

TENDRING DISTRICT COUNCIL
STATEMENT OF REASONS FOR MAKING A DIRECTION UNDER ARTICLE 4(1) OF THE
TOWN AND COUNTRY PLANNING
(GENERAL PERMITTED DEVELOPMENT) ORDER 1995
(as amended)

This statement relates to the Direction made on 27 April 2012 and confirmed by the Council on 12 October 2012, relating to Land at Mistley Quay, Mistley, Manningtree, Essex.

1. Introduction

- 1.1 On 27 April 2012, this Immediate Article 4(1) Direction (“the Direction”) was made, served and came into effect under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (“the Order”). The Direction relates to land at Mistley Quay, Mistley, Manningtree, Essex shown edged red on the plan attached to the Direction. The Direction removes permitted development rights for development within Class A of Part 2 of Schedule 2 to the Order within this area, namely the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

2 Description of the Area

- 2.1 The land that is the subject of this Direction lies adjacent to the River Stour and is part of the wider area of land commonly known as “Mistley Port”, “Mistley Quay” or “Mistley Quayside”.
- 2.2 The quayside itself is part of the Mistley and Manningtree Conservation Area that was so designated in 1969. A Conservation Area Appraisal carried out by consultants on behalf of the Council in 2001 (and updated in 2006) specifically recognised the importance of open views out across the River Stour, to the Suffolk Shore opposite, from gaps in the High Street.
- 2.3 The settlement of Mistley was originally intended to be developed as a planned 18th Century community, but became dominated by the large maltings and workers’ housing along and off the main street (now known as Mistley High Street) associated with the processing and outwards shipment of barley from the surrounding rural hinterland. Many of these buildings survive which contribute to the area’s unique character and sense of place and is part of the reason why the area became a designated Conservation Area.
- 2.4 Today, Mistley Port handles the shipment and storage of loose, bulky materials such as granite, stone and other coarse aggregates. Mistley Port is linear in shape and is bounded to the north by the River Stour. The eastern end contains the working berths and cargo-handling facilities and is used for open storage. The western end contains a large warehouse and is also used for open storage. The middle section of the port, which comprises the land that is the subject of this Direction, is open quayside and is the only traffic route through the port used by commercial traffic travelling between each end of the port. It is also used by the residents and businesses in the immediate vicinity including those occupying the former maltings buildings immediately to the south that have recently been converted to mainly residential use.

- 2.5 Whilst the middle section of the port is within the operational area and ownership of the port, prior to the current fence being erected there, it had historically been open in nature, with uninterrupted views out across the Stour Estuary.

3. Current Fence and Proposed New Fence

- 3.1 In September 2008, the existing fence, which constituted permitted development under the Order, was lawfully erected without the need for planning permission by the Company ("TWL") that owns and operates Mistley Port. It is a steel wire mesh fence, separated by vertical steel supports in sections of about 2 metres each. The fence is approaching 2 metres high and is approximately 150 metres long, running along the edge of the quayside. The fence is unsightly, due to its size, construction and materials and, in the judgment of the Council, it detracts from the character and appearance of the Conservation Area due to its stark, utilitarian appearance. Moreover, the fence also mars views out across the Stour Estuary.
- 3.2 The Council accepts that a fence or some form of barrier is needed for health and safety reasons. However, it is the Council's firm opinion that the current fence is excessive, especially when compared with those at other ports in the area. The Council understands that the current fence is higher than the type of fence that the Health and Safety Executive would normally require and that health and safety concerns could have been addressed using a fence with a more sympathetic design than the one erected.
- 3.3 The fence was installed without any prior discussion or negotiation with the Council.
- 3.4 The Council has made repeated attempts since 2010 to try and meet with the owner to try and discuss the fence and agree on a design that is appropriate within a designated Conservation Area whilst enabling the owner to comply with health and safety requirements. However, for a number of reasons, such a meeting has never taken place.
- 3.5 On 12 August 2011, TWL wrote to the Council in the following terms: *"We have however pursued a conservation solution and after a long search acquired reclaimed railings with an architectural salvage specialist. We will invite Mr Hornby [the Council's then Heritage & Conservation Manager] to our workshop when the restoration process is underway"*. No such invitation was ever received, nor has TWL provided the Council with any further details about the proposed replacement fence. However, the description of the proposed replacement railings as *"reclaimed wrought iron railings"* was repeated by TWL's company secretary, in her representations to the Council of 24th May 2012.
- 3.6 The Council received detailed descriptions from witnesses of what is believed to be sections of the proposed replacement fence. They confirm that the fence is of a wrought iron construction and consists of sections of fencing, comprising of thick, solid, vertical members each about an inch wide, which are spaced approximately 6 inches apart and are tapered at the top. These vertical members are held together by a horizontal steel support near the top and another near the bottom. The fence is estimated to be somewhere between 1 and 1.5 metres in height and so would be shorter than the existing fence. The Council is concerned about the materials and the construction of the proposed fence. The Council considers that it would be overbearing, dominant and oppressive. The tight spacing of the vertical bars and their thickness would make the replacement fence even more obstructive and domineering than the existing fence and so would detract from the appearance and character of the Conservation Area.

4. Reasons of Expediency for Making the Article 4(1) Direction

Planning Policies and Guidance

- 4.1 The land that is the subject of this Direction lies within the wider Manningtree and Mistley Conservation Area, in respect of which Adopted Local Plan Policy EN17 requires that any development should preserve or enhance its character or appearance, in accordance with the overarching statutory duty imposed on the Council by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 4.2 The land falls within the Mistley Waterfront and Village Urban Regeneration Area. It is covered by the District wide policy QL6, the urban regeneration policy, which requires that development should reinforce and/or enhance the function, character and appearance of the area and contribute towards regeneration and renewal. It is subject to Policy LMM1 of the adopted Local Plan, the details of which are set out below:-

Policy LMM1 – Mistley Urban Regeneration Area

New development in the Mistley Urban Regeneration Area will be required to:

- i. provide for the promotion of a balanced community, including an appropriate range of opportunities for the protection and enhancement of the historic environment (having particular regard to the maritime heritage of the area) and the provision of new housing, employment, tourist, recreation and leisure facilities;*
- ii. protect the employment base of Mistley through the provision of alternative employment facilities to replace any potential loss of employment;*
- iii. protect the port operations;*
- iv. have regard to the potential for port uses of existing buildings, before allowing any change of use;*
- v. allow for access arrangements which do not increase current levels of HGV traffic on the High Street;*
- vi. provide or allow for sustainable and managed public facilities and non-motorised public access to the waterfront, including a public footpath link in all the non-commercial areas and a public right of mooring along the quayside; enable the development of views across the Stour Estuary; and*
- vii. protect the adjoining nature conservation interests, biodiversity and landscape quality during construction work and thereafter.*

New development at the western end of the Urban Regeneration Area must respect the character and setting of the Mistley Towers Scheduled Ancient Monument.

- 4.3 A Conservation Area Management Plan (CAMP) relating to the wider Manningtree and Mistley Conservation Area has been adopted by the Council. Recommendation 17 of the CAMP specifically states that every opportunity should be used to seek a more sympathetic design solution for the edge of Mistley Quayside.
- 4.4 The future of the area beyond the lifespan of the current adopted Local Plan will be addressed in a new Local Plan that the Council is preparing but the Council will remain committed to protecting or enhancing its Conservation Areas.

Government Advice

- 4.5 The advice from Central Government in the DCLG Circular of June 2012¹ is that permitted development rights should be withdrawn only in exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.
- 4.6 The circular gives some examples of circumstances where an Article 4(1) Direction might be appropriate, one of which is that the exercise of permitted development rights would undermine the visual amenity of the area or damage the historic environment.

Expediency

- 4.7 The existing fence at Mistley Quay is unsightly due to its utilitarian appearance, its height and materials which do not compliment its setting and so the fence detracts from the character and appearance of the Manningtree and Mistley Conservation Area. It was installed without any prior discussion or negotiation with the Council and the port owner has consistently failed to meet with the Council to discuss the concerns about the appearance of the fence or to agree on a possible replacement, despite a number of offers of a meeting from the Council.
- 4.8 In April 2012, the Council received evidence from eye witnesses in the local area suggesting that the erection of the replacement fence was imminent. In those circumstances and given its concern about the materials and the construction of the proposed fence, the Council was satisfied that its erection constituted an 'immediate threat' in accordance with the DCLG Circular and justified it making and serving the immediate Article 4(1) Direction.
- 4.9 The Council is also satisfied (from TWL's representations of 24th May 2012) that, without an Article 4 Direction, TWL intends to erect the proposed replacement fence under permitted development rights and that the erection of such a fence could undermine the visual amenity of the area and/or damage the historic environment and/or be prejudicial to the proper planning of the area, in that it could have an adverse impact on the character and appearance of the Conservation Area.
- 4.10 Moreover, the history of this matter demonstrates that, without an Article 4 Direction, there is a real risk of an inappropriate replacement fence being erected on the quayside and/or further fences being erected there and/or the current fence being inappropriately altered or allegedly "improved", any of which would have the potential to harm the character and appearance of the Conservation Area. It would be prejudicial to the proper planning of the area and would damage the historic environment if further inappropriate development took place. In effect, failure to act would put the Council at risk of not properly discharging its duty to protect and enhance its conservation areas.
- 4.11 In the circumstances, an Article 4(1) Direction is considered expedient in order to bring the forms of development covered by the Direction back under control so that potentially harmful proposals can be considered on a case by case basis, in accordance with English Heritage and Government advice.

¹ Department for Communities and Local Government Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 – June 2012

5. Conclusion

- 5.1 Walls, gates or fencing of the height permitted in the General Development Order can be unsightly and should therefore be brought within planning control, where necessary and where such development could cause harm to the historic character of an area. For the reasons given above, the Council considers it expedient to make and serve an immediate Article 4(1) Direction to control the erection, construction, maintenance, improvement or alteration of gates, fences, walls or other means of enclosure at land at Mistley Quay.
- 5.2 Notice was given on 27 April 2012 by site display and individually to the owners/occupiers of the land that is the subject of this Direction and by local advertisement on 4 May 2012. Copies of the Direction and notice were submitted to the Secretary of State and the County planning authority to notify them that this Direction had been made.
- 5.3 The Direction came into force on the date notice was first given (27 April 2012). A period of public consultation was held from Friday 4 May 2012 until 16:00 on Friday 25 May 2012, during which time any person or organisation was entitled to make written representation to the Council about the Direction. A number of representations were received about the Direction, which were carefully considered (see separate report on the consideration of representations received).
- 5.4 However, the Council remains concerned about potential development that could harm the character and appearance of the Manningtree and Mistley Conservation Area and has therefore decided to confirm the Direction. Authority was given by the Council's Planning Committee on 2 October 2012 to confirm the Direction. The Direction was subsequently confirmed on 12 October 2012, thereby making it permanent.