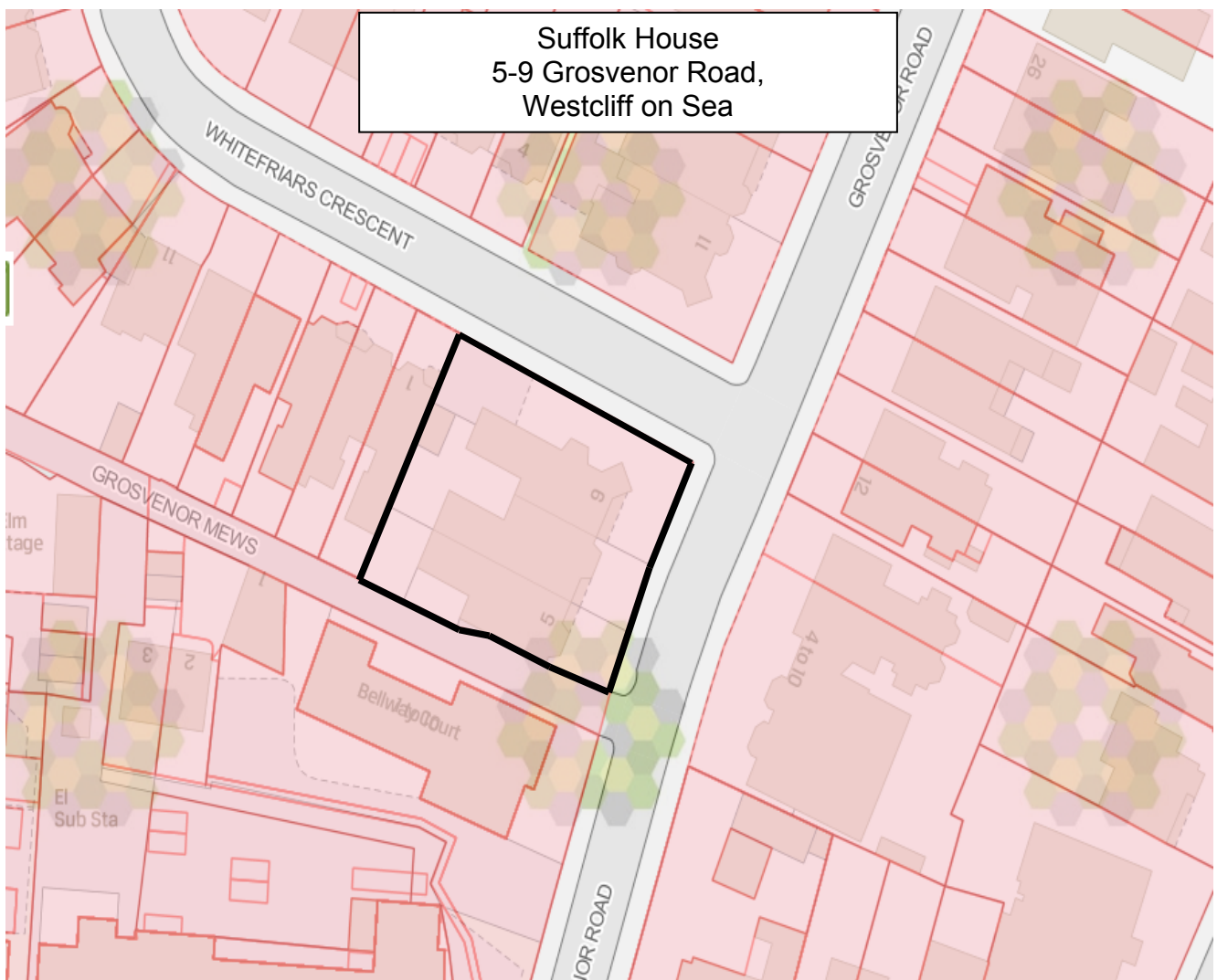


Reference:	15/00160/UCOU_B
Ward:	Chalkwell
Breaches of Control	Without planning permission, the unauthorised Change of Use from a care home (Use Class C2) to 21 self-contained flats (Use Class C3)
Address:	Suffolk House, 5-9 Grosvenor Road, Westcliff on Sea, Essex. SS0 8EP
Case Opened:	19 th June 2015
Case Officer:	Steve Jones
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The subject property is an existing three storey detached building at the junction of Grosvenor Road and Whitefriars Crescent which also has a side frontage to Grosvenor Mews. The building appears to have originally been constructed as a terrace of houses but has subsequently been converted over time. The front part of the building is two storeys in form with additional rooms in the roofspace and has three storey gable bay projections to the front. A large box dormer and a third storey flat roofed dormer projection exist at the rear together with a variety of two and single storey projections.
- 1.2 Four on-site parking spaces are accessed from Whitefriars Crescent and a fifth parking space is accessed from Grosvenor Mews.
- 1.3 The character of the area is largely residential and comprises mainly of two and three storey high built form.
- 1.4 The site is not the subject of any site specific policy designations.

2 Lawful Planning Use

- 2.1 In 1991 the building, known as Suffolk House, and previously Cecil House, was granted planning permission to operate as a care home which falls within Use Class C2 of the Schedule to the Town and Country Planning Use Classes Order 1987 (Planning Reference 91/0731).

3 Present Position

- 3.1 On 19th June 2015 a complaint was received that the property, which was operating as a care home, was undergoing 'conversion', allegedly into flats.
- 3.2 On 19th June 2015 Enforcement staff received information from the Council Tax Service stating that the building was listed as containing 14 flats.
- 3.3 On 23rd June 2015 Enforcement staff wrote to the complainant following a site visit stating the property was undergoing major renovation works although access to the building had not been gained.
- 3.4 On 8th July 2015 Enforcement staff conducted a check of Land Registry records which showed the Title Absolute to be registered to 'Serenity Limited' of 9 Grosvenor Road, Westcliff on Sea, SS0 8EP.
- 3.5 In July 2015 a brochure from an agent's website was advertising an 'open house' on 19th July 2015 for 21 new apartments at this location.
- 3.6 In July and August 2015 Enforcement staff wrote to the property owners advising on the right to submit a retrospective planning application to seek to regularise the 21 self-contained flats.

- 3.7 On 7th October 2015 Enforcement staff wrote to Runwood Homes Ltd as enquiries revealed they had an interest in the property. Runwood Homes were informed that the registered owners had been written to twice and no response had been received. Runwood Homes were advised of the right to submit a retrospective planning application for the unauthorised flats.
- 3.8 On 12th October 2015 Enforcement staff received an email from an agent acting on behalf of Runwood Homes stating the site comprised of 21 flats when they purchased the property in March 2015 and that it was this number of flats that were refurbished by them.
- 3.9 On 26th October 2015 Enforcement staff received information from the Valuation Office who stated that their records indicated 12 flats in 1998 but in June 2015 following correspondence from Southend Council Tax service that this was increased to 21 units of accommodation.
- 3.10 On 10th November 2015 Enforcement staff emailed the property owner's agent advising that the increase in units appeared to have taken place within the last 4 years. They were advised that they should submit a retrospective planning application or an application for a Certificate of Lawful Development if the increase in units took place over 4 years ago.
- 3.11 On 16th November 2015 Enforcement staff received an email from the property owner's agent advising it was their intention to submit an application for a Certificate of Lawful Development.
- 3.12 On 24th May 2016 the agent for the property owners emailed Enforcement staff apologising for the delay and explained the difficulty they were having obtaining sufficient information for the Certificate of Lawful Development. This, in the main, related to tracing the previous owner.
- 3.13 On 3rd June 2016 Enforcement staff received a letter signed by 10 persons stating that the conversion of the property into 21 flats took place in the first half of 2015 by the new owner. This involved the conversion of the care home kitchen, communal lounge and office.
- 3.14 On 14th June 2016 Enforcement staff received an email from the property owner's agent advising that an application for a Certificate of Lawful Development would be submitted the following week.
- 3.15 On 30th August 2016 an application for a Certificate of Lawful Development was received but found to be invalid for a number of reasons. This application was subsequently validated (Reference 16/01588/CLE).
- 3.16 On 30th September 2016 Enforcement staff made enquires with the Integrated Commissioning Contracts Officer within Southend Council to establish when the property subject of this report stopped operating as a care home.
- 3.17 On 30th September 2016 Enforcement staff were informed that the company tasked with running the supported accommodation (Metropolitan Housing Trust) were contractually required to decant Cecil House in the first 2 years of the contract. And that this was achieved in September 2014.

- 3.18 On 2nd December 2016 the application for a Certificate of Lawful Development was refused for the following reason; *'The evidence available is considered to be insufficient to demonstrate, on the balance of probabilities, that the use of Suffolk House, 5-9 Grosvenor Road, Westcliff-on-Sea, Essex, as either fourteen, seventeen or twenty one self-contained flats (within use class C3) benefits from planning permission or has existed continuously for a period of not less than ten Years.'*
- 3.19 On 27th April 2017 Planning Officers wrote to the property owner's planning agent requesting an update and advising that consideration was being given to the expediency of enforcement action.
- 3.20 On 27th April 2017 Planning Officers received an email from the property owner's planning agent advising they were having difficulty obtaining evidence about the use of these premises from the previous owner.
- 3.21 On 25th May 2017 Enforcement staff received an email from the property owner's planning agent advising they were seeking additional evidence to support their claim that the property was being used as self-contained flats.
- 3.22 On 22nd August 2017 Enforcement staff emailed the property owner's planning agent advising that due to the lack of a fresh application for a Certificate of Lawful Development or a planning application that formal enforcement action would likely follow and requesting an urgent update.
- 3.23 On 22nd August 2017 Enforcement staff received an email from the property owner's planning agent advising that they had obtained additional evidence for the submission of a fresh application for a Certificate of Lawful Development and that Runwood Homes should be able to provide an update in respect of timing for the application.
- 3.24 On 11th October 2017 Enforcement staff emailed Runwood homes requesting an update on timescales for the submission of an application for a Certificate of Lawful Development.
- 3.25 On 20th October 2017 Enforcement staff received an email from the planning agent stating an application for a Certificate of Lawful Development would be submitted within the next 28 days.
- 3.26 On 19th December 2017 an application for a Certificate of Lawful Development was received to 'Use the property as 14 self-contained flats' (Reference 17/02224/CLE)
- 3.27 On 26th June 2018 the above application was refused for the following reason:
- The evidence available is considered to be insufficient to demonstrate, on the balance of probabilities, that the use of Suffolk House, 5-9 Grosvenor Road, Westcliff-on-Sea, Essex, as fourteen, self-contained flats (within use class C3) benefits from planning permission or has existed continuously for a period of not less than four years, as required under section 191 of the Town and Country Planning Act (1990) as amended. The certificate is therefore found to be unlawful.*

4 Policy Background and Appraisal

4.1 The key parts of the planning history for the site (set out more fully in Section 6 of this report) are set out below.

- Planning permissions granted in 1982 and 1983 allowed the change of use of five residential properties to a care home for elderly people.
- In 1990 the building was adapted to form 16 self-contained units. These appear to have been used as sheltered housing, but with a greater level of care than normal sheltered housing.
- In 1991 planning permission was granted for the use of the building as a care home but also to allow the building to be occupied by other people of mixed abilities.
- The documentation available indicates that the building was used by persons living under the Supporting People programme between 2003-2014. Cecil House provided housing related support to people with learning difficulties under a Supporting People contract with Genesis Housing Association (who superseded Springboard) until 30th September 2013. The contract was put out to tender during 2013 and was awarded to Metropolitan Housing Trust and commenced on 1st October 2013. Up to 2014, the building was occupied by tenants of Springboard Housing Association.
- The building returned to the trust that owned it in October 2014 and was purchased by the current owner in June 2015.
- The building was refurbished in 2015 to enable the occupation of the building as 21 self-contained flats.
- In 2015, the Council received a complaint alleging a breach of control at the site described as the unauthorised change of use to flats.
- In December 2016 the Council refused to grant the Certificate of Lawful Use for the application (Ref 16/01588/LDE) described as 'Use as fourteen, seventeen or twenty-one self-contained flats (Lawful Development Certificate - Existing).
- In June 2018 the Council refused to grant the Certificate of Lawfulness for an application described as "Use as fourteen self-contained flats" (17/02224/CLE).

4.2 Enforcement action should be considered where there is a breach of planning control and it is expedient to take formal action to seek to remedy demonstrable harm.

4.3 The alteration of the building into 21 unauthorised self-contained flats represents a material breach of planning control. The fact that the merits or otherwise of that development has not been formally applied for or assessed through the planning application process means that it has not been possible to formally and/or fully assess the development's compliance or otherwise with a range of national and

local policy objectives and requirements and thereby its impact on its surroundings and the needs of future occupiers. However Staff consider that the development is unlikely to satisfy whether fully or partly the Council's objectives pertaining to the following particular considerations. In each case the relevant policy background is listed.

Standard of Residential Units

National Planning Policy Framework (NPPF) (2018), Policy KP2 and CP4 of the Core Strategy (2007), Development Management Document (2015), Policies DM1, DM3 and DM8 and the Design and Townscape Guide (2009).

4.4 Paragraph 124 of the NPPF states that "*planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings*". It is considered that most weight should be given to the Technical Housing Standards that have been published by the government which are set out as per the below table:

- 4.5
- Minimum property size for a 1 bedroom, 1 person flat is 39 sqm and for a 1 bedroom 2 person flat is 50 sqm.
 - Minimum property size for a 2 bedroom, 3 person flat is 61 sqm and for a 2 bedroom 4 person flat is 70 sqm.
 - Minimum property size for 3 bedroom 4, 5 and 6 person flats are 74sqm, 86sqm and 95sqm respectively.

(The above dimensions increase for two and three storey flats if on more than one level)

- Bedroom Sizes: The minimum floor area for bedrooms to be no less than 7.5m² for a single bedroom with a minimum width of 2.15m and 11 sqm for a double/twin bedroom with a minimum width of 2.75m or 2.55m in the case of a second double/twin bedroom.
- Floor space with a head height of less than 1.5 metres should not be counted in the above calculations unless it is solely used for storage in which case 50% of that floor space shall be counted.
- A minimum ceiling height of 2.3 metres shall be provided for at least 75% of the Gross Internal Area.

4.6 Weight should also be given to the content of Policy DM8 which states the following standards in addition to the national standards.

- Provision of a storage cupboard with a minimum floor area of 1.25m² should be provided for 1-2 person dwellings. A minimum of 0.5m² storage area should be provided for each additional bed space.
- Amenity: Suitable space should be provided for a washing machine and for drying clothes, as well as private outdoor amenity, where feasible and appropriate to the scheme.

- Storage: Suitable, safe cycle storage with convenient access to the street frontage.
- Refuse Facilities: Non-recyclable waste storage facilities should be provided in new residential development and suitable space should be provided for and recycling bins within the home. Refuse stores should be located to limit the nuisance caused by noise and smells and should be provided with a means for cleaning, such as a water supply.

4.7 Working: Provide suitable space which provides occupiers with the opportunity to work from home. This space must be able to accommodate a desk and filing/storage cupboards.

4.8 The Council has not been provided with full floor plans and sizes of the existing arrangement of 21 flats within the building. However based on the plans made available with the unsuccessful Certificate of Lawfulness applications, it is considered that the overall size, bedroom size and adequacy of the layouts' quality, including external amenity space provision, is unlikely to adequately satisfy the Council's policy objectives described above. Accordingly on the balance of probability it is considered that the failure to meet policy objectives for the building's layout is harmful to the amenity of occupiers and so is unacceptable and contrary to policy objectives.

Highways and Transport Issues:

National Planning Policy Framework (NPPF) (2018), Policies KP2, CP3, CP4 and CP8 of the Core Strategy (2007), Development Management Document (2015) Policies DM1, DM3 and DM15 and the Design and Townscape Guide (2009).

4.9 Policy DM15 states that all development should meet the parking standards(including cycle parking) set out in Appendix 6.It further states that residential vehicle parking standards may be applied flexibly where it can be demonstrated that the development is proposed in a sustainable location with frequent and extensive links to public transport and/ or where the rigid application of these standards would have a clear detrimental impact on local character and context.

4.10 Appendix 6 standards require a minimum of one parking space per flat which, here, equates to a required 21 on-site spaces. Only five on site spaces exist. To a limited degree account may be taken of the past uses but given their supported nature those past, authorised uses would have accommodated people with low parking needs. This site is within reasonable walking distance of Westcliff Railway station but the site is not well-served by a number of different bus routes. Whilst some allowance can be made it is not considered that the site's circumstances justify provision of on-site parking at a ratio of less than a quarter of the development's minimum requirements (5 spaces provided against a requirement of 21) when assessed against the relevant parking standard.

- 4.11 This significant degree of shortfall in on-site provision for these unauthorised general needs flats manifests itself in material harm to the highway network through the material increase in on-street parking in the vicinity of the site. The significant under provision of on-site parking is harmful to the reasonable needs of occupiers of the unauthorised flats. This is unacceptable and conflicts with the policies describe above. The significant under provision also causes material harm to the amenity of other road users including neighbours who live in the vicinity. This too is unacceptable and contrary to national and local policy requirements.
- 4.12 In the absence of a planning application satisfactorily identifying how the above issues can be appropriately addressed the conclusion is reached that the continued unauthorised use of the building as 21 self-contained flats is causing demonstrable and unacceptable harm to interests of acknowledged importance.
- 4.13 Significant opportunity has been afforded to the owner to seek to remedy the identified issues including the submission of 2 Certificates of Lawful Development, both of which have been found unlawful. It is therefore considered to be necessary proportionate and expedient for enforcement action to be taken.
- 4.14 If the opinion is taken that the unauthorised development could potentially be made acceptable through an altered proposal, then the service of an Enforcement Notice will not prejudice the owner's ability to submit a planning application for this.
- 4.15 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 cessation of the use of the building as 21 flats.

5 Planning History

1982 and 1983

- 5.1 Planning permission was granted under the terms of application 1023/82 for the 'use of flats as old persons rest home'. A condition was attached to that permission as follows'

'The premises shall be used as an old persons home and for no other purpose, including any other purpose within Class XIV of the Town and Country Planning Use Classes order 1972.'

- 5.2 The reason for the condition was : *Because the premises would not be suitable for other uses within Class X1 V of that Order having regard to their location and the level of parking provision*
- 5.3 A very similar permission was granted under the terms of application 973/83 subject to an almost identical condition. The applicant was Springboard Housing Association.

1991

- 5.4 Planning permission was granted under the terms of application 91/0731 dated 23/10/1991 for a development described as
- 5.5 "Use elderly persons home for additional purposes in connection with the care and rehabilitation of frail elderly people and people of mixed abilities. " The applicant was Springboard Housing Association
- 5.6 Condition 02 of that permission stated that *"The premises shall be used as a residential care home and for the care and rehabilitation of frail elderly people and people of mixed ability and for no other purpose, including any other purpose within Class C2 of the Schedule to the Town and Country Planning Use Classes Order 1987, and in particular shall not be used wholly as a nursing home"*.
- 5.7 The delegated officer report for the 2016 LDC application noted that the submission of the 1991 application stemmed from an enforcement investigation undertaken by the Local Planning Authority and following an invitation to submit an application dated 16/05/91. The 2016 report further stated that the Council's records included a letter from the Chief Environmental Health Officer dated 14/02/91 which included the following extracts.
- 5.8 *"The premises to this date has been known to this Department as an elderly persons residential home. It has come to our attention that the organisation has recently cancelled its registration under the Registered Homes Act 1984. Minor internal alterations have been made to create 16 lettings for individual tenants. "*
- 5.9 *"The majority of the flats have bathrooms and limited cooking facilities behind their own entrance door Two lettings on the ground floor and three lettings on the first floor share sanitary accommodation and the latter rooms also share a kitchen. However, a limited degree of care does still exist with a permanent member of staff on duty both day and night and a meal is served in the communal dining room once a day. "*
- 5.10 "Since it is our opinion that the property would be classified as a House in Multiple Occupation I will be grateful if you could clarify the planning position prior to any further action. "
- 5.11 The 2016 report continued by noting that correspondence between the Director of Development (08/03/91) and the Borough Solicitor (23/04/91) appears to have assessed the use and it is noted that the Borough Solicitor assessed whether the use should be considered as a nursing home, hostel or sheltered flats In summary it was stated that - *"On balance I agree with your conclusion that the current use of the property is as self-contained sheltered flats. Whilst it is the case that the occupants of the flats are given greater support than in many sheltered schemes, it does appear that each flat is occupied as a separate household "*
- 5.12 The 2016 report indicated that this then led to the abovementioned application. The report stated that it was relevant to note that the applicant sought permission for the "change of use from an elderly persons residential home to self-contained residential flats"(as advised by the Local Planning Authority). However a letter from Springboard dated 29/08/91 stated-

- 5.13 *“We confirm that the project is being used for people who are frail, have learning difficulties and have some psychological problems. Because of the support that the people need, we provide the main meal for them at lunch time and also provide the food for them to make their own breakfast and tea if they want to do this. We also provide a partial laundry service and assist some with the whole of their laundry. We give social and physical support, depending on the need, to all the residents.*

We trust this will assist you in assessing how the building is used and the rooms are not being used in a completely self-contained way ”

- 5.14 The 2016 report stated that following the receipt of this letter it was clear that the application was assessed as a care home with associated ancillary uses and the description of development and the abovementioned condition made clear that the building was to be used as a care home with associated additional uses.

2015 and 2016

- 5.15 In August 2016, the owners of the site submitted an application for a Lawful Development Certificate for a proposal described on the application form as “Apartment Building with at least 17 self-contained established dwelling units” During the course of the application, submissions from the applicant were reviewed and research was undertaken into the planning history of the site as well as records held by other Council departments. Emails were exchanged between both parties and subsequently the applicant amended the application description to “Apartment Building with at least 14 self-contained established dwelling units” and the LPA formally revised this description to “Use as fourteen self-contained flats (Lawful Development Certificate - Existing)”. That application was refused in December 2016 Following the refusal of this application, the Planning Enforcement Team contacted the appellant during the course of 2017 confirming that its investigation into the alleged breach of control was still live and that it would have to consider taking formal enforcement action given the amount time that had elapsed since the initial allegation was received.

6 Planning Policy Summary

6.1 National Planning Policy Framework (NPPF) 2018

Core Strategy (2007) Policies KP1, KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (The Environment and Urban Renaissance) and CP8 (Dwelling Provision)

Development Management Document (2015) Policies DM1(Design Quality), DM3 (Efficient Use of Land), DM8 (Residential Standards) and DM15 (Sustainable Transport and Parking)

Design and Townscape Guide (2009)

7 Recommendation

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure cessation of the unauthorised use of the building as 21 self-contained flats
- 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, a compliance period of 6 months is deemed reasonable.