

Applicant: Mr Adam Ivory

**Agent : Mr Matthew Gosling
Matt Gosling Architectural Design**

Land East Of Magnolia Cottage, Kirkgate, Tydd St Giles, Cambridgeshire

Erect 1 x dwelling (3-storey 6-bed)

Officer recommendation: Refuse

Reason for Committee: Referred by Head of Planning on Advice of Committee Chairman

1 EXECUTIVE SUMMARY

- 1.1 This application seeks full planning permission for the erection of a detached dwelling on land east of Magnolia Cottage, similar applications have been resisted previously on the grounds of relationship to the main settlement of Tydd St Giles and failure to comply with the sequential and exception tests regarding flood risk.
- 1.2 Recent appeal decisions and approvals have seen a number of approvals for residential development within the locality and it is therefore accepted that the location forms part of the settlement and is appropriate for residential development however the earlier flood risk considerations do remain paramount.
- 1.3 Whilst the scheme has demonstrated adherence to policy in respect of its form and appearance and is also viewed as acceptable in terms of residential amenity impacts and highway safety it fails to demonstrate compliance with the Sequential and Exceptions Tests.
- 1.4 Noting that there are other reasonably available sites on which such a development may be located the only response to this proposal must be to withhold consent on flood risk grounds.

2 SITE DESCRIPTION

- 2.1 The site comprises land originally within the boundaries of Magnolia Cottage which has been largely cleared, albeit there are remnants of household detritus and general spoil within the site boundaries.
- 2.2 The land has been subdivided from the host dwelling by high level hit and miss fencing along the western boundary. Temporary fencing forms the rear boundary and also reinforces the common boundary with Ivy Cottage to the east supplementing the low-level boundary fence along this aspect. To the front of the site is an established hedge which extends along the frontage of the side garden to Ivy Cottage.

2.3 The site is within a flood zone 3 location.

3 PROPOSAL

- 3.1 The scheme proposes a detached dwelling which follows the general line of Magnolia Cottage, albeit there is a forward projection which contains garaging at ground floor and a bedroom accommodation at first floor. The main footprint of the dwelling is 14.96 metres wide x 8.1 metres deep with a sunroom/balcony projection to the rear of 5.4 metres wide x 3.903 metres deep. The forward projection is offset by 1.5 metres from the eastern flank and projects 7.953 metres forward of the main section of the dwelling. The maximum ridge height of the dwelling is 8.8 metres and the eaves height is 5.1 metres with the lower forward projection having an overall height to the ridge of 6.2 metres.
- 3.2 No materials details have been specified within the submission albeit it is indicated that the property will be finished in facing bricks and the drawings appear to indicate cladding to the forward projection.
- 3.3 With regard to boundary treatments the drawings indicate that the front (northern) boundary and side (eastern) boundary will be formed by 1.7 metre chain link fencing with 1.8 metre close boarded fencing to the southern and western boundaries. No reference is made to the existing hedge which forms the majority of the front boundary at present.
- 3.4 It is noted that the scheme is almost identical to earlier proposals for the site save for the internal remodelling to deliver a further bedroom and revisions to the site layout which show the existing hedge to the front no longer a feature of the ultimate development.

Full plans and associated documents for this application can be found at:

4 SITE PLANNING HISTORY

F/YR18/0191/F	Erection of a 3-storey 5-bed dwelling with integral garage Land East Of Magnolia Cottage	Refused	19.04.2018
F/YR17/0230/F	Erection of a 3-storey 5-bed dwelling with integral garage Land East Of Magnolia Cottage	Refused	11.05.2017
F/YR13/0798/NONMAT	Non-material amendment: Reposition dwelling 700 mm west and remove 2no ground floor windows on south elevation relating to planning permission F/YR13/0210/F (Magnolia Cottage)	Approved	11.11.2013
F/YR13/3054/COND	Details reserved by condition 5 of planning permission F/YR13/0210/F (Magnolia Cottage)	Approved	28.08.2013
F/YR13/0210/F	Erection of a 2-storey 4-bed dwelling and detached double garage with studio over involving	Granted	23.05.2013

	the demolition of existing dwelling (Magnolia Cottage)		
F/YR12/0346/F	Erection of a 2-storey 4-bed dwelling and detached double garage with studio over involving the demolition of existing dwelling (Magnolia Cottage)	Granted	27.06.2012

5 CONSULTATIONS

- 5.1 **Parish Council:** *'Members considered this application and resolved to offer no objection'.*
- 5.2 **Environment Agency:** Have no objection to the submitted application but identify the need to apply the sequential test. With regard to the FRA the EA confirm that they *'have no objection to this application, but strongly recommend that the development is carried out in accordance with the submitted flood risk assessment (Ellingham Consulting LTD. ECL0447/MG Design) and the following mitigation measures it details:*
- *The floor level should be set a minimum of 0.3m above ground level with 0.3m of flood resilient construction above finished floor level'.*
- In addition, the EA also offer advice to the applicant in respect of Flood Resilience and Foul drainage.
- 5.3 **Environment & Health Services (FDC):** *'The Environmental Health Team note and accept the submitted information and have 'No Objections' to the proposed development. The proposal is unlikely to have a detrimental effect on local air quality or the noise climate. However as there may have been outbuildings on the site the [unsuspected contamination] condition should be imposed'.*
- 5.4 **Cambridgeshire County Council Highways Authority:** *'The access should be sealed and drained 5 m x 10m as per the appeal site example. Plan to be annotated accordingly, or a pre-commencement condition will be required'.*
- 5.5 **North Level Internal Drainage Board:** *'North Level District IDB has no comment to make with regard to the above application'.*
- 5.6 **Local Residents/Interested Parties:** One letter of representation has been received which indicates that whilst they *'support the application of the build and have no issue with a property being built next door to us and Magnolia Cottage [they] have a couple of points we would like considered.*

The windows on the first floor to the East of the build will be opposite our house and because of the layout of our property will look directly into our two main bedrooms and over our side garden so would like a consideration to these being glazed to be made.

The balcony to the rear of the plans will overlook our rear garden/land and we feel will affect our privacy'.

Apart from these two points [they] have no concerns or objections to this application.

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

7.1 National Planning Policy Framework (NPPF)

Para. 2 - Applications should be determined in accordance with the development plan, unless material considerations indicate otherwise

Para. 10 - Presumption in favour of sustainable development

Para. 12 - Presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making

Para. 47 – All applications for development shall be determined in accordance with the development plan, unless material considerations indicate otherwise
Chapter 14 - Meeting the challenge of climate change, flooding and coastal change

7.2 National Planning Policy Guidance (NPPG)

7.3 National Design Guide

Context C1 - Relationship with local and wider context;

Identity I1 - Respond to existing local character and identity

Built Form B2 - Appropriate building types and forms

Uses U2 - A mix of home tenures, types and sizes

Homes and Buildings H1 - Healthy, comfortable and safe internal and external environment, H3 - Attention to detail; storage, waste, servicing and utilities

Lifespan L3 - A sense of ownership

7.4 Fenland Local Plan 2014

LP1 – A Presumption in Favour of Sustainable Development

LP2 – Facilitating Health and Wellbeing of Fenland Residents

LP3 – Spatial Strategy, the Settlement Hierarchy and the Countryside

LP12 – Rural Area 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

LP19 – The Natural Environment

7.5 Cambridgeshire Flood and Water Supplementary Planning Document

Developed by Cambridgeshire County Council as Lead Local Flood Authority and adopted by FDC Full Council on 15th December 2016 as SPD

8 KEY ISSUES

- **Principle of Development**
- **Character and design**
- **Residential amenity**
- **Highway considerations**

- **Flood Risk and the Sequential/Exception test**

9 BACKGROUND

- 9.1 As can be noted from the history section above, planning permission has been refused on two separate occasions for an almost identical scheme to that now proposed, with the sole revision being the remodelling of the first floor layout internally to provide a further bedroom within the property. The reasons for refusal on both occasions were as follows:
- (1) Policy LP14 of the Fenland Local Plan (2014) and paragraph 100 of the National Planning Policy Framework and seeks to direct development to areas of lowest flood risk. The development is located within Flood Zone 3, the area of highest flood risk and therefore would result in highly vulnerable development being located in the area of highest flood risk. The application is required to pass a sequential test to demonstrate there are no sequentially preferable sites reasonably available that can meet the developments need. Guidance on the application of the sequential test is given in 'The Cambridgeshire Flood and Water Supplementary Planning Document' adopted by the LPA December 15th 2016. The application has failed to demonstrate that sequentially preferable sites are not reasonably available. Therefore the application is considered to fail the sequential test and is therefore contrary to paragraph 100 of NPPF, and Policy LP14 of the Fenland Local Plan(2014) and contrary to guidance in the Cambridgeshire Flood and Water Supplementary Planning Document.
 - (2) The site is located away from the existing developed footprint of the village and is therefore contrary to Policy LP12, Part A(a) of the Fenland Local Plan 2014. In accordance with Policy LP3 of the Fenland Local Plan the development site is considered to be located an 'Elsewhere' development where development will be restricted to that demonstrably essential to the operation of local agriculture, horticulture or forestry. Given that no justification is included within the application the proposed development is considered to be contrary to Policies LP12 part D and LP3 of the Fenland Local Plan adopted 2014. Therefore, the proposal is considered to represent unsustainable development.
- 9.2 It is noted that the applicant did not submit an appeal in respect of either of these decisions.

10 ASSESSMENT

Principle of Development

- 10.1 Tydd St Giles is identified as a small village within the settlement hierarchy contained within Policy LP3 of the Fenland Local Plan and as such development proposals will normally be limited in scale to residential infill. This assumes the premise that the site at Kirkgate forms part of the main settlement.
- 10.2 The granting of consent for 4 plots to the western side of Magnolia Cottage at appeal APP/D0515/W/19/3227741 is material to the consideration of this scheme and as such the concept of infill at this site must be accepted and the earlier reason for refusal on the grounds of Policy LP3 falls away.

Character and design

- 10.3 As indicated in the proposal section above the scheme now proposed is identical to that considered under the earlier two refusals, save for internal revisions which result in the dwelling having an additional bedroom. No objection was raised with regard to the earlier submission in terms of character and design and there would be no grounds to resist the scheme in the context of Policies LP12 or LP16 noting the character of the existing Kirkgate street scene and the conclusions drawn in the appeal decision referenced above, specifically the assessment of the Planning Inspector who noted that *'due to the number of developments around the site I consider that the area is residential in character'*.
- 10.4 The property is of a scale and design commensurate with its setting and aligning with other dwellings along the Kirkgate frontage and as such is acceptable with regard to Policies LP12 and LP16; however it would be necessary should a positive recommendation be forthcoming to clarify details of the boundary treatments as the chain link fencing detailed would not be appropriate within a residential setting such as this.

Residential amenity

- 10.5 Again, it is noted that no residential amenity impacts were identified in respect of the earlier scheme proposals when considered in the context of Policies LP2 and LP16. The property will be situated in line with the dwelling known as Magnolia Cottage and achieves appropriate separation with its neighbours to the east and west. It is noted that representation has been received from the occupiers of Ivy Cottage to the east specifically highlighting concerns relating to the presence of the two windows in the first floor eastern elevation of the dwelling and the balcony projection to the rear. In respect of the former it is noted that these windows serve as secondary windows to the main bedroom and are sited circa 24 metres wall to wall from Ivy Cottage, whilst there may be a level of overlooking with regard to the side garden of this property this would not be so significant as to render the scheme unacceptable in terms of residential amenity. In respect of the balcony area again the distances are such that it is not considered a recommendation for refusal however it would be reasonable, notwithstanding the submitted details, to condition a privacy screen to the eastern flank of the balcony projection to ameliorate overlooking potential. Subject to the above condition recommendation it is considered that the scheme accords with Policies LP2 and LP16 of the Fenland Local Plan (2014).
- 10.6 With regard to the residential amenities of the intended occupier it is noted that the scheme makes provision for private amenity space of a minimum third of the overall plot curtilage, thereby according with Policy LP16(h). Ample space is available within the site for the storage of waste and recycling receptacles and a kerb-side collection is available which accords with the RECAP guidelines.

Highway considerations

- 10.7 The LHA have raised no objection to the proposed scheme albeit they have recommended that *'the access should be sealed and drained 5 m x 10 m as per the appeal site example. Plan to be annotated accordingly, or a pre-commencement condition will be required'*.
- 10.8 Amended drawings have not been sought however this detail, as acknowledged by the LHA, may be secured by condition. With regard to parking provision the scheme amply provides for the three parking spaces required under Appendix A

of the FLP. Based on the above the scheme is considered to accord with the requirements of Policy LP15 of the FLP (2014).

Flood Risk and the Sequential/Exception test

10.9 Policy LP14 Part B as well as Paragraph 155 of the NPPF express that new developments should adopt a sequential approach to flood risk, where new developments are steered to areas with the lowest possibility of flooding. Paragraph 158 states development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Therefore, proposals for housing should be directed to Flood Zone 1 areas followed by Flood Zone 2 areas and then Flood Zone 3 areas as a last resort.

10.10 The application includes a sequential test evaluation as part of the submitted Planning Statement (PS), this document seeks to demonstrate that there are no available alternative sites within a lesser flood risk designation.

The Cambridgeshire Flood and Water SPD identifies reasonable available sites to be:

- Local Plan allocations;
- Sites with planning permission for the same or similar development, but not yet developed;
- Five-year land supply and/or annual monitoring reports;
- Housing and Economic Land Availability Assessments;
- Local property agents' lettings;
- Historic windfall rates, where appropriate.

10.11 The submitted Sequential Test has been duly considered however a number of sites have been discounted solely on the basis that the agents for those schemes have advised that '*they have not been informed the site will be available in the short/medium term*'

F/YR19/0332/F	Erection of 1no attached 2-storey 2-bed dwelling and a single-storey rear extension to existing dwelling involving demolition of kitchen and garage and formation of parking area - The Palms, 4 High Broadgate, Tydd St Giles	Granted 19.06.2019
F/YR19/0565/O	Erect 1 dwelling (outline application with matters committed in respect of access) Land East of Field House, Hockland Road, Tydd St Giles	Granted 17.10.2019
F/YR19/1008/O	Erect 1 dwelling (outline application with matters committed in respect of access) Land East of 17 Newgate Road, Tydd St Giles	Granted 15.05.2020

Furthermore, the following two sites are listed as 'available'

F/YR19/0518/F	Erect 4 dwellings (2 x 2-storey 4-bed and 2 x 2-storey 3-bed) with garages Land East of Tindall Mill, Kirkgate, Tydd St Giles	Granted 12.09.2019
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- 10.12 However the 'available' sites have been discounted as they are all within flood zone 3, with the proposed site having a 'very low long term flood risk for surface water' with the other two sites being 'low risk' in this regard, as such it is contended that 'it is not considered that there are any reasonably available sites with a lower probability of flooding and the site is considered to pass the sequential test'.
- 10.13 Given that the sites highlighted above have planning permissions in place they are for the purposes of the sequential test sequentially preferable; furthermore, the absence of plans to develop the other sites highlighted again does not preclude them from being considered for the purposes of the Sequential Test.
- 10.14 It is therefore considered that the accompanying sequential test has not fully explored reasonably available site and subsequently renders the sequential test deficient.
- 10.15 Given the failure to pass the sequential test there is no requirement to assess whether the scheme passes the exception test, however it is acknowledged that the FRA has been accepted by the Environment Agency, thereby addressing the 2nd part of the exception test. Notwithstanding this the first part of the Exception Test requires that schemes should show 'wider sustainability benefits' and to this end the submission identifies that the 'wider sustainability benefits' of the scheme comprises 'meeting the demands for rural housing'. It is clearly outlined in the Cambridgeshire Flood and Water Supplementary Planning Document at 4.5.9 that *'the general provision of housing by itself would not normally be considered a wider sustainability benefit to the community which would outweigh flood risk'* and as such the scheme would also fail with regard to compliance with the exceptions test.
- 10.16 It is concluded that the scheme fails to satisfy both the Sequential Test and the Exceptions test therefore rendering the proposal contrary to Policy LP14 and as such the scheme must be recommended for refusal on these grounds.

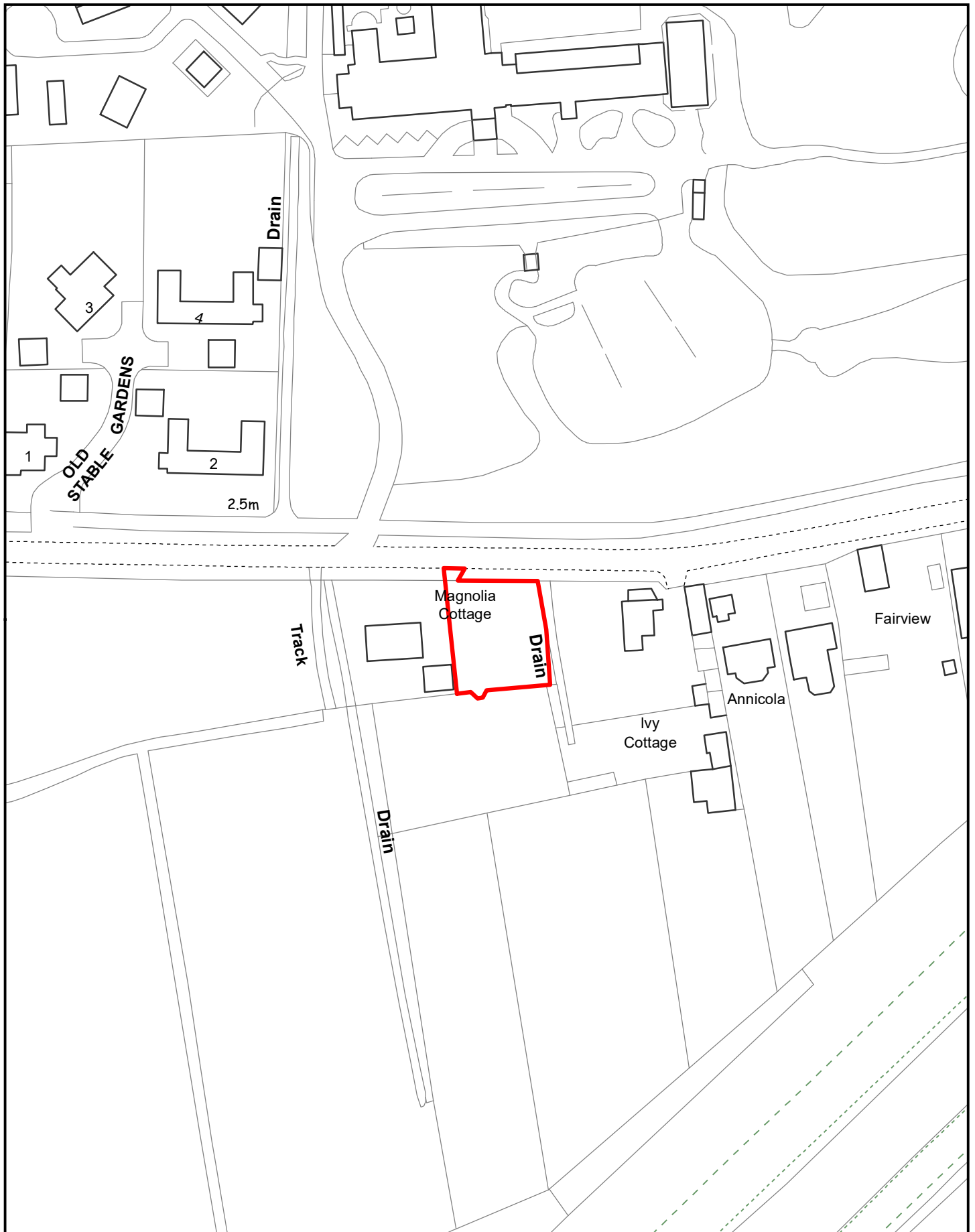
11 CONCLUSIONS

- 11.1 Whilst the scheme has demonstrated adherence to policy in respect of its form and appearance and is also viewed as acceptable in terms of residential amenity impacts and highway safety it fails to demonstrate compliance with the Sequential and Exceptions Tests.
- 11.2 Noting that there are other reasonably available sites on which such a development may be located the only response to this proposal must be to withhold consent on flood risk grounds.

12 RECOMMENDATION: Refuse

Reason for refusal

	<p>158 of the National Planning Policy Framework 2012 and the Cambridgeshire Flood and Water SPD state a sequential test should be applied where new developments are located in areas known to be at risk from any form of flooding. The Policies also express that developments should not be permitted if there are reasonably available sites. The proposed development fails to demonstrate that there are no reasonably available sites within the settlement of Tydd St Giles and therefore provides a deficient sequential test. As such, the proposed development fails to comply with the aforementioned policy. Notwithstanding the schemes failure to meet the Sequential Test it is also apparent that the scheme does not demonstrate 'wider sustainability benefits' and that this would also render the scheme non-compliant with the Exceptions Test.</p>
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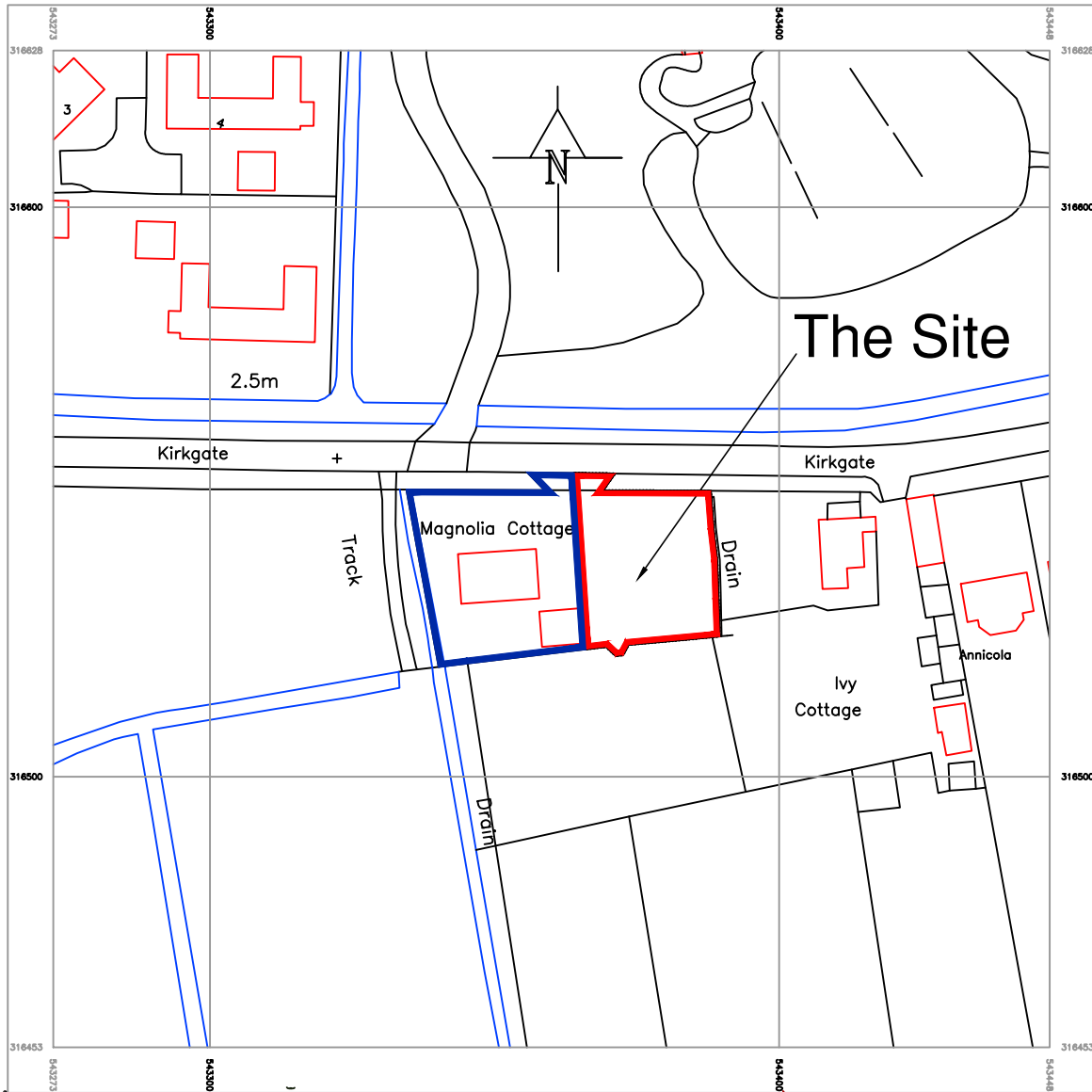
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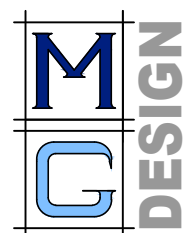
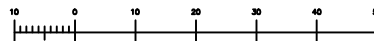


Tydd St Giles

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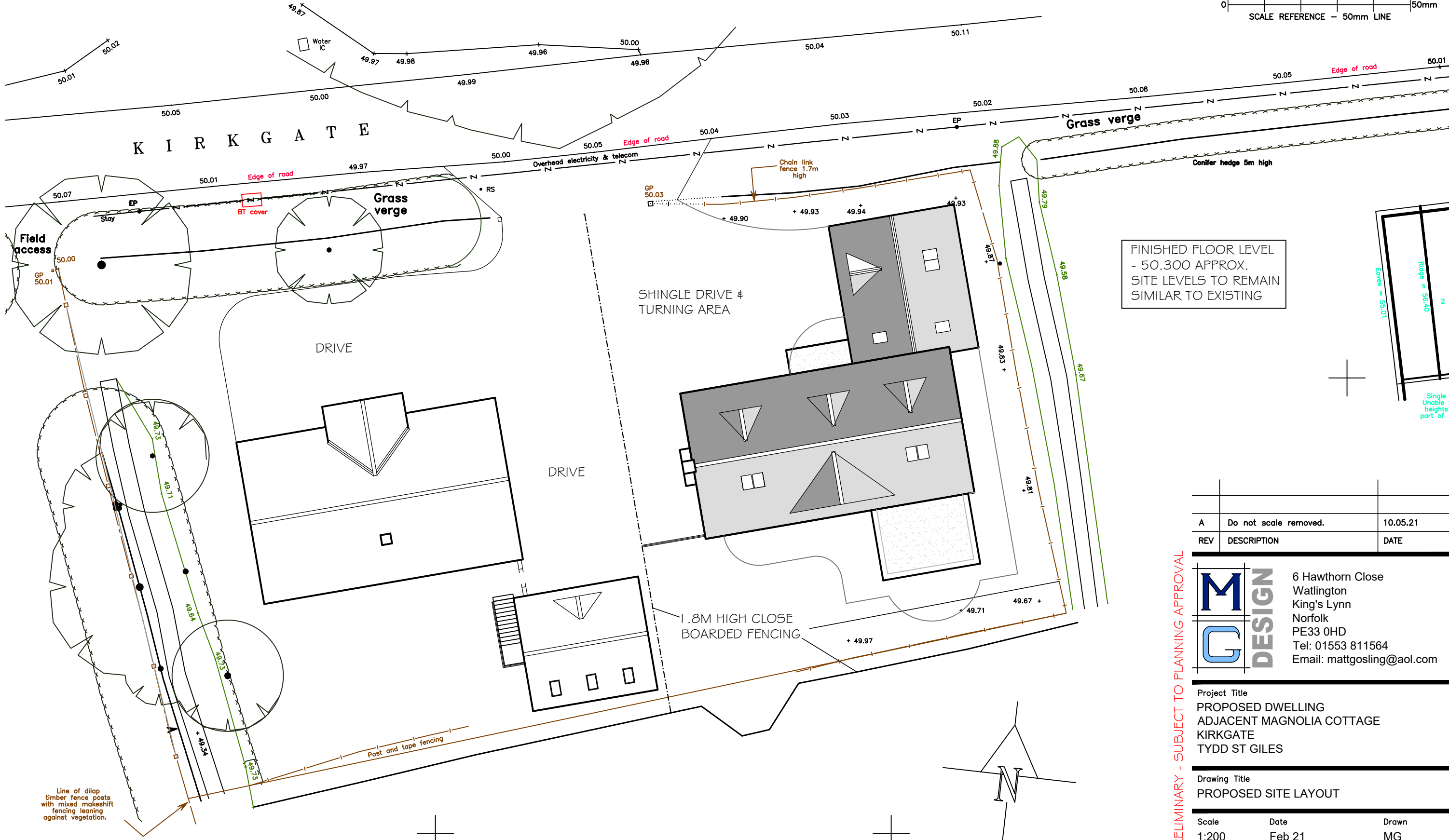


Location Map 1:1250

888/21 - AI

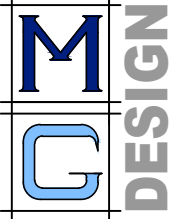
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0 50mm
SCALE REFERENCE - 50mm LINE



FINISHED FLOOR LEVEL
- 50.300 APPROX.
SITE LEVELS TO REMAIN
SIMILAR TO EXISTING

REV	DESCRIPTION	DATE
A	Do not scale removed.	10.05.21



6 Hawthorn Close
Watlington
King's Lynn
Norfolk
PE33 0HD
Tel: 01553 811564
Email: mattgosling@aol.com

Project Title
PROPOSED DWELLING
ADJACENT MAGNOLIA COTTAGE
KIRK GATE
TYDD ST GILES

Drawing Title
PROPOSED SITE LAYOUT

Scale	Date	Drawn
1:200	Feb 21	MG

Drawing No: 888/21 - 15 Rev: A

Proposed Site Layout 1:200

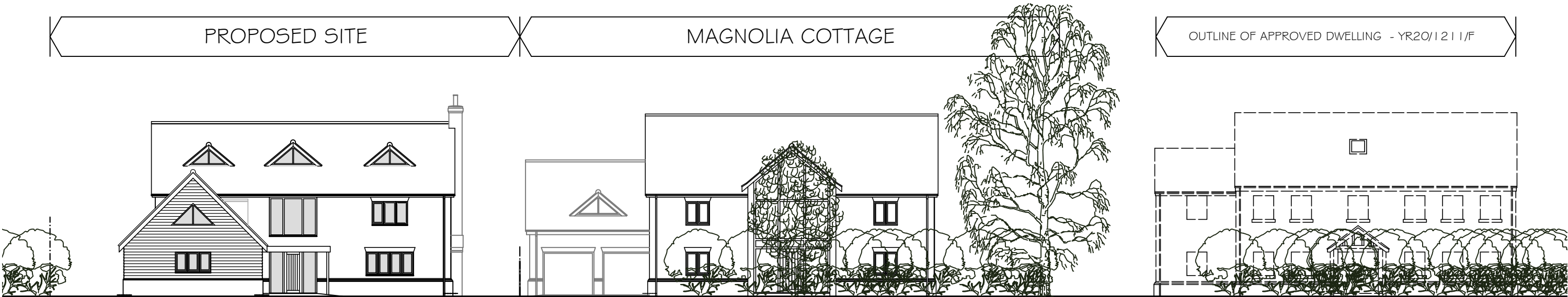
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SCALE REFERENCE - 50mm LINE

PROPOSED SITE

MAGNOLIA COTTAGE

OUTLINE OF APPROVED DWELLING - YR20/1211/F



Proposed Street Scene

REV	DESCRIPTION	DATE

M

C

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Watlington
King's Lynn
Norfolk
PE33 0HD
Tel: 01553 811564
Email: mattgosling@aol.com

Project Title
PROPOSED DWELLING
ADJACENT MAGNOLIA COTTAGE
KIRKGATE
TYDD ST GILES

Drawing Title
STREET SCENE

Scale	Date	Drawn
1:200	May 21	MG

Drawing No: 888/21 - 16 Rev:

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Side (East) Elevation



Rear (South) Elevation

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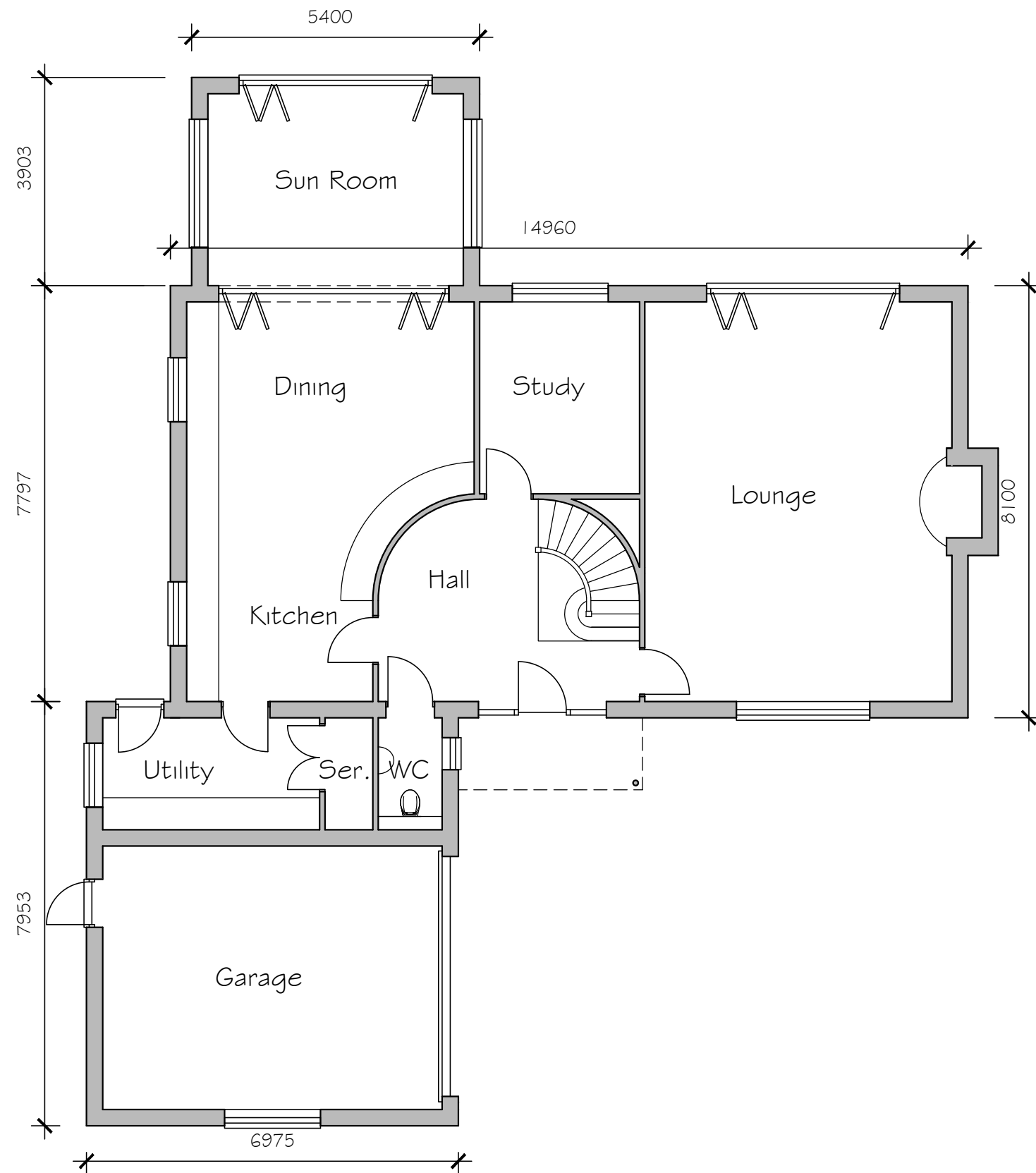
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PROPOSED DWELLING
ADJACENT MAGNOLIA COTTAGE
KIRKGATE
TYDD ST GILES

Drawing Title
PROPOSED ELEVATIONS

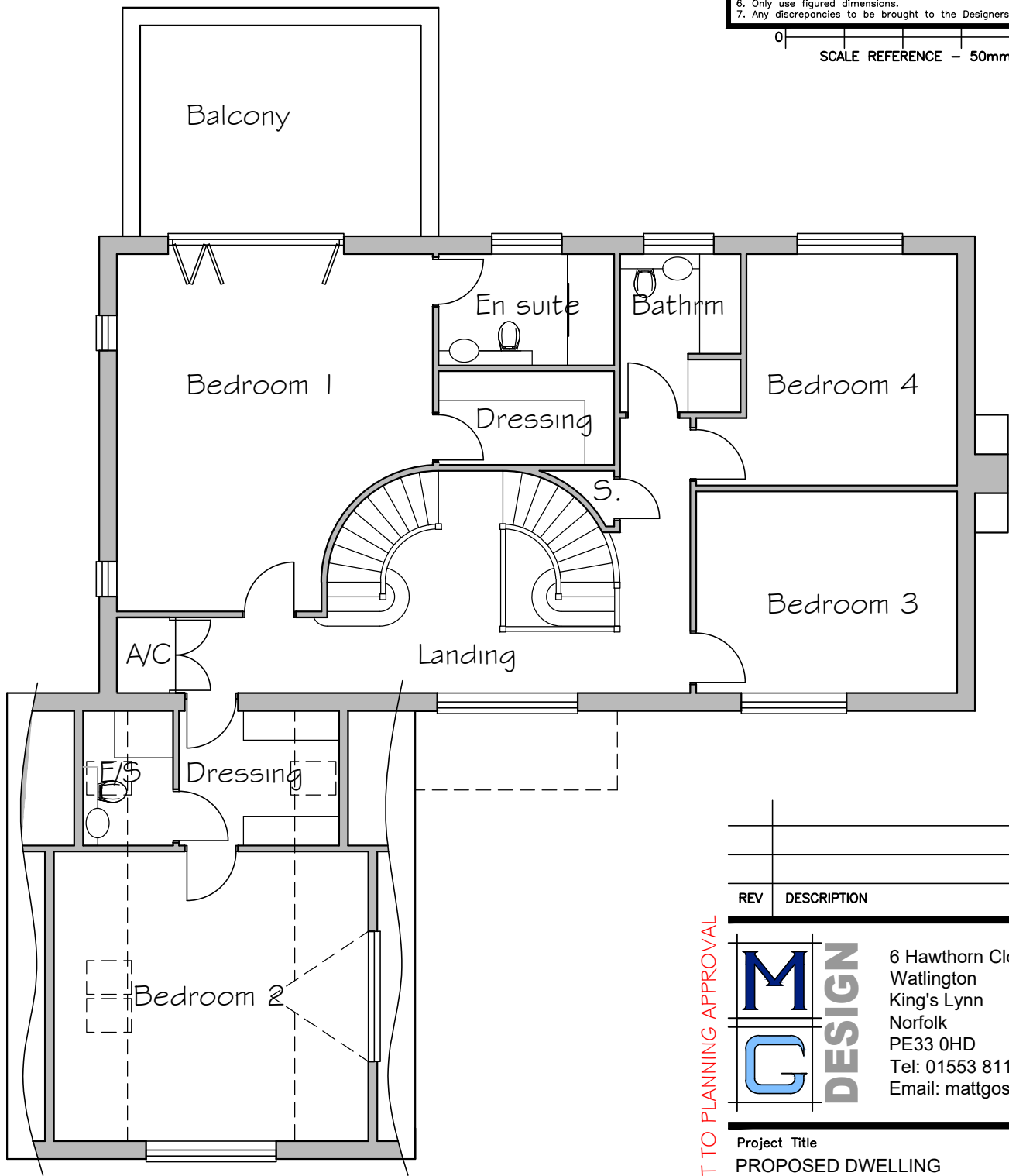
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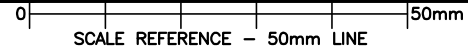


Ground Floor Layout



First Floor Layout

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 King's Lynn
 Norfolk
 PE33 0HD
 Tel: 01553 811564
 Email: mattgosling@aol.com

Project Title
**PROPOSED DWELLING
 ADJACENT MAGNOLIA COTTAGE
 KIRKGATE
 TYDD ST GILES**

Drawing Title
PROPOSED FLOOR LAYOUTS

Scale	Date	Drawn
1:100	Feb 21	MG

Drawing No: **888/21 - 12** Rev:

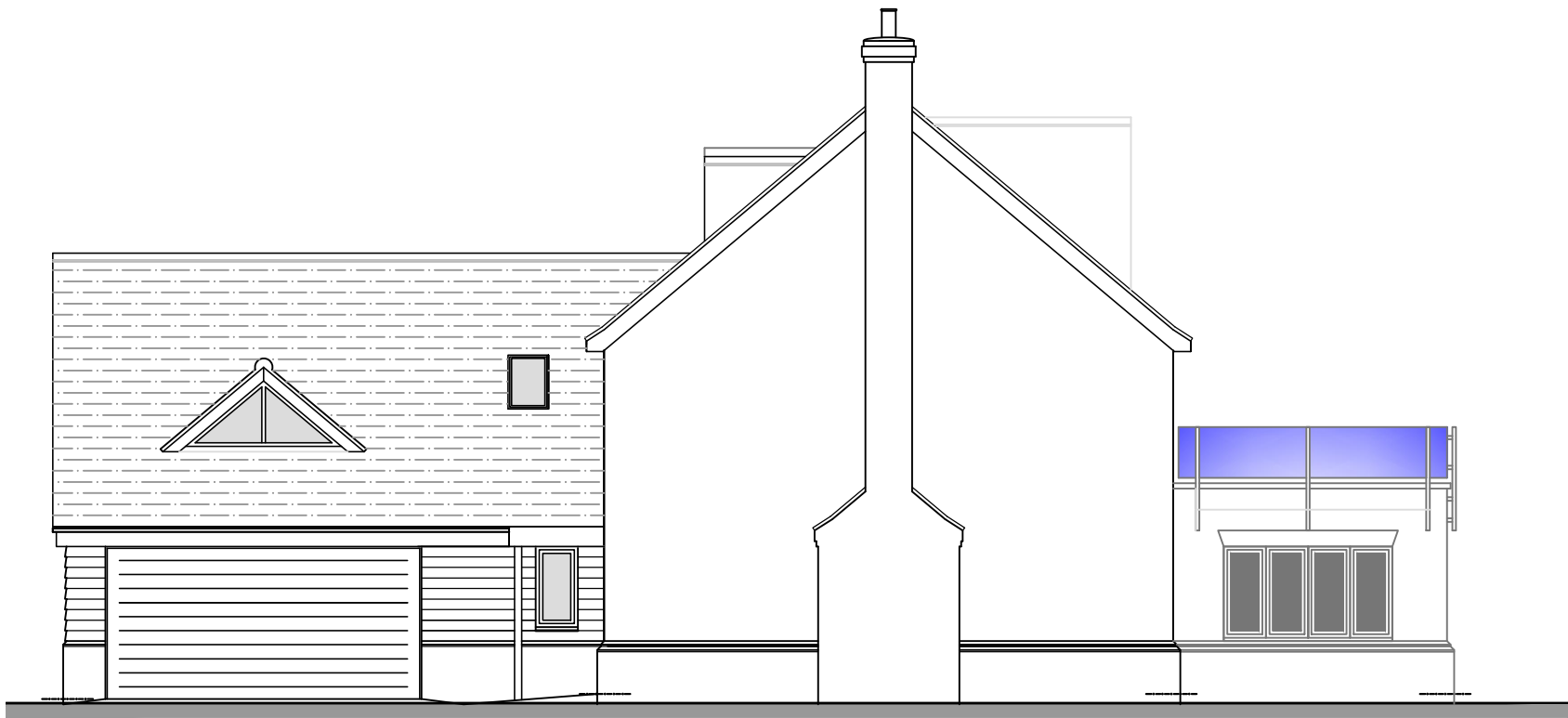
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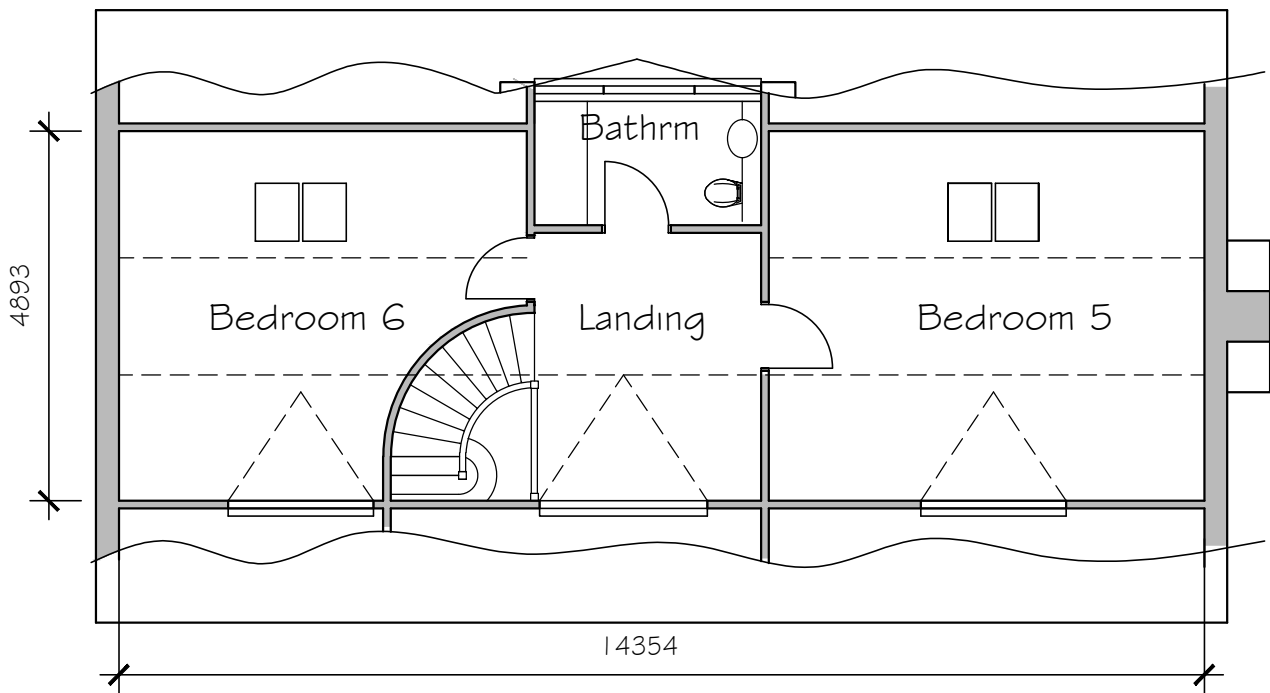
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Front (North) Elevation



Side (West) Elevation



Second Floor Layout

PRELIMINARY - SUBJECT TO PLANNING APPROVAL

REV	DESCRIPTION	DATE
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M

C

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King's Lynn
Norfolk
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Tel: 01553 811564
Email: mattgosling@aol.com

Project Title
PROPOSED DWELLING
ADJACENT MAGNOLIA COTTAGE
KIRKGATE
TYDD ST GILES

Drawing Title
PROPOSED FLOOR LAYOUT & ELEVATIONS

Scale	Date	Drawn
1:100	Feb 21	MG

Drawing No: 888/21 - 13 Rev: