

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 13 Colne Way Point Clear Bay St Osyth Clacton On Sea 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 Permission Concerned:

Planning Permission TEN/119/59 dated 7th May 1959 for construction of new chalets.

The Condition Concerned

The new Condition of TEN/119/59 as amended on appeal on 3rd July 1990 as set out in paragraph 22.9 of the Inspectors decision letter.

The chalet may be occupied for residential purposes only during the following periods

- (i) At any time from 1st March to 31st October
- (ii) At weekends from noon on Friday until noon on Monday between 1st 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 Breach of Condition Concerned

The breach of the new condition 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 paragraph 22.9 by the occupation of this chalet between the period of 1st November and 28th February (29 the February in a leap year) each year otherwise than in compliance with the amended condition of the said planning permission TEN/119/59.

4. REASONS FOR ISSUING THIS NOTICE

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. Policies QL1 of the Tendring District Local Plan 2007 and (emerging policy) SP1 of the Tendring Local Plan 2013-2033 and beyond publication draft support the principle of sustainable development.

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.

Policy QL3 of the saved Tendring District Local Plan 2007 provides that flood risk is to be taken into account in all stages in the planning process to avoid inappropriate development in areas at risk of flooding. Development will only be permitted in areas of

flood risk when there are no reasonably available sites in areas of lower flood risk and the benefits of development outweigh the risks of flooding. Therefore for all sites in Flood Zone 3 the sequential test will be applied to demonstrate that there are no reasonably available sites in an area of lower flood risk. The flood vulnerability of the use must match the flood vulnerability of the site. Higher vulnerability uses must be located in the part of the site with the lowest probability of flooding. Here the entire surrounding area is at high risk of flooding as the holiday dwelling and its area is entirely within Flood Zone 3 and in relation to the breach of condition its use as a dwelling all year round would give rise to a use which was “highly vulnerable” under the Environment Agency’s use system.

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.

In the event that the current condition 02 to the planning permission TEN/119/59 as amended on appeal on 3rd July 1990 were removed or enforcement action was not taken ultimately it would increase the flood vulnerability of the site from “more vulnerable” as a holiday property to “highly vulnerable” as a permanent dwelling in respect of Environment Agency flood risk use criteria’s.

The site is located outside of the Settlement Development Boundaries (SDB) for Point Clear, as established in the saved Tendring District Local Plan 2007 and the settlement boundary for St Osyth in the 2013-2033 and beyond Publication Draft local plan and as such is considered to form part of the countryside. Normally the Council would not consider approving new housing outside of the defined SDB, because it would be contrary to the policy stance taken in the local plan.

The site lies in one of the District's Plotland Developments which were laid out and sold for holiday homes in the post-war years. The site is outside of any defined settlement limits with only very basic facilities designed to serve the summer tourist trade. In considering social sustainability, there is no convenient access to proper local services and facilities with poor vehicular access. The nearby settlement of Point Clear scores poorly on sustainability with no primary school, healthcare provision, defined areas of employment, defined village centre and also no railway station. Whilst there is a bus route on Point Clear Road (approximately half a mile from the application site), the site is geographically isolated and its sustainability credentials are significantly outweighed by the lack of the afore-mentioned services and facilities. Environmentally, the site is located in the Coastal Protection Belt, as covered by Tendring District Local Plan 2007 Policy EN3 and emerging 2013 - 2033 and beyond Publication Draft policy PPL2. Development is not permitted in such areas where there is no compelling functional need. Whether it is compelling is to be decided. The breach of condition will not have a material visual impact on the Coastal Protection Belt by virtue of the extent of the built form, as that is not proposed to change. Therefore, the breach of condition would not be harmful visually. Economically, allowing the breach of condition would be of small benefit, due to the small change in the pattern of occupation for a limited period.

On this basis, the small economic benefit would be significantly outweighed by the social harm and would therefore be in direct conflict with the provisions of the National Planning Policy Framework due to its unsustainable location. Furthermore, although each case is assessed on its merits, allowing this breach of condition to continue would set a precedent which would make it more difficult for the Local Planning Authority to resist similar planning applications in this very large area of chalet accommodation which is not suitable for winter occupation, exacerbating the harmful effect on the living conditions in the area.

Policy ER20 as to occupancy timescales in the Tendring District Local Plan 2007 provides that occupation of chalets may be restricted to the period between 1 March to 31 October every year where the site lacks the necessary and appropriate infrastructure and services for longer occupation or is located in an area of flood risk. Here this holiday dwelling akin to a chalet both lacks a sustainable location and is in an area of flood risk thus justifying the restriction on its use.

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 this Condition of Planning Permission TEN119/59 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 breach of this Condition of Planning Permission TEN/119/59 dated 5th November 1959 took place less than ten (10) years ago.

5. WHAT YOU ARE REQUIRED TO DO

1. Comply with the Condition of Planning Permission TEN/119/59 dated 7th May 1959 as set out in the Inspectors appeal decision letter dated 3rd July 1990 in paragraph 22.9 by ceasing the occupation of the chalet on the land between 1st November and 28th February (29th February in a leap year) each year unless such occupation is during a period allowed by the said Condition during that period.

6. TIME FOR COMPLIANCE

1st November 2018

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 15th January 2018 unless an appeal is made against it beforehand.

Dated: 8th December 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: -

Mr Nicky Hellier
13 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LL

Mr Billy Clark
13 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LL

Mr Billy Clark
42B Bel Air Estate
St. Osyth
Clacton-on-Sea
Essex
CO16 8SR

Mr Billy Clark
C/O 216 Point Clear Road
St. Osyth
Clacton-on Sea
Essex
CO16 8JJ

The Owner
13 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LL

The Occupier
13 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LL

Continuation of Annex

Relevant Planning Policies

NPPF National Planning Policy Framework

Paragraph 14 - Sustainable Development

Paragraphs 100 – 104 - Flood Risk

National Planning Practice Guidance

Taking Planning Enforcement Action.

Tendring District Local Plan 2007

QL1	Spatial Strategy
QL3	Minimising and Managing Flood Risk
COM33	Flood Protection
EN1	Landscape Character
EN3	Coastal Protection Belt
ER20	Occupancy Timescales

Tendring District Replacement Local Plan 2013 – 2033 and Beyond Publication Draft Policies

SP1	Sustainable Development
PPL1	Development and Flood Risk
PPL3	The Rural Landscape
SPL1	Managing Growth
SPL2	Settlement Development Boundaries