



Report Reference Number: 2020/0719/FUL

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

APPLICATION NUMBER:	2020/0719/FUL	PARISH:	Carlton Parish Council
APPLICANT:	Mr Peter Hutchings	VALID DATE: EXPIRY DATE:	19th August 2020 14th October 2020
PROPOSAL:	Creation of a bund/bank for flood protection (retrospective)		
LOCATION:	New Coates Lodge Hirst Road Carlton Goole East Yorkshire DN14 9PX		
RECOMMENDATION:	GRANT		

This application has been brought before Planning Committee as this application is being considered at the same time as 2020/0718/FUL because cumulatively the two applications form a single entity. This application has received 6 letters of representation and 2020/0718/FUL has received 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 area of the bank/bund measures 29.86 metres to the north and 31.84 metres to the east.
- 1.2 This application is being considered at the same time as 2020/0718/FUL because cumulatively they would form a single entity.

The Proposal

- 1.7 The proposal seeks retrospective consent to the creation of a bund/bank to protect Coates Hall Lodge from flooding.

Relevant Planning History

- 1.8 The following historical application is considered to be relevant to the determination of this application.
- Application Number: CO/1992/0672 for the removal of planning condition 02 restricting the occupancy of the dwelling attached to permission 8/29/141A/PA dated 28.12.89 at Coates Hall Farm refused on 7th January 1993.
 - Application Number: CO/1996/1017 for the proposed alterations and extensions to existing bungalow at Coates Hall, Hirst Road, Carlton permitted on 16th January 1997.
 - Application Number: CO/1986/0721 for the use of existing stables for the establishment of riding stables at, Coates Hall permitted on 08th September 1986.
 - Application Number: 2004/1293/FUL for the proposed erection of a detached triple garage at The Lodge, Coates Hall permitted on 30th November 2004.
 - Application Number: CO/1989/0870 for the proposed change of use of existing agricultural outbuildings into a granny flat at Coates Hall Farm permitted on 28th December 1989.
 - Application Number: 2020/0718/FUL for the creation of a bund/bank to protect properties from flooding (retrospective) at New Coates Farm pending a decision.

2. CONSULTATION AND PUBLICITY

2.1 NYCC Highways

There are no objections to the proposals.

2.2 Carlton Parish Council

No comments received.

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 EA's 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 6 objections have been received as a result of this advertisement. The concerns raised were as follows:

- Planning permission is required not none has been obtained.
- There is no mention of the materials to be used within the application.
- Concerns this will lead to flood risk elsewhere.
- Where will the surface water go?
- £10 million in funding has already been spend maintaining and heightening the existing bank of the River Aire.
- No planning application is visible of Public Access.

- This flood bank/bund will change the course of the flood water to cause flooding to neighbouring properties and many other neighbouring properties in the area.
- Object to the flood bund/bank at Coates Hall Lodge which the plans are to join a
- Object to the flood bund/bank with New Coates Farm as it is altering the levels of water and potentially will flood Carlton putting neighbours and the village at risk. It will come over the fields and flood Cloud Dyke and over into the back of low street.
- The two neighbours have put planning in to join a flood bank/bund around their properties and there is concern about it redirecting any future flood water towards our property, the bank/bund will redirect flood water more onto Hirst Road and it will flow down into Carlton village.
- It was stated that no trees and no hedges where this bund/bank will go. The hedge/fence has already been removed and some trees and bushes. There is trees along the fence where plans are to put the bund.
- The planning map and this bund/bank is actually going on the back of one of neighbours buildings and will go above damp proof level.
- Coates hall was built in the 1740's and the property has never flooded. Coates Hall Lodge owned by the applicant was once one of Coates Halls out buildings and was converted into a bungalow around twenty years ago. On the 25th February 2020 Coates Hall flooded and question why this was the case.
- The two home owners that have put in the planning permission never flooded in 2020.
- As a result of the two bunds it will direct flood water to other nearby properties.
- This bank/bund is moving the natural flow of the flood water. Coates Hall Lodge did not flood in the February floods only the garden flooded. If this is built it will confine the water more to nearby property that flooded in February for the first time ever since it was built in 17th century.

3 SITE CONSTRAINTS

Constraints

- 3.1 The site lies within the countryside and falls within Flood Zone 2.

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.
- 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 floodplain (Flood Zone 3) and the Environment Agency (EA) lodged an objection. A Flood Risk Assessment was submitted with the application. Since that time, the EA have revised their flooding maps to the extent that the application site is now in Flood Zone 2, which is land having between 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. 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.

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 2020/0719/FUL and associated documents.

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Appendices: None