

** please also email decision.*

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AL	11/02/2020
Planning Development Manager authorisation:	AN	11/2/20
Admin checks / despatch completed	CC	12/02/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	AP	12/2/2020

Application: 19/01927/COUNOT **Town / Parish:** Thorpe Le Soken Parish Council

Applicant: Mr De Roy

Address: Units 7 & 7A Rice Bridge Industrial Estate Station Road

Development: Proposed conversion of office to 6 residential units.

1. Town / Parish Council

Not applicable.

2. Consultation Responses

ECC Highways Dept

The site is located close to reasonably good transport links. When compared with the former commercial use, the level of activity will be similar or considerably reduced while the nature of vehicles will also change; therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, always covered and provided prior to first occupation and retained.

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

2. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for the dwelling, for sustainable transport, approved by Essex County Council, (to include six one day travel vouchers for use with the relevant local public transport operator free of charge)
(Continued...)

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative

1: Although the site is not situated with a main urban area the site is located close to the local railway station with frequent and extensive public transport, the EPOA Parking Standards recommend that a reduced parking standard provision may be applied to residential developments. A reduced parking standard provision level can be considered to this proposal as it is located very close to regular public transport services.

2: The vehicular access to the site is situated behind gates located at the entrance to Rice Bridge Industrial Estate; if these are ever closed access would be blocked to the prospective residential units. Consideration would need to be given to re-locate these gates beyond the vehicular entrance to 7 and 7A if there is a requirement to close these gates for the benefit of the remainder of the industrial estate.

3: Steps should be taken to ensure that the Developer provides enough turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

4: 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

5: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

Environment Agency

Thank you for your application received 16 January 2020 we have reviewed the plans as proposed and, we are raising a holding objection to this application on flood risk grounds.

Flood Risk

Our maps show the application site lies within fluvial and tidal Flood Zone 3, the high probability zone. Paragraph 163, footnote 50 of the National Planning Policy Framework (NPPF) requires applicants for planning permission to submit a site-specific flood risk assessment (FRA) when development is proposed in such locations. No FRA has been submitted to support this application and we are therefore raising a holding objection.

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.

Please be aware that tidal level data for this area has unfortunately been missed from our product 4 request. There is an SMP (Essex and South Suffolk) in the area so the development is safe from a current day residual risk. However, if the development is to be residential safe refuge should be provided above the worst case 1:1000 plus climate change level which is 5.18m AOD (Clacton Coastal modelling 2018).

Overcoming our Objection

You can overcome our objection by undertaking an FRA that demonstrates that the development is safe without increasing risk elsewhere and, where possible, reduces flood risk overall. If this cannot be achieved, we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an objection.

We ask to be re-consulted with the results of the FRA. We will provide you with bespoke comments within 21 days of receiving formal re-consultation. Our objection will be maintained until an adequate FRA has been submitted.

We have included a factsheet with our response, which sets out the minimum requirements and further guidance on completing an FRA is available on our website.

Our Customers and Engagement team can provide any relevant flooding information that we have available. Please be aware that there may be a charge for this information. Please contact: Enquiries_EastAnglia@environment-agency.gov.uk.

For further information on our flood map products please visit our website at: www.environment-agency.gov.uk/research/planning/93498.aspx

Strategic Flood Risk Assessments (SFRA) are undertaken by local planning authorities as part of the planning process. The SFRA may contain information to assist in preparing site-specific FRAs. Applicants should consult the SFRA while preparing planning applications. Please contact your local authority for further information. Information on preparing property for flooding can be found in the documents

'Improving the Flood performance of new buildings' and 'Prepare your property for flooding' (<https://www.gov.uk/government/publications/flood-resilient-construction-of-new-buildings> and <http://www.environment-agency.gov.uk/homeandleisure/floods/31644.aspx>)

If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009.

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 determining the application.

Informative - Environmental Permit for Flood Risk Activities

The applicant may need an environmental permit for flood risk activities if they want to do work in, under, over or within 8 metres (m) from a fluvial main river and from any flood defence structure or culvert or 16m from a tidal main river and from any flood defence structure or culvert. Holland Brook, is designated a 'main river'.

Application forms and further information can be found at: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. Anyone carrying out these activities without a permit where one is required, is breaking the law.

We trust you find this advice useful.

3. Planning History

None relevant.

4. Relevant Policies / Government Guidance

Not applicable.

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) 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 (including Site Description and Proposal)

Site Description

This prior notification application relates to Units 7 and 7a, Rice Bridge Industrial Estate, Station Road, Thorpe-le-Soken. The Rice Bridge Estate comprises a mix of office and industrial units located close to the railway bridge and railway station in Thorpe le Soken. At the entrance to the estate is a large two storey building constructed in the 1980's which is occupied as a single office unit. This is the unit subject of this application. To the front of the office building are 6 car parking spaces. To the south of the estate road are further parking spaces occupied by the office units. To the east are a collection of single storey units which are occupied by various B1 commercial activities. To the north is an existing car MOT and serving garage.

Description of Proposal

It is proposed to convert the building in to six self-contained apartments, all of which would have 2 bedrooms. Access to all the units would be from the existing front and rear doors. The layout has been designed to ensure that both first living rooms are located above similar ground floor rooms. No external alterations are required. Other than bathroom and kitchen facilities and a new internal staircase, only minor internal partitions are required. The building has full phase electricity supply, water and sewage connections.

Assessment

The application falls to be considered against Schedule 3, Part 3 Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended by the 2016 Statutory Instrument No. 332 Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 which states;

Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted.

O.1 Development is not permitted by Class O if:

- (a) an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30th May 2019;

The application was received on 19th December 2019. This criterion is met.

- (b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order -
- (i) on 29th May 2013, or
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use

The building was used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order on 29th May 2013 and is currently in office use. This criterion is met.

- (c) the site is, or forms part of, a safety hazard area

The site is not, or does not form part of, a safety hazard area. This criterion is met.

- (d) the site is, or forms part of, a military explosives storage area

The site is not, or does not form part of, a military explosives storage area. This criterion is met.

- (e) the building is a listed building or is within the curtilage of a listed building

The building is not a listed building nor is it within the curtilage of a listed building. This criterion is met.

- (f) the site is, or contains, a scheduled monument

The site is not, nor contains, a scheduled monument. This criterion is met.

Conditions

O.2 (1) Development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to -

- (a) transport and highways impacts of the development
- (b) contamination risks on the site
- (c) flooding risks on the site, and
- (d) impacts of noise from commercial premises on the intended occupiers of the development,

and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date;

(a) Transport and Highways Impacts of the Development

The site is served by an existing access and 6 parking bays. The parking to the south of the site (as referred to within the Planning Statement) is informal and does not form part of the red lined site area and therefore does not form part of the land subject to the change of use. There are gates at the entrance of the estate which appear to be locked when the site is closed.

In the event of the prior notification application being granted the gates would need to be relocated further back into the site so that unrestricted access to the flats and the associated parking spaces is available to the residents whilst retaining the security for the remainder of the uses to the rear of the site.

The development proposes the conversion of the building into 6 no. 2 bedroom flats. As set out within the Essex Parking Standards 2009, each flat should be served by 2 parking spaces 5.5m by 2.9 metres in size. Only 6 spaces are provided. However, given the close proximity of the site within walking distance of the Thorpe-le-Soken train station and nearby bus stops, the shortfall in parking is not considered to warrant a refusal.

Essex County Council Highway Authority do not raise an objection.

(b) Contamination Risks on the Site

The site is not in an area where there are contamination risks on the site. The proposal does not raise any concerns in this regard and therefore complies with this consideration.

(c) Flooding risks on the site

Paragraph 3.8 of the Planning Statement submitted with the application states that 'The site is within Flood Zone 3, but within an area shown as being protected by existing flood defences. The risk of flooding is therefore low and no greater than for the existing office use. There is no requirement to undertake a sequential test with regard to Class O of the GPDO. There are no known surface drainage problems in the area. There is some considerable doubt on our part with regard to the Flood Zone mapping and the correct contour heights. It is known that the ground levels have been raised on this estate, and which may not have been taken into account by the Environment Agency when making revisions to their Flood Map. This situation is being investigated and further details will be submitted very shortly.' The additional information was provided on 22nd January 2020 and sent to the Environment Agency to be taken into consideration as part of their assessment.

In response to these points, the Environment Agency maps show the application site lies within fluvial and tidal Flood Zone 3, the high probability zone. There is a Shoreline Management Plan (Essex and South Suffolk) in the area so the development is safe from a current day residual risk. However, if the development is to be residential safe, refuge should be provided above the worst case 1:1000 plus climate change level which is 5.18m AOD (Clacton Coastal modelling 2018).

In this instance, Paragraph W.2 (i) requires the submission of a site-specific flood risk assessment (FRA) and consultation with the Environment Agency to be carried out. No FRA has been submitted. Paragraph W.3 states that the local planning authority may refuse an application where, in the opinion of the authority, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question. An FRA is vital if the 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 Environment Agency therefore raise an objection to the development. The absence of an FRA is therefore sufficient reason for a refusal.

Furthermore, Paragraph W.10 states that the local planning authority must, when determining an application, have regard to the National Planning Policy Framework (NPPF), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. In this regard the proposal must be assessed in accordance with the NPPF.

The proposal would be a change of use of a 'less vulnerable' use to a 'more vulnerable' development as identified in Table 2: Flood risk vulnerability classification (Paragraph: 066 Reference ID: 7-066-20140306 of the NPPG). Paragraph 163 of the NPPF states that applications should be supported by a site-specific flood-risk assessment. Paragraph 164 of the NPPF states that applications for minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments. Paragraph 163 states that development should only be allowed in areas at risk of flooding where it can be demonstrated that the development is appropriately flood resistant and resilient and provides safe access and escape routes as part of an agreed emergency plan.

Saved Policy QL3 of the adopted Tendring District Local Plan (2007) states that the Council will ensure that flood risk is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding. These sentiments are echoed within draft

Policy PPL1 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

In this instance the proposal would result in self-contained apartments with sleeping accommodation on the ground floor with a finished floor level of 3.24m AOD throughout. These apartments have no opportunity for safe refuge above the required 1:1000 plus climate change level which is 5.18m AOD. On this basis, the submission of a FRA for the proposed development could not overcome the objection to the development.

The proposal is considered to represent an inappropriate development in a high risk flood area that fails to provide safe refuge contrary to the afore-mentioned national and local plan policy.

(d) Impacts of noise from commercial premises on the intended occupiers of the development

The accompanying Planning Statement suggests that it is not expected that the existing activities of nearby businesses will have an effect in relation to noise on the intended occupiers of the development.

Paragraph 180 of the National Planning Policy Framework (2019) states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Saved Policy QL11 of the adopted Tendring District Local Plan (2007) states that amongst other criteria, development will only be permitted if the nature of the development is appropriate to the locality and the health, safety or amenity of any occupants of the proposed development will not be materially harmed by any pollution from an existing or committed use. These sentiments are carried forward in draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

In the absence of a full noise assessment it cannot be adequately demonstrated that future residents would not be subjected to adverse levels of noise from the established Station Garage directly to the north carrying out vehicle MOTs, serving and repairs, other commercial businesses to the rear of the site and due to the proximity of a main train line serving Thorpe-le-Soken train station with frequent and late night services. As a result the Local Planning Authority cannot be certain that future residents will have a sufficient level of residential amenity or that the existing business will be compromised through the potential for noise complaints. The development therefore fails to comply with the above mentioned national and local planning policies.

The provisions of paragraph W (prior approval) apply in relation to this application.

Procedure for applications for prior approval under Part 3

W.1 The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.

W.2 The application must be accompanied by

- (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must include any building or other operations
- (b) a plan indicating the site and showing the proposed development
- (c) the developer's contact address
- (d) the developer's email address if the developer is content to receive communications electronically

- (e) where sub-paragraph (6) requires the Environment Agency(a) to be consulted, a site-specific flood risk assessment together with any fee required to be paid.

The application is accompanied by an Application Form, Planning Statement and existing and proposed plans meeting the requirements set out within W.2 (a) to (d).

Sub-paragraph (6) is applicable due to the location of the site within Flood Zone 3. However, the application fails to provide a site-specific flood risk assessment.

The appropriate fee was received on 19.12.2019.

W.3 The local planning authority may refuse an application where, in the opinion of the authority -

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

This application fails to comply with the requirements of Paragraph W.3 as set out above.

W.4 Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.

The application is being refused for the reasons set out above.

W.5 Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult -

- (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road
- (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority
- (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway

The Highways Authority were consulted on 16.01.2020. The Local Planning Authority has complied with the requirements of Paragraph W.5.

W.6 Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency (b) where the development is -

- (a) in an area within Flood Zone 2 or Flood Zone 3; or
- (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

The site is within Flood Zone 3. The Environment Agency were consulted on 16.01.2020. Local Planning Authority has complied with the requirements of Paragraph W.6.

W.7 The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given).

The Local Planning Authority notified the consultees referred to in sub-paragraphs (5) and (6) on 16.01.2020 specifying the date by which they must respond of 06.02.2020; this date is not less than 21 days from the date the notice is given. The Local Planning Authority has complied with the requirements of Paragraph W.6.

W.8 The local planning authority must give notice of the proposed development -

- (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which –
 - (i) describes the proposed development
 - (ii) provides the address of the proposed development
 - (iii) specifies the date by which representations are to be received by the local planning authority; or
- (b) by serving a notice in that form on any adjoining owner or occupier.

A site notice was displayed on the entrance to the site on 16.01.2020 (the 21-day period expired on 06.02.2020) including all information required by (a) (i) to (iii).

Notification letters were sent to all units adjoining the red lined site area on 16.01.2020 (the 21-day period expired on 06.02.2020).

The Local Planning Authority has complied with the requirements of Paragraph W.8

W.9 The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include— (a) assessments of impacts or risks; (b) statements setting out how impacts or risks are to be mitigated; or (c) details of proposed building or other operations.

Given the fundamental objections to the development in relation to flood risk and noise, it is not considered appropriate to request further information in this instance.

W.10 The local planning authority must, when determining an application -

- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8)
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and
- (c) in relation to the contamination risks on the site -
 - (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and
 - (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

All representations received as a result of the consultation exercise have been taken into account. The Local Planning Authority has had regard to the National Planning Policy Framework. As a result of the proposed change of use, taking into account any proposed mitigation, the site will not be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b). The Local Planning Authority has complied with the requirements of Paragraph W.10.

W.11 The development must not begin before the occurrence of one of the following -

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required

- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

The expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority is 13th February 2020. A notification to the applicant is being made in advance of this date informing the applicant that prior approval is required and refused. The Local Planning Authority has complied with the requirements of Paragraph W.11.

W.12 The development must be carried out -

- (a) where prior approval is required, in accordance with the details approved by the local planning authority
- (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing

W.13 The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

The application is being refused and these conditions are not relevant in this instance.

6. Recommendation

Prior Approval Refused.

7. Reasons for Refusal

- 1 The Environment Agency maps show the application site lies within fluvial and tidal Flood Zone 3, the high probability zone. There is a Shoreline Management Plan (Essex and South Suffolk) in the area so the development is safe from a current day residual risk. However, if the development is to be residential safe refuge should be provided above the worst case 1:1000 plus climate change level which is 5.18m AOD (Clacton Coastal modelling 2018).

Paragraph W.2 of Schedule 3, Part 3 Class O of the Town and Country Planning (General Permitted Development) (England) Order 2016 (as amended) (i) requires the submission of a site-specific flood risk assessment (FRA) and consultation with the Environment Agency to be carried out. No FRA has been submitted. Furthermore, Paragraph W.3 states that the Local Planning Authority may refuse an application where, in the opinion of the authority, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question. In addition, Paragraph W.10 states that the local planning authority must, when determining an application, have regard to the National Planning Policy Framework (NPPF), so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

The proposal would be a change of use of a 'less vulnerable' use to a 'more vulnerable' development as identified in Table 2: Flood risk vulnerability classification (Paragraph: 066 Reference ID: 7-066-20140306 of the NPPG). Paragraph 163 of the NPPF states that applications should be supported by a site-specific flood-risk assessment. Paragraph 164 of the NPPF states that applications for minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments. Paragraph 163 states that development should only be allowed in areas at risk of flooding where it can be demonstrated that the development is appropriately flood resistant and resilient and provides safe access and escape routes as part of an agreed emergency plan.

Saved Policy QL3 of the adopted Tendring District Local Plan (2007) states that the Council will ensure that flood risk is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding. These sentiments are echoed within draft Policy PPL1 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

In this instance the proposal would result in self-contained apartments with sleeping accommodation on the ground floor with a finished floor level of 3.24m AOD throughout. These apartments have no opportunity for safe refuge above the required 1:1000 plus climate change level which is 5.18m AOD. On this basis, the submission of a FRA for the proposed development could not overcome the objection to the development.

The proposal is considered to represent an inappropriate development in a high risk flood area that fails to provide safe refuge contrary to the afore-mentioned national and local plan policy.

- 2 Paragraph 180 of the National Planning Policy Framework (2019) states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Saved Policy QL11 of the adopted Tendring District Local Plan (2007) states that amongst other criteria, development will only be permitted if the nature of the development is appropriate to the locality and the health, safety or amenity of any occupants of the proposed development will not be materially harmed by any pollution from an existing or committed use. These sentiments are carried forward in draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

In the absence of a full noise assessment it cannot be adequately demonstrated that future residents would not be subjected to adverse levels of noise from the established Station Garage directly to the north carrying out vehicle MOTs, serving and repairs, other commercial businesses to the rear of the site and due to the proximity of a main train line serving Thorpe-Soken train station with frequent and late night services. As a result the Local Planning Authority cannot be certain that future residents will have a sufficient level of residential amenity or that the existing business will be compromised through the potential for noise complaints. The development therefore fails to comply with the above mentioned national and local planning policies.

8. **Informatives**

Not applicable.