### F/YR24/0879/O

Applicant: Mr Jack Shepherd

Agent : Swann Edwards Swann Edwards Architecture Limited

Garden Land At Honeybank, Second Drove, Swingbrow, Chatteris, Cambridgeshire

Erect up to 1no self build dwelling (outline application with all matters reserved)

**Officer recommendation: Refusal** 

Reason for Committee: Number of representations contrary to Officer recommendation.

#### **Government Planning Guarantee**

Statutory Target Date For Determination: 27 December 2024

EOT in Place: Yes

EOT Expiry: 12 February 2025

Application Fee: £1156

**Risk Statement:** 

This application must be determined by 12 February 2025 as it will be out of time and therefore negatively affect the performance figures.

### 1 EXECUTIVE SUMMARY

- 1.1 The proposed dwelling is to be located in the open countryside. Policy LP3 of the Fenland Local Plan supports development in the open countryside ('Elsewhere') where it is demonstrably essential to the effective operation of local agriculture, horticulture, forestry, outdoor recreation, transport or utility services. The proposal fails to demonstrate that the development is essential for any of the operations as identified in Policy LP3 and therefore would result in unwarranted residential development in an unsustainable location contrary to Policy LP3 of the Fenland Local Plan (2014).
- 1.2 The Cambridgeshire Flood and Water SPD 2016 and Policy LP14 (Part B) of the Local Plan requires development in Flood Zone 3 to undergo a sequential test to demonstrate that the development cannot be delivered elsewhere in the area at lower risk areas of flooding. Policy LP2 seeks to deliver high quality environments, ensuring that people are not put at identified risks from development thereby avoiding adverse impacts in the interests of health and wellbeing. The site lies within Flood Zone 3 which is a high risk flood area. The applicant has failed to undertake a substantive and evidenced sequential test and has therefore failed to demonstrate that the development could not be delivered in an area of lower flood risk, thereby failing LP14 (Part B). Consequently, the proposal fails to satisfy policy LP2 of the Fenland Local Plan as it fails to deliver a high quality environment and unjustifiably puts future occupants at higher risk of flooding.

- 1.3 Policy LP15 requires all development with transport implications to identify deliverable mitigation measures and secure arrangement for their implementation in order to make the development acceptable in transport terms. A swept path analysis is required to demonstrate that the application site can be accessed safely from both directions. The lack of a tracking analysis means that the application fails to demonstrate that a safe and suitable access can be delivered to serve the development and as such the proposal fails to satisfy Policy LP15 of the Fenland Local Plan (2014).
- 1.4 The Local Planning Authority recommendation is one of **refusal**.

# 2 SITE DESCRIPTION

- 2.1 The site is located with the open countryside, off Second Drove and fronting Forty foot Bank . The site at the time of the officer site visit appeared to have been used as a garden and was overgrown and unkempt. Subsequently the site has been cleared, a boundary fence now surrounds the site, and a concrete pad has been constructed to the northern rear of the site with a package treatment plant adjacent. This is a matter which the Council's Planning Enforcement team are aware of.
- 2.2 There is a small group of historic residential properties located to the west, east and north of the site. Ramsey Forty Foot Drain is located beyond Forty Foot Bank to the south of the site. Beyond the vicinity of the site is open land in arable use. The land levels differ from the road at Forty Foot Bank significantly and are lower into the site. The site lies within Flood Zone 3 and is within a Flood Warning Area. The nearest area of potential surface water flood risk on the Environment Agency mapping, is an area of low flood risk to the east, in the rear garden of 4 Forty Foot Bank.

# 3 PROPOSAL

- 3.1 This application seeks outline planning permission (with all matters reserved) for a dwelling on land at Honeybank, Swingbrow, Second Drove, Chatteris. An indicative site plan has been submitted which appears to show a chalet bungalow and a detached garage. No elevational drawings have been supplied. An indicative site access to the property is shown at the south-west corner of the plot.
- 3.2 The application has been amended to seek to address access concerns expressed by Cambridgeshire County Council Highways.
- 3.3 Full plans and associated documents for this application can be found at: <u>https://www.publicaccess.fenland.gov.uk/publicaccess/</u>

# 4 SITE PLANNING HISTORY

Reference	Description	Decision	
F/1108/88/O	Erection of one bungalow on garden	Refused – 10 <sup>th</sup> November	
	Adj Honeybank Swingbrow Forty	1988	
	Foot Bank Chatteris		
F/1486/89/O	Erection of a bungalow and	Approved – 17 <sup>th</sup> October	
	improvement to access roadway	1990	
F/93/0503/O	Erection of a bungalow and	Approved – 9 <sup>th</sup> December	
	improvement to access roadway	1993	
F/96/0552/O	Erection of a bungalow and	Approved – 4 <sup>th</sup> December	
	improvement to access roadway	1996	
F/99/0641/O	Erection of a bungalow and	Approved – 29 <sup>th</sup>	
	improvement to access roadway	November 1999	
F/YR02/0856/O	Erection of a bungalow and	Approved – 6 <sup>th</sup>	
	improvement to access roadway	September 2002	
F/YR04/4240/O	Erection of a bungalow and	Approved – 5 <sup>th</sup> January	
	improvement to access roadway	2005	
F/YR16/0157/O	Erection of a dwelling (Outline	Approved – 27 <sup>th</sup> April	
	application with all matters reserved)	2016	

## 5 CONSULTATIONS (summarised)

# 5.1 Chatteris Town Council – 5<sup>th</sup> December 2024

Support

### 5.2 Middle Level Commissioners Internal Drainage Board

Please be advised that neither the Middle Level Commissioners nor the Internal Drainage Boards within our district are, in planning terms, statutory consultees and, therefore, do not actually have to provide a response to the planning authority and we receive no external funding to do so.

However, the above application appears to involve development within the Commissioners' 20m byelaw strip.

During the decision-making process both the applicant and your Council must acknowledge the close proximity of important watercourses and/or associated maintenance access strips to the application site. These watercourses are protected by Byelaws made in accordance with the Land Drainage Act.

Development within, over, or under a Commissioners maintained watercourse, or within the Commissioners' maintenance strip, requires the Commissioners' prior written consent.

It must not be assumed that consent will be given for any development within, over or under these watercourses and/or any associated maintenance access strips or that the issuing of planning permission by your authority means that the relevant works will be consented.

*Please be advised that a more detailed response concerning other relevant Conservation, Environmental, Biodiversity Enhancement and Net Gain Issues;* 

Navigation (where appropriate); Water level and flood risk management matters may be issued to supplement this reply and better inform the parties concerned.

In view of the above, the applicant is urged to contact us to discuss the proposed works via the post- application consultation process as a matter of urgency. Further information on this and other development control issues can be on our website: Consents & Byelaws – Middle Level

### 5.3 Environment Agency

We have no objection to the proposed development on flood risk grounds but wish to make the following comments:

We consider that the main source of flood risk at this site is associated with watercourses under the jurisdiction of the Internal Drainage Board (IDB). As such, the IDB should be consulted with regard to flood risk associated with watercourses under their jurisdiction and surface water drainage proposals.

In all circumstances where flood warning and evacuation are significant measures in contributing to managing flood risk, we expect local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

NPPF Flood Risk Sequential Test:

In accordance with the National Planning Policy Framework (paragraph 162), development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is for the Local Planning Authority to determine if the sequential test needs to be applied and whether there are other sites available at lower flood risk. Our flood risk standing advice reminds you of this and provides advice on how to apply the test.

### 5.4 Environmental Health

The Environmental Health Team note and accept the submitted information and have 'No Objections' to the proposal, as it is unlikely to have a detrimental effect on the local amenity from the standpoint of air quality and light pollution or be affected by ground contamination.

This service would however welcome a condition on construction working times due to the close proximity to existing noise sensitive receptors, with the following considered reasonable:

No construction work shall be carried out and no plant or power operated machinery operated other than between the following hours: 08:00 hours and 18:00 hours on Monday to Friday, 08:00 hours and 13:00 hours on Saturday and at no time on Sundays, Bank or Public Holidays, unless otherwise previously agreed in writing with the Local Planning Authority.

## 5.5 Cambridgeshire County Council Highways – 17<sup>th</sup> December 2024

### Recommendation

The applicant is referred to the previous consultation of the Local Highway Authority dated 9th December, which still requires attention.

#### Comments

Following the previous consultation response, dated 9th December, revised site location and visibility splay drawings have been submitted. It is accepted that the proposed junction arrangement will achieve the acceptable visibility splays, however, whilst egress from the site can be achieved in either direction, it is the responsibility of the applicant to demonstrate that the junction can be accessed from either direction from Forty Foot Bank.

Further consideration will be given to this application following the receipt of swept path analysis which demonstrates that this site can be suitably accessed from either direction from Forty Foot Bank. Should the tracking demonstrate that the access arrangement is unsuitable, it will be the responsibility of the applicant to amend the width and alignment of the access arrangement accordingly.

### 5.6 Local Residents/Interested Parties

## Supporters

There have been 13 letters (three from Forty Foot Road and one from Second Drove in the vicinity of the site, with two comments received from residents of March Road and Chapel Lane in Wimblington and further letters from Curf Fen Drove, Farriers Gate, Millfield Close and Pound Road in Chatteris, New Street in Doddington, Glebe Close in Manea and Millfield Close in March) supporting the application on the following grounds:

- There has been no recent flooding in the area.
- The dwelling will transform an area of neglect.
- The land is going to waste.
- The land has being laying dormant for over thirty years.
- The proposed design will contribute positively to the area.
- The proposal will not be out of character as there are houses either side.
- It will complete a line of homes.
- The proposal will benefit my business.
- The dwelling is for a young family.
- This dwelling will help someone get on the property ladder.

### Representations

Two representations have been received from Forty Foot Road, Chatteris raising the following issues:

- Manoeuvrability on and around the site.
- Access must not be hampered during construction.

# 6 STATUTORY DUTY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted Fenland Local Plan (2014).

# 7 POLICY FRAMEWORK

# National Planning Policy Framework (NPPF) 2024

Chapter 2 - Achieving sustainable development

Chapter 5 – Delivering a sufficient supply of homes

Chapter 9 – Promoting sustainable transport

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

# National Planning Practice Guidance (NPPG)

Determining a Planning Application

# National Design Guide 2021

Context Identity Built Form Homes and Buildings

# Fenland Local Plan 2014

- LP1 A Presumption in Favour of Sustainable Development
- LP3 Spatial Strategy, the Settlement Hierarchy and the Countryside
- LP4 Housing
- LP5 Meeting Housing Need
- LP12 Rural Areas Development Policy
- LP14 Responding to Climate Change and Managing the Risk of Flooding in Fenland
- LP15 Facilitating the Creation of a More Sustainable Transport Network in Fenland
- LP16 Delivering and Protecting High Quality Environments across the District

# Delivering and Protecting High Quality Environments in Fenland SPD 2014

- DM3 Making a Positive Contribution to Local Distinctiveness and character of the Area
- DM6 Mitigating Against Harmful Effects

# Cambridgeshire Flood and Water SPD 2016

# **Emerging Local Plan**

The Draft Fenland Local Plan (2022) was published for consultation between 25th August 2022 and 19 October 2022, all comments received will be reviewed and any changes arising from the consultation will be made to the draft Local Plan. Given the very early stage which the Plan is therefore at, it is considered, in accordance with Paragraph 49 of the NPPF, that the policies of this should carry extremely limited weight in decision making. Of relevance to this application are policies:

- LP1: Settlement Hierarchy
- LP2: Spatial Strategy for the Location of Residential Development
- LP7: Design
- LP8: Amenity Provision
- LP12: Meeting Housing Needs
- LP13: Custom and Self Build
- LP18: Development in the Countryside
- LP20: Accessibility and Transport
- LP22: Parking Provision
- LP24: Natural Environment

- LP25: Biodiversity Net Gain
- LP27: Trees and Planting
- LP28: Landscape
- LP32: Flood and Water Management
- 8 KEY ISSUES
  - Principle of Development
  - Layout and Design
  - Impact on Residential Amenity / Land Users
  - Highway Safety and Parking
  - Flooding Considerations / Drainage
  - Biodiversity Net Gain (BNG)

## 9 BACKGROUND

9.1 A number of outline applications for a dwelling on this site were made and approved between 1988 and 2004. A further application for an outline dwelling was made under reference F/YR16/0157/O. This application was assessed under the current Fenland Local Plan (2014) and was refused due to the site being an Elsewhere Location, lack of a sequential test, lack of a biodiversity study and the need to materially amend the access onto Forty Foot Bank to facilitate adequate access and visibility.

# 10 ASSESSMENT

### **Principle of Development**

- 10.1 The site is located within an area known as Swingbrow, which for planning policy purposes is designated as open countryside. Policy LP3 of the Local Plan establishes a settlement hierarchy for the district, defining market towns and various categories of villages. The site falls in none of these, and the Policy states that development elsewhere will be restricted to specified categories of development i.e. agriculture. The proposal would not amount to any of these categories and it therefore follows that the proposal would be in obvious and significant conflict with Policy LP3. It would also conflict with the NPPF (2024), which at Paragraph 83 states: *To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.* There are no local services within walking distance of the site. Paragraph 84 states that:
- 10.2 Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
  - a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
  - b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
  - c) the development would re-use redundant or disused buildings and enhance its immediate setting;

- d) the development would involve the subdivision of an existing residential building; or
- e) the design is of exceptional quality, in that it:
  i) is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
  ii) would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
- 10.3 The proposal as submitted meets none of the above criteria. Whilst the site is not physically isolated given the proximity of other dwellings it is functionally isolated as it is located away from established settlement, is not served by a footpath and has no services in the vicinity. Therefore, the principle of development in this location is not supported by local or national planning policy.

# Layout and Design

10.4 The application has been made in outline form (with all matters reserved); as such the external appearance and scale have been reserved for subsequent consideration. It is accepted that the principle of developing the site would not have an adverse character impact, due to the nearby dwellings, and there not being a requirement to materially raise finished floor levels. An indicative footprint has been provided, which would appear to suggest an appropriate scale of development for the size of the plot. However, a determination as to whether the external appearance is in keeping with that of the surrounding area cannot be made as no indicative elevational drawings have been provided.

# Impact on Residential Amenity / Land Users

10.5 The application has been made in outline form (with all matters reserved); as such the external appearance and scale have been reserved for subsequent consideration. Notwithstanding the principle of developing the site (as discussed above), the site could potentially accommodate a two-storey development. However, careful consideration would be required to provide a development which would be sympathetic to the bungalow at 4 Forty Foot Bank to the east, and the two storey dwelling at 6 Forty Foot Bank to the west. It is considered that the site could accommodate a dwelling without compromising the amenity of neighbouring dwellings, and as such would comply with Policy LP16 in this respect.

# **Highway Safety and Parking**

- 10.6 Although 'access' has not been committed, the amended location plan shows the red development boundary line around the existing vehicular access which appears to serve 4 and 6 Forty Foot Bank, as well as Bumble Cottage, Second Drove. The speed limit along this section of the Forty Foot Bank is 50mph and there are no footpaths. The Highway Authority has advised that improvements to the existing access and visibility splays (2.4m x 215m) would be required in order to make the development acceptable. The improvements include widening and re-aligning the existing access to ensure that vehicles accessing the site from a westerly direction can do so safely.
- 10.7 Following amendments to address the above the matters a further response was received from the Highway Authority dated 17<sup>th</sup> December 2024 stating: *Further consideration will be given to this application following the receipt of swept path analysis which demonstrates that this site can be suitably accessed from either direction from Forty Foot Bank. Should the tracking demonstrate that the access*

arrangement is unsuitable, it will be the responsibility of the applicant to amend the width and alignment of the access arrangement accordingly.

10.8 The applicant's agent confirmed on 2<sup>nd</sup> January 2025 that they were not prepared to make further amendments if the application was likely to be refused and wished for this matter to be conditioned should the application be approved. This approach is considered unacceptable as Policy LP15 of the Fenland Local Plan (2014) states that any development that has transport implications will not be granted planning permission unless deliverable mitigation measures have been secured which will make the development acceptable in transport terms. Currently the Local Planning Authority has insufficient evidence to demonstrate that the site can be safely accessed and a such planning permission cannot reasonably be granted.

# **Flooding Considerations / Drainage**

- 10.9 The application site and surrounding area lies entirely within Environment Agency (EA) Flood Zone 3. A Flood Risk Assessment accompanies the application, proposing finished floor levels of 500mm, which has been accepted by the EA. However, they do advise consultation with the Internal Drainage Board and implementation of a Sequential Test.
- 10.10 As the site is located in Flood Zone 3, the approach of the supporting planning documents is not to rely on mitigation measures in areas at high risk of flooding, but instead to make development safe and therefore direct new development away from such areas. For that reason, the proposal is required to be subjected to the Sequential Test to establish whether there are reasonably available sites with Zone 1 (and Zone 2 if no land is available in Zone 1). The guidance states that the developer should justify, with evidence, what area of search has been used. There is no evidence within the submitted sequential test that an area of search has been identified. The text within the Sequential Test states: Large parts of Fenland District Council between the River Nene and River Great Ouse, around the towns of March and Chatteris, lie in Flood Zone 3. As such the opportunities to undertake the development at an alternative site within Flood Zone 1 are limited ..... The Fenland Local Plan defines the housing distribution for new dwellings across the District. Within the district there is a target of 11,000 new dwellings over the period from 2011 to 2031. The proposed development will provide wider sustainability benefits by meeting the demand for rural housing.
- 10.11 The above text is not considered to demonstrate that the application site meets the Sequential Test. The area known as Swingbrow is entirely within Flood Zone 3. The Local Planning Authority stance on developments in the open countryside is that the suitability for development should be assessed district wide under the sequential test. In the absence of the submission of such information the application is clearly contrary to Policy LP14 in this regard and the Sequential Test has not been passed. The submitted FRA Argues that the need to provide 11,000 homes across the district between 2011 and 2031, as well as the need to provide rural housing means that the application delivers wider sustainability benefits which would presumably be deemed to meet the requirements of the exception test. Notwithstanding that the Local Planning Authority can currently demonstrate a Five Year Housing Land Supply, the SPD is clear that to pass the exception test, wider sustainability benefits over and above the delivery of the housing itself should be delivered. No other sustainability benefits are proposed as part of the application. It is therefore considered that this application fails to pass both the sequential and exceptions test.

### Self-Build / Custom Build Properties

- 10.12 Policy LP5, Part C seeks to provide, in appropriate circumstances, housing solutions that meet market expectations including self build homes, which is supported by Para 63 of the NPPF (2024). Under Section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Weight would therefore be given to this, the amount dependant on identified demand.
- 10.13 The proposal is for self/custom build dwellings, however the Council can currently demonstrate that the number of permissions given for self/custom builds exceeds identified demand, and as such very limited weight can therefore be reasonably afforded to the delivery of this form of housing when determining the application.

# **Biodiversity Net Gain (BNG)**

- 10.14 The Environment Act 2021 requires development proposals to deliver a net gain in biodiversity following a mitigation hierarchy which is focused on avoiding ecological harm over minimising, rectifying, reducing and then off-setting. This approach accords with Local Plan policies LP16 and LP19 which outlines a primary objective for biodiversity to be conserved or enhanced and provides for the protection of Protected Species, Priority Species and Priority Habitat.
- 10.15 There are statutory exemptions, transitional arrangements and requirements relating to irreplaceable habitat which mean that the biodiversity gain condition does not always apply. In this instance, one or more of the exemptions / transitional arrangements are considered to apply and a Biodiversity Gain Condition is not required to be approved before development is begun because the nature of the development being self / custom build is exempt from statutory net gain.

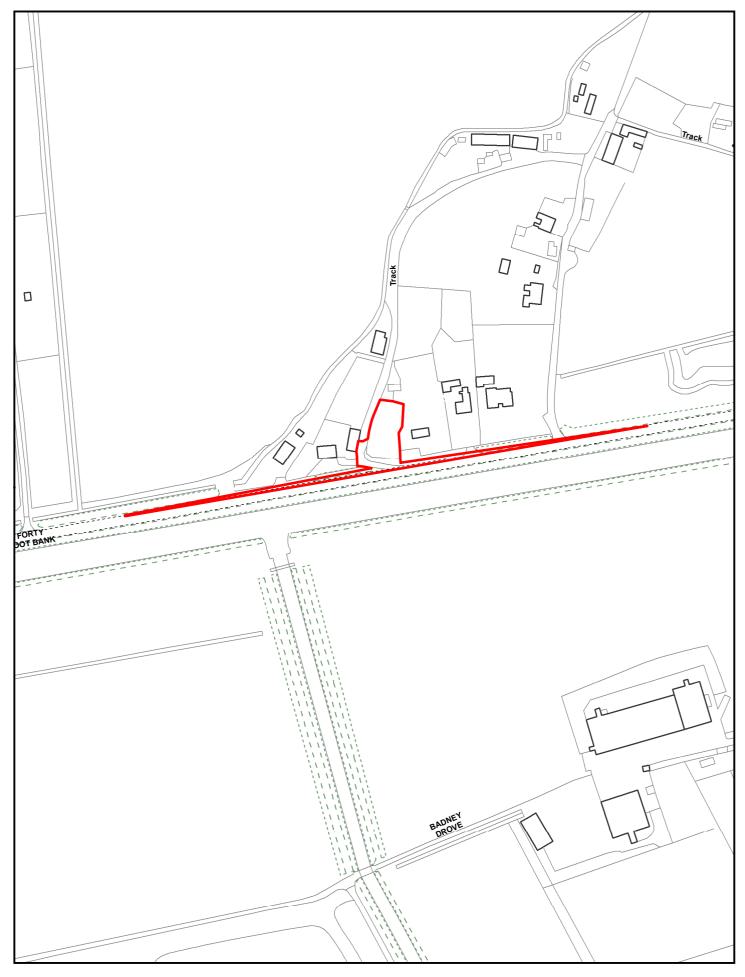
# 11 CONCLUSIONS

- 11.1 The proposed scheme is considered to be unacceptable for a number of reasons. Firstly by virtue of its location in the open countryside, the proposal would not be close to any existing facilities, and the occupant would likely have to rely on private transport to access the nearest facilities and services.
- 11.2 Secondly, the site is located within Flood Zone 3 and no evidenced argument has been given within the Sequential Test to demonstrate that there are no sequentially preferable sites in the vicinity.
- 11.3 Finally, the scheme also requires improvements to the existing access to ensure that an acceptable development could be achieved from a highway safety perspective. A swept path analysis has not been submitted to demonstrate that vehicles entering the site from the west will not be encroaching onto the opposite side of highway at Forty Foot Bank.
- 11.4 The application is therefore not considered to accord with Policies LP1, LP3, LP4, LP5, LP12, LP14, LP15 and LP16 of the Fenland Local Plan (2014), as well as Sections 2, 5, 9, 12 and 14 of the National Planning Policy Framework (2024).

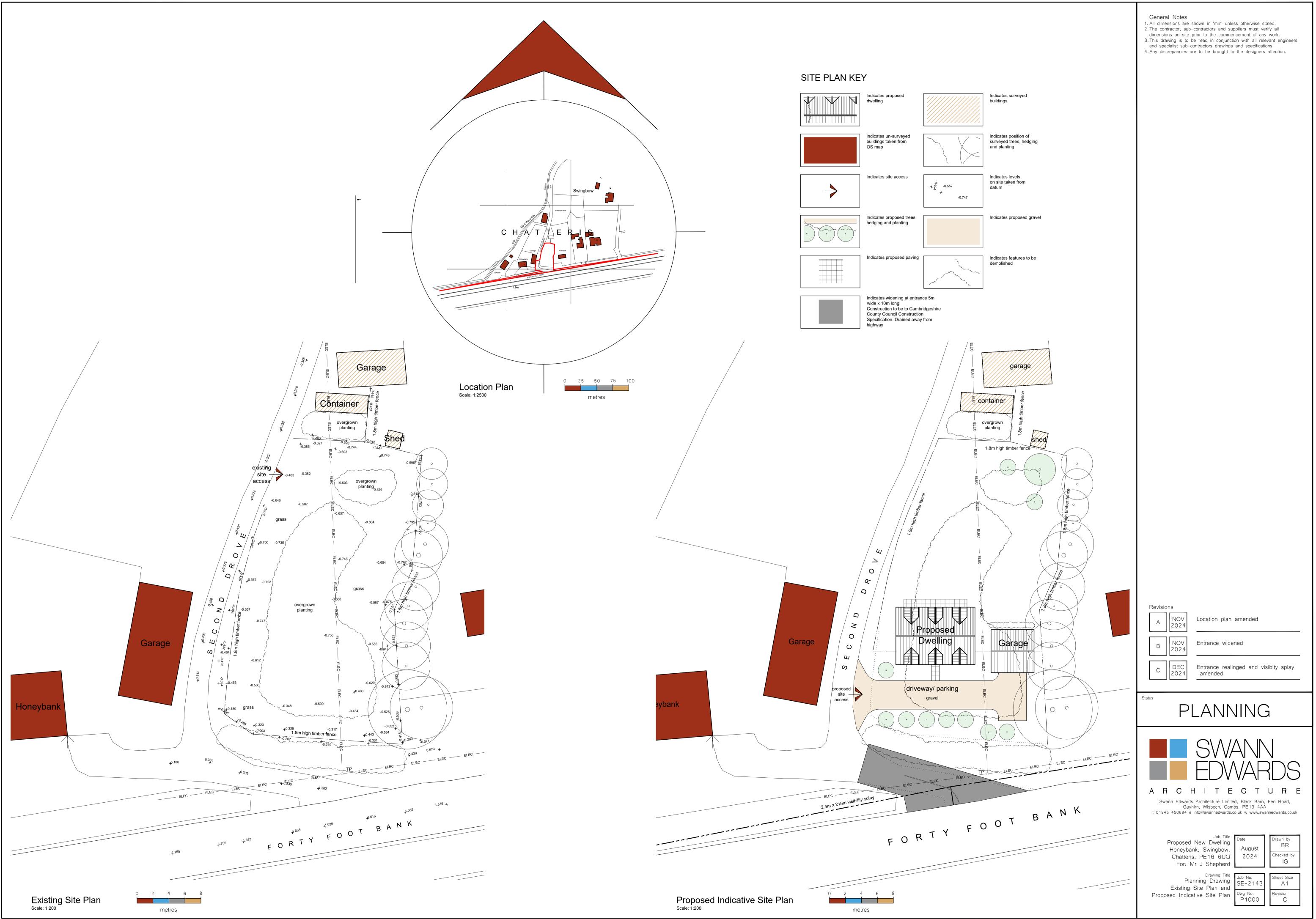
### 12 RECOMMENDATION

**Refuse;** for the following reasons:

1	The proposed dwelling is to be located in the open countryside. Policy LP3 of the Fenland Local Plan supports development in the open countryside ('Elsewhere') where it is demonstrably essential to the effective operation of local agriculture, horticulture, forestry, outdoor recreation, transport or utility services. The proposal fails to demonstrate that the development is essential for any of the operations as identified in Policy LP3 and therefore would result in unwarranted residential development in an unsustainable location contrary to Policy LP3 of the Fenland Local Plan (2014).
2	The Cambridgeshire Flood and Water SPD 2016 and Policy LP14 (Part B) of the Local Plan requires development in Flood Zone 3 to undergo a sequential test to demonstrate that the development cannot be delivered elsewhere in the area at lower risk areas of flooding. Policy LP2 seeks to deliver high quality environments, ensuring that people are not put at identified risks from development thereby avoiding adverse impacts in the interests of health and wellbeing. The site lies within Flood Zone 3 which is a high risk flood area. The applicant has failed to undertake a substantive and evidenced sequential test, and has therefore failed to demonstrate that the development could not be delivered in an area of lower flood risk, thereby failing LP14 (Part B). Consequently, the proposal fails to satisfy policy LP2 of the Fenland Local Plan as it fails to deliver a high quality environment and unjustifiably puts future occupants at higher risk of flooding.
3	Policy LP15 requires all development with transport implications to identify deliverable mitigation measures and secure arrangement for their implementation in order to make the development acceptable in transport terms. A swept path analysis is required to demonstrate that the application site can be accessed safely from both directions. The lack of a tracking analysis means that the application fails to demonstrate that a safe and suitable access can be delivered to serve the development and as such the proposal fails to satisfy Policy LP15 of the Fenland Local Plan (2014).



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