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**MAIN CASE**

**Reference No:** 13/00441/OUT

**Proposal:** Detached house and garage

**Site Address:** Land Adjacent 39 East Fen Common Soham Ely  
Cambridgeshire CB7 5JJ

**Applicant:** Mr & Mrs J.M.A. Sinclair

**Case Officer:** Richard West Planning Officer

**Parish:** Soham

**Ward:** Soham South

**Ward Councillors:** Councillor T Parramint  
Councillor C Fordham  
Councillor H Ross

**Date Received:** 4 June 2013

**Expiry Date:**

[P223]

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1.0 **RECOMMENDATION**

1.1 Members are requested to REFUSE the application for the following reasons:

1. The proposed dwelling, by reason of its location outside the development envelope of Soham, and lack of exceptional circumstances, is considered to be contrary to policies CS1 of the Core Strategy and GROWTH2 of the Draft Local Plan.
2. The proposed dwelling, by reason of its location within flood zone 3, as identified on the Environment Agency's flood maps, is subject to the sequential test in accordance with section 10 of the NPPF and policies EN7 of the Core Strategy and ENV8 of the Draft Local Plan. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. The applicant has failed to demonstrate an appropriate area of search and therefore the local planning authority have applied a district wide area of search which is considered appropriate for one open market dwelling. Within the district wide area of search there are other reasonably available sites in areas at a lower risk of flooding. It is considered the development has failed to pass the sequential test and is contrary to policies EN7 of the Core Strategy and ENV8 of the Draft Local Plan and section 10 of the NPPF.

## 2.0 SUMMARY OF APPLICATION

- 2.1 This application seeks outline planning permission for the erection of a detached house and garage. Details of Access, Appearance, Layout and Scale have been submitted with Landscaping to be a reserved matter.
- 2.2 The proposed dwelling will be one and a half storey with pitched dormer windows in the front roof slope. A detached single storey garage will be located to the side and rear of the dwelling. A new access will be provided onto the site, adjacent to the existing, with shared access across the common.
- 2.3 Amended plans have been received during the application process reducing the size of the proposed dwelling.
- 2.4 The full planning application, plans and documents submitted by the Applicant can be viewed online via East Cambridgeshire District Council's Public Access online service, via the following link <http://pa.eastcambs.gov.uk/online-applications/>. **Alternatively a paper copy is available to view at the East Cambridgeshire District Council offices, in the application file.**

## 3.0 PLANNING HISTORY

- 3.1
- |              |   |          |            |
|--------------|---|----------|------------|
| 07/00029/OUT | Outline for one dwelling with garage and parking. | Approved | 13.03.2007 |
| 12/00086/OUT | Detached house and garage                         |          | 01.05.2012 |

## 4.0 THE SITE AND ITS ENVIRONMENT

- 4.1 The application site is located to the east of Soham, outside the development envelope. The area is semi-rural in character. There is a linear development of residential dwellings set back from the road. Beyond the linear development are fields.
- 4.2 The dwellings within the linear development surrounding the site comprise primarily detached bungalows. The dwelling to the west of the application site is a detached bungalow with the roof ridge parallel to the road. The dwelling to the east of the application site is a two storey detached house with a steep pitched roof. The roof ridge of the main dwelling is parallel to the road although there is a one and a half storey gable projecting towards the road.
- 4.3 The application site is currently garden land serving no.39 East Fen Common. No.39 is accessed via an access track across the common. The site is bounded by hedgerow with several trees on site.

## 5.0 RESPONSES FROM CONSULTEES

5.1 Responses were received from the following consultees and these are summarised below. The full responses are available on the Council's web site.

Soham Town Council – no concerns provided access over the common is agreed and no materials are to be stored on the common during construction

Councillor James Palmer – the application should be determined at planning committee because the applicant accidentally allowed the previous permission to expire thinking the permission lasted 5 years, not 3 years

Middle Fen and Mere Internal Drainage Board – no objections provided that soakaways form an effective means of disposing of surface water

Local Highways Authority – no objection

Tree Officer – Two young trees are proposed to be removed and the majority of the front hedgerow is to be retained; no objection

Environmental Health – no further land contamination investigation is required; no objection

Environment Agency – the submitted flood risk assessment is acceptable; no objection subject to conditions. The sequential test should be undertaken by the local planning authority

Definitive Map Officer – The proposed access will cross Public Footpath No.70 Soham. Driving across footpaths and common land is illegal without lawful authority. No objection subject to informatives

Cambs Wildlife Trust – East Fen Common is a county wildlife site. Construction activities have the potential to impact on the vegetation of the common. The biodiversity implications have not been properly considered

5.2 Neighbours – 2 neighbouring properties were notified and a site notice was posted on 05/07/2013. No responses have been received

## 6.0 The Planning Policy Context

6.1 East Cambridgeshire Core Strategy 2009

CS1	Spatial Strategy
CS2	Housing
S6	Transport impact
S7	Parking provision
EN1	Landscape and settlement character
EN2	Design
EN6	Biodiversity and geology
EN7	Flood risk
EN8	Pollution

6.2 East Cambridgeshire Draft Local Plan Pre-submission version (as modified)

- GROWTH 2 Locational strategy
- ENV 1 Landscape and settlement character
- ENV 2 Design
- ENV 7 Biodiversity and geology
- ENV 8 Flood risk
- ENV 9 Pollution
- COM 7 Transport impact
- COM 8 Parking provision

6.3 Supplementary Planning Documents

Design Guide

6.4 National Planning Policy Framework 2012

- 6 Delivering a wide choice of high quality homes
- 7 Requiring good design
- 10 Meeting the challenge of climate change, flooding and coastal change

6.5 Planning Practice Guidance

7.0 PLANNING COMMENTS

7.1 The main issues in assessing this application are the principle of development and the impacts on the visual appearance and character of the area, flood risk, amenity, biodiversity and highway safety and access.

Principle of development

7.2 The application site is located to the east of Soham, outside the development envelope, as defined in both the Core Strategy and Draft Local Plan. Policies CS1 of the Core Strategy and GROWTH2 of the Local Plan strictly control development outside of development envelopes with some exceptions as listed in the policies. The proposed development does not meet any of the exceptions and therefore is contrary to policy.

7.3 An outline application for a dwelling and garage was permitted in 2007, reference: 07/00029/OUT which has expired. The dwelling was approved as an 'infill' dwelling in accordance with applicable national and local policy at the time. There has been a substantial change in local and national policy since 2007 and therefore the previous decision is given very limited weight in the decision making process.

7.4 It is considered there is an in-principle objection to the proposed dwelling due to its location outside the development envelope of Soham and lack of exceptional circumstances. The proposed development is considered to be contrary to policies CS1 of the Core Strategy and GROWTH2 of the Draft Local Plan.

## Visual Appearance and Character of the Area

- 7.5 The proposed dwelling, as originally submitted, was considered to be overly large and detrimental to the visual appearance and character of the area. Notwithstanding an in-principle objection, the applicant submitted amended plans.
- 7.6 The proposed dwelling would be located in the side garden of no.39 East Fen Common between a bungalow and a two storey house and therefore would not extend the linear form of development and would not constitute backland development extending the depth of the surrounding built form. The one and a half storey height of the dwelling would provide a transition between the adjacent dwellings and it is considered that the use of modest sized dormer windows would not create a dominant feature in the street scene. The proposed access will result in the loss of two trees and some of the hedgerow along the front boundary of the property. The tree officer was consulted on the application and confirmed the trees are not significant specimens and do not make an important contribution to amenity.
- 7.7 It is considered that the proposed dwelling will not have a detrimental impact on the visual appearance or character of the area. The proposed development is considered to be in accordance with policies EN1 and EN2 of the Core Strategy and ENV1 and ENV2 of the Draft Local Plan.

## Flood Risk

- 7.8 The application site is identified on the Environment Agency (EA) flood maps as being located within an undefended area of Flood Zone 3. The applicant has demonstrated there is a raised flood defence along the bank of Soham Lode which provides a 1 in 100 year standard of protection. The EA has accepted that the site is not located in the functional floodplain but is still located in flood zone 3.
- 7.9 In accordance with policies EN7 of the Core Strategy, ENV8 of the Draft Local Plan and section 10 of the NPPF the sequential test must be applied to new development in flood zones 2 and 3. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development shall not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
- 7.10 The Planning Practice Guidance notes that for individual planning applications the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. It is for local planning authority, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application.
- 7.11 In the submitted flood risk assessment the developer identifies that it is impractical to consider alternative sites as the application involves the erection of a dwelling on land occupied by the garden of an existing dwelling. No evidence has been submitted as to why it is impractical to consider alternative sites for the siting of a

single open market dwelling. It is considered that an area of search appropriate for a single open market dwelling would be district wide. District wide there are many sites reasonably available to accommodate a new dwelling and therefore it is considered that the sequential test has not been passed and the application should be refused.

- 7.12 The EA were consulted on the application and made the following comments. The submitted flood risk assessment identifies inaccuracies in the hydraulic modelling used to create the flood map in the area. A site specific model was undertaken for a site in the area which is applicable to this site. The model produced a 1 in 100 flood level of 4.62m AOD at East Fen Common. The flood risk assessment identified that the model has not taken into account some site specific conditions which would reduce the estimated flood levels. However, until such a time that the model has been revised, we have to use the current modelled flood levels to evaluate the flood risk at the site.
- 7.13 As part of the exception test, in accordance with paragraph 102, bullet point 2 of the NPPF, the applicant is required to demonstrate that the development will be safe for its lifetime. The EA have raised no objection to the development subject to conditions regarding finished floor levels and flood resilience. Additionally, the EA reiterated the requirement for the dwelling to pass the sequential test and the exception test to be applied for this to be applicable. The Internal Drainage Board were also consulted on the application and raised no objection provided that soakaways form an However, as noted above, the application has not passed the sequential test and therefore whether the building would be safe for its lifetime is irrelevant as a dwelling could be located in an area at a lower risk of flooding.
- 7.14 The proposed development does not pass the sequential test and is considered contrary to policies EN7 of the Core Strategy, ENV8 of the Draft Local Plan and section 10 of the NPPF.

#### Amenity

- 7.15 The proposed dwelling will be located in close proximity to no.33 East Fen Common and no.39 East Fen Common.
- 7.16 The proposed dwelling will not extend beyond the rear building line of no.33 and therefore is not considered to have an overbearing or significant overshadowing impact on the rear amenity space or windows serving habitable rooms in the rear elevation of no.33. The front elevation will extend beyond the front elevation of no.33 but not enough to impact upon the front windows.
- 7.17 No.39 has several windows which will face the proposed dwelling and garage. The windows will be 9.5m from the garage and 14.5m from the dwelling which is considered sufficient to avoid an overbearing impact. The dwelling will be located on garden land currently serving no.39 with some amenity space retained to the rear. The amenity space to be retained will exceed the 50 square metres as set out in the Council's Design Guide SPD and will be separated from the rear amenity of the proposed dwelling by a 1.8m high fence. As originally submitted, the proposed dwelling had dormer windows which would have overlooked this space however these have been removed from the amended plans.

- 7.18 The proposed dwelling will have an amenity space to the rear that exceeds the required 50 square metres.
- 7.19 An Envirosearch report dated 26<sup>th</sup> January 2012 was submitted as part of the application. Environmental Health were consulted on the application and commented that no further work is needed to address land contamination at the site. A residential use of the site is not considered contrary to policies EN8 of the Core Strategy and ENV9 of the Draft Local Plan.
- 7.20 It is considered that the proposed dwelling will incorporate sufficient amenity space to provide the occupiers with a high standard of living and will not have a significant detrimental impact on the amenity of the occupiers of the neighbouring properties. The proposed development is considered to be in accordance with policies EN2 and EN8 of the Core Strategy and ENV2 and ENV9 of the Draft Local Plan.

#### Biodiversity

- 7.21 Access to the site is proposed across the common which is a county wildlife site due to the remnants of species-rich grassland. Cambs Wildlife Trust were consulted on the application and commented that no consideration has been given to the potential implications during the construction activities resulting from vehicle movements and storage of materials. Any potential impacts should be compensated for and biodiversity gains should be sought. Policy EN6 of the Core Strategy and ENV7 of the Draft Local Plan note that proposals that would cause harm to county wildlife sites will not be permitted unless the need for, and benefits of development in that location outweigh the potential harm to nature conservation interests. To avoid any adverse impacts during the construction period a condition could be attached to any permission requiring a construction management plan to be submitted prior to commencement. A construction management plan would ensure there are no adverse impacts and therefore a further condition requiring damage to be compensated for would be speculative and would not meet the test for conditions. Subject to a construction management plan, it is considered there will not be a detrimental impact on the county wildlife site in accordance with policies EN6 of the Core Strategy and ENV7 of the Draft Local Plan.

#### Highway safety and access

- 7.22 The application proposes a new access to the site by removing a section of hedgerow to the front of the site. The dwelling will then use the access across the common to gain access to the highway. A turning space has been provided in front of the dwelling to allow vehicles to manoeuvre on-site allowing access and egress in a forward gear. CCC Highways were consulted on the application and raised no objection; commenting that there is not considered to be an adverse impact on the highway network.
- 7.23 Public footpath no.70, Soham, runs immediately across the front of the site and vehicular access would be across the common. CCC Definitive Map Officer was consulted on the application and raised no objection to the application subject to informatives and the applicant ensuring that they have lawful authority prior to proceeding.

7.24 It is considered that, subjecting to gaining lawful authority across the common land, the development will be provide a safe access which will not have a detrimental impact on highway safety. The proposed development is considered to be in accordance with policies S6 of the Core Strategy and COM7 of the Local Plan.

#### Conclusion

7.25 The proposed development is located outside the development envelope of Soham where development is strictly controlled, subject to exceptions. The proposed development is not considered to constitute an exception and is considered contrary to policies CS1 of the Core Strategy and GROWTH2 of the Draft Local Plan. Therefore, there is an in-principle objection to the proposed dwelling.

7.26 The application site is located in Flood Zone 3, as shown on the Environment Agency flood maps, where the sequential test must be undertaken. The applicant has failed to demonstrate that there are no reasonably available sites in an area at lower risk of flooding. In the opinion of the Local Planning Authority there are other reasonably available sites which could accommodate a single dwelling in an area with a lower risk of flooding and therefore the proposed development does not pass the sequential test. The proposed development would be contrary to policies EN7 of the Core Strategy, ENV8 of the Draft Local Plan and section 10 of the NPPF.

7.27 The impact of the proposed dwelling on the visual appearance and character of the area, amenity, biodiversity and highway safety has been assessed and it is considered there will not be a detrimental impact that would justify a refusal of planning permission. The proposed development is considered to be in accordance with policies EN1, EN2, EN6, EN8, S6 and S7 of the Core Strategy and ENV1, ENV2, ENV7, ENV9, COM7 and COM8 of the Draft Local Plan.

#### 8.0 APPENDICES

8.1 Application reference: 07/00029/OUT officer report

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer(s)</u></b>
13/00441/OUT application file	Richard West Room No. 011 The Grange	Richard West Planning Officer 01353 665555
07/00029/OUT application file	Ely	richard.west@eastcambs.gov.uk