



TENDRING DISTRICT COUNCIL

Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

APPLICANT: Mrs Gwendoline Noble
55 Colne Way
Point Clear Bay
St Osyth
Clacton On Sea
Essex
CO16 8LL

AGENT:

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 18/01230/FUL

DATE REGISTERED: 20th August 2018

Proposed Development and Location of Land:

**Variation of ENE/TEN/119/59 and TEN/1406/88 to allow unrestricted occupation all year round.
55 Colne Way Point Clear Bay St Osyth Clacton On Sea**

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY REFUSE PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted for the following reason(s)

- 1 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 conditions 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.

DATED: 19th November 2018

SIGNED:

Catherine Bicknell

Catherine Bicknell
Head of Planning

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

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

PPL3 The Rural Landscape

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

UK Marine Policy Statement

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
 - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by the Secretary of State.

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.