

## **DELEGATED DECISION OFFICER REPORT**

<b>AUTHORISATION</b>	<b>INITIALS</b>	<b>DATE</b>
File completed and officer recommendation:	NH	21/12/2020
Planning Development Manager authorisation:	TF	21/12/2020
Admin checks / despatch completed	DB	21/12/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	21.12.2020

**Application:** 20/01377/FUL **Town / Parish:** Brightlingsea Town Council

**Applicant:** Tracey Baldwin - Bull & Baldwin Development Ltd

**Address:** Land adjacent 21 Waterside Brightlingsea

**Development:** Erection of 2 semi-detached houses with parking spaces on a vacant site.

### **1. Town / Parish Council**

Brightlingsea Town  
Council  
05.11.2020

Recommend refusal, as the proposal does not appear to cover the policy of the District Council with regard of the sequential test.

### **2. Consultation Responses**

Essex County Council  
Heritage  
10.11.2020

This application is for the erection of 2 semi-detached house with parking spaces on a vacant site.

The property is located in the Brightlingsea Conservation Area.

There is no in principle objection to the erection of two new dwellings on the vacant site. The overall scale of the building is considered acceptable. However, there are concerns regarding the design and materiality of the proposed dwellings which is not in keeping with the character and appearance of the Conservation Area.

The rooflights to the front roof pitch would be unacceptable and they should be removed from any future application. There is a preference for the rear extensions to be better articulated to reduce the massing and bulk of the proposed dwellings. The use of two materials within the flank elevations is not considered to uphold the architectural quality of the area, nor is it appropriate to the seaside context of the area.

The fenestration is relatively bland and could make better reference to the traditional character of the neighbouring properties. The appearance of the 'pop out' windows and the door is overly modern and there is a preference for them to be more traditional.

Given the sensitivities of the site, ECC Heritage recommend a more bespoke approach to the design and appearance of the proposed dwellings, which has not been realised within this application.

The proposals would in the opinion of ECC Heritage fail to preserve or enhance the character and appearance of the Conservation Area, contrary to Section 72(1) of the Planning (Listed Buildings and

Conservation Areas) Act 1990. With regard to the National Planning Policy Framework (2019), the level of harm is considered to be 'less than substantial' as per paragraph 196. 'Great weight' should be given to the heritage asset's conservation as per paragraph 193.

ECC Heritage recommend this application is refused. The applicant may wish to consider pre-application advice with an improved design, more appropriate to the sensitive site.

ECC Highways Dept  
18.11.2020

The information that was submitted in association with the application has been fully considered by the Highway Authority. The proposal is identical to approved application 19/00573/FUL, 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. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

Reason: To provide adequate inter-visibility between the users of the access and pedestrians in the adjoining public highway in the interest of highway safety in accordance with policy DM1

2. No unbound material shall be used in the surface treatment of the vehicular access throughout.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

3. Prior to occupation of the development, each vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be less than 3.6 metres (4 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway.

Reason: to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety in accordance with policy DM1.

4. Any part of the existing access at the site that becomes redundant shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge / footway / cycleway / kerbing immediately the proposed new access is brought into first beneficial use.

Reason: To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety in accordance with policy DM1.

5. There shall be no discharge of surface water onto the Highway.

Reason: To prevent hazards caused by water flowing onto the highway and to avoid the formation of ice on the highway in the interest of highway safety to ensure accordance with policy DM1.

6. Each tandem vehicular parking space shall have minimum dimensions of 2.9 metres x 11 metres to accommodate two vehicles

and each vehicular parking space which is bounded by walls or other construction shall have minimum dimensions of 3.4 metres x 5.5 metres.

Reason: To ensure adequate space for parking off the highway is provided in the interest of highway safety in accordance with Policy DM8.

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

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

8. Prior to occupation of the proposed dwelling, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack 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.

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.

9. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM 1.

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: Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site.

2: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area it covers and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

3: 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](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Development Management Team  
Ardleigh Depot,  
Harwich Road,  
Ardleigh,  
Colchester,  
CO7 7LT

Environment Agency  
04.11.2020

ERECTION OF 2 SEMI-DETACHED HOUSE WITH PARKING SPACES ON A VACANT SITE.

LAND ADJACENT 21 WATERSIDE BRIGHTLINGSEA ESSEX

Thank you for your consultation we have reviewed the plans as proposed and we have no objection to this planning application, providing that you have taken into account the flood risk considerations which are your responsibility. We have highlighted these in the flood risk section below.

#### 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 Erection of 2no. Semi-detached dwellings with parking 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. To assist you in making an informed decision about the flood risk affecting this site, the key points to note from the submitted FRA, referenced AEL-4491-FRA-918243 and dated 29th September 2017, and the 28.8.2020 addendum which incorporates the latest Coastal Modelling 2018 data are: Actual Risk

- The site lies within the flood extent for a 0.5percent 1 in 200 annual probability event, including an allowance for climate change.

- The site does benefit from the presence of defences. The defences have an effective crest level of 3.8m AOD which is below the 0.5 percent 1 in 200 annual probability flood level including climate change AOD and therefore the site is at actual risk of flooding in this event.

- Finished ground floor levels have been proposed at 5.63m AOD. This is above the 0.5percent 1 in 200 annual probability flood level including climate change of 5.31m AOD and therefore at risk of flooding by 0.32m depth in this event.

- Finished first floor levels have been proposed at 5.87. The ground floor level is proposed at 5.63mAOD which is above the 0.1percent 1 in 1000 annual probability including climate change flood level of 5.54m AOD and therefore there is safe refuge AND the living areas will not flood internally.

- The surrounding site levels from the topographic survey are a minimum of 3.71m AOD and therefore flood depths on site are up to 1.6m in the 0.5percent 1 in 200 annual probability flood event including climate change.

- Therefore assuming a velocity of 0.5m per s the flood hazard is danger for all including the emergency services in the 0.5percent 1 in

200 annual probability flood event including climate change.  
This proposal does not have a safe means of access in the event of flooding from all new buildings to an area wholly outside the floodplain up to a 0.5percent 1 in 200 annual probability including climate change flood event. We have no objections to the development on flood risk access safety grounds because an Emergency Flood Plan has been submitted by the applicant but you should determine its adequacy to ensure the safety of the occupants.  
-Compensatory storage is not required.  
-Flood resilience, resistance measures have been proposed  
-A Flood Evacuation Plan has been submitted referenced 73360.02R2 and dated 2020-08-28

Essex County Council  
Archaeology  
18.11.2020

The above planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest.

The proposed development lies within the historic town of Brightlingsea and within the Conservation Area. To the north lies the core of the medieval town while the development lies within the area of the historic waterfront connected by 19th century expansion of the town. Historic mapping reveals that a number of buildings existed within the development area which no longer survive, evidence for these and possibly earlier remains associated with the maritime and industrial history of the town may survive below ground and will be impacted upon by the proposed development.

The following recommendations are made in line with the National Planning Policy Framework

#### RECOMMENDATION A Programme of Archaeological evaluation

1. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.
2. No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in 1 above.
3. The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

#### Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. In the first instance a programme of trial trenching investigation will be required A brief outlining the level of archaeological investigation will be issued from this office on request Tendring District Council should inform the applicant of the recommendabon and its financial implications.

If you have any questions about this advice, please do not hesitate to

contact me.

### **3. Planning History**

17/02138/FUL	Proposed 2 two bedroom semi-detached dwellings with parking.	Refused	27.02.2018
19/00873/FUL	Erection of 2no. semi-detached dwellings with parking.	Refused Dismissed at Appeal	11.10.2019

### **4. Relevant Policies / Government Guidance**

*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
<i>Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)</i>	
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*

## **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) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10<sup>th</sup> December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council is now making arrangements to formally adopt Section 1 of the Local Plan in its modified state and this is expected to be confirmed at the meeting of Full Council on 26<sup>th</sup> January 2021 – at which point will become part of the development plan and will carry full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan. In the interim, the modified policies in the Section 1 Local Plan, including the confirmed housing requirement, can be given significant weight in decision making owing to their advancement through the final stages of the plan-making process.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) is now expected to proceed in 2021 and two Inspectors have already been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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 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 technically falls below 5 years – but this is only because, until the modified Section 1 Local Plan is formally adopted at the end of January 2021, housing supply has to be calculated against a housing need figure derived through the government’s ‘standard methodology’ – a figure that is significantly higher than the ‘objectively assessed housing need’ of 550 dwellings per annum in the Section 1 Plan and confirmed by the Inspector in his final report to be sound. Because of this technicality, the NPPF still requires 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.

However, because the housing land supply shortfall is relatively modest when applying the standard method prescribed by the NPPF and significant weight can now be given, in the interim, to the sound policies in the modified Section 1 Plan (including the housing requirement of 550 dwellings per annum), the reality is that there is no housing shortfall and, on adoption of the Section 1 Plan, the Council will be able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years. Therefore, in weighing the benefits of residential development against the harm, the Inspector’s confirmation of 550 dwellings per annum as the actual objectively assessed housing need for Tendring is a significant material consideration which substantially tempers the amount of weight that can reasonably be attributed to the benefit of additional new housing – particularly in the consideration of proposals that fall outside of the settlement development boundaries in either the adopted or the emerging Section 2 Local Plan.

## **5. Officer Appraisal (including Site Description and Proposal)**

### **Site Description**

The application site is located on the northern side of Waterside within the settlement boundary of Brightlingsea in both the saved and emerging local plans. The site is also located within the Brightlingsea Conservation Area and a Flood Zone 3a.

The site is currently vacant but was previously utilised for storage purposes. The site frontage is enclosed to the highway by 2m high metal railings.

### **Proposal**

This planning application seeks permission to erect two semi-detached dwellings comprises of two bedrooms with associated parking.

### **Planning History**

Planning permission was refused under planning reference 19/00873/FUL for the erection of two x semi-detached dwellings with parking due to there being other sequentially preferable sites available.

The application was taken to appeal and dismissed by the Planning Inspectorate on 20 March 2020 under reference APP/P1560/W/19/324577. The appeal was dismissed as the development failed the sequential test due to its location within an area of high flood risk.

### **Appraisal**

#### **1. Principle**



The site is located within the settlement development boundary for Brightlingsea in both the saved and draft local plans. Furthermore, the site is not protected for any commercial use in either plan and the previous storage use on the site appears to have long since left. Consequently, as the site is vacant and does not accommodate an established commercial use its re-development for residential purposes is acceptable in principle and the provisions of saved policy ER3 (Loss of Employment) do not apply.

Consideration now turns to matters of detail including design/impact, residential amenities, highway safety, flood risk, trees and landscaping, financial contributions - open space and habitat regulations assessment.

## 2. Design/Impact

Paragraph 11 of the NPPF sets out the overarching objectives for achieving sustainable development, one being the environmental objective which requires the planning system to contribute to protecting and enhancing our natural, built and historic environment including making effective use of land. Paragraph 127 of the NPPF states that developments should function well, should add to the overall quality of the area, are visually attractive as a result of good architecture and layout and are sympathetic to local character including the surrounding built environment and landscape setting.

Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) state that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.

Saved Policies QL9, QL10 and QL11 of the adopted Tendring District Local Plan (2007) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Emerging Plan. Saved Policy HG14 requires a minimum of 1 metre side isolation between dwellings.

In terms of design and appearance, the dwellings are two storey. The front elevation of both dwellings, incorporates a pop out window and canopy metal cladding with roof with a fixed glazed window to the first floor, roof lights and a hipped roof. Both dwellings comprise of two tandem parking spaces which are located to the side elevations of each dwelling. As stated within the Brightlingsea Conservation Area Appraisal, *'Buildings on the north side generally date from the Victorian period: they are typically two storeys, and detached with hipped roofs'*. It is considered that the features are all positive and contribute positively to the overall design and appearance of the proposed dwellings and the Brightlingsea Conservation Area.

ECC Heritage have been consulted on this application and have stated that there is no in principle objection to the erection of two new dwellings on the vacant site. The overall scale of the building is considered acceptable. However, there are concerns regarding the design and materiality of the proposed dwellings which is not in keeping with the character and appearance of the Conservation Area. The rooflights to the front roof pitch would be unacceptable and they should be removed from any future application. There is a preference for the rear extensions to be better articulated to reduce the massing and bulk of the proposed dwellings. The use of two materials within the flank elevations is not considered to uphold the architectural quality of the area, nor is it appropriate to the seaside context of the area. The fenestration is relatively bland and could make better reference to the traditional character of the neighbouring properties. The appearance of the 'pop out' windows and the door is overly modern and there is a preference for them to be more traditional. Given the sensitivities of the site, it is recommended a more bespoke approach to the design and appearance of the proposed dwellings, which has not been realised within this application.

As this application is a re-submission of planning permission 19/00873/FUL, the heritage comments have not been taken into consideration on this occasion as they did not form part of the grounds for refusing that earlier application.

The materials proposed are red facing brick with black weatherboarding, grey slate tiles, white ppc windows, dark wood within white ppc aluminium frame, rear bifold doors - white ppc and black rain water good. It is considered that there is a mixture of dwelling styles and materials within the street scene and therefore the proposed materials are considered to be acceptable in terms of design and appearance.

The proposed dwellings would occupy a footprint similar to that of surrounding dwellings. As a result the additional two dwellings would not represent a cramped form of development detrimental to the street scene, as it would provide important gaps to both sides in excess of the minimum standards set out within saved Policy HG14.

Policy HG9 of the Saved Tendring Local Plan 2007 states that private amenity space for a dwelling of two bedrooms or more should be a minimum of 75sqm. The submitted plans demonstrate that both dwellings can accommodate 75 sqm.

### 3. Residential Amenities

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties'. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

To the south east of the application site is number 29 Waterside and to the north west is number 21 Waterside. Both side elevations of the proposed dwellings incorporate a fixed obscure glazed window and a high level window which will be obscure glazed and therefore will not cause any overlooking. To the rear of the application site is a boat yard. The internal arrangement of the proposed dwellings has been designed so that the first floor is recessed to ensure that there is not any overlooking onto neighbouring amenities. To the ground floor the proposal incorporates the raising of finished floor levels to 5.63m to comply with Flood Risk. Although this is higher, the floor levels will not interfere with the overlooking onto neighbouring amenities.

### 4. Highway Safety and Parking Provision

ECC Highways have been consulted on this application and have stated that the proposal is identical to approved application 19/00573/FUL. Highways therefore have no objections subject to conditions relating to pedestrian visibility splay, no unbound materials, vehicular access, redundant access, no discharge of surface water, parking space measurements, cycle parking, residential travel pack and a construction method statement. The cycle parking will not be imposed as a condition as there is sufficient storage to the rear of the dwellings. The application is for a minor development therefore the residential travel pack condition will not be imposed.

The plans provided demonstrate two tandem parking spaces to serve both dwellings. The parking spaces measure 5.5 metres by 2.9 metres which complies with Essex Parking Standards requirements. As such the parking provision is considered to be acceptable.

### 5. Flood Risk

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 the erection of 2 semi-detached houses and associated parking, 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. SHLAAA 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 sites not benefiting from planning permission and potential issues with access. The second would be considered unviable due to the cost of the site.

Notwithstanding the above, it remains the case that across the District and in Brightlingsea specifically, it is still considered that there are sequentially preferable sites available for development.

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'.*

Further, the Inspector 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 Inspector 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 approach to sequential testing is also acknowledged through another recent planning appeal within the District (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.

## 6. Trees and Landscaping

There are no trees or other vegetation on the application site and there is little scope for new planting. Therefore, the development is acceptable in terms of trees and landscaping.

## 7. Financial Obligation - Open Space

Policy COM6 of the adopted Tendring District Local Plan 2007 states "For residential development below 1.5 hectares in size, developers shall contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built".

There is currently a deficit of 13.68 hectares of play and formal open space in Brightlingsea. Any additional development in the Brightlingsea area will increase demand on already stretched play facilities and formal open space. A contribution towards increasing the play or facilities and formal open space is relevant and justified to the planning application. Any contribution would be used to make improvements Western Promenade

## 8. Habitat Regulations 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 Areas of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against the in-combination recreational impact from new dwellings.

A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be the RAMS level contribution as recommended by Natural England.

The application scheme proposes a residential dwelling on a site that lies within the Zone of Influence (Zol) being approximately 0.1km away from Colne Estuary RAMSAR and Essex Estuaries SAC and SPA. New housing development within the Zol would be likely to increase the number of recreational visitors to Colne Estuary and Essex Estuary 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 completed unilateral undertaking has been provided to secure this legal obligation and to ensure 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.

## 9. Archaeology

Place Services Archaeology team have commented on this application and have stated that the planning application has been identified as having the potential to harm non-designated heritage assets with archaeological interest. The proposed development lies within the historic town of Brightlingsea and within the Conservation Area. To the north lies the core of the medieval town while the development lies within the area of the historic waterfront connected by 19th century expansion of the town. Historic mapping reveals that a number of buildings existed within the development area which no longer survive, evidence for these and possibly earlier remains associated with the maritime and industrial history of the town may survive below ground and will be impacted upon by the proposed development. The team have recommend conditions to be imposed relating to a written scheme of investigation and a post excavation assessment.

## 10. Other Considerations

Brightlingsea Town Council recommends refusal, as the proposal does not appear to cover the policy of the District Council with regard of the sequential test.

No letters of representation have been received.

## 6. **Recommendation**

Refusal - Full

## 7. **Reason for Refusal**

- 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.

## **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.

Building Control

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

<b>Are there any letters to be sent to applicant / agent with the decision? If so please specify:</b>	YES	NO
<b>Are there any third parties to be informed of the decision? If so, please specify:</b>	YES	NO