

Southend-on-Sea Borough Council

Agenda
Item

Report of the Corporate Director of Place
To
Development Control Committee
On
03rd June 2015

Report(s) Enforcement of Planning Control

A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172

Reports prepared by: Enforcement Officers

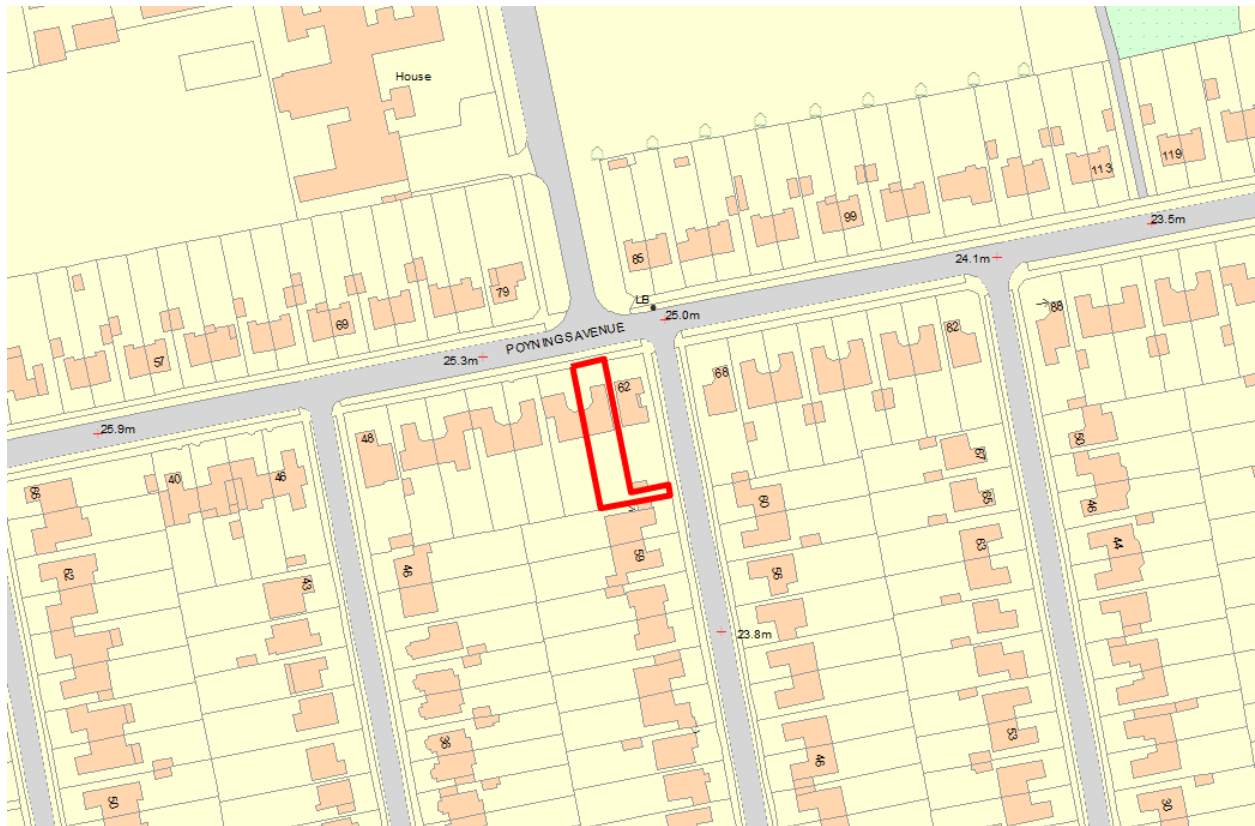
1 Introduction

1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

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Enforcement Report			
Southchurch	15/00003/UNAU_B	60 Poynings Avenue Southend-On-Sea	2
Victoria	15/00048/UNAU_B	17 Bircham Road Southend-On-Sea	7

Reference:	15/00003/UNAU_B
Ward:	Southchurch
Breach of Control	Without planning permission, the erection of single storey side and rear extensions.
Address:	60 Poynings Avenue, Southend-On-Sea, Essex, SS2 4RU
Case Opened:	08 January 2015
Case Officer:	Ian Harrison
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The 'L' shaped application site is located to the South of Poynings Avenue with a small vehicle access onto Arlington Road leading to the rear of 62 Poynings Avenue and to the side of 61 Arlington Road. The site contains a single storey dwelling which measures approximately 12.5 metres deep and 8 metres wide. The site is surrounded by residential properties with similar bungalows to the South, East and West and two storey dwellings to the North.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a dwellinghouse within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

3 Present Position

- 3.1 On 8th January 2015, an enforcement case was opened as a result of concerns raised by local residents about a number of works that have occurred at the site comprising of the erection of an outbuilding/structure at the rear of the site, gates at the Arlington Road frontage of the site and single storey projections to the South and East of the existing dwelling.
- 3.2 On 16 January 2015 a site visit was undertaken when it was established that the gates were within 2 metres of the highway and exceeded a height of 1 metre and therefore required planning permission unless they were moved to a position that is 2 metres or more from the highway. This has subsequently occurred and therefore the gates are deemed to be permitted development under the terms of Class B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.
- 3.3 It was also concluded that the single storey side/rear extensions require planning permission as the developments that have occurred do not accord with the terms and conditions of permitted development allowances as defined by Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 1995 (as amended), which has subsequently been superseded by the Town and Country Planning (General Permitted Development)(England) Order 2015. It is considered that the proposal does not accord with permitted development allowances for the following reasons:
- The rear extension projects to the side of the dwelling and therefore must also be considered as a side extension. As the extension exceeds half of the width of the dwellinghouse, the development exceeds the limit of permitted development that is set out at A.1 (J) (iii) of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

- As the materials used in the construction do not match the original dwelling the development does not accord with condition A.3 of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015

- 3.4 During initial correspondence, the landowner suggested that the structures are immune from enforcement action by virtue of the fact that they have existed at the site for more than four years. Photographic evidence demonstrates that this is not the case.
- 3.5 The landowner was advised that planning permission was required to retain the side/rear extensions but as an application was unlikely to be supported by Officers, the applicant was advised to remove the unauthorised structures.
- 3.6 No application was received and so the position of Officers was reiterated in correspondence dated 27 March 2015.
- 3.7 To date, no application for retrospective planning permission has been received.
- 3.8 The rear outbuilding/structure at the site does not measure more than 2.5 metres tall and do not cover more than 50% of the curtilage of the property and as such it is considered that the structures accord with permitted development allowances as set out at Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 1995 as amended and subsequently superseded.

4 Appraisal

- 4.1 For the reasons set out above, it is considered that the side and rear extensions that have occurred require planning permission.
- 4.2 Members will be aware that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in unmitigated, demonstrable harm to the amenities of the area.
- 4.3 If a retrospective application for planning permission to retain the outbuildings was to be submitted, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential amenity.
- 4.4 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.

- 4.5 Policy C11 of the Borough Local Plan requires development carried out in residential areas to be designed to create a satisfactory relationship with its surroundings.
- 4.6 Policy H5 requires all development within residential streets to be appropriate in its setting by respecting neighbouring development, existing residential amenities and the overall character of the locality whilst also achieving a high standard of layout and design. Similar advice is contained within policy DM1 of the Council's emerging Development Management DPD.
- 4.7 The roofs of the extensions are visible above the existing boundary treatments and are therefore visible from Arlington Road. Moreover, the front elevation of the side extension is visible from public vantage points within Poynings Avenue.
- 4.8 Paragraph 348 of SPD1 states that *"Whether or not there are any public views, the design of rear extensions is still important and every effort should be made to integrate them with the character of the parent building, particularly in terms of scale, materials and the relationship with existing fenestration and roof form."* Policy C11 states that "external materials should be sympathetic in colour and texture with neighbouring development." This is supported by section 4.41 of SPD1.
- 4.9 In this instance it is considered that the timber and polycarbonate materials that have been used in the construction of the side and rear extensions is not in-keeping with the character and appearance of the existing dwelling and has a makeshift and untidy appearance that causes harm to the character and appearance of the site and the surrounding area. The condition of permitted development rights that requires developments to use matching materials is considered to be in place to ensure that development does not cause visual injury such as that which is caused by the development that has occurred.
- 4.10 The scale and positioning of the extensions is not considered to be unacceptable as the extensions are subordinate to the original dwelling and are of a height that does not cause material harm to the light, privacy or outlook of neighbouring properties. However, this does not override the injury to visual amenity that is caused through the use of unacceptable materials in the construction of the development.
- 4.11 For the reasons given, it is considered that the developments conflict with Policy CP4 of the Core Strategy, emerging Development Management DMD policy DM1 and policies C11 and H5 of the Borough Local Plan to the extent that enforcement action would be proportionate, expedient, reasonable and in the public interest and, if an application for planning permission to retain the outbuildings were to be submitted, it is considered that it would, most likely, be recommended for refusal.

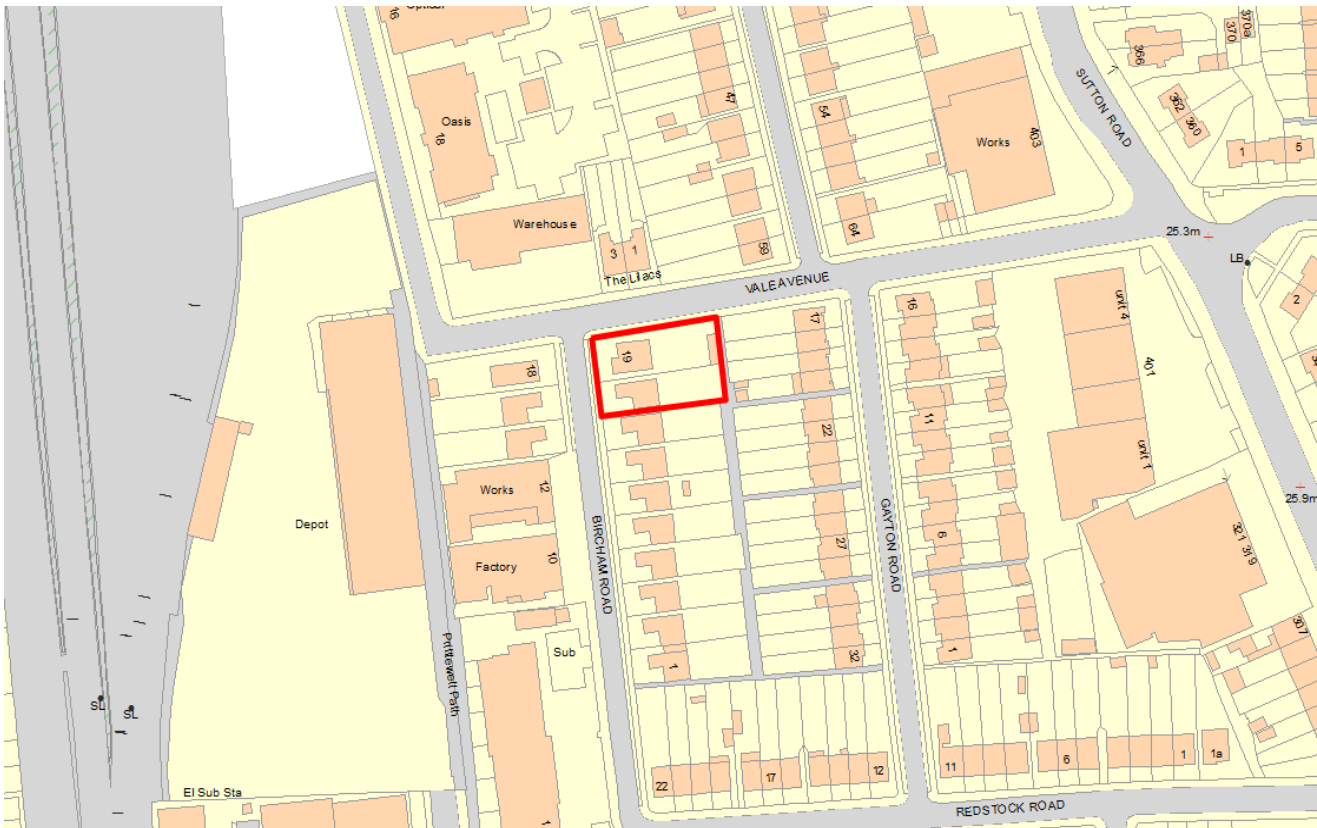
5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF).
- 5.2 National Planning Practice Guidance (NPPG).
- 5.3 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 5.4 Southend-on-Sea Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design and Layout Considerations).
- 5.5 Emerging Development Management (DPD2) Policy DM1 (Design Quality).
- 5.6 Design and Townscape Guide 2009 (SPD1).

6 Recommendation

- 6.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to require the removal of the unauthorised side and rear extensions on the grounds of detriment to visual amenity caused by the poor design and inappropriate materials that have been used contrary to Core Strategy Policies KP2 and CP4, Local Plan Policies, C11 and H5, Emerging Development Management DPD policy DM1 and the Design and Townscape Guidance (SPD1).
- 6.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.
- 6.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case it is considered that a compliance period of 3 months is reasonable

Reference:	15/00048/UNAU-B
Ward:	Victoria
Breach of Control	The erection of a 1.8m high fence other than in accordance with Condition 07 of Planning Permission 13/001625/FUL.
Address:	Rear of: 17-19 Bircham Road, Southend-on-Sea, SS2 5DN
Case Opened:	11 th February 2015
Case Officer:	Neil Auger
Recommendation:	TAKE NO FURTHER ACTION



1 Site and Surroundings

- 1.1 Plot of land to the rear, and formerly part of the curtilage of, a pair of detached bungalows located to the east side of Bircham Road directly adjacent to its junction with Vale Avenue. The rear gardens of numbers 17 to 20 Gayton Road lie to the east side of the plot which will be accessed from Vale Avenue.

2 Lawful Planning Use

- 2.1 The lawful planning use is as residential curtilage within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

3 Present Position

- 3.1 On 11th February 2015, an enforcement case was opened as a result of concerns raised by a local resident about a fence which had been constructed to the eastern boundary of the land.
- 3.2 On 18th February 2015, a site visit was carried out by the case officer when it was noted that a fence, approximately 1.8m high, had been erected centrally within the area designated on the Title Plan held by the Land Registry as a rear alleyway for the houses at 17 to 20 Gayton Road. This resulted in approximately 0.70m of the shared alleyway being incorporated into the development plot.
- 3.3 A letter was sent to the landowner/applicant reminding him that condition 07 of planning permission 13/01625/FUL, imposed by the Planning Inspector, required that:

“The dwelling shall not be occupied until a solid timber fence a minimum of 1.8m in height has been erected to the boundaries of the site with the gardens of Nos. 17 and 19 Bircham Road to the west and with the shared alleyway to the east.”

The reason given in the Inspector’s decision letter for the imposition of condition 07 was:

“to ensure there is no encroachment from the development onto the shared access way”.

The owner/applicant was advised to submit an application for planning permission for the variation of condition 07 or, alternatively, to relocate the fence to the position stipulated therein.

- 3.4 To date, no application has been received and the fence remains in its unauthorised location.

4 Appraisal

- 4.1 Disputes concerning ownership and/or the location of boundaries between areas of private land are civil matters in which the Council, generally, has no role. As a result, alleged encroachment onto neighbouring land does not represent a breach of planning control and residents are routinely advised to seek private legal advice if they wish to pursue such issues.
- 4.2 Provided they are not located adjacent to a highway, the erection of fences up to 1.8m in height are permitted under Schedule 2 Part 2 Class A of the Town and Country Planning (Permitted Development) (England) Order 2015.
- 4.3 Specific planning permission is not, therefore, required to erect a fence within the shared alleyway and the development would not fall within the control of the Council in planning terms.
- 4.4 Also, although condition 07 of 13/01625/FUL, requires a fence to be erected to the western side of the alleyway, it does not require its retention in that location. As such, there is no reason why the applicant could not erect it initially in its approved location in order to comply with the condition and then remove it.
- 4.5 Notwithstanding the validity of the condition or that encroachment would be a civil matter, Council records and photographic evidence submitted by the owner/applicant show that the alleyway in question has been fenced off at the Vale Avenue end and overgrown and impassable for a considerable period. It would seem that the alleyway has not been used for some considerable time which brings into question the need for it and, indeed, the reason the condition was imposed.
- 4.6 On this basis, the condition is considered unenforceable and, as such, fails to comply with the tests for the imposition of planning conditions.
- 4.7 For the reasons given, it is not considered that enforcement action under Section 172 of the Town & Country Planning Act 1990 (as amended) would be proportionate, expedient, reasonable or in the public interest.

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- 5.4 Southend-on-Sea Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design and Layout Considerations).

5.5 Design and Townscape Guide 2009 (SPD1).

6 Recommendation

6.1 **Members are recommended to TAKE NO FURTHER ACTION**