

DELEGATED DECISION OFFICER REPORT

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Planning Development Manager authorisation:	TF	25/02/2021
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Application: 20/01412/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mrs Cheryl Bircham

Address: Vacant Land 11 Southcliff Parade Walton On The Naze

Development: Proposed new dwelling.

1. Town / Parish Council

FRINTON & WALTON
TOWN COUNCIL
11.01.2021

RECOMMENDS - REFUSAL, concern in regard to development at this location, the lack of services and in regard to subsidence and instability of cliffs.

2. Consultation Responses

TDC Building Control and
Access Officer
09.11.2020

Clarification required as to access for a fire fighting appliance.

ECC Highways Dept
07.12.2020

The Highway Authority observes that Southcliff Parade is classified as a Private Road and would not normally comment, however, the site is in a town centre location where there is good transport links; there are existing waiting restrictions covering the adopted highway in the vicinity of the site and it is noted that the proposal has off-street parking set aside within the boundary of the site, 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 vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.
2. 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.
3. The proposed development shall not be occupied until such

time as domestic car parking for a minimum of two vehicles has been provided in accordance with the

Parking Standards. The agreed car parking shall be retained at all times for such purpose.

Reason: To ensure that on street parking of vehicles in the adjoining streets/roads does not occur and that appropriate parking is provided in accordance with Policy DM8.

4. No development shall take place until the areas within the site are identified for the purpose of loading/unloading/reception and storage of materials and manoeuvring shall be provided and retained thereafter for duration of the works.

Reason: To ensure that appropriate loading / unloading facilities are available in the interest of highway safety in accordance with policy DM1.

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: It is recommended prior to the commencement of any work on the site a joint inspection of Southcliff Parade to be used by construction vehicles should be carried out by the applicant and the owner(s) of the road, to include photographic evidence. The route should then be inspected again, after completion of the development, and any damage to the private road resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the owner(s) of the road.

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

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 or by post to:

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

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

TDC Tree & Landscape
Officer
20.11.2020

There is a small Eucalyptus and a culinary Apple tree situated on the land. Neither tree makes such a significant contribution to the amenities of the locality that they merit retention or protection by means of a Tendring District Council Tree Preservation Order.

Although there appears to be little scope for new planting; soft landscaping opportunities should be maximised on the frontage of the development to enhance, as far as is possible, the appearance of the development and the public realm.

TDC UU Open Spaces
02.12.2020

Response from Public Realm
Open Space & Play

Application Details

Application No: 20/01412/FUL

Site Address: Land 11 Southcliff Parade Walton on the Naze Essex

Description of Development: Proposed new dwelling with log cabin studio

Current Position

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.

Recommendation

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.

Essex County Council
Heritage
21.01.2021

The application is for a proposed new dwelling.

This letter should be read in addendum to my previous response which contained errors in the last paragraph. The below information should supersede the last paragraph of my previous response.

Whilst ECC Heritage do no objection to a proposal for development on this site in principle, they do recommend the local planning authority have regard of paragraph 200 of the NPPF. This proposal is not considered to be of a quality which preserves or enhances the character and appearance of the Conservation Area and as such paragraph 196 of the NPPF is relevant. A Heritage Statement has also not been forthcoming and the application is not compliant with paragraph 189 of the NPPF. The setting of the adjacent nineteenth century buildings also requires consideration and, based on the information provided, this will cause harm to their setting and appreciation in the Conservation Area which should be considered under paragraph 197 of the NPPF.

If this site is to be developed, it is recommended that a higher quality and more appropriate design is required. This should be justified by a

more in depth understanding of the Conservation Area and the site's location within it.

Essex County Council
Heritage
20.01.2021

The application is for a proposed new dwelling.

The site is located in a Conservation Area and in a prominent location.

ECC Heritage have no objection to development of this site. Development in a Conservation Area typically requires a bespoke response. The design of the new building is not considered to draw influence from the Conservation Area, however this will be located in a row of new buildings which are considered to be of little architectural merit and do little to enhance the special interest of this area.

Whilst ECC Heritage have no objection to this proposal, it is recommended that the local planning authority have regard of paragraph 200 of the NPPF.

TDC Environmental
Protection
25.01.2021

I can confirm the cliffs in this area have a low factor of safety and area subject 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° required. Therefore we would expect the developer to ensure the proposed development would not add to this instability. We would expect the developer to do this by carrying out ground investigation and structural calculation.

If the development was to cause instability and movement within the cliffs we would seek to recover our losses.

TDC Open Spaces
19.01.2021

Further to receipt of this and viewing the application I do share concerns expressed by some local residents with regard to access issues, traffic, parking and the overall stability of the cliff edge..

It is appreciated that these may not be material planning considerations, but it is worth noting that as a Council we receive many complaints / expressions of concerns from this area about vehicle movements and parking from springtime through to Autumn. We have also tried to limit use of the road near the cliff edge for parking, or planting due to concerns about safety.

The status of the road as a private road or highway not maintained at public expense makes vehicle movement tricky due to the uneven surface and the relatively narrow width of the road with a boundary bordering on the cliff edge where in places little or no protection (barriers) is in place is potentially dangerous, especially for construction or larger vehicles generally.

The absence of alternative means of access is a concern generally for normal traffic, but more so in respect of emergency vehicles - fire / ambulances.

The Public Realm service is responsible for the maintenance of vegetation along the cliffs and we do not use tractors and side arm due to the instability of the cliff edge and the lack of space for vehicles to move about in. All work is undertaken manually.

My service has already commented on the open space / play requirements and I would add that any additional building or dwelling in this area generating additional vehicles, or vehicle movements is unlikely to improve the quality of life for anyone living in the vicinity, or the overall safety concerns, certainly during construction.

3. Planning History

FRW/47/53	Use as site for one caravan	Refused	
12/00997/FUL	Temporary siting of caravan on vacant plot for 3 years	Refused	
20/00015/FUL	Proposed erection of a non residential summer house.	Withdrawn	15.04.2020
20/30111/PREAPP	Proposed 2 storey new dwelling with log cabin to rear.	Refused	17.08.2020
20/01412/FUL	Proposed new dwelling.	Current	

4. Relevant Policies / Government Guidance

*NPPF National Planning Policy Framework February 2019
National Planning Practice Guidance*

Tending 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

Tending 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

*Local Planning Guidance**Essex County Council Car Parking Standards - Design and Good Practice**Essex Design Guide***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. In this latter regard, as of 26th January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

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 10th 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 has now formally adopt Section 1 of the Local Plan, in its modified state, at the meeting of Full Council on 26th January 2021, at which point it became part of the development plan and carries full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will proceed in early 2021 and two Inspectors have 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.

With the adoption of the modified Section 1 of the emerging Local Plan, the Councils 'objectively assessed housing need' of 550 dwellings per annum has been found 'sound' and there is no housing shortfall. The Council is able to report a significant surplus of housing land supply over the 5 year requirement, in the order of 6.5 years.

5. Officer Appraisal

Site Description

The application site lies on the cliff top of Southcliff Parade facing south east towards the sea front, with views of Walton Pier to the east. To the front of the site runs a non-designated footpath and in front of that is rough grass on the cliff edge. The site is bounded by closed board fencing which has an area of grass with two small trees and various shrubs. Contained within the site is a mobile home which is not occupied. Pedestrian access can be gained to the site through a gate although there is currently no vehicular access.

Description of Proposal

The application seeks full planning permission for one new dwelling.

Assessment

The main considerations in this instance are;

- Principle of Development
- Scale, Layout and Appearance and heritage
- Trees and Landscaping
- Access, Parking and Highway Safety
- Residential Amenities
- Financial Contribution – Recreational Disturbance
- Financial Contribution – Open Space
- Other considerations

Principle of Development

Walton on the Naze is categorised as a town within the adopted Tendring District Local Plan 2007 and as a Smaller Urban Settlement within the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. It is considered that these smaller urban settlements with their existing infrastructure and services in place could deliver sustainable housing growth.

The site lies within the Settlement Development Boundary of Frinton on Sea and Walton on the Naze as defined within the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017.

Policy HG3 of the Adopted Tendring Local Plan 2007 and Policy SPL2 of the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 states that there is a general presumption in favour of new development within defined development boundaries of towns and villages, subject to detailed consideration against other relevant Local Plan policies.

The principle of residential development on this site is therefore established. This is recognised as a socially sustainable location.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 necessitates that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The detailed considerations relevant to this proposal are set out below.

Scale, Layout, Appearance and Heritage

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. Outside development boundaries, the Local Plan seeks to conserve and enhance the countryside for its own sake.

In a similar way Policy EN17 of the adopted Tendring District Local Plan (2007) and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017) seeks to ensure that any new development which affects the setting of a conservation area, would not prejudice the setting and surroundings of the conservation area and will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area, especially in terms of: any important views into, out of, or within the Conservation Area.

The site holds an elevated and prominent position on the cliff top which is publicly visible and holds views across the sea front at Walton on the Naze adjacent to the Frinton and Walton Conservation Area. Situated south west of the application site is a development known as Seaview Heights built in the late 1980's and early 1990's. These buildings do not serve to complement the seafront location as a result of their size and stark use of materials, however they better fit in with the various styles of housing seen to the rear in Woodland Way which has been developed over a period of time. To the north east and located within the Conservation Area are a terrace of two storey bay fronted houses, a detached house of three storeys with full height projecting bays and on the corner Southcliff Lodge which also has bay windows and has been altered and extended over time.

Essex County Council Heritage were consulted for heritage advice given the location of the application site adjacent to the Conservation Area. Although they have no objection in principle they feel that a higher quality and more appropriate design is required.

The proposed dwelling is two storey with attic rooms and full width balcony overlooking the sea. The scale, form and bulk of the proposed building appears imposing however when compared against the Seaview Heights apartments, along with the use of render as seen locally and design of the front elevation it is on balance considered acceptable.

Trees and Landscaping

The Council's Tree and Landscape Officer has been consulted on the proposal and he confirms that the small trees on the site do not warrant retention or protection by means of a Tendring District Council Tree Preservation Order.

Although there appears to be little scope for new planting; soft landscaping opportunities should be maximised on the frontage of the development to enhance, as far as is possible, the appearance of the development and the public realm. A scheme of soft and hard landscaping could be secured by condition which would help assimilate the proposal in its surrounding.

Access, Parking and Highway Safety

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.

Furthermore, the Essex County Council Parking Standards 2009 state that for dwellings of 2 or more bedrooms, 2 off-street parking spaces should be provided.

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) principally maintain the cliff edge at Southcliff Parade and they have been consulted on the proposal due to concerns of cliff stability and safety arising from the new development including a new vehicular access.

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.

TDC have also tried to use their powers to limit use of the private road near the cliff edge for parking, or planting due to concerns about safety. 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 been consulted as part of the application process although they would not normally comment due to the private nature of the road. However, they confirm that the proposal is acceptable subject to conditions. One of the conditions pertains to areas within the site being 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.

There is sufficient space on the site for parking and turning serving the completed dwelling however the absence of a safe and appropriate access is considered unacceptable.

Residential Amenities

Paragraph 127 of the National Planning Policy Framework 2019 states that planning should always seek to secure a good standard of amenity for all existing and future occupants. In addition, Policy QL11 of the Tendring District Local Plan (2007) states that new 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. Emerging Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 supports these objectives. Furthermore, Policy HG9 of the adopted Local Plan provides standards of minimum gardens sizes.

The nearest neighbouring dwellings are Seaview Heights apartments to the south west. The proposed dwelling is a distance of 2.21 metres to the shared south west side boundary with Seaview Heights ensuring no significant impact in terms of loss of light, privacy or overlooking.

A distance of more than 35 metres exists to the rear of the properties along Woodberry Way, notably 15, 17 and 19 being the closest. The Essex Design Guide requires a minimum distance of 25 metres between rear facing properties which has been met in this case.

9 Southcliff Parade, to the north east of the application site is a distance of at least 15 metres from the proposal although it has a side garden which abuts the application site. The proposal has been designed with high level small windows on the north eastern elevation so as to prevent direct overlooking of the garden.

The proposal would therefore result in no material harm to neighbouring amenity.

Saved Policy HG9 of the Tendring District Local Plan 2007 seeks to provide a minimum of 100 square metres of private amenity space for a three bedroomed property. The private amenity space provided is over 150 square metres and is considered ample.

Financial Contribution – Recreational Disturbance

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 (Zol) being approximately 1800 metres from Hamford Water SAC, SPA and RAMSAR. New housing development within the Zol 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.

Financial Contribution – Open Space

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.

Other considerations

Frinton and Walton Town Council object to the proposal in respect of the lack of services and concern for development in this area.

A further ten objections have been received which raise the following concerns:

1. The cliffs are not stable or wide enough to support extra traffic
2. Massive cracks in the cliff top
3. My property underpinned
4. Council already have concerns about current parking on the cliffs

5. Impact of heavy plant and construction traffic on the cliff
6. Subsidence of the narrow cliffs
7. Dangerous cliff top
8. Cracks in pathway
9. In front of numbers 8 and 9, Southcliff is supported by a steel enforced wall which is now deteriorating and this will exacerbate the problem
10. Road un-adopted and in poor condition
11. Conservation area
12. Safety of people walking along the path/Health and safety of tourist and visitors
13. Loss of light/privacy
14. No vehicular access
15. Minimal parking already
16. Additional traffic when complete
17. Waste collections
18. Was told no other buildings unless an alternative entrance from Woodberry Way could service it
19. Brother may live in log cabin without permission
20. How can caravan be removed
21. Access through Seaview Heights has been denied
22. There are no services/utilities to the site
23. Noise pollution

Points 1- 10 relate to the condition and the stability of the cliff and this has been addressed in the report.

Points 11-16 have been addressed in the report

Point 17 – the applicant would be required to liaise with the Local Authority in respect of waste collections

Point 18 – each planning application is assessed on its own merits

Point 19 – the log cabin has been removed from the proposal

Point 20-22 are not planning considerations

Point 23 - excessive noise would be a matter for the Council's Environmental Health team. Noise associated with a residential property is not likely to require a noise assessment nor is it considered necessary to condition any planning permission for a residential property in terms of noise.

Conclusion

For the reasons set out above, due to the unsafe and inappropriate access the application is recommended for refusal together with the lack of a completed UU to secure the planning obligations.

6. Recommendation

Refusal - Full

7. Reasons for Refusal

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 movements 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.

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.

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