

LOCATION

Land At
Dam Lane
Kessingland
Suffolk

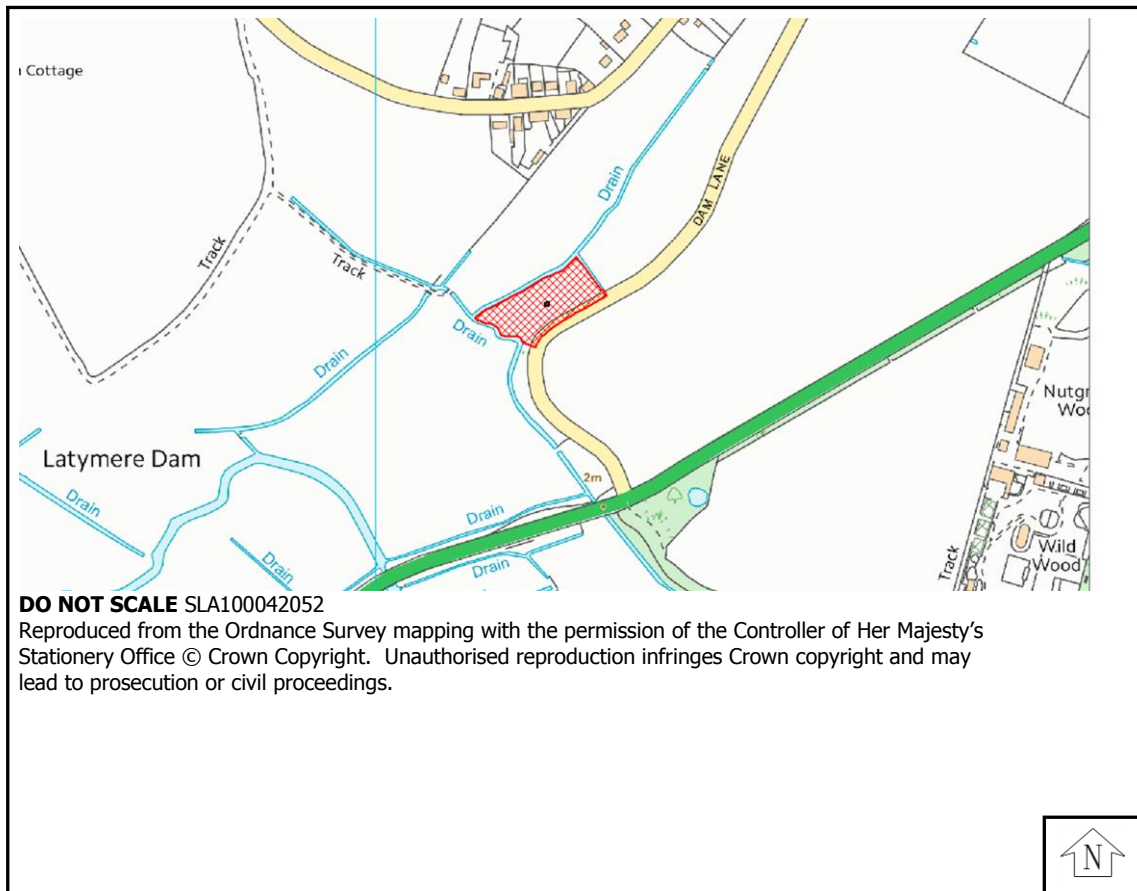
EXPIRY DATE 24 April 2017

APPLICATION TYPE Full Application

APPLICANT Mr Gary Regan

PARISH Kessingland

PROPOSAL Retrospective Application - Formation of lake for private recreational use and erection of 5 timber structures on land for amenity and storage use



SUMMARY

1.1 This application is retrospective and relates to works to create a large pond and erect five timber buildings on a site close to Gisleham (although within Kessingland parish). The applicant's intention has been to form a wildlife pond for the enjoyment of his family.

- 1.2 The site is within Flood Zone 3 and despite several versions of a Flood Risk Assessment having been submitted the Environment Agency maintains its objection.
- 1.3 The application is therefore recommended for refusal, with enforcement action to follow.

SITE DESCRIPTION

- 2.1 Dam Lane is a narrow single track lane which runs between Black Street and the A12. The site extends to 0.6 hectares on the north side of Dam Lane. The applicant has excavated a large pond and erected five timber buildings around the perimeter of the site.
- 2.2 The site lies within Flood Zone 3.

PROPOSAL

- 3.1 The application is retrospective and includes the excavation of the lake and erection of five buildings. They are used as:
 - Shelter for the family when visiting the site
 - Two buildings used for storage
 - A barbeque hut and
 - A hide to observe wildlife.

CONSULTATIONS/COMMENTS

- 4.1 **Neighbour consultation/representations:** objections have been received from two neighbours:
- 4.2 Mr Gower, Gate Cottage, Black Street, Gisleham: The application is retrospective. I observed the development from an early stage. When I spoke to those doing the work I was advised the land had been bought for personal use (i.e. owner and immediate circle), and initial observation appeared to confirm this. However, the application is for private use, which could embrace large scale, possibly charged-for, usage (i.e. a commercial enterprise). Interestingly the latest environmental submission by the applicant uses the word personal, but then references safety precautions applicable to extremely diverse needs.
- 4.3 I have no fundamental problem with a garden pond, on whatever scale. I can however appreciate the environmental issues, particularly when a body as eminent as the Environment Agency expresses concern. The issue that concerns me most is access. The development is down a very narrow lane, with no passing places, and subject only to the national speed limit. Recently the verges have been tidied, but that is not the norm. My wife relies on a mobility scooter. During what should have been a pleasant outing down this little used lane, and at a time when the work had only just been completed, she was effectively forced into the undergrowth to accommodate a small car coming in the opposite direction. I note Kessingland Parish Council have already commented on access,

so I need say little more. It is worth remembering that properties adjoining Dam Lane have previously been denied vehicular access.

4.4 The key factor is whether it is for personal or private use. The former should not normally create problems. The latter is a completely different matter, both of risk and demand on services Dam Lane, although little used, is an adopted public highway. Commercial use would place significantly greater demands on highway maintenance.

4.5 Mrs Moffatt, Ivy Cottage, Black Street, Gisleham: I am writing to voice my concerns about the planning application to form a fishing lake and erect buildings on the marsh in Dam Lane. I hope you will take the following points into consideration.

- Dam Lane is a single track road with no passing spaces and the exit onto the A12 is extremely dangerous.
- The proposed area is in Flood Zone 3. Should there be a Flood Risk assessment?
- This lake was for sale last year for £99,000 and described as a “fully stocked business opportunity”. What does the Environment Agency say about the excavation of the land and the movement of fish? Does the owner have a site permit from the EA? Is the fishery registered with the Fish Health Inspectorate?
- The land butts up against a water course that leads to the River Hundred.
- What happens if there is a flood? This area does flood from excess rainwater across the marsh as well as being at risk from the sea. I have pictures of the whole area under water in 2009 and 2013 just from severe rainfall. What happens to the fish then?
- The buildings can’t be for storage as they have large windows floor to ceiling. The two small cabins are high on the bank and are obviously for viewing the lake.
- The large two storey log cabin is 4.5 metres high with metal tile roofing. Scott’s Sheds (the makers) recommend obtaining planning permission on their website because of the height. It took five men five days to erect so I don’t think it is “fully portable”. This building is totally out of place in the middle of the marsh.
- If it is for family use only why has the owner set up a private limited company with share capital...Kessingland Fishing Lakes Ltd. What does he plan to do?
- I am objecting strongly to the building of the fishing lake in a flood zone without obtaining the proper permissions first and the huge two storey 4.5m log cabin stuck out in the middle of the marsh.

4.6 **Gisleham Parish Council Comments:** Recommend refusal:

1. Lack of basic information on planning form
2. Item numbers 11 and 12 not completed
3. Located in flood zone 3
4. Access and egress - terrible onto A12 and Black Street
5. No services - e.g. toilets, water, power, drainage or sewerage
6. Dam Lane very narrow and only one car width with no passing places
7. Flooding occurs with heavy rainfall
8. unsure of the need and use of a two storey building.
9. Plan shows one gated access however there are two. Originally only one access.

4.7 **Kessingland Parish Council:** Response to Retrospective Planning Application – Fishing Lake, Dam Lane, Kessingland

- 4.8 Kessingland Parish Council recommends that this application be REFUSED for the following reasons:
- The application site lies within Flood Zone 3, the high probability zone. Although this type of development is not specifically covered in the Neighbourhood Plan, para 103 of the National Planning Policy Framework states:-
 - "When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment, following the Sequential Test, and if required the Exception Test, it can be demonstrated that
 - Within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
 - Development is appropriately flood resilient, including safe access and escape routes where required and that any residual risk can be safely managed and gives priority to the use of sustainable drainage systems.
- No Flood Risk Assessment has been submitted with this application and therefore in the absence of the FRA, this in itself is a reason for refusal of planning permission.
- 4.9 2. No provision has been made by the applicant to provide any amenity services and there is no provision in the application to say how they will deal with foul water.
- 4.10 3. With regards to accessing the site, for this to be safe, Dam Lane would have to become "One Way", entering from the A12 and exiting onto Black Street. Entering onto the A12 is extremely dangerous and hazardous, with drivers being 'blind sighted' to traffic approaching from the South. Dam Lane is also very narrow with no passing places and a hazard to pedestrians.
- 4.11 This planning application should be refused for the above reasons.
- 4.12 **Environment Agency - Drainage** (initial consultation) Thank you for consulting us on this application which we received on 1 March 2017. We are submitting a holding objection on the grounds of flood risk and seek some additional information regarding foul water disposal. If our objection is overcome we will have further advice to offer regarding fish stocking, ecology and biosecurity.
- 4.13 Flood risk. Our maps show the application site lies within Flood Zone 3 the high probability zone. Paragraph 103, footnote 20 of the National Planning Policy Framework (NPPF) requires applicants for planning permission to submit a site-specific flood risk assessment (FRA) when development is proposed in such locations. No FRA has been submitted to support this application and we are therefore raising a holding objection.
- 4.14 An FRA is vital if the local council is to make an informed planning decision. In the absence of an FRA, the flood risk resulting from the proposed development is unknown. The absence of an FRA is therefore sufficient reason in itself for a refusal of planning permission.
- 4.15 Overcoming our Objection You can overcome our objection by undertaking an FRA that demonstrates that the development is safe without increasing risk elsewhere and, where possible, reduces flood risk overall. If this cannot be achieved, we are likely to maintain our

objection to the application. Production of an FRA will not in itself result in the removal of an objection.

- 4.16 We ask to be re-consulted with the results of the FRA. We will provide you with bespoke comments within 21 days of receiving formal re-consultation. Our objection will be maintained until an adequate FRA has been submitted.
- 4.17 We would also seek your confirmation of the flood risk vulnerability of the development. The proposed structures could be considered to be water compatible. However, we note from the photographs that one of the buildings is substantial enough to be capable of occupation in which case the flood risk vulnerability may change to the more or highly vulnerable category.
- 4.18 This objection is supported by your Policy CS03 Flood Risk and Coastal Erosion.
- 4.19 If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009.
- 4.20 Foul water. The site is located on a Secondary A Aquifer over a Principle Aquifer and as such the water environment is sensitive. As noted above the structures suggest that significant numbers of people may well be on site. No toilet provision or for the disposal of grey water appears to have been made. The applicant should clarify how the potential pollution of the water environment is to be managed.
- 4.21 **Environment Agency - Drainage** (further comments following the submission of a FRA) Thank you for the reconsultation which we received on 13 October 2017. We have reviewed the additional information and we are not in a position to remove the holding objection as described in our letter of 16 March 2017. We have not received any information with regard to foul water disposal. In the absence of any information we are also issuing a holding objection regarding the protection of the water environment. Should our objections be overcome we will have further advice for the applicant regarding fish stocking, ecology and biosecurity.
- 4.22 Flood Risk Our maps show the site lies within fluvial & tidal Flood Zone 3b, defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The proposal is for retrospective permission for a lake and erection of 5 timber structures for storage and amenity, which is classified as a 'water compatible' development, as defined in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance (PPG). Therefore, to comply with national policy the application is required to pass the Sequential and Exception Tests and be supported by a site specific Flood Risk Assessment (FRA). We have not seen evidence that you have applied the Sequential and Exception Tests. This is your responsibility and we recommend you consider them before the applicant reviews their FRA.
- 4.23 We have reviewed the submitted FRA; Evans Rivers and Coastal Ltd, 1905/RE/10-17/01, October 2017, and consider it does not comply with the requirements set out in the Planning Practice Guidance, Flood Risk and Coastal Change, Reference ID: 7-030-20140306. It does not, therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development. In particular, the submitted FRA fails to:

1. Provide a topographic survey
2. Demonstrate adequate flood storage compensation for the proposed development.
3. No details have been provided regarding the lake and where the excavated spoil has gone.
4. The FRA has classified the 5 structures as water-compatible development, as there will be no sleeping accommodation across the site. The 5 structures could be used as sleeping accommodation and we cannot see how this could be prevented or enforced should you consider that the matter could be conditioned.

4.24 Overcoming our Objection The applicant should:

- Submit a GPS verified topographic survey as LiDAR data is not accurate enough to be used in an FRA.
- The applicant has not proposed Flood Storage Compensation. The development is in fluvial flood zone 3b and the applicant needs to consider compensation on a volume-for-volume and level-for-level basis. This requires an available area of land on the edge of the floodplain to be viable.

4.25 It will need to be shown that the built footprint of the 5 structures within the 1% (1 in 100) annual probability flood extent, including allowances for climate change, can be directly compensated for on a volume-for-volume and level-for-level basis to prevent a loss of floodplain storage. If there are no available areas for compensation above the design flood level and compensation will not be possible then a calculation of the offsite flood risk impacts will need to be undertaken. If this does not show insignificant offsite impacts then the 5 structures should not be allowed. Further guidance on the provision of compensatory flood storage is provided in section A3.3.10 of the CIRIA document C624.

4.26 Detailed information regarding the excavated spoil is required. If the spoil has been used to raise the land or create a bund on the site, we will object in principle as this land is in functional floodplain and such works could impede its functionality.

4.27 The applicant can overcome our objection by revising their proposals or flood storage compensation arrangements to ensure that there will be no loss of flood storage capacity on site.

4.28 Figure 6 of the FRA seems to show a bed inside the bird hide. We are unsure if the development may actually be a more vulnerable development. If the proposed structures are intended to be habitable we would object in principle.

4.29 We could remove an in principle objection if you, in consultation with your Emergency Planner, consider the 5 structures to be water compatible and inform us in writing that you accept the flood risk to the future occupants. You must also consider the proposed risk of internal flooding to be acceptable, safe and able to be managed through the Flood Response Plan for the proposed 5 structures.

4.30 The applicant can overcome our objection by submitting an FRA that covers the deficiencies highlighted above and demonstrates that the development will be safe will not increase risk elsewhere. If this cannot be achieved we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an objection. We ask to be re-consulted with the results of the FRA. We will provide you

with bespoke comments within 21 days of receiving formal re-consultation. Our objection will be maintained until an adequate FRA has been submitted.

- 4.31 In addition to the above flood risk, the site may be within an area at risk of flooding from surface water, reservoirs, sewer and/or groundwater. We have not considered these risks in any detail, but you should ensure these risks are all considered fully before determining the application.
- 4.32 Environmental Permit for Flood Risk Activities The applicant may need an environmental permit for flood risk activities if they want to do work in, under, over or within 8 metres (m) from a fluvial main river and from any flood defence structure or culvert or 16m from a tidal main river and from any flood defence structure or culvert. The Lothingland Hundred and tributary, is designated a 'main river'. Application forms and further information can be found at: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. Anyone carrying out these activities without a permit where one is required is breaking the law.
- 4.33 The water environment As advised in our letter of 16 March 2017 the water environment in this area is sensitive and is in direct connectivity to the River Waveney. The applicant has not provided any information regarding the management and disposal of sewage, grey water and any potential trade effluent. It is accepted that connection to the available foul sewer to the north in Black Street may be impracticable but the applicant needs to show that this is the case. Only clean rainwater should go to soakaway.
- 4.34 We object to the application as submitted because the risks to the water environment from the development are unacceptable. The applicant has not supplied adequate information to demonstrate that the risks can be satisfactorily managed. We recommend that planning permission should be refused on this basis in accordance with the precautionary principle.
- 4.35 The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels water pollution.
- 4.36 In this case we consider that the proposed development may pose an unacceptable risk of causing a detrimental impact to groundwater quality because the applicant has failed to provide acceptable information as to how potential pollutants will be managed.
- 4.37 In accordance with our Groundwater Protection: Principles and Practice we will maintain our objection until we receive a satisfactory risk assessment that demonstrates that the risks to groundwater posed by this development can be satisfactorily managed.
- 4.38 If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009
- 4.39 **Environment Agency – drainage:** (further comments following submission of revised FRA)
- 4.40 Thank you for your letter of 28 November 2016. We have reviewed the revised flood risk assessment by Evans Rivers and Coastal Ltd, 1905/RE/10-17/01 Revision 1, November

2017 and are maintaining our objection on flood risk grounds as it does not adequately address the issues raised previously. Specifically:

- The topographic survey within the FRA shows that the spoil from creating the lake has been re-graded across the site and is acting as a bund between the watercourse and the site. The re-graded site level around the edge of the site at its lowest is 1.09m AOD. This is above the 5% (1 in 20) annual exceedance probability plus climate change level of 1.04m AOD and means that the site has been taken out of the functional floodplain now and into the future.
- Drawing BBS-BB-EGL-SU-03 within the FRA shows that the re-graded spoil around the site has resulted in the creation of a bund between the functional floodplain and the site. The cross-sections of this drawing show that the spoil bund has raised the ground level by between 0.77m AOD and 1.3m AOD and section 5.7 of the FRA states that there is a total volume of 1501.65m³ of flood water that is displaced across the floodplain by the re-graded spoil bunds surrounding the site.
- It is noted that the FRA undertakes a flood displacement calculation across the flood plain in the local area surrounding the site. This calculation shows that the bund is increasing fluvial flood risk to the surrounding land by 0.03m.
- Flood displacement calculations are not an acceptable means to investigate the flood risk implications of taking land out of functional floodplain.
- Table 3: Flood Risk Vulnerability and flood zone 'compatibility' of the Planning Practice Guidance (PPG) states that water compatible development in flood zone 3b should be designed and constructed to remain operational and safe for users in times of flood, result in no net loss of floodplain storage; not impede water flows and not increase flood risk elsewhere. However the proposed development results in a net loss of floodplain storage of 1501.65m³ and prevents floodwater from flooding onto the functional floodplain site so does not meet these requirements.
- Section 5.9 of the FRA states "there is no scope of compensating for the loss of flood volume due to the site levels". If compensatory storage cannot be found other measures must be considered to ensure there is no net loss of floodplain storage or impeding of water flows. This could include removing the spoil from the floodplain.
- There is a proposed flood alleviation scheme for the Lothingland Hundred system. This scheme will result in moving the tidal defences further inland and a number of options are being considered. This may affect the fluvial flood storage capacity in the area downstream of the A12, which could also affect the fluvial flood storage capacity in the area of this application. This further highlights the importance of there being no loss of fluvial flood storage capacity.

4.41 Overcoming our Objection As stated in our previous objection we object in principle to spoil being used as a bund on the site as this land is in functional floodplain and these works will stop it functioning.

4.42 The applicant can overcome our objection by revising their proposals by removing the spoil bunds from the floodplain or providing flood storage compensation arrangements to ensure that there will be no loss of flood storage capacity on site.

4.43 The FRA should cover the deficiencies highlighted above and demonstrate that the development will not increase risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application. We ask to be re-consulted with the results of the FRA. We will provide you

with bespoke comments within 21 days of receiving formal re-consultation. Our objection will be maintained until an adequate FRA has been submitted. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009.

- 4.44 **Other Sources of Flooding** In addition to the above flood risk, the site may be within an area at risk of flooding from surface water, reservoirs, sewer and/or groundwater. We have not considered these risks in any detail, but you should ensure these risks are all considered fully before determining the application.
- 4.45 **The water environment** We have not received any information to overcome our holding objection regarding the protection of this sensitive waterbody. We understand the applicant has given an undertaking that any water with polluting potential will be collected in containers and removed from the site. Regarding sewage we understand that no toilet facilities will be provided and that users of the site will rely on facilities at local retail and restaurant sites.
- 4.46 If you are satisfied that this is an acceptable solution, capable of being enforced, we would remove our objection. The Environmental Permitting Regulations 2010 make it an offence to cause or knowingly permit a groundwater activity unless authorised by an Environmental Permit which we will issue. A groundwater activity includes any discharge that will result in the input of pollutants to groundwater.
- 4.47 **Environment Agency - HMIP - Pollution** was consulted on the 1 March 2017.
- 4.48 **Suffolk Wildlife Trust** Thank you for sending us details of this application, we have the following comments:
- 4.49 This site lies directly adjacent to Kessingland Levels County Wildlife Site, designated for its importance as grazing marshes. We note that this is a retrospective application and therefore any direct ecological impacts on the application site itself will already have occurred. However, given the close proximity to sites designated for their nature conservation importance, it is very important that the development does not have an adverse impact on the existing hydrology of the area. We recommend that further advice is sought from the Environment Agency on this matter.

PUBLICITY

- 4.50 None

SITE NOTICES

- 4.51 The following site notices have been displayed: General site notice posted 2 March 2017

PLANNING POLICY

- 5.1 The following policies are relevant to the consideration of the application:

- 5.2 Core Strategy policies: CS01 Spatial Strategy, CS03 Flooding and Coastal Erosion and CS16 Natural Environment
- 5.3 Development Management policies DM02 Design Principles and DM27 Protection of Landscape Character
- 5.4 The National Planning Policy Framework (NPPF) is also relevant.

PLANNING CONSIDERATIONS

- 6.1 The main issues for consideration of this application are the flood risk issues and the visual impact of the buildings.
- 6.2 Members will note that initially there was no Flood Risk Assessment (FRA) submitted with the application and the Environment Agency made a holding objection. It noted that the site lies within Flood Zone 3, the area with the highest probability of flooding. However the Environment Agency noted that their objection could be withdrawn if a FRA was submitted that demonstrates that the development is safe without increasing risk elsewhere and, where possible, reduces flood risk overall (paragraphs 4.12 – 4.20). As a result the application was deferred to enable the applicant to commission a FRA.
- 6.3 The FRA was received in October 2017 and the Environment Agency was reconsulted. The Environment Agency found a number of omissions and concluded that its holding objection could not be withdrawn. These included demonstration of adequate flood storage compensation for the proposed development, details of where the excavated spoil has gone and whether the five buildings could be used as sleeping accommodation (paragraphs 4.21 – 4.38).
- 6.4 A further revised version of the FRA was received in November 2017 and the Environment Agency again reconsulted. It again maintained its objection. In particular the Environment Agency notes that the topographic survey within the FRA shows that the spoil from creating the lake has been re-graded across the site and is acting as a bund between the watercourse and the site. This means that the site has been taken out of the functional floodplain now and into the future.
- 6.5 The Environment Agency do say that their objection might be overcome by removing the bund or providing flood or providing flood storage compensation arrangements to ensure that there will be no loss of flood storage capacity on site (paragraphs 4.39 – 4.46).
- 6.6 There are also other concerns, including disposal of foul sewage and the potential for the 5 structures be used as sleeping accommodation.
- 6.7 Since the application was submitted a further issue has come to light. The Benacre Pumping Station is likely to fail at some point and consideration is currently underway on potential flood defences. These are not likely to reduce the risk of flooding on the application site, but it does highlight the importance of retaining functional flood plain.
- 6.8 If the Environment Agency's objections could be overcome there remains the issue of the buildings. It is possible to see a requirement for some storage on the site it is difficult to justify five buildings. Although the site is for the most part not prominent in the landscape,

the tallest building can be seen from the A12. In addition the Environment Agency is concerned about whether some or all of the buildings may be used for sleeping accommodation at some stage, increasing the potential impacts of flooding.

- 6.9 Members should note that if they are minded to grant planning permission further consultation with the Environment Agency would be required.

CONCLUSION

- 7.1 Government policy (as set out in the NPPF) is to ensure that flood risk is not increased elsewhere and only consider development areas at risk of flooding where, informed by a site-specific flood risk assessment, it can be demonstrated that within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location and development is appropriately flood resilient and resistant, including safe access and escape routes where required.
- 7.2 The Council has given the applicant every opportunity to supply information to meet the Environment Agency's objection, without success. It is therefore recommended that planning permission is refused.
- 7.3 As the application is retrospective enforcement action should follow the refusal of planning permission. This should include removal of the bunds and buildings.

RECOMMENDATION

That planning permission be refused for the following reasons:

1. The site is located within Flood Zone 3, the area of highest flood risk. Government and Council policy is that development should not increase flood risk elsewhere, but in this case the spoil from creating the lake has been re-graded across the site and is acting as a bund between the watercourse and the site, which means that the site has been taken out of the functional floodplain now and into the future. In addition, there is a proposed flood alleviation scheme for the Lothingland Hundred system. This scheme will result in moving the tidal defences further inland and a number of options are being considered. This may affect the fluvial flood storage capacity in the area downstream of the A12, which could also affect the fluvial flood storage capacity in the area of this application. This further highlights the importance of there being no loss of fluvial flood storage capacity.
2. This site is in the open countryside where policy CS01 states that the objective is to preserve the countryside for its own sake. The development includes five buildings of various types which are out of place in this rural site and detrimental to the character of the countryside.

BACKGROUND INFORMATION:

See application ref: DC/17/0786/FUL at
www.eastsuffolk.gov.uk/public-access

CONTACT

Richard Amor, Planning Officer, (01502) 523018,
richard.amor@eastsuffolk.gov.uk