



Report Reference Number: 2020/0718/FUL

To: Planning Committee
Date: 8 December 2021
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/0718/FUL	PARISH:	Carlton Parish Council
APPLICANT:	Mr David Leek	VALID DATE:	14th September 2020
		EXPIRY DATE:	9th November 2020
PROPOSAL:	Creation of a bund/bank to protect properties from flooding (retrospective)		
LOCATION:	New Coates Farm Hirst Road Carlton Goole East Yorkshire DN14 9PX		
RECOMMENDATION:	GRANT		

This application has been brought before Planning Committee as 16 letters of representation have been received, which raise material planning considerations in objection to the scheme and officers would otherwise determine the application contrary to these representations.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site forms part of a group of buildings adjacent to Hirst Road, Carton.
- 1.2 The area of the bank/bund covers 516sq metres and it measures 198 metres to the north and 120 metres to the west.
- 1.3 This application is being considered at the same time as 2020/0719/FUL because cumulatively they would form a single entity.

The Proposal

- 1.7 The proposal seeks retrospective consent to replace sandbags to protect Newcoates Farm bungalow, L & L Equestrian, New Coates Farm bungalow, Shepstyle Cottage, Coates Marsh Grange bungalows from flooding. The bund/bank has been made with from soil.

Relevant Planning History

- 1.8 The following historical application is considered to be relevant to the determination of this application.
- CO/1992/0672 for the proposed removal of planning condition 02 restricting the occupancy of the dwelling attached to permission 8/29/141A/PA at Coates Hall Farm which refused on 7 January 1993.
 - CO/1986/0721 for the use of existing stables for the establishment of riding stables at Coates Hall Farm which was permitted on 8 September 1986.
 - CO/1989/0870 for the proposed change of use of existing agricultural outbuildings into a granny flat at Coates Hall Farm which was permitted on 28 December 1989.
 - 2020/0718/FUL for the creation of a bund/bank to protect properties from flooding at New Coates Farm which is pending.

2. CONSULTATION AND PUBLICITY

2.1 NYCC Highways

No objections subject to conditions being attached to any consent granted.

2.2 Carlton Parish Council

Have no objections to the proposals.

2.3 Yorkshire Water

No comments received.

2.4 Environmental Health

Have no comments to make.

2.5 Internal Drainage Board

No objections subject to conditions.

2.6 Environment Agency

The EA have responded to the proposals three times and had previously objected to the proposals however, in the latest consultee response the EA confirmed that they have been able to remove their previous object to the scheme subject to the inclusion of relevant planning conditions.

The EA in their latest consultation have confirmed that since their previous comments, changes have been made to the Flood Storage Area relevant to this case and also the published Flood Map for Planning, following recent winter flooding.

These comments affect our previous position and advice regarding this planning application:

(i) The overall extent of the Flood Storage Area has been reduced, removing most of the Coates Hall Lodge and New Coates Farm area and refining to the lower lying washland to the south and west.

(ii) The historic flood extent from Winter 2019/20 has been incorporated into the Flood Map, with the surrounding area now showing as Flood Zone 2, and a small part within the complex now showing as Flood Zone 2.

Therefore, the EA have reviewed the above and the available construction details to clarify flood risk permitting requirements under the 2016 Environmental Permitting Regulations. As the Flood Storage Areas (FSA) have been amended, those currently shown in the Selby Strategic Flood Risk Assessment should be reviewed alongside this updated information. By reducing the FSA extent the majority of the proposed development no longer appears within the area commensurate with the Functional Floodplain. Therefore, the EAs previous comments in relation to the principal as set out in the NPPG Tables 2 & 3 are no longer relevant. The updated Flood Storage Areas can be found on the open data (data.gov.uk) website.

A short section of the proposed embankment lies on the edge of the Flood Storage Area. However, the EA do not wish to pursue an objection purely on this aspect. As the Flood Zone 3b mapping is prepared by the Local Planning Authority, the EA recommend that latest comments provided here are used to the LPA that the development no longer sits within the Functional Floodplain. Parts of the proposed development are now identified to sit within Flood Zone 2, which is land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding, and parts of the development are within 20 metres of the existing formal flood defences.

The EA in their latest response confirm that they have considered the findings of the flood risk assessment in relation to the likely depths, velocities and flood hazard rating against the design flood for the proposal. The EA's understanding is that the raised bund is designed to prevent the flooding of properties (including buildings and land) within the control of the applicant and neighbouring developers. The EAs understanding is that the partially completed bund has been constructed out of locally sourced material but has not been constructed to any recognised standard. As a consequence, and as per our previous correspondence, there is a residual risk that the embankment could fail under loading (i.e., during a flood).

There is also a risk that the bund may be outflanked, or overtopped under certain conditions. A consequence of this is that rapid onset could occur behind the defence, and this may be accompanied by deep and fast flowing water. The possibility of the embankment failing and introducing these hazards is likely to be higher given the construction techniques used.

The Environment Agency recommends that the bunds, given their scale and purpose, are constructed to an approved standard, such as the Eurocode 7 specification. Designing and constructing the bund to an approved standard will aid in reducing the causes and consequences of flooding should they occur. Where not constructed to an approved specification, the development carries an inherently higher risk of failure, which could increase flood hazards to development behind the flood defence.

In considering the EA's position and advice, they also draw attention of the need to consider subsequent ownership and maintenance of any flood infrastructure. Based

on the information submitted, the constructed bund would be the responsibility of the landowner. Where any reliance is placed on that bund, its performance could be impacted as a result of future actions, including maintenance.

The EA also draw attention to the need to consider the bund in conjunction with the similar proposal on adjacent land. There is a possibility of the bund being outflanked, such as in the area in close proximity to the existing Carlton Barrier flood embankment. The EA have requested a condition relating to the tying into the existing flood infrastructure in order to protect the integrity of that embankment. If the developer is considering the construction of a bund to an approved standard, the EA will consider those within our position on a planning permission, and (where required) under the 2016 Environmental Permitting Regulations.

Failure of the bund could risk life, property and the formal flood defence infrastructure. It is recommended the bund is constructed to the Eurocode 7 specification.

Should the LPA consider Condition 1 is not achievable then the EA would propose the following condition be included. Where not constructed to an approved standard, the bund should be no higher than 1.0m (metres) above the ground level where the defence is constructed. This may require parts of the bund that have been constructed to be lowered, however this is in the interests of reducing the consequences should the bund fail under loading (i.e., during flooding).

Further correspondence also confirmed that the applicant agreed that they would not be building the bund within 16m of the embankment however the EA request that as stated in response dated 7 May 2021 to condition this (Condition 3) is still valid.

2.13 Neighbour Summary

The application has been publicised by site notice and 16 objections have been received as a result of this advertisement. The concerns raised were as follows:

- The proposed bunding will confine all the water to neighbouring properties.
- Redirecting the flood water will affect other properties.
- If planning is passed then the water could breach into neighbouring properties, gardens and businesses.
- The development has commenced without formal planning consent and planning permission is required.
- It is not clear what materials have been used in the formation of the bund.
- Concerns raised in regard to the delivery of the materials given access is particularly narrow and the roads are busier given the closure of the A19.
- The application form has not been filled in correctly.
- Surface water is to be disposed into the River Aire which is already full.
- There are more regular heavy rainfall events occurring.
- There will be negative impacts on the local area and surrounding properties.
- Flood risk funding is already in place to secure the maintenance and to heighten the existing riverbank at the River Aire.
- Concern that this bund will adjoin another bund currently going through the planning application process.
- The EA have objected to these proposals.
- Flooding disrupts roads making it difficult for people to gain access to their properties.
- Question raised in regard to the submitted Flood Risk Assessment.

- Given the probability of increased flooding with the increase in the number of developments planned and currently under construction additional flood protection should form part of a national and regional plan.
- The farm has never flooded and due to the works started due to floods it has caused the farm to flood for the first time in history.
- Not all neighbours have been consulted.
- Concerns this could direct water into the village and have a negative impact on the village of Carlton.
- The dykes would be more likely to overflow nearer the village, forcing flood waters into the lower areas of the village.
- Object to the building of something that would solely benefit one property at the cost of others.
- The proposals puts other properties at higher risk of flooding and it is unethical that others will have to bear the brunt as a result of one person's actions.
- If a flood bank is to be built it should be to serve to protect the village not just particular properties.
- Adequate consultation has not been undertaken.
- The proposal will alter levels of water and the natural flow and direction of water.
- Will have severe effects on the village which has already seen devastating floods.

3 SITE CONSTRAINTS

Constraints

- 3.1 The site lies within the countryside and the majority of the application site falls within Flood Zone 1.

4 POLICY CONSIDERATIONS

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.
- 4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options took place early in 2020. Consultation on preferred options took place in early 2021. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4 The National Planning Policy Framework (July 2021) (NPPF) replaced the February 2019 NPPF, first published in March 2012. The NPPF does not change the status of an up-to-date development plan and where a planning application conflicts with such

a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2021 NPPF.

- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

“219...existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

Selby District Core Strategy Local Plan

- 4.6 The relevant Core Strategy Policies are:

SP1 – Presumption in Favour of Sustainable Development
SP2 – Spatial Development Strategy
SP15 – Sustainable Development and Climate Change
SP18 – Protecting and Enhancing the Environment
SP19 – Design Quality

Selby District Local Plan

- 4.7 The relevant Selby District Local Plan Policies are:

ENV1 – Control of Development
T1 – Development in Relation to the Highway Network

5 APPRAISAL

- 5.1 The main issues to be taken into account when assessing this application are:

- The Principle of the Development
- Design, layout and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Flood Risk and Drainage

The Principle of the Development

- 5.2 The application site is located outside the defined development limits of Carlton and as such is within the “open countryside”. Therefore, Policies SP1 and SP2 of the Core Strategy are relevant as well as policies within the NPPF. Policy SP1 of the Core Strategy outlines that “when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework” and sets out how this will be undertaken.
- 5.3 In addition Policy SP2 sets out the spatial development strategy for the district and states that development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings. The purpose

of Policy SP2(c) is to give a strategic stance and not to give an exhaustive list of all types of development that would be acceptable in principle in the countryside. It is also noted that many forms of development do not constitute buildings but it is clear that a bund would be an appropriate form of development in the open countryside.

- 5.4 The bund is therefore considered to comply with Policies SP1 and SP2 of the Selby District Core Strategy. It remains however, to be considered whether the proposal would cause any substantial harm in other respects.

Character and Appearance of the Local Area

- 5.5 Relevant policies in respect of design and impact on the character of the area include Policies ENV1 (1) and (4) of the Selby District Local Plan and Policy SP19 "Design Quality" of the Core Strategy.
- 5.6 Significant weight should be attached to the Local Plan Policy ENV1 as it is broadly consistent with the aims of the NPPF. Relevant policies within the NPPF, which relate to design include paragraphs 56 to 64.
- 5.7 With the exception of Hirst Road (which is on a raised embankment, similar to other roads surrounding,) the topography of the land is very flat with ditches dug into the ground. The proposed bund would to some degree appear to be odds with the general grain of the land, however it would be seen in the context of the existing built forms of the existing farmsteads. In addition, as discussed in greater detail below in the report the Environment Agency have proposed a planning condition limiting the extent of the bund above ground level, and in part would reduce the current build bund. Taking account of the open character of the area, on balance it is considered that the bund viewed in context of the existing farmstead, this would not result in a level of harm to justify the refusal of planning permission.
- 5.8 The proposed development is therefore considered to accord with Policy SP19 of the Core Strategy regarding Design Quality and Policy ENV1 of the adopted Selby Local Plan regarding Control of Development.

Impact on Residential Amenity

- 5.9 Relevant policies in respect of the impact of the proposal on residential amenity include Policy ENV1 (1) of the Selby District Local Plan. This is consistent with the aims of the NPPF to ensure that a good standard of amenity is achieved for all existing and future occupants of land and buildings.
- 5.10 The key considerations in respect of residential amenity are the potential of the proposal to result in overlooking of neighbouring properties, overshadowing of neighbouring properties and whether oppression would occur from the size, scale and massing of the development proposed. Given the nature of the proposals it is not considered that nearby properties will be affected from any overlooking, overshadowing or oppression and the proposals are therefore considered to accord with Policy ENV 1 (1) of the Local Plan and Policy SP19 of the Core Strategy.

Impact on Highway Safety

- 5.11 Policy in respect of highway safety and capacity is provided by Policies ENV1 (2), T1 and T2 of the Selby District Local Plan, Policy SP19 of the Core Strategy.

- 5.12 North Yorkshire County Highways have been consulted on the application and have not raised any objections to the proposed development subject to conditions attached to any consent granted. One of the conditions requested by NYCC Highways relates to a Construction Management Plan. However, given the retrospective nature and scale of the scheme this is not considered to be necessary or reasonable.
- 5.13 Given the above, it is considered that the proposal would not result in a detrimental impact on highway safety in accordance with Policies ENV1 (2), and T1 of the Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

Flood Risk and Drainage

- 5.14 Policies SP15, SP16 and SP19 of the Core Strategy require proposals to take account of flood risk, drainage, climate change and energy efficiency within the design.
- 5.15 On submission of the application, the surrounding area and the application site were designated as functional flood plan (Flood Zone 3) and the Environment Agency (EA) lodged an objection. A Flood Risk Assessment was submitted with the planning application. Since that time, the EA have revised their flooding maps to the extent that the application site is now in Flood Zone1 (with the exception of a very small element of the bund which is now is flood zone 2). As a consequence, the EA has revised its consultation response to remove their objection and recommended conditions to be imposed in the event planning permission is granted. These include reducing the height of the bund slightly, and that no part of the bund should be within 16m of the flood defence to the north and east. The proposed bund is lower than the adjacent flood defences, but in any event, the bund would not provide a defence against all flooding, but the site would still flood in extreme events.
- 5.16 There has been a number of objections by neighbours who suggests the flood defence bund would result in increased flooding to their property located to the south of the flood defence bund. The Environment Agency are aware of these objections and have confirmed that they are satisfied with the creation of the bund/bank subject to the planning condition they have suggest and consider the proposal to be acceptable. In light of the EA's response as statutory consultee, there is no evidence to counter the EA's opinion and the planning condition recommended is reasonable, meet the statutory tests and are appropriate in this case.
- 5.17 Therefore the proposals are considered to be acceptable in terms of Policies SP15, SP16 and SP19 of the Core Strategy.

6. CONCLUSION

Having had regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, it is considered that the proposed development would not have a detrimental effect on the character and appearance of the area, the residential amenity of the occupants of neighbouring properties, highway safety, drainage and flooding. The application is therefore considered to be in compliance with Policies ENV1, and T1 of the Selby District Local Plan, Policies SP1, SP2, SP15, SP18 and SP19 of the Core Strategy and the advice contained within the NPPF.

7. RECOMMENDATION

This application is recommended to be Granted subject to the following conditions:

01. The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:

(Plans to be inserted into the Decision Notice.

03. Notwithstanding the approved plans listed under condition 2 the height of the bund hereby approved shall be no higher than the lower of:

- the approved drawings.
- 1m in height above the existing ground levels.
- 6.40 AOD (being the crest of the Carlton Barrier flood bank)

Reason

To ensure that the bund does not displace floodwater elsewhere and does not increase flood risk hazards elsewhere.

04. No part of the bund should be constructed within 16 metres of the toe of the Carlton Bank embankment without the prior written consent of the Environment Agency.

Reason

To ensure the bund does not affect the integrity or stability of the existing flood defence infrastructure.

05. Within 3 months of the consent the access to the site has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority and the following requirements:

The crossing of the highway verge and/or footway must be constructed in accordance with the approved details - the bund must be constructed to a low gradient and the material be laid in layers that do not exceed a thickness of 150mm (compacted with a roller after each layer).

All works must accord with the approved details.

Reason:

To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users.

8 Legal Issues

8.1 Planning Acts

This application has been determined in accordance with the relevant planning acts.

8.2 Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

8.3 Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However, it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

9 **Financial Issues**

Financial issues are not material to the determination of this application.

10 **Background Documents**

Planning Application file reference 2020/0718/FUL and associated documents.

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Appendices: None