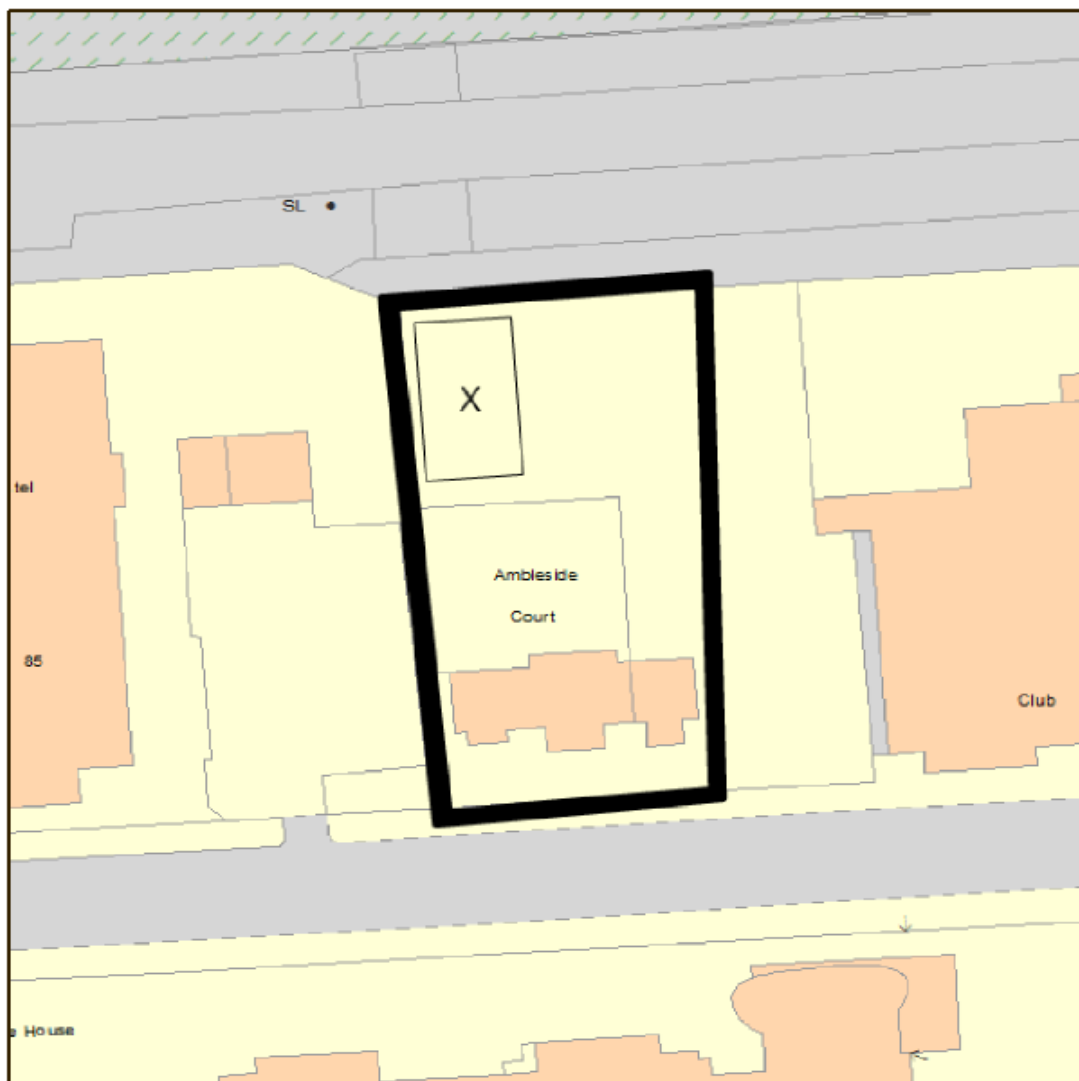


|                            |   |
|----------------------------|---|
| <b>Reference:</b>          | 16/00122/UNAU_B   |
| <b>Ward:</b>               | Kursaal   |
| <b>Breaches of Control</b> | Without planning permission, the construction of a block of 5 flats |
| <b>Address:</b>            | Rear of Ambleside Court, Ambleside Drive, Southend, Essex.          |
| <b>Case Opened:</b>        | 29 June 2016  |
| <b>Case Officer:</b>       | Steve Jones   |
| <b>Recommendation:</b>     | <b>AUTHORISE ENFORCEMENT ACTION</b>                                 |



## **1 Site and Surroundings**

- 1.1 The subject building is situated within the curtilage of the three-to-four storey Ambleside Court, and is accessed via its undercroft access road. Ambleside Court comprises 11 flats. The site is located to the immediate south of the Fenchurch Street – Shoeburyness railway line. To the west is the three-storey YMCA building. To the east of the site is a car park area and to the south is Southend Adult Community College.
- 1.2 The prevailing character of the surrounding area is of residential uses, with a mixture of flats and houses of varying design and scale.
- 1.3 The site is not the subject of any site specific policy designations.

## **2 Lawful Planning Use**

- 2.1 The building to the south side of the land known as Ambleside Court was approved under reference 11/00337/FUL and its use falls within Class C3 of the Town and Country Planning Use Classes Order. The building to the north side of the land and subject of this report does not benefit from planning permission.

## **3 Present Position**

- 3.1 On 26<sup>th</sup> January 2003 outline planning permission (reference 02/01085/OUT) was granted to '*Erect three storey block of flats, lay out parking and form vehicular access onto Ambleside Drive*' This building is known as Ambleside Court.
- 3.2 On 28<sup>th</sup> August 2008 planning permission (reference 08/00974/FUL) was granted to build 4 flats on that part of the site subject of this report. (To the rear of Ambleside Court)
- 3.3 On 12<sup>th</sup> May 2011 planning permission (reference 11/00337/FUL) was granted to '*Create 3 self-contained flats within roof space and alter front and rear elevations.*' (in the main Ambleside Court building).
- 3.4 Condition 02 of the above permission required the development to be carried out in accordance with the approved plans. The approved plans do not show the building now existing to the rear of Ambleside Court. Rather, they showed the rear of the site as a car parking and amenity area to serve the main Ambleside Court building.
- 3.5 Building control records confirm that two applications were submitted around the same time in 2011:
  - 11/00726/IN - 4 apartments in two storey block.
    - Submitted June 2017, not yet completed.
  - 11/00850/IN - Conversion to form 3 self-contained flats in the roof space
    - Submitted September 2011, completed June 2015

The records show that these building control applications were submitted after the decision was issued for the planning application 11/00337/FUL (May 2011).

Given the dates that the planning application was approved, and the dates for the building control works as outlined above, it is more probable than not that the building works for both the unlawful flats and the additional flats in the roof approved under the 2011 planning permission occurred at the same time. Officers conclude on the balance of probability that both sets of works were undertaken as a single building operation.

- 3.6 On 10<sup>th</sup> July 2015 a retrospective planning application (reference 15/00764/FUL) to '*Erect three storey block comprising of five self-contained flats with balconies to first floor front elevation, lay out parking spaces, refuse and recycling store (retrospective)*' was refused permission. This was for the building to rear of Ambleside Court. The reason was due to its contrived and unacceptable parking layout, lack of off-street parking and amenity space, indicative of overdevelopment of the site, the proposal would result in additional on street parking in an area with limited on street parking availability to the detriment of highway safety and the local highway network and also insufficient amenity space to the detriment of the amenity of current and future site occupiers.
- 3.7 On 16<sup>th</sup> May 2016 the Planning Inspectorate dismissed an appeal (reference APP/D1590/W/16/3141762) against refusal of that retrospective planning application. 'The appeal Inspector agreed with the Council's refusal reasons related to highway safety and amenity.
- 3.8 On 29<sup>th</sup> June 2016, following the Planning Inspector's decision, a Planning Enforcement case was initially opened relating to the unauthorised development of 5 flats. (i.e. the building to the rear of Ambleside Court)
- 3.9 On 3<sup>rd</sup> October 2016 an amended planning application (reference 16/01822/FUL) was received from Southend YMCA in respect of the unauthorised development for the following: '*Erect three storey block comprising of four self-contained flats with balconies to first floor rear elevation, rooflights to front, erect boundary fence, refuse store and form sixteen parking spaces (Retrospective - Amended Proposal)*'
- 3.10 The above application technically remains outstanding because the applicant was unwilling to agree terms for a S106 legal agreement which would restrict the specific nature of occupation to households associated with Southend YMCA who were expected to have a low car ownership need and could benefit from sharing amenity space with the neighbouring YMCA
- 3.11 On 5<sup>th</sup> September 2017 Enforcement Officers wrote to the site owner advising: '*If progress of the current application is reliant on negotiations with the YMCA regarding the purchase of the site, then I would urge you to give this the utmost priority.*' and further advising that no further works take place until the matter is resolved and to contact the Council within 14 days with details of how they plan to resolve this matter.
- 3.12 On 5<sup>th</sup> September 2017 Planning Officers emailed the agent acting on behalf of the YMCA, and who had previously acted for the site owners, attaching a copy of the Planning Inspectorate decision as at 3.6 asking that the document be shared with both parties if considered appropriate.

- 3.13 On 19<sup>th</sup> September 2017 the planning agent wrote to Enforcement Officers advising they did represent the site owner and further advising the details of the agents representing the YMCA.
- 3.14 On 10<sup>th</sup> October 2017 Enforcement Officers conducted a site visit and noted that the walls of the building were constructed, the roof was on and fully tiled and all of the doors and windows were installed. However the property was not ready for occupation nor was it occupied.
- 3.15 On 9<sup>th</sup> November 2017 Enforcement Officers issued a Planning Contravention Notice on relevant parties including the land owner 'Taylor Made Homes Limited' to seek to ascertain when the block of flats alleged in the breach was built. It was also served to seek to clarify the owner's position on whether or not the unlawful block of flats and the flats approved in the 2011 planning application were carried out as a single building operation
- 3.16 On 30<sup>th</sup> November 2017 the completed Planning Contravention Notice was returned to Enforcement Officers. Significantly the answers from the site owner stated that construction of the property at the rear of Ambleside Court commenced April / May 2011 and works ceased April 2012, that the building was unoccupied and the property was not provided with any car parking spaces. The flats in the roof of the 'principal building' (Ambleside Court) commenced in June 2011 and were completed in 2016.
- 3.17 On 18<sup>th</sup> January 2018 Enforcement Officers received an email from the agent stating they had been engaged to submit a revised planning application to seek to retain the building to the rear of Ambleside Court.
- 3.18 On 5<sup>th</sup> April 2018 a planning application (reference 18/00636/FUL) was received to; *'Erect three storey building comprising three self-contained flats (Class C3) with Juliette balconies to front at first floor level, undercroft and layout parking and associated amenity space (Retrospective)(Amended Proposal)'*
- 3.19 On 31<sup>st</sup> May 2018 the above planning application was refused. A copy of the officer report is attached here as Appendix 1. That report's analysis, assessment of the development's compliance or otherwise with policy requirements and weighing up of factors leading to the refusal form the substantive case for the enforcement action for which authority is now sought from Development Control Committee.
- 3.20 On 13<sup>th</sup> June 2018 Enforcement Officers attended the site and noted that no additional works had taken place externally since the site visit of 10<sup>th</sup> October 2017 and, although access to the building was partly restricted by the security fencing, it could be seen that some of the internal walls of the flats had not been plaster boarded.

#### **4 Appraisal**

- 4.1 When considering the expediency of action, consideration should be given to the level of harm caused by the breach of planning control as well as the opportunities given to the owners to correct the breach of planning control.

The 2011 planning application (11/00337/FUL) was approved on the basis that the additional three flats in the main block facing Ambleside Drive would have 12 car parking spaces provided within the site. The addition of the unlawful block of five flats has obstructed the ability for the owner of the site to provide the 12 car parking spaces that were required and approved to serve the frontage block, Ambleside Court

- 4.2 Negotiations with regards to resolving the unlawful block of flats have been undertaken in an effort to seek to resolve matters without recourse to formal planning enforcement action. That included the Council entertaining the submission of a planning application in 2015 which was eventually refused and dismissed at appeal. The outstanding planning application (16/01822/FUL) has become unduly protracted and delayed through drawn out negotiations in drafting a S106 legal agreement and shows no promise of being resolved any time soon. The Council has since refused the further planning application which sought to address the key issues by different means but without success. This failure of repeated planning applications to achieve an acceptable policy compliant outcome reinforces officers' view that the interrelationship between the main Ambleside Court building, its additional three roofspace units and the unauthorised two storey rear building amounts to an overdevelopment of the site thereby explaining why parking and amenity space commensurate with both building's overall requirements cannot be delivered within the site.
- 4.3 Enforcement action should only be considered when there is a breach of planning control and it is expedient to do so (this is outlined in section 172 of the Town and Country Planning Act 1990 [as amended]); considering the public interest in doing so. The construction of the unauthorised rear block of flats not only provides a new block of flats that are considered unacceptable as set out in the analysis and decision in Appendix 1, but also obstructs the ability of the current or any subsequent owner to deliver the additional flats approved through the 2011 application in accordance with the full requirements of that planning permission. In view of the identified harm and to protect the Council's position going forward in the interests of the community it is necessary, proportionate and expedient that action is taken to stop the unauthorised development from becoming immune from planning control..
- 4.4 If the opinion is taken that the development could be acceptable through an altered design or scheme, then the service of an Enforcement Notice will not prejudice the owner's ability to submit a planning application for this. Given the arguments set out above, it is taking enforcement action is in the public interest, is reasonable and proportionate and is therefore fully justified.
- 4.5 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 building and the provision of car parking spaces in accordance with the 2011 planning permission.

## **5 Relevant Planning History**

- 5.1 16/01822/FUL Erect three-storey block comprising of four self-contained flats with Balconies to first floor rear elevation, rooflights to front, erect boundary fence, refuse store and form sixteen parking spaces (Retrospective - Amended Proposal). Pending consideration
- 5.2 15/00764/FUL' Erect three-storey block comprising of five self-contained flats with balconies to first floor front elevation, lay out parking spaces, refuse and recycling store (retrospective). Refused, appeal dismissed
- 5.3 11/00337/FUL Create 3 self-contained flats within roof space and alter front and rear elevations at Ambleside Court. Approved.
- 5.4 08/00974/FUL. Erect two-storey block comprising four flats, lay out parking spaces, refuse and recycling store (Amended Proposal) Approved
- 5.5 02/01085/OUT Erect three storey block of flats, lay out parking and form vehicular access onto Ambleside Drive Approved.

## **6 Planning Policy Summary**

- 6.1 The planning policy background is set out fully within the officer report for application 18/00636/FUL attached at Appendix 1.

## **7 Recommendation**

- 7.1 To authorise planning enforcement action to require :
  - a) demolition of the unauthorised two storey block for which permission (with modifications to the building's layout and design) was refused under planning application 18/00636/FUL dated 31 May 2018 ; and
  - b) the laying out of on-site car parking provision for the flats within Ambleside Court, Ambleside Drive in full accordance with the requirements of Condition 2 of planning permission 11/00337/FUL dated 12 May 2011; and
  - c) removal of all rubble, materials and equipment associated with complying with the notice(s).
- 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 6 months is reasonable.

## Appendix 1.

|                             |   |
|-----------------------------|---|
| <b>Reference:</b>           | 18/00636/FUL  |
| <b>Ward:</b>                | Kursaal   |
| <b>Proposal:</b>            | Erect three storey building comprising three self-contained flats (Class C3) with juliette balconies to front at first floor level, undercroft and layout parking and associated amenity space (Retrospective) (Amended Proposal) |
| <b>Address:</b>             | Land Rear Of Ambleside Court, Ambleside Drive, Southend-On-Sea, Essex   |
| <b>Applicant:</b>           | Mr Graham Taylor  |
| <b>Agent:</b>               | The JTS Partnership LLP   |
| <b>Consultation Expiry:</b> | 17.05.2018  |
| <b>Expiry Date:</b>         | 31.05.2018  |
| <b>Case Officer:</b>        | R Lilburn   |
| <b>Plan Nos:</b>            | 8222 100 00, 8222 200 04, 8222 201 03, 8222 202 05, 8222 300 03, 8222 400 04 and 00298/4  |
| <b>Recommendation:</b>      | <b>REFUSE PLANNING PERMISSION</b>   |

## 1 The Proposal

- 1.1 The application seeks planning permission for the retention of a three storey building, to house 3no.self-contained one-bed flats following external and internal alterations. The building would be modified to provide undercroft parking for the adjacent, existing apartment building. The building is finished externally in red facing brick with red roof tiles and upvc windows and would be retained as such.
- 1.2 Planning permission was granted under the terms of planning application 08/00974/FUL for the erection of a two storey building on the site, which would have contained four flats.
- 1.3 It was subsequently identified that the building had been partially constructed to include five flats, with the fifth flat being provided in the roof space of the building. Therefore it was found that the approved development had not been lawfully implemented.
- 1.4 Furthermore, it was found that the planning permission that had been granted (08/00974/FUL) was also overridden by planning permission 11/00337/FUL for three flats at the 'parent building' at Ambleside Court. That scheme relied upon the land, occupied by the building for which planning permission was sought, for amenity space.
- 1.5 A partially retrospective planning application (15/00764/FUL) for the development that had occurred (*'Erect three storey block comprising of five self-contained flats with balconies to first floor front elevation, lay out parking spaces, refuse and recycling store (retrospective)'*) was refused for the following reason:

*"The proposed development by reason of contrived and unacceptable parking layout, lack of off-street parking space and amenity space, which is indicative of the overdevelopment of the site, would result in additional on street parking in an area with limited on-street parking availability to the detriment of highway safety and the local highway network and also in insufficient amenity space to the detriment of the residential amenity of the current and future occupiers. These would be contrary to the NPPF, Policy CP3 of DPD1 (Core Strategy), Policies C11, H5, T8 and T11 of the Borough Local Plan, guidance contained in the Design and Townscape Guide and Policies DM1 and DM15 of the emerging Development Management DPD."*

- 1.6 A subsequent planning appeal was dismissed and within that appeal it was stated that the main grounds of objection related to the inadequate parking and amenity space provision. In this regard the Inspector set out the following:
  - *"In my view, if the development were permitted, any future residents of the proposed development, along with those currently occupying Ambleside Court, would be placed in the unsatisfactory position of having to park 'on street' in an area of parking stress, with the harmful impacts on safety this would entail, including reduced visibility for pedestrians and congestion. Moreover, the lack of on-site parking could result in residents having to park some distance from the flats thus leading to a temptation to park inconsiderately closer to the site. It would also result in additional vehicular movements in the area as they search for vacant spaces"*.



- *“I note that Policy DM15 of the DMP does allow parking standards to be applied flexibly when a site can be considered to be within a sustainable location with frequent and extensive links to public transport. The site is located very close to a rail station and bus stops and within walking distance of a local centre. It is therefore in a sustainable location. Nevertheless, it is also in an area of parking stress and the shortfall in parking is significant, effectively requiring 5 of the 16 flats to be occupied on a ‘car free’ basis. In my view, for this to be acceptable, sound evidence would need to be submitted to demonstrate that car free occupation would be likely to occur”.*
- *“The appeal scheme includes small balconies to serve the two first floor flats and space for small terraces to serve the two ground floor flats. These spaces are small and it has not been demonstrated that they are large enough to enable future occupants, perhaps with a guest, to sit out on. The ground floor patios would also be directly adjacent to the parking court, which would make them uninviting spaces. Thus it is not clear the spaces proposed would function adequately as outdoor amenity spaces. This necessitates the provision of further amenity space”.*
- *“In addition, the area proposed as the amenity space for the occupants of the appeal scheme is already meant to be in use by the occupants of the current flats at Ambleside Court. In this respect, the provision of amenity space needs to be considered cumulatively”.*
- *“The Council states that the previously approved communal area provided 7.3sqm per flat and I have no reason to doubt this. The appellant states the amenity area proposed, as shown on the amended plan, would be 89sqm. If this area is divided by 16 flats then the provision per flat would be around 5.5sqm”.*
- *“Consequently, I share the view of the Council that the design and layout of the space is such that it has the hallmarks of being an afterthought rather than a carefully designed and well integrated amenity area. I therefore find that the proposed amenity space would be inadequate for the future occupants of the proposed development and the current occupants of Ambleside Court”.*

1.7 It is considered relevant that the Inspector acknowledged that *“The Council have not raised concerns with regards to the principle of development, land contamination, noise impacts or the siting or appearance of the proposed building. This is because the appeal building is similar to the design of the building approved in 2008 in these respects and the policies guiding the assessment of these matters do not appear to have changed significantly. Likewise, the approval of the three flats at Ambleside Court has little direct bearing on the acceptability of the appeal scheme when considering these matters.”*

1.8 The building is predominantly two storeys in height with accommodation in the roof space. Central three storey gable projections are centred on the east and west elevations with a two storey bay to each side on the east ‘principal elevation’.

- 1.9 The proposal would remove the ground floor accommodation from the building as currently exists in order to provide four car parking spaces for the existing flats at Ambleside Court in an undercroft, together with three cycle stands.
- 1.10 To the east of the building is an area of land that is proposed to be laid to hardstanding to provide six parking spaces to serve the existing flats of Ambleside Court. An additional parking space for Ambleside Court would be situated at the front, in the position of an existing access ramp.
- 1.11 The applicant has stated that disabled parking would be provided in the space to the immediate rear of Ambleside Court, adjacent the access road.
- 1.12 The total car parking proposed for the development and the existing Ambleside Court would be 11 spaces, for 14 flats. The applicant envisages that the three flats within the subject building would be 'car free'.
- 1.13 Amenity space to serve the proposed flats (3no.) and the existing flats (11no.) would be situated between the two buildings, at a position which is currently a hardstanding in gravel.
- 1.14 The applicant has indicated that the existing bin store for Ambleside Court, situated at the access point, would be enlarged. The enlargement is envisaged by the applicant to take place upwards, on top of the existing bin store, due to space constraints at ground level.
- 1.15 Soft landscaping is proposed including tree planting and permeable surfacing with integrated grid-reinforced grass.

## **2 Site and Surroundings**

- 2.1 The subject building is situated within the curtilage of the three-to-four storey Ambleside Court, and is accessed via its undercroft access road. Ambleside Court comprises 11 flats. The site is located to the immediate south of the Shoeburyness railway line. To the west is the three-storey YMCA building. To the east of the site is a car park area and to the south is Southend Adult Community College.
- 2.2 The prevailing character of the surrounding area is of residential uses, with a mixture of flats and houses of varying design and scale.
- 2.3 The site is not the subject of any site specific policy designations.

## **3 Planning Considerations**

- 3.1 The main considerations in the determination of this application are the principle of the development, design and impact on the streetscene, impact on residential amenity of neighbouring residents, the standard of accommodation for future occupiers, and traffic and highways issues.

## 4 Appraisal

### Principle of Development

**National Planning Policy Framework (NPPF), Policies KP1, KP2, CP3, CP4, CP6 and CP8 of the Southend-on-Sea Core Strategy (2007), Policies DM1, DM2, DM3, DM7, DM8 and DM15 of the Southend-on-Sea Development Management Document (2015), and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.1 The NPPF states at paragraph 14 that it presumes in favour of sustainable development. Sustainable development is defined at paragraph 7 of the NPPF in economic, social and environmental terms.
- 4.2 At paragraph 17 the NPPF seeks to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value
- 4.3 Policy KP1 of the Core Strategy seeks sustainable development. Policy KP2 requires that new development contributes to economic, social, physical and environmental regeneration in a sustainable way through securing improvements to the urban environment through quality design, and respecting the character and scale of the existing neighbourhood.
- 4.4 Policy CP4 requires that new development be of appropriate design and have a satisfactory relationship with surrounding development. Policy CP8 requires that development proposals contribute to local housing needs, and states the expectation that 80% of residential development should be provided on previously developed land.
- 4.5 Policy DM1 seeks design quality that adds to the overall quality of an area and respects the character of a site and its local context. Policy DM3 seeks to support development that is well designed and that seeks to optimise the use of land in a sustainable manner that responds positively to local context and does not lead to over-intensification.
- 4.6 Through Policy DM8 the Council seeks appropriate flexibility and dimensions within the internal accommodation to meet the changing needs of residents. Policy DM15 states that development will be allowed where there is, or it can be demonstrated, that there will be, physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner. The Design and Townscape Guide seeks to promote a high quality of design in new developments.
- 4.7 As part of its Strategic Housing Land Availability Assessment (SHLAA) update, the Council has published information on its potential housing supply (5 year supply of housing plus an additional 5% buffer as required by the NPPF). This demonstrates that the Council has a 6 year housing land supply against its adopted targets and therefore meets the requirements of the NPPF in terms of housing delivery. Thus the authority is able to meet its housing needs targets without recourse to allowing development which would otherwise be unacceptable in light of development plan policies.

- 4.8 The principle of residential development at this site was found acceptable in application 08/00974/FUL, and no objection was raised to the principle of residential development at this site in application 15/00764/FUL or the subsequent appeal decision. There have been no significant policy changes affecting the site or the development since 2015, and these decisions are material considerations carrying significant weight.
- 4.9 The site is sustainably located, on previously developed land suitably integrated to the surrounding town and wider connections. The development would contribute to housing supply. The position and orientation of the building is suitably consistent with the prevailing urban grain, and the broad principle of residential development in this case is acceptable.

#### **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)**

- 4.10 The National Planning Policy Framework requires new development to respond positively to its surroundings. Paragraph 64 of the NPPF states that “permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”
- 4.11 Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 and the Design and Townscape Guide advocate the need for any new development to respect the character of the area and to complement local character.
- 4.12 Policy DM3 goes on to state that “All development on land that constitutes backland and infill development will be considered on a site-by-site basis. Development within these locations will be resisted where the proposals:
- (i) Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents; or
  - (ii) Conflict with the character and grain of the local area; or
  - (iii) Result in unusable garden space for the existing and proposed dwellings in line with Policy DM8.
- 4.13 It is considered that the planning history of this site is relevant to the determination of this application and carries significant weight. The built form is largely the same as that which has previously been found acceptable at the site and policies and site circumstances have not changed to an extent since the most recent decision that would justify a different approach being taken with respect to the scale or overall form of development. It is considered that the development does not conflict with the character and grain of the area with regard to the pattern of spaces and buildings.
- 4.14 In this case it is considered that the proposed works and alterations would not materially change the visual impact of the building within the street scene and wider area. The works to the elevations would be appropriate in seeking that the building functions appropriately within its context, i.e. in seeking to provide car parking as an undercroft.

- 4.15 The effect of this development with regard to car parking availability and the amount of useable amenity space, for occupiers of the development and of Ambleside Court, is considered further below. However the quantum of outdoor space providing a setting for the building would be unchanged from the earlier approval in application 08/00974/FUL and this carries a degree of weight.
- 4.16 Although much of the space would be taken up by hardstanding for car parking, scope remains for soft landscaping and to this end the applicant has supplied a landscaping scheme. Proposed tree planting and use of permeable paving with grid-reinforced grass would assist with softening the space to an extent.
- 4.17 It is considered that conditions can be attached to any planning permission to address boundary enclosures and to require that the landscaping and the abovementioned alterations to the building take place.
- 4.18 The proposed bin / waste storage arrangements have been indicated as an upward enlargement of the existing bin store, due to the site constraints. No details have been submitted in relation to the appearance of the resulting structure. However, the existing bins store is an appropriate design and scale, assuming the scale of a substantial front wall approximately 1.5m in height adjacent the access road.
- 4.19 It is considered that the envisaged upward extension of the bin store would be likely to form an unduly dominant feature and is considered likely to be harmful to the appearance of the site and street scene. There appears little scope for relocation of the proposed bin store given the car parking constraints noted below. While refuse and recycling facilities could be conditioned theoretically, this is considered a negative aspect of the proposals, indicating an overdevelopment of the site and compounding the issues identified in other regards such as amenity space and parking provision.

#### **Impact on Neighbouring Occupiers**

**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)**

- 4.20 Paragraph 17 of the National Planning Policy Framework seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 4.21 Policy KP2 of the Core Strategy seeks to secure improvements to the urban environment through quality design. Policy CP4 seeks to maintain and enhance the amenities, appeal and character of residential areas.
- 4.22 Policies DM1 and DM3 of the Development Management Document seek to support sustainable development which is appropriate in its setting, and that protects the amenity of the site, immediate neighbours, and surrounding area, having regard to matters including privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”.

- 4.23 The Design and Townscape Guide also states that “the Borough Council is committed to good design and will seek to create attractive, high-quality living environments” and that “extensions must respect the amenity of neighbouring buildings and ensure not to adversely affect light, outlook or privacy of the habitable rooms in adjacent properties”.
- 4.24 As set out above, the scale and form of the proposed building has previously been found acceptable at this site and the overall dimensions of the building have been found to have an acceptable physical impact on the amenities of occupiers at Ambleside Court. No objection was raised to the previous application on those grounds by either the Local Planning Authority or the Planning Inspectorate. This carries significant weight in determining the application.
- 4.25 The building is situated to the north of Ambleside Court, and as such causes no materially-significant shadowing to the flats within. It would continue to be no taller or deeper than the previous proposals and would have no additional material impact on daylight or outlook of occupiers at Ambleside Court. It would include no additional windows on the south elevation, or balconies allowing sideways views. As such it is considered that the physical impact of the building as proposed would not be materially harmful to residential amenities at Ambleside Court, having regard to daylight, shadowing, outlook or privacy.
- 4.26 The development would lead to comings and goings at the rear of Ambleside Court. These would not be of greater significance than the earlier approved scheme and are considered unlikely to cause a material disamenity.
- 4.27 No other properties would be materially affected by the proposed development, given its position relative to surrounding streets and buildings.
- 4.28 It is considered that the physical impacts of the built form would not be materially different to those which have previously been found to be acceptable. Notwithstanding this, the development is found to be acceptable and policy compliant in the above specific regards. Other matters relating to the impacts of the proposed development on occupiers of Ambleside Court, which arise by virtue of the shared curtilage, are considered in the following sections. These relate to: quantity and quality of amenity space, and effects of car parking quantity and layout.

#### **Living Conditions for Future Occupiers**

**National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1, DM7 and DM8 of the Southend-on-Sea Development Management Document (2015), The National Technical Housing Standards DCLG 2015 and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.29 One of the core planning principles of the NPPF is that the planning system should “*always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings*”.
- 4.30 Policy DM1 of the Development Management Document requires that developments provide an internal and external layout that takes account of all potential users.

- 4.31 Policy DM8 states that the internal environment of all new dwellings must be high quality and flexible to meet the changing needs of residents.
- 4.32 Further to this, from the 1<sup>st</sup> October 2015 the National Housing Standards have been adopted and state that 39sqm internal floorspace per one-bedroom dwelling (1 bed space) and 50sqm internal floorspace per one-bedroom dwelling (2 bed spaces) are required.
- 4.33 The proposed floor areas of the first floor flats (one-bed, one-person) would be 37.5sqm each and incorporate a bathroom. In this case 39sqm is required under the National Housing Standards, although this may be reduced to 37sqm where there is a shower-room only rather than a bathroom. The proposed bedrooms would individually exceed the minimum dimension requirements under the National Housing Standards. The small GIA is considered a negative aspect of the proposals.
- 4.34 The second floor flat would be 47.5sqm in GIA, with a 16sqm bedroom indicated as a double and meeting the size requirement for a double or twin bedroom. The submitted plan shows the available space within this room as 11.4sqm however this appears to be in error. As a one-bed, two-person flat its GIA would fall short of the above standards. The proposed bedroom would exceed the minimum dimension requirements under the National Housing Standards. This is a negative aspect of the scheme.
- 4.35 Policy DM8 of the Development Management Document also states that all new dwellings must make provision for useable private outdoor amenity space for the enjoyment of intended occupiers; for flatted schemes this can take the form of a balcony or semi-private communal amenity space.
- 4.36 The Design and Townscape Guide also states at Paragraph 144 that communal amenity space should be useable, reasonably private and well-landscaped.
- 4.37 The submitted plans show that the site would incorporate 103sqm of communal outdoor amenity space, shared with Ambleside Court. This would equate to approximately 7.3sqm per flat, including those at Ambleside Court. However this figure would be likely reduced further by the provision of adequate refuse and recycling facilities.
- 4.38 The comparable amenity space on the earlier grant of planning permission in application 08/00974/FUL was an area of 90sqm. This was to serve the four new one-bed flats together with the formerly existing eight two-bed flats within Ambleside Court. As such it equated to approximately 7.5sqm per flat.
- 4.39 The comparable amenity space on the earlier grant of planning permission in application 11/00337/FUL was an area of 210sqm. This was to serve eleven flats (the formerly existing eight two-bed flats and three new studio flats) within Ambleside Court, and equated to approximately 19sqm per flat.
- 4.40 The comparable amenity space on the earlier proposal in application 15/00764/FUL was an area of 89sqm. This was to serve the five new one-bed flats in the subject building together with the existing eleven flats within Ambleside Court. As such it equated to approximately 5.5sqm per flat.

- 4.41 The presence of balconies to many of the existing flats at Ambleside Court, and the small size of the proposed flats leading them likely not into family accommodation, is accounted for. However having regard to the prevailing suburban character of the surroundings and the density of development proposed on the site, it is considered that the quantum of useable amenity space is notably small.
- 4.42 Since the grant of planning permission under 08/00974/FUL, development plan policies and guidance have sought useable private amenity space of an appropriate quality. Concerns were raised in the earlier appeal decision following refusal of application 15/00764/FUL over the quality of amenity space in the location proposed, sited between two buildings, one to the south, and adjacent a car park. The applicant has now shown soft landscaping proposals. The space is shaded from the south but would receive some direct light earlier and later in the day.
- 4.43 It is considered that the proposed outdoor amenity space would feel oppressive and lacking privacy given its proximity to the car parking area and situation immediately in front of the rear windows of Ambleside Court. Combined with its small size (equating approximately to 7.3sqm per flat) and its position, relating poorly to the proposed flats, it is considered that the outdoor amenity space would be inadequate for occupiers of all flats including the existing flats at Ambleside Court. In this respect the proposal has not overcome the reasons for refusal on appeal, further to application 15/00764/FUL, and is contrary to the objectives of Policies DM1, DM3 and DM8, and the supplementary planning guidance which seek a high quality of useable outdoor amenity space. This combined with the shortfall in the size of the second floor flat is considered to be a significant concern in terms of future occupiers' amenities.
- 4.44 Given the quantum and quality of proposed parking (proposing eleven spaces for fourteen flats) it is considered that the amenity space would also be at risk of use for ad hoc car parking or manoeuvring by visitors or residents. A grant of planning permission could be subject to a condition requiring the amenity space to be fenced off to prevent ad hoc car parking on the amenity space. This however would indicate that there are clear pressures on the site and that the proposal may be over-development.
- 4.45 Occupiers of the proposed flats would have an outlook across the car park only; this would be softened to a degree by border planting including trees, however it is considered that the effect would be a low quality environment dominated by car parking. The use of grid-reinforced grass and permeable surfacing may reduce the likely negative effects of extensive hardstanding (eg through heat reflection and stark appearance) but this would not be sufficient to provide a high standard of outlook.
- 4.46 The proposed car parking arrangements would dominate the site. Cars would manoeuvre in front of and below the proposed flats in order to leave the site in a forward gear; the highways engineer has noted concerns relating to the useability of the car parking arrangements especially with regard to manoeuvring space. This would lead to additional noise and air pollution in close proximity to the sole outlook of the proposed dwellings.



- 4.47 Policy DM8 of the Development Management Document states that all new dwellings should meet the Lifetime Homes Standards, which from the 1<sup>st</sup> of October 2015 have been substituted by Building Regulation M4 (2).
- 4.48 Part M4(2) of the Building Regulations adopted by the National Technical Housing Standards 1st October 2015 requires accessible and adaptable dwellings. Given the limitations of the proposal, introducing undercroft parking, it appears that compliance with Building Regulation M4 (2) may not be practical and therefore may not be a bar to a grant of planning permission in this instance. However this is a further indication that the proposal represents an overdevelopment of the site, resulting in a poor quality living environment which is not capable of fully meeting the requirements of the development plan policies.
- 4.49 The proposal would also reintroduce a car parking space to the front of the unit at Ambleside Court which is closest to the access road. The developer has not to date formed a space at this location further to approval of 11/00337/FUL, in which it would be marked 'disabled parking' on the approved plan. The site is occupied by an access ramp. The applicant has confirmed that the ramp leads to a stairwell only, and that disabled parking would be provided elsewhere within the site.
- 4.50 As stated above the proposed plan and additional details supplied by the applicant refer to increasing the size of the existing bin store at the front of the building to accommodate waste from the proposed three flats. However as noted above it is not clear the expansion of the bin store would be practical or visually acceptable.
- 4.51 There are no obvious opportunities elsewhere within the site, and further to the concerns raised in the appeal decision it seems likely that bin storage would take place at the amenity space, further reducing its size and quality.
- 4.52 Taking the above factors together, it is found that the development would be unacceptable and contrary to the objectives of the NPPF and development policies in terms of future occupiers' amenities.

#### **Traffic and Transport Issues**

#### **National Planning Policy Framework, Policies KP2 and CP3 of the Southend-on-Sea Core Strategy (2007), Policy DM15 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.53 Policy DM15 of the Development Management Document requires that all development should meet the minimum off-street parking standards and as such, one parking space would be required for each dwelling in the proposed development. This would combine the Ambleside Court (11 flats) and the modified building for which planning permission is now sought (3 flats) with a total off-street 'standard' parking requirement of 14 spaces.
- 4.54 The development proposes 11 off-street car parking spaces for 14 flats. The applicant has supplied a parking survey together with census data in seeking to demonstrate that:
- there is very little parking stress caused by residents, and the parking profile of commuters is such that there would be sufficient on-street parking, for any

residents of the 'car free' part of the scheme who do require a car, in the evenings and overnight; and

- future occupiers of the development would be less likely to require a car in the first instance given the character of the development and its location near Southend East station together with typical car ownership levels in the area.

- 4.55 The site is situated close to Southend East station, and the surrounding streets appear to be subject to high levels of commuter parking. The area is densely built-up.
- 4.56 The Inspector's report further to the appeal against refusal of application 15/00764/FUL noted that the supplied short-term survey data was not persuasive as to whether the locality was free of 'severe parking stress', as found by the Council's highway engineer at that time and reiterated in the consultation comments below.
- 4.57 The applicant's survey shows that there are times when parking stress is less but also that there are times of high demand, and the temporal limitations of the submitted survey are noted. It is considered that the streets around the site are subject to considerable parking stress in particular as a result of commuter parking combined with residents parking.
- 4.58 It is acknowledged that, as found by the Inspector, the site is a relatively sustainable location given its proximity to the rail station. However a shortfall of three spaces is considered at this location unlikely to be wholly taken up by other modes of transport.
- 4.59 It is considered likely that the proposed shortfall in off-street parking would lead to situations where occupiers would at times be forced to search for spaces in the locality, given that it is subject to a considerable degree of parking stress.
- 4.60 Furthermore the Council's highway engineer has identified concerns that the proposed layout of the parking arrangements are restrictive to effective manoeuvring and the parking of vehicles, and this inadequacy would render the proposed off-street parking less than adequate for its stated purpose and lead to a shortfall by a further space (creating a shortfall of 4 spaces in total) as one space is not independently accessible.
- 4.61 A consequence of this would be a disamenity to occupiers of the development and surrounding occupiers of additional vehicle movements. A further consequence of this would be to increase the likelihood of inconsiderate parking near to or on the site, resulting in disamenity and safety impacts.
- 4.62 Given the potential severity of these impacts, by virtue of their nature, it is considered overly simplistic and insufficient to justify the parking shortfall on the basis of a short-term survey combined with an assumption that occupiers who do require on-street parking as a result of the shortfall on-site would only do this at alternate times of the day to commuters.

- 4.63 It is considered that the proposed car parking arrangements would harm highway safety and cause a disamenity to future occupiers and to nearby residents as a result of on-street parking searches and consequent inconsiderate parking. This would be worsened by the inadequacy of the proposed parking layout. This would be unacceptable and contrary to the relevant development plan policies. The provision of cycle parking as shown and the proximity to the rail station are not considered sufficient to overcome these concerns.

## **Sustainability**

### **National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policy DM2 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.64 Policy KP2 of the Core Strategy requires that 10% of the energy needs of a new development should come from on-site renewable resources, and also promotes the minimisation of consumption of resources. No details have been submitted to demonstrate this proposal would provide 10% of the energy needs; however it is considered this could be required by condition if permission was to be granted.
- 4.65 Policy DM2 of the Development Management Document part (iv) requires water efficient design measures that limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption). Such measures will include the use of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting.
- 4.66 A condition could be attached to any planning permission, requiring energy efficient design measures, water efficient design measures and permeable surfacing, for example. The proposals are considered acceptable with reference to these matters.

### **Community Infrastructure Levy CIL Charging Schedule 2015**

- 4.67 This application is CIL liable. If the application had been recommended for approval, a CIL charge would have been payable. If an appeal is lodged and allowed the development will be CIL liable. Any revised application would also be CIL liable.

## **Conclusion**

- 4.68 Having taking all material planning considerations into account, it is found that the principle of residential development would be acceptable at this location. The design of the development would maintain the character and appearance of the building and the visual amenities of the wider surroundings. The direct physical impacts of the building on neighbouring occupiers would not be materially harmful with respect to privacy, light and outlook. The development would provide inadequate space internally and externally for the purposes of future occupiers, and for Ambleside Court. Together with a poor outlook for future occupiers of the proposed flats, in close proximity to car parking of restricted layout, it is considered that this would lead to a poor quality living environment.

The development would include insufficient car parking for the use of future and existing occupiers and this would lead to a disamenity to occupiers and nearby residents, and would be detrimental to highway safety. It is considered that the proposal has failed to overcome the earlier reasons for refusal, and these concerns are not outweighed by the generally sustainable location of the development.

## **5 Planning Policy Summary**

- 5.1 National Planning Policy Framework (2012)
- 5.2 The Southend-on-Sea Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles) CP3 (Transport and Accessibility) CP4 (Environment & Urban Renaissance) CP8 (Dwelling Provision)
- 5.3 The Southend-on-Sea Development Management Document (2015): Policies DM1 (Design Quality) DM2 (Low Carbon Development and Efficient Use of Resources) DM3 (The Efficient and Effective Use of Land) DM8 (Residential Standards) DM15 (Sustainable Transport Management)
- 5.4 Supplementary Planning Document 1: The Southend-on-Sea Design & Townscape Guide (2009)
- 5.5 CIL Charging Schedule 2015
- 5.6 National Housing Standards 2015

## **6 Representation Summary**

### **Highways**

- 6.1 There is a highway objection to this proposal. Concern is raised regarding the proposed parking layout which appears very tight and restricts vehicles manoeuvring effectively within the parking area. The single parking space to the east as you enter the parking area via the undercroft is especially tight. The applicant will need to provide vehicle tracking to demonstrate that vehicles can manoeuvre within the parking area.

Failure to provide adequate and useable parking spaces for the development could have a detrimental impact on parking within the local area which suffers from considerable parking stress.

### **Public Consultation**

- 6.2 A site notice was displayed and 87 neighbours were notified of the application. No objections have been received.

## **7 Relevant Planning History**

- 7.1 16/01822/FUL: Erect three-storey block comprising of four self-contained flats with balconies to first floor rear elevation, rooflights to front, erect boundary fence, refuse store and form sixteen parking spaces (Retrospective - Amended Proposal). Pending consideration.

- 7.2 15/00764/FUL: Erect three-storey block comprising of five self-contained flats with balconies to first floor front elevation, lay out parking spaces, refuse and recycling store (retrospective). Refused; appeal dismissed.
- 7.3 11/00337/FUL: Create 3 self-contained flats within roof space and alter front and rear elevations at Ambleside Court. Approved.
- 7.4 08/00974/FUL: Erect two-storey block comprising four flats, lay out parking spaces, refuse and recycling store (Amended Proposal). Approved.
- 7.5 02/01085/OUT: Erect three storey block of flats, lay out parking and form vehicular access onto Ambleside Drive. Approved.

## **8 Recommendation**

### **REFUSE PLANNING PERMISSION for the following reasons:**

- 1 The existing and in particular the proposed dwellings would not benefit from a suitable quantity and quality of outdoor space for the reasonable use and enjoyment of the occupiers, and the proposed second floor dwelling would not provide a sufficiently high standard of internal environment having regard to its quantity of internal floorspace. This would create a poor living environment for future occupiers of the development. This is 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 DM8 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).
- 2 The proposed development would by reason of a contrived parking layout, and insufficient off-street parking spaces, result in additional on street parking in an area with limited on-street parking availability to the detriment of amenity, highway safety and the local highway network. This is unacceptable and contrary to the National Planning Policy Framework, Policies KP2, CP3 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM3 and DM15 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

**The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action.**

## **9 Informative**

**Please note that this application would be liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended) if planning permission had been granted. Therefore if an appeal is lodged and subsequently allowed, the CIL liability will be applied. Any revised application might also be CIL liable.**