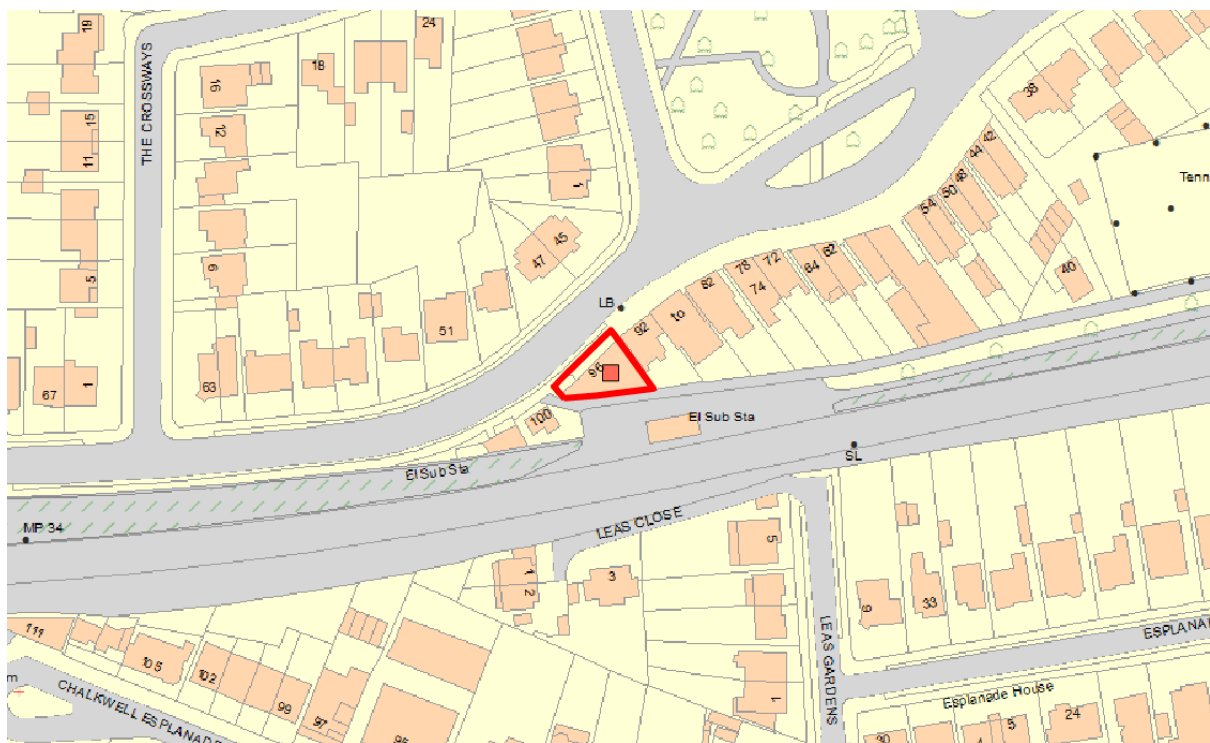


Reference:	16/00189/UNAU_B	
Ward:	Chalkwell	
Breach of Control	Without planning permission erection of canopies and other alterations to the frontage of the application site.	
Address:	96 The Ridgeway, Westcliff-On-Sea, Essex, SS0 8NU	
Case Opened:	08/11/15	
Case Officer:	Ian Harrison	
Recommendation:	AUTHORISE Enforcement Action	



## **1 Site and Surroundings**

- 1.1 The application site is located to the South of The Ridgeway within an area of mixed residential and commercial properties. The site contains a three storey building that is used as a restaurant.
- 1.2 The site is allocated as part of a secondary shopping frontage in the Council's Development Management DPD.

## **2 Lawful Planning Use**

- 2.1 The most recent known use of the site has been as a restaurant falling within Use Class A3.

## **3 Present Position**

- 3.1 The site was previously used as a restaurant falling within Use Class A3 and has been the subject of refurbishment works to enable its use for the same purposes.
- 3.2 Planning permission has been granted under the terms of applications 16/00406/FUL and 16/00919/FUL for alterations to the external elevations of the property and the erection of a porch.
- 3.3 Planning permission was refused for the erection of retractable canopies at the frontage of the application site. The application (16/01529/FUL) was refused for the following reasons:

*1. The installation of the canopies as proposed would lead to an intensification in the use of the external area at the front of the restaurant and create additional noise and disturbance, which is detrimental to the amenities of the occupiers of nearby residential properties. The proposal is therefore unacceptable and contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); and Policy DM1 of the Southend-on-Sea Development Management Document (2015).*

*2. The proposed canopies would, by reason of their size, design and siting, fail to integrate with the existing building and be out of keeping with and detrimental to the character and appearance of the existing building and the area more widely. The proposal is therefore contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015); the advice contained within the Southend-on-Sea adopted Design and Townscape Guide (2009).*

- 3.4 Following the refusal of the application, an appeal was submitted in relation to the refusal and the unauthorised canopies were erected. Although submitted, the appeal has not formally started and therefore the public notification exercise that will be undertaken in relation to that appeal has not commenced. The erection of the canopies at the site was brought to the attention of the Local Planning Authority on 08/11/16. This occurred after the determination of the application.

3.5 Having regard to the permissions that have been granted, it is considered that the following alterations, extensions and works at the site do not benefit from planning permission or are not in accordance with the approved plans:

- The unauthorised canopies that were the subject of application 16/01529/FUL have been installed.
- The installation of outdoor heaters underneath the canopies.
- Low walls and railings between brick piers have been erected at the frontage of the site which measure 0.9 metres tall. On the brick piers are elaborate flower pots that measure a maximum of 1.65 metres tall. The combined height therefore exceeds 1 metre.
- A bronze 'ram' head has been affixed to the entrance.
- Additional gates formed of railings have been created at the main entrance.

## **4 Appraisal**

4.1 The landowner has undertaken extensive works to alter the appearance of the building, largely in accordance with planning permissions that have been granted. In respect of the additional works that have been undertaken and the variations to the approved plans it is considered appropriate to undertake an assessment of the planning merits of the works and also the expediency of taking enforcement action.

### Canopies

4.2 The retractable canopies were refused planning permission under the terms of application 16/01529/FUL for the two reasons that are set out above. The position of the Local Planning Authority must be that the development is unacceptable for the stated reasons and there are no known grounds to reach a different conclusion at this time. It would therefore be appropriate to take enforcement action.

4.3 Notwithstanding this, it should be noted that an appeal was submitted on 08/11/16 and the Planning Inspectorate's targets would be to determine such an appeal within 19 weeks of its validation.

4.4 Taking enforcement action, which would be in the form of serving an enforcement notice, requires the resources of officers of Southend-on-Sea Borough Council, both within the planning and legal departments. There is a possibility that the appeal against the refusal could be successful and as such officers would suggest that the potential for poorly spent resources is weighed against the urgency of enforcement action. In this regard it is considered relevant to note that an enforcement notice would have to give a time for the enforcement notice to come into effect and time for compliance and as such, cannot bring about an immediate resolution to the breach of planning control.

### Outdoor Heaters

4.5 There is no basis to object to outdoor dining at the frontage of the site. The long standing use of the site is as a restaurant and the forecourt area at the frontage of the site can be used for any purpose that is ancillary to the use of the site. It is however noted that the intensified use of the outdoor area would be a possibility as a result of the erection of the canopies and it is acknowledged that heaters have been provided underneath the canopies. The heaters do not benefit from planning

permission and due to their number and as they are fixed to the building it is considered that the heaters constitute development that requires planning permission as they materially change the external appearance of the building.

- 4.6 When the canopies are extended, they mask the heaters and they therefore have very little impact on the character of the area. When the canopies are retracted, the heaters would be much more conspicuous. The heaters are inherently linked to the canopies as their visual acceptability is dependent on them being screened (for the majority of the time) by the canopies and their use would enable the same intensified use of the outdoor seating area as the canopies. As that intensified use was found to be unacceptable previously, it is considered that the same conclusion should be reached in relation to the outdoor heaters in terms of how they would facilitate such use.

#### Enclosures

- 4.7 Under the terms of permitted development rights, it is possible for the landowner to erect walls, fences, railings or other such enclosures to a height of 1 metre without planning permission. In this instance the main part of the enclosures have been erected to a height of 0.9 metres, which does not exceed the limitations of permitted development rights and does not therefore require planning permission.
- 4.8 The most striking features of the enclosure are the 0.5 and 0.75 metre tall pots that have been affixed to the brick piers. As they have been fixed it is considered that they constitute part of the enclosure. It is arguable that these decorative additions are a matter of taste which is subjective. However, it is considered that the bulk and shape of the additions result in them having a significant visual impact that causes visual harm to the character and appearance of the existing building.

#### Decorative Ram's Head

- 4.9 Minor works of decoration to a building can be deemed to be 'de minimis' i.e. of such a small scale that they are deemed to not constitute development. Fixing a small ram's head above the entrance door does not constitute an advert and due to its small scale it is considered that this piece of decoration at the entrance can reasonably be considered to be de minimis. It is noted that the enforcement case that has been raised only related to the canopies and as such the ram's head has not caused sufficient harm to justify being the subject of an enforcement case.

#### Additional Gates

- 4.10 Within the approved porch an additional pair of gates have been erected, which take the form of black metal railings with gold painted tips that measure approximately 2 metres tall. These gates were not shown on any previously approved plans and therefore represent a variation to the approved development.
- 4.11 However, the gates are contained within the porch area and are of a design that suitably integrates with the host building and the railings that have been erected at the frontage of the site. The gates are considered to have an acceptable visual impact and cause not harm to the amenities of neighbouring residents. It is therefore considered that this addition to the approved porch does not cause harm that would warrant enforcement action. It is noted that the enforcement case that

has been raised only related to the canopies and as such these gates have not caused sufficient harm to justify being the subject of an enforcement case.

## **5 Planning History**

- 5.1 Application 15/01038/FUL proposed a single storey front extension with a retractable roof and the alteration of the front elevation. That application was refused. The extension proposed was of no similarity to the canopies that have been erected.
- 5.2 Planning permission has been granted for the renovation of the existing building at the application site under the terms of applications 15/01274/FUL, 16/00406/FUL and 16/00919/FUL. The refurbishment works include alterations to the front elevation, the replacement of windows, the alteration of the elevations of the building, the replacement of the former porch with a porch to the west side of the front elevation and the provision of raised planting beds. The approved works have commenced and some works have been completed.
- 5.3 Planning permission was refused for the erection of retractable canopies at the frontage of the application site as set out above.
- 5.4 Other planning history at the site is considered to be of little relevance to the works that have been undertaken.

## **6 Planning Policy Summary**

- 6.1 National Planning Policy Framework and National Planning Policy Guidance.
- 6.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance)
- 6.3 Development Plan Document 2: Development Management Policies DM1 (Design Quality), DM3 (The Efficient and Effective Use of Land) and DM13 (Shopping Frontage Management outside the Town Centre).
- 6.4 Supplementary Planning Document 1: Design & Townscape Guide (2009)
- 6.5 Community Infrastructure Levy Charging Schedule.

## **7 Recommendation**

- 7.1 **Members are recommended TO AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised canopies, heaters and the planters that have been affixed to the boundary enclosure at the frontage of the site.

This is because the use of the canopy covered part of the site, aided by the addition of outdoor heaters, would be intensified and create additional noise and disturbance, which would be detrimental to the amenities of the occupiers of nearby residential properties. The development is therefore unacceptable and contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); and Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015).

It is also considered that the canopies, heaters and the elevated planters would, by reason of their size, design, siting and number, fail to integrate with the existing building and be out of keeping with and detrimental to the character and appearance of the existing building and the area more widely. The developments are therefore contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1, DM3 and DM13 of the Southend-on-Sea Development Management Document (2015); the advice contained within the Southend-on-Sea adopted Design and Townscape Guide (2009).

- 7.2 **The Enforcement Action should only be taken after and depending on the outcome of the determination of the appeal against the refusal of application 16/01529/FUL.**
- 7.3 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.

When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a one month compliance period is reasonable in these circumstances.