

Reference:	23/00142/UADV_B	
Report Type:	Enforcement	
Ward:	Milton	
Breach of Planning Control:	Unauthorised fascia and shopfront	
Address:	12 Pier Hill, Southend-on-Sea, Essex, SS1 2EQ	
Case Opened Date:	4 th August 2023	
Case Officer:	Edward Robinson / Author: Hayley Thompson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is on the northern side of Pier Hill and this report relates to the ground floor commercial unit within a two-storey terraced building. The site adjoins a three-storey building at 1a Marine Parade and the four- to eight-storey Park Inn Palace Hotel building. The Park Inn is a locally listed building and is designated as a local landmark building within the Southend Central Area Action Plan (SCAAP). Nos.1-4 Marine Parade are Grade II listed buildings.
- 1.2 The site is within Clifftown Conservation Area, Southend Seafront Area and Central Area South as identified on the policies map of the SCAAP. The wider area is mixed in character including the Southend central primary shopping area to the north and leisure uses to the east and south.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 23/01559/ADV - Install 1no. externally illuminated projecting box fascia sign to front (retrospective) – Refused
- 3.2 23/01962/FUL - Retain replacement shopfront to commercial unit (Retrospective) – Refused
- 3.3 24/00057/REFN – Appeal against refusal of reference 23/01962/FUL (submitted 10.07.2024 and pending)

4 Planning Policy Summary

- 4.1 Planning (Listed Buildings and Conservation Areas) Act 1990
- 4.2 The National Planning Policy Framework (NPPF) (2023)
- 4.3 Planning Practice Guidance (PPG) (2024)
- 4.4 National Design Guide (NDG) (2021)
- 4.5 Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles), CP2 (Town Centre and Retail Development) and CP4 (Environment & Urban Renaissance)
- 4.6 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend's Historic Environment)
- 4.7 Southend Central Area Action Plan (SCAAP) (2018): CS1 (Central Seafront Policy Area Development Principles), DS2 (Key Views), Policy DS3 (Landmarks and Landmark Buildings), PA6 (Clifftown Policy Area Development Principles)
- 4.8 Clifftown Conservation Area Appraisal (2022)

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:

- Installation of a shopfront and projecting fascia

7 Efforts to resolve the breach to date

7.1 In August 2023 the Local Planning Authority (LPA) created an enforcement case for a replacement shopfront and projecting fascia. No planning application had been submitted, for any works at the site. In August a letter was sent to the business owner inviting a retrospective planning application be submitted. Application 23/01962/FUL was submitted in December 2023.

7.2 In February 2024 advertisement consent was refused to retain the unauthorised projecting fascia and planning permission was refused to retain the unauthorised shopfront. The officer's report for the refusal of planning permission is attached as Appendix A. An appeal against that decision has recently been submitted to the Planning Inspectorate (PINS) in July 2024.

8 Appraisal

Design and Impact on the Character of the Area and Heritage

8.1 Sections 69 and 72 of the Planning and Listed Buildings and Conservation Areas Act 1990 state that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

8.2 Paragraph 207 of the NPPF states 'where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or total loss...'

8.3 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 Council's Design and Townscape Guide provide further details on how this can be achieved.

8.4 Policy CS1 states that all development "affecting all designated and non-designated heritage assets, including Conservation Areas, listed and locally listed buildings conserve and enhance these buildings and their settings in line with Policy DM5 of the Development Management Document".

8.5 Policy PA6 relates to Clifftown Conservation Area and seeks to ensure that all development proposals affecting all designated and non-designated heritage assets, including Conservation Areas, listed and locally listed buildings conserve and enhance these buildings and their settings in line with Development Management Policy DM5 (Historic Environment) and seeks to conserve existing landmarks and landmark buildings and ensure new development respects views to and from them, their setting and character, in line with Policy DS2 and Policy DS3. Policy DS2: Key Views' and Policy DS3: Landmarks and Landmark Buildings seeks to ensure that new development respects views, setting and character of existing landmark buildings including The Palace Hotel (Now Park Inn), Adventure Island, The Pier and Pier Hill Observation Tower and lift all of which are close to the site.

- 8.6 The site is in Clifftown Conservation Area. Policy DM5 of the Development Management Document states any new development that affects a heritage asset will be required to conserve and enhance its historic and architectural character, setting and the townscape value.
- 8.7 The Clifftown Conservation Area Appraisal states that the existing site makes a positive contribution to the conservation area, which formerly had a traditional style of shop front which was painted timber, with a painted timber fascia and stallrisers.

Fascia

- 8.8 The unauthorised fascia has replaced a non-illuminated, modestly sized, timber fascia and is situated at first floor level below existing first floor windows, is 1.25m deep and projects beyond the front of the building to almost the full width of the building. The existing building is an attractive and well detailed building which has been subject to a number of unauthorised changes including the signage and this has had a detrimental impact on its historic character. The fascia is significantly over scaled both in its projection and height and as such it impacts on the original corbel detailing and covers the sill of the first floor windows both of which have caused harm, The fascia has a canopy style design which does not sit well with the modest shop frontage, it is a dominant addition to the building and appears out of keeping. The use of corrugated aluminium has a contemporary appearance that is inappropriate for a historic building, and which is out of character generally within the setting of area, having a detrimental impact on the character of the Conservation Area and views of and the setting of the adjacent locally listed and listed buildings.

Shopfront

- 8.9 The former shopfront had a traditional style which was painted timber with stallrisers. The unauthorised shop front has been constructed in aluminium in a bright blue colour, which is highly visible from the public realm. Whilst there is no objection to the general form and arrangement of the shopfront, timber is the most appropriate material for shopfronts in a conservation area and this has been retained on a number of other shopfronts within the streetscene. The removal of the timber shopfront, loss of the timber stallriser and replacement with modern materials is materially at odds with the character of the building and the wider surrounding area.
- 8.10 The unauthorised shopfront and fascia do not preserve or enhance the character and significance of the conservation area or the setting of the listed and locally listed buildings and on the contrary, causes less than substantial but nevertheless significant harm to the character and significance of the conservation area. This harm is not outweighed by any identified public benefits. The development is therefore contrary to policies and guidance.

Enforcement Action

- 8.11 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 shopfront and fascia in its entirety, restore the frontage to its condition before the breach took place and remove from the site all materials resulting from compliance with the other steps. No lesser steps that could remedy the identified breach or associated harm have been identified.
- 8.12 It is considered that three (3) months is sufficient and reasonable time to allow for compliance with the above-described steps. This is in addition to the period of at least 28 calendar days which has to be allowed before any enforcement notice takes effect.

- 8.13 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, or for an appeal to be submitted against the Council's refusal of planning permission which has happened in this instance.
- 8.14 Regarding the unlawful advertisements at the site, these are controlled under the Advertisement Regulations. Enforcement action within the meaning of the planning law cannot be taken for illegal advertisements, only legal action can be taken. The expediency for such legal action is being considered separately.
- 8.15 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

- 8.16 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) Remove from the site the unauthorised shopfront and fascia in their entirety;**
- b) Restore the store frontage to its condition before the breach took place; and**
- c) Remove from the site all materials resulting from compliance with a) and b).**

- 9.2 **With time for compliance of:**

- Three (3) calendar months.**

- 9.3 **For the following reason:**

01 The removal of the former timber shopfront and fascia and their replacement with a modern aluminium shopfront and fascia has resulted in significant and demonstrable harm to the character and appearance of the application site, the streetscene and the conservation area more widely. The development causes less than substantial, albeit significant, harm to the Clifftown Conservation Area, and the setting of the adjacent listed and locally listed buildings and no public benefits have been identified to outweigh the identified harm. The development is therefore contrary to the National

Planning Policy Framework (2023), Core Strategy Policies KP2 and CP4, Development Management Document Policies DM1, DM3 and DM5, Policies CS1, PA6, DS2 and DS3 of the Southend Central Area Action Plan (2018) and the guidance contained in the National Design Guide (2021), the Southend-on-Sea Design and Townscape Guide (2009) and the Clifftown Conservation Area Appraisal (2022).

Appendix A

Reference:	23/01962/FUL
Application Type:	Full Application
Ward:	Milton
Proposal:	Retain replacement shopfront to commercial unit (Retrospective)
Address:	12 Pier Hill, Southend-on-Sea, Essex, SS1 2EQ
Applicant:	Mr John Remblance
Agent:	Mr Colin Stone of Stone Me Ltd
Consultation Expiry:	10th January 2024
Expiry Date:	6th February 2024
Case Officer:	Hayley Thompson
Plan Nos:	Location plan, 01B
Supporting Documents:	Design and Access Statement
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site contains a two-storey terraced building occupied as a commercial unit at ground floor. At first floor level is a residential unit. It adjoins a three-storey building at 1a Marine Parade and to the four to eight storey Park Inn Palace Hotel building on Pier Hill. The Park Inn is a locally listed building and is designated as a local landmark building within the Southend Central Area Action Plan (SCAAP). Nos.1-4 Marine Parade are Grade II listed buildings.
- 1.2 The site is within Clifftown Conservation Area, Southend Seafront Area and Central Area South as identified on the policies map of the SCAAP. The wider area is mixed in character including the Southend central primary shopping area to the north and leisure uses to the east and south.

2 The Proposal

- 2.1 The application seeks planning permission to install a blue powder coated aluminium shopfront which has been constructed on site and the application is therefore retrospective in nature.
- 2.2 The previous shopfront was traditional in design and painted timber with a recessed central entrance. The replacement shopfront has infilled the recessed area to the front with a wider door in a similar central location.

- 2.3 An original timber fascia has been removed and a projecting fascia box has been installed, this development has separately been refused consent under the scope of application reference 23/01559/ADV. Flanking corbels to the side of the projecting fascia box have been retained.
- 2.4 Former shutters have been removed and the submitted plans do not indicate that replacement shutters have been installed to the site. A raised platform has been installed to the front of the site which does not form part of the application and has not been assessed within the scope of this application.

3 Relevant Planning History

- 3.1 23/01559/ADV - Install 1no. externally illuminated projecting box fascia sign to front (retrospective) – Refused.

4 Representation Summary

Public Consultation

- 4.1 6 neighbouring properties were notified of the application by letter, a site notice was displayed and the application was advertised in the press. No representation has been received.

Design and Conservation

- 4.2 Object - The existing building is an attractive and well detailed building which has been subject to a number of unauthorised changes and this has had a detrimental impact on its historic character and that of the wider Conservation Area. The loss of an original timber shopfront has failed to preserve that character of the Conservation Area and has resulted in less than substantial harm to the adjacent locally listed and listed buildings. Generally, the proportions and arrangement are acceptable but the shopfront should be timber with a timber stallriser.

5 Planning Policy Summary

- 5.1 Planning (Listed Buildings and Conservation Areas) Act 1990
- 5.2 The National Planning Policy Framework (NPPF) (2023)
- 5.3 Planning Practice Guidance (PPG) (2023)
- 5.4 National Design Guide (NDG) (2021)
- 5.5 Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles), CP1 (Employment Generating Development) CP2 (Town Centre and Retail Development) CP3 (Transport and Accessibility) and CP4 (Environment & Urban Renaissance)
- 5.6 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend's Historic Environment), DM15 (Sustainable Transport Management)

- 5.7 Southend Central Area Action Plan (SCAAP) (2018): CS1 (Central Seafront Policy Area Development Principles), DS2 (Key Views), Policy DS3 (Landmarks and Landmark Buildings) DS5 (Transport, Access and Public Realm), PA6 (Clifftown Policy Area Development Principles)
- 5.8 Clifftown Conservation Area Appraisal (2022)
- 5.9 Southend-on-Sea Design and Townscape Guide (2009)
- 5.10 Community Infrastructure Levy (CIL) Charging Schedule (2015)

6 Appraisal

Principle of Development

- 6.1 Policies KP1 and KP2 seek sustainably located development. DM13 seeks to maintain and enhance the vitality and viability of shopping frontages. Policy CP2 seeks to ensure that development does not impact negatively on the ability of centres to meet the day to day needs of residents.
- 6.2 Local and national policies and guidance support extensions and alterations to existing buildings in most cases but require that such extensions and alterations respect the existing character and appearance of the building and the historic and architectural character and significance of heritage assets, such as the Clifftown Conservation Area and the locally listed building.
- 6.3 The building is within a predominantly commercial part of the conservation area and alterations to the building are considered acceptable in principle.
- 6.4 The principle of development is considered to be acceptable, subject to detailed considerations discussed below.

Design and Impact on the Character of the Area and Heritage

- 6.5 Sections 69 and 72 of the Planning and Listed Buildings and Conservation Areas Act 1990 state that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 6.6 Paragraph 207 of the NPPF states 'where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or total loss...'
- 6.7 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 Council's Design and Townscape Guide provide further details on how this can be achieved.

- 6.8 The Design and Townscape Guide states that the “Council is committed to good design and will seek to create attractive, high-quality living environments” and that “proposed development [should] make a positive contribution to the local area”.
- 6.9 Policy CS1 states that all development “affecting all designated and non-designated heritage assets, including Conservation Areas, listed and locally listed buildings conserve and enhance these buildings and their settings in line with Policy DM5 of the Development Management Document”.
- 6.10 Policy PA6 relates to Clifftown Conservation Area and seeks to ensure that all development proposals affecting all designated and non-designated heritage assets, including Conservation Areas, listed and locally listed buildings conserve and enhance these buildings and their settings in line with Development Management Policy DM5 (Historic Environment) and seeks to conserve existing landmarks and landmark buildings and ensure new development respects views to and from them, their setting and character, in line with Policy DS2 and Policy DS3. Policy DS2: Key Views’ and Policy DS3: Landmarks and Landmark Buildings seeks to ensure that new development respects views, setting and character of existing landmark buildings including The Palace Hotel (Now Park Inn), Adventure Island, The Pier and Pier Hill Observation Tower and lift all of which are close to the site.
- 6.11 The site is in Clifftown Conservation Area. Section 72(1) of the Planning and Listed Building and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Policy DM5 of the Development Management Document states any new development that affects a heritage asset will be required to conserve and enhance its historic and architectural character, setting and the townscape value.
- 6.12 The Clifftown Conservation Area Appraisal states that the existing site makes a positive contribution to the conservation area, which formerly had a traditional style of shop front which was painted timber, with a painted timber fascia and stallrisers (see figure 1 dated 2018). The unauthorised shop front has been constructed in aluminium in a bright blue colour, which is highly visible from the public realm (figure 2). Whilst there is no objection to the general form and arrangement of the shopfront, timber is the most appropriate material for shopfronts in a conservation area and this has been retained on a number of other shopfronts within the streetscene. The removal of the timber shopfront, loss of the timber stallriser and replacement with modern materials is materially at odds with the character of the building and the wider surrounding area. The development does not preserve or enhance the character and significance of the conservation area or the setting of the listed and locally listed buildings and on the contrary, causes less than substantial but nevertheless significant harm to the character and significance of the conservation area. This harm is not outweighed by any identified public benefits. The development is therefore contrary to policies and guidance and refusal is therefore recommended on this basis.

Figure 1 (pre-existing shopfront and signage c2018)



Figure 2 (unauthorised fascia and shopfront)



- 6.13 The development is considered to be unacceptable and conflicts with policy in the above regards.

Amenity Impacts

- 6.14 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.
- 6.15 Having regard to the nature of the development and the commercial nature of the surrounding premises, it is considered that the design, size, siting and scale of the development are such that it would not result in any significant harm to the amenities of other neighbouring premises in any relevant regard. The development is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Other Matters

- 6.16 The proposed development is not found to result in any significant parking or highways impacts, it is therefore acceptable and policy compliant in these regards.

- 6.17 As the development does not create more than 100m² of floorspace and does not involve the creation of a new dwelling (Class C3), the proposal benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

Equality and Diversity Issues

- 6.18 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

- 6.19 Having taken all material planning considerations into account, it is found that the development is unacceptable and contrary to the objectives of the relevant development plan policies and guidance. The shopfront causes less than substantial but nevertheless significant harm to the character and significance of the Conservation Area and the setting of the adjacent listed and locally listed buildings. The public benefits do not outweigh the identified harm. The application is therefore recommended for refusal.

7 Recommendation

7.1 REFUSE PLANNING PERMISSION for the following reason:

- 1 The removal of the former timber shopfront and its replacement with a modern aluminium shopfront, has resulted in material harm to the character and appearance of the application site, the streetscene and the conservation area more widely. The development causes less than substantial, albeit significant, harm to the Clifftown Conservation Area, and the setting of adjacent listed and locally listed buildings and no public benefits have been identified to outweigh the identified harm. The development is therefore contrary to the National Planning Policy Framework (2023), Core Strategy Policies KP2 and CP4, Development Management Document Policies DM1, DM3 and DM5, Policies CS1, PA6, DS2 and DS3 of the Southend Central Area Action Plan (2018) and the guidance contained in the National Design Guide (2021), the Southend-on-Sea Design and Townscape Guide (2009) and the Clifftown Conservation Area Appraisal (2022).**

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 preapplication service available at https://www.southend.gov.uk/info/200155/make_a_planning_application_and_planning_advice/365/planning_advice_and_guidance/2.

Informatives:

- 1 You are advised that as the proposed extension(s) or change of use to your property equates to less than 100sqm of new floorspace, and does not involve the creation of a new dwelling (Class C3), 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 the Planning Portal (www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy) or the Council's website (www.southend.gov.uk/cil) for further details about CIL.**