



# TENDRING DISTRICT COUNCIL

## Planning Services

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

**AGENT:** Sharon Smith - FJG  
Charter Court  
Newcomen Way  
Colchester Business Park  
Colchester  
Essex  
CO4 9YA

**APPLICANT:** Mr Yadav & Ms Donovan  
C/o Agent

### TOWN AND COUNTRY PLANNING ACT 1990

**APPLICATION NO:** 17/01993/FUL      **DATE REGISTERED:** 9th October 2020

Proposed Development and Location of Land:

**Erection of two dwellinghouses with associated garages and including a garage for the Martello Tower  
Land adjacent Martello Tower Arthur Ransome Way 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 8 of the National Planning Policy Framework 2019 (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. Furthermore, Paragraph 127 of the National Planning Policy Framework 2019 requires that development should respond to local character and history, and reflect the identity of local surroundings. It goes on to say that local distinctiveness should be promoted and reinforced. Saved Policy QL9 and EN1 of the Tendring District Local Plan (2007) and Policy SPL3 and PPL3 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) seeks to ensure that development is appropriate in its locality and does not harm the appearance of the area.

In addition saved policy QL11 of the Tendring District Local Plan (2007) and emerging policy SPL3 state that all new development should be compatible with surrounding land uses and minimise any adverse environmental impacts. In particular development will only be permitted if, inter alia, the scale and nature of the development is appropriate to the locality and the health, safety or amenity of any occupants or users of the proposed development will not be materially harmed by any pollution from an existing or committed use.

In an attempt to overcome the heritage objections by preserving the setting of the Martello Tower the property at the southern end of the site has been sited between an existing boat shed serving the boat yard to the east and enclosures forming the rear

boundary of the adjacent care home car park. As a result the property proposed on this plot would be sited in a contrived position directly adjacent to a substantial boat shed building. Consequently, this element of the development would appear cramped and incongruous in this location adjacent to an incompatible commercial building. This element of the development would therefore not respond appropriately to the local character as required by the policies noted above.

Moreover in the absence of any information regarding potential noise impacts upon future residents it cannot be concluded that the residential use proposed or its siting is compatible with the adjacent commercial uses. As such has not been demonstrated that the development would not harm the future residential amenities of residents or the function of the adjacent of boat yard.

- 2 Paragraph 155 of the NPPF (2019) states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Local Plans should be supported by Strategic Flood Risk Assessment and develop policies to manage flood risk from all sources, taking account of advice from the Environment Agency and other relevant flood risk management bodies, such as lead local flood authorities and internal drainage boards. 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:

- applying the Sequential Test;
- if necessary, applying the Exception Test;
- safeguarding land from development that is required for current and future flood management;
- using opportunities offered by new development to reduce the causes and impacts of flooding; and
- where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to facilitate the relocation of development, including housing, to more sustainable locations.

Paragraph 158 of the NPPF further states that the aim of the Sequential Test is to steer new development to areas with the lowest probability 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 probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.

Saved Policy QL3 also supports this approach by stating that 'development should be located to avoid danger to people and property from flood risk now and for the lifetime of the development. For this purpose, development will not be permitted where sites of lesser flood risk are available to meet development need'.

The Environment Agency (EA) acknowledge that the site lies partly within tidal Flood Zone 3a, which is defined as having a high probability of flooding, whilst stating that the proposal is classified as a more vulnerable development. The northern-most property falls partly within a Flood Zone 3a whereas the southern-most property is situated wholly within Flood Zone 3a. However, whilst the EA has not objected because the site is currently defended, it further states that the Council should be satisfied that the sequential test has been passed.

In this instance, the Council acknowledges further sites with extant planning permission for similar housing development, for example within the Frinton/Walton Town Council

area, at Greenways, Church Lane, Great Holland (19/00560/OUT), Land adjacent The Street, Kirby-le-Soken (19/00560/OUT) and Green End Farm, Green End Lane, Great Holland (19/01684/COUNOT).

It is considered that having assessed the information submitted, officers have identified other sites in the surrounding area which could contain the development in a lower flood zone. The Council therefore does not agree that the sequential test requirement has been satisfied. The allocations in the emerging Local Plan, intelligence gathered in updating the SHLAA and knowledge of extant planning permissions indicates that there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding that are therefore considered sequentially preferable to the application site.

It is therefore considered that the proposal has failed the Sequential Test. The proposed residential development is therefore considered to be unacceptable and contrary to the advice contained in the NPPF, policy PLA1 of the emerging Local Plan, and policy QL3 of the 2007 Local Plan.

- 3 In terms of planning policy, the National Planning and Policy Framework (NPPF) establishes a presumption in favour of sustainable development in the planning system (paragraphs 7, 8, 10 and 11) which also identifies protection of the historic environment as an important element of achieving sustainable development.

Further policy principles relating to the historic environment are set out in Chapter 16 of the NPPF which emphasises the importance of conserving heritage assets, which are an irreplaceable resource, in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations (NPPF para. 184).

In particular paragraph 189 state that 'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance'.

Paragraph 194 States that 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'.

Paragraph 196 states Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

197 states that 'the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

Proposals that preserve "those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably" (para 200).

Additionally, Saved Policy EN23 of the Tendring District Local Plan (2007) and Policy PPL9 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication

Draft (June 2017) state that proposals for development that would adversely affect the setting of a listed building will not be permitted.

Martello Tower K is a grade II designated heritage asset, as well as being a scheduled monument with its forward battery located to the east of the tower. The tower was built between 1808 and 1812 and is the most northerly in the line of the Essex Martello towers. It was built to command the landing places and safe harbours to the rear of Walton-on-the-Naze and to oversee and protect the town.

The associated forward battery, which was constructed during the 1790s, is a rare survival - with only two Martello Towers where the forward battery is still intact. The Tower and associated battery possess a considerable amount of architectural and historic interest.

The applicant is proposing to construct two houses with associated garages to the east of the Martello Tower.

The two proposed dwellings, primarily the northern of the two houses and the garaging are clearly still within the setting of the Martello tower, and therefore any development of structures within the compound introduces new built form within this sensitive area and is therefore clearly harmful to the significance of the designated heritage asset. The level of harm remains high.

The applicant has also not provided any additional or updated supporting information in relation to the impact of the development on the historic environment, or the justification for the development as required by the policies of the NPPF.

Overall therefore it is concluded the proposed development would therefore result in a very serious degree of harm to the significance of the heritage assets. The development is therefore contrary to the aforementioned local and national planning policies.

- 4 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. Due to the significant lack of play facilities in the area a contribution towards play is justified and relevant to the planning application. The contribution will be used to provide enhancements at Bathhouse Meadow, Walton

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.

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

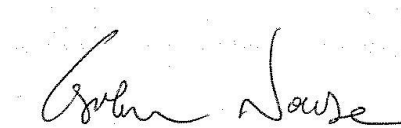
The application scheme proposes new dwellings on a site that lies within the Zone of Influence (Zol) of the Hamford Water SAC, SPA, Ramsar sites. New housing development within the Zol would be likely to increase the number of recreational visitors to the Hamford Water SAC, SPA, Ramsar sites and, in 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.

**DATED:**

**SIGNED:**




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Graham Nourse  
Assistant Director  
Planning Service

**IMPORTANT INFORMATION :-**

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

- QL11 Environmental Impacts and Compatibility of Uses
  - QL12 Planning Obligations
  - HG3 Residential Development Within Defined Settlements
  - HG7 Residential Densities
  - HG9 Private Amenity Space
  - HG14 Side Isolation
  - COM22 Noise Pollution
  - COM23 General Pollution
  - EN1 Landscape Character
  - EN6 Biodiversity
  - EN11A Protection of International Sites European Sites and RAMSAR Sites
  - EN11B Protection of National Sites SSSI's, National Nature Reserves, Nature Conservation Review Sites, Geological Conservation Review Sites
  - EN23 Development Within the Proximity of a Listed Building
  - EN29 Archaeology
- 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
  - LP2 Housing Choice
  - LP3 Housing Density and Standards
  - LP4 Housing Layout
  - PPL1 Development and Flood Risk
  - PPL3 The Rural Landscape
  - PPL4 Biodiversity and Geodiversity
  - PPL7 Archaeology
  - PPL9 Listed Buildings

Local Planning Guidance

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

**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.