

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND
COMPENSATION ACT 1991)

ENFORCEMENT NOTICE - BREACH OF CONDITION

ISSUED BY: TENDRING DISTRICT COUNCIL

1. THIS NOTICE is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (b) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
2. THE LAND TO WHICH THE NOTICE RELATES

Land at 143 Colne Way (previously referred to as 143 Off New Way), Point Clear Bay, St. Osyth, Essex, CO16 8LL shown edged and hatched pink on the attached plan (“the land”)
3. THE BREACH OF PLANNING CONTROL ALLEGED- BREACH OF PLANNING CONDITION

The Planning Permissions Concerned:

Planning Permission TEN/119/59 dated 7th May 1959 for construction of new chalets as amended at appeal on 3rd July 1990 under reference APP/P1560/A/89/124195 for retention of the chalet with new conditions set out in Paragraph 22.8 of the Inspectors decision letter replacing condition 2 of the permission TEN/119/59.

The Conditions Concerned

The new Conditions of TEN/119/59 as amended on appeal on 3rd July 1990 as set out in paragraph 22.8 of the Inspectors decision letter.

- a. The chalet may be used in each case for permanent residential purposes only by the named person listed below for a limited period being the period during which the premises are occupied by the persons named above (The named persons and the addresses of the relevant properties are as follows-Mrs W. M. Smith-143 off New Way- now known as 143 Colne Way,) or where there are 2 by one or other of them.
- b. When the premises cease to be so occupied the permanent residential use of the chalet hereby permitted shall cease.

- c. Upon the cessation of the permanent residential use as aforesaid the chalet may be occupied for residential purposes in each case only during the following periods:
- (i) At any time from 1 March to 31 October.
 - (ii) At weekends from noon on Friday until noon on Monday between 1 November in any year and the end of February in the following year.
 - (iii) During any period of 10 consecutive days which shall include both Christmas Day and New Year's Day.

The Breaches of Condition Concerned

The breach of the new conditions to planning permission TEN/119/59 dated 7th May 1959 as amended at appeal on 3rd July 1990 as set in out in the Inspectors decision letter paragraphs 22.8 by:

1. The use for permanent residential occupation purposes of the chalet by a person other than Mrs W. M. Smith.
2. The failure to cease the permanent residential use of the chalet upon the departure of Mrs W.M. Smith.
3. The occupation of this chalet between the period of 1st November and 28th February (29th February in a leap year) each year otherwise than in compliance with the amended conditions of the said planning permission granted on appeal in paragraph 22.8 of the Inspectors decision letter dated 3rd July 1990 in relation to planning permission TEN/119/59.

4. REASONS FOR ISSUING THIS NOTICE

The personal circumstances which applied on 3rd July 1990 served by the grant of personal planning permissions at appeal to occupiers who have made properties their permanent homes or by reason of age or particular circumstances or hardship no longer apply as they have ceased to reside at the premises concerned i.e. the land.

Paragraph 14 of The National Planning Policy Framework ("the Framework") sets out a presumption in favour of sustainable development; in paragraph 7 of the Framework it states that there are three dimensions to sustainable development: economic, social and environmental. Here there is an unsustainable development as to the breach of planning condition due to the location of the property in a high risk site as to flooding and the environmental aspect as to sustainable development is not met.

The land is situated within a Flood Zone Level 3 as defined by the Environment Agency ("Flood Zone 3") and for that reason the location of the land for the unlawful breach of condition set out above is not sustainable in terms of the required environmental sustainability as there is a potential substantial risk to the health and wellbeing of occupiers. Paragraph 100 of the Framework advises that "**Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk,**"

Here no Strategic Flood Risk Assessment has been prepared; and no site-specific flood risk assessment has been provided to demonstrate that the development as comprised in the breach of condition will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, that it will reduce flood risk overall. There is therefore a presumption against the development under Paragraph 102 of the Framework.

The Tendring Local Plan 2007 saved policy COM33 states that in order to minimise the effects of local flooding permission will be refused for development on land to the seaward side of flood defences including the siting of temporary structures such as holiday chalets and caravans. On land between the first line of sea defences and the main defence the siting of temporary structures may be permitted following consultation with the Environment Agency. Time limited occupancy condition will be imposed and enforced preventing occupancy during the winter period from November to March inclusive when the risk of tidal inundation is greatest.

Here the advice of the policy COM33 is that appropriate enforcement action should be taken where there is breach of any winter occupancy conditions to a planning permission.

The Tendring District Local Plan 2013-2033 and beyond Publication Draft contains Policy PPL1 as follows:

**Policy PPL 1
DEVELOPMENT AND FLOOD RISK**

All development proposals should include appropriate measures to respond to the risk of flooding on and/or off site and within the Flood Zone (which includes Flood Zones 2 and 3, as defined by the Environment Agency) shown on the Policies Map and Local Maps, or elsewhere involving sites of 1ha or more, must be accompanied by a Flood Risk Assessment. New development in areas of high flood risk must be designed to be resilient in the event of a flood and ensure that, in the case of new residential development, that there are no bedrooms at ground floor level and that a means of escape is possible from first floor level.

All major development proposals should consider the potential for new Green Infrastructure to help mitigate potential flood risk and include such Green Infrastructure, where appropriate.

Proposals must have regard, as necessary, to the following tests:

The Sequential Test

All development proposals will be considered against the National Planning Policy Framework's 'Sequential Test', to direct development toward sites at the lowest risk of flooding, unless they involve land specifically allocated for development on the Policies Maps or Local Maps.

The Exception Test

Where new development cannot be located in an area of lower flood risk and is otherwise sustainable, the Exception Test will be applied in accordance with the National Planning Policy Framework.

This unauthorised development would fail the advice in Policy PPL1 as it fails to show that the development comprised in the breach of condition would meet the requirements of that Policy.

For the above reasons this unauthorised breach of planning control as to a breach of condition is harmful as it fails to comply with the advice in the above national and local planning policy. It also fails the advice in the emerging replacement local plan.

The Council does not believe that any permitted development rights under the then Town and Country Planning (General Permitted Development) Order 1995 as amended or the current Town and Country Planning (General Permitted Development) (England) Order 2015 would allow this unauthorised breach of condition nor do they believe that any further planning permission exists for this unauthorised breach of condition.

It is considered necessary and proportionate to interfere with the owners and occupiers rights under the Human Rights Act 1998 and European Convention on Human Rights as to respect for their possessions and property together with their rights under the Equalities Act 2010 in the greater interests of the right of the public to have faith in a planning system which takes proportionate action to ensure that development is sustainable and that unauthorised and potentially harmful development is eliminated.

The Council does not believe that the breach of these Conditions of Planning Permission TEN119/59 as set out in the Inspectors decision letter of 3rd July 1990 paragraph 22.8 could be made acceptable through the grant of planning permission or that conditions to a planning permission could rectify the unacceptable harm caused by this breach of planning control.

The Council believes that the breach of planning control via the breaches of these Conditions of Planning Permission TEN/119/59 dated 5th November 1959 as set out in paragraph 22.8 of the Inspectors decision letter of 3rd July 1990 took place less than ten (10) years ago.

4. WHAT YOU ARE REQUIRED TO DO

Comply with the Amended Planning Permission TEN119/59 as set out in the Inspectors decision letter of 3rd July 1990 paragraph 22.8 by

1. Ceasing all use for permanent residential occupation purposes of the chalet by a person other than Mrs W.M. Smith.
2. Ceasing the occupation of this chalet between the period of 1st November and 28th February (29th February in a leap year) each year otherwise than in compliance with the amended conditions of the said planning permission granted on appeal on 3rd July 1990 in paragraph 22.8 of the Inspectors decision letter in relation to planning permission TEN/119/59.

6. TIME FOR COMPLIANCE

Both Steps - Three Months after the date this Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 5th September 2017 unless an appeal is made against it beforehand.

Dated: 1st August 2017

Signed:  |

Catherine Bicknell
Head of Planning

On behalf of: Tendring District Council, Council Offices, Thorpe Road, Weeley,
CLACTON-ON-SEA, Essex. CO16 9AJ

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be **received**, by the Secretary of State **before** the date specified in paragraph 7 of the notice. Your rights of appeal and the process by which you may make an appeal are set out in the enclosed "Enforcement Information Sheet" and "Planning Inspectorate Leaflet".

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

SERVICE

Copies of this notice have been served on: -

Mrs Jean Anne Jackson
143 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LU

Mr David Malcolm Jackson
143 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LU

The Owner
143 Colne Way
St Osyth
Clacton On Sea
Essex
CO16 8LL

The Occupier
143 Colne Way
St Osyth
Clacton On Sea
Essex
CO16 8LL

Mrs Jean Anne Jackson
2 Hopwood Close
Watford
Herts
WD17 4LJ

Mr David Malcolm Jackson
2 Hopwood Close
Watford
Herts
WD17 4LJ

Continuation of Annex
Relevant Planning Policies:

The National Planning Policy Framework

Achieving Sustainable Development - Para7.
Flood Risk - Paragraphs 100 and 102.

Tendring District Local Plan 2007 (adopted 11 December 2007)

Saved Policy COM33 - Flood Risk.

Tendring District Local Plan 2013- 2033 and beyond Publication Draft Policies

Policy PPL1 - Development and Flood Risk.