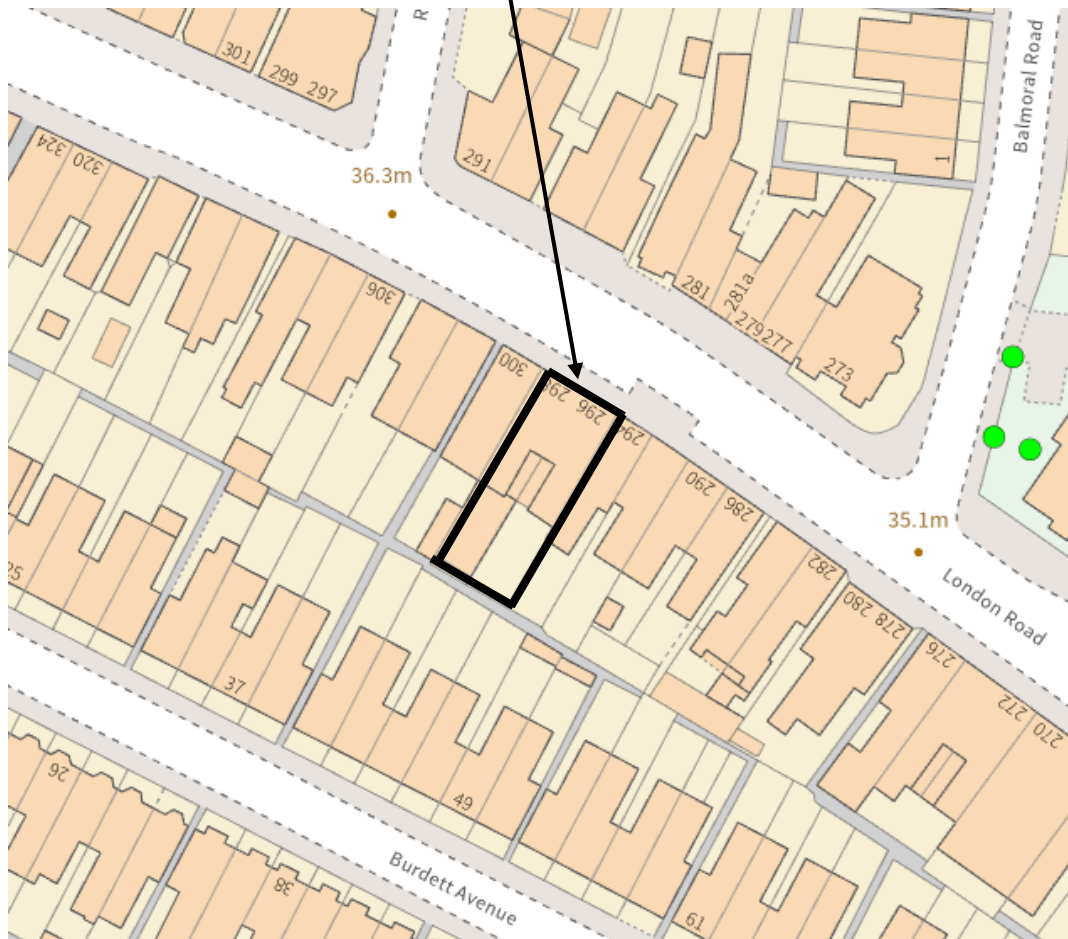


Reference:	20/00036/UNAU_B	
Report Type:	Enforcement	
Ward:	Milton	
Breach of Planning Control:	Installation of an extraction flue and metal ducting	
Address:	296-298, London Road, Westcliff-on-Sea, Essex, SS0 7JJ	
Case Opened Date:	05 February 2020	
Case Officer:	Edward Robinson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

296-298, London Road, Westcliff-on-Sea SS0 7JJ



1 Site and Surroundings

- 1.1 The site is on the southern side of London Road and contains two mid-terrace, two-storey buildings, consisting of a restaurant at ground floor and two flats above. The site is surrounded by other businesses and upper floor flats including No.296A and 298A and is part of a designated Secondary Shopping Frontage.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a business within Use Class E and as a flat within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 Relevant Planning History

296 London Road

- 3.1 There is no relevant planning history for this site.

298 London Road

- 3.2 20/00345/UCOU_B – Enforcement case –air conditioning equipment to rear – Open

[Officer Comment: Planning permission for the air conditioning equipment has been granted but conditions requiring additional details remain outstanding. Although at the same site, this is a separate matter and dealt under this separate case.]

- 3.3 21/00449/FUL- Alter shop front comprising of additional door to front and install three replacement air conditioning condensers at rear (Retrospective)- Application withdrawn.
- 3.4 21/00450/ADV- Install internally illuminated fascia signs to front (Retrospective)- Granted advertisement consent.
- 3.5 21/02146/FUL- Alter shop front comprising of additional door to front and install three replacement air conditioning condensers at rear (Retrospective) (Amended Proposal)- Permission granted.
- 3.6 22/01514/FUL- Install extraction flue to rear (retrospective)- application returned.
- 3.7 22/01532/FUL- Extend existing store to rear and alter elevations of the existing store- Permission granted.

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2023)
- 4.2 Planning Practice Guidance (PPG) (2023)
- 4.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)

5 The breach of planning control

5.1 The identified breach of planning control is:

- The erection of an extraction flue and metal ducting.

6 Procedural Matters

6.1 This case is presented to the Development Control Committee because officers consider it would be expedient to take enforcement action, including by issuing an enforcement notice.

7 Efforts to resolve the breach to date

7.1 In February 2020, a complaint was received by the Council alleging a flue had been installed to the rear. This related to the vertical extraction flue above No.298. Through correspondence with officers, the owner of the site was advised that a number of other breaches were identified at the site, including the installation of three air-conditioning units, the material change of use of the site, and the material alteration of the shopfront. In 2021, three applications were submitted seeking to regularise the identified breaches.

7.2 In April 2021, an advertisement application was submitted retrospectively to 'Install internally illuminated fascia signs to front. This received advertisement consent in May 2021 so that breach ceased.

7.3 In October 2021, a full planning application was submitted 21/02146/FUL to 'Alter shop front comprising of additional door to front and install three replacement air conditioning condensers at rear (Retrospective) (Amended Proposal)'. This received approval in February 2022. A condition was imposed requiring a noise impact assessment for the air-conditioning units. This remains outstanding and is the subject of planning enforcement investigation 20/00345/UCOU_B.

7.4 Between the original enforcement case being created in 2020 and at some point after 2021, the flue in its current unlawful form was installed. This is evidenced in photographs submitted with the various applications for the site.

7.5 A site visit was completed on 15 June 2022 and the flue was observed to still be in place. On 16 June 2022, a letter to the premises invited the owner to submit information required for this Local Planning Authority to validate the retrospective planning application. On 20 June 2022, an agent emailed the case officer asking for a copy of that letter so they could represent the owner.

7.6 In July 2022, a retrospective planning application 22/01514/FUL was received to 'Install extraction flue to rear' (retrospective). During July to October 2022, there was an exchange of emails with the planning agent about the lack of sufficient information for the application to be made valid.

7.7 On 06 January 2023 a final LPA letter warned the business that the application could not be validated and that enforcement action may be taken due to the unresolved breach. No response was received to this letter.

8 Appraisal of the harm caused

Impact on the Character of the Area

8.1 Given the limited public vistas available towards the development, and the presence of comparable type of development at the rear of the terrace, the development as

constructed would not be unexpected to the rear of a commercial parade and would not result in material harm to the character and appearance of the site, the streetscene and the wider area.

Amenity Impacts

- 8.2 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies that development should protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight. Further advice on how to achieve this is set out in the Council's Design and Townscape Guide. Paragraph 185 of the Council's Design and Townscape Guide states that flues should be designed to ensure that no nuisance or detriment to amenity is caused by odour, fumes, dust particles, food droplets vibration or noise to nearby properties.
- 8.3 The metallic extract ducting and flue to the rear has been installed to facilitate the operation of apparatus in association with the ground floor use of the site as a restaurant / hot food take-away. The immediate surrounding include shops, upper floor flats and amenity areas in London Road and the amenity areas and gardens of dwellings to the south of the site in Burdett Avenue.
- 8.4 The operation of such equipment gives rise to the potential for unacceptable odours, fumes, vibration, noise and disturbance. The nearest noise sensitive residential properties to the commercial kitchen extraction system are the first-floor flats at No.296A and No.298A London Road above the ground floor restaurant. The rear elevation of No.296A contains a first-floor entrance and window which are some 1m from the ducting's exit point in the elevation and the extract flue. The extract ducting extends across the flat roof area between the two flats within a well configuration and extends upwards along the side of No.298A.
- 8.5 It is understood that the restaurant operates daily between noon and 11pm. In considering a planning application for such equipment, it would be expected that full details, specifications and the location of the equipment, as well as a noise impact assessment and odour risk assessment measures would be required. The Council's Environmental Health service would be consulted to assess whether such details and assessments reasonably demonstrated that the unauthorised development would be detrimental to neighbours' amenity. No valid planning application has been demonstrating that the impacts of the unauthorised equipment are acceptable. Whilst an application for other air conditioning equipment was approved and details required by conditions remain outstanding, that apparatus is the subject of a different enforcement case.
- 8.6 It is not considered that the unauthorised development harms the privacy, outlook, sense of enclosure, or daylight and sunlight for the flats at No.296A & 298A London Road. It is not considered any other properties are adversely affected in these regards.
- 8.7 In the absence of any valid application, it has not been demonstrated that the unauthorised development does not give rise to unacceptable odours and fumes, vibration, noise and disturbance. In the absence of noise, odour and vibration impact assessments and any professionally recommended mitigation, it has not been demonstrated that the development is not harmful to the residential amenity. The unauthorised development is therefore unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Development Management Document (2015) Policies DM1 and DM3 and the guidance

contained within the Southend-on-Sea Design and Townscape Guide (2009).

9 Enforcement Action

- 9.1 Given the harm identified above, it is reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. This will reasonably aim to secure the removal of the unauthorised flue and metal ducting in its entirety and to remove from the site all materials resulting from compliance. No lesser steps that could remedy the identified breach or associated harm have been identified. It is considered that two (2) months is sufficient and reasonable time to allow for compliance with the above described steps.
- 9.2 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served as this will bring further focus to the need for the breach to cease and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 9.3 Taking enforcement action in this case may amount to an interference with the owner/occupier's 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 the public interest.

10 Equality and Diversity Issues

- 10.1 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment, and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have, in considering this planning enforcement case and preparing this report, had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

11 Recommendation

- 11.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION to require those issued with a copy of the Enforcement Notice to:**
- a) **Remove from the site the metal ducting and extraction flue to the rear in its entirety, and**
 - b) **Remove from site all materials resulting from compliance with a)**
- 11.2 **The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act with time for compliance two (2) months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**