



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT: Mr Malcolm Inkster - Trinity
Planning
33 West Street
Wivenhoe
CO7 9DA

APPLICANT: Tracey Baldwin - Bull & Baldwin
Development Ltd
12 Westlake Crescent
Wivenhoe
CO7 9RZ

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 20/01377/FUL

DATE REGISTERED: 1st October 2020

Proposed Development and Location of Land:

**Erection of 2 semi-detached houses with parking spaces on a vacant site.
Land adjacent 21 Waterside Brightlingsea Essex**

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

- 1 The 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 a proposed demolition of existing dwelling and erection of 9 apartments, associated parking and landscaping, which is classified as a 'more vulnerable' development, as defined in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance. Therefore, to comply with national policy the application is required to pass the Sequential and Exception Tests and be supported by a site specific Flood Risk Assessment (FRA).

Paragraph 155 of the National Planning Policy Framework 2019 states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 157 states that Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by (inter alia) applying the Sequential Test. Paragraph 158 further explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

Saved Policy QL3 of the adopted Tendring District Local Plan 2007 supports this approach by stating 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, whilst for all proposed sites within Flood Zones 2 and 3, the sequential test must be applied to demonstrate that there are no reasonably available sites in a lower flood risk area. These sentiments are echoed in draft policy PPL1 of the emerging

Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017, which states that all development proposals will be considered against the National Planning Policy Framework's flood risk 'sequential test' to direct development toward sites at the lowest risk of flooding unless they involve development on land specifically allocated for development.

The application is accompanied by a Flood Risk Assessment to which the Environment Agency raise no objection subject to the Sequential and Exception Tests. Also accompanying the application is evidence in support of an assessment against the Sequential and Exception Tests. The Sequential Test area of analysis is based upon Tendring District Council's Strategic Housing Land Availability Assessment documents updated 2019 (SHLAA). A summary of the assessment provided is set out below.

A document has been provided to demonstrate that there are no reasonably available sites within a lower probability of flooding that would be appropriate to the type of development or land use proposed. This sequential test reviews 246 sites overall, 217 are sites taken from the SHLAA and the other 29 are identified via a commercial land search, including sites not allocated within the local plan but have been granted planning permission and sites which have not been granted planning permission but would likely be acceptable in principle based on the adopted Local Plan. Of the 217no. SHLAA sites that have been assessed, 92no. of these sites can be automatically discounted on flood risk grounds (see appendix 2). Of the remaining 125no. sites, only 8no. of these are considered to be comparable to the subject site in terms of size, the others being 0.3ha or larger (over 10x bigger than subject site) and thus not being suitable for the amount of development proposed. In addition to the SHLAA sites 22no. sites have been identified which are currently advertised for sale with the benefit of planning permission or which have had planning permission previously which has expired. Of these 22no. sites, 13no. of these are automatically removed by virtue of having worse flood risk characteristics. Another is removed due to the permission relating to a commercial development. The other 9 sites were discounted due to the site being located outside the settlement boundary, within the local green gap, impact upon the character, the site being too cramped, the site being located within flood zone 2, not able to accommodate two dwellings on the site, undeveloped greenfield, site doesn't benefit from planning permission, high cost of land and surface water flooding. In addition to the sites identified which benefit from planning permission/have had planning permission in the past, a further 7no. sites are advertised for sale on Rightmove without the benefit of planning. Of these sites 5no. can be instantly disregarded on flood risk grounds. The remaining two were discounted due to the site not benefiting from planning permission and potential issues with access. The second would be considered unviable due to the cost of the site.

Within the most recent appeal decision reference APP/P1560/W/19/3242577 dated 20 march 2020, the Planning Inspectorate stated within paragraph 7 that 'the proposal is for a pair of semi-detached dwellings. However, the Council has identified a list of 6 sites within Brightlingsea which have secured planning permission for small scale residential developments. All are considered sequentially preferential to the appeal site as they are further from the harbour and therefore likely to be at a lower risk of flooding. In addition, the Tendring Strategic Housing Land Availability Assessment (SHLAA) identified a number of sites around Brightlingsea where residential development could take place that would not be in areas of high flood risk'. The Inspectorate states within paragraph 9 that 'taking all these factors into account, I find there are other sites that are available for residential development within Brightlingsea which have a lower risk of flooding. For this reason, the proposal fails the Sequential Test'. The Inspectorate concludes within paragraph 11 of the appeal decision that 'I therefore conclude that the proposal is unacceptable due to its location within an area of high flood risk. It therefore fails to comply with saved Policy QL3 of the Tendring District Local Plan (2007) which seeks to avoid inappropriate development in areas at risk of flooding. The proposal also conflicts

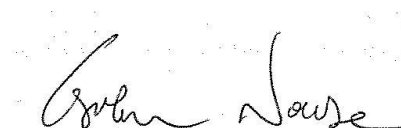
with the Framework's requirement to direct development away from areas at highest risk of flooding. In addition, it would be contrary to emerging Policy PPL1 of the Tendring District Local Plan 2013-2033 and Beyond which requires proposals to have regard to the tests set out in the Framework to reduce the risk of exposure to flooding'.

The need for a sequential test is also acknowledged through the recent planning appeal reference APP/P1560/W/18/3215282 dated 1st October 2019. The appeal was for the erection of a four bedroom dwelling within Flood Zone 3a. Paragraph 12 states that 'Development should not be permitted where there are reasonably available sites, appropriate for the proposal, in lower flood risk areas. If the Sequential Test shows it is not possible for the development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives) the Exception Test may have to be applied. The PPG5 classifies dwellings as development 'more vulnerable' in respect of flood risk. Should the appeal proposal satisfy the Sequential Test, it would therefore then also need to meet an Exception Test, based on it being a more vulnerable development located within a Zone 3a, high probability flood risk area'. Paragraph 25 concludes that 'the overriding aim of flooding policy is to direct new development away from areas at highest risk. For the reasons set out above, I find no essential reason to locate the dwelling proposed in a high flood risk area and thus the Sequential Test is not passed. Given that finding, there is no requirement to apply the Exception Test. The application of Framework policies to direct inappropriate development away from areas with the highest risk of flooding provides a clear reason for refusing the development'.

The Sequential Test does not provide a case for the essential siting of the development in this high risk area nor does it provide adequate information to demonstrate that there are no alternative sites available in accordance with the National Planning Policy Guidance for Sequential Tests. Therefore, the quantum of development as proposed under this application, either individually or cumulatively, would be possible in areas at lower risk of flooding. Thus, the Council are not persuaded that the Sequential Test has been passed. It is therefore considered that the proposal has failed the Sequential Test and the benefits of the development do not therefore outweigh the risks of flooding. The proposed residential development is therefore considered to be unacceptable and contrary to the advice contained in the NPPF, NPPG, Policy PPL1 of the emerging Local Plan, and Saved policy QL3 of the 2007 adopted Local Plan.

DATED: 21st December 2020

SIGNED:



Graham Nourse
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

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG3 Residential Development Within Defined Settlements

HG9 Private Amenity Space

HG14 Side Isolation

EN17 Conservation Areas

EN29 Archaeology

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

EN6A Protected Species

EN11A Protection of International Sites European Sites and RAMSAR Sites

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

SPL3 Sustainable Design

LP1 Housing Supply

LP3 Housing Density and Standards

LP4 Housing Layout

PPL1 Development and Flood Risk

PPL7 Archaeology

PPL8 Conservation Areas

PPL4 Biodiversity and Geodiversity

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

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.

Building Control

Means of escape do not appear to comply with Approved Document B.

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.