
MAIN CASE

Reference No: 17/00147/OUT

Proposal: Outline planning application for a detached dwelling

Site Address: 26B East Fen Common Soham Ely Cambridgeshire CB7 5JJ

Applicant: Mr M West

Case Officer: Richard Fitzjohn Planning Officer

Parish: Soham

Ward: Soham South
Ward Councillor/s: Councillor Hamish Ross
Councillor Ian Bovington
Councillor Dan Schumann

Date Received: 31 January 2017 **Expiry Date:** 8th September 2017

[S82]

1.0 **RECOMMENDATION**

1.1 Members are recommended to REFUSE this application for the following reasons:

1. The proposed development would be sited within Flood Zone 3 as identified by the Environment Agency, where in the Sequential Test must be applied for more vulnerable uses. The proposal fails to meet the Sequential Test as there are reasonably available sites elsewhere with a lower probability of flooding, contrary to Policy ENV 8 of the East Cambridgeshire Local Plan, the provisions of the PPG on Flood Risk and Coastal Change and the National Planning Policy Framework.

2.0 **SUMMARY OF APPLICATION**

2.1 This application seeks outline planning permission, with all matters reserved apart from access, for 1No. dwelling. A block plan has been submitted with the application which shows details of the proposed access and an indicative layout of the dwelling.

2.2 The application is supported by a Flood Risk Assessment.

2.3 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.

2.4 This application has been called in to Planning Committee by Councillor Ian Bovingdon as he feels that the new information regarding flood zones would allow for this application to be approved.

3.0 **PLANNING HISTORY**

3.1 No relevant planning history.

4.0 **THE SITE AND ITS ENVIRONMENT**

4.1 The application site is located within the curtilage of No.26B, within a linear row of dwellings between the existing single-storey bungalows of No.26A and No.26B. The site is bordered by agricultural land to the south-east and common land to the north-west.

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.

5.2 Soham Town Council – No concerns. The land abuts and is adjacent to common land. Whilst recognizing its role and remit was solely to consider material planning issues, the Committee indicated that any encroachment or enclosure on common land would be subject to civil action and potential prosecution. Should the development be approved, the owner should be aware of those rights, entitlements and responsibilities (costs) associated with use of the access track. The proposed dwelling appeared to be too large (overdevelopment) for the available land (amenity).

5.3 Ward Councillor Ian Bovingdon – Would like to call in the application to Planning Committee as he feels that the new information regarding flood zones would allow for this application to be approved.

5.4 Ward Councillor Hamish Ross – Would like written assurance that not one square inch of East Fen Common will be lost in building this development or granting access to it.

5.5 Trees Officer – Does not consider the trees appropriate for a Tree Preservation Order, therefore unlikely to prevent development. Recommends a condition requiring replacement planting.

5.6 Asset Information Definitive Map Team - The site access is recorded as a Public Footpath, affording the public the right on foot only. There are no public rights to drive a motor vehicular along the track. The applicant must therefore be satisfied that they have a legal (private) right to access the new dwelling by motor vehicle and the Local Planning Authority must be satisfied that the applicant has a legal right before granting any permission. The public's right to use this route must not be

compromised by this application. We would like to draw your attention to the informatives below which are required to be adhered to at all times.

- Public Footpath No.74 Soham must remain open and unobstructed at all times. Building materials must not be stored on Public Rights of Way and contractors' vehicles must not be parked on it (it is an offence under s 137 of the Highways Act 1980 to obstruct a public Highway).
- No alteration to the Footpath's surface is permitted without our consent (it is an offence to damage the surface of a public footpath under s 1 of the Criminal Damage Act 1971).
- Landowners are reminded that it is their responsibility to maintain boundaries, including trees, hedges and fences adjacent to Public Rights of way, and that any transfer of land should account for any such boundaries (s154 Highways Act 1980).
- The Highways Authority has a duty to maintain Public Rights of Way in such a state as to be suitable for its intended use. (S41 Highways Act 1980). If the surface of the Footpath is damaged as a result of increased motorised vehicle usage, the Highways Authority is only liable to maintain it to a Footpath standard. Those with private vehicular rights will therefore be liable for making good the surface of the Public Right of Way.
- The Public Footpath must not be used to access the development site unless the applicant is sure they have lawful authority to do so (it is an offence under S34 of the Road Traffic Act 1988 to drive on a Public Footpath without lawful authority).
- The granting of planning permission does not entitle a developer to obstruct a Public Right of Way (Circular 1/09 para 7.1).

5.7 Local Highways Authority – This section of East Fen Common does not form part of the public highway. However, the track leading to this proposed development has a number of houses and an adequate access with the highway.

5.8 CCC Growth & Development - No Comments Received

5.9 Lead Local Flood Authority – The application is not classified as 'major development' and, as the Lead Local Flood Authority are not a statutory consultee for this type of application, will therefore not be making any comments.

5.10 Minerals And Waste Development Control Team - No Comments Received

5.11 Waste Strategy (ECDC) –

- East Cambs District Council will not enter private property to collect waste or recycling, therefore it would be the responsibility of the owners/residents to take any sacks/bins to the public highway boundary on the relevant collection day and this should be made clear to any prospective purchasers in advance, this is

especially the case where bins would need to be moved over long distances and/or loose gravel/shingle driveways; the RECAP Waste Management Design Guide defines the maximum distance a resident should have to take a wheeled bin to the collection point as 30 metres (assuming a level smooth surface).

- Under Section 46 of The Environmental Protection Act 1990, East Cambridgeshire District Council as a Waste Collection Authority is permitted to make a charge for the provision of waste collection receptacles, this power being re-enforced in the Local Government Act's of 1972, 2000, and 2003, as well as the Localism Act of 2011.
- Each new property requires two bins; this contribution is currently set at £43 per property.
- Payment must be made in advance of bins being delivered; East Cambs District Council Account Number **43135897**, Sort Code **52-41-19**, reference should be the planning application number followed by (bins) i.e. 15/012345/FUL (bins) a separate e-mail should also be sent to waste@eastcambs.gov.uk detailing the payment amount and the planning reference number.

5.12 Middle Fen and Mere Internal Drainage Board - Provided that soakaways form an effective means of surface water disposal in this area, the Board will not object to this application. It is essential that any proposed soakaway does not cause flooding to neighbouring land. If soakaways are found not to be an effective means of surface water disposal, the Board must be re-consulted on this matter.

5.13 Cambridge Ramblers Association - No Comments Received.

5.14 Cambs Wildlife Trust – The application site is adjacent to East Fen Common and the Wash County Wildlife Site (CWS), a site which was selected for its grassland communities and willow pollards. The proposed building itself should not have significant negative impacts on the CWS features of interest, however construction impacts e.g. through movement of vehicles or storage of materials are possible. Should permission be granted, measures must be put in place to avoid any impacts on the CWS.

5.15 Neighbours – A site notice was displayed on 16th February 2017 and an advert was published in the Cambridge Evening News on 16th February 2017, advertising the application as a departure. In addition, 3 neighbouring properties were notified. The responses received are summarised below. A full copy of the responses are available on the Council's website.

6.0 The Planning Policy Context

6.1 East Cambridgeshire Local Plan 2015

GROWTH 2	Locational strategy
GROWTH 3	Infrastructure requirements
GROWTH 5	Presumption in favour of sustainable development
HOU 2	Housing density

SOH 16	Green Lanes and Commons
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

6.2 Supplementary Planning Documents

Developer Contributions and Planning Obligations

Design Guide

Contaminated Land - Guidance on submitted Planning Application on land that may be contaminated

Flood and Water

6.3 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

7.0 PLANNING COMMENTS

7.1 The main issues to consider when determining this application relate to the principle of development, in addition to the impacts on flood risk, highway safety, the character and appearance of the area, residential amenity and ecology and trees.

7.2 Principle of Development

7.2.1 The Local Planning Authority is not currently able to demonstrate that it has an adequate five year supply of land for housing. Therefore, all Local Planning policies relating to the supply of housing must be considered out of date and housing applications assessed in terms of the presumption in favour of sustainable development set out in the National Planning Policy Framework. This means that development proposals should be approved unless any adverse effects of the development significantly and demonstrably outweigh the benefits.

7.2.2 The site is located outside of, but within close proximity to, the established development framework for Soham (250 metres from the edge of the nearest settlement boundary). The site is also located approximately 0.6 miles from the town centre of Soham where a wide range of services and facilities are located.

7.2.3 The proposal would provide the following benefits:- the provision of an additional residential dwelling to the district's housing stock which would be built to modern, sustainable building standards and the positive contribution to the local and wider economy in the short term through construction work.

7.2.4 However, the site is located within Flood Zone 3 and, on balance, is not considered to be sustainable for this type of development unless it can be demonstrated that

there are no other reasonably available sites for this type of development in areas at lower risk of flooding and that the development would not enhance risk elsewhere. There are 8 allocated sites for housing within Soham (SOH1, SOH2, SOH3, SOH4, SOH5, SOH6, SOH7 and SOH8), as specified within the East Cambridgeshire Local Plan 2015. In flood risk terms, these allocated sites provide a more sustainable location for housing development than the application site.

7.3 Flood Risk

- 7.3.1 Paragraph 14 of the NPPF makes it clear that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Paragraph 100 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.
- 7.3.2 The NPPF requires that a sequential approach is taken to the location of development, based on Flood Zones, and development should as far as possible be directed towards areas with the lowest probability of flooding. The NPPF requires Local Planning Authorities to steer new development to areas at the lowest probability of flooding by applying a Flood Risk Sequential Test. The Local Planning Authority must determine whether the application site passes the NPPF Sequential Test.
- 7.3.3 The application site is located within Flood Zone 3, defined within the NPPF Planning Practice Guidance as having a 'high probability' of flooding. The development type proposed (a new dwellinghouse) is classified as 'more vulnerable', in accordance with Table 2 of the NPPF Planning Practice Guidance. Table 3 of the NPPF Planning Practice Guidance makes it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted unless the development is necessary.
- 7.3.4 Paragraph 101 of the NPPF states that development should not be permitted if there are other reasonably available sites appropriate for the proposed development, located in areas with a lower probability of flooding.
- 7.3.5 Policy ENV8 of the 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. In respect of this application, the Sequential Test would need to demonstrate that there are no other reasonably available sites within the parish of Soham for the erection of a single dwelling which are outside of Flood Zone 3.
- 7.3.6 It is considered by the Local Planning Authority that there are other reasonably available sites for the erection of a single dwelling, within the parish of Soham, which are at a lower probability of flooding. Therefore the proposed development is not necessary in this location and fails the Sequential Test.

7.3.7 Although the flood risks inherent within the site located wholly within Flood Zone 3 site were examined and mitigation proposed within the applicants Flood Risk Assessment, the development potential for other sites with less flood risk within the locality was not addressed. Although the Environment Agency have not raised an objection to the flood risk assessment submitted, they make it clear in their comments that this is subject to the requirements of the Sequential Test being met and that this test is applied by the Planning Authority.

As the proposal fails to pass the Sequential Test, the proposal is considered to unnecessarily place a dwelling in an area at significant risk of flooding, contrary to Policy ENV8 of the East Cambridgeshire Local Plan 2015 and relevant guidance within the NPPF.

7.4 Highway Safety

7.4.1 The County Council's Asset Information Definitive Map Team has stated that the site access is recorded as a public footpath, with no public rights to drive a motor vehicular along the track. The Asset Information Definitive Map Team has stated that the applicant must therefore be satisfied that they have a legal (private) right to access the new dwelling by motor vehicle and the Local Planning Authority must be satisfied that the applicant has a legal right before granting any permission.

7.4.2 This public footpath provides an existing vehicular access to the site and neighbouring properties, and the applicant's agent has informed the Local Planning Authority that the applicant has a legal private right of vehicular access over this public footpath. On the basis of the information provided by the applicant's agent stating that the applicant has a legal (private) right to access the new dwelling by motor vehicle, and with a lack of evidence to confirm otherwise, the Local Planning Authority do not consider that the use of the Public Footpath as a vehicular access is a reason to refuse planning permission. The Asset Information Definitive Map Team has requested an informative to draw the applicant's attention to the fact that it is an offence under S34 of the Road Traffic Act 1988 to drive on a Public Footpath without lawful authority, and that the Public Footpath must not be used to access the development site unless the applicant is sure they have lawful authority to do so.

7.4.3 The Local Highway Authority has stated that this section of East Fen Common does not form part of the public highway. However, the track leading to this proposed development has a number of houses and an adequate access with the highway. Although layout is a reserved matter at this stage, the site provides adequate space for the parking of 2 cars and cars would be able to access and egress the public highway in a forward gear. It is therefore considered that the proposed development would provide adequate parking provision and would not create a detrimental impact upon highway safety, in accordance with Policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.

7.5 Character and appearance of the area

7.5.1 The application seeks outline planning permission with only the matter of access being considered. Layout, scale and appearance are reserved matters which are not being considered as part of this application. Therefore, the scale of the dwelling

shown on the submitted plans is indicative only and it cannot be determined that the application would result in overdevelopment of the site. The size of the site is in keeping with some of the nearby properties to the north-east (No's 30, 32 ,34 and 36 East Fen Common) and the proposed dwelling would infill a gap between existing dwellings, retaining the existing linear nature of development within the vicinity of the site. Subject to further details of layout, scale and appearance, it is considered that a small/modest single-storey bungalow could be accommodated within the application site without causing significant harm to the character and appearance of the area. It is therefore considered that the proposed development would not create significant and demonstrable harm to the character and appearance of the area that would warrant a reason for refusal of planning permission given the lack of a 5 year housing supply.

7.6 Residential Amenity

7.6.1 The application seeks outline planning permission with only the matter of access being considered. Although layout, scale and appearance are reserved matters, it is considered that a small/modest single-storey bungalow could be accommodated within the application site which ensures that future occupiers enjoy a high quality of residential amenity and that residential amenity of existing neighbouring occupiers is not significantly harmed, in accordance with Policy ENV2 of the East Cambridgeshire Local Plan 2015.

7.7 Ecology and trees

7.7.1 The application site is adjacent to East Fen Common and the Wash County Wildlife Site (CWS), a site which was selected for its grassland communities and willow pollards. The proposed building itself should not have significant negative impacts on the CWS features of interest, however construction impacts e.g. through movement of vehicles or storage of materials are possible. Cambs Wildlife Trust has stated that, should permission be granted, measures must be put in place to avoid any impacts on the CWS. A condition could be appended to any grant of planning permission requiring a scheme of biodiversity mitigation and enhancement measures in order to prevent any significant impacts being created upon the CWS.

7.7.2 The Council's Trees Officer does not consider that there are any trees within the site which are worthy of a Tree Preservation Order. Therefore, any loss of trees would not result in any significant harm. Landscaping is a reserved matter which is not being assessed as part of this application.

7.8 Other Material Matters

7.8.1 The application site does not encroach on to the adjacent common land. The proposed development would have no adverse impact on the quality, character or accessibility or biodiversity value of the adjacent common land, in accordance with Policy SOH16 of the East Cambridgeshire Local Plan 2015. Any development on common land would be a matter requiring civil action.

7.8.2 An informative could be appended to any grant of planning permission informing the applicant of their rights, entitlements and responsibilities associated with use of the access track.

7.9 Planning Balance

- 7.9.1 The proposal would provide the following benefits:- the provision of an additional residential dwelling to the district's housing stock which would be built to modern, sustainable building standards and the positive contribution to the local and wider economy in the short term through construction work.
- 7.9.2 However, it is considered that these benefits would be outweighed by the significant and demonstrable harm which would be created by the unnecessary siting of a dwelling within Flood Zone 3 despite there being reasonably available sites elsewhere within the parish of Soham with a lower probability of flooding. Other land exists within the parish of Soham which is not within Flood Zone 3 so development is not necessary on this particular land.

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer(s)</u>
17/00147/OUT	Richard Fitzjohn Room No. 011 The Grange Ely	Richard Fitzjohn Planning Officer 01353 665555 richard.fitzjohn@ea stcambs.gov.uk

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>