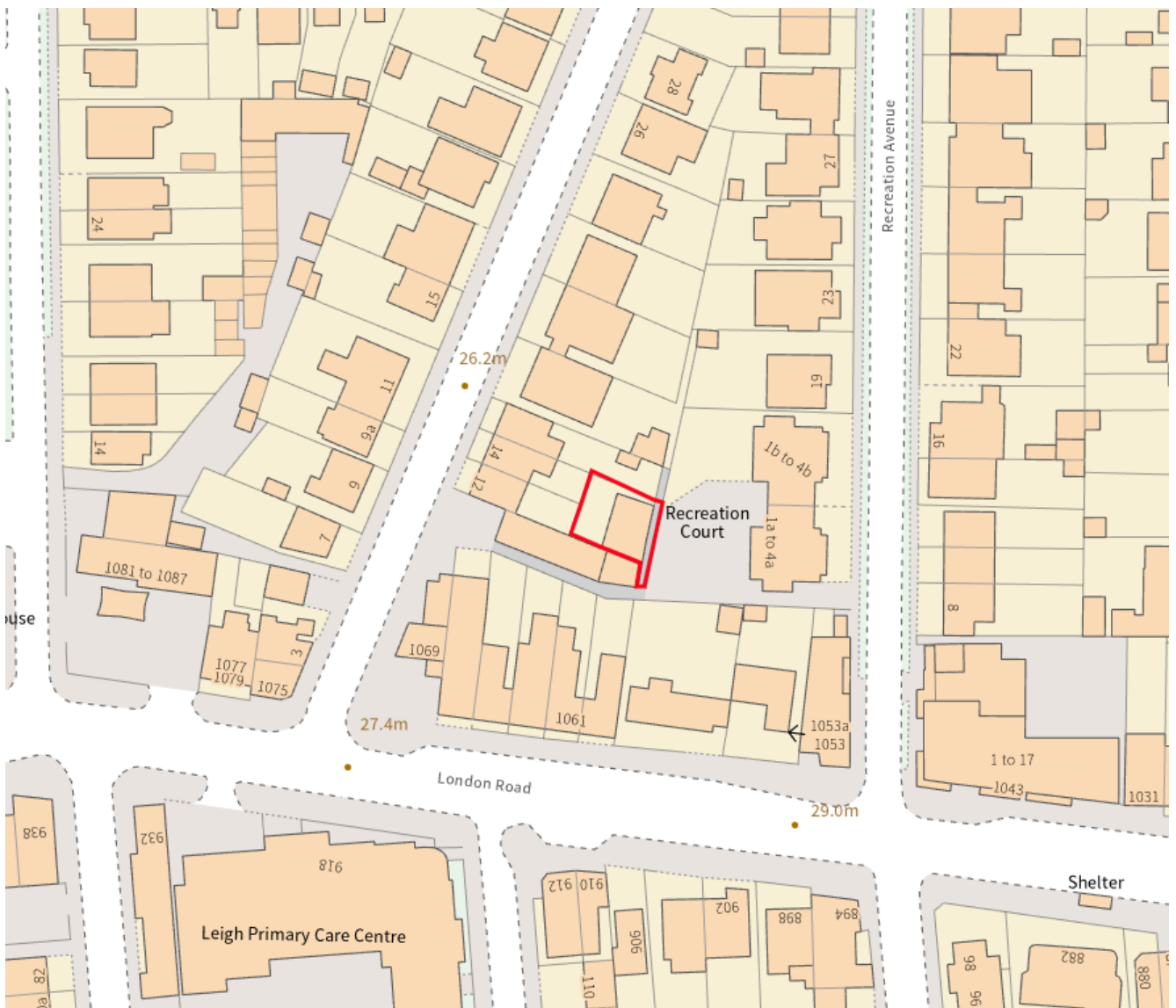


Reference:	23/00184/UNAU_B	
Report Type:	Enforcement	
Ward:	Blenheim Park	
Breach of Planning Control:	Material change of use from ancillary outbuilding to a self-contained dwellinghouse (Use Class C3)	
Address:	Rear of 12 Pavilion Drive, Leigh-on-Sea, Essex, SS9 3JR	
Case Opened Date:	06 October 2023	
Case Officer:	Tinotenda Mangwanda/ Author: Oliver Hart	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is on the eastern side of Pavilion Drive and is occupied by a building to the rear of Nos. 12 and 14 Pavilion Drive, two terraced dwellings. The access to the building is from Recreation Avenue via the parking area of Recreation Court, a neighbouring block of flats, and a narrow-enclosed path to the rear and side of the building. The yard in front of the building is hard surfaced and used as an external amenity area enclosed with fences. There is a gate at the part of the fence separating the building with No.12.
- 1.2 The surrounding area is mixed to the south of the site and largely residential in character in other directions. The site is not located 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 an ancillary annexe type accommodation used in association with 12 Pavilion Drive.

3 Relevant Planning History

- 3.1 14/01477/FUL - Erect two storey dwellinghouse – Refused [07.11.2014].
- 3.2 14/01963/FUL - Erect two storey dwellinghouse – Permission Granted [30.01.2015].
- 3.3 17/00126/UNAU_B - Unauthorised development to provide habitable accommodation – Case Closed [05.07.2018].
- 3.4 17/01673/FUL - Change of use of detached garage at rear to live-work unit (Sui Generis), erect 1.8m high boundary fence to front and alter elevations – Refused [14.12.2017].

Reason for refusal:

“The proposed development would, by reason of its substandard internal size, commercially dominated access, contrived layout reliant on high level and obscure glazed windows for habitable rooms with poor outlook and light conditions and amenity space overlooked by adjacent premises result in a poor quality of accommodation for future occupiers that is harmful to their amenity. This is unacceptable and contrary to National Planning Policy Framework, policies KP2 and CP4 of the Core Strategy (2007), policies DM1, DM3 and DM8 of the Development Management Document (2015) and the advice contained within the Design and Townscape Guide (2009).”

- 3.5 20/00483/CLP - Convert existing detached outbuilding at rear into residential annex for ancillary use to main dwelling (Lawful Development Certificate - Proposed). - Not Lawful [05.05.2020].

Reason for refusal:

“This application was judged based on the day it was submitted and does not take into consideration any applications permitted since that date.

Based on the lack of relevant information contained within the plans submitted as part of this application it cannot be established that the proposed development would be fully ancillary to the main dwelling and not constitute a material change of use as defined within section

55 of the 1990 Town and Country Planning Act (as amended), requiring express planning permission.”

- 3.6 23/01718/CLE - Use outbuilding at rear as a residential dwelling (Certificate of Lawful Development -Existing). - Not Lawful [27.12.2023].
- 3.7 24/00112/CLE - Use outbuilding at rear as a residential dwelling (Certificate of Lawful Development - Existing) (amended proposal). - Not Lawful [09.04.2024].

Reason for refusal:

“The information submitted is considered to be insufficient to demonstrate, on the balance of probability, that the use of rear of 12 Pavilion Drive, as a Use Class C3 dwellinghouse has existed continuously for a period of not less than four years, as required under section 191 of the Town and Country Planning Act (1990) as amended.”

4 Planning Policy 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 KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance), CP8 (Dwelling Provision).
- 4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM2 (Low Carbon Development and Efficient Use of Resources), DM3 (Efficient and Effective Use of Land), DM6 (The Seafront), DM7 (Dwelling Mix, Size and Type), DM8 (Residential Standards) and DM15 (Sustainable Transport Management).
- 4.6 Technical Housing Standards – Nationally Described Space Standards (2015).
- 4.7 Technical Housing Standards Policy Transition Statement (2015).
- 4.8 Southend-on-Sea Design and Townscape Guide (2009).
- 4.9 Waste Storage, Collection and Management Guide for New Developments (2019)
- 4.10 The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (2020)

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:
 - Material change of use from ancillary outbuilding to a self-contained dwellinghouse (Use

Class C3).

7 Efforts to resolve the breach to date

- 7.1 The site was first investigated by planning enforcement in 2017 (17/00126/UNAU_B – the “2017 Case”) when concerns were first raised that the building was being used to provide habitable accommodation. At the time of the investigation, it was established that the building was used as a live-work unit (a sui generis use) by the owner who was living and was running a car sales business at the site.
- 7.2 A retrospective application to regularise the development works was invited and submitted in 2017 (Ref. 17/01673/FUL). The application was refused for the reason stated in paragraph 3.4 above. No formal enforcement action was undertaken at that point because the owner expressed their intention to construct the dwellinghouse approved in 2015 with the planning permission 14/01963/FUL and use the building for ancillary purposes. The 2017 Case was closed when the dwelling now known as 12 Pavilion Drive was at advanced stages of construction.
- 7.3 In 2020, a certificate of lawfulness application (reference 20/00483/CLP) was submitted seeking to confirm that the building was lawfully used as an annex to No.12. But the application was found to lack in evidence.
- 7.4 In 2023, complaints were received about the use of the building. Council staff visited the site and established that the building is used as a separate dwellinghouse. A letter was sent in October 2023 advising of the identified breach of planning control. Applications for certificates of lawfulness were submitted in 2023 and 2024 (Ref. 23/01718/CLE and 24/00112/CLE) seeking confirmation that the use of the building as a dwellinghouse was lawful through the passage of time.
- 7.5 The information submitted was found in all events to be insufficient to demonstrate, on the balance of probability, that the use of rear of 12 Pavilion Drive, as a Use Class C3 dwellinghouse has existed continuously for a period of not less than four years, as required under section 191 of the Town and Country Planning Act (1990) as amended. Consequently, those applications were refused.
- 7.6 The development at the site remains unauthorised.

8 Appraisal

Impact on Occupier Amenity

- 8.1 Following a recent site visit conducted by staff, it was apparent that the outbuilding was being used as a 2-bed property by a young family. The Technical Housing Standards – Nationally Described Space Standards (NDSS) requirements for a 2-bed property would be for a minimum overall floor space of 61sqm. High level windows were noted on the eastern elevation,
- 8.2 Using information and drawings from previous applications, the building measures some 48.7sqm in area, with the bedrooms measuring 9.5sqm and 11sqm. The development fails to meet the minimum overall and room size requirements of the NDSS. Furthermore, the bedroom on the north-eastern part of the building is only served by a high-level window and does not benefit from acceptable outlook.
- 8.3 The building is some 16.4m away from the rear elevation of Recreation Court and some

13.4m away from the rear elevation of No.12 Pavilion Drive. This separation distance is such that the amenity space and habitable rooms of the building are significantly and harmfully overlooked by the first floor windows of neighbouring properties.

- 8.4 With these factors in mind, the development is considered to offer unacceptable living conditions for current and future occupiers. This matter goes to the principle of whether a dwelling would be acceptable in this location as it would fail to meet criteria (i) and (iii) of Policy DM3 (2). Whilst the development relates to the provision of housing, for which there is significant need, the harm identified is substantial. The tilted balance described in the NPPF is engaged in this instance, but the harm significantly and demonstrably outweighs the public benefits arising from the development when considered against the policies of the NPPF as a whole. The development is unacceptable and contrary to policy in the above regards.

Recreational disturbance Avoidance Mitigation Strategy (RAMS).

- 8.5 New residential development in the city has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations (2017).
- 8.6 The development involves the net increase of one dwelling within the Zone of Influence. No mechanism for appropriate mitigation within a reasonable timescale, or for any alternate mitigation has been established.
- 8.7 The development therefore fails to reasonably mitigate the in-combination effects of the development on habitats and species in accordance with the Habitats Regulations and as required in the adopted RAMS SPD. This is unacceptable and contrary to the relevant policies which seek to protect the natural environment with specific reference to the coastal habitats.

Other matters

- 8.8 The development is not found to result in any significantly harmful impact on the character and appearance of the area, given that built form at the site is established over a long period, in any significant parking or highways impacts or in any significantly harmful neighbour amenity impacts. Whilst it is acceptable and policy compliant in these regards, the identified harm outweighs these considerations.

Enforcement Action

- 8.9 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 cessation of the unauthorised use and remove at least one of the key services that facilitate the use. No lesser steps that could remedy the identified breach or associated harm have been identified.
- 8.10 The Local Planning Authority must allow a reasonable timeframe for compliance with the requirements of any enforcement notice. Given that the building is occupied the minimum time allowed for compliance with the notice should be at least two months in line with case law related to human rights. Considering that the building is occupied by a family with young children, it is considered that additional time should be allowed. In the round, allowing three (3) calendar months is considered 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.

- 8.11 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.
- 8.12 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.

Equality and Diversity Issues

- 8.13 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) **Cease the use of the building as a self-contained dwellinghouse (Use Class C3); and**
- b) **Remove from the building at least one category of items from the following so that the unauthorised use cannot take place at the site:**
 - i. **Shower/bath tab and/or any other item which can be used for washing (showering or bathing); or**
 - ii. **Toilet; or**
 - iii. **Oven and/or hob and/or any other item which can be used for cooking; or**
 - iv. **Fridge and/or freezer or other items which allows the storage of food; or**
 - v. **Clothes washing and/or drying equipment; or**
 - vi. **Beds and/or sofa/beds and/or other items which can be used for sleeping.**

- 9.2 **For the following reasons:**

- 01 **The significant shortfall of the unit's overall size and bedroom sizes against the adopted minimum standards, the unacceptable outlook at the south-eastern bedroom, and the separation distance from first floor openings at neighbouring properties which results in significantly harmful overlooking and loss of privacy, are to the substantial detriment of living conditions of current and future occupiers at the site. The identified adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the development taking into consideration the presumption in favour of sustainable development. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core**

Strategy (2007), Policies DM1, DM3 and DM8 [as amended with the Technical Housing Standards Policy Transition Statement (2015)] of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Technical Housing Standards – Nationally Described Space Standards (2015).

- 02 The development offers no suitable mitigation of the in-combination effect of the net increase of one dwelling on habitats and species in accordance with the Conservation of Habitats and Species Regulations (2017), as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020). This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP1, KP2 and CP4 of the Core Strategy (2007), Policy DM6 of the Development Management Document (2015) and the guidance contained within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020), which seek to protect the designated habitats and species with specific reference to the coastal environment.**
- 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 three (3) months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**