

Reference:	23/00197/UNAU_B	
Report Type:	Enforcement	
Ward:	Victoria	
Breach of Planning Control:	Erection of single storey rear extension	
Address:	35 Albion Road, Westcliff-on-sea, Essex, SS0 7DP	
Case Opened Date:	12 October 2023	
Case Officer:	Tinotenda Mangwanda	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site contains a semi-detached dwelling on the north side of Albion Road. The area is residential in nature. The site is not within a conservation area or subject to any site-specific planning policy designations.

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 23/01778/FULH - Erect single storey conservatory and storeroom to rear (part retrospective) - Refused - 08.01.2024. [Officer's report appended to this report as Appendix 1]
- 3.2 24/00142/FULH - Erect single storey conservatory and storeroom to rear (part retrospective) (amended proposal) - Refused - 28.03.2024.

4 Planning Policy and Legislation Summary

- 4.1 The National Planning Policy Framework (NPPF) (2023)
- 4.2 Planning Practice Guidance (PPG) (2024)
- 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)
- 4.6 Southend-on-Sea Design and Townscape Guide (2009)

5 Procedural Matters

- 5.1 This case is presented to the Development Control Committee because it is considered expedient to issue an Enforcement Notice and this action requires authorisation by the Committee.

6 The breach of planning control

- 6.1 The identified breach of planning control is the:
- Erection of a single storey rear extension.
- 6.2 The extension measures some 3.5m high, 6.6m wide, 4.6m deep on the western flank and 1.65m deep on the eastern flank. The extension has been finished in black cladding.

7 Efforts to resolve the breach to date

- 7.1 In October 2023 a complaint was received by the Council alleging a single storey extension

had been erected. No planning application had been submitted for this extension.

- 7.2 A site visit by council staff on 17 October 2023 found that the extension was under construction. Following the site visit, the site owner was invited to submit a retrospective planning application.
- 7.3 An application (reference 23/01778/FULH – the “2023 Application”) was submitted on 13 November 2023 and was refused on 8 January 2024. An amended application (reference 24/00142/FULH) was then submitted on 26 January 2024 and was also refused on 28 March 2024.
- 7.4 The extension remains in situ hence the expediency for enforcement action needs to be considered.

8 Appraisal

Design and Impact on the character and appearance of the area

- 8.1 There are some instances of rear extensions in the rear garden scene. In principle, a rear extension is not harmful to the character of the site. The choice of materials previously proposed, namely black cladding, would have been a negative aspect of the development which would clash with the existing brick and render finish of the existing dwelling, in line with the findings in the Officer’s Report (Appendix 1) for the 2023 Application. As this has not been installed yet and the extension remains unfinished, there are no concerns from a design and impact on character point of view.

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.
- 8.3 As discussed in paragraphs 6.6 to 6.9 of the Officer’s Report for the 2023 Application, the extension does not have any significantly harmful impact on the residential amenity of neighbouring occupiers at No 33 Albion Road. However, as the extension abuts the shared boundary with No 37 Albion Road and extends some 4.1m beyond the rearmost wall of the single storey extension closest to the shared boundary with No 37, it results in unacceptable loss of outlook, loss of light and an undue sense of enclosure and is a dominant and overbearing addition. It is therefore unacceptable and contrary to policy in the above regards.

Enforcement Action

- 8.4 Given the harm identified above, it is reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. Enforcement action in this case will reasonably aim to secure the removal of the unauthorised rear extension in its entirety and remove from the site all materials resulting from compliance with the removal of the extension. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 8.5 When serving Enforcement Notices the Local Planning Authority must ensure a reasonable

time for compliance. In this case a compliance period of 3 months is considered reasonable for compliance with the above requirements. This is in addition to the period of at least 28 calendar days which has to be allowed before any enforcement notice takes effect.

- 8.6 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served on the responsible parties as this will bring further focus to the need for the breach to be regularised and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and does not fetter the owners in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 8.7 Taking enforcement action in this case may amount to an interference with the owners'/occupiers' human rights. However, it is necessary for the Council to balance the rights of the owners/occupiers against the legitimate aims of the Council to regulate and control land within its area in the public interest.

Equality and Diversity Issues

- 8.8 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.

9 Recommendation

- 9.1 **AUTHORISE ENFORCEMENT ACTION to require those issued with a copy of the Enforcement Notice to:**

- a) Remove from the site the rear extension in its entirety, and**
- b) Remove from site all materials resulting from compliance with a).**

- 9.2 **For the following reasons:**

- 01 **The extension, due its siting abutting the site boundary, its size, noting its significant depth and its height above the existing fence, is dominant and creates an unacceptable loss of outlook and light and an undue sense of enclosure significantly harmful to the residential amenity of the occupiers of the neighbouring dwelling No.37 Albion Road. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the guidance contained within the Southend-on-Sea Design and Townscape Guide (2009).**
- 02 **The choice of materials of the extension results in a visually incongruous addition to the existing building which results in significant harm to the character and appearance of the site, the rear garden scene and the wider area. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the**

Southend-on-Sea Design and Townscape Guide (2009) and the National Design Guide (2021).

- 9.3 **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 of 3 months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**

Appendix 1

Reference:	23/01778/FULH
Application Type:	Householder
Ward:	Victoria
Proposal:	Erect single storey conservatory and store room to rear (part retrospective)
Address:	35 Albion Road, Westcliff-on-Sea, Essex, SS0 7DP
Applicant:	Mr A. Hannan
Agent:	Mr N.A Cooper of Nigel Cooper
Consultation Expiry:	7 th December 2023
Expiry Date:	8 th January 2024
Case Officer:	Jennifer Doherty
Plan Nos:	Location Plan, 32723:01
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site contains a semi-detached dwelling on the north side of Albion Road. The area is residential in nature. The site is not within a conservation area or subject to any site-specific planning policy designations.

2 The Proposal

- 2.1 Part-retrospective planning permission is sought to erect an "L"-Shaped pitched roof single storey conservatory and storeroom to the rear. The development measures some 3.5m high, 6.6m wide, 4.6m deep on the western flank and 1.65m deep on the eastern flank. A square window and full height windows and patio doors have been installed on the eastern flank elevation with 0.7m steps leading to the garden. To the rear, a window has been installed to the store with full height windows installed to the rear for the conservatory.
- 2.2 The proposed finish of the extension is black finish horizontal boarding cladding whilst the existing dwelling has a brick finish to the side and rear elevations and a render finish to the front. Prior to the current built form at the site there was a conservatory some 3.6m high, 4.6m deep and 3.5m wide, which was erected at some point before April 2020 without planning permission and which has been removed.

3 Relevant Planning History

Enforcement

- 3.1 23/00197/UNAU_B – Rear extension – Case open

4 Representation Summary

Public Consultation

- 4.1 Twenty-three (23) neighbouring properties were notified of the application by letter. One letter of representation has been received which is summarised below.
- Plans are not accurate, extension is larger
 - Construction and cladding materials not similar to existing house
 - Main construction is chipboard- a fire hazard
 - Impact the freedom of outdoor space
- 4.2 **Officers comments:** The comments in the representation have been taken into consideration in the assessment of the application but, other than as discussed in the last section of the report, they have not been found to be justifiable reasons for refusing planning permission in the circumstances of this case.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF) (2023)
- 5.2 Planning Practice Guidance (PPG) (2023)
- 5.3 National Design Guide (NDG) (2021)
- 5.4 Core Strategy (2007): Policies KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance).
- 5.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM15 (Sustainable Transport Management).
- 5.6 The Southend-on-Sea Design and Townscape Guide (2009)
- 5.7 Community Infrastructure Levy (CIL) Charging Schedule (2015)

6 Appraisal

Principle of Development

- 6.1 The principle of altering and extending an existing dwelling is considered acceptable and policy compliant, subject to the application appropriately addressing the relevant detailed planning considerations.

Design and Impact on the Character of the Area

- 6.2 Local and national planning policies and guidance seek to ensure that new development is well designed. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 6.3 Local development plan policies seek to ensure that new development is designed so that it adds to the overall quality of the area and respects the character of the site, its local context and surroundings, provides appropriate detailing that contributes to and enhances the distinctiveness of place; and contribute positively to the space between buildings and their relationship to the public realm. Policy DM1 and the Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.
- 6.4 | There are some instances of rear extensions in the rear garden scene, therefore, a rear extension is not harmful to the character of the site. The use of black cladding is a negative aspect of the development due to the existing brick and render finish of the existing dwelling,

making it an incongruous addition to the existing dwelling. The proposed cladding is not considered suitable in this instance. If the application was otherwise acceptable, a condition could be imposed to ensure that the materials used are in keeping with the existing dwelling.

- 6.5 Subject to the stated condition, it is considered that the design, size, siting and scale of the development proposed are such that it would not result in any significant harm to the character and appearance of the site, the streetscene and the area more widely. The proposal is therefore considered to be acceptable and policy compliant in the above regards.

Amenity Impacts

- 6.6 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.
- 6.7 The extension is sited some 2m from the shared boundary and some 3.9m from the side elevation of No 33 Albion Road. The store element of the development extends 1.4m beyond the rear wall of No 33 and the conservatory element is some 6.8m from the flank wall of No 33. Due to the separation distance, the extension is not considered to be significantly harmful to the occupiers of No 33 in any relevant regards.
- 6.8 The extension abuts the shared boundary with No 37 Albion Road and extends some 4.1m beyond the rearmost wall of the single storey extension closest to the shared boundary at No 37. The development results in a loss of outlook, loss of light and an undue sense of enclosure and, due to the height and depth beyond the rear wall of No 37, it results in a dominant and overbearing addition. Whilst the submitted plans show a pre-existing conservatory which was of a similar height and depth at the boundary, that conservatory was unauthorised and there is no evidence to demonstrate that it was immune before its removal. Hence, its presence, offers no significant support for the retention of the development applied for. The presence of trees at the boundary is a mitigating factor for the resulting loss of light which is given very limited weight given that trees are living things which can die of disease or can be removed by their owner. These factors do not outweigh the identified harm.
- 6.9 It is considered that the design, size, siting and scale of the development are such that it would result in significant harm to the amenities of the neighbouring occupiers at No 37 in the regards discussed above. The development is therefore considered to be unacceptable and contrary to policy in terms of its amenity impacts.

Other Matters

- 6.10 The development is not found to result in any significant parking or highways impacts, it is therefore acceptable and policy compliant in these regards.
- 6.11 The development is not liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended).

Equality and Diversity Issues

- 6.12 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

- 6.13 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 reasons:

- 01 The extension, due its siting abutting the site boundary, its size, noting its significant depth and its height above the existing fence, is dominant and creates an unacceptable loss of outlook and light and an undue sense of enclosure significantly harmful to the residential amenity of the occupiers of the neighbouring dwelling No.37 Albion Road. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the guidance contained within the Southend-on-Sea Design and Townscape Guide (2009).

Informatives

- 1 You are advised that failure to remove the extension or regularising it through an amended design or via a lodge of appeal, could result in the Local Planning Authority considering it expedient to take enforcement action to secure that the breach of planning control is remedied.
- 2 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.

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.