

Reference:	EN/17/00125/UCOU_B	
Ward:	Kursaal	
Breaches of Control	Without planning permission, conversion of a storage building ancillary to a public house to create three self-contained residential units (Class C3 use) together with material changes to the external appearance of the premises	
Address:	Variously known as 3 Burdett Road, 58 Burdett Road, and rear of 1 Burnaby Road or Land to rear of 'Smithys' Public House, Eastern Esplanade, Southend.	
Case Opened:	17 th May 2017	
Case Officer:	Steve Jones/ Patrick Keyes	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is a parcel of land to the rear of Smithy's Public House, Eastern Esplanade, Southend SS1 2ES. It contains a single storey building understood to previously have been used for storage ancillary to the public house. Access to the land, which is situated to the far east side of the rear car park of the public house, is from Burdett Road.

2 Lawful Planning Use

- 2.1 The lawful planning use of the building is considered to be for storage ancillary to the frontage public house so falling within Class A4 of the Town and Country Planning Use Classes Order 1987 (as amended).

3 Present Position

- 3.1 A complaint was received on 8th May 2017 alleging conversion of the store building into 3 dwellings.
- 3.2 A staff site inspection on 22nd May 2017 confirmed that the building had undergone material alteration, including installation of new doors and windows to the west aspect and a new roof. It was inconclusive as to whether the newly converted premises were occupied.
- 3.3 On 22nd May 2017 the landowner was contacted. He stated the property had been converted into 3 offices.
- 3.4 On 23rd May 2017 staff met with the owner on site. He referred staff to architect plans indicating the conversion was for office accommodation and stated the units were designed to be used solely as offices.
- 3.5 The owner enabled access to the middle unit which had been recently completed but was unoccupied. The visiting officer noted it contained a full kitchen. To the rear of the premises was a shower room. When asked about the supplied facilities including a washing machine the owner remarked that more people are cycling to work these days so may need to shower and wash clothing.
- 3.6 Staff then called at the first unit. The door was not answered but personal items including clothing and a settee could be seen through the letterbox. The items indicated a residential - not office - use.
- 3.7 Staff then called at the third unit. It could be clearly seen that this unit was being occupied as a home. In the rear room was a bed and cot. The occupier agreed for staff to take photographs.
- 3.8 The owner stated that he would speak to his agents as the property should have been let as offices. Staff advised the owner that due to their location within flood zones 2 & 3 a planning application to retain these units as residential would likely be refused in principle.

- 3.9 On 24th May 2017, the registered owners of the property were sent a letter advising that the residential use of the units should cease with immediate effect and the use should revert back to that of ancillary storage but also that a planning application was still required for the development which had taken place in terms of the change of roof materials and insertion of doors and windows.
- 3.10 On 30th May 2017 an email was received from a local architect advising they had been instructed to submit a planning application in respect of the use of the building. Following further email exchanges between the staff and the architect, a planning application was submitted. However to date it has not been possible to validate that application because of deficiencies in the plans.

4 Appraisal

- 4.1 Planning permission is required for this development because (a) new windows and doors installed in the west elevation and new roof materials represent a material change in the external appearance of the building and (b) conversion from an ancillary store to 3 self- contained residential units represents a material change of use. The works and change of use do not benefit from permitted development (PD) rights.
- 4.2 Although currently invalid, the planning application (received 15 July 2017) includes plans which confirm the room sizes and layout of the new self-contained units such that a policy based assessment of their adequacy or otherwise can be made. That is discussed in the following sections of this report.
- 4.3 The issues raised by this unauthorised development are: the principle of the new use and alterations to the exterior of the building including flood risk considerations; the impact on the character of the site and its surroundings; the effect on the living conditions of future occupants; the effect on neighbours' amenity; parking and highway safety and CIL (Community Infrastructure Levy).
- 4.4 Policy DM1 confirms the Council will support good quality innovative design that contributes positively to the creation of successful places. It sets out a range of considerations and also links to the Council's Design and Townscape Guide. Policy DM3 seeks efficient and effective use of land. Development on back land will be considered on a site by site basis but there is a presumption against this type of development where, amongst other things, it detrimentally affects the living conditions and amenity of existing and future residents or neighbouring residents or conflicts with the character and grain of the local area. The unauthorised conversion has created a contrived residential arrangement with no garden space, other than restricted patio areas in front of each unit. The development's cramped layout, positioned next to the rear service area of a functional public house, is materially out of keeping with the urban grain and character of surrounding development which is primarily residential and of a conventional domestic arrangement. This conflicts with Policies DM1 and DM3.
- 4.5 It is considered that re-roofing of the building has not caused material harm. It is now finished in a dark grey roof tile which, given the variety of materials used in surrounding development, is not unduly obtrusive. Nor is it considered that the development has a materially harmful effect on neighbours' amenity the nearest of whom live to the north of the site in Burnaby Road.

However the incorporation of domestic doors and windows to the front (west) elevation reinforces the intrusive form and impact of the unauthorised building's residential use so these aspects of the unauthorised physical works to the building are considered unacceptable.

- 4.6 Policies KP1 and KP2 deal with flooding matters and DM6 require development proposals within the Seafront Area to take account of flood risk and coastal change. This will include, where appropriate, developing, agreeing and then incorporating factors such as appropriate flood defence and engineering solutions. NPPF and local policy requires developers to follow a sequential test where development is located within a flood risk area. Therefore whilst the principle of any residential development is not necessarily objected to this property is within flood risk zones 2 and 3 and there is no evidence of physical flood prevention measures having been implemented or taken into account. This is judged unacceptable.
- 4.7 Policy DM 8 deals with residential standards. The internal environment of all new dwellings must be high quality and flexible to meet the changing needs of residents. To achieve this all new dwellings should provide convenient, useable and effective room layouts. They must meet, if not exceed, the residential space standards and the requirements of residential bedroom and amenity standards. Plans submitted with the invalid planning application show three units containing a double bed area each. The studio units are 33.2 m², 33.8 m² and 34.5 m² whereas the technical standard is min 37 m² and 50m² if the unit is for two persons. The double bedroom sizes within the units are 9.1 m², 9.4 m² and 9.5 m² so each falling below the minimum standard of 11.5 m². In conflicting with the above minimum standards the unauthorised development therefore fails to provide an acceptable residential quality, harmful to the amenity of future occupiers, and contrary to Policy DM8.
- 4.8 Three parking spaces appear to be provided within the yard area, one each for the unauthorised residential units. In principle this would meet the Council's residential parking standards under Policy DM15.
- 4.9 In view of the conflict with policy requirements and the absence of material considerations evident to outweigh the identified harm it is considered expedient to pursue enforcement action to secure : (a) cessation of the residential use (b) removal of the domestic doors and windows from the front elevation and removal of internal fixtures and fittings serving the residential use to include kitchen units, showers, domestic appliances and domestic furniture (c) cessation of the use of the part of the yard area used for associated residential parking and (d) remove of all rubble, materials and equipment associated with complying with the notice.
- 4.10 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 require the unauthorised residential to cease.

- 4.11 In the event any appeal against an enforcement notice were allowed by the Planning Inspectorate, thereby resulting in a planning permission being granted for the three residential units, the development would be CIL liable due to the change from commercial to residential use. The development is also likely to be CIL chargeable based on the floor area of the residential use, as previous "in-use" floor space can only be deducted if that use was lawful for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development. An exemption or relief from a CIL charge is also unlikely to be granted if the use/works for which planning permission is granted are deemed to be retrospective. Any CIL charge will be determined at the time planning is granted, should this be the case.

5 Planning History

- 5.1 There is no relevant planning history

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF) 2012.
- 6.2 Development Plan Document 1: Core Strategy Policies KP1, KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Development Plan Document 2: Development Management Document Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land) DM 6 (The Seafront) DM8 (Residential Standards) and DM15 (Sustainable Transport/Parking).
- 6.4 Design and Townscape Guide 2009

7. Recommendation

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure (a) cessation of the residential use (b) removal of the domestic doors and windows from the front elevation and removal of internal fixtures and fittings serving the residential use to include kitchen units, showers, domestic appliances and domestic furniture (c) cessation of the use of the part of the yard area used for associated residential parking and (d) remove of all rubble, materials and equipment associated with complying with the notice.
- 7.2 The unauthorised development is considered detrimental to the character and visual amenity of the area by reason of its contrived and cramped domestic design. The properties lies within flood zones 2 and 3 and there is no evidence that the risk of flooding has or can be satisfactorily mitigated. The proposal also provides inadequate amenity for future occupiers. The unauthorised development conflicts with Policies CP4, KP1 and KP2 of the Southend-on-Sea Core Strategy, Policies DM1, DM3, DM6 and DM8 and DM15 of the Southend-on-Sea Development Management Document and the advice contained within the Council's Design and Townscape Guide.

- 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.
- 7.4 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case, up to 3 separate families may need to find alternative accommodation. A compliance period of 3 months is deemed reasonable for this to be completed. In respect of the physical conversion of the property 3 months is also considered a reasonable time to return the property to its former condition (with the exception of the retained new roof which is not proposed for enforcement). In the event that the invalid planning application is satisfactorily validated following receipt of the necessary information this would be considered and determined on its merits having regard to all of the planning considerations raised.