indigo.**



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By email.

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let.001..DM.E18-412

1 May 2018

Dear Mr Clarke

**KFC, MITCHELL DRIVE, GREAT YARMOUTH - REPRESENTATIONS TO  
PLANNING APPLICATION 06/18/0173/F**

We write on behalf of Pasteur Retail Park Ltd to object to planning application 06/18/0173/F at Plot 3, Land off Mitchell Drive and Jones (GC) Way, Great Yarmouth, NR31 0HA for the:

*"Erection of a single storey building for mixed A3/A5 (restaurant and hot food takeaway) use, incorporating a 'Drive-Thru' lane, car and cycle parking and associated landscaping and boundary treatment"*

The application is made by DPKBV Ltd to deliver a drive-thru KFC unit on land owned by Tesco PLC.

Our objection is that the application site is allocated as a designated employment site and the proposed is contrary to Core Strategy Policy CS6 which seeks to safeguard designated employment land.

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Local Plan: Core Strategy 2013 – 2030 (described hereafter as the Core Strategy).

In light of the Council's approach to similar proposals on the adjacent Pasta Foods site, there are no material circumstances which indicate that consent should be granted in this case.

**Grounds for Objection: Conflict with Core Strategy Policy CS6**

The Applicant has failed to demonstrate compliance with adopted Core Strategy Policy CS6.

The Core Strategy was adopted in December 2015 and must be considered to be an up-to-date plan for the purpose of decision making. Significantly, the adoption pre-dates the lapsed consent on the site, which was granted in May 2014. The previous consents also predates the appeal on the Pasta Foods site, which is also important. We address this further below.

The pre-application advice given to the applicant's planning consultants misrepresented the position. It acknowledges that the previous consent on the site

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Registered number: 2078843 V&T number: 449246134





pre-dated the adoption of the Core Strategy, and therefore circumstances have changed in respect of the sequential test. However, the advice does not follow the same logic in respect of the need for marketing evidence or a viability assessment to deal with the employment land designation.

## **Policy CS6**

Policy CS6 is a long, all-encompassing policy that seeks to support Great Yarmouth's economy. The policy has been considered by an Inspector at Examination and found to be in conformity with the NPPF.

Policy CS6 and its role in decision making on designated employment land has also been considered by a s78 Appeal Inspector in considering proposals on the adjacent Pasta Food site (Appeal ref: APP/U2615/W/15/3136604). The Inspector, Mr Nicholson, describes the aim of Policy CS6 at paragraph 6 of his decision letter:

"Policy CS6 aims to support the local economy by safeguarding, and making the most of, existing employment sites. In particular, it only allows alternative uses for allocated employment areas where there is no commercial interest demonstrated by marketing at an appropriate price for at least 18 months. In making a distinction between employment and the local economy in general, CS6 criterion g) refers to support for the retail economy in Policy CS7."

In the case of Pasta Food, it was agreed by the Inspector that development on their site would benefit a significant employer in the town. No such benefit will accrue from the KFC proposals.

In respect of Policy CS6, the Inspector concluded:

"The appeal site is currently designated as employment land. The Council acknowledged that there was an ample supply of such land and did not try and defend its position on this basis. Nevertheless, as a statement of intent so recently adopted, the requirements of Policy CS6 should be addressed and, as a matter of fact, there was no evidence that the required marketing had been carried out. Moreover, I do not agree that the CS deals with employment in the same way as retail or that providing retail jobs would satisfy the requirements. Indeed, CS6 draws a clear distinction between the two. For these reasons, some weight should be given to this conflict with Policy CS6 to set against the potential employment benefits at Pasta Foods".

The employment benefits relate to investment that would be made in Pasta Foods as a result of the development.

The Inspector's interpretation of the policy must apply to the application site. Indeed, his interpretation of Policy CS6 was applied in respect of the recent proposals for a Travelodge and eateries on the Pasta Food site (application ref: 06/16/0332/F) - hereafter described as the Travelodge application.



Like the KFC application, the Travelodge application is on land designated for employment under Policy CS6. It proposed a Travelodge and three restaurants.

The Committee Report helpfully confirms that previous Inspectors' decisions should be attributed "significant weight" in decision making. It states:

"Previous Inspector decisions are not binding, but given the application site is close to the appeal site and the facts relating to the application site are similar to the facts in the appeal decision then it is likely that as the decision makers Members of the Committee can attribute significant weight to the previous Inspector decision when determining the current planning application which relates to a very similar site".

The Travelodge Committee Report explains the policy background, which is also applicable to the KFC site:

"The scheme is situated on existing employment land, safeguarded for employment use and is subject, principally, to the direction of Local Plan Core Strategy (LPCS) Policy CS6. *The LPCS interpretation of 'employment-use' is clearly distinguished by individual policies. LPCS Policy CS6 is used as the primary basis for directing general business, industry and warehousing 'employment-uses', whereas LPCS Policy CS7 is used for the basis of directing retail-based 'employment' uses. Similarly, LPCS CS8 is used for the basis of directing leisure and tourism-based 'employment uses'.*

The proposal clearly seeks to change the practical use of the site away from general warehousing and industrial 'employment uses' to tourism and retail 'employment-uses'. *Therefore it is the Strategic Planning view that this proposal is not seeking to implement the types of 'employment-uses' as interpreted under the definition of Policy CS6, therefore the proposal should seek to demonstrate compliance against the remaining policy criteria of LPCS Policy CS6 (b) in order to allow 'alternative' uses.*

In assessing the Travelodge application, the Council supported the delivery of the Travelodge and one (of the three) associated restaurants because there is policy support for improving facilities for tourists and visitors. However, officers were particularly concerned about the remaining two restaurants, which were linked with Burger King and Costa Coffee. The Committee Report for the Travelodge application sets out how applications for restaurants on designated employment land must be considered. For ease we quote from it at length.

"As set out in the Strategic Planning policy section above the application is seeking to change the practical use of the site away from general warehousing and industrial 'employment uses' to tourism and retail 'employment-uses'. *Therefore it is considered that this proposal is not seeking to implement the types of 'employment-uses' as interpreted under the definition of Policy CS6, therefore the proposal should seek to demonstrate compliance against the remaining policy criteria of LPCS Policy CS6 (b) in order to allow 'alternative' uses.*



Since the application was submitted the applicants have provided further information in respect of the existing warehouse building which it is proposed to demolish here. In an executive overview report on the building states:-

1. The premises as a single unit lack offices, staff facilities and appropriate loading.
2. As a single unit the premises are badly laid out and unattractive bar for an occupier who requires a single "long run" process.
3. Sub division into a number of units likewise would not be cost effective.
4. Rents in the town coupled with unfavourable ground conditions render redevelopment economically unviable for industrial purposes.
5. No suitable applicant for newer refurbished premises were around on our parallel two year marketing of the former Pasta Warehouse on Bessemer Way, Gaptown Hall Industrial Estate.

The report that sets out the advantages and disadvantages of the building, market demand for industrial/warehouse accommodation along with ground conditions and competing accommodation concludes:-

The premises in their current format provide at best basic dry storage. Subdivision into smaller units is not viable due to the cost of direct building works and external changes. Redevelopment is not viable due to excessive build costs and absence of demand and the availability of competing lands with greater incentives such as the Council sponsored Enterprise Zone, Energy Park and Beacon Park as direct competitors. Higher land use occupiers are likely to be the only viable solution.

The report is not evidence that the site has been marketed for 18 months as required by the Policy CS6 – but provides an understanding of local market and ground condition based on local knowledge by a respected and established company in the town. Members will need to consider the information and accord it appropriate weight in the decision making process in relation to Policy CS6". (Our emphasis added).

Therefore, although there was a report by a respected local agent explaining why the Pasta Foods site as not likely to be redeveloped for employment use, the 18 month marketing requirement was not addressed. It should be noted that the existing warehouse was demolished to accommodate the Travelodge not the two restaurants.

The Travelodge Committee Report's conclusion is crucial. For this reason, we have again quoted it at length.

"This application differs from the previously refused applications on the site in that the larger retail elements have been dropped from the scheme which contributed to Members and the Planning Inspectorate refusing the



applications as whole because of the potential adverse impact upon vitality and viability of Great Yarmouth town centre. The Planning Inspector was supportive of the newly adopted Core Strategy policies and whilst the Council is not bound by the Inspectors decision in determining these applications Members should consider it a material consideration of some weight given the similarity in the issues involved and relevance to this application.

It is clear that the relevant policies in terms of marketing the land have not been addressed ie in that it has not been demonstrated that the land has been marketed for a period 18 months as required by the policy and that there is no demand for the land for employment purposes. In its absence the applicants have produced a report looking on the condition of the building, the land and local markets conditions. The report concludes that there is little local demand and that ground conditions are poor and development for employment/industrial purposes would not be viable.

The Planning Inspector gave some weight to Policy CS6 in that the policy had not been complied with and was cited in conjunction with the other policies as a reason for refusal.

In terms of the Costa and Burger King (A3/A5) Uses the Inspector concluded that their location would contribute to making this out of town location a destination in its own right and not supporting the town centre. This is likely to continue here. The applicants have done limited work on looking in terms of the sequential test but it is acknowledged in the policy assessment that there are a limited number of site which are available given the format required but it is clear that empty shops with road frontages available as put forward by the Planning Inspector.

In terms of the consultation responses from statutory consultees on the technical side reading access and drainage no real issues have been raised that cannot be controlled by suitable conditions.

The site is within a flood risk area and Members will need to satisfy themselves that this a suitable location for a location of a hotel and that Flood Risk can be managed taking into account the comments of the Environment Agency referred to above.

The application has been subject to representation from a number of parties including local hotelier, Market Gates Shopping and employees of Pasta Foods all which should be given due consideration and weight in the decision making.

The Economic Development Officer in commenting in the application acknowledges that this is safe guarded land in the local plan but also acknowledges the role of Pasta Foods as an important local employer and recognise the potential for growth in the and the investment required. The creation of jobs within this development is supported along with the potential via a legal agreement of ensuring the sustainability of the Pasta Foods and if this can be assured by agreement on balance the application he supports the application". (Our emphasis added).



The overall conclusion supports the proposals 'on balance'. It states:

"On balance Approve subject to the signing of a legal agreement ensuring investment in the existing Great Yarmouth Pasta Factory and subject to conditions as by the highway authority, Environment Agency, Landscaping and drainage and controlling condition to secure the development as proposed".

It is clear from reading the conclusions and recommendations that:

- Officers considered that providing restaurants on employment land conflicted with CS6 because there had not been 18 months marketing; and
- There are potential sequential sites available to accommodate the Costa Coffee and Burger King.

However, given the legal agreement ensuring investment in Pasta Foods, 'on balance' the application could be approved.

In the case of KFC's application, we are not aware of:

- Any attempt to market the site; or
- Any attempt to explain why the site is not suitable for a Class B Use.

In short, the proposals conflict with Policy CS6. There are no material circumstances that indicate that the conflict with this policy should be accepted and so the application must be refused.

## Conclusion

As we have set out above, the proposed development is for a new drive-thru restaurant on designated employment land. Therefore, the proposals conflict with Policy CS6 of the adopted Core Strategy because it fails to adequately safeguard designated employment land and does not provide any evidence to justify the loss of the employment land or demonstrate that it is no longer required through an 18-month marketing exercise.

It is an axiom of good planning that there is consistency in decision making. The history of the Pasta Foods site on the opposite side of Jones (GC) Way shows how an appeal Inspector and the Council has interpreted planning policy, particularly Policy CS6, which deals with designated employment land.

Both the Inspector and the Council expect sites to be marketed for 18 months before a non-B Class use will be accepted. The failure to market the site for this period was enough to be a reason for refusal for the Inspector, even though he acknowledged that the appeal scheme would benefit a major local employer.

In the case of the Travelodge application, it is clear from the committee report that



officers considered that the proposals conflicted with Policy CS6. However, the applicant's commitment to invest £500,000 in Pasta Foods' Great Yarmouth factory was given significant weight in the planning balance and this material consideration outweighed the policy conflict.

In the case of the KFC application, there must still be a conflict with Policy CS6, but there are no material circumstances that outweigh the conflict.

Officers have confirmed that the previous Inspector's decision must be given 'significant weight' when determining an application which relates to a very similar site. This must also be true in respect of the Council's interpretation of policies in respect of the Travelodge application.

For these reasons, the application must be refused.

We trust that these representations will be taken into account in the determination of this planning application and that the applicant is told that they must market the site for 18 months or the application will be refused planning consent.

If you require any further information, please let me know.

Yours sincerely,  


Anna Stot

cc: Steve Burton, CCE  
Kim Balls, GYBC



Environment  
Agency

Great Yarmouth Borough Council  
Planning Department  
Town Hall  
Great Yarmouth  
Norfolk  
NR30 2QF

Our ref: AE/2018/122707/01-L01  
Your ref: 06/18/0173/F  
Date: 23 April 2018

Dear Sir/Madam

**ERECTION OF A SINGLE STOREY BUILDING FOR MIXED A3/A5 (RESTAURANT AND HOT FOOD TAKEAWAY) USE, INCORPORATING A 'DRIVE-THRU' LANE, CAR AND CYCLE PARKING AND ASSOCIATED LANDSCAPING AND BOUNDARY TREATMENT**

**MITCHELL DRIVE AND JONES (GC) WAY (LAND OFF) PLOT 3 GREAT YARMOUTH NR31 0GA/0GB**

Thank you for your consultation received on 3 April 2018. We have inspected the application, as submitted, and have no objection because the site is currently defended and the area benefits from a Catchment Flood Management Plan (CFMP). If the CFMP policy is not taken forward the development would be unsafe in the future. Please take note of this and the other flood risk considerations which are your responsibility. We have highlighted these in the flood risk section below.

**Flood Risk**

Our maps show the site lies within tidal Flood Zone 3a defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The proposal is for the erection of a single storey building (restaurant and takeaway), incorporating a drive-thru, car and cycle parking and associated landscaping, which is classified as a 'less vulnerable' development, as defined in [Table 2: Flood Risk Vulnerability Classification](#) of the Planning Practice Guidance.

To comply with national policy the application is required to pass the Sequential Test and be supported by a site specific Flood Risk Assessment (FRA). The requirement to apply the Sequential Test is set out in Paragraph 101 of the National Planning Policy Framework. The Exception Test is set out in paragraph 102. These tests are your responsibility and should be completed before the application is determined. Additional guidance is also provided on [Defra's website](#) and in the [Planning Practice Guidance](#).

To assist you in making an informed decision about the flood risk affecting this site, the key points to note from the submitted FRA, referenced IE18/017/RMC/rc and dated 9 March 2018, are:

Environment Agency  
Cobham Road, Ipswich, Suffolk, IP3 9JD.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)  
Cont/d..



### Actual Risk

- The site is currently protected by flood defences with an effective crest level of 2.99m AOD which is above the present-day 0.5% (1 in 200) annual probability flood level. Therefore the site is not at risk of flooding in the present-day 0.5% (1 in 200) annual probability flood event. The defences will continue to offer protection over the lifetime of the development, provided that the hold the line CFMP policy is followed and the defences are raised in line with climate change, which is dependent on future funding.
- At the end of the development lifetime with climate change applied to the design 0.5% annual probability flood event, if the CFMP policy is not followed then through overtopping of the current defences the resulting on-site flood level would be 2.28m AOD. The resulting actual risk depth of flooding on the site using the minimum site level of 0.96m AOD would be 1.32m deep, and in the building using the proposed finished floor levels of 1.30m AOD would be 0.98m deep.

### Residual Risk

- Our undefended flood levels show that in a worst-case scenario the site could experience breach flood depths of up to 2.27 metres during the 0.5% (1 in 200) annual probability including climate change breach flood event with flood level of 3.23m AOD, and up to 2.52 metres during the 0.1% (1 in 1000) annual probability including climate change breach flood event with flood level of 3.48m AOD. You may wish to ask the applicant to provide a breach assessment for the development site in their FRA so that you can make a more informed decision on flood risk.
- Therefore assuming a velocity of 0.5m/s the flood hazard is danger for all including the emergency services in the 0.5% (1 in 200) annual probability flood event including climate change.
- Finished ground floor levels have been proposed at 1.30m AOD. This is below the 0.5% annual probability breach flood level including climate change of 3.23m AOD and therefore at risk of flooding by 1.93m depth in this event.
- Flood resilience measures have been proposed at 2.80m AOD which is 0.43m below the 0.5% (1 in 200) annual probability breach flood level including climate change.
- A Flood Evacuation Plan has been proposed and is necessary to ensure the safety of the development in the absence of safe access / with internal flooding in the event of a breach flood.

### **Catchment Flood Management Plan**

The current defences protect Great Yarmouth against a tidal flood with a 0.5% (1 in 200) annual probability of occurrence. However, the impacts of climate change on sea levels over the development's lifetime will gradually reduce the level of protection afforded by the defences if they are not raised within this timeline. Without the raising of the defence, the site could flood should a tide with a 0.5% (1 in 200) annual probability flood event plus climate change occur. This could also present challenges to the safety



of the users of the buildings and a future reliance on evacuation or emergency response.

The Broadland Catchment Flood Management Plan (CFMP) for Great Yarmouth has a policy stating 'areas of moderate to high flood risk where we can generally take further action to reduce flood risk' and one of the key messages is 'Develop a study to look at options to manage residual flood risk in the future.' Therefore it is possible that the flood defences may be raised in line with climate change to continue to protect against the future 0.5% (1 in 200) flood event for the lifetime of the development.

This policy is aspirational rather than a definitive so whether the defences are raised or reconstructed in the future will be dependent the availability of funding. The level of block funding "grant in aid" that we can allocate towards flood defence improvements is currently evaluated through cost benefit analysis, and any identified shortfalls in scheme funding requirements could require significant partnership funding contributions from other organisations to ensure that schemes proceed.

When determining the safety of the proposed development, you should take this uncertainty over the future flood defences and level of flood protection into account. This may require consideration of whether obtaining the funds necessary to enable the defences to be raised in line with climate change is achievable.

### **Safety of Building – Flood Resilient Construction**

The FRA does propose to include flood resistant/resilient measures in the design of the building to protect/mitigate the proposed development from flooding.

You should determine whether the proposed measures will ensure the safety and sustainability of the proposed development. Consultation with your building control department is recommended when determining if flood proofing measures are effective. Further information can be found in the document 'Improving the flood performance of new buildings' at: [http://www.planningportal.gov.uk/uploads/br/flood\\_performance.pdf](http://www.planningportal.gov.uk/uploads/br/flood_performance.pdf). Additional guidance can be found in our publication 'Prepare your property for flooding', which can be found on our website at <https://www.gov.uk/government/publications/prepare-your-property-for-flooding>

### **Safety of Inhabitants – Emergency Flood Plan**

We do not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The [Planning Practice Guidance](#) to the National Planning Policy Framework states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. As such, we recommend you consult with your Emergency Planners and the Emergency Services to determine whether the proposals are safe in accordance with



the guiding principles of the Planning Practice Guidance (PPG).

We have considered the findings of the FRA in relation to the likely duration, depths, velocities and flood hazard rating against the design flood event for the development proposals. We agree that this indicates that there will be:

- A danger for all people (e.g. there will be danger of loss of life for the general public and the emergency services).

This does not mean we consider that the access is safe, or the proposals acceptable in this regard. We remind you to consult with your Emergency Planners and the Emergency Services to confirm the adequacy of the evacuation proposals.

#### **Partnership funding for new/upgraded defences**

Please note that government funding rules do not take into account any new properties (residential or non-residential), or existing buildings converted into housing, when determining the funding available for new/upgraded defences. Therefore as the proposed development may reduce the funding available for any future defence works we would like to take opportunities to bring in funding through the planning system, so please can you consider this when determining the planning application.

#### **Other Sources of Flooding**

In addition to the above flood risk, the site may be within an area at risk of flooding from surface water, reservoirs, sewer and/or groundwater. We have not considered these risks in any detail, but you should ensure these risks are all considered fully before determining the application.

Yours faithfully



**Miss Natalie Kermath**  
**Planning Advisor**

Direct dial 02077141064

Direct e-mail [natalie.kermath@environment-agency.gov.uk](mailto:natalie.kermath@environment-agency.gov.uk)

cc Beamish Planning Consultancy

End



Graham Clarke  
Great Yarmouth Borough Council  
Town Hall  
Hall Plain  
Great Yarmouth  
Norfolk  
NR30 2QF

Your Ref: 06/18/0173/F  
Date: 25 April 2018

My Ref: 9/6/18/0173  
Tel No.: 01603 638070  
Email: [stuart.french@norfolk.gov.uk](mailto:stuart.french@norfolk.gov.uk)

Dear Graham

**Great Yarmouth: Erection of a single storey building for mixed A3/A5 (restaurant and hot food takeaway) use, incorporating a 'Drive-Thru' lane, car and cycle parking and associated landscaping and boundary treatment  
Mitchell Drive and Jones (GC) Way (Land off) Plot 3 GREAT YARMOUTH NR31  
0GA/0GB**

Thank you for your recent consultation with respect to the above.

Having considered the application I have no objection in principle in highway terms, however, the application includes a large number of staff, 25 full time and 35 part time, possibly equating to around 40 f.t.e, although the latter has not been defined.

Accordingly given the proposed staffing numbers I do have some concerns with regard to where staff will park, as the proposed car park provision for the customers is only acceptable for that use, and given the sites constraints it would appear no expansion is possible.

Whilst I accept that some of the staff may well be local and or of an age whereby they may not have access to their own private means of transport, there is the possibility of staff parking being displaced on the surrounding roads, and indeed possibly customer parking if staff utilise the customer parking provision. Certainly if this were to occur on Jones (GC) Way this would give rise to conditions detrimental to highway safety

I am however, minded from experience that the overall operation of the proposals is unlikely to have a severe residual cumulative impact such that I could recommend refusal on highway grounds, but I do consider that, if this application is approved that the operation be monitored in terms of parking and any displacement thereof. If this

*Continued/...*



monitoring identifies issues then the applicant will be expected to fund the promotion of Traffic Regulation Orders in respect of appropriate restrictions. I am prepared to deal with these matters by condition if that is acceptable to the LPA.

Accordingly the Highway Authority raise no objection to the proposals subject to the following conditions and informative note being appended to any grant of permission your Authority is minded to make.

SHC 21 Prior to the commencement of the use hereby permitted a 2.4 metre wide parallel visibility splay (as measured back from the near edge of the adjacent carriageway) shall be provided across the whole of the site's roadside frontage. The parallel visibility splay shall thereafter be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the adjacent highway carriageway.

Reason: In the interests of highway safety.

SHC 24 Prior to the commencement of the use hereby permitted the proposed access, on-site car and cycle parking, servicing, turning and waiting areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.

Reason: To ensure the permanent availability of the parking / manoeuvring area, in the interests of highway safety.

SHC 45A Prior to the commencement of the development a monitoring programme to assess the level of on street parking on Jones (GC) Way resulting from the development shall be submitted to and approved in writing by the Local Planning Authority. The monitoring programme shall be implemented as agreed unless the Local Planning Authority gives written approval to any variation.

Reason: To ensure that agreed traffic/parking levels are not breached and thus highway network is adequate to cater for the development proposed.

SHC 45B Subject to the findings of the monitoring programme referred to in Part A, if required by the Local Planning Authority in discussion with the Highway Authority, the applicant shall fund the promotion of appropriate Traffic Regulation Order (s) for parking/loading restriction

Reason: In the interests of highway safety.

Inf.1 It is an OFFENCE to carry out any works within the Public Highway, which includes a Public Right of Way, without the permission of the Highway Authority. This development involves work to the public highway that can only be undertaken within the scope of a Legal Agreement between the Applicant and the County Council. Please note that it is the Applicant's

*Continued/...*



responsibility to ensure that, in addition to planning permission, any necessary Agreements Advice on this matter can be obtained from the County Council's Highways Development Management Group based at County Hall in Norwich, tel: 0344 800 8020. Public Utility apparatus may be affected by this proposal. Contact the appropriate utility service to reach agreement on any necessary alterations, which have to be carried out at the expense of the developer.

If required, street furniture will need to be repositioned at the Applicant's own expense.

Yours sincerely

*Stuart French*

Highways Development Management & Licensing Officer  
for Executive Director for Community and Environmental Services

Secured by Design



**NORFOLK**  
CONSTABULARY

*Our Priority is You*

Norfolk Constabulary

Community Safety Department (Norfolk)  
C/o Police Station  
3, London Road  
Beccles  
Suffolk  
NR34 9TZ

Tel: 01493 333349  
Mobile: 07920 878216  
Email: wolseyr2@norfolk.pnn.police.uk

[www.norfolk.police.uk](http://www.norfolk.police.uk)  
Non-Emergency Tel: 101

FAO  
Mr Graham CLARKE

Great Yarmouth Borough Council  
Planning Services  
Town Hall  
Hall Plain  
Great Yarmouth  
Norfolk  
NR30 2QF

Ref: **06/18/0173/F**

Date: 13/04/18

### Planning Application

**Erect single storey building for mixed A3/A5 use, incorporating 'Drive-Thru', car & cycle parking & associated landscaping & boundary treatment at Mitchell Drive and Jones (GC) Way, (Land off) Plot 3, GREAT YARMOUTH, NR31 0GA/0GB**

Dear Mr Clarke,

Thank you for inviting me to comment on the above Planning Application. I note that opening hours for the proposed use of the premises covers a 24hr period and therefore security protection during vulnerable closed periods is reduced due to business activity within. However, there is an absence of security measures contained within this application and therefore I make the following comments:

The area suffers from a high level of retail crime and associated crime within the realms of retail parks in this Policing District. I would recommend that doorsets reflect PAS 24:2016 or LPS 1175 SR2 standards. All glazing in and adjacent to doors should be certified to PAS 24:2016 or LPS 1175 standards. All accessible windows should incorporate laminate attack resistant glazing and reflect Secured by Design Commercial Developments 2015 guidance. For the purposes of reducing criminality, Fire doors should not feature exposed external hinges or other external door furniture to which criminals can use to gain purchase to assist attack. I recommend building materials, including external doors and

We will answer letters within 10 working days, where information is available.  
Where this is not possible, an explanation will be given for any delay.



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windows reflect Secured by Design (SBD) Commercial Developments 2015 guidance, where attack resistant products provides appropriate security and business protection.

Boundary treatments for an open aspect business should prevent excess vehicular permeability across boundary lines, which the knee rails should provide. However, the northern boundary should also be appropriately defensible to protect against unauthorised vehicular access, including any possibility of encampment access into the large grassed area.

Criminals like to use the darkness to commit crime or commit anti-social behaviour and without providing adequate light cover, criminality and anti-social behaviour will occur. Such cover will protect users and other visitors during the hours of darkness, reduce the fear of crime and deter criminality and anti-social behaviour. The building should be equipped with vandal resistant 'dusk to dawn' sensor security lighting to remove dark voids, meaning use of the development will be safer and criminal activity deterred or identified early. When considering security lighting, due regard should be given to preventing nuisance and minimising light pollution. External and internal security lighting should reflect Secured by Design Commercial Developments 2015 guidance.

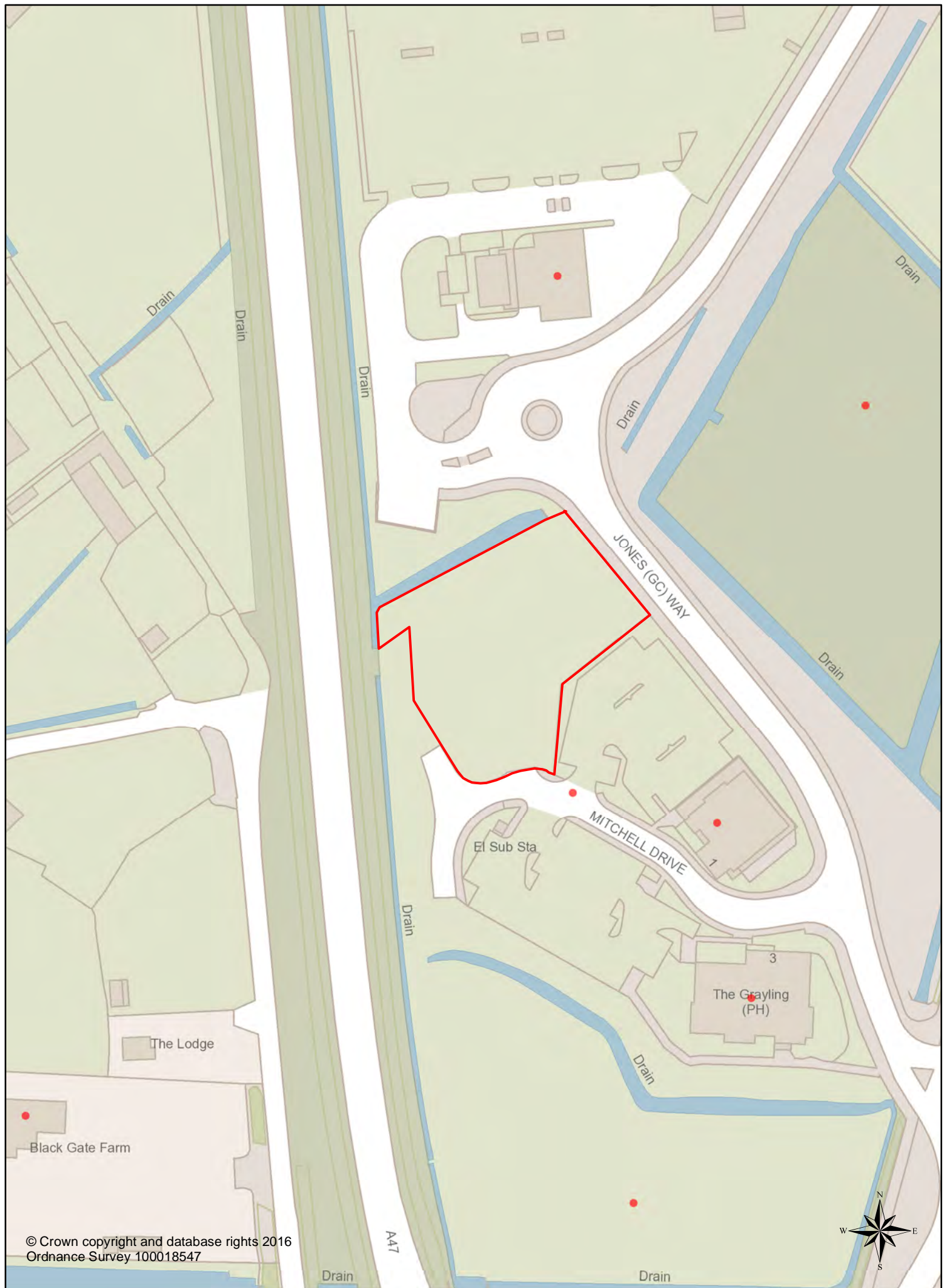
I am not in agreement with the siting of the open cycle bays in the current location. I wholly recommend cycle bays should move to where the cycles can be readily and directly seen and closely monitored by the owners/users and that would be where they are situated in front of glazed windows, allowing natural surveillance to be maintained. Plans indicate the siting would put the bays out of sight and will encourage cycle crime, which remains high in the area.

I would encourage the adoption of the principles contained within Commercial Developments 2015 guidance, which can be downloaded from [http://www.securedbydesign.com/professionals/pdfs/SBD Commercial 2015 V2.pdf](http://www.securedbydesign.com/professionals/pdfs/SBD_Commercial_2015_V2.pdf). If the applicant wishes to discuss these comments or requires any further assistance, please do not hesitate to contact me.

Yours sincerely

Mr Dick Wolsey  
**Architectural Liaison Officer**  
GT Yarmouth Police station  
[www.securedbydesign.co.uk](http://www.securedbydesign.co.uk)





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