Appeal Decision

Inquiry commenced on 18 June 2019

Site visit made on 1 August 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 December 2019

Appeal Ref: APP/P1560/C/3184265
Land at 46 Colne Way, Point Clear Bay, St Osyth, Clacton on Sea, Essex CO16 8LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Gina Clarke against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 16/00343/BRCHC3, was issued on 1 August 2017.
- The breach of planning control alleged in the notice is the breaches of condition 2 of planning permission TEN/119/59 dated 7 May 1959 with amended layout on 5 November 1959 and condition 2 of planning permission TEN/119G/59 dated 23 March 1961.
- The development to which the permission relates is construction of new chalets.
- The condition in question is No 2 which states that: The chalets shall be used for habitation only during the period 1st March to 31st October in each year and during the winter months may be used for storage of household effects.
- The notice alleges that the condition has not been complied with by the habitation (occupation) of this chalet between the period of 1 November snd 28 February (29February in leap years) each year otherwise than in compliance with condition 2 of the said planning permission TEN/119/59 and condition 2 of the said planning permission TEN/119G/59.
- The requirements of the notice are to:
    1. Comply with Condition 2 of Planning Permission TEN/119/59 dated 7 May 1959 with layout amended on 5 November 1959 by ceasing the habitation (occupation) of the chalet on the land between 1 November and 28 February (29 February in leap years) each year.
    2. Comply with Condition 2 of Planning Permission TEN/119G/59 dated 23 March 1961 by ceasing the habitation (occupation) of the chalet on the land between 1 November and 28 February (29 February in leap years) each year.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Procedural Matters

1. A number of appeals relating to several properties at Point Clear Bay were heard together at the above Inquiry. General evidence relating to flooding considerations and proximity to services and facilities, common to many appeals containing ground (a), including this one, was heard during Week 1 and presented on behalf of a number of appellants by Mrs Kelly. There was an opportunity for any matters specific to individual appeals were heard throughout the remainder of the Inquiry. The appellant did not give additional oral evidence.

2. Whilst no corrections are required to this Notice, it has been necessary to correct the period for compliance in relation to a number of the notices relating to other appeal properties. The Council's witness accepted that there should be a consistent compliance period across this group of appeals. Accordingly, I intend to vary the compliance period to 14 months to correspond with the longest period specified amongst this set of appeal notices should the Notice be upheld.

Decision

3. It is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 14 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Reasons

Ground (a) & the deemed planning application

Background

4. Planning permission was granted (reference TEN/119/59) on 7 May 1959 for a revised layout for 133 chalets ('the 1959 permission'). There is no dispute that this permission was implemented. Condition 2 states that the chalets shall be used for habitation only during the period 1 March to 31 October in each year and during the winter months may be used for the storage of household effects. The reason for the condition is that the site is not considered to be suitable for permanent all year round living accommodation.

5. A subsequent appeal against a number of enforcement notices relating to some of the properties erected under the 1959 permission was determined on 3 July 1990 (the 1990 planning permission). In that appeal the Inspector allowed the appeal in so far as it related to this property and granted pp for the variation of that condition as set out above. The 1990 permission is a new and separate planning permission.

6. Ground (a) is that planning permission should be granted for the development alleged in the notice, in other words, the erection of the 133 chalets for which planning permission was granted but without compliance with the 1990 condition that restricts occupancy during the winter months in respect of this appeal property. If successful a further new planning permission would be granted.

Main Issues

7. The main issues are whether the restrictive condition remains reasonable and necessary having regard to:

   - Flooding considerations; and
   - The location of the property outside of a defined settlement boundary and its proximity to services and facilities.

Policy Framework

8. Section 38 (6) of the Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

9. The development plan includes the Tendring District Local Plan 2007 (LP). Policy QL1 sets out the spatial strategy for Tendring directing where new development should be located having regard to settlement hierarchy. In smaller towns and villages, limited development consistent with local community needs will be permitted. The appeal property is outside the defined settlement development boundaries including that of Point Clear. Outside of these defined boundaries only development consistent with countryside policies will be permitted. Policy QL3 is concerned with minimising and managing flood risk and it indicates that flood risk will be taken into account at all stages of the planning process with the aim of avoiding inappropriate development in areas at risk of flooding. It sets out the tests to be applied when development is located in Flood Zone 3. It reflects and is consistent with national policy contained in the National Planning Policy Framework (the Framework).

10. Policy COM33 confirms that "time limited occupancy conditions will be imposed and enforced preventing occupancy during the winter period from November to March inclusive when the risk of inundation is greatest."

11. It is also submitted by the Council that ER20 'Occupancy Timescales' is relevant to this appeal. Policy ER20 confirms that the occupation of all types of holiday units (my emphasis), including chalets will not be permitted between 14 January and 1 March in any year and a further restriction of the period from 1 March to 31 October may also be appropriate where there is a flood risk. The Council drew my attention to advertisement particulars that describe the chalets as a 'New Essex Holiday Resort'. In addition, the appeal site is located within an area identified in the Local Plan as 'Portland Development' in recognition that numerous plots of land in the area were laid out and sold as holiday homes. However, neither the 1959 nor 1990 planning permission is specifically described as being for the erection of 'holiday' chalets. Neither permission includes a condition that expressly limits habitation for holiday purposes.

12. Whilst the effect of condition 2 is to restrict habitation all year round, it does not restrict the nature of the occupation specifically to holiday use during those times when habitation is permitted. I heard that some occupiers simply go on holiday abroad during the winter. To my mind, this particular policy is not of relevance to this appeal.

13. In the emerging Tendring District Local Plan 2013-2033 and beyond Publication Draft, Point Clear Bay is not classified in policy SPL1, as being even in the lowest category of settlement called a smaller rural settlement. Policy PPL1 of the emerging plan requires that all development proposals should include appropriate measures to respond to the risk of flooding on and / or off site and within the Flood Zone shown on the Policies Map and Local Maps must be accompanied by a Flood Risk Assessment. New development in areas of high flood risk must be designed to be resilient in the event of a flood and ensure that, in the case of new residential development, that there are no bedrooms at ground floor level and that a means of escape is possible from first floor level. Proposals must have regard, as necessary to the Sequential and Exceptions

tests contained in the Framework. As emerging policies their weight is reduced.

14. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

15. Table 3 of the National Planning Practise Guidance (NPPG) sets out what classifications of development are appropriate in the various Flood Zones. In Flood Zone 3a only development categorised as less vulnerable or water compatible would be appropriate. The development would not fall within either of those classifications and so should be avoided.

16. Whether a Sequential Test and / or Exception Test is necessary also depends on the classification of the development before me. The Sequential Test is set out in paragraph 158 of the Framework and explained further in the NPPG. It aims to steer development to areas with the lowest risk of flooding.

17. The Exception Test should only be applied following the application of the Sequential Test. To satisfy the exception test it needs to be shown that the development has wider sustainability benefits and that the development will be safe for its lifetime taking into account the vulnerability of its users. Buildings used for dwelling houses fall within the 'More Vulnerable' classification and so the Exception Test should be applied. Park Homes intended for permanent residential use fall within the Highly Vulnerable' classification and, according to Table 3, should not be permitted. The Council's Flooding witness considered both scenarios although for the reasons set out, I take the view this is a building used as a dwellinghouse, not a park home, albeit habitation is restricted during the winter months.

18. Paragraph 163 of the Framework clarifies that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate applications should be supported by a site-specific flood-risk assessment (FRA). A site-specific FRA should be provided for all development in Flood Zones 2 and 3 . Development should only be allowed in areas at risk of flooding where, in light of this assessment (and the sequential and exception tests, as applicable) certain requirements can be met. These include that:

    b) The development is appropriately flood resistant and resilient;

    d) Any residual risk can be safely managed; and

    e) Safe access and egress routes are included where appropriate as part of an emergency plan.

Reasoning

Flooding

19. The appeal site is within an area designated as Flood Zone 3a on the Environment Agency's Flood Map for Planning. Flood Zones ignore the presence of defences and do not take account of possible impacts of climate

change and consequent changes in the future probability of flooding. Flood Zone 3a is land classified as being at high probability of flooding.

20. The Environment Agency (EA) witness provided compelling evidence that most of the highest floods occur in the December to February months. For the 10-year period looked at for the Clacton gauge, most of the over 3.1 m maximum floods were in those 3 months. The work done by the EA in Lincolnshire was over a longer period and so is statistically preferable for analysis of flooding. Again, the recorded tide levels and each of the components most likely to cause tidal inundation was greatest for the months of November to March. The EA witness explained that the most recent surges of note in Norfolk, Suffolk and Essex have all been between October to March. No contradictory technical evidence was presented to the Inquiry.

21. In the 1990 appeal relating to some properties at Point clear Bay, the Inspector records at paragraph 14.3 that when the condition was imposed in 1959, flooding from the sea was a major consideration. However, he found no reason, in 1990, to reject the assurances given by Anglian Water that the new sea defences will be good against all events up to 1 in 1000-year frequency. The reason for the imposition of restrictive conditions in 1990 did not therefore relate to concerns about flooding at that time. It is not therefore correct to suggest that the Inspector was somehow of the view that no flooding would occur at weekends or over Christmas and New Year or that flooding would not affect certain individuals. Notwithstanding that there continues to be sea defences in place, the Council take a different view to the 1990 Inspector having regard to current national and local policy and the current advice from the EA.

22. When applying the Sequential Test, a pragmatic approach to the availability of alternatives should be applied. It was not suggested by anyone that it would not be possible to identify more suitable and sustainable sites for residential development in preferable locations outside of Flood Zone 3 at lower risk of flooding. However, the appeal property will remain whatever the outcome of this appeal irrespective of whether alternative locations for housing are available. It is not the property itself that is unauthorised, but its occupation during the winter in breach of the relevant condition. The question is simply one of whether the condition remains reasonable and necessary given the location of the appeal property in Flood Zone 3a. The Council adopted a pragmatic approach when granting planning permission for a replacement dwelling at 138 Colne Way acknowledging there were more sustainable and preferable sites where housing should be located but, nevertheless acknowledging the benefits that would be achieved by replacing an existing property with one that would, according to the FRA that accompanied it, be safe in terms of flooding.

23. Whilst it can clearly be argued that the residential development in this location does not have wider sustainability benefits in terms of location, being located in a relatively unsustainable area below the bottom of the settlement hierarchy in the local plan and not classified in the lowest category of settlement called a smaller rural settlement in Policy SPL1 of the emerging plan, again the property exists and will remain. The first part of the exceptions test is therefore of limited assistance in determining if the condition remains reasonable and necessary.

24. I turn now to consider whether it can be shown that the development will be safe for the lifetime of the development. No FRA has been submitted to support the appeal or demonstrate that the necessary requirements could be satisfied. The proposal is clearly therefore in conflict with both national policy and Policy QL3.

25. Even if such a FRA had been commissioned by the appellant, the Council's expert flooding witness gave evidence to show that it would not be possible to achieve the requirements that a FRA should satisfy if planning permission is to be forthcoming.

26. In relation to demonstrating that a development would be appropriately flood resistant and resilient, the correct way of modelling the flooding is to take the lifetime of the development and take into account climate change. This is set out as being the correct approach in NPPG (paragraph 030).

27. The most recent EA coastal modelling completed in 2018 indicates that the defences at Point Clear Bay could experience wave overtopping now in a 10% chance flood. Impacts in that scenario would be limited. However, each subsequent increase in severity of a storm event shows greater impacts stretching further into the area from the south west defences until the 1% chance in any year tide where more widespread flooding would be seen with more defences overtopping. This modelling shows that the defences are close to overtopping from still water levels in the 0.5% (1 in 200) chance in any year. Still water levels means the actual height of the North Sea, not the additional height of the waves. By the 0.2% (1 in 500) chance flood the still water levels are higher than defence levels in places and in 0.1% (1 in 1000) it is higher than most the defences. In the event of a tidal surge, I heard that the impacts depend on a lot of factors such as the wind speed and direction, the height of the preceding tide and the timing of the surge with the astronomical tide. This is based on the assumption that the defences do not breach at a lower level. Once overtopped, the floodwaters would flood the area very quickly with deep, cold and fast flowing water because the area is so low lying and narrow.

28. A breach is a sudden, unexpected structural failure of the flood defences. The Strategic Flood Risk Assessment 2009, carried out by the Council as part of the evidence base for the LP, indicates that a breach in the defences during a 0.5% chance flood in any year would lead water of 2-3 metres across the site and exceeding 4m in places.

29. This could not be warned against and the onset would be fast. The flood hazard has been calculated according to the standard method and the result is that the Hazard is classified as "extreme (dangerous for all)" from a breach . Dangerous for all includes not only the property occupiers but the emergency services.

30. Taking account of climate change, Appendix E, Plan E5 of Guy Coopers evidence on behalf of the EA, shows that for the 0.5% (1:200) year flood event or 0.5% annual probability which is the design flood (NPPG para 055), that towards the end of the lifetime of the development (2115) the design flood will mean that there would be flood water that is 3-4m deep for most of the area at Point Clear Bay.

31. It was put to the inquiry that the lifetime of the development should include the 50 or so years since the chalets were constructed. Even if that were the

case, no FRA has been submitted to demonstrate the appeal property could be made flood resistant and resilient over the remaining period, such that a time restricted permission may have been considered. Furthermore, there is no suggestion within the Framework or PPG that assessments can be back dated in this way.

32. The appellant explains that the appeal property was re-built in 2012, now being of double brick construction. In doing so the appellant has followed the Council's guidelines by maintaining a rescue area in the roof space. Access to the roof space is via a staircase. The building works were, the appellant states, approved and signed off by the Council. I do not doubt that the works were carried out to meet building regulations standards, however, there is no technical evidence before me to demonstrate that this is sufficient to make the appeal property appropriately flood resistant[1] or resilient[2] for those levels of flood waters. Indeed, I heard that 0.6m of water can cause structural damage and the government do not advise that resistance measures should be used for floods above those levels (NPPG paragraph 059).

33. Any safe refuge would need to be above the levels of flood water shown in an extreme event by a sufficient margin. In a recent planning permission granted at 138 Colne Way for a replacement dwelling such a safe refuge was demonstrated, through a FRA to be 5.77m AOD. This was based on the modelling that accorded with national policy at that time.

34. I heard from the Council's flooding witness why she considered the danger was so pronounced. The Royal Life Saving Society guidance on water safety explained that 15cm of fast flowing water can knock an adult over and 0.6m of water will float a car. Thus, in a breach situation, it has not been and could not be shown that this residual risk can be safely managed. In such an unexpected breach situation I heard from the EA that it is unlikely that there would be any advanced warning since warnings assume that the defences will not be breached.

35. Finally, in considering whether safe access and egress routes are included to the property, the government requires that "access routes should allow occupants to safely access and exit their dwellings in design flood conditions". No access routes that would allow occupants to safely access and exit dwellings in design flood conditions have been demonstrated. The shape of the peninsula and the depths of water make it very unlikely that it could be safe to access for emergency vehicles in an extreme flood now or the design flood in the future. There would not be a safe egress for residents during a flood resulting from a breach of the defences or an extreme flood today or design flood in the future. During the floods in 1953 the Causeway was damaged and blocked by boats.

36. I heard that the appellants and others in Point Clear Bay have signed up to receive flood warning alerts from the EA. The Parish Council also have an emergency plan although it was accepted that this was generic in nature.

37. Whilst the flood warning service is clearly very good, it only reduces the risk during a flood, it does not eliminate it. I heard from the EA representative, that

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[1] Flood-resistant construction can prevent entry of water or minimise the amount that may enter a building where there is a short duration flooding outside with water depths of 0.6m or less.
[2] Flood-resilient buildings are designed and constructed to reduce the impact of flood water entering the building so that no permanent damage is caused, structural integrity is maintained and drying and cleaning is easier.

flood events are inherently difficult to predict. Whilst signing up to flood warnings and emergency plans are important, they don't overcome the risk that would be caused by flood waters of 3-4 m in depth. This is especially the case because there is no safe refuge from the 1:1000 year flood event.

38. I heard first hand experiences of evacuations in 2013 and 2017 to Dumont Hall following such warnings. Residents were able to evacuate in advance of any predicted flooding. This is a different proposition entirely to the circumstances described by the EA if an unexpected breach were to occur and no warnings were given. I note that if access across the causeway was not possible or restricted for vehicles, as occurred in 1953, then aid to or recovery from Dumont Hall itself may be problematic for the emergency services.

39. Notwithstanding that the absence of a FRA is a clear breach of national and local policy in itself, the Council's proposition that even if a FRA had been commissioned, it would not have been possible to show that any of these requirements could be met, is compelling.

40. A 'hold the line' policy exists in relation to the sea defences. On this basis, it was argued that the flooding scenarios referred to by the EA would be unlikely to occur. The EA witness explained that funding to maintain and improve the flood defences could not be guaranteed since it was necessary to bid for the funding against other schemes. The 'hold the line policy' does not therefore offer assurances that the occupation of the property during the winter months would be safe. It is a consideration I afford limited weight.

41. There are a substantial number of the properties that can now be occupied lawfully throughout the winter without complying with conditions restricting occupation. Some occupiers can occupy the property every weekend (Friday to Monday) and for 10 consecutive days including Christmas and New Year whilst others (such as the case here) are not permitted to reside in the property at all over the winter months. That inconsistency of approach is considered to be an unfair and untenable position for those residents required to leave for all or part of the winter. Indeed, it leaves those occupiers who may remain in occupation throughout the winter, in the exact same position that the appellants are seeking to achieve through this appeal.

42. Where certificates of lawfulness have been issued, the point at issue was simply one of whether and for how long the condition had been continuously breached. Flooding and other planning considerations have no bearing on those decisions. I have already explained that flooding was not considered to be an issue of great concern for the 1990 Inspector based on the evidence before him at that time. Hence, the condition was relaxed or temporarily waivered for some individuals on a personal basis. The evidence before me on flooding now differs greatly.

43. The Council has granted planning permission to extend the periods when caravans can be occupied on nearby caravan parks. Again, this is seen by many as an inconsistent approach. The Council view the caravan parks, where the owner has the opportunity to ensure evacuation occurs in accordance with an agreed evacuation plan as a different situation to individual occupiers of individual homes. I appreciate there may be more certainty that evacuation of the entire site will be enforced, although that does not address a situation where a breach occurs unexpectedly and without any prior warning.

44. In addition a replacement property has been permitted at 138 Colne Way with no restrictions on occupancy. The fact that the permission is for a replacement is key to this grant of planning permission as the applicant was able to demonstrate in that case that the replacement property would be flood resistant and resilient not least because the Flood Risk Assessment demonstrated that the upper floor would be at a height sufficient to provide a safe refuge in the event of a flood. The report to Committee clearly expresses this as a beneficial outcome that others may follow.

45. I can clearly understand how unfair it may appear to require some occupiers to leave during the winter months when many others can lawfully remain for longer periods or all year round. However, the potential risk from a flood event is a consideration of substantial weight. Paragraph 40 of the NPPG says: "Proposals that are likely to increase the number of people living or working in areas of flood risk require careful consideration." Thus, the Government's policy is not to increase the burden for emergency and other services by increasing the number of people living in areas of flood risk. I recognise that even if the notice is upheld, this burden will differ from weekends (Fri to Mon) and weekdays (Mon to Fri) and over Christmas and New Year making it difficult to manage. Nevertheless, in my view the inconsistency between one property to another is a matter that can be afforded little weight in the determination of this appeal. The reality is that the evidence demonstrates that allowing any increase in occupation during the winter, in turn, increases the risk that the property might be occupied when a flooding event occurs.

46. To conclude on this issue, the condition remains reasonable and necessary having regard to the location of the appeal property in Flood Zone 3a and the risk of flooding during the winter months.

Location of property

47. The appeal site is situated outside of a defined settlement area. Whilst there is a small supermarket and other basic facilities generally intended to serve the occupants of the caravan parks and holiday homes during the holiday season, together with a small shop open all year, it lacks many other services and facilities including schools and healthcare facilities. There is a bus service but I nevertheless share the view of the Council that overall it is an unsustainable location and occupiers would be largely reliant on the private car. In relation to plotland development, paragraph 4.168 of the LP says that any spread of permanent housing in such locations would be in direct conflict with the structure and local plan policies for the general distribution of housing and protection of the countryside as well as the Government's approach to sustainable development.

48. New residential development in this location would clearly be contrary to the development plan. However, the development exists and can be occupied for residential purposes for 8 months of the year, unrestricted, bringing with it associated vehicle trips. Furthermore, compliance with the conditions on many other properties throughout the remaining months would still potentially generate vehicle trips into and out of the area during the winter in any event.

49. So whilst there is clear conflict with the development plan, having regard to the existing position, I do not consider that un-restricted occupation would necessarily result in any significant increase in vehicle trips overall. Accordingly, I do not find that the location of the property in relation to

services and facilities is a reason why the property is not suitable for permanent, all year round, habitation.

Other Matters

50. The Framework at paragraph 11(d) confirms that the presumption in favour of sustainable development means that where the policies which are most important for determining the application are out-of-date, that planning permission should be granted. The Council accepts that it cannot demonstrate a five-year housing land supply. Accordingly, such policies would be regarded as out-of-date as clarified in footnote 7 and the tilted balance would apply. However, there are exceptions to this, the first of which is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Areas at risk of flooding or coastal change are one such area of particular importance. The policies in the Framework relevant to the risk of flooding do provide a clear reason for refusing development in this case, for the reasons already set out above. As such, notwithstanding the lack of a 5-year housing land supply, the 'tilted balance' need not be applied.

51. A disclaimer of some description would not overcome my concerns about risks from flooding.

52. Other concerns relate to increased crime and vandalism and opportunities for squatters if properties are left unoccupied over the Winter. Again, no substantive evidence is before me to support this assertion but in any event, some level of surveillance will remain as a result of those properties that can remain occupied all year round and the condition does not prevent the checking or maintenance of properties, only their occupation. Furthermore, I only give very limited weight to concerns about the validity of house insurance if properties are empty for long periods. This situation is not uncommon, for example where a second home is owned but not permanently occupied.

53. The property is providing a home and thus contributing to the available housing stock. This is a consideration clearly in favour of the proposal and one I give great weight.

54. The property is occupied by the tenant and her son who I was told has learning needs. I accept, from the evidence I have heard throughout the Inquiry that rental values and house prices are generally lower in Point Clear Bay than many surrounding settlements outside flood zone 3. I therefore acknowledge the difficulties in finding an alternative. On the other hand, the occupier is in no worse a position than if she had been given the requisite notice to leave as required by her agreement. Only limited security of tenure is offered by any tenancy agreement. This reduces the weight I give to the personal circumstances of the tenant.

The overall balance

55. To conclude on ground (a) the removal of the planning condition to allow all year round unrestricted occupation of the property would be contrary to the development plan and national policies concerning flooding. No other considerations are of sufficient weight to indicate that planning permission should nevertheless be granted for the development without compliance with the relevant condition in so far as it relates to this property.

56. In the event that planning permission was refused for the removal of the condition altogether, I was asked to consider extending the period of occupation to 11 months, consistent with caravan sites in the area. However, given the compelling evidence relating to the increased risk of flooding during the months of November – February, I do not consider the period should be extended.

57. I have considered the rights of the existing tenant under Article 8 of the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. This is the occupiers only home. Dismissing the appeal would interfere with their rights under Article 8, since the consequence would be that the tenant and her son are unable to occupy their existing home unrestricted throughout the winter. It will be necessary to make alternative arrangements during these periods to avoid becoming temporarily homeless. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: in the interests of public safety. As a tenant, the occupier has a limited security of tenure as the landlord could potentially give a shorter period of notice that the tenancy is terminated than the enforcement notice.

58. The best interests of the child are a primary consideration. However, I find it difficult to reconcile that the best interests of the child would be to reside in the property during the winter in light of the compelling evidence relating to the increased risk of flooding during that time.

59. Given the circumstances overall, I find that the dismissal of the appeal would be proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

60. The appeal on ground (a) fails.

Overall Conclusions

61. For the reasons set out in my preliminary paragraphs I conclude that a reasonable period for compliance would be 14 months, and I am varying the enforcement notice accordingly, prior to upholding it.

Claire Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:	
Mrs Gina Clarke	
She called	
Mrs Mandy Kelly	General Planning Issues
FOR THE LOCAL PLANNING AUTHORITY:	
Mr Richard Ground QC	Instructed by the Council's solicitor
He called	
Ms Hanna Coogan	Technical Director in Flood Risk Management with Jeremy Benn Associates Limited
Mr Guy Cooper	For the Environment Agency
Mr Keith Hutchinson	Of Hutchinsons Planning and Development Consultants
Mr Chris Stathers	Enforcement Officer for Tendring District Council

Documents received at the Inquiry

Document 1	Appeal Notification - Copy of Site Notice.
Document 2	Opening Statement by Mrs M Kelly regarding flooding.
Document 3	EA Supplementary Maps 1 and 2.
Document 4	Extract from NPPG 'Flood risk and coastal change'.
Document 5	Judgement: Wisenfeld v Secretary of State for the Environment and another [1992] 1 PLR 32.
Document 6	Judgement: Michael William Howells v SoSCLG & Gloucestershire County Council [2009] EWHC 2757 (Admin).
Document 7	Decision Notice 16/00809/FUL – variation of seasonal occupancy period at Seawick Holiday Village.
Document 8	Extract from Strategic Housing Land Availability Assessment (May 2019).
Document 9	EA comments and Committee Report relating to planning application for replacement dwelling at 138 Colne Way.
Document 10	Historic Planning Permissions.
Document 11	Legal Submissions on Breach of Condition Notice for Tendring DC.
Document 12	Legal Submissions from Mandy Kelly.
Document 13	Welwyn Hatfield BC v SSCLG & another [2011]UKSC 15.
Document 14	Bonsall v SSCLG & another [2015]EWCA Civ 1246.
Document 15	Closing Submissions from Mr Everett.
Document 16	Closing Submissions from Mr Ground QC for the Council.
Document 17	Closing Submissions from Mandy Kelly.