

<b>Reference:</b>	23/00231/UNAU_B	
<b>Report Type:</b>	Enforcement	
<b>Ward:</b>	Westborough	
<b>Breach of Planning Control:</b>	Unauthorised change of Use from a dwelling (Use Class C3) to a mixed use of dwelling and circumcision clinic (sui generis).	
<b>Address:</b>	5 Westcliff Park Drive, Westcliff-on-Sea, Essex, SS0 9LN	
<b>Case Opened Date:</b>	13 November 2023	
<b>Case Officer:</b>	Edward Robinson / Author: Oliver Hart	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site and Surroundings**

1.1 No 5 is an end-of-terrace dwelling on the western side of Westcliff Park Drive. The site is not within a conservation area or subject to any other 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 None relevant.

## **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 KP2 (Development Principles), CP4 (Environment and Urban Renaissance), CP6 (Community Infrastructure), CP8 (Dwelling Provision).

4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), and DM15 (Sustainable Transport Management)

4.6 Southend-on-Sea Design and Townscape Guide (2009).

4.7 Waste Storage, Collection and Management Guide for New Developments (2019).

4.8 Community Infrastructure Levy (CIL) Charging Schedule (2015).

## **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:

- Unauthorised change of use of dwellinghouse (Use Class C3) to a mixed use as a dwelling and circumcision clinic (sui generis).

## **7 Efforts to resolve the breach to date**

7.1 In November 2023 a complaint was received by the Council alleging a 24/7 circumcision clinic was being operated at the property. It is understood that this is primarily intended to serve the Jewish Community.

7.2 Following a staff site visit, access was gained in November 2023, confirming that the alleged change of use had occurred. Internally, at ground floor level, the property was set up as a

clinic with a sign at the door displaying the name of the clinic, a waiting area formed in the kitchen area with forms for patients near the entrance and medical equipment where the lounge used to be.

- 7.3 Following the site visit, the owner/ operator of the use was advised that this use requires planning permission. They were informed that they had an opportunity to seek planning permission retrospectively, failing which, the use should cease, with a risk that planning enforcement action would be taken should the unauthorised use continue.
- 7.4 Following no response from the owner/operator a final warning letter was sent in December 2023. This letter was acknowledged by a third party who said they wanted to represent the owners and would submit an application.
- 7.5 Later in January 2024, contact was received from the third party contending that no material change of use has occurred. Understanding them to represent the owner/ operator of the unauthorised use, the planning service gave until 20 February 2024 for retrospective submission of a planning application, or for the unauthorised clinic use to cease. No response has been received to date while the clinic continues to operate.

## **8 Appraisal**

### **Principle of the use**

#### *Community Infrastructure*

- 8.1 Paragraph 8.12 of the Council's Core Strategy identifies that health and social wellbeing of Southend's residents are vitally important to the regeneration of the City. Supporting Paragraph 8.10 of the Core Strategy highlights the Council's vision that Southend must be a city for people, and it is important that everyone feels they are included and can access opportunities the city has to offer.
- 8.2 Of the relevant criteria contained in Policy CP6, only Part 1 is applicable, requiring that new development should demonstrate that it will not jeopardise the City's ability to improve the education attainment, health and well-being of local residents and visitors to Southend by:

*"1. providing for health and social care facilities, in particular supporting the strategic services development plan of the Primary Care Trust, and the improvement and expansion plans of Southend Hospital and other key health and social care agencies where these demonstrate clear net benefits in terms of accessibility to services for the local community."*

- 8.3 The use alleged is not considered to relate to the strategic needs of the City for the purposes of this policy. The development has enhanced the provision of healthcare services in the area.

#### *Loss of single-family dwelling*

- 8.4 The results of the Housing Delivery Test (HDT) published by the Government show that there is underperformance of housing delivery in the City. Similarly, the Council's Five-Year Housing Land Supply (5YHLS) figure shows that there is a deficit in housing land supply in the City.
- 8.5 While the benefits of the use are recognised, a concern is raised to the principle of this development as it could potentially, in the absence of appropriate controls, result in the loss

of a family dwellinghouse, without evidenced justification, and would therefore be contrary to the above-noted policies.

- 8.6 Having regard to the above, an 'in-principle' objection would be raised to the loss of the dwellinghouse. However, the change to a *mixed-use comprising* the clinic and residential accommodation may be acceptable, subject to demonstration through a planning application, that there is an identified, demonstrably evidenced need for this clinic use and that the residential use of the premises would remain as the predominant use. This would likely be achieved through clearly defined limits on the nature and operating hours of the clinic use and through planning conditions.
- 8.7 It is possible that a clinic use could be supported under Policy CP6 but, in the absence of any planning application and/ or positive objective engagement by the owner/ operator there has been no evidence to justify a demonstrable need for this clinic use. Any such community benefits of the use, should they exist, do not at present outweigh the identified harm of losing this dwellinghouse against a background of a shortage of all dwelling types across the City, and in particular the need for family sized dwellings. Based on the known information, including taking account of clinic's benefits to users from a particular religious background, the principle of the mixed use is unacceptable.

### **Impact on the Character and appearance of the Area**

- 8.8 No external alterations have been carried out to facilitate the clinic use. The only visible advertisement is a small, laminated sign on the rear door which has no public view. On this basis, there is no identified harm to character and appearance of the site or streetscene arising in terms of the built form.
- 8.9 Owing to the proximity to London Road, associated comings and goings during daytime hours are not considered to be harmful in-principle to the character and appearance of the area. However, while it is primarily an amenity consideration (dealt with in the appropriate section below) the unauthorised use's 24/7 activity currently being operated within this residential street does impact negatively on local character which is not typified by overnight business activity.
- 8.10 Based on the known information, an indirect objection on character grounds is raised in relation to the hours of operation.

### **Neighbour Amenity Impact**

- 8.11 No details of the frequency of visits or numbers of visitors per day have been provided. However, the LPA is aware that the clinic business is open to the public 24 hours a day and is publicly advertising its operating hours as such. The unrestricted hours of operation are such that it has already been demonstrated that the unauthorised use creates levels of activity that are incompatible with a residential area.
- 8.12 Whilst the activity would be contained largely within the property, the comings and goings of visitors potentially at all hours of the day and the nature of the use involving young children is considered to lead to undue noise and disturbance that would be harmful to neighbouring occupiers who reasonably expect quieter living conditions from later evening through to morning hours.
- 8.13 In the absence of any planning application enabling the detailed nature and pattern of the clinic use to be fully understood and assessed with associated potential to impose planning conditions, the unauthorised use on the face of it has not demonstrated that the mixed sui

generis use would not harm neighbour amenity. The unauthorised use is unacceptable and conflicts with policy on that basis.

### **Parking and Highways**

- 8.14 As noted, no details of the frequency or type of visits or numbers of visitors per day have been provided so it has not been possible to assess the parking and highway impacts at this stage. This could be clarified through a planning application. Currently there is no evidence to demonstrate that the use has resulted in detrimental effects on highway safety or parking conditions of the area.

### **Equality and Diversity Issues**

- 8.15 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 purpose of the circumcision clinic and how it operates in support of the ethnic and faith based protected characteristics of specific communities having 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.
- 8.16 The report to this Committee for the enforcement action against the unauthorised use of the circumcision clinic, contains an extended analysis of the enforcement matter in the context of the Equality Act 2010 which sets out a general duty on public bodies. This duty requires the Council to have due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics, such as race, disability, and gender, including gender reassignment, religion or belief, sex, pregnancy or maternity, and to foster good relations between different groups when discharging its functions.
- 8.17 This planning enforcement matter falls to be considered on its planning merits but, given the nature of the use, in reaching its decision the Local Planning Authority must have regard to those provisions of the Equality Act 2010. The Act requires the Local Planning Authority to demonstrate that any decision it makes is reached in a fair, transparent or accountable way considering the needs and rights of different members of the community.
- 8.18 This development has the potential to generate some negative and positive impacts on groups with the protected characteristics of age, disability, sex, religion or belief. The potential impacts, both positive and negative, of the circumcision clinic on the different groups have been considered and weighed against each other.
- 8.19 If the clinic were to operate within normal business hours, is unlikely to cause any detrimental effects on neighbouring occupiers or users of the nearby public pavement and street. The clinic would not change nor impose any changes in behaviour on others were it to operate within hours within which nearby residents would expect to experience a higher ambient noise level. However, operating on a 24-hour basis it is likely to cause a negative impact and potentially force changes in behaviour for nearby residents who would experience the noise generated from the use during unsociable hours when ambient noise levels are very low.
- 8.20 There are benefits from the development to groups with protected characteristics, including

followers of religions which perform the ritual of circumcision, parents of infants and children, mainly, if not solely from within the Jewish community of the city. Officers consider that, in the absence of a mechanism to ensure appropriate planning controls are put in place, the benefits to these protected groups would not outweigh the identified potential harm to members of other groups.

### **Enforcement Action**

- 8.21 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 clinic use in its entirety, the property returned to its lawful use as a single dwellinghouse and removal from the site of all materials facilitating the unauthorised use and 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 particularly considering that an additional period of at least 28 calendar days has to be allowed before any enforcement notice takes effect.
- 8.22 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.
- 8.23 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 Recommendation**

- 9.1 **AUTHORISE ENFORCEMENT ACTION to require those issued with a copy of the Enforcement Notice to:**
- a) **Cease the use of the property for mixed use purposes as a clinic and residential accommodation and to return the property to its lawful planning use as a Class C3 single family dwellinghouse; and**
  - b) **Remove from site all materials, fittings and equipment resulting from compliance with a)**
- 9.2 **For the following reasons:**
- 01 **It has not been demonstrated in principle that the development could operate in a way that would not result in the total loss of the dwellinghouse use to the detriment of the provision of housing in the city. This is unacceptable and contrary to the National Planning Policy Framework (2023) and Policies KP1, KP2 and CP8 of the Core Strategy (2007).**
- 02 **It has not been demonstrated that the development operating on a 24-hour basis would not erode the domestic character of the site and the area and would not result in an unacceptable significant harm to the residential amenity of neighbouring occupiers in term of noise and disturbance. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policy KP2 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).**

- 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 two (2) months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**