

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
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Planning Development Manager authorisation:	TF	05/03/2021
Admin checks / despatch completed	CC	08.03.2021
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Application: 17/01993/FUL **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr Yadav & Ms Donovan

Address: Land adjacent Martello Tower Arthur Ransome Way Walton On The Naze

Development: Erection of two dwellinghouses with associated garages and including a garage for the Martello Tower

1. Town / Parish Council

FRINTON & WALTON
TOWN COUNCIL
19.02.2021

Recommends: REFUSAL - overdevelopment of the site, out of keeping in the locality and unsympathetic to the historic building. The Martello Tower is a relevant historical property and should be protected.

The open views to the Martello Tower should be maintained and not blocked by any development.

Concern in regard to the risk of flood.

The Town Council continues to support the very strong reasons given by English Heritage and the local Heritage Trust.

2. Consultation Responses

Essex County Council
Archaeology
22.01.2021

No further comments on the revised details of the above application

ECC Highways Dept
18.02.2021

The revised information that was submitted in association with the application has been fully considered by the Highway Authority. Due to the current COVID-19 restrictions no site visit was undertaken in conjunction with this planning application. The conclusions have been drawn from a desktop study with the observations below based on submitted material, and details of the previous application. The proposals are similar to the previous application that the Highway Authority did not raise any objections to.

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. Prior to occupation of the development the vehicular turning facilities, as shown on the submitted plan 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.

3. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

4. No unbound material shall be used in the surface treatment of the vehicular access or private drive throughout.

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

5. Prior to the first occupation of the development, a 500mm wide overhang strip shall be provided adjacent to the carriageway unless otherwise agreed, in writing, by the Local Planning Authority.

Reason: To ensure that adequate clearance for vehicles swept paths is provided in the interests of highway safety in accordance Policy DM7.

6. Prior to occupation of the development each vehicular access shall be constructed at right angles to the highway boundary/ private drive and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (equivalent to 5 low kerbs), shall be retained at that width for 6 metres within the site.

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

7. Each vehicular parking space shall have minimum dimensions of 2.9 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.

8. All double garages should have a minimum internal measurement of 7m x 5.5m.

Reason: To encourage the use of garages for their intended purpose and to discourage on-street parking, in the interests of highway safety and in accordance with Policy DM8.

9. 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.

10. 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.

11. 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.

Historic England
03.02.2021

Thank you for your letter of 22 Jan 2021 with revised description of work changed and amendments to the above application for planning permission. The application is now proposed for the erection of two dwelling houses with associated garages and including a garage for the Martello Tower.

On the basis of the information available to date, we offer the following advice to assist your authority in determining the application. Please note this letter should be read in conjunction with our previous letter of advice dated December 2017. Please note this letter is an objection on heritage grounds

Historic England Advice
Significance

Martello Tower 'K' was built between 1808 and 1812. It is a nationally important designated heritage asset, which also includes a forward battery, built during the 1790s, and located circa 80 m to the East. The tower and battery were originally enclosed in a ca. 16,000 m² rectangular compound, identified by cornerstones. The compound is still largely identified in the open area to the east of the Martello tower itself, it is still discernible, has survived within the current land boundaries and represents the immediate historic setting of the Martello tower (and curtilage of the listed building). The compound area should be regarded as a non-designated heritage asset in NPPF terms, because of the important and historic relationship it has with the

Martello and the forward battery.

Tower 'K' is one of 18 surviving Martello towers along the east coast, of which only 6 remain in Essex. There is only one other tower in Essex where its contemporary forward battery is also still extant. Tower 'K' is well preserved, though in poor condition. Its significance is high and the setting of the asset is needed both to understand the asset and to provide its context. As set out in previous letters the setting of the tower, the compound and the relationship of the forward batteries to the tower are key historic attributes that both enhance the asset and form its setting.

Impact

As set out in previous advice Historic England does not object in principle to the conversion of the Martello tower although we have yet to see either a planning application or a corresponding scheduled monument consent application.

In relation to this proposal we note the application has been reduced from four to three and now two dwellings but still includes garaging for the Martello and for the additional two dwellings.

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 in our view 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 reduction in the number of dwellings does preserve more of the relationship between the Martello and the forward battery and to some extent reduces the harm to the significance of the assets to some degree, however any development within the compound, particularly the northern of the two dwellings, and the garages is still within the compound of the Martello tower and battery and therefore continues to harm the relationship between the designated asset.

Policy

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 states 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 193 requires the planning authorities to place 'great weight' on the conservation of designated heritage assets, and states that the

more important the asset the greater the weight should be, 'this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its 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'.

Para 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).

Position

As set out in our letter of 2017 Historic England position is clear and this position remains the same. In our view the introduction of residential housing at this location would harm the historical and visual relationship between the tower and the battery. In particular it is the encroachment of new build elements, both houses and garaging within the historic compound for the tower and battery that will result in the highest degree of harm to the assets significance.

As we said before in 2017 '...the property divisions and current use of part of the site of the battery for boat storage is not an impediment to the future possibility of creating a stronger visual relationship, which would enhance the setting of the heritage assets, potential which would be lost were the proposed development to take place.' Fundamentally this remains our view.

Whilst we note the applicant has sought to reduce the amount of development, the location of the dwellings, particularly the northern of the two houses and all the garage structures remain in a prominent location within the compound area. The introduction of additional, new and modern built form into this environment is harmful to the significance of the compound and the designated heritage assets.

We further note the application now no longer includes the Martello tower itself which further reduces the opportunity for any public benefits that would be realised by giving the tower a sustainable use. The harm the proposed development would cause to the significance of the heritage assets continues to outweigh the benefits in our view.

We also note the applicant has 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 we have concluded the proposed development would therefore result in a very serious degree of harm to the significance of the heritage assets and we object to the development in principle.

Recommendation

Historic England objects to the application on heritage grounds. In particular we consider the application fails to satisfy paragraphs 189, 9194, 196 and 200.

Your authority should take these representations into account in determining the application. If there are any material changes to the proposals, or you would like further advice, please contact us.

Environment Agency
19.02.2021

Thank you for your re-consultation dated 22 February 2021. The Flood Risk Assessment reference and floor levels are unchanged since our previous response. Therefore we have no further comments to add from our previous letter referenced AE/2017/122348/02-L01 and dated 18 November 2020.

TDC UU Open Spaces
10.02.2021

Response from Public Realm
Open Space & Play

Application Details

Application No: 17/01993/FUL

Site Address: Land adjacent Martello Tower Arthur Ransome Way
Walton On The Naze Essex

Description of Development: Erection of two dwelling houses with

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.

Recommendation

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

Environment Agency
18.11.2020

Thank you for your application 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 Construction
of 4 houses and garages, 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).

Sequential Test and Exception Tests

The requirement to apply the Sequential Test is set out in Paragraph 158 of the National Planning Policy Framework. The Exception Test is set out in paragraph 160. These tests are your responsibility and should be completed before the application is determined. Additional guidance is also provided on Defra's website and in the Planning Practice Guidance.

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 2554/RE/09-20/01 and dated September 2020, are:

Actual Risk

- The site lies within the flood extent for a 0.5% (1 in 200) annual probability event, including an allowance for climate change.
- The site does benefit from the presence of defences. However these defences will overtop in the 0.5% (1 in 200) annual probability flood level including climate change and therefore the site is actual risk of flooding in this event.
- Finished ground floor levels have been proposed at 5.70m AOD. This is above the 0.5% (1 in 200) annual probability flood level including climate change of 5.01 m AOD and therefore dry of flooding in this event.
- Flood resilience/resistance measures have been proposed.
- The site levels are a minimum of 4.37m AOD and therefore flood depths on site are 0.64 m in the 0.5% (1 in 200) annual probability flood event including climate change.
- Therefore assuming a velocity of 0.5m/s the flood hazard is danger for all including the emergency services in the 0.5% (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 0.5% (1 in 200) annual probability including climate change flood event). We have no objections to the proposed 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.

Residual Risk

- Our data shows that in a worst-case scenario the site could experience worst case undefended flood depths of up to 0.64 metres during the 0.5% (1 in 200) annual probability including climate change breach flood event and up to 1.02 metres during the 0.1% (1 in 1000) annual probability including climate change breach flood event. You may wish to ask the applicant to provide a breach assessment for the

development site in their FRA so that you can make a more informed decision on flood risk.

- Therefore assuming a velocity of 0.5m/s the flood hazard is danger for all including the emergency services in the 0.5% (1 in 200) annual probability flood event including climate change.

- Finished ground floor levels have been proposed at 5.70m AOD. This is above the 0.5% (1 in 200) annual probability breach flood level including climate change of 5.01 m AOD and therefore dry of flooding in this event. This finished floor level will also mean there is safe refuge above the 0.1% (1 in 1000) annual probability breach flood level including climate change of 5.39m AOD.

- Flood resilience/resistance measures have been proposed

- A Flood Evacuation Plan has been proposed

Other Sources of Flooding

In addition to the above flood risk, the site may be within an area at risk of flooding from surface water, reservoirs, sewer and/or groundwater. We have not considered these risks in any detail, but you should ensure these risks are all considered fully before determining the application.

Additional guidance can be found at the end of this letter, we trust you find this advice useful.

National Amenity
Societies
06.11.2020

Thank you for consulting us on this application. We have reviewed the documents available on your website, and the Ancient Monuments Society objects to the amended plans submitted for this application.

Whilst the amendments have reduced the scale of the proposal, it continues to introduce residential development - comprising three detached houses and four detached garages - in the area between the grade II listed Martello Tower K and its forward battery, structures that are also both designated as a scheduled monument.

The listing description notes that Tower K is one of six remaining towers in Essex, and one of only two where the forward battery is still extant. This combination of structures is vital to understanding the British response to the threat of invasion in the early C19, and as the most northerly of the Essex towers constructed, its location is important as it protected the safe harbour and landing places to the rear of Walton and the waters towards Suffolk.

Section 16 of the NPPF (2019) states that when 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. The gradual expansion of the town, and more recently, the new residential development surrounding the tower to the North and West has already badly eroded the tower's setting and connection with the harbour. This development will result in the visual and physical separation of these two intrinsically linked structures. No additional information has been provided to justify this unsympathetic development and will result in a significant level of harm to the setting and significance of both the Martello Tower K and the forward battery.

National Amenity
Societies
24.11.2020

I would be grateful if the AMS could be informed of the outcome when this becomes available.

Thank you for informing the Georgian Group of the above application for Planning Permission. On the basis of the information available to date, the Group offers the following advice to assist your authority in determining this application.

Significance of Heritage Asset

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.

Proposal

The applicant is proposing to construct three houses with associated garages to the east of the Martello Tower which would be located between the tower and the forward battery.

The Georgian Group's Comments

The Group wishes to support the concerns raised by Historic England and the Ancient Monument Society. The proposed development would further harm the setting of the Martello Tower and would interrupt the historic relationship between the tower and the forward battery to the east of the site.

Recommendation

The Georgian Group objects to this application for Planning Permission on heritage grounds.

Paragraph 193 of the NPPF directs that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of the level of harm. The more important the asset, the greater the weight should be (paragraph 193). Paragraph 194 of the NPPF stipulates 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....'

Furthermore, as far as the settings of and inter-relationship between associated heritages assets are concerned, the following advice from the section of the PPG accompanying the NPPF entitled 'What is the setting of a heritage asset and how can it be taken into account?' is directly relevant: 'The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other

environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each'.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Your Authority should take these representations into account in determining the application.

3. Planning History

17/01993/FUL	Erection of two dwellinghouses with associated garages and including a garage for the Martello Tower	Current
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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
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

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 (including Site Description and Proposal)

Site Description

The site is an area of loose surfacing which extends to the east of the Martello Tower.

The application site is roughly rectangular in shape and extends to 0.2 hectares, behind Bedwells Boatyard and three other residential properties which front on to Mill Lane.

The area surrounding the tower has recently undergone significant change. To the west is a new three storey care home which extends in an 'L' shape bordering new residential development that extends further to the north up to the backwaters. The infrastructure for this housing development is completed, and includes a new estate road that extends along the majority of the northern boundary. To the south is the car park for the new care home, with a vehicular access available serving the Martello Tower.

The site is partly located within a Flood Zone 3a (High Risk).

The site lies outside of, but directly adjacent to the settlement boundary of Walton in the adopted local plan. It also lies outside of but immediately adjacent to the urban regeneration area identified by Policy QL6. The site lies inside the revised settlement boundary of the emerging local plan.

Proposal

This application proposes the construction of two detached dwellings and associated garaging. A further 3 bay garage with a home office above is proposed as part of this application for the Martello Tower.

Plot 1 will be located at the northern end of the site and will comprise of a 3 bedroom bungalow with an associated double garage. Plot 2 would be located at the southern end of the site adjacent to an existing boatyard building. The property on plot 2 would be two-storey in scale and comprise of 4 bedrooms.

The original application proposed 3 dwellings. In an attempt to overcome heritage objections the scheme has been reduced to 2 properties with the area between plots 1 and 2 being retained as open grassland.

Access to the site is proposed via the new estate recently constructed to the north.

Appraisal

Principle of Development

The site lies outside of the Settlement Development Boundary of the Saved Local Plan (Tendring District Local Plan 2007) but within the SDB of the draft Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017). The site also lies within a protected caravan park designation in the saved plan (Policy ER18) which is not carried forward into the emerging plan due to the granting of residential/care home development on the remainder of the site.

In this instance the site falls within the former Martello Caravan site for redevelopment and is situated adjacent to an approved residential development south. To the north, a housing development has recently been constructed consisting of 216 dwellings. This development proposal seeks to provide additional residential development in a central location within the overall site in amongst other compatible uses.

The basis for any decision on a planning application is required to consider the land use planning policy in the first instance and then alongside any other material considerations. The site is a brownfield site and in a sustainable location (albeit out of town centre) and is accessible by a range of means of transport - including public transport, walking and cycling as well as by car. The Council's assessment of the application takes into account the NPPF presumption in favour of sustainable development and the status of the adopted local plan and the emerging local plan and also has regard to other material considerations. Undue weight has not been given to any one policy but regard has been had to all three arms of the sustainability criteria of the NPPF which cannot be judged in isolation and to the strong material consideration that exists in that the site no longer operates as a caravan park (Policy ER18 is therefore carries little, if any, weight).

Subsequently, it is considered that the principle of residential development here is acceptable.

Design/Layout

The two proposed properties are located at either end of the site in an attempt to safeguard the setting of the Martello Tower and its historic relationship with the battery to the east of the site. This has resulted in a grassed area to the middle of the site.

The property on plot 1 would be single storey in scale and of a traditional design in keeping with the character of the new housing development to the north. The southern unit would be positioned between a boat shed and new car park for the care home. This dwelling would be constructed with

an external render finish and clay plain tile hipped roof featuring bay windows and a classically inspired porch on the front elevation.

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 incompatible commercial building.

Each of the properties would have a garage and one further car parking space. A further two spaces are to be provided at the entrance to the site for visitor parking purposes. The properties would have private rear gardens of at least 100m² per dwelling.

This application also includes a new garage block to be associated with the potential occupation of the tower. A separate access to serve the tower is available through the adjoining care home car park. Adjacent to the access would be a single building housing three vehicles and with a loft area above to accommodate a home office. The building has been kept simple in design terms, with horizontal weather boarding and plain tiles above. The garage doors would be in timber and side hung.

Residential Amenities

The development would not adversely impact upon the amenity of neighbouring residents. Plot 1 would be single storey in nature and set approximately 40m from the rear elevation of those properties situated on Mill Lane to the east. Plot 2 would be two storey in scale but the existing boat shed would assist in largely screening the property from view of local residents. The intervening boat yard and degree of separation to those properties on Mill Lane would also ensure that any loss of privacy to existing residents would be minimal.

In respect of the new properties to the north the single storey nature of the property on Plot 1 would intervening vegetation would remove any potential for loss of amenity. The new access via the estate road would not harm resident's amenity due to the low level of traffic movements envisaged for 2 no. new properties.

However as noted above the property at the southern end of the site would be located in a southern set back position directly adjacent to a commercial boat shed building and associated yard. 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 commercial uses. As such has not been demonstrated that the development would not harm future residential amenity or the function of the adjacent of boat yard.

Heritage Impacts

In determining this application LPAs have to take into consideration the statutory duty of section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Paragraph 193 of the NPPF directs that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of the level of harm. The more important the asset, the greater the weight should be (paragraph 193). Paragraph 194 of the NPPF stipulates 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

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.

Historic England has been consulted and concludes as follows;

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 reduction in the number of dwellings does preserve more of the relationship between the Martello and the forward battery and to some extent reduces the harm to the significance of the assets to some degree, however any development within the compound, particularly the northern of the two dwellings, and the garages is still within the compound of the Martello tower and battery and therefore continues to harm the relationship between the designated asset.

Flood Risk

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.

Highway Impacts

ECC-Highways have no objections to the application subject to the following requirements;

- Prior to occupation of the development the vehicular turning facilities, as shown on the submitted plan shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- Prior to the first occupation of the development, the proposed access shall be constructed as a shared use route to a width of 5.5 metres to the satisfaction of the Local Planning Authority.
- Prior to the first occupation of the development, a 500mm wide overhang strip shall be provided adjacent to the carriageway as shown on the approved plans unless otherwise agreed, in writing, by the Local Planning Authority.
- Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.
- Any double garages should have a minimum internal measurement of 7m x 6m

These requirements are either reflected on the plans or will be secured via condition.

Legal Obligations - Open Space Contribution

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 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 legal agreement has not been provided to secure this planning obligation and the proposal therefore fails to comply with the above-mentioned local plan policy.

Legal Obligations - Recreational Disturbance Contribution

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 (Zoi) of the Hamford Water SAC, SPA, Ramsar sites. New housing development within the Zoi 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.

Other Considerations

Frinton & Walton Town Council recommends refusal due to overdevelopment of the site, out of keeping in the locality and unsympathetic to the historic building. The Martello Tower is a relevant historical property and should be protected. The open views to the Martello Tower should be maintained and not blocked by any development. Concern in regard to the risk of flood. The Town Council continues to support the very strong reasons given by English Heritage and the local Heritage Trust.

Numerous letters of objection have been received in respect of the various iterations of the proposed development these outline the following concerns;

- adverse impact upon setting of Martello Tower and its relationship with its forward battery
- adverse impact upon drainage and in respect of flood risk
- no meaningful heritage assessment provided
- cramped and overbearing appearance
- noise from adjacent boat yard/incompatible uses.

6. Recommendation

Refusal

7. Reasons for Refusal

- 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.

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.

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