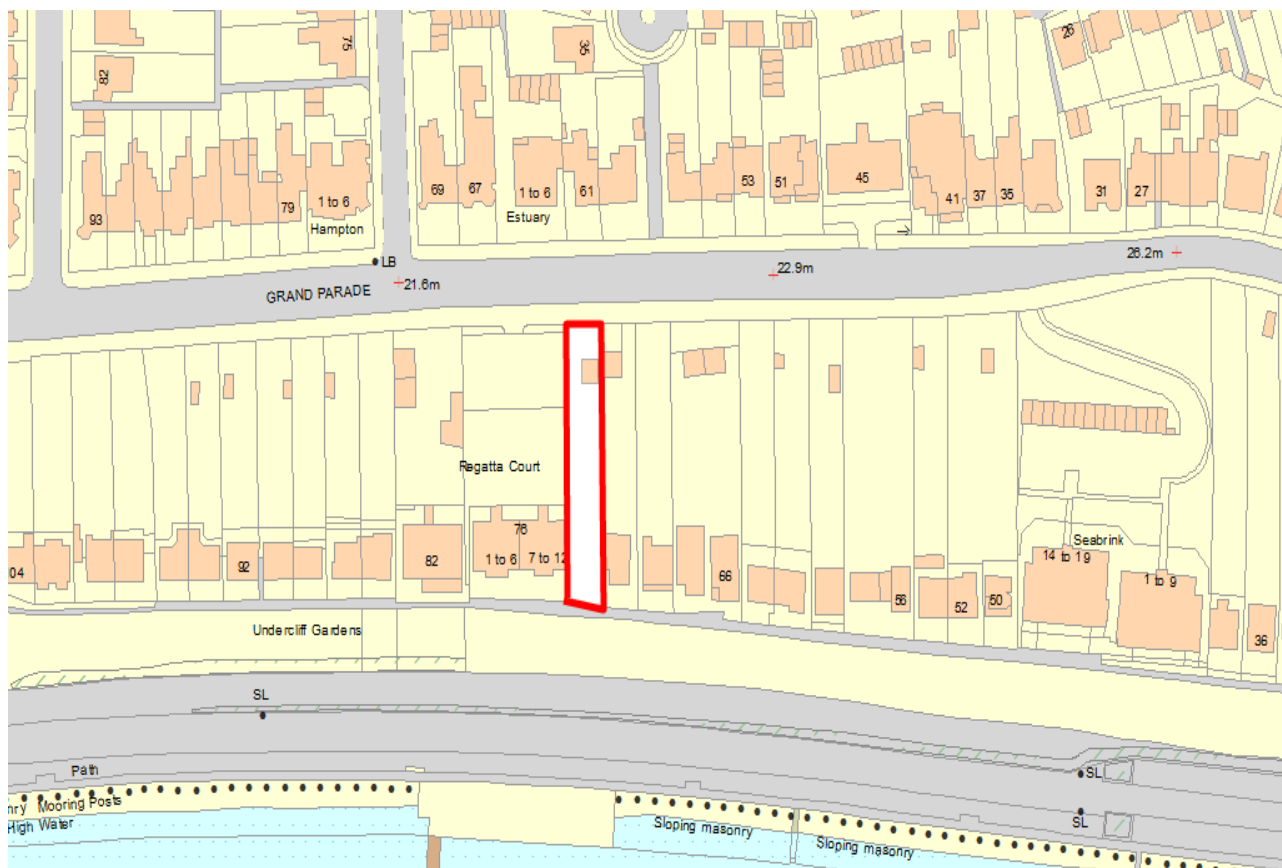


Reference:	17/00009/UNAU_B
Ward:	Leigh
Breach of Control	The installation of clear glazed side panels to balconies & non installation of obscure glazed panels to ground floor north aspect in breach of condition 3 of planning approval 15/01606/AMDT granted under appeal Ref APP/D1590/W/16/3144896
Address:	74 Undercliff Gardens, Leigh on Sea, Essex. SS9 1ED
Case Opened:	16 th January 2017
Case Officer:	Steve Jones
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 No 74 Undercliff Gardens is a contemporary 3 storey detached house on the north of the footpath that runs to the north of the London to Shoebury railway line. Properties in Undercliff Gardens generally have their front entrances and gardens to their north, accessed from Grand Parade and their rear gardens and terraces facing south towards the estuary. Neighbouring development comprises residential uses, Regatta Court flats to the east and a house to the west.

2 Lawful Planning Use

- 2.1 The current use of the property is as a dwelling within Use Class C3 of the Town and Country Planning Act Use Classes (Amendment) Order 2005.

3 Background

- 3.1 On 16th January 2017 an enforcement case was opened following a complaint that the property did not comply with planning conditions requiring that the balconies be fitted with obscure glazed side screens pursuant to planning permission having been granted on appeal by the Planning Inspectorate in 2016 including for modified balconies to be created on the dwelling's north and south elevations. The original dwelling was granted planning permission in 2010. The planning application history is set out in section 6 of this report.
- 3.2 On 30th March 2017 Enforcement staff emailed the planning agent asking when the required screens would be installed.
- 3.3 On 3rd April 2017 Enforcement staff received an email from the property owner advising that access works on site would be completed soon to enable scaffolding to be erected in order to install the screens. The owner further stated that "The glazed screens have been surveyed by a specialist London glass company and will be installed soon"
- 3.4 On 26th July 2017, following further complaints, Enforcement staff emailed the property owner asking for an update.
- 3.5 On 3rd August 2017 Enforcement staff received an email from the property owner who apologised for the delay but explained the enabling works had been delayed due to contractor holidays but anticipated the scaffolding to be in place in September 2017.
- 3.6 On 27th September 2017 following further contact from complainants, Enforcement staff again emailed the property owner asking for a detailed update on timings for the installation of the obscure glazed balcony sides and reminding the owner of the terms of his planning permission and warning that enforcement action would be considered to seek resolution.
- 3.7 On 4th October 2017 Enforcement staff received an email from the property owner advising that the property was occupied on a part time basis. He further advised that, following a meeting with the relevant contractors, assurances had been given that the screens would be installed within 4 weeks.

- 3.8 On 30th October 2017 following a series of email exchanges between the owner and Enforcement staff, the owner advised that the scaffolding would be erected the following week and other trades would complete pre installation works for the screens that week.
- 3.9 On 21st November 2017 Enforcement staff emailed the property owner asking what stage had been reached with regards to the balcony screen installation.
- 3.10 On 26th November 2017 Enforcement staff received an email from the property owner advising completion of works on 4th & 5th December 2017.
- 3.11 On 7th December 2017 Enforcement staff received an email from the property owner advising the glazed screens had been installed to the balconies.
- 3.12 On 8th December 2017, following further contact from a complainant, Enforcement staff emailed the property owner asking if it was possible to electrically 'turn off' the glass obscuring and advising that to comply with the planning condition the glass should be permanently obscured.
- 3.13 On 21st December 2017 Enforcement staff again emailed the property owner asking for a response to the email sent on 8th December 2017.
- 3.14 On 10th January 2018 Enforcement staff again emailed the property owner asking for a response.
- 3.15 On 19th January 2018 Enforcement staff emailed the property owner to arrange a site visit. No response was received.
- 3.16 On 29th January 2018 Enforcement staff attended the site unannounced and called at the main entrance door to the property. This was answered by the property owner who immediately asked Enforcement staff to leave the site. A brief conversation followed concerning the balcony glazing but the owner was insistent that staff vacated the site. Enforcement staff did leave but it was noted at this time that there was no screening to the sides of the entranceway and that the screening to the rear first floor was clear and at a lower height to that shown on the approved plans.
- 3.17 On 16th February 2018 a 'Notice of Intended Entry' letter was sent to the property owner at the site address. This notified the owner of intended Enforcement staff attendance at the property at 11:00am on 20th February 2018.
- 3.18 At 11:00am on 20th February 2018 Enforcement staff attended the property and established the property owners were not on site. Following a conversation with contractors Enforcement staff received a phone call from the owner advising he had not received any letter requesting entry as there is no letterbox at the site.
- 3.19 On 20th February 2018 Enforcement staff hand delivered a 'Notice of Intended Entry' to the property owner at the site advising that Enforcement staff would attend the site at 11:00am on Friday 23rd February 2018. This Notice was also sent to the owner by email.

- 3.20 On 21st February 2018 Enforcement staff received a phone call from the property owner asking if the attendance date could be changed to the following week. Enforcement staff advised this was not possible. He then confirmed that the screens to the south balconies could be 'switched' on and off and asked if he made a declaration to that effect if the visit could be cancelled. He was informed the visit would take place.
- 3.21 On 21st February 2018 Enforcement staff received an email from the property owner asking if the visit time could be changed to 10:00am on 23rd February. This was agreed.
- 3.22 On 23rd February 2018 Enforcement staff attended the property and were allowed entry by the property owner. During the course of the visit it was seen that the side glazed units to both south balconies were obscured. The bottom half of the balcony was more obscure than the top half. The owner was asked to demonstrate how the 'switchable' system worked but he refused to do so stating his Barrister will deal with that. He was advised that his non-cooperation could amount to an obstruction which is a criminal offence and he was cautioned. He generally answered 'No Comment' to questions following that.
- 3.23 On examination of the balcony to the north side of the property it was noted that the side glass was clear and the handrail measured 1.1m from the balcony floor.
- 3.24 It was also evident from the amount of furniture, clothing and general day to day accessories in the house that it was in regular occupation.
- 3.25 On 6th March 2018 a Planning Contravention Notice (PCN) was hand delivered to the site with an accompanying letter. The primary objective for the service of this notice was to establish when the site was occupied and to what degree and to gain an understanding of what balcony glass could be switched and how this system worked technically. There is a legal requirement to respond to the PCN within 21 days.
- 3.26 On 27th March 2018 Enforcement staff received a response to the PCN via solicitors representing the property owners.
- 3.27 On 27th March 2018 Enforcement staff emailed the solicitors in respect of the answers given as it was considered some questions had not been fully answered and seeking further clarity.
- 3.28 On 3rd April 2018 Enforcement staff received photographs from 2 neighbouring properties alleging the south balcony screens to be clear on 31st March 2018. (Photos attached)
- 3.29 On 6th April 2018 Enforcement staff received a further email and photo from a neighbouring property again showing the south balcony at first floor to have clear glazing to the side. (Photo attached)
- 3.30 On 7th April 2018 Enforcement staff received a further email and photo from a neighbouring property again showing the south balcony at first floor to have clear glazing to the side. (Photo attached)

3.31 On 13th April 2018 Enforcement staff received a further email from the owner's solicitor in respect of the PCN. Although some additional information was provided it is considered that some questions are still not fully answered.

4 Appraisal

4.1 Planning permission 10/00554/FUL was granted on 25th May 2010 for the new dwelling. This included front and rear balconies. An amended application 15/01606/AMDT was submitted to the Local Planning Authority in 2015 seeking to vary condition 10 of the 2010 permission (Approved plans) and to replace the approved drawings with new plans which increased the depth of the ground and first floor rear (South facing) balconies. That application was refused by the Development Control Committee on 25th January 2016 on grounds that the proposed development by virtue of the depth and appearance of the proposed balconies and the associated roof would cause harm to the character and appearance of the application site and the surrounding area contrary to policy objectives.

4.2 An appeal against the refusal was allowed (Ref APP/D1590/W/16/3144896 dated 18th May 2016). The appeal inspector concluded that although the balconies would be slightly more prominent than as approved, given the same design approach, the variety of architectural forms and designs along Undercliff Gardens, including the adjoining flats at Regatta Court which he felt to be particularly dominant, and the existing variety of styles and designs of balconies, there would not be any adverse visual impact arising on the character and appearance of the area as a result of the change to balcony depth and the roof form as constructed. He therefore allowed the appeal subject to conditions amongst them a condition requiring obscure glazing to windows in side walls, the installation of privacy screens and timescales for their implementation, which the inspector considered were necessary in the interests of safeguarding privacy of adjoining occupiers.

4.3 Condition 3 says:

The vertical glazing screens to all balconies shall be glazed in obscure glass only (the glass to be at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the local planning authority), shall be fixed in position prior to the first occupation of the dwelling hereby approved and shall thereafter be retained in the position and size as shown on drawing no b500.

4.4 The drawings on plan b500 show that the side glazing screens to all balconies/terraces are full height (ranging between 2.4 – 2.5m) and obscure glazed. The requirements of Condition 3 have been triggered because the dwelling has been occupied. At the date of this report the situation on site is as follows:

1. Ground Floor South Balcony – both glass side panels are split horizontally approximately 60/40 (top/bottom). Top portion is switchable glass and can be made clear. This does not comply with Condition 3.
2. First Floor South Balcony – both glass side panels are split horizontally approximately 60/40 (top/bottom). Top portion is switchable glass and can be made clear. This does not comply with Condition 3.

3. Ground floor North side screening has not been installed to the side of the terrace and although the development is not complete there does not appear to be any provision for side screening to be installed. This does not comply with Condition 3.
4. First floor North side Balcony – both side panels are clear glazed and not full height allowing uninterrupted views to both neighbouring properties to the west and east sides. This does not comply with Condition 3.

5.0 Policy Considerations

- 5.1 The issue for consideration raised by this breach of planning condition is the impact on the amenity of occupiers of neighbouring properties.
- 5.2 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the National Planning Policy Framework 2012 (NPPF), in Policy DM1 of the Development Management Document (DMD) and in Policies KP2 and CP4 of the Core Strategy..” As one of its core planning principles (para 17) the NPPF states that “...planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings” and at para 203 states that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions..” but only to impose them “...where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”.
- 5.3 Linked to Core Strategy policies KP2 and CP4, Policy DM1 of the DMD states at (iv) that development should “protect the amenity of the site, immediate neighbours and surrounding area, having regard to privacy, overlooking, (and) outlook...”
- 5.4 The Council’s Design and Townscape Guide states that “the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.

6.0 Planning Considerations

- 6.1 Balconies and terraces are a characteristic feature of Undercliff Gardens residential properties including on the premises either side of No 74. The Council’s opposition to deeper balconies was based on character grounds, a view overturned by the appeal inspector. The inspector also concluded however that restrictions were needed to safeguard the impact of the deeper balconies on the amenity of neighbours. He would have imposed Condition 3 with full regard to the “tests” for planning conditions set out in the NPPF and referred to in 5.2 above. Screens have been installed to the sides of the balconies. Arguably they are in keeping with the contemporary, engineered design of the new dwelling. They rely however on an electrically controlled system which can instantly switch the glazing from obscured to clear. Despite being a specific element of the Planning Contravention Notice (PCN) questions, no detailed information has been supplied on the technical or other specification of the system installed.

- 6.2 Irrespective of the system's ability to switch to obscure glazing it is not permanently obscured. This means that it would remain at the volition of the current or future occupiers of the dwelling to decide to switch the system to clear. That would afford wider views up and down the estuary and of neighbouring properties. Aside from the former and a possible interest in new technology there appears to be no other reason why the owner would have installed switchable glazing. It is clear from the glazed screen would enable views directly onto the balconies of neighbouring dwellings, exacerbated by the deeper form of balconies at No 74. As well as the consequent direct harm to amenity which would result, neighbours would have a perception that the system could be switched at any time, leading to an added perception of possible invasion of privacy even when the screens are obscured. In all of the above respects the current screen installation does not comply with the terms of the planning condition, is unacceptably harmful to residential amenity and therefore contrary to policy objectives. The owner has recently submitted amendment applications seeking to retain the screens in their current form. One of those applications was subsequently withdrawn and the other is newer and under consideration. That will be determined on its individual merits but in general terms given the harm identified above it is considered that a retrospective approval would not be given for the screens in their current form.
- 6.3 Attempts to resolve the breach through communication with the owner seemed initially effective but have become less successful and increasingly and unreasonably more protracted with an installation in place which breaches the condition and which is causing anxiety for neighbours that their privacy may not be permanently safeguarded. Under these circumstances it is considered that formal enforcement action is both necessary and proportionate and authority for this is sought.

7.0 Relevant Planning History

- 7.1 Planning permission was granted for the erection of a three storey replacement dwelling at the application site under 10/00554/FUL. Earlier applications 08/00391/FUL, 08/01046/FUL, 09/01277/FUL and 09/01970/FUL proposed replacement dwellings but were withdrawn or refused.
- 7.2 Details were submitted to address conditions 2 (samples of materials) 4 (details of obscured glazing to balconies) and 5 (existing and proposed ground levels) under the terms of application 11/01650/AD. The submitted details were agreed by the Local Planning Authority.
- 7.3 Application 15/01801/NON was approved on 24/11/15 to enable the addition of a condition to planning permission 10/00554/FUL to list the conditions the development should have been undertaken in accordance with.
- 7.4 Planning permission was granted under the terms of planning application 11/00927/FULH for the erection of a detached garage, following the refusal of earlier application 10/01868/FULH which proposed a similar development. The design of the approved garage was subsequently amended under the terms of application 15/00798/AMDT.

- 7.5 Application 18/00298/AMDT sought to vary condition 3 (Balcony screening) to remove the requirement for obscure glazing at first floor level north aspect. This was withdrawn on 17th April 2018.
- 7.6 Application 18/00717/AMDT seeks to vary Condition 3 (Balcony screening). The proposal seeks the use of non-transparent materials in all balconies. This application has been validated and is currently under consideration. The determination date is 13th June 2018.

8 Recommendation

- 8.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure the installation of permanent obscure glazing to the north and south balconies in accordance with approved plan b500 and condition 3 of appeal decision APP/D1590/W/16/3144896 dated 18th May 2016.
- 8.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act or a Breach of Condition Notice and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice or Breach of Condition Notice.
- 8.3 When serving an Enforcement or Breach of Condition Notice the local planning authority must ensure a reasonable time for compliance. In this case a compliance period of 8 weeks is considered reasonable for the installation of suitable obscured glass.
- 8.4 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the local planning authority to balance the rights of the owners and/or occupiers against its legitimate aims 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 on the grounds set out in the formal recommendation.