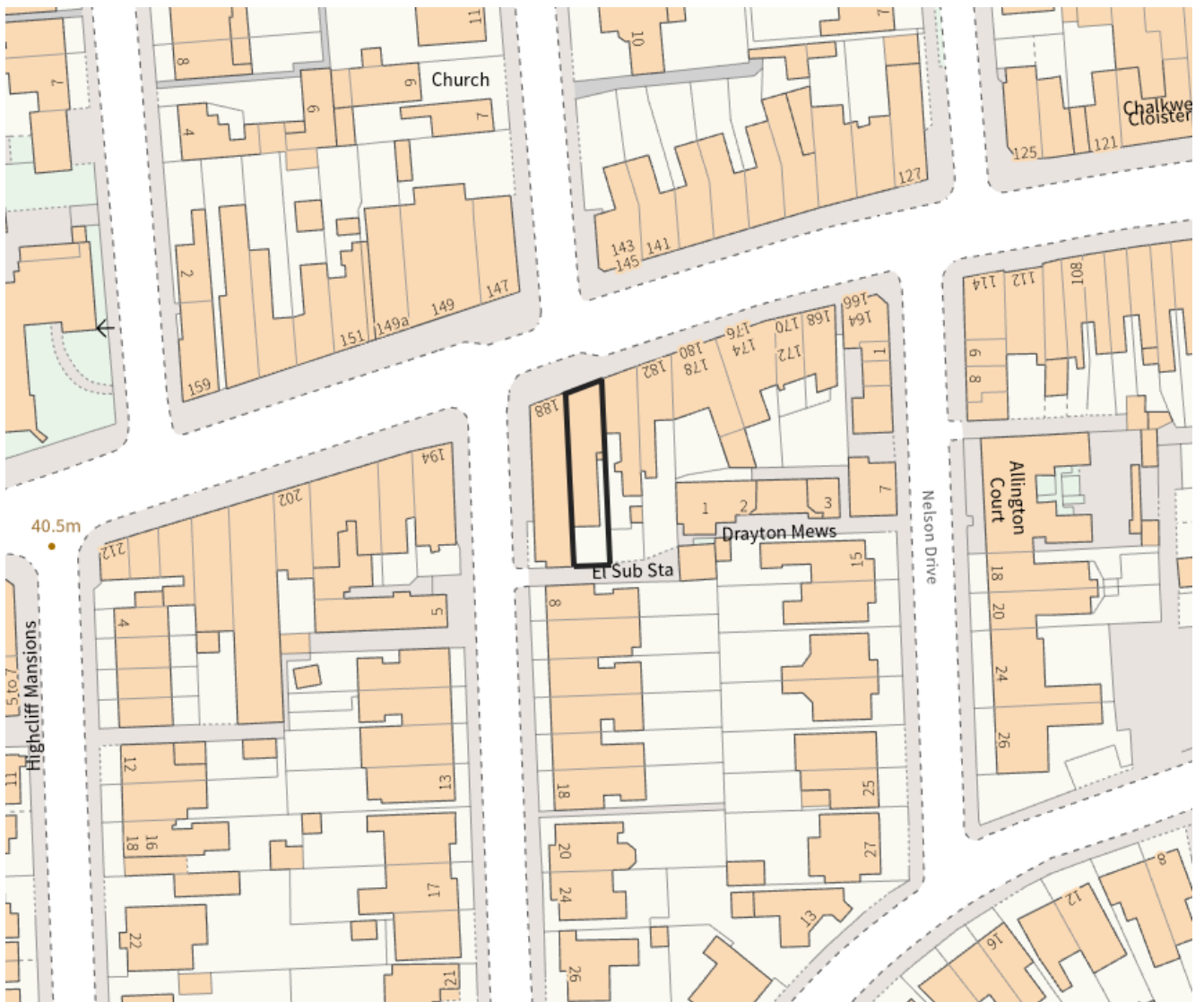


<b>Reference:</b>	20/00308/UNAU_B	
<b>Report Type:</b>	Enforcement	
<b>Ward:</b>	Leigh	
<b>Breach of Planning Control:</b>	Installation of external ducting and flue to side and rear elevations.	
<b>Address:</b>	186 Leigh Road, Leigh-on-Sea, Essex, SS9 1BT	
<b>Case Opened Date:</b>	23.10.2020	
<b>Case Officer</b>	Edward Robinson	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site and Surroundings**

- 1.1 The site is within a part of Leigh Road mainly containing businesses at ground floor some with residential above. The most southern part of this site backs onto Carlton Drive, which predominantly contains dwellings. The site is within a designated Secondary Shopping Frontage area. No other site-specific planning related designations affect the site or the surrounding area.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use of the site is as a hot-food takeaway, a sui generis use, at ground floor and as a residential unit above, a use falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

## **3 Relevant Planning History**

- 3.1 21/02245/FUL- Install external extract ventilation ductwork to side and rear. Application returned 10 November 2022.
- 3.2 23/00517/FUL- Install external extract ducting and flue to side and rear elevations (Retrospective). Application Invalid.

## **4 Planning Policy and Legislation Summary**

- 4.1 The National Planning Policy Framework (NPPF) (2023)
- 4.2 Planning Practice Guidance (PPG) (2024)
- 4.3 National Design Guide (NDG) (2021)
- 4.4 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)
- 4.6 Southend-on-Sea Design and Townscape Guide (2009)

## **5 Procedural Matters**

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

## **6 The alleged planning breach**

- 6.1 The identified breach of planning control is:

Installation of external extract ducting and flue to the side and rear elevations.

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

- 7.1 In October 2020 a complaint was received by the Council alleging the installation of a new ventilation and extractor system. In February 2021 a letter was sent to the premises advising them that planning permission was required for the installation.

- 7.2 In November 2021 a planning application was submitted. This was then shown as an invalid application on 10 November 2022. No response was received, and it was then returned to the agent.
- 7.3 In March 2023 a second planning application was submitted. This has since been shown as invalid. In December 2023, the case officer contacted the agent requesting the submission of the necessary material to make the application valid. No further application has been submitted and the installation remains in situ.

## **8 Appraisal of the harm caused**

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

- 8.1 Given the limited public vistas available towards the development, and the presence of comparable type of development at the rear of neighbouring properties, the development as constructed would not be unexpected to the rear of a commercial parade and would not be considered to result in significant harm to the character and appearance of the site, the streetscene and the wider area.

### **Amenity Impacts**

- 8.2 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies that development should protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight. Further advice on how to achieve this is set out in the Council's Design and Townscape Guide. Paragraph 185 of the Council's Design and Townscape Guide states that flues should be designed to ensure that no nuisance or detriment to amenity is caused by odour, fumes, dust particles, food droplets, vibration or noise to nearby properties.
- 8.3 The metallic extract ducting and flue to the rear and side has been installed to facilitate the operation of apparatus in association with the ground floor use of the site as a hot food take-away. The immediate surroundings include shops, upper floor flats and amenity areas in Leigh Road and dwellings to the south of the site facing Carlton Drive.
- 8.4 The operation of such equipment gives rise to the potential for unacceptable odours, fumes, vibration, noise and disturbance. The nearest noise sensitive residential properties to the commercial kitchen extraction system are the first-floor flats at the site and at Nos.188A and 184A Leigh Road. These flats have openings and amenity areas near to the development.
- 8.5 It is understood that the take-away restaurant operates daily (except Sundays) between 11am and 9pm. In considering a planning application for such equipment, it would be expected that full details, specifications and the location of the equipment, as well as a noise impact assessment and odour risk assessment measures would be required. The Council's Environmental Health service would be consulted to assess whether such details and assessments reasonably demonstrated whether the unauthorised development would be detrimental to neighbours' amenity or not. No valid planning application has been demonstrating that the impacts of the unauthorised equipment are acceptable and/ or that its impacts can suitably be controlled through planning conditions. It is understood that a nuisance abatement notice has also been issued by the Council's Environmental Health service related to noise from operation of the kitchen extract ventilation system.

- 8.6 It is not considered that the unauthorised development harms the privacy, outlook, sense of enclosure, or daylight and sunlight for the nearby flats. It is not considered any other properties are adversely affected in these regards.

## **9 Enforcement and Legal Action**

- 9.1 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 secure removal of the rear flue in its entirety and removal from the site of all materials resulting from compliance with the removal of the flue. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 9.2 When serving Enforcement Notices the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of 3 months is considered reasonable for compliance with the above requirements.
- 9.3 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served on the responsible parties as this will bring further focus to the need for the breach to be regularised and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and does not fetter the owners in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 9.4 Taking enforcement action in this case may amount to an interference with the owners'/occupiers' human rights. However, it is necessary for the Council to balance the rights of the owners/occupiers against the legitimate aims of the Council to regulate and control land within its area in the public interest.

## **Equality and Diversity Issues**

- 9.5 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.

## **10 Recommendation**

- 10.1 **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 the unauthorised extraction flue to the rear and side; and**
  - b) **Remove from site all materials and debris resulting from compliance with requirement (a) above.**

**10.2 With time for compliance of:**

**3 calendar months.**

**10.3 For the following reason(s):**

- 1. In the absence of any valid application, it has not been demonstrated that the unauthorised development does not give rise to unacceptable odours and fumes, vibration, noise and disturbance. In the absence of noise, odour and vibration impact assessments and any professionally recommended mitigation, it has not been demonstrated that the development is not materially harmful to residential amenity. The unauthorised development is therefore unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Development Management Document (2015) Policies DM1 and DM3 and the guidance contained within the Southend-on-Sea Design and Townscape Guide (2009).**