

Reference:	EN/16/00193/UNAU-B
Ward:	Leigh
Breach of Control	The carrying out of various internal and external works to a listed building, operational development and engineering operations which constitute development, without the necessary planning permission and listed building consents being obtained. The removal of trees in a conservation area without serving an appropriate Section 211 notice.
Address:	Herschell House, 87 Leigh Hill, Leigh on Sea, Essex. SS9 1AR
Case Opened:	22 nd November 2016
Case Officers:	Kevin Waters and Steve Jones
Recommendation:	AUTHORISE ENFORCEMENT ACTION

The Chairman has agreed that this item be considered at this meeting as an urgent additional item on the grounds that the unauthorised works have caused serious harm to heritage assets. It is considered important that prompt action is taken against these significant breaches of listed building and planning controls.

1. Site and Surroundings

- 1.1 The original property on the site is an early 19th century timber framed and weather boarded four bay two storey house with a further level of accommodation in the roof. The original building has been extended on a number of occasions in the intervening period since its initial construction. This includes significant extensions on its northern and western sides in the late 19th and early 20th centuries. The property is a Grade II statutory listed building located in Leigh Conservation Area.
- 1.2 The site is located on the west side of Leigh Hill, to the south of St. Clements Church and the Broadway and north of Leigh Hill's junction with Cliff Parade. The property is one of a number of statutory and locally listed buildings in this part of the Leigh Conservation Area.
- 1.3 The north and east elevations of the main building on the application site are prominent in views from the public footpath in Leigh Hill and also the graveyard of the adjacent St Clements Church (which is a Grade II* statutory listed building). The property is considered to form an important part of the streetscene in Leigh Hill, which is a key road within the Leigh Conservation Area.
- 1.4 The oldest and most significant part of the listed building is the original timber framed house, which has an important weatherboard frontage facing south overlooking the garden and the Thames Estuary beyond. The brick built additions facing the road, the bay windows and the ancillary buildings were added in the late nineteenth and early twentieth centuries. The Historic England list description for this property specifically mentions that 'it is the original weather boarded house, now the garden front that is the feature of interest'.
- 1.5 The lawful use of the property is as a single dwellinghouse. This falls within Use Class C3 (a) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 1.6 The site and immediate surroundings are discussed in further detail in subsequent sections of this report as appropriate.

2. Recent Site History

- 2.1 In 2016 planning permission and listed building consent were granted for a range of internal and external works at the site. A full summary of the relevant applications is set out in Appendix 1 of this report. These consents followed extensive pre-application discussions between the applicant and their advisors, the Local Planning Authority and Historic England. This engagement included visiting the site, meetings and the provision of written advice.

- 2.2 The proposals put forward during pre-application engagement included a variety of substantial works to the listed building and wider site. A number of these proposals were found to be harmful to the significance the heritage assets by the Local Planning Authority and Historic England. The applicant was therefore advised accordingly. However, certain changes sought were acceptable on both planning and listed building grounds. These works formed the basis of a subsequent application at the site (with Local Planning Authority references 16/00744/FUL and 16/00745/LBC discussed in further detail below).
- 2.3 On 7th October 2015 it was brought to the attention of the Local Planning Authority that works were being undertaken at the site without the relevant planning and listed building consents having been obtained. The owners were therefore requested to cease work and submit an application for listed building consent and planning permission.
- 2.4 On the 23rd October 2015 an application for listed building consent and planning permission (application reference numbers 15/01783/FUL and 15/01784/LBC) to undertake various works to the main building at the site were received by the Local Planning Authority. These were initially incomplete and not finally validated until 20th April 2016. These applications, which were approved, sought consent for a range of internal and external works, including renovations to address damp and dry rot; the installation of new bathrooms; the upgrading of roof insulation; the removal of paint from brickwork and the reinstatement of a missing window. This application was amended during the application process. The amendments made included changes to retain the existing windows to the first floor bay (which were originally proposed for replacement) as these were judged by the Local Planning Authority and Historic England to be important to the significance of this heritage asset.
- 2.5 During a site visit for the applications identified above (in paragraph 2.4) it was found that works were already underway at the site and that these involved the loss of historic fabric. This included the removal of original plaster, historic partitions in the loft area and a fireplace. Following this visit the owner was asked to reinstate the missing partitions and fireplace and they complied with this request (as was confirmed by a subsequent visit). On balance it was concluded that while some of the original plasterwork had been lost, the works overall had addressed defects to the structure of the building which safeguarded its future. This was therefore found, on balance, to be acceptable. Consent for the applications submitted in October 2015 was granted on the 15th June 2016. On the decision notice for the application seeking listed building consent the applicant was reminded that it can be an offence to undertake works to a listed building without listed building consent.
- 2.6 On the 29th April 2016 an application (with reference numbers 16/00744/FUL and 16/00745/LBC) for listed building consent and planning permission was received (validated as complete on 7th June 2016) to demolish the existing single storey structure at the site and erect a single storey extension to the west side of the listed building. The application, which was approved, also included a change in the fenestration to the south elevation of the existing Edwardian wing of the building (which links the oldest and most significant part of the listed building with the more recent extension). The application further proposed piling works

associated with the new extension and the removal of 3 trees from the site. This proposal was heavily based on the principles set out in the pre-application advice given by the Local Planning Authority and Historic England. Since this time the detailed design of the application had been progressed substantially. The application now included full information on the materials to be used and elements of the detailed design. This additional information showed the proposal to be a high quality and subservient extension, which was respectful to the character, appearance and setting of the listed building. The works proposed were approved as they were found to be acceptable in all relevant regards.

3. Present Position

- 3.1 On 10th November 2016 a complaint was received by the Council's Building Control Team which alleged that unauthorised piling work was being carried out at the site. The owners were initially contacted by the Building Control Team (by email) on 11th November 2016. Following this it was confirmed by one of the owners that a private company was being used to deal with the requirements of the Building Regulations and that piling work had taken place at the site in relation to garden terracing. On the 14th November 2016 a further complaint was received by the Council's Building Control Team that trees were being felled at site without the necessary consent.
- 3.2 The Council's Building Control Team reported these complaints to the Local Planning Authority and an initial visit was made to the site by a Planning Enforcement Officer on the 15th November 2016. During this visit the officer identified that very extensive works were taking place both at the main building and also on the surrounding curtilage land.
- 3.3 On 16th November 2016 a second site visit was made to the site by the Planning Enforcement Team Leader, a Planning Enforcement Officer and a Planning Conservation Officer. Extensive photographs and notes of the work being undertaken at the main building and on the surrounding land were taken during this visit. It was apparent to officers that works to buildings, land and trees appeared to have taken place at the site without the necessary consents having been obtained under the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and the Town and Country Planning Act 1990 (as amended). Officers therefore advised the owners (who were present) to cease work at the site immediately. The breaches identified following the visit and subsequent investigations into the sites planning history are set out in greater detail in subsequent sections of this report.
- 3.4 On the 17th November 2016 officers wrote to the properties owners to confirm the statements made on site and also to set out that:
 - Works undertaken without the necessary consents under the above legislation could be the subject of enforcement action by the Local Planning Authority and may need to be removed or returned to their previous condition.
 - It is a criminal offence to carry out work, or cause works to be undertaken, to a listed building without the necessary listed building consent, where such work materially affects its character as a building of special historic or architectural interest.

- It is a criminal offence to fail to comply with a condition on a listed building consent, where the work undertaken materially affects the buildings character as a building of special historic or architectural interest.
- It is a criminal offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy trees in a Conservation Area without the serving of the necessary notice on the Local Planning Authority.
- Any work which is carried out without the necessary planning permission is undertaken entirely at your own risk.
- The Local Planning Authority should be contacted as a matter of the upmost urgency to discuss these issues.

3.5 At the time of writing this report one of the properties owners has contacted the Local Planning Authority to confirm in writing that he will stop any further construction work and a date has been arranged for this owner to meet officers to discuss the works that have taken place at the site. Officers are also presently visiting the site on a regular (approximately weekly) basis to monitor the situation.

4. Appraisal of Breaches of Listed Building and Planning Controls

4.1 The National Planning Policy Framework (NPPF) sets out the approach that Local Planning Authorities should take when dealing with designated heritage assets, such as a statutory listed building within a conservation area. The NPPF makes it clear that when the impact of a proposed development on the significance of a designated heritage asset is being considered great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. It is also noted that the significance of a heritage asset can be harmed or lost through alteration or destruction of the asset or development within its setting. As heritage assets are irreplaceable, any harm or loss will require clear and convincing justification. The permitting of substantial harm to a grade II listed building should be exceptional.

4.2 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 loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following points apply:

- The nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

4.3 Where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Local Planning Authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting

that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

- 4.4 Policy CP4 of the Southend-on-Sea Core Strategy identifies that development proposals will be expected to contribute to the creation of a high quality sustainable urban environment which enhances and compliments the natural and built assets of Southend. This objective will be achieved in a number of ways including the promotion of sustainable development of the highest quality, encouraging innovation and excellence in design and safeguarding and enhancing the historic environment and heritage assets, including listed buildings and conservation areas.
- 4.5 Policy DM1 of the Southend-on-Sea Development Management Document 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 giving appropriate weight to the preservation of a heritage asset based on its significance in accordance with Policy DM5 where applicable”. This policy also identifies that development should protect the amenity of immediate neighbours having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.
- 4.6 Policy DM5 of the Southend-on-Sea Development Management Document identifies that development proposals which result in the total loss of or substantial harm to the significance of a designated heritage asset, including listed buildings and buildings within conservation areas, will be resisted, unless there is a clear and convincing justification that outweighs the harm or loss. Where development proposals are shown to result in less than substantial harm to a designated heritage asset the identified harm will be weighed against the impact on the significance of the asset and the public benefits of the proposal. Works will be resisted where there is no clear and convincing justification for what is proposed.
- 4.7 Members will be aware that the carrying out of operational development works without the necessary planning permission is not, in itself, an offence or a reason for the Local Planning Authority to take enforcement action (work which is carried out without the necessary planning permission is undertaken at the owner’s risk). However, for the reasons set out in this report, it is considered that it is appropriate to take enforcement action in the specific circumstances found in this instance. Members will also be aware that it is a criminal offence to:
- Carry out work, or cause works to be undertaken, to a listed building without the necessary listed building consent, where such work materially affects its character as a building of special historic or architectural interest.
 - Fail to comply with a condition on a listed building consent, where the work undertaken materially affects the buildings character as a building of special historic or architectural interest.
 - Cut down, top, lop, uproot, wilfully damage or wilfully destroy trees in a Conservation Area without the serving of the necessary notice on the Local Planning Authority.

4.8 A large number of breaches of planning and listed building controls have been identified at the site by officers. In certain instances the breaches identified are found to be causing substantial harm to the heritage assets (the statutory listed building and conservation area) significance and would need to be removed altogether or very significantly amended if they are to be found acceptable. There are also works that have taken place which cause less than substantial harm to the heritage assets significance (but harm nonetheless) and works which have been undertaken without the necessary consents, and that should therefore be regularised, but which are likely to be found acceptable in terms of their impacts on heritage significance.

4.9 The breaches of planning and listed building controls identified at the time of writing this report and an assessment of their impacts is summarised below:

a) A new side extension to the main building has been constructed on a new concrete slab. While it is presently unfinished this structure is unauthorised (no listed building consent or planning permission) and significantly different from the side extension approved under the application with reference numbers 16/00744/FUL and 16/00745/LBC in terms of both its overall form and detailing. The building line of the extension constructed has been brought forward and the footprint and scale of both this structure and the concrete base on which it sits increased. Consequently the structure built, in conjunction with the changes noted at 4.9 b) below, is no longer subservient and relates poorly to the most significant part of the listed building. The extension also lacks the simple form and quality of detailing of the approved extension. This contributes to the degree to which the structure now competes unacceptably with the host building. Changes from the approved extension, in terms of detailing specifically, include the addition of further or differently designed openings (windows, rooflights and doors), poor detailing of approved openings (not in accordance with the approved plans) and the use of inferior fenestration materials (not in accordance with the approved plans). Overall the structure erected has significantly increased in scale and is not of a sufficient design quality. It is found to be detrimental to the character, appearance and setting of the heritage assets (listed building and conservation area) to a degree which harms their significance.

b) At the rear of the house the Edwardian 'linking' section, which joined the oldest part of the building to the more recent extension (and now the new side extension identified above), has been extended southwards towards the rear garden by approximately 1m without consent (planning permission and listed building consent). This has resulted in the loss of the original form of the Edwardian linking section and has detrimentally impacted on its relationship with the original house such that the link now is no longer subservient to the older part of the building. In addition, it is also noted that there have been significant changes to design, materials and detailing of this section (which are not in accordance with the approved plans), such as the change from simple high quality curtain glazing to patio doors. Overall the changes in size, scale and detailed design are found to be unacceptable. The structure is detrimental to the character and appearance of the heritage assets (listed building and conservation area) to a degree which harms their significance.

- c) Beyond the extensions identified above the external elevations of the building have been changed in a range of ways that either do not accord with the consents granted in 2016 for the site or which simply have not received the necessary consents in any regard (planning permission and listed building consent). These changes are found to harm the character and appearance of the heritage assets and in places cause the unjustified loss of historic fabric to a degree which harms the significance of the heritage assets (listed building and conservation area). They include the insertion of rooflights, the replacement of windows (including those in dormer windows), the erection of a satellite dish on the roof, changes to the rainwater goods (which appears to include a mixture of plastic and new metal rainwater goods), the use of new roof tiles of an inappropriate design and the application of poorly detailed new weatherboarding. It is possible that certain works at the site (including and beyond those identified in this paragraph), for example a car changer which has not been appropriately enclosed, were simply not finished at the time of officers visits to the site. However, this would need to be clarified by the owners and it is clear that this is not the problem with the significant majority of the breaches identified in this report.
- d) The unauthorised (planning permission and listed building consent) excavation of a large volume of earth from beneath the new side extension identified at 4.9 a) above. A change in the piling arrangement from that which was agreed for this area, from well-spaced individual piles to contiguous piles, is also noted. This feature is presently incomplete and its final purpose and design are unknown. However, during pre-application discussions it was advised, by both the Local Planning Authority and Historic England, that a basement or garage in this location would be unacceptable, because such a structure would significantly increase the scale of any side extension such that it would no longer appear subservient to the listed building and would therefore be detrimental to the character, appearance and setting of the heritage assets (listed building and conservation area) to a degree which harms their significance. Officers remain of this view. It is noted that other unauthorised piling works have taken place across the site.
- e) An unauthorised (without planning permission) concrete slab approximately 95m² in size with partially completed perimeter walls has been constructed in the rear garden of the property at a lower level to the main house. This structure is located to the south of new piling (which is also unauthorised) and close to the site of a much smaller curtilage building (with a footprint of approximately 38m²) which was demolished. The new structure here is presently incomplete and its final purpose and design are unknown. However, during pre-application discussions it was advised, by both the Local Planning Authority and Historic England, that a new house in the garden would be unacceptable. It is considered that a new structure of the scale and size presently constructed would be inappropriate due to its detrimental impact on the setting of the listed building and the conservation area. This structure is found to harm the significance of these heritage assets.
- f) Internally there have been changes to the historic fabric of the listed building without the necessary listed building consent having been obtained. This

includes the removal of doors and partitions, original doors and changes to three fireplaces (including full and partial removal). It is noted that certain of these features have previously been removed by the owners without consent and then subsequently re-instated at the request of the Local Planning Authority and Historic England. Officers remain of the view that these unauthorised losses of historic fabric are unacceptable and harmful to the significance of the heritage asset. Other more minor works have taken place inside without the required listed building consent. As such they should now be the subject of the appropriate applications. However, it is recognised that they are likely to be found acceptable if an application is made. These works include the installation of shutters, fitted desks, fitted cupboards and new architrave to a window and works associated with a bathroom.

- g) Substantial changes have been made to the levels of the land on the site (over 2m in height in places). In certain locations this has been facilitated by the significant use of piling. These works have been carried out without planning permission and it is considered that they are of an order that constitutes an engineering operation requiring planning permission. The changes made were not shown on the plans provided for the various consents granted at the site in 2016. At present the garden works are incomplete and the final land levels and design of these areas is not known. However, it is considered that in their present form they are not acceptable because they impact adversely on the character and setting of the listed building to a degree which harms the significance of the heritage asset. For example the removal of earth close to the property has given the extension identified in section 4.9 a) of this report the appearance of a two storey structure. It has previously been advised by both the Local Planning Authority and Historic England that such an approach is unacceptable. There is also concern that, at the rear of the site, the level changes are likely to cause either unacceptable overlooking and loss of privacy at neighbouring properties, to the detriment of the occupiers residential amenity, or, if structures are erected to prevent this overlooking, an overbearing and visually obtrusive relationship with neighbouring properties which is harmful to occupiers residential amenity. Either approach would be unacceptable and contrary to the objectives of adopted development plan policies (policy DM1). It is noted that officers have previously advised that the making of level changes to provide parking at the rear of the site would be unacceptable due to its harm to the setting of the heritage asset. It is understood that during these earthworks new drainage infrastructure was installed for the house and wider site. This work has not received any form of consent. The sites rear boundary enclosure (and retaining feature) has been altered without planning permission. While it appears to be unfinished and the final design is not clear, this structure presently has an unacceptable character and appearance which is detrimental to the conservation area and the setting of the listed building to a degree which harms their significance as heritage assets.
- h) 6 trees have been felled at the site, which falls within a designated conservation area, without the serving of the necessary notice on the Local Planning Authority (a Section 211 notice under the provisions of the Town and Country Planning Act (1990) as amended). A total of 9 trees have been removed from the site to date, but 3 of these have consent to be removed

(under the terms of the planning permission with reference 16/00744/FUL). There is also evidence that works which have taken place on the land have damaged trees which are retained. It is found that that unauthorised works impacts on trees (in terms of both felling and damage) at the site is such that it has caused a loss of amenity. It is also noted that a condition allowing the removal of only 3 trees from the site and requiring the use of specified tree protection measures was imposed, as condition 4, on the planning permission with Local Planning Authority reference 16/00744/FUL. The terms of this condition are considered to have been breached by the works that have taken place.

- 4.10 Officers consider that in reaching a decision on whether or not to authorise action in this instance Members should have particular regard to the unauthorised works impacts on the significance of designated heritage assets (the statutory listed building and conservation area). As has already been noted in this report national planning guidance makes it clear that when considering the impact of works on the significance of a designated heritage asset great weight should be given to the asset's conservation. As heritage assets are irreplaceable, any harm or loss will require clear and convincing justification and the permitting of substantial harm to a grade II listed building should be exceptional. Officers consider that when they are taken in the round the unauthorised works which have been carried out at the site have resulted in substantial harm to the significance of the listed building and conservation area as heritage assets. They are therefore in conflict with the objectives of development plan policy and national guidance on this matter. These unauthorised works are not found to result in any public benefits which outweigh this harm. The works are also found to have resulted in the loss of trees from the site (without the serving of the necessary notification on the Local Planning Authority) to the detriment of amenity and to harm the amenities of the occupiers of neighbouring residential property. The impact of the works on amenity are found to be such that they are in conflict with the objectives of development plan policy (including policy DM1). There are not considered to be any heritage or other planning benefits arising from the unauthorised works which outweigh the conflict with development plan policy and amenity harm they have resulted in.
- 4.11 It is recognised that taking enforcement action in this case may amount to an interference with the Human Rights of owners and occupiers of the property. However, it is necessary for the Local Planning Authority to balance the rights of the owners and occupiers against its legitimate aims to regulate and control land within its area. In this particular case it is considered reasonable, expedient, proportionate and in the public interest to pursue enforcement action for the reasons and in the ways set out in this report.

5. Planning Policy Summary

- 5.1 The National Planning Policy Framework (2012)
- 5.2 National Planning Practice Guidance

- 5.3 Southend-on-Sea Core Strategy (2007) Policies: KP2 (Development Principles); CP3 (Transport and Accessibility); and CP4 (The Environment and Urban Renaissance).
- 5.4 Southend-on-Sea Development Management Document (2007) Policies: DM1 (Design Quality); DM3 (Efficient and Effective Use of Land); DM5 (Southend-on-Sea's Historic Environment); DM14 (Environmental Protection); and DM15 (Sustainable Transport Management)
- 5.5 Leigh Conservation Area Appraisal (2010)
- 5.6 Southend-on-Sea Design and Townscape Guide (2009)

6. Recommendation

- 6.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** in respect of the breaches of planning and listed building controls identified as harmful in sections a) to g) (inclusive) of paragraph 4.9 of this report to secure their removal, making good, remediation or construction in full compliance with the terms of the planning permissions and listed building consents granted at the site in 2016 (as set out in Appendix 1 of this report) as appropriate. **Members are also recommended to AUTHORISE ENFORCEMENT ACTION** to secure the planting of new trees of an appropriate size and species and in appropriate locations to replace the trees felled at the site without the appropriate notice being served (as identified in paragraph 4.9 h) of this report). It is considered reasonable, expedient, proportionate and in the public interest to pursue enforcement action for the reasons and in the ways set out in this report.
- 6.2 The authorised enforcement action to include (if and as necessary) the service of Listed Building Enforcement Notices under the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), Planning Enforcement Notices under the Town and Country Planning Act 1990 (as amended) and Notices requiring the planting of trees to replace those removed without the service of an appropriate notice (under Section 211 of the Town and Country Planning Act (1990) as amended) and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of these Notices.
- 6.3 When serving a Planning or Listed Building Enforcement Notice or a Notice requiring replacement trees to be planted the Local Planning authority must ensure a reasonable time for compliance. In this case the necessary remedial works would be extensive and so a compliance period of 3 months is considered reasonable.
- 6.4 **Members are recommended to AUTHORISE officers to INVESTIGATE AND, WHERE THIS IS FOUND TO BE APPROPRIATE, PURSUE PROSECUTIONS** for the carrying out of work, or causing works to be undertaken, to the listed building at the site without the necessary (where this work has materially affected its character as a building of special historic or architectural interest) listed building consent and the cutting down and wilful damaging of trees in a Conservation Area without the serving of the necessary notice on the Local Planning Authority.

APPENDIX 1: RECENT SITE PLANNING HISTORY

15/01500/LBC 'Demolish existing garage, install gates to side and install enclosed charger (Listed Building Consent)' Listed Building Consent Granted (2016).

15/01783/FUL 'Reinstate window to east elevation, remove external paintwork, strip and reinstate existing tiles to upgrade roof insulation' Planning Permission Granted (2016).

15/01784/LBC 'Reinstate window to east elevation, remove external paintwork, strip and reinstate existing tiles to upgrade roof insulation and various internal repairs and refurbishment (Listed Building Consent)' Listed Building Consent Granted (2016).

16/00744/FUL 'Demolish existing single storey studio and erect single storey extension to west side, associated alterations to the western end of the listed building' Planning Permission Granted (2016).

16/00745/LBC 'Demolish existing single storey studio and erect single storey extension to west side, associated alterations to the western end of the listed building including change of fenestration to the south elevation and associated piling works.' Listed Building Consent Granted (2016).