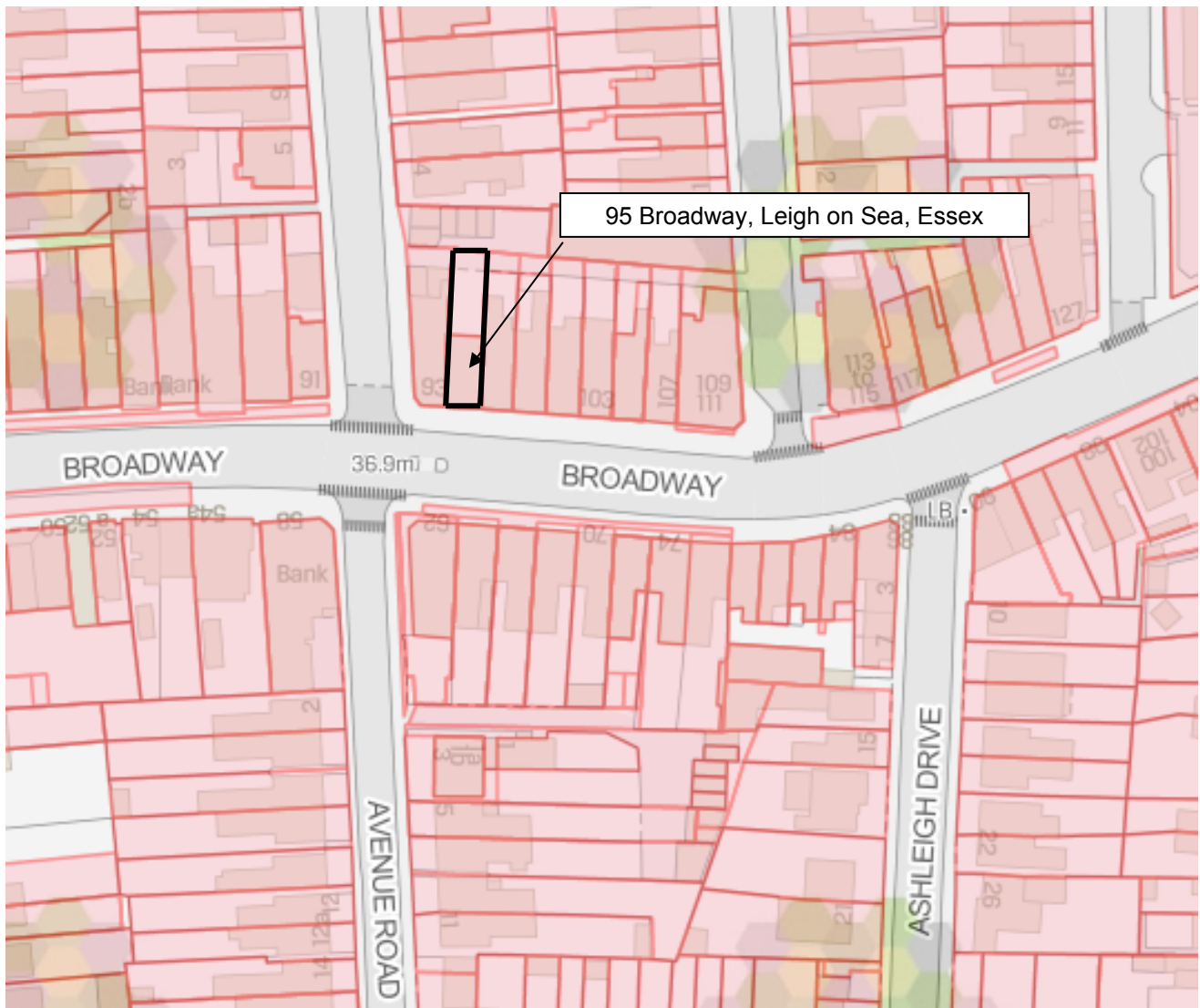


Reference:	15/00224/UNAU_B	
Ward:	Leigh	
Breaches of Control	Without planning permission, the replacement of the existing wooden framed windows at first, second and third floor level in the front elevation with Upvc windows. (Conservation Area)	
Address:	Flats above 95 Broadway, Leigh on Sea, Essex. SS9 1PG	
Case Opened:	16 th September 2015	
Case Officer:	Steve Jones	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The property is located within the centre of an Edwardian street block within the shopping parade of Leigh Broadway. It is a 4 storey block and is prominent in the streetscene. At the Ground Floor is a shop currently trading as a charity shop. At first floor is a self-contained flat. At second floor is a further self-contained flat. At 3rd Floor is a self-contained loft flat.
- 1.2 The block has a mix of window designs between the different units, including bay windows with timber sashes and wide runs of timber casements set within feature masonry surrounds, but as a group the terrace has a symmetrical arrangement and this is part of its special character.
- 1.3 Some Upvc windows are evident within this block but these are generally at roof level and these appear to be historic. Nevertheless these instances of Upvc windows are considered to have a negative impact on the character of the Conservation Area and are illustrative of the harm such features cause to the heritage asset.
- 1.4 The property is sited within Leigh Cliff Conservation Area. It is not located within the Leigh Cliff Article 4 area (which protects windows), not because windows in the Broadway are not important to the historic character of the Conservation Area, but because the flats and shops in this location have no permitted development rights to make such changes. Therefore the Article 4 is not needed to control inappropriate changes within the commercial area as express planning permission is needed.

2 Lawful Planning Use

- 2.1 The lawful planning use of the flats are as dwellings within Class C3 of the Town and Country Planning Use Classes Order 1987 (as amended)

3 Present Position

- 3.1 In September 2015 it came to the services attention that Upvc windows had allegedly been installed without consent.
- 3.2 On 5th November 2015 a site visit was conducted by Enforcement staff and photos of the south elevation showing the Upvc windows were taken.
- 3.3 On 5th November 2015 a check was made with Land Registry and details of the freeholder of the building were established.
- 3.4 On 10th November 2015 Enforcement staff wrote to the freeholder advising of the breach of planning controls and asking that the recently installed Upvc windows be replaced with suitable wooden sliding sash windows.
- 3.5 On 13th November 2015 the freeholder emailed Enforcement staff advising that they had sought advice and concluded that replacing like for like was 'ok' and no permission was required.

- 3.6 On 17th May 2015 Enforcement staff emailed the freeholder advising that the replacement windows were not 'like for like'
- 3.7 On 24th February 2017 Enforcement staff emailed the freeholder advising that no retrospective planning application had been received and asking for their intentions to resolve the issue.
- 3.8 On 1st March 2017 the freeholder emailed Enforcement staff advising they had contacted the agents who managed the refurbishment for their comments and advice.
- 3.9 On 3rd March 2017 the freeholder emailed Enforcement staff to advise they were meeting with the managing agents and architects on site on 16th March 2017 and will update afterwards.
- 3.10 On 21st March 2017 Enforcement staff emailed the freeholder asking for an update following the site meeting mentioned in the email of 3rd March 2017.
- 3.11 On 22nd March 2017 the freeholder emailed Enforcement staff advising that they were away until April but they were awaiting architect's comments.
- 3.12 On 22nd March 2017 Enforcement staff emailed the freeholder reminding them that initial contact about this matter was 16 months previous and that should have given them sufficient time to replace the windows in a style and material in keeping with the character of the conservation area.
- 3.13 On 3rd April 2017 the freeholder emailed Enforcement staff stating that they did take advice at the time they were in receipt of the initial letter but decided not to follow it as there were similar windows east and west of the property. (Upvc) They added that in their opinion they had done a sympathetic and responsible job in bringing the building back into a modern habitable state.
- 3.14 On 6th April 2017 Enforcement Staff emailed the freeholder asking for evidence of the previously installed windows such as photographs, stock condition survey or installation invoices indicating what materials the previous windows were constructed from to enable an assessment to be made against the current installation.
- 3.15 On 11th April 2017 the freeholder emailed Enforcement Staff a number of documents including photographs a 'specification of works' report and an 'Energy' report. The text of the email indicates that the 3rd floor window was already a Upvc window when the current freeholder took ownership on 29th July 2014. The 1st and 2nd floor windows are revealed to have been non opening timber casement windows which were in poor condition.
- 3.16 On 13th April 2017 Enforcement staff emailed the freeholder highlighting that the 'specification of works' document at page 14 refers to defective wood windows and the 'Energy' report at page 4 recommends the fitting of secondary glazing or the replacement or improvement of frames. There is no mention of replacement with Upvc windows. The freeholder was further reminded that the property lies within a Conservation area and as the properties are flats they do not benefit from Permitted

Development Rights.

The freeholder was invited to submit a retrospective planning application should they wish to retain the current window installation. They were advised that the invitation to submit an application was not an indication that the application will be given consent as each application is considered on its individual merit. Alternatively the windows should be removed and replaced with windows matching the originals.

- 3.17 On 3rd May 2017 the freeholder emailed Enforcement staff advising that they hadn't made a planning application due to the cost running into 'many thousands'
- 3.18 On 3rd May 2017 Enforcement staff emailed the freeholder advising that if a planning application is not received within 28 days the matter would be reported to the next available Development Control Committee seeking authority for enforcement action.
- 3.19 On 19th May 2017 Enforcement staff emailed the freeholder attaching documents detailing images of timber casement windows which would be considered appropriate for the Conservation area.
- 3.20 On 27th June 2017 Enforcement staff emailed the freeholder advising that a recent application by a householder in a Leigh Conservation Area to retain Upvc windows was refused and asking for an update with regards to the replacement of their windows.
- 3.21 On 28th June 2017 The freeholder emailed Enforcement staff advising the submission of a planning application was imminent.
- 3.22 On 3rd July 2017 a retrospective planning application was received under reference 17/01144/FUL to replace the windows to second and third floor.
- 3.23 On 18th July 2017 Enforcement staff emailed the freeholder asking why the application didn't cover the windows to the first floor.
- 3.24 On 18th July 2017 the freeholder emailed Enforcement staff advising they do not own the first floor.
- 3.25 On 24th July 2017 the freeholder emailed Enforcement staff further advising that they own the freehold to the entire building but the first floor flat is sold on a long term lease. They stated 'The first floor flat owner took it upon themselves without contacting myself to change the windows'
- 3.26 On 25th July 2017 Enforcement staff sent a letter to the lessee of flat 1, 95 Broadway at that address and the alternative address recorded at Land Registry asking that they make contact.
- 3.27 On 25th July 2017 Enforcement staff emailed the freeholder advising of the above action and informing them that any formal enforcement action taken will affect the freeholder and anyone else having an interest in that property. As such, any breach of planning controls by flat 1 will impact on them. They were advised to seek advice as to whether to include floor 1 in the current planning application.

- 3.28 On 26th July 2017 Enforcement staff received a phone call from the lessee of the first floor flat. They confirmed that they did replace the windows independently of the freeholder but took advantage of using the same company as had already been commissioned to supply and fit the windows to the 2nd and third floors. Staff informed them that they would send them a formal letter advising what action should be taken.
- 3.29 On 26th July 2017 Enforcement staff sent a letter to the lessee of the 1st floor flat advising of the unauthorised development in respect of the replacement Upvc windows and further advising that a planning application to retain them would not likely be approved and they should be replaced.
- 3.30 On 24th August 2017 the Retrospective Planning application submitted by the freeholder, to retain the Upvc windows to second and third floor flats was refused for the following reason
- 3.31 *'The windows, by reason of their detailed design, materials and opening mechanism, are harmful to the character and appearance of the individual property and the street scene in the wider Leigh Cliff Conservation Area of which it forms a part. 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), Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015); and advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Cliff Conservation Area Appraisal 2010'*
- 3.32 The decision notice contained the following advice note;
- 3.33 *'The applicant is advised that an installation of traditional timber casement windows, similar to the adjacent property, which could include slimline double glazing, would be considered more acceptable but these will require a revised planning application. If you require further advice regarding this please contact the Council's Conservation Officer.'*
- 3.34 On 27th September 2017 Enforcement staff emailed the freeholder reminding them that the retrospective planning application to retain the Upvc windows to the 2nd and third floors, under reference 17/01144/FUL had been refused on 24th August 2017, advising that they had 12 weeks to appeal this decision from the date of the Decision Notice should they wish to do so. They were asked to keep the Enforcement staff updated with their decision.
- 3.35 On 9th October 2017 Enforcement staff emailed the freeholder due to the lack of update, to advise that the matter would be reported to the Development Control Committee to seek to authorise the issuance of an Enforcement Notice.
- 3.36 On 9th October 2017 the freeholder emailed Enforcement staff stating they will be submitting a planning application to replace the windows with timber.
- 3.37 On 9th October 2017 Enforcement staff emailed the freeholder advising the intended report to Development Control Committee to seek enforcement authority would be put back to enable them to submit an amended planning application.

- 3.38 On 24th November 2017 a planning application was received under reference 17/02084/FUL to remove the unauthorised Upvc windows to first, second and third floor front elevation and replace with slimline double glazed timber casement windows.
- 3.39 On 18th January 2018 the above planning application was conditionally approved.
- 3.40 On 10th May 2018 Enforcement staff emailed the freeholder asking for timescales for the replacement of the windows as the currently installed Upvc windows still amounted to a planning breach.
- 3.41 On 21st May 2018 the freeholder emailed Enforcement staff stating they were away and would reply fully within a couple of days.
- 3.42 On 24th May 2018 Enforcement staff emailed the freeholder asking for an urgent update.
- 3.43 As of 30th May 2018 no reply had been received.

4 Appraisal

- 4.1 Policy CP4 of the Core Strategy requires development to safeguard and enhance the historic environment, including Conservation Areas. Policy DM5 of the Development Management Document also requires that all new development within a Conservation Area should preserve or enhance its character.
- 4.2 There is no permitted development right to change windows within flats. Therefore, as with the residential properties within the Leigh Cliff Article 4 Direction area, proposals for replacement windows within the conservation area will require planning permission. Applicants need to demonstrate that the proposed replacements will preserve or enhance the historic character of the conservation area.
- 4.3 Leigh Cliff Conservation Area has generally retained a high proportion of its original features including timber windows. These make an important contribution to the character and significance of the conservation area. A few windows in the Broadway were changed to UPVC many years ago most likely prior to the designation of the Article 4 Direction. It is noted that a number of recent installations of Upvc windows in the street have been subject to enforcement action and have been reinstated with timber replacements.
- 4.4 95 Broadway has replaced all the windows to the front with new Upvc casement style windows. Prior to this the property had its original timber casements at first and second floor. The materials for the dormer are unclear. Even if the previously installed window was Upvc then this has been replaced as part of the more recent refurbishment and is regarded as new development. These timber windows matched others in the block and were considered to make a positive contribution to the character of the conservation area.

- 4.5 The unauthorised Upvc windows are very visible from the public realm and are noticeably different from the timber windows in the adjacent properties. Although the replacement Upvc windows are of a casement design, differences are apparent in their design detailing as well the different appearance of the materials. In particular the thickness of the windows is significantly greater making them appear heavy and less refined and at odds with others in the block. The joins within the plastic frame are evident at the corners; these would normally be concealed behind paintwork on timber frames. There is a clear difference between the Upvc windows and the other timber casements in the block and it is considered that this difference has contributed to an erosion of historic character and significance of the heritage asset. An application to retain these windows was refused because it was considered that they had a detrimental impact on the character of the conservation area.
- 4.6 It is acknowledged that there are a number of Upvc window installations in the area which were carried out many years ago and are now immune from enforcement by virtue of the time constraints imposed by Section 171B of the Town and Country Planning Act 1990 (as amended). The presence of other, unsuitable replacement windows does not justify the insertion of additional harmful examples which further harm the character of the area.
- 4.7 An exact date for the installation of these Upvc windows cannot be established but is suspected to be sometime between late 2014 and September 2015. In order to prevent the current unauthorised installation of Upvc windows becoming immune from enforcement action it is considered necessary that an Enforcement Notice is issued before the development can be claimed to be over 4 years old.
- 4.8 Bearing in mind the owner has planning permission to install suitable replacements it is therefore considered expedient to pursue enforcement action to secure the unauthorised windows removal.
- 4.9 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 removal of the unauthorised Upvc windows.

5 Relevant Planning History

- 5.1 3/7/2017 Reference 17/01144/FUL – Replace windows to second and third floor flats with Upvc windows to front (Retrospective) – Refused
- 5.2 24/11/2017 Reference 17/02084/FUL - Remove unauthorised Upvc windows to first, second and third floor front elevation and replace with slimline double glazed timber casement windows. – Conditionally approved.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF) 2012.

- 6.2 Development Plan Document 1: Core Strategy Policies 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) and DM5 (Southend-on-Sea's Historic Environment).
- 6.4 Design and Townscape Guide 2009 (SPD1)

7 Recommendation

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure the removal of the unauthorised Upvc framed windows installed to the first second and third floor front elevation of this property on the grounds that they harm the character and appearance of the property and the streetscene by reason of their unsympathetic materials and discordant frame thickness to the extent that they are detrimental to the character and appearance of the Leigh Cliff Conservation area contrary to the National Planning Policy Framework, Policies CP4 and KP2 of the Southend-on-Sea Core Strategy, Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document and the advice contained within the Council's Design and Townscape Guide.
- 7.2 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.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case, research and quotes are possibly still required to be obtained and any time delay in manufacture and installation is likely to be dictated by the suppliers lead time. It is considered that a compliance period of 3 months is deemed reasonable.

Appendix 1 – Leigh Cliff Conservation Area Boundary

