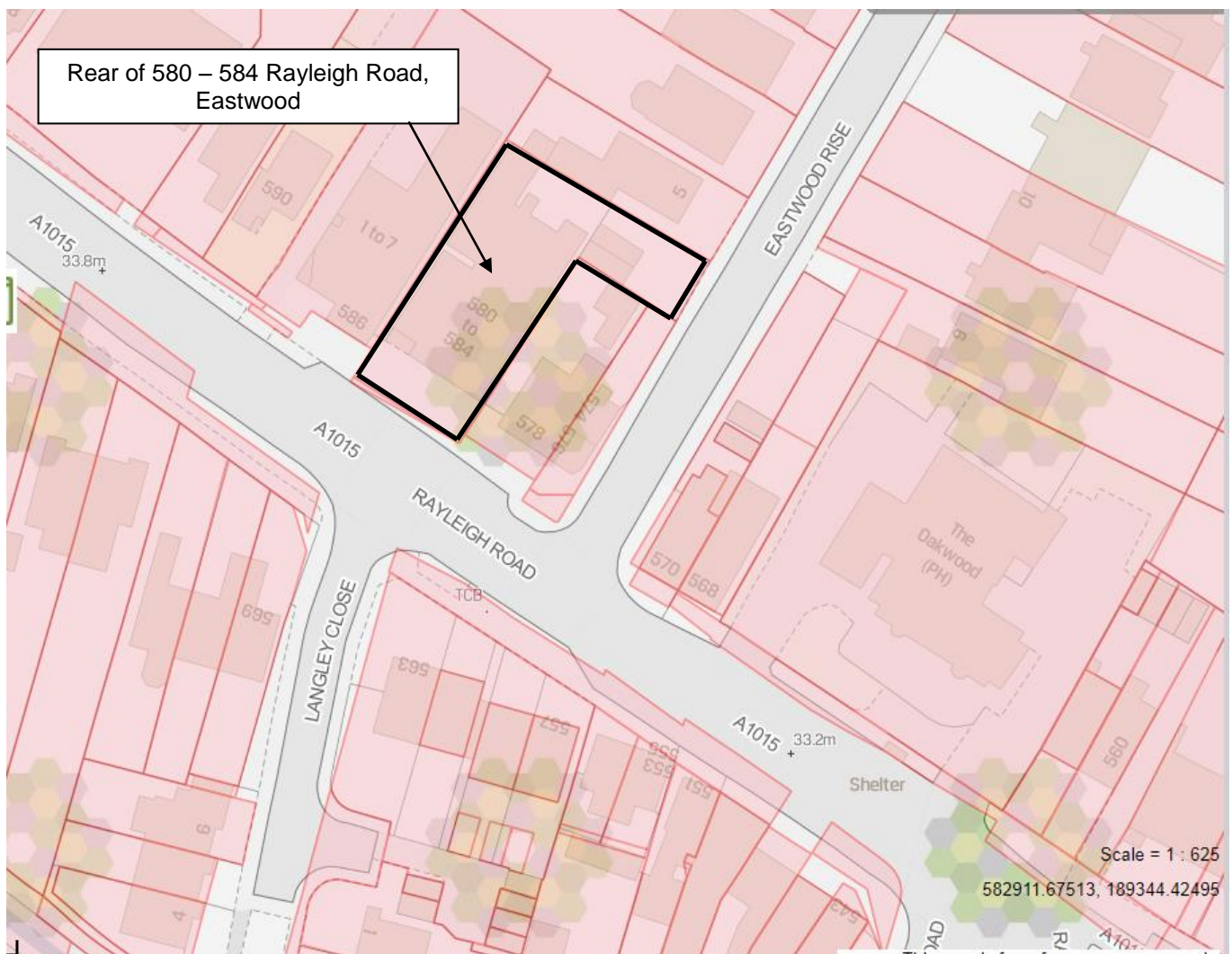


<b>Reference:</b>	18/00232/UCOU_B	
<b>Ward:</b>	Eastwood Park	
<b>Breach of Control</b>	Without planning permission the Unauthorised Change of Use from A1 retail to Car sales (Sui Generis)	
<b>Address:</b>	Land to rear of 580 - 584 Rayleigh Road, Eastwood, Essex. SS9 5HU	
<b>Case Opened:</b>	24 <sup>th</sup> July 2017	
<b>Case Officer:</b>	Steve Jones	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site and Surroundings**

- 1.1 The site is 'L' shaped. The main building is located on the north side of Rayleigh Road a short distance west of the junction with Eastwood Rise. The building consists of a retail unit to the ground floor (Class Use A1) with residential flats above (Class Use C3) and is identified on Land Registry records as 580, 582 and 584 Rayleigh Road. At the rear of the site is a double garage and large hardstanding/forecourt area and ancillary outbuildings accessed via Eastwood Rise. It is understood that this affords delivery access to the rear of the retail unit in Rayleigh Road. It is the site to the rear that is subject of this report.
- 1.2 Immediately south of the site access in Eastwood Rise is a barbers shop which faces onto Rayleigh Road and to the north is a residential bungalow. Eastwood Rise features a variety of house types but the immediate area predominantly consists of residential bungalows and chalets.
- 1.3 The site is not the subject of any site specific policy designations.

## **2 Lawful Planning Use**

- 2.1 The current use of the site is mixed. The ground floor retail unit is within Use Class A1 of the Use Classes Order and the first floor flats are within Use Class C3. It is understood that the rear hardstanding, garage and outbuildings serve the retail unit and therefore are ancillary to that Class A1 use.

## **3 Background**

- 3.1 In July 2018 an enforcement case was opened following a complaint that the site, consisting of the hardstanding in Eastwood Rise, had commenced operations as car sales without planning permission. Car sales is a Sui Generis use (for definition see para 4.1).
- 3.2 Enforcement Staff noted several cars for sale on the forecourt. Predominantly displayed around the site and on the vehicles was a mobile telephone number.
- 3.3 A Land Registry search established the owner of the site.
- 3.4 The identity of the person running the car sales site was not the same person identified as the owner of the site via Land Registry.
- 3.5 Enforcement Staff wrote to the site operator advising of the planning breach and advised that they could submit a planning application to seek to regularise the unauthorised change of use. They were also alternatively advised to cease the use of the site as a car sales forecourt by 24<sup>th</sup> August 2018.
- 3.6 Despite further written and verbal contact over the subsequent period, by 11<sup>th</sup> January 2019 several vehicles were still for sale on the forecourt next to Eastwood Rise and there was also a van for sale on the forecourt of the empty retail unit facing Rayleigh Road. That van displayed, on a window, the same mobile telephone number as displayed on the vehicles on the main site.

- 3.7 To date and despite several abortive attempts to secure submission of a retrospective planning application no application has been submitted.
- 3.8 A car sales operation, whether this be from an enclosed showroom or open site, falls under the Use Class term 'Sui Generis' meaning 'of its own kind' and is applied to uses not falling within any specific Class under the Use Classes Order. There are no Permitted Development Rights to change to a car sales use so express planning permission is required for this unauthorised change of use.
- 3.9 When assessing whether a change of use of land is acceptable, due regard must be given to the potential impact of the use and its associated activities on employment considerations, the character of the surrounding area and the amenity of neighbouring uses.

#### **4.0 Policy Considerations and Appraisal**

**National Planning Policy Framework (NPPF) (2018), Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3, CP4 (The Environment and Urban Renaissance) of the Core Strategy (2007), Policies DM1 (Design Quality), DM3 (Efficient Use of Land) and DM11 (Employment Generating Development) DM15 of the Development Management Document (2015) and advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.1 Paragraphs 124 and 127 of the National Planning Policy Framework seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 4.2 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.
- 4.3 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”.
- 4.4 Policy DM11 confirms that proposals for employment generating uses outside the (defined) Employment Areas, (which this site isn't), will be allowed where they do not impact on the amenity of the surrounding uses and do not conflict with other development plan policies.
- 4.5 In this case, there are not necessarily any in principle Policy DM11 employment land based objections to a commercial use on the land, including car sales, subject to compliance of such a use with other policy objectives. However, it is considered that uncontrolled car sales and the associated cleaning and repairs, has the potential to result in a significant activity on the land with associated noise and disturbance and potentially other environmental impacts caused for example by vehicular movements onto and off the site and activity carried out on the site in connection with the use.

This is deemed likely to impact detrimentally on the amenities of the neighbouring residential properties by reason of noise and disturbance. In the absence of any planning application (and conditions which could potentially be used within a grant of planning permission to reasonably control such impacts) the unauthorised car sales use conflicts with policy requirements in the above regards.

- 4.6 Similarly movement of vehicles on and off the site is considered likely to adversely affect highway safety in Eastwood Rise and the inability to formally control that through conditions on a grant of planning permission is of concern and means that this is contrary to policy requirements.
- 4.7 As attempts to remedy the identified harm through submission of a planning application have not succeeded, it is considered necessary reasonable, expedient proportionate and in the public interest to take enforcement action to secure the cessation of the unauthorised use.

## **5.0 Relevant Planning History**

- 5.1 None

## **6.0 Recommendation**

- 6.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to secure the cessation of use of the site as car sales.
- 6.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.
- 6.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case a compliance period of 2 calendar months is considered reasonable for the site to stop operating as vehicle sales.
- 6.4 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the local planning authority to balance the rights of the owners and/or occupiers against its legitimate aims 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 on the grounds set out in the formal recommendation.



