

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	30/04/19
Planning Development Manager authorisation:	AN	30/04/19
Admin checks / despatch completed	PW	30/4/19

Application: 19/00219/FUL **Town / Parish:** St Osyth Parish Council

Applicant: Mr Derek Shannon

Address: 128 Colne Way Point Clear Bay St Osyth

Development: Removal of condition 2 of application TEN/119/59 to allow all year occupancy.

1. Town / Parish Council

St Osyth Parish Council

The Parish Council 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.

2. Consultation Responses

UU Open Spaces Public Realm does not have any comments to add to this application.

ECC Highways Dept The Highway Authority does not object to the proposals as submitted.

Informative 1: 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.

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

Environment Agency

Thank you for your consultation received on 12 March 2019. We have inspected the application, as submitted, and we object to this application in principle because the proposed development falls into a flood risk vulnerability category that is inappropriate to the flood zone in which the site is located. We therefore recommend that the application is refused planning permission on this basis. Flood Risk Our maps show the site lies within 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 for removal of condition 2 of application TEN/119/59 to allow all year occupancy

which has been identified by the Local Planning Authority as moving the property into a 'Highly Vulnerable' classification. In accordance with Table 3 of the PPG 'Highly vulnerable' development should not be permitted in Flood Zone 3 and the Exception Test is required in Flood Zone 2. If users of the development function as residents rather than holiday makers, in the event of a flood, they may have no other place of residence available and could lose all of their possessions.

3. Planning History

98/00155/FUL	Removal of condition 2 imposed upon planning permission TEN/119/59 to allow permanent year round occupation	Refused	17.03.1998
98/01268/LUEX	Claim for Certificate of Lawful Use: Use of property for permanent occupation	Withdrawn	30.03.2005

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

EN1 Landscape Character

EN3 Coastal Protection Belt

EN6 Biodiversity

QL1 Spatial Strategy

QL3 Minimising and Managing Flood Risk

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

PPL1 Development and Flood Risk

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

SP1 Presumption in Favour of Sustainable Development

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

Status of the Local Plan

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.

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.

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.

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 supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal

Site Description

The application site is 128 Colne Way, which is a single storey property located within the parish of Point Clear, St Osyth. The surrounding area is characterised by similar single storey properties. The site is located outside of a recognised Settlement Development within both the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft. The site is located within Flood Zone 3, the highest risk area for flooding as defined by the Environment Agency.

Proposal

This application seeks planning permission for the removal of Condition 2 of planning permission TEN/119/59. This condition states the property is only to be occupied between 1 March and 31 October each year, and therefore the proposal is to allow all year round occupancy.

Site History

Under planning reference TEN/98/0155, planning permission was refused for the same proposal. The reasons for this refusal focussed on the proposal being inappropriate by virtue of being sited outside of a recognised settlement boundary and in the absence of appropriate services and normal residential standards. Further, the site is at risk of flooding, particularly in the winter months, and would also cause disturbance to the adjacent Colne Estuary which would further degraded the internationally important wildlife habitat.

Further, under appeal reference APP/P1560/W/15/3005809 (dated 5th August 2015), the appeal for a similar proposal at 117 Colne Way was dismissed on the grounds of overall unsustainability and flood risk. The Inspector viewed the site as unsustainable for long term permanent occupation as an isolated new home in the countryside for which special circumstances did not apply.

Assessment

1. Flooding Risks

Paragraph 155 of the National Planning Policy Framework (2019) states that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of high risk". Paragraph 157 of the Framework requires that the sequential test be passed in areas of high flood risk. A similar approach is taken in Policy QL3 of the "Saved" Tendring District Local Plan (2007) and "Emerging" Policy PPL1 of the Tendring District Local Plan: 2013-2033 and beyond Publication Draft.

The Environment Agency, following consultation, has lodged an objection to the proposal. They record the property as in Flood Zone 3a which is the area of high flood risk probability as defined in Table 1: Flood Zones in the National Planning Policy Guidance ("NPPG"). The proposal seeks to remove the restriction on occupation but the Agency view the proposed use as falling within the category "highly vulnerable" in Table 3 of the NPPG. This will increase the degree of flood risk given the permanent nature of residential occupation during the period of the proposed suspension of the condition. The Environment Agency view the proposal as changing the use of the property from a holiday home to a permanent dwelling under their system of uses. As this would be a new dwelling in Flood Zone 3a the most vulnerable area they recommend refusal of the application.

In terms of possible conditions which could improve the situation, this is not a proposal for a replacement flood resilient dwelling nor could the property be expected at reasonable expense to provide increased flood defences. This could only be done by an area wide improvement of defences at great expense, which an individual occupier could not be expected to fund. Therefore possible potential conditions could not overcome the risk of a dwelling in the highest area of flood risk being occupied all year round and the risk of flood damage and threat of loss of life.

A further factor is that Point Clear could still be cut off as an "island" if the causeway at St. Osyth Creek were to be breached by flooding leaving inhabitants isolated and in need of medical attention, food, water and medical supplies until rescue arrives. In this area near to the application site in the last major flood in 1953 two persons lost their lives due to flooding. The chalets were not then in existence. Based upon modern advice and practice they are a use which should ideally be situated outside Flood Zone 3a but for historic reasons the chalets have secured planning permission and can be occupied during the period 1st March to 31st October each year.

2. Sustainability

The application site lies outside of a Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft.

The National Planning Policy Framework 2019 (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 report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local plan. There are therefore significant doubts about the validity or extent of any housing supply 'deficit', albeit the tilted balance applies. This minimises the reduction in weight to conflict with Policy QL1, as per the *Hallam Land* judgement, especially in view of the fact that the Council has considerably increased its housing delivery figures in recent years.

Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

Therefore, at this present time, it is correct to assess the housing development on its merits against the sustainable development objectives set out within Paragraph 8 of the NPPF. The economic objective, a social objective and an environmental objective are therefore assessed below.

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 0.5 miles 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 saved plan Policy EN3 and emerging policy PPL2. Development is not permitted in such areas where there is no compelling functional need. No evidence of a need has been submitted by the applicant. However the proposal 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 proposal would not be harmful visually.

Economically, the proposal 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, approval of this application would set a precedent which would make it more difficult for the Local

Planning Authority to resist similar applications in this very large area of chalet accommodation which are not suitable for winter occupation, exacerbating the harmful effect on the living conditions in the area.

3. Habitats Regulation Assessment

Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.

Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). In this case the increased occupancy period will put additional pressure on the European Sites during their most sensitive over-wintering period and a contribution to mitigate against the in-combination effects of recreational pressure is therefore justified. A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be the RAMS level contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites. The contribution is secured by unilateral undertaking. There is therefore certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Other Considerations

St Osyth Parish Council have made an observation that they may be willing to support the proposal, but would prefer for the decision to be deferred until such time as the District Council or Planning Inspectorate gave an overall decision in respect of the ongoing occupancy issues in the surrounding area.

6. Recommendation

Refusal.

7. Reasons for Refusal

- 1 Paragraph 155 of the National Planning Policy Framework ("the Framework") states that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of high risk". Paragraph 157 of the Framework requires that the sequential test be passed in areas of high flood risk. A similar approach is taken in Policy QL3 of the "Saved" Tendring District Local Plan (2007) and "Draft" Policy PPL1 of the Tendring District Local Plan: 2013-2033 and beyond Publication Draft.

The application site is a single-storey detached property forming part of a wider chalet park. Year round residential use of the site is prevented by existing conditions relating to planning permission ref: TEN/119/59. The site is located in an area of high flood risk (Flood Zone 3).

The proposal seeks year round residential use of the site through the relaxation of a condition. Such a proposal would increase the flood vulnerability of the site from "more vulnerable" to "highly vulnerable". Therefore the proposal would constitute inappropriate development in an area at risk of flooding and would be contrary to the afore-mentioned policies and Paragraphs of the Framework.

- 2 The application site lies outside of a Settlement Development Boundary as defined within the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

The National Planning Policy Framework 2019 (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 report, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination in Public of the Local plan. There are therefore significant doubts about the validity or extent of any housing supply 'deficit', albeit the tilted balance applies. This minimises the reduction in weight to conflict with Policy QL1, as per the *Hallam Land* judgement, especially in view of the fact that the Council has considerably increased its housing delivery figures in recent years.

Whilst it is recognised that there would be conflict with Saved Policy QL1 and Emerging Policy SPL1 in terms of the site being sited outside the settlement development boundary, as stated above, in the context of the 5 year housing land supply paragraph 11 d) of the NPPF requires applications for housing development to be assessed on their merits, whether sites are allocated for development in the Local Plan or not and it is important to consider whether any circumstances outweigh this conflict.

Saved Tendring District Local Plan (2007) Policy QL1 sets out that development should be focussed towards the larger urban areas and to within development boundaries as defined within the Local Plan. These sentiments are carried forward in emerging Policy SPL1 of the Publication Draft. Emerging Policy SPL1 of the Publication Draft of the Local Plan 2017 includes a 'settlement hierarchy' aimed at categorising the district's towns and villages and providing a framework for directing development toward the most sustainable locations. This is the emerging policy equivalent to Saved Policy QL1 of the adopted Tendring District Local Plan 2007 which states that development should be focussed towards the larger urban areas. Point Clear is identified as a 'Village' within saved Policy QL1 of the adopted Tendring District Local Plan 2007 and is not even referenced within Policy SPL1 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft June 2017 in recognition of its size and limited range of local services.

The proposal for relaxation of a planning condition to effectively give a change from a chalet with a limited period of occupancy to a dwelling with year-round use is contrary to the NPPF, Saved Policies QL1 and QL3 of the Tendring District Local Plan 2007 and Emerging policies SPL2 and PPL1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. The site is approximately half a mile outside of the Settlement Development Boundary for Point Clear in the saved local plan and several miles outside the settlement boundary for St Osyth in the draft emerging local plan and is therefore considered a part of the countryside.

As identified in the Council's "Establishing a Settlement Hierarchy" study (April 2016), Point Clear has few facilities and services with no primary school, healthcare provision, defined areas of employment, defined village centre and no railway station. Whilst there is a bus stop approximately half a mile from the application site it remains likely that most journeys would be taken by private car and would therefore not be socially sustainable. Therefore, the proposal would not represent sustainable development and would thereby be contrary

to the aforementioned policies. Furthermore, approval of this application would very likely set a precedent which would make it more difficult for the Local Planning Authority to resist similar applications in this very large area of chalets which are not suitable for year-round use, exacerbating the harmful effect.

For the reasons set out above the proposal is considered to fail the social objective. This together with the conflict with Saved Policy QL1 of the adopted plan and emerging Policy SPL1 amounts to an unsustainable form of development.

8. Informatives

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.