

Reference:	24/01392/FUL
Application Type:	Full Application
Ward:	Kursaal
Proposal:	Erect detached outbuilding to rear (retrospective)
Address:	18 Belle Vue Avenue, Southend-on-Sea
Applicant:	Ms Emma Stoakes
Agent:	Mr Michael Dedman
Consultation Expiry:	9th October 2024
Expiry Date:	15th November 2024
Case Officer:	Kara Elliott
Plan Nos:	Location Plan, Block Plan, Elevations X-Section and Plans, A101,
Supporting Documents:	Design and Access Statement, Letters of Support (x2), Aerial Photos 2013-2022, Photos Existing, Photos Proposed
Recommendation:	(A) REFUSE PLANNING PERMISSION (B) AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The application relates to a detached outbuilding which has been built in the rear garden of No 18, a first floor flat on the east side of Belle Vue Avenue. The ground floor flat within this two-storey semi-detached building is No. 16.
- 1.2 The site is not within a conservation area or subject to any site-specific planning policies.

2 The Proposal

- 2.1 Retrospectively planning permission is sought to keep the rear outbuilding which is set 2.1m from the rear building line of the building and is some 2m wide x 5.6m deep x 2.7m high, taken from the lowest ground level. The outbuilding's flat roof has a 0.6m overhang to both its eastern and northern flanks. The outbuilding, excluding the roof, is set 0.8m from the site's southern boundary and is set up to the northern boundary.
- 2.2 The outbuilding is constructed in composite timber effect cladding finished in light and dark grey with upvc windows and doors. The outbuilding is used as a home office and for general domestic storage.
- 2.3 The submitted plans do not fully show the outbuilding in relation to the whole application property but this has not prejudiced the assessment of the application or the development's impacts.
- 2.4 Two letters of support from nearby occupiers have been submitted by the applicant in support of their application.
- 2.5 The application has been submitted following an enforcement investigation.

3 Relevant Planning History

- 3.1 The most relevant planning history for the determination of this application is shown on Table 1 below:

Table 1: Relevant Planning History of the Application Site

Reference	Description	Outcome [Date]
21/01108/FUL	Erect dormer to rear, rooflights to front	Refused [03.08.2021]
24/00117/UNAU_B	Enforcement Enquiry for Outbuilding	Pending Investigation

4 Representation Summary

Public Consultation

- 4.1 Ten (10) neighbouring properties were consulted. No letters of representation were received.

5 Procedural matters

- 5.1 This application is presented to the Development Control Committee because it has been called in by Cllr M Dent.

6 Planning Policy and Legislation Summary

- 6.1 The National Planning Policy Framework (NPPF) (2023)
- 6.2 Planning Practice Guidance (PPG) (2024)

- 6.3 National Design Guide (NDG) (2021)
- 6.4 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 6.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)
- 6.6 Southend-on-Sea Design and Townscape Guide (2009)
- 6.7 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 6.8 Town and Country Planning Act 1990 (as amended): Section 90A, Schedule 7A (Biodiversity Net Gain)

7 Planning Considerations

- 7.1 The main considerations in relation to this application are the principle of the development, the design and impact on the character and appearance of the area, the residential amenity for future and neighbouring occupiers, parking/ highway impacts and CIL liability.

8 Appraisal

Principle of Development

- 8.1 The outbuilding subject of the application serves the first floor flat which does not benefit from permitted development rights. Solely for information, had this been a single family dwelling the outbuilding would not have met permitted development criteria in any event due to its dimensions and position.
- 8.2 The principle of providing an outbuilding in connection with an existing dwelling is considered acceptable and policy compliant, subject to the proposal appropriately addressing the relevant detailed planning considerations.

Design and Impact on the Character of the Area

- 8.3 Local and national planning policies and guidance seek to ensure that new development is well designed. 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.
- 8.4 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.
- 8.5 Where outbuildings exist in the rear gardens of the nearest properties in Belle Vue Avenue, they are generally incidental, modest features appropriate to their use, subordinate in scale and form to their host dwellings, set close to the rear boundaries of the deep gardens and are not obvious from the public realm. Also, whereas fencing further away is generally taller, boundary fencing either side of this property is low (some

1- 1.2m) so lending a sense of openness to this immediate rear garden scene.

- 8.6 The outbuilding is set within a narrow garden some 3.1m in width which is similar to the gardens of Nos 16-22 Belle Vue Avenue. The outbuilding has no material streetscene impact. It spans the majority of the width of the site and in context is viewed as a building of a significant size and scale particularly how deeply it penetrates into the rear garden setting. It projects some 7.6m in total beyond the outrigger of the main building and is set some 2.1m from the ground floor flat below the application dwelling. The outbuilding exceeds the typical characteristics of an incidental residential outbuilding and is incongruent and overscaled in this setting, including in comparison with the modest and open character of the wider residential garden scenes. Its visual impact is exacerbated by its overhanging roof and its external light and dark finished cladding.
- 8.7 Due to its siting, excessive size, scale, overhanging roof and appearance including its use of materials unrelated to the application dwelling or typical rear garden scene the development is dominant, overscaled and incongruent and so is materially harmful to the character and appearance of the application site and the wider rear garden scene.
- 8.8 The development is therefore considered to be unacceptable and conflicts with policy in the above regards.

Amenity Impacts

- 8.9 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.
- 8.10 The development is set close to the rear of the existing flatted building and its stairwell. Due to its excessive size and bulk, exacerbated by its external finishes the outbuilding represents a dominant and incongruent feature in the rear garden scene which significantly harms neighbours' enjoyment of their rear gardens immediately to the north and south. This is exacerbated by how the typically low height boundary treatment lends an openness to the prevailing garden setting. Equally, whereas the outbuilding has openings to its northern flank which look into the garden of No 16 Belle Vue Avenue (the ground floor flat) it would be unreasonable to argue that the overlooking so created is any worse than the mutual overlooking that could occur from day to day use of these immediate rear gardens wherein users can see each other. If this were the sole issue of concern the overlooking could perhaps be ameliorated by erecting taller boundary fencing, if necessary, subject of a potential planning condition. Beyond that however and even if taller boundary fencing were to be erected to part shield the outbuilding, the development would still be dominant and have an overbearing sense of enclosure harmful to the amenity of Nos 16 and 20 by reason of its scale and position. It may also be unreasonable to seek to impose a taller fence on the setting of No 16 and 20's narrow rear garden which may be judged harmful to their amenity.
- 8.11 The footprint (not including roof overhang) of the outbuilding is set 0.8m from the southern side boundary and virtually up to the northern boundary. Due to the layout of the application property and neighbouring properties, with outriggers that have no ground floor habitable windows at their rear at ground floor, the development does not result in any harmful loss of outlook or loss of light for any other neighbouring occupiers.
- 8.12 In the round the development is therefore considered to be unacceptable and in conflict

with policy in the above regards due to its unacceptable impacts upon the occupiers of no.16 and 20 Belle Vue Avenue.

Other Matters

- 8.13 The development is not found to result in any significant parking or highways impacts. It is therefore acceptable and policy compliant in these regards.
- 8.14 The development is not liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended).
- 8.15 As the application is retrospective, this application is exempt from the requirements of Biodiversity Net Gain (BNG).

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 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 for Planning Application

- 8.17 Having taken all material planning considerations into account, it is found that the development is unacceptable and contrary to the objectives of the relevant local and national planning policies and guidance. The development significantly harms the character and appearance of the site and the wider rear garden scene due to its position and its excessive size and scale, coupled with the appearance of its external finishes. The development also results in unacceptable impacts upon neighbouring residential occupiers amenities from dominance, an overbearing impact and sense of enclosure.

Enforcement Action

- 8.18 Given the significant harm caused by the unauthorised outbuilding, as identified above, it is considered necessary, proportionate and justified in the circumstances of this case to seek authority for an enforcement notice(s) to be served. Service of an enforcement notice carries its own right of appeal and also does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm. Enforcement action in this case will reasonably require the removal of the outbuilding. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 8.19 When serving an Enforcement Notice the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of three (3) months is considered reasonable for the removal of the unauthorised outbuilding.
- 8.20 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the Local Planning Authority to balance the rights of the owners and/or occupiers against its legitimate aims to regulate and control land within its area. In this particular case it is considered reasonable, expedient, and proportionate and in the public interest to pursue

enforcement action on the grounds set out in the formal recommendation.

9 Recommendation

9.1 (A) REFUSE PLANNING PERMISSION for the following reasons:

- 01** The development significantly harms the character and appearance of the site and the wider rear garden scene due to its position and its excessive size and scale, coupled with its external appearance which create a feature which is dominant, incongruous and overscaled in this typical open setting. The development is therefore unacceptable and contrary to the National Planning Policy Framework (2023); Policy CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015); and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).
- 02** Due to its position and its excessive size and scale, coupled with its external appearance, the development is dominant, incongruous and over scaled so creating an unacceptable sense of enclosure significantly harmful to the amenities of the occupiers of Nos 16 and 20 Belle Vue Avenue. This is unacceptable and the development is contrary to the National Planning Policy Framework (2023); Policy CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015); and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

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 pre-application service available at <https://www.southend.gov.uk/info/200155/make-a-planning-application-and-planning-advice/365/planning-advice-and-guidance/2>

9.2 (B) Members are recommended to 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 outbuilding;**
- AND**
- b) Remove from site all materials resulting from compliance with a) above.**

9.3 With time for compliance of:

- Three (3) calendar months.**

9.4 For the reasons stated in paragraph 9.1 above.