



TENDRING DISTRICT COUNCIL

Planning Services

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

AGENT:	Geoffrey Pickard 18 Alfred Terrace Walton On The Naze Essex CO14 8PD	APPLICANT:	Mrs Cheryl Bircham 45 Easton Way Frinton On Sea Essex CO13 9NU
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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 20/01412/FUL **DATE REGISTERED:** 31st December 2020

Proposed Development and Location of Land:

**Proposed new dwelling.
Vacant Land 11 Southcliff Parade Walton On The Naze 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 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.

The site is proposed to be accessed at the front from Southcliff Parade by extending the unmade un-adopted road to allow for vehicular access to the application site.

Tendring District Council (TDC) confirm that the cliffs in this area have a low factor of safety and are subject to small cliff moments known as 'creep'. The low factor of safety and 'creep' is due to the slope angle being too steep. The current slope angle is between 25° to 35° where for a stable slope of this nature a slope angle of between 10° to 18° is required. TDC therefore expect the developer to ensure the proposed development would not add to this instability. A ground investigation should be carried out and structural calculation. These reports have not been provided by the applicant and so there is no certainty that a safe access is possible.

The private unmade and uneven road is narrow with the boundary bordering the cliff edge. In places there is little or no protection by means of barriers and as a consequence it is dangerous. All maintenance of the vegetation on the cliff edge is undertaken manually due to the instability of the cliff edge and lack of space for vehicles to manoeuvre. Furthermore, the cliff edge area in front of the application site is narrower than the unmade private road with no barrier in place significantly affecting the safety of

users of vehicles and pedestrians.

Essex County Council Highways have confirmed that areas within the application site should be identified for the purpose of loading/unloading/reception and storage of materials to ensure appropriate facilities are available. There is currently no vehicular access to the site and there is no explanation or construction method statement submitted that offers a solution. In addition no provision is made for the parking of construction workers vehicles. These matters are likely to contribute to the instability of the cliff and also serve to impact the safety of pedestrians using the path. The absence of a safe and appropriate access is considered unacceptable.

- 2 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 application scheme constitutes a new dwelling on a site that lies within the Zone of Influence (Zoi) being approximately 1800 metres from Hamford Water SAC, SPA and RAMSAR. New housing development within the Zoi would be likely to increase the number of recreational visitors to Hamford Water 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 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.

- 3 Paragraph 54 of the National Planning Policy Framework (2019) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 of the NPPF states planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development.

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". These sentiments are carried forward within emerging Policy HP5.

In line with the requirements of saved Policy COM6 and emerging Policy HP5, the Council's Open Space Team have been consulted on the application to determine if the proposal would generate the requirement for a financial contribution toward public open or play space.

There is currently a deficit of 14.12 hectares of equipped play in Frinton, Walton & Kirby. Any additional development in Walton-on-the-Naze will increase demand on already stretched play areas. The nearest play area to the proposed development is located 0.6 miles away at Bathhouse Meadow. Due to the significant lack of play facilities in the area

a contribution towards play is justified and relevant to the planning application, any contribution received would be spent on the ongoing improvements at Bathhouse Meadow.

A completed S106 legal agreement to secure the above-mentioned planning obligations has not been provided and the application is therefore contrary to the above-mentioned policies.

In the absence of any means to address a shortfall of public open space in the locality, the proposal is contrary to public amenity and contrary to Policies QL12 and COM6 of the Saved Tendring District Local Plan 2007 and to the provisions of the NPPF.

DATED: 25th February 2021

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

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG3 Residential Development Within Defined Settlements

HG9 Private Amenity Space

HG14 Side Isolation

COM6 Provision of Recreational Open Space for New Residential Development

EN1 Landscape Character

EN6 Biodiversity

EN11A Protection of International Sites European Sites and RAMSAR Sites

EN17 Conservation Areas

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

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP5 Open Space, Sports & Recreation Facilities

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL8 Conservation Areas

Local Planning Guidance

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 reason(s) 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.