

DELEGATED DECISION OFFICER REPORT

AUTHORISATION		INITIALS	DATE
Planning Officer recommendation:		AP	19/8/2024
EIA Development - Notify Planning Casework Unit of Decision:	NO		
Team Leader authorisation / sign off:		ML	19/08/2024
Assistant Planner final checks and despatch:		JJ	20/08/2024

Application: 24/00945/LBC

Town / Parish: Frinton & Walton Town Council

Applicant: Mr Smith

Address: 6 Penrice Court East Terrace Walton On The Naze

Development: Application for Listed Building Consent - 2 replacement timber single glazed windows to 2nd floor flat.

1. Town / Parish Council

Frinton and Walton Town Council Recommends approval

2. Consultation Responses

Essex County Council Built Heritage Advice pertaining to an application for listed building consent to replace two timber single glazed windows serving a second floor flat.
Heritage
23.07.2024

6 Eastcliff House is a grade II Listed Building that is described under the list entry number: 1317175 for the properties 1- 6 Penrice Court and 2-7 East Terrace. The properties have group value but are not located in or within the setting of the Walton on the Naze, and Frinton on Sea Conservation Area.

Lapsed consent 19/01502/LBC for Flats 1 to 6 at 6 Eastcliff House allowed the repair and draughtproofing of original front sash windows. As well as the replacement of two existing contemporary spring balanced sash windows that serve Flat 5 on the second floor, to be replaced by single glazed timber framed sash windows detailed to appear like the building's historic windows.

There was no objection raised to application 19/01502/LBC on the basis that the historic windows of significance would be repaired, and the existing windows of Flat 5 were not significant and so the like-for-like replacement (single glazed) would be appropriate. Should the modern derivation of the existing windows be confirmed, some of my concerns for this current application would be overcome.

Based on the existing information, the existing windows of East Terrace's continuous front elevation are mostly either original or have been replaced on a like-for-like basis, and predominately fitted with single glazing rather than slimline double glazing. It is considered that the replacement of windows that are not significant with double glazing, even if slimline, would be harmful to the significance and architectural interest of the listed buildings. Due to the visual impact

that piecemeal alteration would have upon the terrace, even more so if the replacement involved the loss of a significant window.

Notwithstanding my objection to this application, a previous application 19/00139/LBC was made to replace the same windows at this property with double glazed. This application was withdrawn before its determination, but it is important to highlight that the Design and Access Statement submitted for this application still makes reference to the intention to install replacement windows that are double glazed. For the avoidance of doubt upon the design outcome of the proposed development, consideration should be given to the NPPF paragraph 140, and the Design and Access Statement should be amended to clarify that the proposal is for replacement windows that are single glazed.

There have also been applications made for the replacement of windows at other properties within the terrace which are considered to be of relevance. Particularly application 23/01263/LBC for Flat 1 at 6 Eastcliff House that retrospectively approved like-for-like replacement of two storm damaged ground floor front windows. Application 22/01488/LBC that approved the installation of slimline double glazing in existing non-original first floor front sash windows for 7A at the far end of East Terrace.

As the windows of Flat 5 are believed to be the same windows that are the subject of this application, it should be confirmed that this is the circumstance, and that the windows are replicas of the historic.

On the basis that they are confirmed to not be significant windows, there is no objection in principle to their replacement on a like-for-like basis, by traditionally detailed timber framing and single glazing.

However, I cannot support this application in its current state due to the lack of heritage information that has been supplied. Without such information the application does not accord with the requirements of the NPPF paragraph 200, for which the applicant must describe the significance of the heritage asset. It is recommended that the Heritage Statement confirms whether the windows are of significance which would mean they are installed as original or early within the building. It would also confirm their condition and inform the design of appropriate replacements or repair works.

I also do not support the use of surface applied glazing bars shown by the cross-sectional drawings (30403435 sheets 1-2) that are submitted for the proposed replacement windows. This modern form of detailing should be amended to integral glazing bars that are solid through in order to reflect the traditional construction method used for the original windows and maintain a uniform appearance.

If the windows are confirmed to be original, a schedule for the windows that are in need of repair should be submitted with photographs that clearly show the condition and are cross-referenceable with the proposed drawings. Historic England's guidance (<https://historicengland.org.uk/images-books/publications/traditional-windows-care-repair-upgrading/heag039-traditional-windows-revfeb17/>), clearly outlines that if windows are historic and contribute to architectural interest they should be repaired rather than replaced. This first level of consideration requires further information.

In consideration of the justification given for replacement of the windows by the Design and Access Statement. That the new windows will improve the flat's thermal efficiency; this is not sufficient justification for the loss of original windows because there are ways such as secondary glazing to improve thermal efficiency.

As currently presented by this application, it is considered that the proposal will result in less than substantial harm to the significance of the listed building. Therefore, the NPPF paragraphs 205 and 208 are relevant and consideration should be given to paragraph 203 c). The application does not accord with the requirements of paragraph 200 due to the lack of heritage information supplied.

Furthermore, the proposal fails to preserve the special interest of the listed building, contrary to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. **Planning History**

01/00865/DETAIL	Proposed six self-contained 2 bedroomed flats (Reserved matters TEN/98/1453)	Approved	07.11.2001
98/01453/OUT	Construction of block of 6 self-contained flats 3 storeys high with associated landscaping and car parking	Approved	26.01.1999
24/00945/LBC	Application for Listed Building Consent - 2 replacement timber single glazed windows to 2nd floor flat.	Current	
24/00946/FUL	Planning Application - 2 replacement timber single glazed windows to 2nd floor flat.	Current	

4. **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 Local Plan 2013-33 and Beyond (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any Neighbourhood Plans that have been made and the Minerals and Waste Local Plans adopted by Essex County Council.

5. **Neighbourhood Plans**

A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>

There are no neighbourhood plans in place for this location.

6. Relevant Policies / Government Guidance

National:

National Planning Policy Framework December 2023 ([NPPF](#))

National Planning Practice Guidance ([NPPG](#))

Local:

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

SP7 Place Shaping Principles

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

SPL3 Sustainable Design

PPL4 Biodiversity and Geodiversity

PPL9 Listed Buildings

7. Officer Appraisal

Proposal

This application seeks listed building consent for the replacement of two second floor sash windows serving the lounge of 6 Penrice Court, part of the Grade 2 listed building listed as 1-6 Penrice Court and 2-7 East Terrace.

The application is being considered alongside applications 24/00946/FUL.

Assessment

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.

Paragraph 195 of the National Planning Policy Framework identifies that heritage assets are an irreplaceable resource and should be conserved 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.

Paragraph 200 of the National Planning Policy Framework requires 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 208 of the National Planning Policy Framework adds that 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 securing its optimum viable use.

Policy PPL9 of the Tendring District Local Plan states that 'Proposals for...development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric'.

The submitted drawings showing each individual window in plan and elevation indicate that the replacement windows are proposed to be timber framed and single glazed, however the Design and Access Statement submitted with application 24/00945/LBC also refers to double glazing and as a result there is no certainty that, if approved, the permission would be implemented as intended by the Local Planning Authority where paragraph 140 of the NPPF takes effect and therefore the Design and Access Statement should be amended to clarify that the proposal is for replacement windows that are single glazed.

The Design and Access Statement does not describe the significance of the heritage assets affected, including any contribution made by its 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 in line with paragraph 200 of the NPPF.

From the supporting information provided, it is not clear whether the existing windows to the front elevation are original, or if they have been replaced like for like at some point in the past and if they have when this took place.

An assessment of the significance of the existing windows and the contribution they make to the overall significance of the building is the key first step in deciding the right course of action. Surviving historic fenestration is an irreplaceable resource which should be conserved and repaired whenever possible. Therefore, should the existing windows be assessed to be original, their replacement would not be supported as this would involve the loss of historic fabric of historic and architectural significance. If the windows are confirmed to be original, a schedule for the windows that are in need of repair should be submitted with photographs that clearly show the condition and are cross-referenceable with the proposed drawings. However, should the existing windows be a later replacement or assessed to be beyond repairs with a supporting window specialist report, there is likely to be no objection to their replacement like for like, subject to the submission and approval in writing of details in section and elevation at scales between 1:20 and 1:1 as appropriate, showing details of glazing type, framing, glazing bars, and cills.

In assessing the proposed windows themselves, the surface applied glazing bars shown by the cross-sectional drawings (30403435 sheets 1-2) are not acceptable. This detailing should be amended to integral glazing bars that are solid through to reflect the traditional construction method used for the original windows and to maintain a uniform appearance.

Place Services, consulted for their heritage advice consider that the proposal as submitted will result in 'less than substantial' harm to the significance of the listed building. Paragraph 208 of the National Planning Policy Framework states that 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 securing its optimum viable use.

The proposal would fail to preserve the special interest of the listed building to which there is no justification, as the building is already in a viable use in its existing situation as a residential dwelling.

The application does not accord with the requirements of paragraph 200 due to the lack of heritage information supplied. Furthermore, the proposal fails to preserve the special interest of the listed building, contrary to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Habitats, Protected Species and Biodiversity Enhancement

Ecology and Biodiversity

General duty on all authorities

The Natural Environment and Rural Communities Act 2006 amended by the Environment Act 2021 provides under Section 40 the general duty to conserve and enhance biodiversity: "For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England." Section 40 states authorities must consider what actions they can take to further the general biodiversity objective and determine policies and specific objectives to achieve this goal. The actions mentioned include conserving, restoring, or enhancing populations of particular species and habitats. In conclusion for decision making, it is considered that the Local Planning Authority must be satisfied that the development would conserve and enhance.

This development is subject to the general duty outlined above. An informative will be imposed on the grant of listed building consent strongly encouraging the applicant to improve the biodiversity of the application site through appropriate additional planting and wildlife friendly features. Therefore,

the development on balance, with consideration of the impact of the development and baseline situation on site, is considered likely to conserve and enhance biodiversity interests.

Biodiversity net gain

Biodiversity net gain (BNG) is an approach that aims to leave the natural environment in a measurably better state than it was beforehand. This excludes applications for Listed Building Consent, Advert Consent, Reserved Matters, Prior Approvals, Lawful Development Certificates, householders, self builds, and other types of application which are below the threshold i.e. does not impact a priority habitat and impacts less than 25 sq.m of habitat, or 5m of linear habitats such as hedgerow). This proposal is not therefore applicable for Biodiversity Net Gain.

Protected Species

In accordance with Natural England's standing advice the proposed development site and surrounding habitat have been assessed for potential impacts on protected species. It is considered that the proposal is unlikely to adversely impact upon protected species or habitats.

Conclusion

In accordance with the overarching duty outlined above, this development is considered to accord to best practice, policy, and legislation requirements in consideration of the impacts on ecology interests.

8. Recommendation

Refusal - Listed Building Consent

9. Reasons for Refusal

- 1 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act imposes a statutory duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.

Paragraph 195 of the National Planning Policy Framework identifies that heritage assets are an irreplaceable resource and should be conserved 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.

Paragraph 200 of the National Planning Policy Framework requires 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 208 of the National Planning Policy Framework adds that 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 securing its optimum viable use.

Policy PPL9 of the Tendring District Local Plan states that 'Proposals for...development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric'.

The proposal for replacement windows fails to describe the significance of the heritage assets affected and provides no substantive justification for the alterations in conflict with paragraph 200 of the NPPF.

The proposal will cause less than substantial harm to the designated heritage asset, the Grade 2 listed building of 1-6 Penrice Court and 2-7 East Terrace and as such paragraph 208

of the NPPF is relevant where the building is already in a very viable use in its existing situation as a residential dwelling. This level of harm is considered in the context of the 'great weight' noted in paragraph 205 of the National Planning Policy Framework.

Consequently, the proposal fails to accord with paragraphs 200 and 208 of the National Planning Policy Framework and the aforementioned local and national planning policies.

10. Informatives

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (accounting for any updated or amended documents):

Site plan 1:1250

Block plan 1:500 indicating location of windows to be replaced

Drawing titled 'Proposed Elevation' 1:50

Drawing titled 'Existing Elevation' 1:50

Contract No: 30403435 Sheet 1 of 2

Contract No: 30403435 Sheet 1 of 2

Design and Access Statement

11. Equality Impact Assessment

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

12. Notification of Decision

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