

Reference:	20/00135/UCOU_B	
Report Type:	Enforcement	
Ward:	Milton	
Breach of Planning Control:	Change of use from a Use Class C4 HMO to seven (7no) self-contained flats	
Address:	76 Park Road, Westcliff-on-Sea, Essex SS0 7PQ	
Case Opened:	13.03.2020	
Case Officer:	Edward Robinson / Author: Abbie Greenwood	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 This site is on the east side of Park Road in Westcliff. It is an attractive late Victorian semi-detached property with one (1) parking space on the frontage.
- 1.2 The site is within Milton Conservation Area and subject of the Milton Conservation Area Article 4 Direction. It is not subject to any other site-specific planning policy designations.

2 Lawful Planning Use

- 2.1 Records show that planning permission under reference SOS/91/0026 was granted in 1991 for the use of the site as an HMO (House in Multiple Occupation) within the modern day equivalent of current Use Class C4 and this was implemented. There have been no other planning approvals since this time which would have superseded the planning permission if they had been implemented.

3 Relevant Planning History

- 3.1 21/01199/FUL (the “2021 Application”) - Retain Use of Parts of Building as Four Self-Contained Flats (Class C3) – Refused and dismissed at appeal.

Reasons for refusal:

01 The proposed development, by reason of the limited size of the units and their lack of any storage space, would result in cramped living conditions and a poor quality residential environment for the existing and future occupiers to the significant detriment of their amenity. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend Core Strategy (2007), Policies DM1, DM3 and DM8 of the Development Management Document (2015) and the advice contained within the Southend Design & Townscape Guide (2009).

02 The development offers no reasonable mitigation of the in-combination effect of the net increase of two dwellings on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020). This is unacceptable and contrary to the RAMS, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.

90/1098 - Use former dwellinghouse as house in multiple occupation – refused.

91/0026 - Use former dwellinghouse as house in multiple occupation – granted.

20/00558/CLE- Use as Large HMO (Sui Generis) (Lawful Development Certificate - Existing) – not lawful for the following reason:

01 Having taken all material considerations into account, including the relevant legislation, the submitted evidence and the evidence canvassed by the Local Planning Authority, it is not considered that the Applicant’s case is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the building on the application site as a seven-bedroom House in Multiple Occupation (HMO) (Use Class Sui Generis) commenced and continued uninterrupted for not less than ten years before the submission of the application.

The use for which the certificate of lawfulness is sought is not lawful.

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 (The Environment and Urban Renaissance) and CP8 (Dwelling Provision).
- 4.5 Development Management Document (2015) Policies DM1 (Design Quality), DM3 (The Efficient and Effective Use of Land), DM7 (Dwelling Mix, Size and Type), DM8 (Residential Standards) and DM15 (Sustainable Transport Management).
- 4.6 Southend-on-Sea Design and Townscape Guide (2009)
- 4.7 Southend-on-Sea Vehicle Crossing Policy (2021)
- 4.8 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 4.9 The National Technical Housing Standards (2015)
- 4.10 Milton Draft Milton Conservation Area Appraisal (2021).
- 4.11 Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (2020)

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 alleged planning breach

- 6.1 The identified breach of planning control is the:
 - Change of use from a Use Class C4 HMO to seven (7no) self-contained flats.

7 Efforts to resolve breach to date

- 7.1 In March 2020 this Local Planning Authority (LPA) became aware that the HMO had been converted into short let accommodation. In a response to a Planning Contravention Notice the owner advised that this use started in November 2019 and stopped in September 2020.
- 7.2 In the information they submitted for previous applications, they claimed that in 2015 three of the seven rooms were converted to self-contained flats without planning permission. These

were the ground floor rear unit, the first floor front unit and the second floor unit. This position has not been proven with a certificate of lawfulness and whilst the enforcement case officer at the time expressed an informal opinion on the lawfulness of these, this opinion cannot bind the Council to a particular decision. For the 3 rooms, where more recent works had been undertaken, including the installation of ensuite facilities in rooms 2, 3 and 4, planning application 21/01199/FUL was submitted seeking retention of that more recent change of use and associated works. That application was refused and the subsequent appeal was dismissed.

8 Appraisal

8.1 Through the determination of the 2021 application, it was found that the 3 self-contained flats at 12.1sqm, 16.7sqm and 12.4sqm, failed to meet the requirements of the National Technical Housing Standards which state that a minimum area of 37sqm must be provided for a 1-person self-contained unit (bedsit). A similar conclusion can be reached for the other flats which also fail to meet the relevant standards. The flats are therefore unacceptable in terms of the standard of living accommodation for the occupiers. A copy of the officer report for that refused application is at Appendix 1 to this report. As outlined in detail in the Planning Inspectorate's 2023 Appeal decision at Appendix 2 this reason for refusal was upheld at appeal where the Inspector concluded:

'9. Shortly after the adoption of the DMDPD, the Government introduced the new Nationally Described Space Standards (2015) (NDSS). The Government's Planning Practice Guidance states that, 'where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS' 1. In response, the Council produced its Policy Transition Statement for housing standards. This indicates that the NDSS should be used in place of those standards set out in Policy DM8. Both parties agree that the NDSS are the relevant standards to apply for this appeal. Consequently, I attach substantial weight to the Policy Transition Statement.

10. The NDSS indicates that a one-bedroom flat should have a gross internal area of at least 37 square metres or 39 square metres (depending on whether it has a bath or a shower). The appellant indicates that the 37 square metre standard is relevant for this appeal. Even based on the appellant's measurements, each of the units have a substantial shortfall against the standards set out by Table 4 of the DMDPD and the NDSS. Furthermore, none of the units have the required square metres of built-in storage space. The very significant shortfalls against the standards indicate that the units provide wholly unsatisfactory self-contained accommodation. Whilst the units are in satisfactory condition with adequate décor and facilities, these considerations do not address the harm arising from the small size of the units and the shortfall against DMDPD Policy DM8 and the NDSS. For the above reasons, I conclude that the development does not provide a satisfactory standard of accommodation for the occupiers.

11. For the above reasons, I conclude that the development does not provide a satisfactory standard of accommodation for the occupiers. Therefore, in this respect, it is contrary to Policies KP2 and CP4 of the Southend Core Strategy (2007) (SCS), and Policies DM1, DM3 and DM8 of the DMDPD. These policies, amongst other aspects, require that new development protects the living conditions of future and existing residents. The development is also contrary to those principles of the National Planning Policy Framework (2021) (the Framework) that promote health, well-being, and a high standard of amenity for existing and future users.'

- 8.2 The appeal decision does not reference the LPA's second reason for refusal in relation to the lack of RAMS payment. This does not remove the LPA's right to raise this matter again. As the development has failed to provide mitigation for the in-combination effects of six additional units this is unacceptable and contrary to the relevant policies.

Enforcement and Legal Action

- 8.3 Given the harm identified due to the substandard sizes of the flats and impact on their residents' living conditions, it is considered 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 cease the unauthorised use as 7 self-contained flats and to secure the removal of the WCs or of the full bathroom facilities or of the cooking facilities within each of the rooms, the full removal of sleeping facilities from one unit and the provision of at least one shared WC or bathroom or kitchen or lounge area so that the property returns to its lawful use as a six-bed, six-person HMO. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 8.4 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 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 owner in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 8.5 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

- 8.6 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 include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice] to require those issued with a copy of the Enforcement Notice to:**

a) Cease the unauthorised use as seven (7) self-contained flats;

AND

b) Remove from all units at least one of the following:

- i. Toilets, shower tubs, bath tubs or any other facility associated with a WC or a bathroom; or
- ii. Cooker, hob, oven, microwave oven, kettle or any other cooking equipment or facility associated with a kitchen;

AND

c) Remove from one unit all beds, sofa-beds or any sleeping equipment or facility so that in the property there are no more than six (6no) bedrooms.

AND

d) Restore the land to its condition before the breach took place, including with provision of any communal facilities for the six bedrooms at the properties.

AND

e) Remove from site all materials resulting from compliance with requirements (a) to (d) above.

9.2 With time for compliance of:

- Three (3) calendar months.

9.3 For the following reason(s):

01 The development, by reason of the limited size of the units and their lack of any storage space, would result in cramped living conditions and a poor-quality residential environment for the existing and future occupiers to the significant detriment of their amenity. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Southend Core Strategy (2007), Policies DM1, DM3 and DM8 (as amended by the Technical Housing Standards - Policy Transition Statement 2015) of the Development Management Document (2015) and the advice contained within the Technical Housing Standards – Nationally Described Space Standard (2015).

02 The development offers no reasonable mitigation of the in-combination effect of the net increase of six (6no) dwellings (taking into account that the lawful HMO would be one (1no) unit) on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020). This is unacceptable and contrary to the RAMS, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.

Appendices

Appendix 1 Delegated report for application 21/01199/FUL

Appendix 2 Appeal Decision reference APP/D1590/W/22/3292272 for application 21/01199/FUL

Appendix 1**Delegated Report**

Reference:	21/01199/FUL
Application Type:	Full Application
Ward:	Milton
Proposal:	Retain Use of Parts of Building as Four Self-Contained Flats (Class C3)
Address:	76 Park Road Westcliff-On-Sea Essex SS0 7PQ
Applicant:	H4Property Limited
Agent:	The Planning and Design Bureau Ltd
Consultation Expiry:	29.07.2021
Expiry Date:	01.09.2021
Case Officer:	Abbie Greenwood
Plan Nos:	PDB/21/200/01, PDB/21/200/02, PDB/200/03, PDB/21/200/04
Supporting Documents	Planning Statement and Heritage Asset Statement dated June 2021
Recommendation:	REFUSE PLANNING PERMISSION

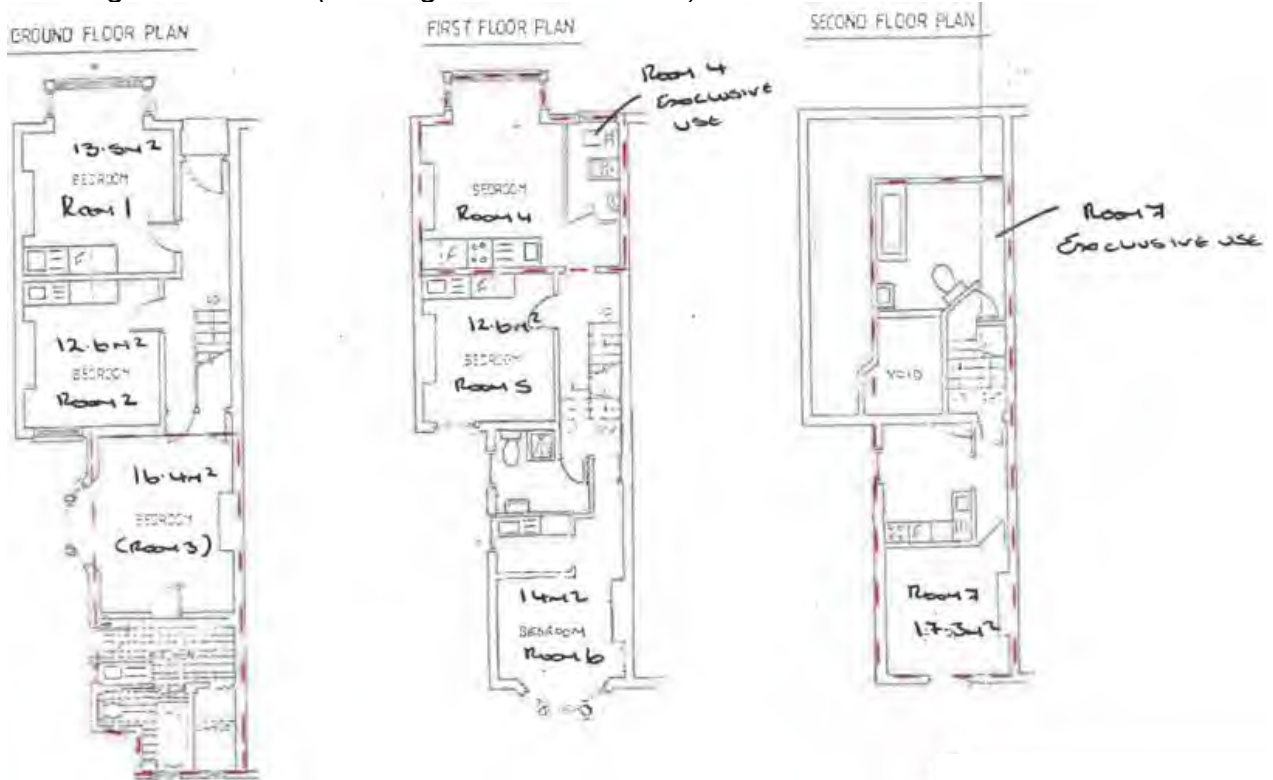
1 Site and Surroundings

- 1.1 The application site is located on the eastern side of Park Road, Westcliff which is in Milton Conservation Area. The property is an attractive late Victorian semi-detached property with 1 parking space on the frontage.
- 1.2 The surrounding area is residential in nature, with a mixture of dwelling types in the vicinity of the site, including semi-detached and terraced houses.
- 1.3 The site has no specific allocation within the Development Management Document Proposals' Map.

2 Proposal and Background to the Application

- 2.1 The property was converted to an HMO in 1991 under reference 91/0026. The submitted statement comments that in 2015 three of the seven rooms were converted to self-contained flats without planning permission. These were the ground floor rear unit, the first floor front unit and the second floor unit. The applicant claims that these are now lawful due to the passage of time that has elapsed being greater than 4 years but it is noted that no Certificate of Lawfulness Application has been submitted in relation to these units and therefore this has not been verified by the Council. The layout which this application suggests existed in 2015 is shown below.

Drawing PDB/200/04 (Existing Floor Plans 2015)

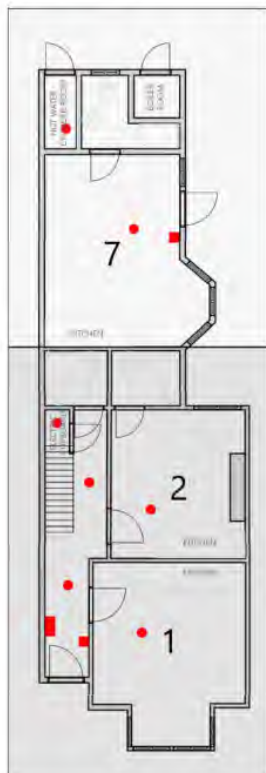


- 2.2 In 2018/19 4 rooms were converted to self-contained units by providing them with new en-suite facilities. This involved changes to the layout of all units including the previously converted units at ground floor and first floor to make space for the new en-suites and resulted in these initial units being reduced in size. The plans also show that the configuration of the 2nd floor unit was also amended and reduced in size at this time.

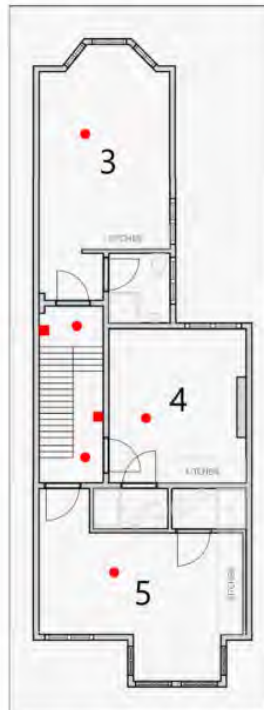
However, these units fall outside the scope of the application as submitted which is seeking planning permission to convert unit numbers 1, 2, 3 and 4 from HMO to flats retrospectively. Units 2,3 and 4 are self-contained including bathroom and kitchen facilities. Unit 1 is not self-contained as it does not have a bathroom but has sole use of the remaining bathroom on the ground floor. The plan below shows the layout which the applicant claims has existed since 2018/19. The size of the units are given in the section below.

Drawing PDB/200/02 (Current Existing Floor Plans to be retained) showing amended flat arrangement for all units

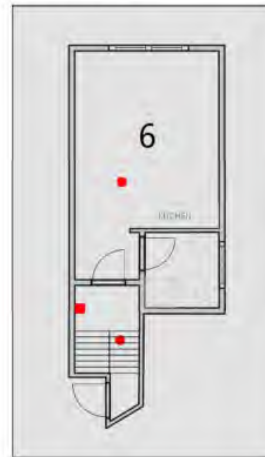
Ground Floor Plan



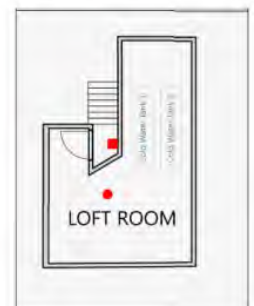
First Floor Plan



Second Floor Plan



Loft Room



3 Relevant Planning History

- 3.1 90/1098 - use former dwellinghouse as house in multiple occupation – refused
- 3.2 91/0026 - use former dwellinghouse as house in multiple occupation – granted
- 3.3 20/00558/CLE- Use as Large HMO (Sui Generis)(Lawful Development Certificate - Existing) – refused for the following reason:

01 Having taken all material considerations into account, including the relevant legislation, the submitted evidence and the evidence canvassed by the Local Planning Authority, it is not considered that the Applicant's case is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the building on the application site as a seven-bedroom House in Multiple Occupation (HMO) (Use Class Sui Generis) commenced and continued uninterrupted for not less than ten years before the submission of the application. The use for which the certificate of lawfulness is sought is not lawful.

4 Representation Summary

Public Consultation

- 4.1 23 neighbouring properties were consulted, a site notice was displayed and a press notice published. No letters of representation have been received

Environmental Health

- 4.2 No objections subject to a condition relating to waste management .

Essex Fire Service

- 4.3 No objections.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF) (2021)
- 5.2 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility) CP4 (The Environment and Urban Renaissance), CP8 (Dwelling Provision).
- 5.3 Development Management Document (2015) Policies DM1 (Design Quality), DM3 (The Efficient and Effective Use of Land), DM7 (Dwelling Mix, Size and Type), DM8 (Residential Standards) and DM15 (Sustainable Transport Management).
- 5.4 Design & Townscape Guide (2009)
- 5.5 The National Technical Housing Standards (2015)
- 5.6 CIL Charging Schedule (2015)
- 5.7 Milton Conservation Area Appraisal (2014) and emerging Milton Draft Milton Conservation Area Appraisal (2021).
- 5.8 Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (2020)

6 Planning Considerations

- 6.1 The main planning considerations in this case are the principle of the development, design and impact on the character of the conservation area, standard of accommodation for future occupiers, impact on neighbours, traffic and transportation and CIL (Community Infrastructure Levy).

7 Appraisal

Principle of Development

- 7.1 The proposal is seeking planning permission for a residential use in a residential area. There is no objection to this in principle subject to the detailed considerations set out below.

Design and Impact on the Character of the Conservation Area

- 7.2 In determining this application the Council has a statutory duty under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that special attention should be paid to the desirability of preserving or enhancing the character and appearance of Conservation Areas.
- 7.3 The National Planning Policy Framework requires new development to respond positively to its surroundings. Paragraph 126 of the NPPF states that; *“The creation of high quality, beautiful buildings and places is fundamental to what the planning and development process should achieve. 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.”*
- 7.4 Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 and the Design and Townscape Guide advocate the need for any new development to respect the character of the area and complement local character.
- 7.5 Policy DM1 of the Development Management DPD states that all development should; *“add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features”*.
- 7.6 The proposed development would not result in any alterations to the external elevations of the building so the proposal would not result in any material harm to the character and appearance of the site or the wider conservation area.
- 7.7 The submitted statement comments that the existing refuse arrangements on the frontage will remain. These consist of 2 x wheelie bins. This arrangement is causing harm to the conservation area and would benefit from screening. If the proposal was otherwise considered to be acceptable a condition could be imposed to require the refuse arrangements to be agreed.
- 7.8 The development is therefore acceptable and the proposal is policy compliant in respect of design, heritage and character matters.

Impact on Residential Amenity

- 7.9 Policy DM1 of the Development Management Document requires all development to be appropriate in its setting by respecting neighbouring development and existing residential amenities *“having regard to privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight.”*
- 7.10 The proposed development seeks the change of use for 4 rooms within the building from HMO into flats. There are no external extensions or alterations proposed and given the size of the units proposed, the number of people at the premises is likely to be similar to the existing HMO use.
- 7.11 It is considered that the proposal would not result in any material change in impact on the amenity of the adjoining residents than the lawful use. The proposal is acceptable and policy compliant in terms of neighbour impact.

Traffic and Transportation

- 7.12 Policy DM15 of the Development Management Document requires new flats to provide 1 off street parking space and 1 secure cycle parking space per unit.
- 7.13 The submitted statement comments that 1 parking space exists at the property although it is unclear whether it will serve one of the units subject of this application, however, it is likely that the number of occupants will be unchanged or very similar to the existing occupancy levels if the proposal were to be granted and there would therefore be no material impact on parking or traffic and transportation. The proposal is acceptable and policy compliant in this regard.

Cycle Parking

- 7.14 No information has been provided in relation to cycle parking but it is noted that the statement confirms that all flats would have access to the rear amenity area via the side gate and there would be scope for a cycle shelter to be provided in this location. If the proposal were otherwise found to be acceptable a condition could be imposed which requires details of a cycle shelter to be agreed and installed within a reasonable timeframe.

Refuse Storage

- 7.15 As noted above this could be similarly dealt with via condition if the proposal was otherwise acceptable.
- 7.16 Overall therefore it is considered that, subject to the provision of secured cycle storage and refuse storage screening/details, the proposal would, have an acceptable impact on parking and highways.

Living Conditions for Existing and Future Occupiers

- 7.17 Delivering high quality homes is a key objective of the NPPF.
- 7.18 Policy DM3 of the Development Management Document (i) states: proposals should be resisted where they “*Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents*”.

Space Standards and Quality of Habitable Rooms.

- 7.19 Policy DM8, as amended, requires that all new homes are required to meet the National Technical Housing Standards in terms of overall floorspace and bedroom sizes. The standards are as follows:
- Flat sizes - the Minimum size for a single storey 1 bedroom 1 person unit is 37sqm (with shower not bath) and the minimum size for a single storey 1 bedroom 2-person unit is 50sqm
 - Bedroom Sizes - The minimum floor area for bedrooms to be no less than 7.5m² for a single bedroom with a minimum width of 2.15m; and 11.5m² for a double/twin bedroom with a minimum width of 2.75m for the master and 2.55m for other doubles.
 - Storage - A 1 bed 1 person units must provide 1sqm of storage and a 1 bed 2-person unit must provide 1.5sqm of storage.

7.20 Space standards are necessary to ensure that homes provide adequate space to undertake typical day to day activities, socialise with family and friends, work from home or study in private, provide storage for general household goods and personal belongings and to avoid the health and social costs that arise where space is inadequate.

7.21 The proposal is seeking retrospective planning permission for 3 x self-contained units and 1 x non self-contained unit. The sizes of units 1-4 are as follows.

Unit Number	Net Internal Area	Bed/living Area	Bed/living width	Storage
1 Not self-contained	10.1 sqm + bathroom of 1.8sqm on shared corridor	10.1 sqm	3.3m	none
2 Self-contained	12.1 sqm	10.1 sqm	3m	none
3 Self-contained	16.7 sqm	14.2 sqm	2.9m	none
4 Self-contained	12.4 sqm	10.6 sqm	3.1m	none

7.22 The size of the units are significantly below the standard set out in the Technical Housing Standards, and none of the units have any storage provision at all. The proposal is unacceptable and contrary to policy in this regard. In order to justify an exception to this requirement the submitted statement comments that:

- i. Despite their failure to meet the National Technical Housing Standards the rooms will provide a suitable standard of accommodation for new professionals and there is a need for this type of unit.
- ii. The basis for the determining planning issues need to be considered in the context of the fallback position of reverting back to an HMO use for these units in which the accommodation will remain the same size but with shared wcs.
- iii. The applicant would be willing to enter into a Unilateral Undertaking (UU) / S106 agreement that '*obligates the owner and any successors in title to retain all 7 units in single ownership such that the individual units cannot be separately sold. In addition, an additional obligation would also be included limiting the maximum length of any tenancy to a 12 month period. The Undertaking is intended to ensure that the units continue to meet the need for small dwellings as advocated though this application and do not become market flats available for sale in the traditional sense.*'
- iv. The Council is not meeting its housing targets for 5 year land supply so this application should be granted.

7.23 The statement also comments that the recent appeals at Suffolk House, reference APP/D1590/X/18/3219061 and APP/D1590/C/18/3219062 which were allowed by the Inspector, are relevant to this case in all the above issues.

7.24 In relation to point i. the need for all types of housing, including 1 bed and studio units, is noted however the aim of the Technical Housing Standards is to ensure that all new housing provides an adequate standard of accommodation for occupiers. All new residential development should meet these standards. As noted above the proposal falls significantly short of these standards with 3 of the 4 units having approximately 1/3 of the required floorspace and the remaining one approximately 1/2 the required floorspace. This is materially worse than the proposed flats at Suffolk House which ranged from 18.6 sqm to

over 30 sqm for 1 bed 1 person units which in some cases is more than double the area of the proposed units in this application. In regard to the flat sizes at Suffolk House the Inspector noted that:

'51. Six of the 7 flats fail to meet that standard. The most significant failing is Flat 21 which, at just 18.6m has only about half the required internal area. The other shortfalls are significant too, Flat 18 having just 26 m² and others being little over 30m². Moreover, only two of the flats have adequate internal storage provision, as required by the standards. The failings are more than minor technical breaches and, in the case of the smallest flats in particular, compromise the quality of the accommodation. Accordingly, there is conflict with DM8.

58..... the shortfalls in terms of the size of the units are significant and detract materially from the quality of the accommodation in the case of many of the flats. Overall, therefore, the living conditions afforded by the development as a whole are not satisfactory, in conflict with Policy DM8.

59 ... it is agreed that relevant policies in this case are out of date as a result of the shortfall in the housing land supply. However, that does not alter the need for adequate residential standards and DM8 does not appear to me to be inconsistent with the Framework. Accordingly, I attach significant weight to the conflict with DM8.

- 7.25 Given that the inspector attached 'significant weight' to the shortfall in the size of the units in the appeal cases it follows that considerably more weight should be attached to this policy conflict under the current application as the units are significantly smaller.
- 7.26 In this regard it is also useful to compare the proposed flat sizes with the emergency homeless shelter accommodation units proposed under application reference 21/01715/BC3. These units measure 25.7sqm and are intended as short term emergency housing for homeless people not to meet the needs of young professionals who are likely to have more possessions.
- 7.27 In relation to point ii. the fall back position in which the wc will be relocated to the shared corridor and the living space remains unchanged is noted, however, it is considered that, the use as an HMO would enable the Council to better regulate the standard of accommodation as it would add another layer of protection for occupiers.
- 7.28 In relation to the fallback issue the Inspector in the Suffolk House appeal at paragraph 75 gave limited weight to the fall back position of an HMO and the housing it would provide because in that case there was no evidence to show how this could be realistically achieved within the appeal property. In this case the application has demonstrated that the conversion back to an HMO would be simple and achievable and the HMO would provide accommodation for the same number of residents. Therefore weight can be given to this option in terms of housing provision as a viable alternative to self-contained flats and one which provides the same number of bedspaces.
- 7.29 In relation to point iii, the proposal for a UU to ensure that all the units remain in the same ownership and that tenancies are limited to 12 months, it is noted that a similar legal agreement was proposed within the Suffolk House Appeals. In these cases the Inspector accepted the benefits of ensuring that the flats remained within the same ownership but in relation to the length of tenancies he commented that:

'72. I am not persuaded that there is an adequate justification to limit the tenancies to 12 months. While I appreciate that the units serve a particular sector of the housing market (and that this forms part of the appellant's case in favour of the development), I have insufficient evidence to show that that would be undermined, or that the units would fail to serve as useful accommodation, if longer tenancies were permitted. Thus, I am not persuaded that it is necessary, and the requirements of Regulation 122(2) are therefore not met. Accordingly, Paragraph 5.1.3 of the Unilateral Undertaking cannot constitute a reason to grant planning permission.'

7.30 However, it is important to remember that the flats within the Suffolk House proposal were materially larger than those currently proposed so the Inspectors acceptance of the proposed UU to provide mitigation for the limited size of the units is not directly comparable to this case.

7.31 In relation to point iv. the Council does not dispute that it has deficit in housing land supply against the current targets. Hence, it is accepted that the tilted balance in favour of sustainable development should be applied when determining the application. In this case the test set out by the NPPF is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when considered against the policies of the NPPF taken as a whole.

7.32 In relation to this issue in the Suffolk House Appeal the Inspector comments that:

'64 Even if there was an adequate supply of housing, I would regard the accommodation provided as a benefit of the scheme, albeit limited by my findings regarding the quality of the accommodation. Against a background of such a significant shortfall of housing land, the need for the accommodation weighs more heavily in favour of the development. Although an HMO scheme would also provide much-needed accommodation.'

7.33 Although the proposal would make a contribution to the housing needs of the borough which must be given weight in the planning balance, the weight attached to this would not be as significant as that given to the Suffolk House proposal because of the units are significantly smaller and therefore not comparable in size to the Suffolk House Scheme and, unlike the Suffolk House proposal the current proposal has a viable fallback position as an HMO which would provide the same number of bedspaces albeit in a slightly amended format.

Non Self-contained unit

7.34 The inclusion of one non-self-contained unit which has sole access to a bathroom accessed off the shared lobby is also considered to be a negative aspect of the proposal as it does not come with the benefits of an HMO such as communal areas or a self-contained flat.

Light and Outlook

7.35 The submitted layout shows all habitable rooms will have adequate light and outlook. The proposal is policy compliant in this regard.

Amenity Space

7.36 The submitted statement comments that all flats will have access to the shared amenity space to the rear. This is considered acceptable and the proposal is policy compliant in this regard.

The Planning Balance

- 7.37 It is accepted that these units are occupied and that there is a certain housing need that is served by their existence. However, a licenced HMO, which would include a cap on the maximum number of occupants and be subject to the HMO licencing regime, would ensure that adequate standards are provided and would satisfy a similar housing need. The fact that people due to affordability reasons decide to occupy substandard accommodation should not be read as an endorsement for the provision of substandard housing as a remedy to the country's housing crisis or the Borough's housing supply shortfall. Furthermore, the Covid-19 pandemic and the restrictions that followed have highlighted the need for high quality homes.
- 7.38 It is the LPA's position that the identified harm to the living conditions of current and future occupiers outweigh the benefits of housing provision, even within the context of the tilted balance. In this case, taking into consideration the number and sub-standard size of accommodation, the benefits of additional housing provision are not considered to be significant and the proposal remains unacceptable in terms of the standard of accommodation provided.

Community Infrastructure Levy (CIL)

- 7.39 This application is CIL liable. If the application had been recommended for approval, a CIL charge would have been payable. If an appeal is lodged and subsequently allowed, the CIL liability will be applied. Any revised application may also be CIL liable.

Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS)

- 7.40 The site falls within the Zone of Influence for one or more European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). It is the Council's duty as a competent authority to undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation. Any new residential development 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. The RAMS Supplementary Planning Document (SPD), was adopted by Full Council on 29th October 2020, requires that a tariff of £127.30 (index linked) is paid per dwelling unit. This will be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement.
- 7.41 The proposal would change the number of housing units from 1 to 4, a net gain of 3 dwellings. Therefore 3 payments of this tariff are required. This has not been paid and as such the proposal fails to provide adequate mitigation for its in-combination effects to the designated sites.

8 Conclusion

- 8.1 Having taken all material planning considerations into account, including the tilted balance in favour of housing provision due to the lack of a 5 year housing supply, the development is considered unacceptable because of the very small sizes of the units which would not provide a satisfactory standard of accommodation for existing and future occupiers. In addition the proposal has not made the required RAMS contribution to mitigate for the impact of additional dwellings on foreshore nature designations. The benefits of the scheme,

including the provision of housing, do not outweigh harm identified. The proposed development is therefore recommended for refusal.

9 Recommendation

9.1 REFUSE PLANNING PERMISSION for the following reason(s):

01 The proposed development, by reason of the limited size of the units and their lack of any storage space, would result in cramped living conditions and a poor quality residential environment for the existing and future occupiers to the significant detriment of their amenity. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend Core Strategy (2007), Policies DM1, DM3 and DM8 of the Development Management Document (2015) and the advice contained within the Southend Design & Townscape Guide (2009).

02 The development offers no reasonable mitigation of the in-combination effect of the net increase of two dwellings on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020). This is unacceptable and contrary to the RAMS, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.

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 as set out in this report. However, the proposal does not represent sustainable development because the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal and set out in a report prepared by officers, approval has not been possible.

Informatives:

01 Please note that this application would have been liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended) if planning permission had been granted. Therefore, if an appeal is lodged and subsequently allowed the CIL liability will be applied. Any revised application may also be CIL liable.

02 The applicant is advised that this refusal does not imply that units 5,6 and 7 are lawful. The applicant is advised to submit a Certificate of Lawfulness Application in relation to these units, however, it is noted that the current submitted layout does not match the layout the application suggests existed in 2015.

Case Officer
Signature.....AJG.....Date.....27.8.21.....
Senior Officer Signature.....SM.....Date.....01.09.2021.....
Delegated Authority Signature.....KW.....Date.....01/09/2021.....

Appeal Decision

Site visit made on 8 November 2022

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 AUGUST 2023

Appeal Ref: APP/D1590/W/22/3292272

76 Park Road, Westcliff-On-Sea SS0 7PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mark Higgins, H4 Property Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/01199/FUL, dated 1 June 2021, was refused by notice dated 1 September 2021.
 - The development proposed was originally described as Retain Use of Parts of Building as Four Self-Contained Flats (Class C3).
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. From my visit and on the basis of the evidence before me, including the submitted drawings, the change of use has commenced, and the associated internal works have been completed. Therefore, the development is retrospective.

Main Issue

3. The main issue is whether or not the development provides a satisfactory standard of accommodation for the occupiers, with particular regard to the size of the self-contained flats.

Reasons

4. The appeal property is a three-storey building. Planning permission for its use as a House in Multiple Occupation (HMO), was approved in 1991 under application reference SOS/91/0026. However, a recent Certificate of Lawfulness application (Ref: 20/00558/CLE) in relation to the use of the property as a large HMO (Sui Generis) was refused in 2020.
5. It is understood that three rooms (annotated as Rooms 3, 4, and 7 on Drawing PDB/200/04) were converted to self-contained units (Class C3) circa 2015, albeit I have not been provided with a Certificate of Lawfulness in relation to these units. The appellant has stated that these units do not form part of the appeal and issues in those respects have not been raised by the Council. As a result, I have not considered those units further.
6. The appellant states that those remaining four rooms (annotated as Rooms 1, 2, 5 and 6 on drawing PDB/200/04) formed part of an HMO prior to the

development and shared a single first floor bathroom. They did not have a shared kitchen, living or dining room.

7. The appellant indicates that three of those rooms were converted to self-contained units through internal alterations in 2018/2019 as shown on submitted drawing PDB/200/02 (and identified as units 2, 3, and 4). The works created new bathrooms accessible from within each of the units. Additionally, unit 1 has also been converted and is self-contained, albeit with exclusive use of a bathroom accessible from the common hallway. This appeal relates to the retention of these four self-contained units.
8. Policy DM8 of the Development Management DPD (2015) (DMDPD) deals with residential standards and requires that all new dwellings must be high quality and flexible. It states that all new dwellings should meet or exceed the residential space standards set out in Table 4 of the policy. Table 4 indicates that a studio unit should have a minimum floor area of 30 square metres.
9. Shortly after the adoption of the DMDPD, the Government introduced the new Nationally Described Space Standards (2015) (NDSS). The Government's Planning Practice Guidance states that, 'where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS'¹. In response, the Council produced its Policy Transition Statement for housing standards. This indicates that the NDSS should be used in place of those standards set out in Policy DM8. Both parties agree that the NDSS are the relevant standards to apply for this appeal. Consequently, I attach substantial weight to the Policy Transition Statement.
10. The NDSS indicates that a one-bedroom flat should have a gross internal area of at least 37 square metres or 39 square metres (depending on whether it has a bath or a shower). The appellant indicates that the 37 square metre standard is relevant for this appeal. Even based on the appellant's measurements, each of the units have a substantial shortfall against the standards set out by Table 4 of the DMDPD and the NDSS. Furthermore, none of the units have the required square metres of built-in storage space. The very significant shortfalls against the standards indicate that the units provide wholly unsatisfactory self-contained accommodation. Whilst the units are in satisfactory condition with adequate décor and facilities, these considerations do not address the harm arising from the small size of the units and the shortfall against DMDPD Policy DM8 and the NDSS.
11. For the above reasons, I conclude that the development does not provide a satisfactory standard of accommodation for the occupiers. Therefore, in this respect, it is contrary to Policies KP2 and CP4 of the Southend Core Strategy (2007) (SCS), and Policies DM1, DM3 and DM8 of the DMDPD. These policies, amongst other aspects, require that new development protects the living conditions of future and existing residents. The development is also contrary to those principles of the National Planning Policy Framework (2021) (the Framework) that promote health, well-being, and a high standard of amenity for existing and future users.

¹ Reference ID: 56-018-20150327

Other Matters

12. The appellant indicates that there is a 'fallback' position that follows the 1991 permission for HMO use. Were this appeal to be unsuccessful, the appellant states that the next most viable use would be to convert the four units concerned to HMO bedsitting rooms by undertaking the minor internal works shown indicatively on drawing PDB/200/03.
13. Implementation of the fallback position would involve internal alterations to the building to remove the private W/Cs from the rooms. Shared W/Cs would be provided in two communal bathrooms rooms, one at ground floor and one at first floor.
14. The fallback position relates to the creation of HMO rooms and is therefore a different form of accommodation to the self-contained units which this appeal relates to. The Essex HMO Amenity Standards (2018) indicate that a single person HMO room without shared facilities should be 11 square metres. The appellant's measurement indicate that the units exceed the minimum standards for HMO rooms.
15. Overall, it seems to me that the HMO rooms which form the fallback position would likely meet the space standards which are relevant to that type of accommodation. Conversely, I have found that the units within the scope of this appeal would be significantly undersized against the space standards which are relevant for self-contained accommodation. Consequently, I do not conclude that the fallback would result in worse quality accommodation for the occupiers than the existing undersized self-contained accommodation. While the fallback works are likely to go ahead, this would be for a different type of accommodation assessed against different space standards. This therefore limits the weight that the fallback can be afforded.
16. The appellant has referred to appeals APP/D1590/X/18/3219061 and APP/D1590/C/18/3219062 at Suffolk House which relate to self-contained units which were undersized when assessed against the NDSS. However, I note that in determining the appeals, the Inspector confirmed that, of the flats that did not meet the NDSS, one had a floor area of 18.6 square metres and one was 26 square metres, whilst the other flats were a little over 30 square metres. All of the units were therefore larger, and the majority were considerably larger, than any of the units under consideration in this appeal. For this reason, I do not find the development at Suffolk House directly comparable. Therefore, this factor is afforded limited weight.
17. The appellant refers to the potential for a Section 106 agreement that would obligate the owner and any successors in title to retain all 7 units within the property within a single ownership such that the individual units cannot be separately sold. An additional obligation could also limit the maximum length of any tenancy to a 12-month period to ensure that the units do not become market flats available for sale in the traditional sense. However, these factors would not overcome the significant shortfalls against the space standards which I have identified. In any event, a legal agreement has not been submitted, and accordingly I do not ascribe this any weight.
18. The main parties dispute whether the development affects one or more 'habitats sites' as defined in the glossary to the Framework. If I were minded to allow the appeal, I would need to be satisfied that the development is not

adversely affecting the integrity of any habitats sites. However, even if there are no effects, this would constitute a neutral consideration rather than a benefit in favour of the development.

19. The site is within the Milton Conservation Area (CA). However, the development is limited to internal alterations which do not have prominence outside the site. Therefore, the development preserves the character and appearance of the CA as a whole.
20. I have no reason to doubt that residential development in this location is acceptable in principle. The development may be compliant with various other provisions of the development plan, for instance providing suitable refuse and recycling storage. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the development.

Planning Balance and Conclusion

21. The self-contained units are significantly undersized when measured against DMDPD Policy DM8 and the NDSS and do not provide sufficient storage space. As a result, I have found that they do not provide a satisfactory standard of accommodation.
22. The appellant and Council agree that the Council is unable to demonstrate a five year housing land supply. Furthermore, housing delivery is also low and has been significantly less than 75% of the housing requirements over the previous three years. As a consequence of the housing supply and delivery positions, paragraph 11(d) of the Framework is triggered as the policies most important for determining the scheme are out of date. Paragraph 11(d)(i) is not relevant as there are no policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development. Instead, paragraph 11(d)(ii) states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
23. Set against the harm identified there would be limited benefits associated with the development. The development makes an efficient use of a brownfield site in an accessible location. The appellant also indicates that there is a specific need in the local housing market for small dwellings, suitable for young professionals who are financially unable to access traditional self-contained one-bedroom flats. As a result, the development could make a very specific contribution to local housing supply which could help the local area attract and retain young professionals in skilled jobs. This weighs in the development's favour.
24. The Framework expects development to safeguard and improve the environment and ensure safe and healthy living conditions for occupiers. Policies KP2 and CP4 of the SCS and Policies DM1, DM3 and DM8 of the DMDPD are therefore consistent with the Framework. Even taking into account the Council's failure to deliver sufficient housing, the conflict between the development and the development plan should be afforded significant weight.
25. In my view, as the development does not provide a satisfactory standard of accommodation for the occupiers, the harm would significantly and

demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

26. The harm that I have found leads me to conclude that the development would conflict with the development plan as a whole. The other considerations in relation to the scheme do not clearly outweigh the harm that I have identified and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. For the reasons given above, I conclude that the appeal should be dismissed. I have not therefore considered the effect of the development on habitats sites since this would have no effect on my decision.

B Pattison

INSPECTOR