

MAIN CASE

Reference No: **19/00897/FUL**

Proposal: **Temporary erection of a single storey marquee for functions, outside bar and store forming an annexe to existing hotel (retrospective)**

Site Address: **The Three Pickerels 19 Bridge Road Mepal Ely Cambridgeshire CB6 2AR**

Applicant: **Mr Paul Kenyon**

Case Officer: **Molly Hood, Planning Officer**

Parish: **Mepal**

Ward: **Sutton**

Ward Councillor/s: **Lorna Dupré
Mark Inskip**

Date Received: **20 August 2019** **Expiry Date:** **12 May 2020**

[U213]

1.0 RECOMMENDATION

1.1 Members are recommended to refuse the application for the following reasons:

- 1 The proposal, due to its light weight marquee material and proximity to the surrounding neighbouring properties would cause significant and demonstrable harm to the residential amenity of neighbouring occupiers, due to the excessive noise and disturbance. This is contrary to policy ENV2, ENV9 and EMP2 of the Local Plan 2015 which seeks to ensure that there are no significantly detrimental impacts on the residential amenity of neighbouring and future occupiers as a result of the new development.
- 2 The proposal fails to provide adequate parking facilities to sufficiently accommodate the volume of guests which the venue could hold. The proposal does not incorporate adequate on-site vehicular parking and manoeuvring facilities to the standard required by the Local Planning Authority. The proposal, if permitted would therefore be likely to result in an undesirable increase in on-street parking to the detriment of highway safety. The proposal is contrary to policies COM7, COM8 and EMP2 of the East Cambridgeshire Local Plan 2015.
- 3 The marquee and shipping container would have a significant visual prominence from the streetscene of Bridge Road and from Footpath No.7. The proposed development, by virtue of its design, scale and siting, is considered to

be out of character with the existing traditional built form in the area and would result in a dominant form of incongruous development. The proposal would cause significant harm to visual amenity and is contrary to Policies ENV1, ENV2 and EMP2 of the East Cambridgeshire Local Plan 2015 and chapter 12 of the NPPF.

2.0 SUMMARY OF APPLICATION

- 2.1 The application seeks permission for the temporary erection of a single storey marquee between the months of April to October. Additionally the application seeks permission for an outside bar and store which are situated within a converted shipping container. The container measures 6.2m, with a width of 2.3m and a maximum height of 2.5m. The marquee and outside bar are proposed to be used for functions as part of The Three Pickerels, in particular birthday parties, weddings and receptions. The shipping container would form a permanent structure on the site. The structure has already been in use throughout 2019 and was present at the time of the Officer site visit.
- 2.2 This application was presented to Planning Committee on 8th January and deferred for four months to allow the applicant time to overcome the five reasons for refusal, in particular the reasons relating to Flood Risk and the insufficient information relating to the sites location within the Ouse Washes SSSI.
- 2.3 Following the deferral the applicant has submitted a Flood Risk Assessment and a Shadow Habitats Regulation Assessment..
- 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

03/00388/FUL	Conservatory extension to Public House	Approved	19.06.2003
17/00623/FUL	Proposed extensions, loft conversions & alterations plus change of use from public house to hotel	Refused	11.07.2017
17/01738/FUL	Extensions, loft conversion and alterations plus change of use from public house to hotel	Approved	07.12.2017

08/00329/FUL	Proposed external dining deck, fire escape staircase, internal alterations to form bed and breakfast accommodation and change existing window to rear entrance door, and redesign of approved conservatory	Approved	20.05.2008
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4.0 THE SITE AND ITS ENVIRONMENT

- 4.1 The application site is a detached building with the permitted use as a hotel, known as The Three Pickerels. The site is setback from the highway, accessed off a further road off Bridge Road. Parking for the site is to the front of the building and adjacent to the north-west is the New Bedford River, which forms part of the SSSI and Ramsar site of the Ouse Washes. As a result the site is located within Flood Zone 3. Although the site is located outside of the defined development envelope, there are a number of residential properties in close proximity.

5.0 RESPONSES FROM CONSULTEES

- 5.1 Responses were received from the following consultees since the Planning Committee on the 8 January 2020 and these are summarised below. The full responses are available on the Council's web site.

Parish – 3 April 2020

Due to premises currently being closed the Parish Council would recommend sound activities power cut off for supply to premises. To be calibrated to an acceptable SPL in access with health and safety guidelines and environmental health guidelines. Curfew to be imposed by license. License should have public access restrictions on times of access.

Environment Agency -

In accordance with the National Planning Policy Framework paragraph 101, development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is for the local planning authority to determine if the Sequential Test has to be applied and whether or not there are other sites available at lower flood risk as required by the Sequential Test in the National Planning Policy Framework. By consulting us on this planning application we assume that your Authority has applied and deemed the site to have passed the Sequential Test.

FLOOD RISK

We have decided to **remove our objection** to the proposed temporary (April-October) sitting of the marquee due to it being only temporary.

Advice to the Applicant

We have the following recommendations as stressed our previous reply:

- Given the expected depth of flooding in the event of a breach, the marquee must be designed to allow flood waters to pass through it and to be able to withstand the expected hydrostatic pressure of water in such an event.

- A means of access and egress to and from the development in the event of extreme flooding should be provided.

We operate a flood warning system for existing properties currently at risk of flooding to enable householders to protect life or take action to manage the effect of flooding on property. Flood Warnings Service (F.W.S.) is a national system we run for broadcasting flood warnings. Receiving the flood warnings is free; you can choose to receive your flood warning as a telephone message, email, fax or text message. To register your contact details, please call Floodline on 0345 988 1188 or visit <https://www.gov.uk/sign-up-for-flood-warnings>

Registration to receive flood warnings is not sufficient on its own to act as an evacuation plan. We are unable to comment on evacuation and rescue for developments. Advice should be sought from the Emergency Services and the Local Planning Authority's Emergency Planners when producing a flood evacuation plan.

Advice for the LPA

With regard to the second part of the Exception Test, your Authority must be satisfied with regards to the safety of people (including those with restricted mobility), the ability of such people to reach places of safety, including safe refuges within buildings, and the ability of the emergency services to access such buildings to rescue and evacuate those people.

In all circumstances where flood warning and evacuation are significant measures in contributing to managing flood risk, we expect the local planning authority to formally consider the emergency planning and rescue implications of new development in making their decisions. We strongly recommend that you consult your Emergency Planner on the above issues.

General advice to the applicant

All surface water from roofs shall be piped direct to an approved surface water system using sealed downpipes. Open gullies should not be used. Only clean, uncontaminated surface water should be discharged to any soakaway, watercourse or surface water sewer. If soakaways are proposed for the disposal of uncontaminated surface water percolation tests should be undertaken, and soakaways designed and constructed in accordance with BRE Digest 365 (or CIRIA Report 156), and to the satisfaction of the Building Control. The maximum acceptable depth for soakaways is 2 metres below existing ground level. If, after tests, it is found that soakaways do not work satisfactorily, alternative proposals must be submitted.

The applicant is advised of their responsibility to ensure that adequate capacity exists within the 'existing surface and foul water drainage systems, to accept any additional discharge from the development without increasing the risk of flooding, or to the detriment of either the land drainage regime or water environment. Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters.

Natural England – 7 April 2020

NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

Natural England's generic advice on other natural environment issues is set out at Annex A.

Sites of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on statutorily protected sites and has no objection to the proposed development.

Other advice

Natural England welcomes preparation of the Shadow Habitats Regulations Assessment (HRA) by Small Ecology Limited (March 2020) to address the advice provided in our email of 3 January 2020.

The HRA provides an appropriate level of assessment including consideration of potential disturbance impacts to SPA birds through increased noise levels. We agree that noise levels over the distances involved, factoring in background noise levels associated with the nearby A142 road, are unlikely to have any significant impact on SPA birds.

On this basis, and taking into account the temporary nature of the proposal, Natural England supports the HRA conclusion that proposed development is unlikely to have any adverse effect on the integrity of the Ouse Washes Special Protection Area (SPA) and Ramsar site. We note from the Flood Risk Assessment prepared by Ellingham Consulting Ltd (January 2020), that this facility will cease to be required once development at the adjacent 17 Bridge Road, for which planning approval is sought, has taken place.

Our advice is that an appropriate planning mechanism should be used to require the facility to cease operating once the new development becomes operational. As Competent Authority under the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended), you should have regard to the information presented in the Shadow HRA, and our advice above, when recording your HRA screening decision.

Sites of Special Scientific Interest Impact Risk Zones

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on “Development in or likely to affect a Site of Special Scientific Interest” (Schedule 4, w). Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI.

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

- 5.2 A further neighbor response was received since the application was deferred at Planning Committee expressing concerns over confusions with the submitted Ecology Report and the Environmental Health officer who has comments on the application given the references to noise and the same name.

6.0 The Planning Policy Context

- 6.1 East Cambridgeshire Local Plan 2015

ENV 1	Landscape and settlement character
ENV 2	Design
ENV 8	Flood risk
ENV 9	Pollution
ENV 12	Listed Buildings
COM 7	Transport impact
COM 8	Parking provision
GROWTH 2	Locational strategy
GROWTH 3	Infrastructure requirements
GROWTH 5	Presumption in favour of sustainable development
EMP 2	Extensions to existing businesses in the countryside

6.2 Supplementary Planning Documents

Design Guide
Flood and Water

6.3 National Planning Policy Framework 2019

- 6 Building a strong competitive economy
- 9 Promoting sustainable transport
- 12 Achieving well-designed places
- 14 Meeting the challenge of climate change, flooding and coastal change
- 16 Conserving & enhancing the historic environment

6.4 Planning Practice Guidance

7.0 PLANNING COMMENTS

- 7.1 In 2017 Planning Committee permitted the change of use of The Three Pickerels from a public house to a hotel, which included external alterations and additions to the building. From the officers site visit it was noted that no building work has commenced on the site. This application seeks to add a temporary Marquee which would be erected on the site between April and October. In addition, the application seeks permission for the siting of two shipping containers, which would form the outside bar and storage.
- 7.2 The report which was presented to Planning Committee on 8 January 2020 is attached as Appendix 1 of this report and covers the main considerations of the application in relation to the principle of development, visual impact, noise and residential amenity, highway safety, flood risk, ecology and biodiversity and needs to be read in conjunction with this report.
- 7.3 This report covers the amendments which have been made to the scheme, following the deferral at Planning Committee. This was in order to allow the applicant time to overcome the reasons for refusal as set out within the Committee Report and the Committee Update document. Additional information has been received, including a Flood Risk Assessment and Shadow Habitats Regulations Assessment. This report includes the subsequent comments received as part of the consultation process.

7.4 Flood Risk

- 7.4.1 The site is located within Flood Zone 3 and is situated within an area designated as flood storage, benefiting from no formal flood defences. Policy ENV8 of the East Cambridgeshire Local Plan 2015 states that the Sequential Test and Exception Test will be strictly applied across the district, and new development should normally be located in Flood Risk Zone 1. However, the NPPF and PGG advise minor development with a footprint under 250sqm does not require the application of the sequential test or exception test. The marquee and shipping containers have a combined foot print of 141.6sqm and are under the 250sqm criteria, as a result the tests are not required to be applied to the proposal.
- 7.4.2 Notwithstanding this guidance, the proposal would pass the sequential test. The Environment Agency advised with regard to the second part of the Exception Test, your Authority must be satisfied with regards to the safety of people (including those with restricted mobility), the ability of such people to reach places of safety, including safe refuges within buildings, and the ability of the emergency services to access such buildings to rescue and evacuate those people. As the proposal constitutes minor development the exception test does not need to be applied. However, if the application was to be recommended for approval, a condition would be included to ensure a flood evacuation programme is provided.
- 7.4.3 The Local Planning Authority have considered the requirements of the Sequential Test. The applicant has advised that the proposal is to work in conjunction with the existing Three Pickerels business and this proposed temporary marquee is to expand the existing business. Therefore, it is considered there are no other suitable sites for the proposal and as the entirety of the rear outdoor space of The Three Pickerels is situated within Flood Zone 3, there is no other suitable location for the proposal within the site. In addition, the applicants Flood Risk Assessment advises that the site has a low probability of flooding given the elevated levels of the site above the river. Therefore, the proposed additional marquee, shipping containers are acceptable in this location and the application passes the Sequential Test for this reason.
- 7.4.4 The applicant has submitted a Flood Risk Assessment which identifies the single potential source of flooding is from flood levels in the New Bedford (Hundred Foot) River. However, the elevation of the site is such that it is not at risk from breaching of the South Level Barrier Bank flood defences alongside the New Bedford (Hundred Foot River). The FRA adds that the proposed site is estimated to be a level of +6.2m OD and therefore significantly above the estimated water levels during the 0.1% annual probability (1 in 1000 chance each year) event and the 1% annual probability (1 in 100 chance each year) event with 20% climate change allowance. Recommendations within the FRA include the applicant joining the Environment Agency Flood Warning Service, to ensure sufficient time for preparation if the unlikely event of flooding occurred.
- 7.4.5 The Environment Agency have removed their objection to the proposal due to the temporary nature of the marquee. The Environment Agency also provided recommendations, such as ensuring the marquee to allow flood waters to pass through, joining the Flood Warning Service and having a means of access to and

from the development in the event of a flood. These recommendations, can be conditioned in the event of a positive recommendation. It is considered the location of the shipping containers and the temporary marquee is not considered to increase flood risk elsewhere or lead to users of the facility being at a high vulnerability. The development would contribute wider sustainability benefits as it also the expansion of the existing public house/hotel within the village. In addition, it is satisfied that there is sufficient access to and from the development to allow for evacuation in the event of a flood. The development is considered to satisfy both requirements of the exemption test and the FRA indicates that the site is not at a high risk of flooding, as a result of elevated levels. It is therefore considered that the proposal overcomes the previous reason for refusal on flooding and is now acceptable.

7.5 Ecology

- 7.5.1 Paragraph 170(d) of the NPPF advises that development proposals should minimise impacts on biodiversity and given the sites location within the SSSI and Ramsar site of the Ouse Washes, it has a high importance. In response to the previous comments raised by Natural England and the fifth recommended reason for refusal of the application the applicant has since submitted a Shadow Habitats Regulations Assessment. The assessment highlights the sites existing use as hotel and the nearby A142, advising that noise from traffic movements to the site is unlikely to increase noise, the noise from the use is seen as being minor and the operational hours of the marquee are less than the hotel. The assessment concluded that there is no identifiable pathway for a potential impact on a protected site from noise and that no linkage can be identified between the proposed development and a significant effect on a receptor within the European sites. It was considered no mitigation is required.
- 7.5.2 Following the consultation of the Shadow Habitats Regulations Assessment with Natural England, the consultee raised no objection to the proposal. Natural England advised that the Habitat Regulations Assessment provides an appropriate level of assessment including consideration of potential disturbance impacts to SPA birds through increased noise levels. The consultee was in agreement that the noise levels over the distances involved, factoring in background noise levels associated with the nearby A142 road, are unlikely to have any significant impact on SPA birds. On this basis, and taking into account the temporary nature of the proposal, Natural England supports the HRA conclusion that the proposed development is unlikely to have any adverse effect on the integrity of the Ouse Washes Special Protection Area (SPA) and Ramsar site.
- 7.5.3 The Local Planning Authority has conducted a Screening Opinion for the proposed development. As the screening has identified that the development will not have the potential for significant adverse impacts on the Ouse Washes SSSI, and this view is supported by Natural England's consultee response, it is considered that an appropriate assessment under the birds or Habitats Directives is not required. It is now considered that sufficient information has been submitted to demonstrate the development will not have any adverse effect on the integrity of the Ouse Washes Special Protection Area and is compliant with policy ENV7 and the NPPF.

- 7.6 No further information or detail has been submitted to overcome the other three reasons for refusal surrounding impact to residential amenity, the visual impact of the structure and insufficient parking facilities for visiting guests. These three reasons for refusal remain outstanding.

8.0 Planning Balance

- 8.1 The applicant has demonstrated, as a result of the elevated levels of the site and the temporary nature of the marquee that the previous reason for refusal for flooding has been overcome. Whilst the applicant has provided further detail on Ecology impacts and has demonstrated that the development will not have an adverse effect on the integrity of the Ouse Washes Special Protection Site, there are still outstanding issues which have not been overcome since it was taken to Planning Committee in January 2020.
- 8.2 The proposal would still result in significant harm to the residential amenity of the surrounding occupiers, as well as having a significant impact on highway safety due to the lack of parking facilities on site. Furthermore adverse impacts are considered to occur to the character and visual appearance of the area, as a result of the scale, materials and design of the proposal. The proposal is contrary to policies ENV1, ENV2, ENV9, EMP2, COM7 and COM8 of the East Cambridgeshire Local Plan, as well as the NPPF. The harm caused by the proposal is considered to outweigh any benefits and therefore the application is recommended for refusal.

9.0 Costs

- 9.1 An appeal can be lodged against a refusal of planning permission or a condition imposed upon a planning permission. If a local planning authority is found to have acted unreasonably and this has incurred costs for the applicant (referred to as appellant through the appeal process) then a cost award can be made against the council.
- 9.2 Unreasonable behaviour can be either procedural ie relating to the way a matter has been dealt with or substantive ie relating to the issues at appeal and whether a local planning authority has been able to provide evidence to justify a refusal reason or a condition.
- 9.3 Members do not have to follow an officer recommendation indeed they can legitimately decide to give a different weight to a material consideration than officers. However, it is often these cases where an appellant submits a claim for costs. The Committee therefore needs to consider and document its reasons for going against an officer recommendation very carefully.
- 9.4 In this case Members' attention is particularly drawn to the following point:

The site is closely situated to a number of residential dwellings and is visually prominent.

Appendix 1 – Committee Report 8 January 2020

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer(s)</u>
19/00897/FUL	Molly Hood Room No. 011	Molly Hood Planning Officer 01353 665555 molly.hood@eastcambs.gov.uk
03/00388/FUL	The Grange	
17/00623/FUL	Ely	
17/01738/FUL		
08/00329/FUL		

National Planning Policy Framework -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

East Cambridgeshire Local Plan 2015 -

<http://www.eastcambs.gov.uk/sites/default/files/Local%20Plan%20April%202015%20-%20front%20cover%20and%20inside%20front%20cover.pdf>