

Reference:	22/00099/UNAU_B	
Report Type:	Enforcement	
Ward:	Leigh	
Breach of Planning Control:	Erection of timber screen to side of terrace	
Address:	19 High Street Leigh-on-Sea SS9 2EN	
Case Opened Date:	21 April 2022	
Case Officer:	Edward Robinson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The subject site is occupied by an end-of-terrace dwelling on the southeast side of the High Street within the Leigh Old Town Conservation Area. The site is also within the area subject of the Leigh Old Town Article 4 Direction which removes permitted development rights for the erection of a fence to a dwellinghouse. The site is within the Seafrost Character Zone 2 and Flood Zone 3, the highest probability zone.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 There is a long planning history for this application site. The most relevant items to this report are shown on the table below:

21/00140/FULH	Demolish rear extension, erect single storey rear extension and extend first floor existing terrace to rear	Approved (19.03.21)
22/02222/FULH	Erect timber privacy screen to side of first floor balcony (Retrospective)	Refused (03.01.2023)
23/00850/FULH	Replace timber privacy screen to side elevation of first floor balcony (amended proposal)	Refused (17.07.2023)

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2023);
- 4.2 Planning Practice Guidance (PPG) (2023);
- 4.3 National Design Guide (NDG) (2021);
- 4.4 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance);
- 4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend on Sea Historic Environment), DM6 (Southend's Seafrost);
- 4.6 Southend-on-Sea Design and Townscape Guide (2009);
- 4.7 Leigh Old Town Conservation Area Appraisal (2021).

5 Procedural Matters

- 5.1 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.

6 The breach of planning control

6.1 The identified breach of planning control is:

- The erection of a timber privacy screen to the eastern side of the first-floor terrace.

7 Efforts to resolve the breach to date

7.1 In April 2022 a complaint was received by the Council alleging timber fencing had been installed to a first-floor balcony. The erected timber privacy screen is some 3.39m wide and 1.8m high and is painted brown.

7.2 Following a site visit, a letter was sent to the dwelling advising the side screen required either retrospective planning permission or removal. A retrospective planning application was submitted later in 2022 under reference 22/02222/FULH (the "2022 Application"). This was refused in January 2023 and the Officer's report is appended to this report as Appendix 1.

7.3 After the refusal of the 2022 Application, in February 2023 a follow-up site visit was completed. Correspondence in February and May 2023 advising of the owner's options following the refusal, led to the submission of a part-retrospective application for an amended development under reference 23/00850/FULH (the "2023 Application"). The 2023 Application was refused in July 2023.

7.4 In September 2023 a follow-up site visit was completed. The side screen was unchanged, and the breach remained. Despite further correspondence, the screen remains in situ.

8 Appraisal

8.1 Through the determination of the 2022 Application, the Local Planning Authority has previously found that the development on site is unacceptable in relation to design and impact on heritage. The officer's report for the 2022 Application is appended to this report as Appendix 1.

Impact on the Character of the Area

8.2 No19 is identified in the Leigh Old Town Conservation Area Appraisal as making a positive contribution to the character and appearance of Leigh Old Town Conservation Area.

8.3 As discussed in paragraphs 6.3 to 6.8 of the officer's report of the 2022 Application (Appendix 1), the development was found to be unacceptable in terms of its impact on the character and appearance of the site and the wider area, including the significance of the Conservation Area. This finding is still relevant.

8.4 The timber privacy screen, by reason of its scale, location, materials and detailed design, is considered to be detrimental to the historic character and significance of the existing property and the wider Leigh Old Town Conservation Area. The identified harm to the conservation area is less than substantial, albeit significant, and any public benefits arising from the development do not outweigh the identified harm. The development is contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of Core Strategy (2007), Policies DM1, DM3 and DM5 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Old Town Conservation Area Appraisal (2021).

Other matters

- 8.5 The development is not found to result in any significant parking or highways impacts or any significantly harmful neighbour amenity impacts, it is therefore acceptable and policy compliant in these regards.

Enforcement Action

- 8.6 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 timber screen in its entirety and 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 one (1) month is sufficient and reasonable time to allow for compliance with the above described steps particularly considering that an additional period of at least 28 calendar days has to be allowed before any enforcement notice takes effect.
- 8.7 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.
- 8.8 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.

9 Equality and Diversity Issues

- 9.1 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.

10 Recommendation

- 10.1 **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 side privacy screen in its entirety, and**
 - b) Remove from site all materials resulting from compliance with a)**
- 10.2 **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 one (1) month and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**

Appendix 1

Reference:	22/02222/FULH
Application Type:	Full Application - Householder
Ward:	Leigh
Proposal:	Erect timber privacy screen to side of first floor balcony (retrospective)
Address:	19 High Street, Leigh-on-Sea, Essex
Applicant:	Mr Jason Morley
Agent:	Mr Jason Hopkins
Consultation Expiry:	29th December 2022
Expiry Date:	19th January 2023
Case Officer:	Gabriella Fairley
Plan Nos:	2020-07-02 (Rev E), 2022-31-01
Supporting Documents:	Heritage Statement, Design and Access Statement,
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site is occupied by an end of terrace dwelling on the southeast side of the High Street located within the Leigh Conservation Area. The application site is also within the area subject of the Leigh Article 4 Direction which removes permitted development rights for the erection of a fence to a dwellinghouse.

2 The Proposal

- 2.1 Retrospective planning permission is sought for the erection of a timber privacy screen to the side of the first-floor balcony. The timber privacy screen measures 3.39m wide and 1.8m high.

3 Relevant Planning History

- 3.1 There is a long planning history for this application site. The most relevant items to the determination of this application are shown on the table below:

93/0735	Erect first floor balcony at rear and install new window to flank wall.	Approved (02.12.1993)
11/00238/CAC	Demolish single storey rear extension (Conservation Area Consent).	Consent not required (01.03.11)
11/00237/FULH	Demolish existing single storey rear extension, erect single storey rear extension, extend existing terrace and erect conservatory to first floor at rear	Approved (21.02.11)
15/01850/FULH	Demolish rear extension, erect single storey	Approved (29.12.15)

	rear extension and conservatory to first floor and extend existing terrace.	
21/00140/FULH	Demolish rear extension, erect single storey rear extension and extend first floor existing terrace to rear	Approved (19.03.21)
22/00099/UNAU_B	Erection of unauthorised timber screen to side of terrace approved under 21/00140/FULH	Pending

4 Representation Summary

Public Consultation

- 4.1 Four (4) properties were consulted, a site notice was displayed, and a press notice was published. No letters of representation have been received.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF) (2021)
- 5.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 5.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance).
- 5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend on Sea Historic Environment)
- 5.5 The Southend-on-Sea Design and Townscape Guide (2009)
- 5.6 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 5.7 Leigh Conservation Area Appraisal (2020)

6 Appraisal

- 6.1 This application is considered in the context of the above policies relating to design and conservation. These policies and guidance support alterations and extensions to properties in a conservation area where they respect the special historic character and significance of the building and that of the wider conservation area.
- 6.2 Subject to these requirements this development is acceptable in principle. The determining factors are therefore the detailed material considerations discussed below.

Design and Impact on the Character of the Area

- 6.3 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, in Policies KP2 and CP4 of the Core Strategy and also in Policy DM1 of the Development Management Document. The Design and Townscape Guide also states that; "the Borough Council is committed to good design and will seek to create attractive, high-quality living environments."
- 6.4 With regard to the character of the area, the application site is located within the Leigh Conservation Area. A Conservation Area is "an area of special architectural or historic

interest" with a character which is "desirable to preserve or enhance" (Part II, paragraph 69 of the Planning (Listed Buildings & Conservation Areas) Act, 1990). This special character comes from a range of factors including the design of the buildings as well as the materials used.

- 6.5 Consistent with the statutory duty under Sn72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy DM5 of the Development Management Document states that in order to conserve and enhance the character and quality of the Conservation Areas, development proposals will have to be carefully considered and demonstrate a high-quality design that not only integrates with the surroundings but also conserves and enhances its intrinsic character and distinctiveness.
- 6.6 The application property forms part of a group of similar terraced dwellings on the southeast of High Street, making up 9 dwellings in total. The other dwellings along the row of terraces have metal balustrades surrounding their rear balconies. These properties provide significant value to the character and integrity of the conservation area. The timber privacy screen is visible from the rear of the dwelling, along Alley Dock and is significantly out of place. The location, scale, choice of material and appearance of the timber privacy screen are inappropriate for this historic dwelling. The inappropriate design significantly harms the conservation area and is an unsympathetic addition to the rear balcony.
- 6.7 Previously approved plans for application 21/00140/FULH, show that the balustrades around the balcony as black metal railings. Similarly, condition 4 for application 21/00140/FULH states:

"Materials shall be black feather edge timber weatherboarding to the exterior walls of the extension, painted white timber fascia to the top of the flat roof, painted white timber French doors to the rear elevation of the extension and black metal railings to enclose the balcony area."

- 6.8 The development fails to preserve the character and significance of the conservation area, causing less than substantial, albeit significant, harm, and the public benefits of the development do not outweigh the identified harm. This is unacceptable and contrary to policy in this regard.

Other Matters

- 6.9 The development is not found to result in any significant parking or highways impacts or any significantly harmful neighbour amenity impacts, it is therefore acceptable and policy compliant in these regards.
- 6.10 The development equates to less than 100sqm of new floorspace. As such, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and no charge is payable.

Equality and Diversity Issues

- 6.11 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 application 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.

Conclusion

- 6.12 For the reasons outlined above the development is found to be unacceptable and contrary to the relevant planning policies and guidance. As there are no other material planning considerations which would justify reaching a different conclusion it is recommended that planning permission is refused.

7 Recommendation

7.1 REFUSE PLANNING PERMISSION for the following reason:

01. The timber privacy screen, by reason of its scale, location, materials and detailed design, is considered to be detrimental to the historic character and significance of the existing property and the wider Leigh Conservation Area. The identified harm to the conservation area is less than substantial, albeit significant, and any public benefits arising from the development do not outweigh the identified harm. The development is contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of Core Strategy (2007), Policies DM1, DM3 and DM5 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Conservation Area Appraisal (2020).

Informatives

- 1 You are advised that as the development equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See www.southend.gov.uk/cil for further details about the Levy.**
- 2 The applicant is reminded that the development on site remains unauthorised. Failure to remedy this will result in the Council considering the expediency of enforcement action to seek to remedy the currently identified harm.**

Positive and proactive statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action via the pre-application service available at https://www.southend.gov.uk/info/200155/make_a_planning_application_and_planning_advice/365/planning_advice_and_guidance/2.

Case Officer Signature.....GF.....Date 08.12.2022

Senior Officer Signature.....**SM**.....Date 03.01.2023

Delegated Authority Signature.....**SM**.....Date 03.01.2023