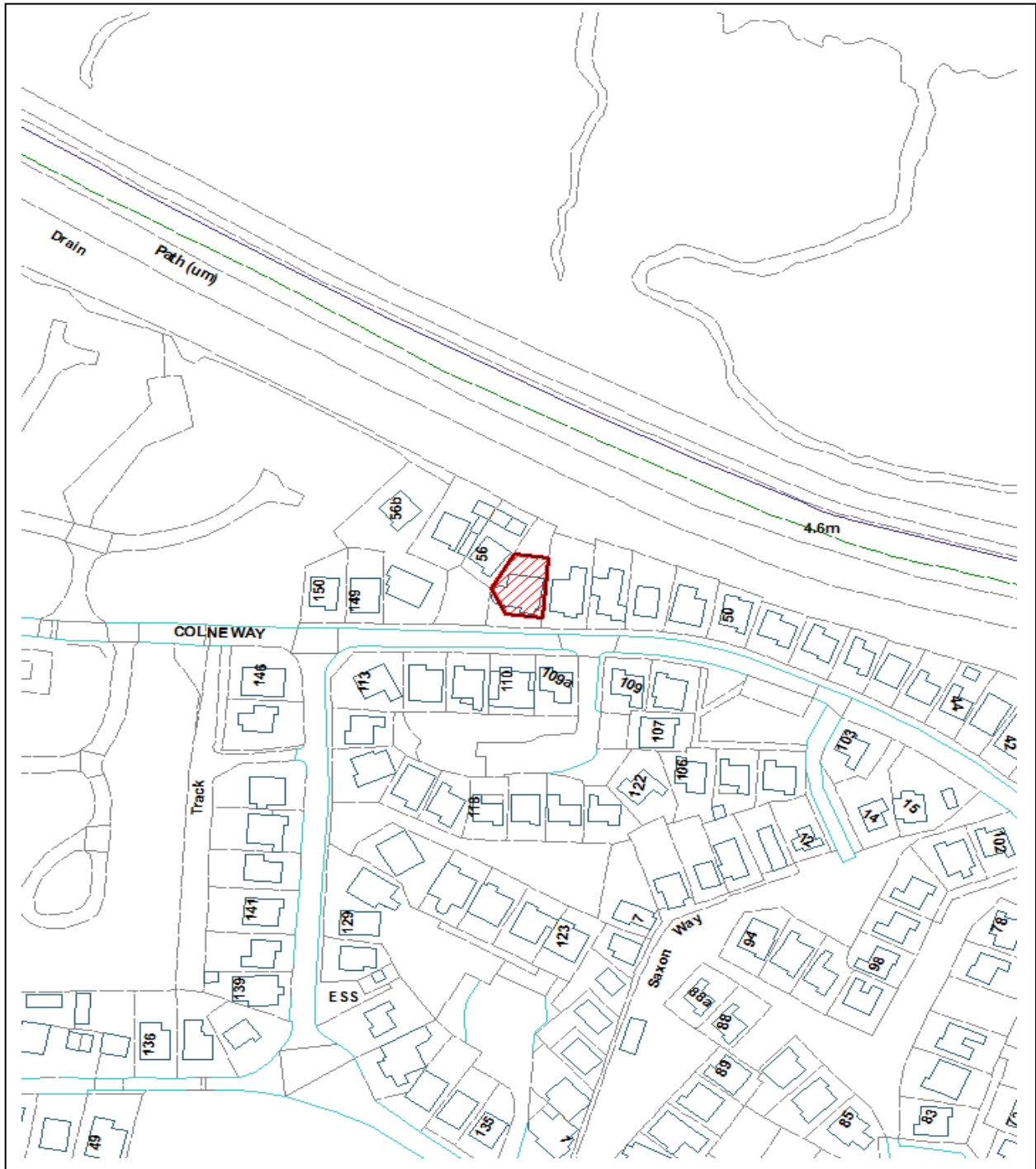


PLANNING COMMITTEE

13th November 2018

REPORT OF THE HEAD OF PLANNING

A.4 PLANNING APPLICATION - 18/01230/FUL - 55 COLNE WAY POINT CLEAR BAY ST OSYTH CLACTON ON SEA CO16 8LL



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Application:	18/01230/FUL	Town / Parish: St Osyth Parish Council
Applicant:	Mrs Gwendoline Noble	
Address:	55 Colne Way Point Clear Bay St Osyth CO16 8LL	
Development:	Variation of ENE/TEN/119/59 and TEN/1406/88 to allow unrestricted occupation all year round.	

1. **Executive Summary**

- 1.1 This is a full planning application to remove the existing conditions restricting all year round occupation of this single storey chalet. The chalet is a dwelling but one where the period of occupation is currently restricted to prevent occupation between 1 November in one year and the end of February in the succeeding year.. At present occupation is only allowed between these dates on winter weekends and during a 10 day holiday starting on Christmas Day.
- 1.2 The planning application has been referred to Planning Committee at the request of Councillor Talbot as one of the elected Councillors of Tendring District Council as a ward member.
- 1.3 The application site is situated on Colne Way in Point Clear Bay where it forms part of a large chalet estate mostly constructed between 1961-1964. As constructed the chalets were intended for leisure use but over the years the estate has become residential in character with the majority of the chalets used as a sole or second home. The estate has a complex planning history as explained elsewhere in this report. Most properties are substandard by modern expectations as to location and are within the tidal Flood Zone 3 for Environment Agency purposes. The risk of flooding and coastal change is set to increase with the effects of climate change.
- 1.4 In considering this application it is not just the applicant who needs to be considered but also those who will own use or occupy the premises at a later date. This is an area where the original chalet properties constructed circa 1961 place existing and future residents at a high risk of flooding particularly if climate change results in rising sea levels as projected by the Environment Agency.
- 1.5 Although the extent of coastal change varies according to the extent of climate change a 1 metre rise in sea levels would place around half of the chalet estate permanently under sea water and a 2 metre rise in sea levels would place most of the chalet estate under sea water. Rising sea levels could also increase the number of flood incidents where current sea defences are at risk of being breached. A rise in sea levels may start to cut off access routes from the chalet estate to other parts of Point Clear on higher ground.
- 1.6 Although rising sea levels are a matter for the future some flood models show coastal change in parts of the United Kingdom as soon as 2080. A metre rise in UK sea levels in the period 2080-2099 is now considered possible according to a recent report by the Committee on Climate Change. Therefore a child born in 2018 may see the impact of these changes.
- 1.7 There is no known plan to improve the current sea defences nor any current plan to abandon this coastline to the sea and cease defending it but rising sea levels will ultimately

overwhelm defences if no more is done. Large parts of this chalet estate are below the current sea wall level.

- 1.8 In 2018 it is unlikely that planning applications would be recommended for approval for new build low rise single storey chalets of this height and size. The chalet in this application differs from the replacement dwelling recently granted planning permission at 138 Colne Way as 18/00464/FUL. That is of two storey flood resilient design.
- 1.9 Occupying a holiday chalet in 1961 for a holiday and then returning to a home elsewhere can be contrasted with the current proposal in 2018 where the chalet is the applicant's only or main home and if granted planning permission they will stay there all year round.
- 1.10 When a holiday is interrupted by flooding an occupier will have another home to return to but if this is the occupiers only or main home the consequences of flooding will potentially be more severe and personal. Property damage may prevent an occupier from returning to their home for some time possibly years.
- 1.11 This proposal would be contrary to national and local planning policy and in light of the objection from the Environment Agency it is recommended for refusal.

Recommendation: Refuse

Reason for Refusal: The proposed removal of the condition sought would be contrary to national and local planning policy as

1. It would effectively allow the creation of a new dwelling in Environment Agency Flood Zone 3. As such in the absence of a Flood Risk Assessment the flood risk resulting from the proposed development cannot be fully assessed and no sequential test or exception test can be performed to show the proposed all year round use of the chalet would be safe for its lifetime. In the light of the advice from the Environment Agency that the property is in an area at high risk of flooding due to its situation within Flood Zone 3 the proposal would be contrary to Paragraph 155 of the National Planning Policy Framework ("the NPPF") as development in an area at risk of flooding which is not safe whether now or in the future and which cannot be directed away to an area of lower risk.
2. The property is also in an area where climate change is likely to result in rising sea levels and the proposal cannot be guaranteed to be safe for its lifetime again contrary to Paragraph 155 of the NPPF and in the light of the advice in the UK Marine Policy Statement and paragraph 166 of the NPPF the proposal would leave future occupiers vulnerable to the additional risk of flooding and coastal change resulting from climate change and rising sea levels.
3. 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.
4. 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 removal of the 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. This would therefore be contrary to policy QL3 of the saved Tendring District Local Plan 2007.

5. 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. Therefore removal of the condition would also be contrary to Policy COM33 of the Tendring Local Plan 2007.
6. 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 as a chalet both lacks a sustainable location and is in an area of flood risk thus justifying the restriction on its use. Therefore removal of the condition would be contrary to policy ER20 of the saved Tendring Local Plan 2007
7. The Tendring District Local Plan 2013 - 2033 and beyond Publication Draft contains Policy PPL1 on development and flood risk which states all new development in high risk areas should be accompanied by a Flood Risk Assessment. Here none has been provided. Development in high flood risk areas such as Flood Zone 3 must be designed to be flood resilient and to avoid the use of bedrooms at ground floor level. Removal of the condition in this proposal would effectively create a new single storey dwelling in Flood Zone 3 which has not been shown to be flood resilient and involves the use of ground floor bedrooms without an appropriate means of escape. The proposed removal of the condition would therefore be contrary to Policy PPL1 of the Tendring District Local Plan 2013-2033 and beyond Publication Draft.

2. **Planning Policy**

NPPF National Planning Policy Framework July 2018

National Planning Practice Guidance

Tendring District Local Plan 2007

ER20 Occupancy Timescales

COM33 Flood Protection

QL1 Spatial Strategy

QL3 Minimising and Managing Flood Risk

EN1 Landscape Character

EN3 Coastal Protection Belt

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Presumption in Favour of Sustainable Development

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

Local Planning Guidance

UK Marine Policy Statement

Status of the Local Plan

- 2.1 The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.
- 2.2 Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.
- 2.3 With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.
- 2.4 In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the Council is able to demonstrate a robust five year supply of deliverable housing sites (as confirmed in recent appeal decisions) and housing delivered over the previous three years has been comfortably above 75% of the requirement. There is consequently no need for the Council to consider an exceptional departure from the Local Plan on housing supply grounds and applications for housing development are to be determined in line with the plan-led approach.

3. Relevant Recent Planning History

05/00762/FUL	Alteration to pitched roof to provide more adequate weather proofing and to house cold water tank and storage. Skylight windows to provide ventilation, light and safety.	Refused	28.06.2005
17/02000/LUEX	To allow unrestricted occupation all year round. Currently Appealed	Refused	30.01.2018
18/01230/FUL	Variation of ENE/TEN/119/59 and TEN/1406/88 to allow unrestricted occupation all year round.	Current	

4. Consultations

ECC Highways Dept	<p>The Highway Authority observes that Colne Way is classified as a Private Road and therefore does not object to the proposals as submitted.</p> <p>Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.</p> <p>The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO1 - Essex Highways Colchester Highways Depot, 653 The Crescent, Colchester CO4 9YQ</p>
Environment Agency	<p>Thank you for your consultation received on 28 August 2018. We have inspected the application, as submitted, and we are raising an objection in principle to this application on flood risk grounds.</p> <p>Flood Risk -Our Flood maps show the site lies within the tidal Flood Zone 3a defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The proposal is the 'Variation of conditions to allow unrestricted occupation all year round'. Tendring District Council have confirmed that this property is considered to be a holiday home on this basis this variation would raise the development vulnerability classification to 'highly vulnerable'. Development types within the 'highly vulnerable' category under Table 3: Flood risk vulnerability and flood zone 'compatibility' in the NPPG are deemed to be inappropriate development in Flood Zone 3 and should not be permitted. We have met with Tendring District Council (TDC) planning officers in order to discuss the application of Table 2: Flood risk vulnerability classification in the National Planning Practice Guidance (NPPG) of holiday homes in the forms of chalets and park homes intended for permanent residential use. We agreed with the assessment of flood risk vulnerability classification by TDC planning officers. It followed from that agreement that changes of use for such holiday homes</p>

intended for permanent residential use fall within the development types represented by the description 'Caravans, mobile homes and park homes intended for permanent residential use' under the 'highly vulnerable' category in the aforementioned Table 2. Further to the above a Flood Risk Assessment had not been submitted to support this application. 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. We take this opportunity to point out the hazard mapping results for the Point Clear Bay Estate area, as set out in the Tendring District Strategic Flood Risk Assessment, show that, among other things, the Hazard Rating would be Extreme and in the event of a breach inundate in 15 minutes. Guidance for Local Council on Safety of Inhabitants - Emergency Flood Plan

An Emergency Flood Response Plan has not been proposed within the FRA, and is necessary to ensure the safety of the development in the absence of safe access and with internal flooding in the event of a breach flood. You are the competent authority on matters of evacuation or rescue, and therefore should assess the adequacy of the evacuation arrangements, including the safety of the route of access/egress from the site in a flood event or information in relation to signage, underwater hazards or any other particular requirements. You should consult your emergency planners as you make this assessment. You should be satisfied with any emergency flood plan submitted and find it adequate for the purposes of the local authority flood plan (for example, possible rescue of inhabitants during a flood, temporary accommodation whilst flood waters subside and properties are inhabitable). If you are not satisfied with the emergency flood plan, then we would recommend you refuse the application on the grounds of safety during a flood event, as users would be exposed to flood hazards on access/egress routes. Other advice: Sequential Test / and Exception Tests

The requirement to apply the Sequential Test is set out in Paragraph 101 of the National Planning Policy Framework. The Exception Test is set out in paragraph 102. These tests are your responsibility and should be completed before the application is determined. Additional guidance is also provided on Defra's website and in the Planning Practice Guidance. Other advice: 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 determination.

5. Representations

- 5.1 St. Osyth P.C. comment that they would possibly support this application, however notwithstanding the approval of similar applications in recent years, together with the many variations of planning permissions imposed on similar properties the Parish Council would request that any decision be deferred until such time as the District Council or Planning Inspectorate gives an overall decision in respect of the ongoing occupancy issues.

6. Assessment

The main planning considerations are:

- Revised National Planning Policy;
- Site Context;
- Proposal;
- Flood Risk;
- Coastal Change;
- Sustainability; and,
- Sustainability for future occupiers.

Revised National Planning Policy

- 6.1 A revised National Planning Policy Framework (NPPF) has appeared in July 2018 before this application was received. It has revised government advice on flood risk and coastal change. It now advises that the policies in marine planning policy documents should be considered for decision taking. In Tendring DC which is part of the South East Inshore area for marine policy there is as yet no adopted local marine plan and therefore reference should be made to the overall UK Marine Policy Statement and its advice instead. This extends to coastline as well as offshore development when coastal change is to be considered. Both policy documents are a material consideration for this application
- 6.2 The revised NPPF now contains a section 14 on flooding climate change and coastal change. Paragraphs 155-164 of the Revised NPPF relate to flood risk and Paragraphs 166-169 as to coastal change. The revised NPPF has altered its advice on Flood risk so that para 155 in the revised NPPF says that development in areas at risk of flooding should be safe and directed away from areas of highest risk (whether existing or future) Therefore making sure that development in high risk areas such as Flood Zone 3 is safe for its lifetime is now a factor.
- 6.3 Determining this application needs to look at the sustainability of the site for future occupiers not just the present one.

Site context

- 6.4 The application site is located in a ribbon development section of Colne Way with similar chalets neighbouring on both sides of the road. The road lacks pavements but there are isolated streetlights. There is off street parking. The chalet would provide a kitchen, living room, bathroom/WC with two bedrooms and a front porch. It is of brick construction but due to its age may not meet modern design requirements as to flood resilience and resistance to hydrostatic pressure.
- 6.5 The site is located within Flood Zone 3 and is protected by current sea defences. However the modelling of Flood Zone 3 assumes that flood defences will fail.

Proposal

- 6.6 This application proposes the removal of the existing condition preventing occupation of the chalet for residential purposes between 1 November in one year and the end of February in any succeeding year, other than on winter weekends or for a 10 day holiday commencing on Christmas Day. The removal of the condition would effectively create a single dwelling which can be used all year round not just by the applicant but by future owners and occupiers.

- 6.7 This would be equivalent to the creation of a new dwelling of this height and design in Flood Zone 3 and an area of future coastal change.

Planning History

- 6.8 The new Condition of TEN/119/59 as amended on appeal on 3rd July 1990 (as to TEN/1406/88) as set out in paragraph 22.9 and 22.10 of the Inspectors appeal decision letter.

- 6.9 This states:

“The chalet may be occupied for residential purposes in each case 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 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.”

- 6.10 An Application for a Certificate of Existing Lawful Use 17/02000/LUEX has been made to prove that this condition had been breached continuously for over 10 years. This has been refused as technically a Certificate cannot be granted due to past planning enforcement action. The decision has been appealed and the Planning Inspectorate is dealing with the case. A joint Public Inquiry to consider this appeal and other planning enforcement appeals at Point Clear is anticipated in 2019.

- 6.11 Point Clear Bay has a complex planning history but one where in general all year round occupation of chalets has been prevented since 1959. The decision in 1990 is part of that overall history .To understand the situation properties at Point Clear Bay break down into these groups:

- A. Properties built before the start of the Planning control system in 1948. These are often two storey houses. As no Planning Permission was required in the period of construction 1923-1948 there are no planning conditions which are applicable. All year round occupation is thus possible.
- B. Properties built between 1948 - 1957 with Planning Permission issued by the former Tendring Rural District Council on a temporary basis usually with an expiry date in 1957. The numbers of properties in B are difficult to calculate but they are excluded from the Point Clear Bay Chalet Estate as they are built to a different design. They are often found on the sea wall frontage at Point Clear Bay. They too can be two storey dwellings. They too had winter occupation restrictions. The restriction on occupation will have expired as a new planning history started after 1957. In cases where planning history has been examined for subsequent Planning Applications such as Certificates of Existing Lawful Use under the 1990 Act it is noted that the property has remained in use as a dwelling after 1957 without a subsequent application for a new Planning Permission. The former temporary Planning Permission does not contain conditions requiring the use to cease or the building to be removed as the temporary Planning Permission expired. There appears to be no planning enforcement action re these properties in 1957. In 2018 there would be no current restrictions on winter occupation.
- C. Are a group of properties which are chalets often covered by older Planning Permissions dealt with at appeal in 1990 in which a Planning Inspector has quashed enforcement notices in relation to winter occupation and ruled the properties to be

immune from further formal action. The Condition is effectively out of time for enforcement.

- D. Are a group of properties which are chalets also often covered by these older Planning Permissions again dealt with by the same appeal in 1990 in which a Planning Inspector has granted a Planning Permission often on personal hardship grounds on a personal basis to provide that an occupier can reside there all year round during a given period but after which there will be a reversion of planning conditions to a revised winter occupancy condition. These personal permissions have largely expired due to vacation of properties. Only two occupiers with such permission are still at Point Clear Bay. . Certain of these properties are now being occupied all year round by occupiers who do not benefit from the personal permissions and are covered by the revised winter occupancy condition.
- E. Are a group of chalets dealt with at appeal in 1990. These various chalets have had their period of winter occupation changed in 1990 to allow additional occupation during winter weekends and also occupation for a 10 day holiday period starting on Christmas Day. Once again some of these chalets are now occupied all year round.
- F. Relates to chalets built under the 1959 Planning Permissions under which the chalet estate was built which are still not to be occupied between 1st November and 28th February (29th February in leap years) and once again some of these chalets are now occupied all year round without any break in occupation contrary to the 1959 Permissions.
- G. Relates to 2 bungalows built subsequently to 1959 circa 1972, but with similar winter occupation restrictions to the 1959 permissions. One bungalow has had its Planning Permission revised at appeal in 1990 in the same way as group E. The Inspector refers to the bungalow as a chalet in the appeal decision. Both chalets are currently breaching the winter occupancy condition.
- H. Relates to isolated replacement bungalows or chalets replacing former chalets built circa 1975-2000. Once again these are subject to similar winter occupation conditions to the chalets in groups F and G but they may be referred to as a holiday bungalow rather than a chalet.

- 6.12 This chalet falls within group E. Whatever the position at some other individual chalets it is the case that all year round occupation is limited to a minority of chalets and mostly to those which between 1990-2017 have been able to obtain a Certificate of Existing Lawful Use to prove that winter occupancy conditions have been continuously breached for more than 10 years or the one remaining chalet where occupiers were granted a personal planning permission in 1990. Those with restrictions remain in the majority.

Principle of Development

- 6.13 In line with Section 38 (6) of the planning and Compulsory Purchase Act 2014, planning decisions must be taken in accordance with the “development plan” unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) 2018 are a material consideration in this regard. In relation to eventual coastal change the NPPF also requires decision making to take account of marine planning policy and therefore the UK Marine Policy Statement is also relevant as a material consideration in this regard.
- 6.14 The site is outside any defined settlement boundary contained in the saved or emerging local plans. As such it is to be considered part of the countryside and is in an area where the council would resist new housing unless as a flood resilient replacement dwelling.

- 6.15 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 aforementioned 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 removal of the 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 removal of the condition would not be harmful visually. Economically, allowing the removal of the condition would be of small benefit, due to the small change in the pattern of occupation for a limited period.
- 6.16 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, removing this condition 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.
- 6.17 These matters are however of less importance than flood risk and eventual coastal change.

Flood Risk

- 6.18 The site, and the rest of this part of Point Clear Bay, is in Flood Zone 3 which is the highest area of risk due to its low-lying position on the coast. The NPPF, as supported by relevant policies in the adopted and emerging Local Plans, requires a 'sequential approach' to the location of new development which seeks to direct new development to the locations at lowest risk. In Tendring, there are clearly many locations of lower risk where a single dwelling could be located. Although this is an application to remove a condition the same tests need to be applied.
- 6.19 The Environment Agency within their comments have made reference to the Flood Risk Vulnerability Classification and have stated that the Council may deem that the development proposed to replace a restricted occupation holiday home with a permanent dwelling could elevate the development from 'more vulnerable' to 'highly vulnerable', which would be contrary to national planning policy and as such unacceptable as a matter of principle.
- 6.20 The NPPF and Local Plan policies refer to the 'Exception Test' which must apply if a development in a higher risk area is being considered having undertaken the sequential test. Paragraph 163 of the NPPF (2018) requires such developments to be informed by site-specific flood risk assessment and to demonstrate 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;
 - the development is appropriately flood resistant and resilient;

- it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - any residual risk can be safely managed; and
 - safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 6.21 No site-specific flood risk assessment has been submitted which, as advised by the Environment Agency, provides sufficient information for the Council to make an informed decision.
- 6.22 The site is currently protected by flood defences with an effective crest level of 4.33m AOD which is above the present-day 0.5% (1 in 200) annual probability flood level of 4.3m AOD. However the Environment Agency for Flood Zone 3 assumes that defences will fail.
- 6.23 The current defences will continue to offer protection but only if the hold the line policy is followed and the defences are raised in line with climate change, which is dependent on future funding. No such proposals are known at this stage.
- 6.24 In the event of sea defences failing it is estimated that the area could flood to between 1 to 3 metres deep in 15 minutes.
- 6.25 No flood resilience measures are proposed as to this application. The Council is simply asked to remove the condition permanently on the basis of the existing property without the installation of any additional measures.
- 6.26 The months when occupation is currently prevented via the condition are those with the highest risk of flooding.
- 6.27 As sea levels rise there will be more chance of severe flood incidents if existing defences are not improved. Actual rises will depend upon the level of global warming.
- 6.28 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.
- 6.29 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 removal of the 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
- 6.30 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.
- 6.31 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.

- 6.32 This proposal would fail the advice in Policy PPL1 as it fails to show that the removal of the condition would meet the requirements of that Policy.
- 6.33 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.
- 6.34 The applicant has been invited to submit a flood risk assessment in the light of the environment agencies objection but has decided not to do so. Therefore no flood risk assessment has been provided.
- 6.35 The site would not be in an area known to experience flood risk from surface water, reservoirs, sewer and/or groundwater thus satisfying that part of the Environment Agencies comments.
- 6.36 Members will be aware that the area flooded badly in 1953 and that two occupiers of a former shop in the area were killed. The floods reached the ridge height of the shop. These chalets appear to have a lower ridge height than the former shop.
- 6.37 As well as risk of death or injury is the issue of loss or damage to personal property if despite successful evacuation the area is badly flooded. In some cases elsewhere in the country occupiers then have to live in caravans or temporary accommodation for several

years after the flood occurs until properties can be repaired and redecorated. They are not able to return to their properties.

- 6.38 Evacuation away from Point Clear to St. Osyth and main evacuation centres elsewhere only has one route by road and that has to pass over the causeway at St. Osyth Creek near the boatyard. The causeway was cut by flooding in 1953 and again in 1987. This would then leave occupiers of Point Clear stranded on an “island” until such time as floods receded or evacuation can be provided. Although Dumont Hall is available at Point Clear it’s not a main evacuation centre. This still leaves occupiers at risk of shortages of food water medication and sanitation and possibly without medical assistance until evacuation can take place.
- 6.39 Although it will be said there has been no serious flood since 1953 the property is in Environment Agency Flood Zone 3a and there the advice is that flood defences may fail with possible flood levels of 1-3 metres deep in 15 minutes. The Environment Agency has objected to this proposal.

Coastal Change

- 6.40 Paragraph 166 of the NPPF advises that in coastal areas planning decisions should take account of the UK Marine Policy Statement. Coastal change should be reduced in its impact by avoiding inappropriate development in vulnerable areas.
- 6.41 The UK Marine Policy Statement advises that coastal change and coastal flooding are likely to be exacerbated by climate change with implications for development on the coast. Inappropriate development should be avoided in areas of highest vulnerability to coastal change and flooding. Account should be taken of the impacts of climate change throughout the operational life of the development.
- 6.42 The Strategic Flood Risk Assessment for the Tendring area predates the latest advice but it suggests that a house in Essex should be assumed to at least have a life of 100 years and possibly more. Therefore a chalet built in 1961 may still be standing in 2061 and possibly 2161.
- 6.43 The impact of coastal change on future occupiers of the premises cannot be ruled out even if the Applicant may not be affected. If the condition is removed permanently future occupiers may be affected. If there are no improvements to sea defences the existing defences will one day be overwhelmed. Without sea defence improvements there will one day be a decision to be taken as to whether Point Clear Chalet Estate is abandoned to rising sea levels if defences are not improved. Most chalets are below sea wall height. The Committee on Climate Change in their recent report on coastal change mentions relocation as one eventual option for communities affected by coastal change.

Sustainability

- 6.44 Paragraph 155 of the NPPF seeks to prevent inappropriate development in areas at risk of flooding now or in the future and where development is necessary in these areas the development should be made safe for its lifetime.
- 6.45 For the above reasons the development could not be guaranteed to be safe for its lifetime as to the unacceptable risk of flooding in Environment Agency Flood Zone 3.

Sustainability for future occupiers

- 6.46 Paragraph 166 of the NPPF advises that in coastal areas planning decision should take account of the UK Marine Policy Statement. Coastal change should be reduced in its impact by avoiding inappropriate development in vulnerable areas.

- 6.47 For these reasons the long term occupation of the chalet as a dwelling to be used all year round would not be sustainable for future occupiers as for the above reasons the development could not be guaranteed to be safe for its lifetime from the impacts of climate change and eventual coastal change through rising sea levels and the unacceptable risk of associated flooding in Environment Agency Flood Zone 3.

Conclusion

- 6.48 The removal of the condition sought would be contrary to national and local planning policy. In view of the objection of the Environment Agency the application is recommended for refusal,

Background Papers

None.