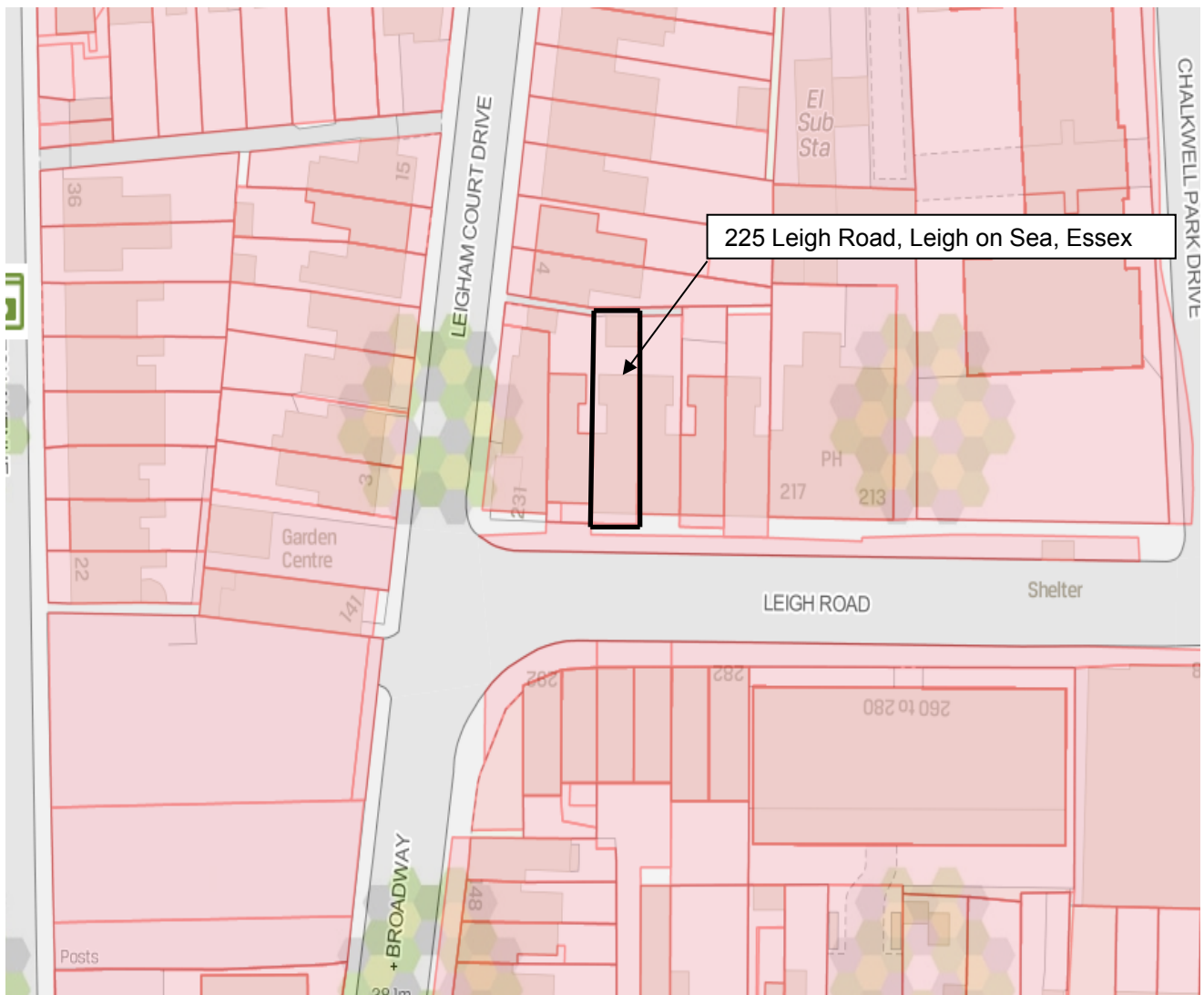


Reference:	15/00278/UNAU_B	
Ward:	Leigh	
Breaches of Control	Without planning permission, the formation of a flat to the rear of shop premises	
Address:	Rear of 225 Leigh Road, Leigh on Sea, Essex. SS9 1JA	
Case Opened:	9 th December 2015	
Case Officer:	Steve Jones	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is located within a mixed commercial and residential area. It is situated within the Leigh District Centre as identified in the Development Management Document.
- 1.2 The site is the rear of a shop on the primary shopping frontage, together with its rear yard.
- 1.3 Access to the property is obtained via a narrow rear alley and gate. The alley runs along between a garage and a domestic property at no 4 Leigham Court Drive.

2 Lawful Planning Use

- 2.1 The lawful planning use of the ground floor is as a nail bar (Retail) within Class A1 of the Town and Country Planning Use Classes Order 1987 (as amended)

3 Present Position

- 3.1 On 6th December 2015 an initial complaint was received alleging that premises had been sub-divided forming a flat to the rear.
- 3.2 On 20th January 2016 Enforcement staff attended the property but could not gain access through a locked gate.
- 3.3 On 27th September 2017 Enforcement staff reviewed the case to ascertain if the issue had been resolved.
- 3.4 On 27th September 2017 Enforcement staff received an email from the complainant stating that they had moved from the area but the 'subletting' was still taking place as of 30th June 2017.
- 3.5 On 4th October 2017 Enforcement staff visited and established the property consisted of a kitchen/lounge area, a small bedroom and a small toilet and shower room. The owner explained at that time that they had created a separate living unit from the nail bar by having a dividing wall built between them sometime in 2014.
- 3.6 On 4th October 2017 Enforcement staff emailed the owner setting out the legislation as it applied when the residential unit was created in 2014. Staff summarised by saying *'In summary I believe you should have made an application for 'Prior Approval' to the Local Planning Authority. As you cannot make a retrospective 'Prior Approval' application you will need to make a full planning application.'*
- 3.7 A series of emails followed but in essence the owner confirmed they would be making a full Retrospective Planning Application to retain the flat.
- 3.8 On 14th November 2017 Enforcement staff emailed the owner asking for timescales for the submission of a planning application.
- 3.9 On 15th November 2017 a Retrospective Planning Application was received under reference 17/02025/FUL to 'Change the use to part of ground floor shop (Class A1) to self-contained flat (Class C3) (Retrospective)'

- 3.10 On 6th March 2018 the above planning application was refused for the following reasons;
- 3.11 *Having taken all material planning considerations into account, it is found that the proposed development is unacceptable and contrary to the objectives of the relevant development plan policies and guidance. The development by reason of its siting and access results in a form of development out of keeping with the grain and character of the surrounding area and in conflict with the principles of good design. The dwelling provides insufficient internal space and thus offers a low amenity for future occupiers. Although the site is accessibly located, sufficient garden ground is available, the amenities of neighbours is maintained satisfactorily, and parking implications are acceptable, these positive aspects do not outweigh the material harm caused by the development as identified above. For the above reasons, the proposed development is unacceptable and fails to comply with planning policy*
- 3.12 On 13th April 2018 Enforcement staff emailed the owner reminding them that the planning application had been refused and asking if they intend to appeal the decision or return the flat to shop use.
- 3.13 On 13th April 2018 the owner emailed Enforcement staff advising of their intention to appeal the decision and asking for further guidance.
- 3.14 On 13th April 2018 Enforcement staff emailed the owner advising that some guidance could be given but also advising that some of the issues raised in the officers report do not appear to be capable of being easily overcome. e.g. The size of the flat.
- 3.15 On 18th April 2018 the owner emailed Enforcement staff asking if it would be acceptable to remove the fixed wall separating the nail bar and the flat but retaining the use of the flat as residential.
- 3.16 On 18th April 2018 Enforcement staff emailed the owner advising they should consider an application for a 'Certificate of Lawful Development' if they believe they could prove an uninterrupted use of the flat for residential purposes for over 4 years.
- 3.17 On 18th April 2018 the owner emailed Enforcement staff and attached a survey dated April 2007 which was prepared for valuation purposes.
- 3.18 On 18th April 2018 Enforcement staff emailed the owner stating;
- 3.19 *'The survey works against you as it does not describe a residential unit to the ground floor. In fact it uses the term 'office'.*
- 3.20 On 18th April 2018 the owner emailed Enforcement staff advising that Council Tax was only charged on the separate flat since 2016.
- 3.21 On 18th April 2018 Enforcement staff emailed the owner advising that a planning application under reference 98/0604 to 'Erect extension at side and single storey rear extension to provide living accommodation.' was refused in 1998.

- 3.22 Enforcement staff further advised that the owner seek professional guidance on this matter as 'you may not be able to prove the use of the property as residential over a sufficient period to make it immune from enforcement action in which case Enforcement staff will be left with no alternative than to issue an Enforcement Notice if the property is not converted back into shop use.'
- 3.23 On 18th April 2018 the owner emailed Enforcement staff attaching the sales advert for the premises.
- 3.24 On 18th April 2018 Enforcement staff emailed the owner stating;
- 3.25 'The advert states SHOP + 2 BEDROOM ACCOMMODATION. It further describes the shop area with 'former' studio flat to rear.' They did that as there is no planning permission for a flat at this location. The Accommodation element of the advert relates solely to the first floor. Even if the word 'formally' was not present I note you did not take ownership until July 2015 which is within the 4 year period required.
- 3.26 On 18th April 2018 Enforcement staff emailed the owner reiterating the need to seek professional, independent advice.
- 3.27 On 18th April 2018 the owner emailed Enforcement staff advising they had submitted an application for a Certificate of Lawful Development.
- 3.28 On 19th April 2018 the Local Planning Authority received an Application for a Certificate of Lawful Development in respect of this site under reference 18/00722/CLE. The application was invalid on receipt.
- 3.29 On 25th May 2018 Enforcement staff emailed the owner reminding them of the invalid application and asking if it was their intention to continue with it.
- 3.30 No response was received to the above email.
- 3.31 On 29th May 2018 Enforcement staff emailed the owner advising that authority for formal enforcement action would be sought on the basis that the earlier planning application was refused and it was considered doubtful that sufficient evidence could be produced to evidence that the flat had been in continuous use for the past 4 years to gain approval for a Certificate of Lawful Development. The owner was advised that the only route available to them to avoid enforcement would be to return the residential unit back into space used by the shop (Class A1)
- 3.32 On 29th May 2018 the owner emailed Enforcement staff advising that further documentation had been sent to the Local Planning Authority in support of the application for a Certificate of Lawful Development.

4 Appraisal

- 4.1 The conversion of a retail unit (Class A1) to residential (Class C3) at ground floor level cannot be carried out under Permitted Development Rights.
- 4.2 The site is not within a Conservation Area nor is it subject of any Article 4 Direction.

- 4.3 It is considered that the reduction in floor area to the retail shop associated with the flat conversion may have impacted on the scope for employment levels at the premises however the degree of impact if any is unlikely to be quantifiable and on this basis it was considered that it would not be reasonable to refuse planning permission on the basis of a loss of employment space.
- 4.4 The principle of development is therefore considered acceptable as a matter of broad principle at this location subject to the details of the proposal, considered below.
- 4.5 The following sections summarise the basis on which the retrospective planning application, ref 17/02025/FUL was found to be unacceptable and in conflict with policy when the retrospective planning application was determined under delegated powers.
- 4.6 **Design and Impact on the Character of the Area 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) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**
- 4.7 The introduction of small flats in the area is considered acceptable given the more densely built-up district centre environment. A small flat is consistent in principle with the grain of the built environment in the district centre location.
- 4.8 The access to the flat is however made via the very narrow unlit rear alley which is situated between rear gardens and alongside a domestic garage and vehicular access. There would be no means of access available to the flat from Leigh Road due to internal alterations to the ancillary accommodation retained for the ground floor commercial unit. This relationship of self-contained accommodation to the street is considered unsatisfactory from a personal security point of view and in conflict with the prevailing grain of development in which dwellings benefit from an appropriate street frontage and access.
- 4.9 The consequence of the unauthorised flat is overdevelopment and inappropriate development of the site, conflicting with the objectives of the above mentioned development plan policies and guidance relating to design and character and which seek to maintain or improve the character and quality of the residential environment.
- 4.10 **Living Conditions for Future Occupiers National Planning Policy Framework, Development Management Document (2015) Policies DM1, DM3 and DM8, The National Technical Housing Standards DCLG (2015) and guidance contained within the Design and Townscape Guide (2009)**
- 4.11 The flat (25.8sqm) does not meet the Nationally Described Space Standards which specify a 1 bed, 1 person dwelling should be at least 37sqm in floor area. The bedroom area falls short of the described standard by 0.6sqm.

- 4.12 The dwelling has a limited outlook with one rear window, and one bedroom window facing on to a tightly constrained yard space. It appears from the site visit conducted by the planning officer that the use of the space as living accommodation has required overspill of domestic appliances and storage into the yard area and the shed.
- 4.13 The Council's Design and Townscape Guide states. "Outdoor space significantly enhances the quality of life for residents and an attractive useable garden area is an essential element of any new residential development".
- 4.14 Having regard to the prevailing characteristics of the area it is considered that there is sufficient and reasonable amenity space for the purposes of occupiers, given the character of the surroundings. However the overspill of normally-internal domestic apparatus into the yard and living space in the shed is indicative of inappropriate internal space and a cramped overdevelopment that offers an insufficient standard of amenity for occupiers.
- 4.15 This is considered unacceptable in this instance and the flat does not provide sufficient benefits to mitigate this shortfall.
- 4.16 It is considered that the implications for living conditions of future occupiers are unacceptable and contrary to the objectives of the above mentioned development plan policies and guidance.
- 4.17 **The case for enforcement action**
In light of the unacceptable nature of the development and the identified harm which conflicts with policy objectives, it is considered expedient to pursue enforcement action to secure the removal of the flat and the return of the floor space to retail use. This takes into account that the owner has not appealed the refused retrospective planning application or meaningfully pursued a Certificate of Lawfulness application to a successful outcome.
- 4.18 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 flat.

5 Relevant Planning History

- 5.1 98/0604: Erect extension at side and single storey rear extension to provide living accommodation. - Refused.
- 5.2 17/02025/FUL; Change of use to part of ground floor shop (Class A1) to self-contained flat (Class C3)(Retrospective) – Refused. For the below reasons

- 5.3 The proposed development by virtue of its position and access arrangement is a poor standard of design. This fails to maintain or improve the character and quality of the residential environment, which is unacceptable and contrary to the National Planning Policy Framework, Policies KP1, KP2, CP4 and CP8 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).
- 5.4 Due to its substandard internal space and cramped layout, the dwelling fails to provide a satisfactory standard of habitable accommodation in accordance with the requirements of the National Technical Housing Standards (2015) and fails to provide satisfactory levels of amenity for future occupiers. This is unacceptable and contrary to the objectives of the National Planning Policy Framework; Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); and Policies DM1, DM3 and DM8 of the Council's Development Management Document.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF) 2012.
- 6.2 The Southend-on-Sea Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP1 (Employment Generating Development), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility), CP4 (The Environment and Urban Renaissance), CP8 (Dwelling Provision)
- 6.3 The Southend-on-Sea ~~Development Management Document~~ (2015) Policies DM1 (Design Quality) DM2 (Efficient use of resources), DM3 (The Efficient and Effective Use of Land) DM8 (Residential Standards) DM10 (Employment Sectors) DM11 (Employment Areas) DM13 (Shopping Frontage Management outside the Town Centre) DM15 (Sustainable Transport Management)
- 6.4 Design and Townscape Guide 2009 (SPD1)

7 Recommendation

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure the cessation of the unauthorised flat use on the grounds highlighted at Paras 5.3 & 5.4.
- 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 it is considered that a compliance period of 3 months is deemed reasonable.