

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	29 <sup>th</sup> Sept 2022
Planning Development Manager authorisation:	SCE	30.09.2022
Admin checks / despatch completed	ER	30/09/2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	30.09.2022

**Application:** 22/00492/FUL

**Town / Parish:** Ramsey & Parkeston Parish Council

**Applicant:** Mr P Webb

**Address:** 51 Garland Road Parkeston Harwich

**Development:** Proposed change of use from butchers shop to residential 1 bedroom dwelling.

### 1. Town / Parish Council

No comments received

### 2. Consultation Responses

UU Open Spaces  
10.05.2022

Response from Public Realm Open Space & Play

#### Current Position

There is currently a deficit of -2.70 hectares of equipped play in Ramsey and Parkeston and -0.93 hectares of formal open space.

There are two play areas one Ramsey and one in Parkeston, the nearest one to the development site is at Garland Road, Parkeston.

#### Recommendation

Due to the current deficit a contribution towards play and formal open space is justified and relevant to the planning application the contribution will be used to make on going improvements to the nearest play area located at the end of Garland Road Parkeston.

Tree & Landscape Officer  
05.04.2022

No trees or other vegetation will be affected by the development proposal.

There is limited opportunity for; and little public benefit to be gained by new soft landscaping associated with the development proposal.

ECC Highways Dept  
18.05.2022

The information submitted with the application has been fully assessed by the Highway Authority and conclusions reached based on a desktop study, no site visit was undertaken in conjunction with this application. It is noted that this application is similar to previous applications 20/01199/FUL and 19/01381/FUL that the Highway Authority did not object to. The site is situated on Garland Road which is predominately a residential road with the majority of the properties having no off-street parking. Given the site history and the revised proposal is for a 1-bedroom dwelling, it is felt a reduced parking

provision level can be applied to this application. Considering these factors, the Highway Authority does not object to the proposals as submitted.

Building Control and Access Officer  
09.04.2022

No adverse comments at this time.

Environment Agency  
25.04.2022

Thank you for your consultation dated 05 April 2022. We have reviewed the documents, as submitted, and are raising a holding objection on grounds of flood risk. We have set out our objection position and provided detail on how the applicant can overcome these in the Flood Risk section below.

We have reviewed the submitted flood risk assessment (FRA), referenced 142122-F01 by Ashfields Solutions Group and dated 24 January 2022 and do not consider it to comply with the requirements of the PPG. In particular:

- The proposed building would flood internally by 0.23m depth in the 0.5% (1 in 200) annual probability with climate change flood event and would therefore be unsafe for the occupants.
- The FRA shows that the proposed building would flood internally by 2.25m depth in the extreme actual risk 0.1% (1 in 1000) annual probability with climate change overtopping flood event, and by 3.34m deep in the extreme residual risk 0.1% (1 in 1000) annual probability with climate change breach flood event and the planning application plans show that there is no higher refuge available within the ground floor apartment, or safe access available. Consequently, there may be an unacceptable risk to the health and safety of the occupants in an extreme flood event.
- Raising finished floor levels to prevent internal flooding of the development and damage to people and property above the 0.5% (1 in 200) annual probability with climate change flood level, including a 300millimetre freeboard, to a level of 2.60m AOD.

Environment Agency  
16.08.2022

Thank you for your consultation dated 25 July 2022. We have reviewed the application as submitted and are maintaining the holding objection which was previously detailed in our response dated 25 April 2022 and referenced AE/2022/126993.

The first part of the previous holding objection has been addressed as the applicant has raised finished ground floor levels to prevent internal flooding in the design event, but there still isn't safe refuge available at the proposed property.

#### Flood Risk

We refer to the plans referenced Drawing P112 proposed plan and section and dated 25/07/2022 which has now been submitted in support of this application. We have reviewed this document and are maintaining our objection on flood risk grounds as it does not adequately address the issues raised previously.

We initially issued a holding objection to the development on flood risk grounds, for the following reasons:

1. The development would flood internally by 0.23m depth in the 0.5%

(1 in 200) annual probability flood event with climate change.

2. The development would flood internally by 2.25m depth in the 0.1% (1 in 1000) annual probability event including climate change and the 3.34m depth in the 0.1% (1 in 1000) annual probability breach flood event including climate change. The proposed development is a self-contained ground floor apartment and therefore there is no higher refuge, or safe access available to the occupants.

The re-submitted plans have overcome objection point 1 as finished ground floor levels have been raised above the 0.5% (1 in 200) annual probability flood level including climate change and therefore the building will remain dry during this event.

However, we are unable to remove our holding objection as objection point 2 has not been addressed. The amended plans show that the site does not have safe access, nor safe refuge from flooding, during both an extreme defence overtopping event and in the event in the breach of the tidal flood defences.

Overcoming our objection

The applicant can overcome our holding objection by:

Providing a satisfactory higher refuge accessible to the occupants of the ground floor flat above the 0.1% (1 in 1000) annual probability breach flood levels with an allowance for climate change, including a 300-millimetre freeboard (6.05 mAOD).

Due to the vulnerable nature of residential development, we have concerns as to whether in this instance it is appropriate or safe for the proposed self-contained ground floor flat to be at risk of flooding internally to 3.13m deep without a higher refuge available.

### **3. Planning History**

18/01211/FUL	Proposed change of shopfront & erection of single pitched roof garage to rear.	Approved	17.09.2018
19/01381/FUL	Proposed change of use from butchers shop to residential 2no. bedroom dwelling including ground floor extensions to rear.	Withdrawn	30.10.2019
20/01199/FUL	Proposed change of use from butchers shop to residential 2no. bedroom dwelling including ground floor extensions to rear.	Refused	12.01.2021
22/00492/FUL	Proposed change of use from butchers shop to residential 1 bedroom dwelling.	Current	

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

National:

*National Planning Policy Framework July 2021 (NPPF)*

*National Planning Practice Guidance (NPPG)*

Local:

*Tendring District Local Plan 2013-2033 and Beyond North Essex Authorities' Shared Strategic Section 1 Plan (adopted January 2021)*

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP7 Place Shaping Principles

*Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted January 2022)*

- SPL1 Managing Growth
- SPL2 Settlement Development Boundaries
- SPL3 Sustainable Design
- LP1 Housing Supply
- LP4 Housing Layout
- PP6 Employment Sites
- PPL1 Development and Flood Risk
- PPL4 Biodiversity and Geodiversity
- PPL5 Water Conservation, Drainage and Sewerage
- CP1 Sustainable Transport and Accessibility
- DI1 Infrastructure Delivery and Impact Mitigation

*Supplementary Planning Documents*

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020 (RAMS)

*Local Planning Guidance*

Essex Design Guide

Essex County Council Car Parking Standards - Design and Good Practice

**Status of the Local Plan**

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the

Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils 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 of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

## **5. Officer Appraisal**

### Site Description

The building is situated roughly central to a large terrace comprises thirteen dwellings; save for one pair of semi-detached dwellings, the south-east side of the road typically comprises similar early nineteenth-century terraces of a limited size. The premises is unique in the area as it clearly retains many features which indicate that historically the premises was a dwelling – the only feature identifying it as a shop being a typically-sized shop-front window.

### Description of Proposal

The application proposes changing the ground floor from retail to a one-bedroom flat.

### Assessment

The main planning considerations are:

- Principle of Development;
- Layout, Scale and Appearance;
- Neighbouring Amenities;
- Highway Considerations;
- Protection of Employment Land
- Flooding
- Financial Contributions - RAMS;
- Financial Contributions – DI1;
- Representations; and,
- Other Considerations.

### **Principle of Development:**

The site is located within the Development Boundary of Harwich, therefore there is no principle objection to the proposal, subject to the detailed considerations discussed below.

### **Layout, Scale and Appearance:**

Section 1 Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Section 2 Policy SPL3 of the 2013-33 Local Plan also requires, amongst other things, that the development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Section 2 Policy LP4 requires that the design and layout of new residential and mixed-use developments in the Tendring District will be expected to deliver new dwellings that are designed to high standards of architecture, which respect local character and which together with a well-considered site layout, create a unique sense of place. Paragraph 130 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.

In regards to the front elevation, changes required would be the provision of an addition entrance door to the ground-floor flat along with fenestration. Whilst the external appearance of the resulting façade would be different to the other dwellings in the vicinity, the area has very little architectural merit and the changes would not result in harm to the character of either the host building or wider streetscene in general.

### **Amenities of Existing & Future Occupiers:**

The NPPF, at paragraph 130 states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Section 1 Policy SP7 of the Tendring District Local Plan 2013-2033 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking. Section 2 Policy LP4 requires that new residential developments will be expected to provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.

Space Standards:-

In March 2015, the government launched a new approach to housing standards and published a new set of streamlined national technical standards. This included publication of Technical housing standards – nationally described space standard.

No. of Bedrooms	No. of Bed Spaces	Storeys	Min Requirement	Actual Floorspace	Compliance
1	2	1	37sqm	39sqm	yes

The ground floor flat would have access to the garden; the extent of the rear garden is already limited due to the extent of built form to the south-west boundary. The current application does not diminish the available space any further. The existing first floor flat does not appear to have an amenity space available.

Overall the proposal is considered to secure a good standard of amenity for all existing and future occupants of land and buildings.

### **Highway Considerations**

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Paragraph 112 states that applications for development should (a) give priority first to pedestrian and cycle movements and (c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter.

Paragraph 130 of the NPPF seeks to ensure that safe and suitable access to a development site can be achieved for all users. These objectives are supported adopted Policy SP7 of the Tendring District Local Plan 2013-2033.

This is an existing dwelling with no off-street parking and existing waiting restrictions on both sides of the road outside the existing flat; the introduction of one additional flat is not going to have an extensive impact on the highway network. The Highway Authority does not object to the proposals as submitted.

### **Protection of Employment Land**

The District Council considers that in an area under pressure for residential development and where appropriate new employment sites in villages and towns are hard to find, there is a pressing need to protect existing employment sites and premises. The Council will seek to protect existing employment sites, as shown on the relevant Policies Maps and Local Maps. Policy PP6 requires that proposals for non-employment uses on these sites will only be permitted if it can be demonstrated that the land or premises have become inherently unsuitable for any form of employment use and there is clear and robust evidence of appropriate marketing with registered commercial agents at a reasonable price to demonstrate no realistic prospect for continued employment use. Although the marketing campaign is a little limited in its contents, it does nonetheless confirm that 'To Rent' signs have been visible in the window since December 2019, the property has been actively marked with Rightmove since January 2020 and its rent is £1,000 per calendar month. The Council are satisfied that the property has been unsuccessfully marketed for an appropriate period of time.

### **Flood Risk**

The site lies within Flood Zone 3, this land is assessed as having a 1 in 100 or greater annual probability of river flooding (>1%), or a 1 in 200 or greater annual probability of flooding from the sea (>0.5%) in any year. These flood zones refer to the probability of river and sea flooding, ignoring the presence of defences. Paragraph 100 of the NPPF 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 162 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.

These sentiments are echoed in Policy PPL1 of the Local Plan, which states that all development proposals will be considered against the National Planning Policy Framework's flood risk 'sequential test' to direct development toward sites at the lowest risk of flooding unless they involve development on land specifically allocated for development in this plan or land within a Priority

Area for Regeneration (the application site is not located in such an area). For development proposals on sites within Settlement Development Boundaries, the sequential approach will apply to all land within the Settlement Development Boundary of the settlement in question.

Policy PPL1 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 within Flood Zone 3a, defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. The proposal is for the change of use of the ground floor from retail to a dwelling, which is classified as a 'more vulnerable' development, as defined in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance (PPG). 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.

A Flood Risk Assessment was submitted; as the proposal is for a change of use there is no statutory requirement to undertake the Sequential Test – notwithstanding this the Exception test still needs to be undertaken and passed. The Exception Test, as set out in paragraph 164 of the Framework, is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. Essentially the test is required to show that proposed development will provide wider sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall. The FRA/plans do not contain evidence of the wider sustainability benefits to the community of the proposed development nor does it demonstrate that in the event of a breach or failure of flood defence infrastructure, refuge will be available above flood levels and that a means of escape is possible from first floor level.

The amended plans show that the site does not have safe access, nor safe refuge from flooding, during both an extreme defence overtopping event and in the event in the breach of the tidal flood defences. For this reason the proposal fails to comply with Policy PPL3 and paragraph 167 (e) of the National Planning Policy Framework.

### **Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)**

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 a new dwelling on a site that lies within the Zone of Influence (Zoi) being approximately 917 metres from Stour And Orwell Estuaries. Since the development is for 1 dwelling only, the number of additional recreational visitors would be limited and the likely effects on Stour And Orwell Estuaries from the proposed development alone may not be significant. However, new housing development within the Zoi would be likely to increase the number of recreational visitors to Stour And Orwell Estuaries; 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 unilateral undertaking has not been prepared to secure this legal obligation. This fails to ensure that the development would not adversely affect the integrity of European Designated Sites in accordance with Section 1 Policy SP2 and Section 2 Policy PPL4 of the Tendring District Local Plan 2013-2033 and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

### **Infrastructure Delivery and Impact Mitigation**



Paragraph 56 of the National Planning Policy Framework (2021) states Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 57 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 DI1 states that all new development should be supported by, and have good access to, all necessary infrastructure. Permission will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development or that such capacity will be delivered by the proposal. It must further be demonstrated that such capacity, as is required, will prove sustainable over time both in physical and financial terms. Where a development proposal requires additional infrastructure capacity to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority and the appropriate infrastructure provider. Such measures may include financial contributions towards Open Space.

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. The outcome of the consultation is that, due to the current deficit a contribution towards play and formal open space is justified and relevant to the planning application the contribution will be used to make on going improvements to the nearest play area located at the end of Garland Road Parkeston. A unilateral undertaking has not been prepared to secure this legal obligation.

## **6. Recommendation**

Refusal - Full

## **7. Reasons for Refusal**

- 1 The National Planning Policy Framework makes it clear that inappropriate development in areas at risk of flooding should be avoided. New development should be directed away from areas at highest risk of flooding, but where such development is necessary it should be made safe. Matters of evacuation and refuge should demonstrate that people will not be exposed to flood hazards.

The development would flood internally by 2.25m depth in the 0.1% (1 in 1000) annual probability event including climate change and the 3.34m depth in the 0.1% (1 in 1000) annual probability breach flood event including climate change. The proposed development is a self-contained ground floor apartment and therefore there is no higher refuge, or safe access available to the occupants. The amended plans show that the site does not have safe access, nor safe refuge from flooding, during both an extreme defence overtopping event and in the event in the breach of the tidal flood defences.

It has not been satisfactorily demonstrated that the development will not expose people to flood hazards. For this reason the development is contrary to Paragraphs 16, 67 (e) of the National Planning Policy Framework (2021) and Policy PP1 Development and Flood Risk of the Tendring District Local Plan 2013-2033 and Beyond.

- 2 In the absence of a unilateral undertaking in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD, the Council cannot be certain that the proposal would not harm habitat sites of ecological interest. The proposal is therefore contrary to adopted Policy SP2 and Section 15 of the National Planning Policy Framework.
- 3 In the absence of a unilateral undertaking the recreation infrastructure requirements of the development would not be met. The proposal would thereby be in Policy DI1, and Section 8 of the National Planning Policy Framework.

**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.

<b>Are there any letters to be sent to applicant / agent with the decision?</b>		NO
<b>Are there any third parties to be informed of the decision?</b>		NO