

# Southend-on-Sea Borough Council

Agenda  
Item

Report of the Corporate Director of  
Enterprise, Tourism & the Environment  
To  
Development Control Committee  
On  
9<sup>th</sup> January 2013

## Report(s) Enforcement of Planning Control

### A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172

Reports prepared by: Enforcement Officers

#### 1 Introduction

- 1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

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Enforcement Report			
Prittlewell	EN/12/00220/UNAU-B	23 Rochester Drive, Westcliff-on-Sea	2
Chalkwell	EN/12/00238/UNAU-B	18 Lansdowne Avenue, Leigh-on-Sea	6
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St Lukes	12/00176/UCOU_B	Yard adjacent 10 Coopers Way, Southend-on-Sea	12

<b>Reference:</b>	EN/12/00220/UNAU-B
<b>Ward:</b>	Prittlewell
<b>Breach of Control</b>	Without planning permission, the erection of an outbuilding which exceeds 2.5m in height within 2.0m of a boundary.
<b>Address:</b>	23 Rochester Drive, Westcliff-on-Sea, SS0 0NJ
<b>Case Opened:</b>	30 <sup>th</sup> August 2012
<b>Case Officer:</b>	Neil Auger
<b>Recommendation:</b>	<b>TAKE NO FURTHER ACTION</b>



## **1 Site and Surroundings**

- 1.1 Two storey semi-detached dwellinghouse lying to the west side of Rochester Drive opposite its junction with Fairview Drive.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use is as a single dwellinghouse within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

## **3 Present Position**

- 3.1 On 30<sup>th</sup> August 2012, a complaint was received concerning an outbuilding located within the curtilage and to the rear of the property. The complainant alleged that (a) the outbuilding was unauthorised and (b) it was being unlawfully used in planning terms.
- 3.2 A site visit was carried out on 18<sup>th</sup> September 2012. At the time, it was noted that the outbuilding in question was of the 'summerhouse' style located directly adjacent to the northern boundary of the rear garden. The building had a height of approximately 3.0m. The householder produced compelling documentary evidence which indicated that the building had been erected in excess of 3 years earlier and advised that it was used primarily for recreational purposes and also, to a lesser extent, in connection with the operation of a small business. An internal inspection confirmed that this appeared to be the case.
- 3.3 An email was sent to the householder on 19<sup>th</sup> September 2012 advising that planning permission was required to retain the outbuilding and inviting the submission of a retrospective application.
- 3.4 No application was received, so a reminder was sent on 6<sup>th</sup> November 2012. To date, the requested application has not been received.
- 3.5 On 26<sup>th</sup> November 2012, a further letter was received concerning the outbuilding. This did not contain a specific complaint but rather a request for an update on the situation. This was provided by way of a written response on 5<sup>th</sup> December 2012.

## **4 Appraisal**

- 4.1 The outbuilding requires planning permission because it exceeds 2.5m in height which is the maximum permitted for such a structure when it is located within 2.0m of a boundary under Schedule 2 Part 1 Class E [E.1 (d) (ii)] of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008.
- 4.2 The outbuilding could benefit from permitted development rights if it were to be moved to a more central location within the plot i.e. so that it would not be located within 2.0m of a boundary. It would not, then, fall within planning control.

- 4.3 The householder contends, and there is no evidence to the contrary, that the outbuilding is used for purposes ancillary to the enjoyment of the overall property as a dwellinghouse. This includes its use in connection with the operation of a small business from home which is run solely by one of the owner/occupiers. The use of one room or outbuilding etc. for such a purpose is permitted under Borough Local Plan Policy E5 (Non-residential Uses Located Close to Housing) so does not represent a breach of planning control. This means the only issue to be considered is that of the impact of the outbuilding itself as operational development.
- 4.4 The building is located to the rear of the property and is not visible from the public domain.
- 4.5 The materials used in the construction of the building are considered acceptable in that they are commensurate with the type which would generally be used in a residential garden environment.
- 4.6 As number 23 Rochester Drive lies within a large plot, the outbuilding is located some 25.0m from the rear of the dwelling and from the rear of the neighbouring residential dwellings at numbers 21 to 31 Rochester Drive. As such, it has little or no impact upon the residential amenities of these adjoining properties.
- 4.7 The closest residential properties are those within Rochester Mews and the outbuilding is located approximately 17.0m from their rear facades.
- 4.8 As the outbuilding lies to the north of these properties, has a height of approximately 3.0m only and there is a substantial boundary enclosure between the gardens, it is considered that it has a minimal impact on the visual and residential amenities of the occupiers.
- 4.9 Having taken all material considerations into account, it is considered that, if a retrospective application for planning permission to retain the development was to be submitted, there would be no reason to recommend it for refusal. It is not considered to result in demonstrable harm to the amenities of the area. Consequently, it would not be expedient or in the public interest to take enforcement action requiring its removal.
- 4.10 It should also be kept in mind that the outbuilding was erected by the present householder in excess of 3 years prior to the first complaint about it being made to the Council.

## **5 Planning History**

- 5.1 14<sup>th</sup> January 2003 – permission granted to “erect single storey rear extension” (02/01521/FUL)

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The

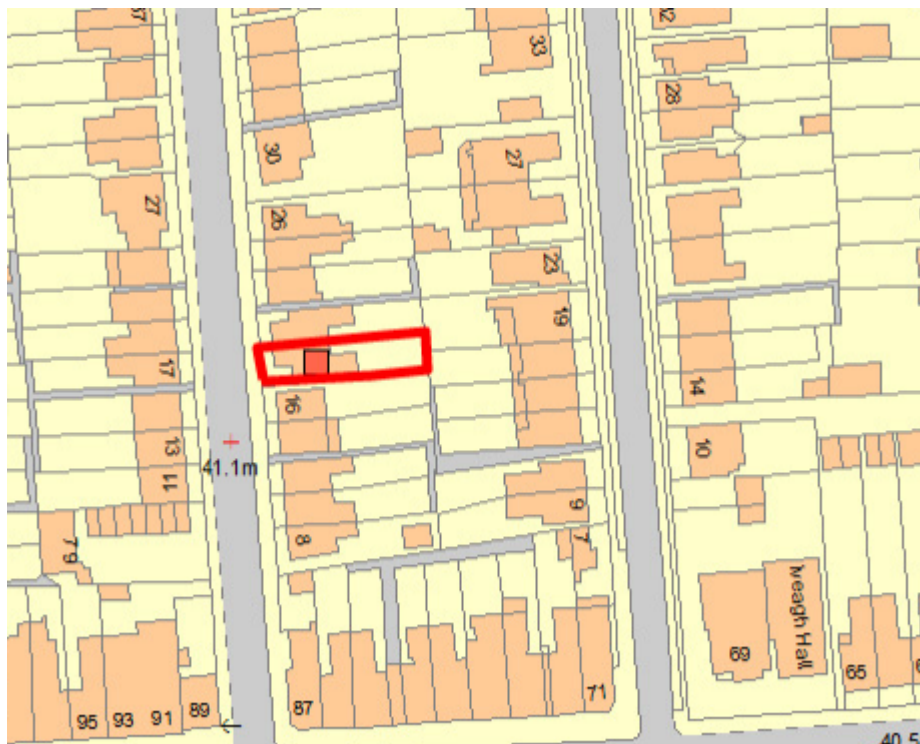
Environment and Urban Renaissance).

- 6.3 Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design & Layout Considerations)..
- 6.4 Design and Townscape Guide (SPD1)

**Recommendation**

**Members are recommended to take NO FURTHER ACTION**

<b>Reference:</b>	EN/12/00238/UNAU-B
<b>Ward:</b>	Chalkwell
<b>Breach of Control</b>	The implementation of the approved development other than in accordance with condition 03 of planning permission 12/00451/FULH which requires “all new work to the outside of the building must match existing in terms of the choice of materials, method of construction and finished appearance”.
<b>Address:</b>	18 Lansdowne Avenue, Leigh-on-Sea, SS9 1LL
<b>Case Opened:</b>	18 <sup>th</sup> September 2012
<b>Case Officer:</b>	Neil Auger
<b>Recommendation:</b>	<b>TAKE NO FURTHER ACTION</b>



## **1 Site and Surroundings**

- 1.1 Two storey semi-detached dwelling lying to the east side of Lansdowne Avenue approximately 60m north of its junction with Leigh Road.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use is as a single dwelling within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005

## **3 Present Position**

- 3.1 On 17<sup>th</sup> September 2012 a complaint was received which alleged that the development, benefiting from planning permission under 12/00451/FULH, had not been built in accordance with the approved plan in that the front dormer window addition had been finished in cladding rather than rendered and the glazing bar was horizontal as opposed to the approved vertical. Several other issues were raised but these were not planning related but rather civil or building control matters.
- 3.2 A site visit was carried out on 25<sup>th</sup> September 2012 when it was established that the reported deviations from the approved plans had taken place.
- 3.3 The deviations were assessed by officers as being relatively minor, resulting in minimal impact. The complainant was notified by email on 18<sup>th</sup> October 2012..
- 3.4 The complainant failed to agree and there followed an exchange of emails which eventually resulted in it being alleged that the deviations represented a breach of condition 03 of planning permission 12/00451/FULH which requires "all new work to the outside of the building must match existing in terms of the choice of materials, method of construction and finished appearance".
- 3.5 On 30<sup>th</sup> October 2012, a letter was sent to the applicant requesting the submission of a revised application for planning permission to retain the development as built.
- 3.6 To date, this has not been received and the complainant has made it clear that he wishes the matter to be resolved.

## **4 Appraisal**

- 4.1 The development is located in a predominately residential area where dwelling style and form is broadly similar. However, various external finishes, window styles, porches etc. have been adopted over the years to the extent that there is a reduced consistency in the appearance of the dwellings in the street.
- 4.2 Planning permission was granted for the front dormer window addition because the proposals, "by reason of siting, design, form and profile, would not be out of character with or detrimental to the character and the visual amenities of the streetscene or adjacent properties". Furthermore, they were considered to comply with the policies in force at the time, specifically: the National Planning Policy Framework, Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design and Layout Considerations), Development

Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (Environment and Urban Renaissance) and the Supplementary Planning Document 1: Design & Townscape Guide 2009.

- 4.3 The standard condition (03) requiring the works to match the existing original work in terms of materials, method of construction and finished appearance was imposed on the planning permission “in the interests of visual amenity and to ensure that the appearance of the building makes a positive contribution to the character and appearance of the area”.
- 4.4 The dormer window addition has been finished in cladding rather than rendered and this, technically, represents a breach of the condition 03. However, this alternative finish is considered acceptable because it is not out of character or detrimental to the visual amenities of the streetscene or adjacent properties.
- 4.5 In any event, even if the addition had been rendered to match the existing finish, the householder would have the right to add cladding at any time because this would benefit from permitted development rights under Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008.
- 4.6 The window has been altered to a traditional timber sliding sash style installation to match other alterations carried out at ground and first floor which are more sympathetic to the overall character of the dwelling and do not require planning permission. This is considered to result in an overall improvement in the appearance of the dwelling.
- 4.7 In any event, again, the configuration, style and materials of the windows could be changed without planning permission at any time under permitted development rights.
- 4.8 Having taken all material factors into account, it is not considered that the development, as built, results in demonstrable harm to the amenities of the area and enforcement action would not be expedient.

## **5 Relevant Planning History**

- 5.1 16<sup>th</sup> May 2012 – planning permission granted to “erect dormer to front and alter elevations” (12/00451/FULH).

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design & Layout Considerations).

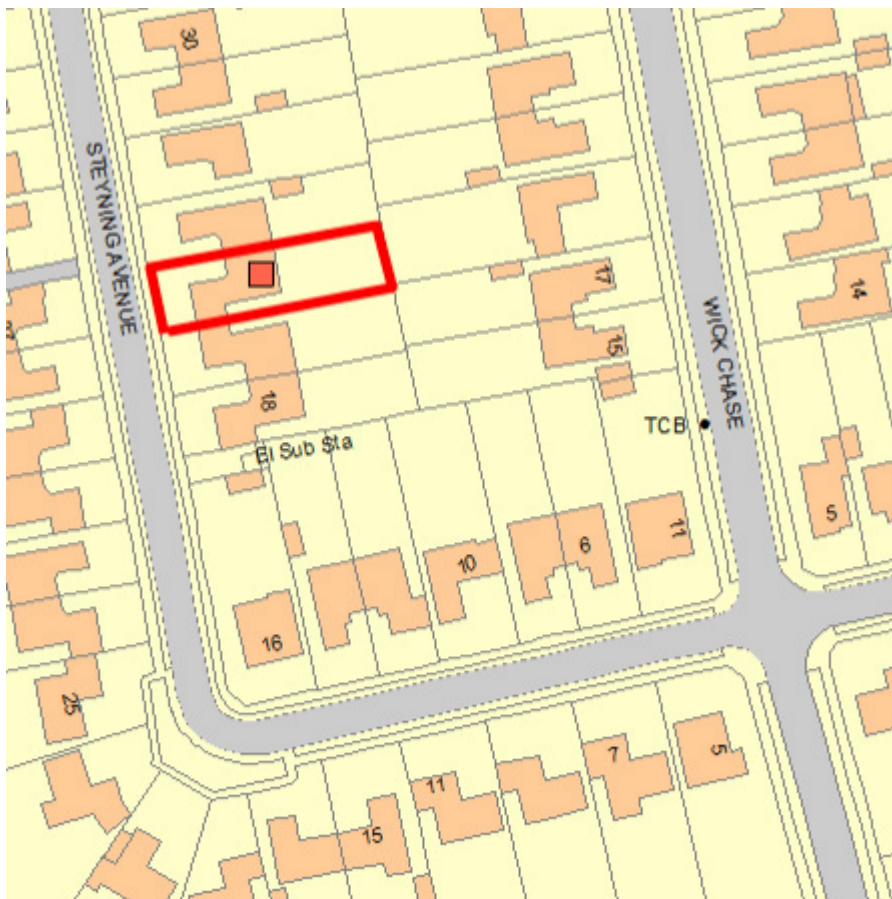


#### 6.4 Design and Townscape Guide (SPD1)

##### **Recommendation**

**Members are recommended to take NO FURTHER ACTION**

<b>Reference:</b>	EN/12/00232/UNAU
<b>Ward:</b>	Southchurch Ward
<b>Breach of Control</b>	Erection of playhouse without planning permission
<b>Address:</b>	22 Steyning Avenue Southend on Sea
<b>Case Opened:</b>	11 September 2012
<b>Case Officer:</b>	Philip Kelly
<b>Recommendation:</b>	<b>TAKE NO FURTHER ACTION</b>



## **1 Site and Surroundings**

- 1.1 The site is a semi-detached house on the east side of Steyning Avenue 195 metres south of the junction with Poynings Avenue. It is a residential area.

## **2 Lawful Planning Use**

- 2.1 The lawful use of the site is as a single dwellinghouse.

## **3 Present Position**

- 3.1 A complaint about the erection of an unauthorised playhouse was received on 11 September 2012. An enforcement officer attended the site and observed a recently erected playhouse to the rear of the property within 2 metres of the boundary with an adjacent property in Wick Chase. It was not in conformity with Permitted Development requirements. The owner was advised that if she wished to retain the playhouse she should make a retrospective application for planning permission within 4 weeks. No application has been received and the playhouse remains in place.

## **4 Appraisal**

- 4.1 The structure is not considered to be development as it is not fixed to the ground and has no degree of permanence. Furthermore the use of the structure will have a limited lifespan as it has clearly been placed in the garden as play equipment for small children. Nevertheless even if it could be argued that the structure was development it is not considered it causes any harm in planning terms. The playhouse is not so big or so close to other properties as to be considered overbearing, or result in an unreasonable level of overlooking.
- 4.2 It is submitted that it would not be proportionate, reasonable, expedient or in the public interest to take enforcement action in this case.

## **5 Planning History**

- 5.1 No record of any planning applications.

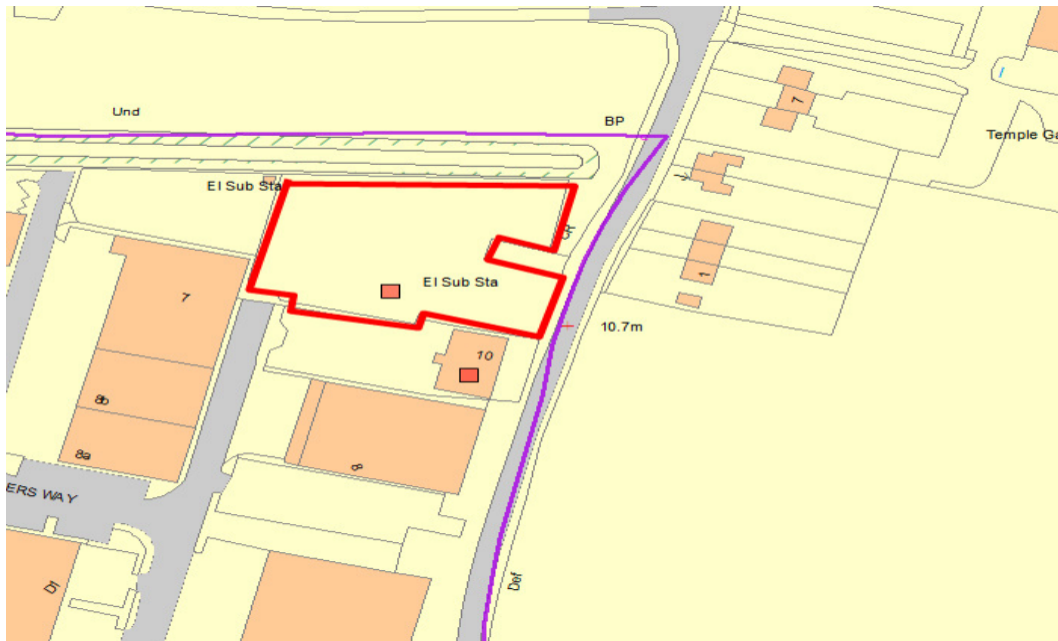
## **6 Planning Policy Summary**

- 6.1 National Planning Policy Framework (NPPF)  
Core Strategy Policies KP2 and CP4  
Borough Local Plan Policies C11 and H5  
Design and Townscape Guide (SPD1)

## **7 Recommendation**

- 7.1 **Members are recommended to take NO FURTHER ACTION.**

<b>Reference:</b>	12/00176/UCOU_B
<b>Ward:</b>	St Lukes
<b>Breach of Control:</b>	Use yard adjacent to 10 Coopers Way as a car park and erect a boundary fence without planning permission
<b>Address:</b>	Yard adjacent 10 Coopers Way, Southend-on-Sea, Essex, SS2 5TE
<b>Case Opened:</b>	18 July 2012
<b>Case Officer:</b>	Matthew Leigh
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b> against the unauthorised use of the site as a car park  <b>NO FURTHER ACTION</b> against the fence



## **1 Location and Description**

- 1.1 The application site is located within the Temple Farm Industrial Estate which is accessed off Sutton Road at its junction with Chandlers Way. The site is located to the north of Chandlers Way adjacent to existing industrial and warehouse buildings.

## **2 Lawful Planning Use**

- 2.1 The site is allocated in an area for industry and warehousing on the Borough Local Plan Proposals Map and for employment uses in the Core Strategy.

## **3 Present Position**

- 3.1 A planning application was approved (05/00589/FUL) to erect a part single and part two storey building of 1405sqm comprising of four industrial units in 2005. In 2010 an application (SOS/10/01078/EXTM) was approved to extend the life of the planning application.

- 3.2 A complaint was received in July 2012 in relation to an unauthorised change of use of the site. The matter was investigated and an application (12/01330/FUL) was submitted to regularise the development.

- 3.3 The planning application was refused planning permission for the following reasons:

*“The change of use of the site to a commercial car park involves the loss of existing employment land. This is considered to have an adverse impact on the Borough's limited supply of employment generating land contrary to Policy E4 of the Borough Local Plan, Policies KP1, KP2 and CP1 of the Core Strategy and Government guidance contained within the NPPF.”*

*“The proposed development provides commercial car parking associated with the day to day operations of the airport for which there is already sufficient provision made within the Borough. As such, the proposal would be contrary to Policies KP3 and CP3 of the Core Strategy and Policy T17 of the Borough Local Plan.”*

## **4 Appraisal**

- 4.1 The site is within an area allocated as Industrial and Warehousing on the Borough Local Plan Proposals Map. The Core Strategy seeks to encourage job led regeneration and ensure appropriate land is available to facilitate the jobs growth required.

- 4.2 The NPPF promotes sustainable development which includes ensuring the right development is delivered in the right place at the right time.

- 4.3 The Core Strategy and Policy T17 of the Local Plan supports appropriate airport-related development, where this pays due regard to the highway network and

residential areas. It is noted the airport has adopted an Airport Surface Access Strategy (ASAS), which was a requirement of the 2010 planning permission for the extended runway. This document recognises the need for adequate provision for parking in relation to the expanding airport and sites to provide this car parking, which does not include this site.

- 4.4 As stated above the site is not identified within the ASAS at the time of the planning application and no evidence was provided by the applicant in relation to need or as to how the site fits in with the ASAS. It is therefore, considered that the provision of further parking in association with the airport in this location is contrary to the Development Plan.
- 4.5 The site benefits from a planning permission to erect a building which would provide employment generating opportunities. The site is allocated for industry and warehousing on the Borough Local Plan Proposals Map and is identified as a 'priority urban area' within the Core Strategy Key Diagram. The existing business provides employment for six full-time and four part-time staff members.
- 4.6 The Borough Local Plan and Core Strategy policies seek to protect existing employment generating uses. Policy CP1 of the Core Strategy states *'Industrial and distribution uses will be supported on existing and identified industrial/employment sites, where this would increase employment densities and/or reinforce their role in regeneration.'* Policy E4 of the Borough Local Plan states *that permission will not be granted for proposals involving the loss of industrial warehousing or other business uses on land identified for such uses.*
- 4.7 An Employment Land Review has been completed (May 2010) for the Borough. The report has identified categories of employment areas spatially and notes the following assessment about the quality of existing stock in this area (North Fringe).
- "Located west of the main railway, the north fringe sites of Stock Road and Temple Farm have been considered separately to other A127/airport corridor sites. Strategic access to this area and new development areas at Fossett's is reasonable but of a more local scale than sites with good access to the A127."*
- 4.8 The Employment Land Review recommended that Temple Farm is retained for future employment purposes and that Temple Farm is well placed to create a health cluster. Existing employment sites are considered to have continued value in employment use and therefore should continue to be protected from loss in the first instance. The key recommendations of the report state that this area should be retained and protected for employment uses.
- 4.9 The current unauthorised use of the premises provides a low level of employment, and is not considered to contribute to the strategic employment objectives for this area as identified in the Development Plan and Employment Land Review (ELR).
- 4.10 The Council considers that Temple Farm Industrial Estate provides some of the best premises for employment generating uses in Southend and is a good employment site with high occupancy levels. At the time of the employment review

there were only a few units available for rent. The ELR concluded that Temple Farm should be retained and protected for employment purposes. It is important that proposals within this high grade industrial area are complementary to existing uses and do not result in a material change to the Class B character and function of the area. Allowing this commercial car park, on a permanent basis, detracts from the character and the function of the area as an area for employment generation and prejudices the likelihood of the extant permission being undertaken.

- 4.11 Therefore, it is considered that the unauthorised use is contrary to the employment regeneration policies identified above and guidance contained within the NPPF. It is considered reasonable, expedient and in the public interest to require the cessation of the use of the premises as a commercial car park.
- 4.12 Whilst the nature of the remedial works necessary to remedy the breach of planning control is minimal, it is considered that a compliance period of 3 months would be reasonable due to the professional nature of the use.
- 4.13 A fence, 2.25m in height, has also been erected. The fence was previously granted temporary consent for three years at appeal. The planning permission expired on the 3<sup>rd</sup> November 2008 but the fence has not been removed. The Inspector stated, at the time of the appeal, that the fencing “*would not significantly detract from the character and appearance of the area.*” The fence has been in situ for in excess of five years given the industrial nature of the site and surrounding area, given the industrial nature of the site and surrounding area, it is not considered that the fence has detracted from the character of the area and that taking no further action is acceptable in this instance be in accordance.

## **5 Human Rights Considerations**

- 5.1 Taking enforcement action in this case may amount to an interference with the owner/occupiers 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 this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to secure the cessation of the unauthorised use on the grounds that it causes demonstrable harm to employment generating opportunities within the borough and provide a facility in association with the air port that there is already sufficient provision of.

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles), KP3 (Implementation and Resources), CP1 (Employment Generating Development), CP3 (Transport and Accessibility) and CP4 (The Environment and Urban Renaissance).
- 6.3 BLP Policies: C11 (New Buildings, Extensions and Alterations), E4 (Industry and

Warehousing), E5 (Non-Residential Uses Located Close to Housing), T8 (Traffic Management and Highway Safety), T11 (Parking Standards) and T17 (Southend Airport).

6.4 Supplementary Planning Document 1: Design & Townscape Guide (2009)

## 7 Relevant Planning History

7.1 2012 – A retrospective application (12/01330/FUL) for the change of use of the land adjacent to 10 Coopers Way to a commercial car park which provides secure parking for Southend airport customers was refused on the 5<sup>th</sup> December 2012.

## 8 Recommendation

8.1 Members are recommended to **AUTHORISE ENFORCEMENT ACTION** to secure the cessation of the use as a commercial car park and the removal of associated office building on the grounds that the unauthorised use is considered detrimental to the to the employment generating opportunities within the borough contrary to Policy E4 of the Borough Local Plan and Policies KP1, KP2 and CP1 of the Core Strategy and provides commercial car parking associated with the day to day operations of the airport for which there is already sufficient provision made within the Borough contrary to Policies KP3 and CP3 of the Core Strategy and Policy T17 of the Borough Local Plan.

8.2 The enforcement action to include (if/as necessary) the service 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.

8.3 When serving an Enforcement Notice, the local planning authority must ensure a reasonable time for compliance. In this case, a compliance period of 3 months is considered reasonable.

8.4 Members are recommended to **AUTHORISE NO FURTHER ACTION** in respect of the fence as the development is considered not to have an undue impact on the character of the area or the amenity of the adjoining property and is therefore in accordance with BLP Policy C11 Policies KP2 and CP4 of the Core Strategy and advice contained within the adopted Design and Townscape Guide (SPD1).