



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Mrs Natalie Winspear -
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IP8 3NJ

APPLICANT: Mr R Brooks and Family
C/o Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 11/00532/OUT **DATE REGISTERED:** 11th May 2011

Proposed Development and Location of Land:

**Erection of up to 65 dwellings.
Land off Trinity Road Trinity Road Mistley Essex**

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

- 1 The site lies outside of the Manningtree, Lawford and Mistley Settlement Development Boundary as defined within both the adopted Tendring District Local Plan (2007) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). Saved Policy QL1 of the Tendring District Local Plan (2007) sets out the spatial strategy for the District and seeks to concentrate most development toward the District's larger towns with limited development, consistent with local community needs, in smaller towns and villages. The policy also seeks to concentrate development within settlement boundaries and states that development outside those boundaries will only be permitted where it is consistent with countryside policies.

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. 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.

The core planning principles under Paragraph 15 of the (NPPF), which state that development should be genuinely plan-led and the Council should actively manage patterns of growth, is therefore applicable and should be awarded significant weight having regard to the relatively modest housing land supply shortfall and the amount of growth already realised in the locality of Mistley, Manningtree and Lawford.

Overall the development would prejudice the effective and coordinated delivery of infrastructure through the plan-led approach and as such further development in this location would be contrary to Saved Policy QL1 and Draft Policy SPL2. The economic and social benefits of the proposed housing have been given due consideration in the overall planning balance, but the adverse effects of the development are considered to significantly and demonstrably outweigh the benefits.

- 2 Paragraph 8 of the National Planning Policy Framework 2019 (NPPF) sets out the overarching objectives for achieving sustainable development, one being the environmental objective. This requires the planning system to contribute to protecting and enhancing our natural, built and historic environment. Furthermore, Paragraph 127 of the NPPF requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the landscape.

The site is located within an area designated as a 'Local Green Gap' within the adopted Tendring District Local Plan 2007 and as a 'Strategic Green Gap' in the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. Policy EN2 of the adopted Tendring District Local Plan 2007 Local Plan states that Local Green Gaps will be kept open, and essentially free of development in order to prevent coalescence of settlements, and to protect their rural setting. Furthermore, paragraphs 6.9 and 6.10 of the adopted Policy preamble expand on the purposes of the Local Green Gaps. In particular one of the purposes is to maintain separation between urban areas and free-standing smaller settlements that surround them and by conserving the countryside between residential settlements to preserve the open character of these important breaks between settlements. Draft Policy PPL6 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 echo the aims of the saved policy stating that the council will not permit any development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their close proximity. Planning permission may be granted where the development would not compromise the open setting between settlements or neighbourhoods.

This designation is based on the areas unique landscape character. Any development which would significantly harm landscape character or quality should not be permitted. The application site lies on the side of the Stour Valley system, which separates Manningtree from Lawford and so development is likely to be prominent as it is located on the top and eastern side of the valley slope. The Tendring District Landscape Character Impact Assessment (November 2001) states clearly that this strategic gap should be maintained and the settlements should not be merged through incremental development. The guidance also states high density or mass produced housing designs would be unsuitable in this rural environment. The development proposed would harm the character of the landscape and erode the strategic green gap between Manningtree with Mistley which should be kept open and rural in nature.

In terms of the landscape impact, the value of the 'openness' of this site to the character and appearance of the Mistley and Manningtree Conservation Area should not be underestimated. The site allows for distant views of the land forming part of The Suffolk Coast and Heaths Area of Outstanding Natural Beauty on the northern shore of the River Stour to be enjoyed from Long Road. This sense of space is a significant factor that contributes positively to the juxtaposition of the Mistley and Manningtree settlements.

In order to assess the impact of the development proposal on the local landscape character the applicant has submitted a Landscape and Visual Assessment (LVIA). The Landscape and Visual Impact Assessment has been carried out in accordance with Landscape Institute and Institute of Environmental Management and Assessment guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition 2013. However, this LVIA is based upon the re-development of the wider site as a whole originally submitted under planning application number 11/00530/OUT for the 'Erection of 15 dwellings together with provision of public open space' and 11/00531/OUT for 'Change of use to form public open space and allotments. Both these applications have been withdrawn. Therefore, the LVIA is not an accurate assessment of this revised application and any benefits from the adjoining developments referenced within the LIVA are no longer applicable to the assessment of this current application. Furthermore, the LVIA states that the area within which the application sits as the Bromley Heaths Landscape Character Area (LCA) - as defined in the Tendring District Council Landscape character Assessment. However it appears that the developed part of the site falls within The Stour Valley System LCA. As the development is within this LCA it will be necessary for the applicant to amend the LVIA to reflect the impact of the development on The Stour Valley System LCA within which it sits. And from adjacent higher land within the Bromley Heaths LCA.

Notwithstanding the above the document describes existing landscape character and qualities of the landscape. It identifies and records the potential impact of the development on the character of the landscape and the way that it is perceived and enjoyed by the public. It goes on to quantify the degree of harm to both the physical character of the landscape and its visual qualities. However the LVIA does not make reference to the Stour Valley System.

One of the key characteristics of the Stour Valley System is that; 'the southern slopes and scenic tributary valleys of the Stour, form a setting to one of the most important wildlife estuaries in Europe and a setting to the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB)'. It is therefore vitally important that planning permission is not granted unless it can be demonstrated that harm will not be caused to either the scenic beauty or wildlife value of the area.

The LVIA submitted by the applicant in support of the application sets out 8 viewpoints from where the views of the site can be enjoyed and goes on to describe the visual effects from each viewpoint. It should also be noted that the LVIA does not include a viewpoint from Elmdale Drive, off Trinity Road. A receptor point in Elmdale Drive should be added to the LVIA to show the impact of the development proposal on the residents of those properties. It appears that the topography of the land is such that the development would be a prominent and dominating feature in the landscape that would bring about a fundamental change to the appearance of the area. The LVIA also fails to assess viewpoints from Waldegrave Way, Lawford as the application site can be clearly seen between pairs of semi-detached dwellings situated in that road and include at least 2 receptor points from the public open space to the rear of Waldegrave Way.

Whilst the LVIA contains a good level of baseline information the general description, this LVIA is not sufficient to consider the current application and a separate description of the magnitude of impact should be provided for the 65 dwelling proposal only

In addition, the application site is located within the Manningtree and Mistley Conservation Area, within which are located a number of listed buildings and places of special historic interest.

Paragraph 184 of the National Planning Policy Framework 2019 (NPPF) states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Specifically Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Furthermore, Paragraph 197 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. Saved Policy EN23 of the Tendring District Local Plan (2007) and Policy PPL9 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state that proposals for development that would adversely affect the setting of a listed building will not be permitted.

The application site, historically undeveloped, remained within a predominantly rural, light-industrial and high-end residential setting until the beginning of the 20th century; as inferred from cartographic evidence, the site's immediate surroundings remained relatively sparsely settled, with loosely dispersed farming, manufacture and associated facilities to the north-south side of Trinity Road and more generously sized properties sited on ample plots to the south, where denser development was already seen to creep in at the end of the 19th century. The 1923 OS map shows the abutment of the site with housing, including the distinctively handsome White Lodge, to its south extent; by 1958 residential properties and allotment gardens abutted its southern edge. Although the context of the site continued to change throughout the 20th century and it is now located within a thoroughly suburban environment, the area retains a historic character and an edge-of-town feel: whilst it's immediate setting is sparse with regard to listed buildings, with only a handful along the intersecting New Road, the upper fragment of Trinity Road is considered to include a number of traditional, exposed-brick structures of non-designated heritage asset status; equally, substantial dwellings and sizeable parcels of land persist in the area, indicating its more affluent background.

The proposed development, however, is considered to negatively impact the above characteristics of this fragment of the Conservation Area: the erection of 65 dwellings on the application site would detract from the historically spacious character of parcellation creating a dense, unsympathetic suburb within the context of quaint, characterful and historic built form. Proposing the creation of a heavily built-up development in conservation terms, the proposal is considered to erode the appreciation and understanding of the historically open nature of the land. Further to this, the Conservation Area Management Plan (July 2010), which draws attention to the need for retention of open spaces within the conservation area, in stating that:

The conservation area is not particularly endowed with open spaces in the urban areas, which makes those that do exist all the more distinctive. Elements that make a positive contribution to the conservation area in Manningtree include the grave yard next to the Evangelical church in Trinity Road, the green triangle in South Street, the old and modern market places and the waterside on either side of the centre. In Mistley, the important spaces are Mistley Green, the surroundings of Mistley Towers, the quaysides and the allotments. (p. 29).

As the above has the status of an important "material consideration" when considering planning proposals within the Conservation Area, it should be given appropriate weight. Therefore, the proposal is considered to cause "less than substantial harm" to a designated heritage asset and paragraph 196 of the NPPF is relevant; as the setting of a number of non-designated heritage assets is also considered to be negatively affected, paragraph 197 of the NPPF is also relevant.

For the reasons set out above, the proposal would unacceptably harm the character and appearance of the area. Significant weight must be attributed to this harm due to the location of the site within the open landscape, the strategic value of the Green Gap designation and significance of the site to the character and appearance of the Manningtree and Mistley Conservation Area. In applying the tilted planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development including taking into account the extent and validity of the housing shortfall and its effect on the weight to be attached to development plan policies.

- 3 Saved Policy EN1 relates to landscape character and states, inter alia, that development control will seek in particular to conserve features which contribute to local distinctiveness, which includes important hedgerows and trees. In terms of the impact of the development proposal on the local landscape character it is important to recognise the existing qualities and value of the landscape and to quantify the potential impact of the proposed development on the local landscape.

There are mature trees situated on the watercourse. On the boundary adjacent Trinity Road and on the southern boundary of the application site there are established and mature hedgerows that fall within the scope of the Hedgerow Regulations 1997. An assessment of the historical, botanical and biological importance of the hedgerow is therefore required. It is also necessary for the applicant to provide information which demonstrates that the development proposal will not cause harm to the trees on the land that are afforded protection because of their position within the Mistley and Manningtree Conservation Area. A tree survey and report in accordance with the recommendations contained in BS58372005: Trees in Relation to Construction has not been provided nor has the Hedgerow Assessment

These issues are matter of principle and it has not been demonstrated that the development would not result in any harm to the mature trees present on the boundary of the site. Consequently, the development is contrary to the aforementioned policy.

- 4 Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation. The contribution is secured by unilateral undertaking.

The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zoi) being approximately 2200 metres from the Stour and Orwell Estuaries Ramsar and SPA. New housing development within the Zoi would be likely to increase the number of recreational visitors to the Stour and Orwell Estuaries; and, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Mitigation measures must therefore be secured prior to occupation.

A proportionate financial contribution has not been secured by way of a completed legal agreement in accordance with the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) requirements. As submitted, there is no certainty that the development would not adversely affect the integrity of Habitats sites.

The proposal is therefore considered to be contrary to 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.

- 5 Saved Policy COM6 of the adopted Tendring District Local Plan (2007) and draft Policy HP5 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) state that for residential development on a site of 1.5ha and above, where existing public open of the space and/or play equipment are inadequate, shall provide appropriate provision on-site or by way of a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of future occupiers of the development.

There is currently a deficit of 3.00 hectares of equipped play/formal open space in Mistley. Due to the considerable deficit already existing in Mistley, it would be necessary to increase the amount of play should further development take place in the village. Apart from the deficit in Mistley, the play areas and formal open space are put under additional strain from the neighbouring village of Manningtree, which has no provision for play and formal open space.

No revised indicative layout plan has been provided but the amended Design and Access Statement provided confirms at paragraph 6.15 that an area of public open space comprising 10% of the total site area is also proposed as part of the development in accordance with adopted policy COM6.

However, a completed legal agreement to secure the delivery and maintenance of an onsite facility has not been received. As submitted, there is no certainty that the development would deliver and maintain the open space required.

- 6 Saved Policy HG4 of the Tendring District Local Plan (2007) requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Emerging Policy LP5 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) which is based on more up-to-date evidence of housing need and viability, requires for developments of 11 or more dwellings, the Council expect 30% of new dwellings to be made available to Tendring District Council or an alternative provider to acquire at a proportionate discounted value for use as affordable housing.

A completed Section 106 Legal Agreement to secure the relevant contributions set out above has not been provided. The application therefore fails to comply with the requirements of the respective national and local plan policies.

- 7 Policy HP1 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft states that the Council will seek contributions towards new or enhanced health facilities from developers where new housing development would result in a shortfall or worsening of health provision.

The development would give rise to a need for improvements to capacity, in line with emerging CCG Estates Strategy, by way of extension, reconfiguration, refurbishment or potential relocation for the benefit of the patients in the North Tendring area, including Lawford and Manningtree; a proportion of the cost of which would need to

be met by the developer. A developer contribution will be required to mitigate the impacts of this proposal. North East Essex CCG calculates the level of contribution required, in this instance to be £22,563.

A completed Section 106 Legal Agreement to secure the relevant contributions set out above has not been provided. The application therefore fails to comply with the requirements of the respective national and local plan policies.

- 8 Saved Policy COM26 of the Tendring District Local Plan (2007) states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Draft Policy PP12 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) states planning permission will not be granted for new residential development unless the individual or cumulative impacts of development on education provision can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

In the absence of details of a residential unit mix, calculations have been based upon all units being homes with two or more bedrooms. Based on this information a development of this size can be expected to generate the need for up to 5.85 Early Years and Childcare (EY&C) places; 19.5 primary school, and 13 secondary school places. Final payments will be based on the actual dwelling unit mix and the inclusion of indexation. Sufficient places for Early Years and Childcare are available and the proposed development is not considered to attract an education contribution in relation to secondary education needs at this time. There are sufficient places available in the area for places and a developers' contribution will not be required for this level.

However, based on demand generated by this proposal, a developer contribution of £297,980 is sought to mitigate its impact on local primary' school provision. This equates to £15,281 per place.

A completed Section 106 Legal Agreement to secure the relevant contributions set out above has not been provided. The application therefore fails to comply with the requirements of the respective national and local plan policies.

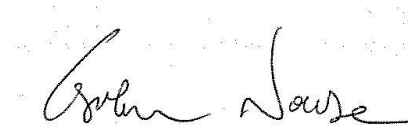
- 9 Paragraph 108 of the National Planning Policy Framework 2019 seeks to ensure that safe and suitable access to a development site can be achieved for all users. Saved Policy QL10 of the adopted Tendring District Local Plan (2007) states that planning permission will only be granted if amongst other things; access to the site is practicable and the highway network will be able to safely accommodate the additional traffic the proposal will generate and the design and layout of the development provides safe and convenient access for people. The sentiments of this policy are carried forward within draft Policy SPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017).

Safe and suitable access to site is achievable via the existing access and there is nothing to suggest that the development would result in any harm to highway safety subject to conditions and an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of necessary highway works in the form of the upgrading of the two nearby bus stops and a minimum 3 metre wide shared foot/cycleway through the proposal site.

A completed Section 106 Legal Agreement to secure the relevant works has not been provided. The application therefore fails to comply with the requirements of the respective national and local plan policies.

DATED: 7th August 2020

SIGNED:



Graham Nourse
Acting Assistant Director
Planning Service

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 February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1	Spatial Strategy
QL2	Promoting Transport Choice
QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
QL11	Environmental Impacts and Compatibility of Uses
QL12	Planning Obligations
HG1	Housing Provision
HG4	Affordable Housing in New Developments
HG6	Dwelling Size and Type
HG7	Residential Densities
HG9	Private Amenity Space
HG14	Side Isolation
COM6	Provision of Recreational Open Space for New Residential Development
EN1	Landscape Character
EN2	Local Green Gaps
EN3	Coastal Protection Belt
EN6	Biodiversity
EN11A	Protection of International Sites European Sites and RAMSAR Sites
EN13	Sustainable Drainage Systems

EN17	Conservation Areas
EN23	Development Within the Proximity of a Listed Building
TR1A	Development Affecting Highways
TR7	Vehicle Parking at New Development

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

SP1	Presumption in Favour of Sustainable Development
SPL1	Managing Growth
SPL3	Sustainable Design
HP5	Open Space, Sports & Recreation Facilities
LP1	Housing Supply
LP2	Housing Choice
LP3	Housing Density and Standards
LP4	Housing Layout
LP5	Affordable and Council Housing
PPL1	Development and Flood Risk
PPL2	Coastal Protection Belt
PPL3	The Rural Landscape
PPL4	Biodiversity and Geodiversity
PPL5	Water Conservation, Drainage and Sewerage
PPL6	Strategic Green Gaps
PPL8	Conservation Areas
PPL9	Listed Buildings
CP1	Sustainable Transport and Accessibility

Local Planning Guidance

Tendring District Council Conservation Area Review 2006 for Manningtree and Mistley Conservation Area

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

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 reasons 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.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

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.