

Southend-on-Sea Borough Council

Agenda
Item

Report of the Corporate Director of Place
To
Development Control Committee
On
08th July 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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Reference:	EN/15/00078/UNAU_B
Ward:	Westborough
Breach of Control	Without planning permission installation of external balcony and staircase
Address:	10A Westminster Drive, Westcliff on Sea Essex
Case Opened:	18 March 2015
Case Officer:	Philip Kelly
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The site is the upstairs flat of a converted house in Westminster Drive. The road comprises mainly terraced houses and lies north to south between Fairfax Drive and London Road parallel with Westbourne Grove. The site is on the eastern side of Westminster Drive north of the junction with London Road.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as a residential flat.

3 Present Position

- 3.1 On 18 March 2015 the Council became aware of development at 10A Westminster Drive. A site visit showed that an unauthorised balcony and external staircase had been erected at the rear of 10A Westminster Drive. It appears from Council records that a staircase and raised balcony, albeit much narrower, has previously existed at the property. On 31 March 2015 the owner of the upstairs flat was written to requesting confirmation that the structure would be removed unless an application were to be submitted for its replacement with a much less obtrusive structure. Nothing has been heard from the owner, and the structure remains.

4 Appraisal

- 4.1 The NPPF, policies KP2 and CP4 of the Core Strategy, policy DM1 of the emerging Development Management DPD, policies H5 and C11 of the Borough Local Plan and the Design and Townscape Guide 2009 (SPD1) require alterations to respect the existing character and appearance of the building. They are also required to respect the amenity of neighbouring buildings; not to adversely affect light, outlook or privacy; to respect existing residential amenities and to create a satisfactory relationship with surroundings. It is considered that this development fails on all of the above grounds. Although it is acknowledged a small balcony and staircase previously existed, the new structure is much more visually dominant and obtrusive. There are other small single storey 'outrigger' extensions to the neighbouring properties which are likely to be original but appear as subservient elements to the main part of the building. However, in contrast, the raised balcony appears as a discordant feature to the detriment of the character of the building and locality.
- 4.2 With regard to the impact on living conditions of neighbouring properties, there are concerns that the significant increase in footprint of the balcony now provides uninterrupted views of neighbouring properties to the detriment of their living conditions. Balconies are not a common feature of the locality and they are considered to be materially different in their impact than a window at upper levels within a property. The scale of the balcony is clearly provided to increase the level of outdoor amenity space and thus will also introduce additional levels of noise and disturbance to the detriment of the amenity of surrounding residents. There are also concerns with regard to the oppressive nature of the structure on the outlook and accessibility to natural daylight and sunlight for the ground floor flat.

The extent of the structure means that ground floor rooms which are served by these windows are significantly affected in terms of their usability and amenity value for these occupiers. On this basis the structure is also considered unreasonably oppressive in this respect.

- 4.3 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised balcony and staircase.

5 Planning History

- 5.1 No planning history

6 Planning Policy Summary

- 6.1 National Planning Policy Framework (NPPF)
- 6.2 CSP Policies KP2 (Development Principles) and CP4 (Environment and Urban Renaissance)
- 6.3 Development Management DPD policy DM1 (Design Quality)
- 6.4 Local Policy C11 (New buildings, extensions and alterations)
- 6.5 Design and Townscape Guide (SPD1)

7 Recommendation

- 7.1 **MEMBERS ARE RECOMMENDED TO AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised external balcony and staircase at the rear. This is because of its unsympathetic design, and because it causes overlooking and an overbearing and oppressive impact on neighbouring properties, to the detriment of residential amenity, contrary to the NPPF, policy C11 of the Borough Local Plan, policies KP2 and CP4 of the Core Strategy, policy DM1 of the emerging Development Management DPD and advice contained within the Design and Townscape Guide (SPD1).
- 7.2 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.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a three months compliance period is reasonable in these circumstances.

Reference:	EN/12/00236/UNAU_C
Ward:	Leigh
Breach of Control	Without planning permission clad shopfront with plastic foliage
Address:	149 Leigh Road, Leigh on Sea Essex
Case Opened:	18 September 2012
Case Officer:	Philip Kelly
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The site is the ground floor unit of a two storey terraced building. It is used as a restaurant. This part of Leigh Road is a secondary shopping area. Number 149 is on the north side of Leigh Road about 10 metres west of the junction with Lord Roberts Avenue.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as a restaurant.

3 Present Position

- 3.1 In September 2012 the Council became aware of development at 149 Leigh Road. Cladding giving the appearance of foliage had been installed on the shopfront. The officer dealing with this wrote to the owner in December 2012 advising that planning permission was required for this and asking for a planning application to be submitted whilst pointing out that permission would not necessarily be given. After several attempts, an application was received in June 2014. This was refused planning permission on 14 August 2014. No appeal against refusal of planning permission has been lodged and on 19 March 2015 the Council sent an email to the owner's agent requesting removal or discussion as to a satisfactory alternative. No reply to this email has been received and the cladding remains in place.

4 Appraisal

- 4.1 National and borough Council planning policy requires alterations to properties to respect the character of the existing neighbourhood and improve the environment through high quality design, including use of appropriate materials. Supplementary Planning Document: Design & Townscape Guide includes specific guidance relating to shopfronts and states that *"shopfronts should reflect the scale and character of the whole building and generally aim to enhance the streetscene"*. It also states that *just one unsympathetic shopfront can destroy the character of the whole street, therefore to build high quality retail environments it is important that basic design principles and high quality detailing is applied to each and every shopfront alteration"*.
- 4.2 The plastic foliage does not make a positive contribution to the appearance of the building or the streetscene. The use of plastic foliage is considered to be a poor quality material which is out of character with other commercial properties in this part of Leigh Road. The extent of the foliage which is applied to the entirety of the fascia exacerbates the visual impact and further makes this appear out of keeping with other properties in the shopping parade, which are characterised by a defined fascia typically including an element of signage. On this basis it is considered detrimental to the appearance of the commercial unit and the wider streetscene.

- 4.3 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised balcony and staircase.

5 Relevant Planning History

August 2014 – Clad shopfront surround with plastic foliage (Retrospective) (14/00944/FUL). Reason:

The plastic foliage by virtue of its appearance is detrimental to the appearance and character of the existing property and the streetscene contrary to the National Planning Policy Framework 2012, Policies KP2 and CP4 of the Core Strategy, Policies C7 and C11 of the Borough Local Plan, and advice contained within the Design & Townscape Guide SPD1

6 Planning Policy Summary

- 6.1 National Planning Policy Framework 2012.
- 6.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (Environment & Urban Renaissance).
- 6.3 Policy DM1 (Design Quality) of the Emerging Development Management DPD
- 6.4 Southend-on-Sea Borough Local Plan C11 (New Buildings, Extensions and Alterations), H5 (Residential Design and Layout Considerations), C7 (Shop and Commercial Frontages and Fascia's), C2 (Historic Buildings).
- 6.5 Supplementary Planning Document 1: Design & Townscape Guide, 2009.

Recommendation

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised plastic foliage on the shopfront of 149 Leigh Road. This is because the nature and extent of the materials used are detrimental to the character of the building and street scene contrary to the NPPF, policy CP4 of the Core Strategy, policy DM1 of the emerging Development Management DPD, Local Plan Policies C11, C7, C2 and the Design and Townscape Guide (SPD1).
- 7.2 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.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a two months compliance period is reasonable in these circumstances.

Reference:	EN/15/00178/UNAU_B
Ward:	Thorpe
Breach of Control	Without planning permission installation of a trellis fence
Address:	165 Eastern Esplanade, Southend on Sea Essex
Case Opened:	28 January 2015
Case Officer:	Philip Kelly
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The site is located to the northern side of Eastern Esplanade. The existing property is a two storey dwellinghouse that has been previously extended with a single storey extension to the rear and a dormer roof extension to the second floor. The property to the west is a three storey flatted block at 164 Eastern Esplanade. To the east are three storey residential properties. To the south is the Eastern Esplanade.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as a dwellinghouse.

3 Present Position

- 3.1 On 26 January 2015 the Council received expressions of concern about the height of a newly constructed trellis fence to the rear. A site visit showed that an unauthorised trellis fence had been erected, about 4.5 metres in total height above ground level. It extends 7.2 metres from the original rear wall of the dwellinghouse, along the boundary with the western neighbouring house mainly as a trellis about 2 metres above the flat roof of the single storey extension.
- 3.2 The owner was advised that a refusal of planning permission to retain the fence was likely, but nevertheless an application for planning permission to retain it was made. This was refused under delegated authority on 28 April 2015. The owner was subsequently requested to confirm that the fence would be removed, but no reply has been received, and the fence remains.

4 Appraisal

Principle of Development

- 4.1 The fence is considered in the context of the National Planning Policy Framework, emerging policy DM1 of the Development Management (DPD2), policies KP2 and CP4 of the Core Strategy, policies C11 and H5 of the Borough Local Plan and the Design and Townscape Guide (SPD1). These policies and guidance support extensions to properties in most cases but require that such alterations and extensions respect the existing character and appearance of the building and the amenities of neighbours.
- 4.2 Paragraph 56 of the NPPF states: *“The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.*

- 4.3 Paragraph 60 of the NPPF states: *“Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness”*.
- 4.4 Emerging policy DM1 of the Development Management and policy KP2 of the Core Strategy advocates the need for all new development to respect the character and scale of the existing neighbourhood where appropriate and secure urban improvements through quality design. Policy CP4 of the Core Strategy states that development proposals will be expected to contribute to the creation of a high quality, sustainable, urban environment which enhances and complements the natural and built assets of Southend by maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development.
- 4.5 Policy C11 of the Southend on Sea Borough Council states that new extensions should be designed to create a satisfactory relationship with their surroundings in respect of form, scale, massing, height, elevational design and materials. The Design and Townscape Guide states that alterations to existing buildings with particular reference to extensions and alterations should appear subservient and must be respectful of the scale of the present building.
- 4.6 The unauthorised trellis has been erected along the boundary between no. 164 and 165 Eastern Esplanade. The trellis is 2m in height, but from the top of the trellis to the ground level is 4.5m. It extends 7.2m beyond the existing rear wall of the dwellinghouse. The trellis is highly visible within the streetscene from Lifstan Way to the east and Bryant Avenue to the west. Given its scale, in particular the height and depth, it is considered to be an excessively large boundary treatment which is not subservient to the existing building. On this basis it is considered to be detrimental to the appearance of the existing building and the locality.
- 4.7 The trellis set on the boundary is adjacent to an existing window serving a kitchen but is also visible from a bedroom serving flat 1 of Conway Court, 164 Eastern Esplanade. Although in close proximity to these windows, it is not considered the trellis results in a material loss of light. However, the development by reason of its siting, rearward projection and overall height results in an obtrusive feature which creates an unreasonable sense of enclosure, particularly when viewed from the rear garden area. This is considered detrimental to the living conditions of residents at 164 Eastern Esplanade.
- 4.8 It is acknowledged that the owner erected the trellis due to overlooking and security issues. In this instance it is not considered that any potential security concerns outweigh the visual harm identified by the structure. With respect to overlooking, the rear garden is no worse overlooked than before the building works took place on the existing property as this was an existing situation.

- 4.9 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised trellis fence.

5 Planning History

- 5.1 Erect single storey side extension and install bi-fold doors to front balcony (amended proposal) - Granted (13/01754/FULH).
- 5.2 Form enlarged dormer and bi-fold doors to balcony from loft, double doors to first floor balcony and erect single storey side extension - Refused (13/01206/FULH).
- 5.3 Erect trellis to side boundary of existing flat roof at rear (retrospective) – Refused (15/00373/FULH). The reason for refusal was;

The trellis by reason of its siting, rearward projection beyond the original dwellinghouse and height would result in an incongruous addition to the existing building overbearing to the immediate neighbours at Conway Court, 164 Eastern Esplanade and a harmful addition to the detriment of the character and appearance of the streetscene when viewed from Lifstan Way to the east and Bryant Avenue to the west contrary to the National Planning Policy Framework, policy DM1 of DPD2, Policies KP2 and CP4 of the Core Strategy and Policies C11 and H5 of the Southend on Sea Borough Local Plan and the advice contained within the adopted Design and Townscape Guide (SPD1).

6 Planning Policy Summary

- 6.1 National Planning Policy Framework
- 6.2 Core Strategy Policies KP2 (Development Principles) and CP4 (Environment and Urban Renaissance)
- 6.3 Policy DM1 (Design Quality) of the emerging Development Management DPD
- 6.4 Borough Local Plan Policies C11 (New buildings, extensions and alterations) and H5 (Residential Design and Layout)
- 6.5 Design and Townscape Guide (SPD1)

7 Recommendation

- 7.1 **MEMBERS ARE RECOMMENDED TO AUTHORISE ENFORCEMENT ACTION** to remove the trellis on the grounds that by reason of its siting, rearward projection beyond the original dwellinghouse and height results in an incongruous addition to the existing building, is overbearing to the immediate neighbours at Conway Court 164 Eastern Esplanade and is a harmful addition to the detriment of the character and of the streetscene contrary to the National Planning Policy Framework, policy DM1 of DPD2, Policies KP2 and CP4 of the Core Strategy and Policies C11 and H5 of the Southend on Sea Borough Local Plan and the advice contained within the adopted Design and Townscape Guide (SPD1).
- 7.2 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.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a one month compliance period is reasonable in these circumstances.