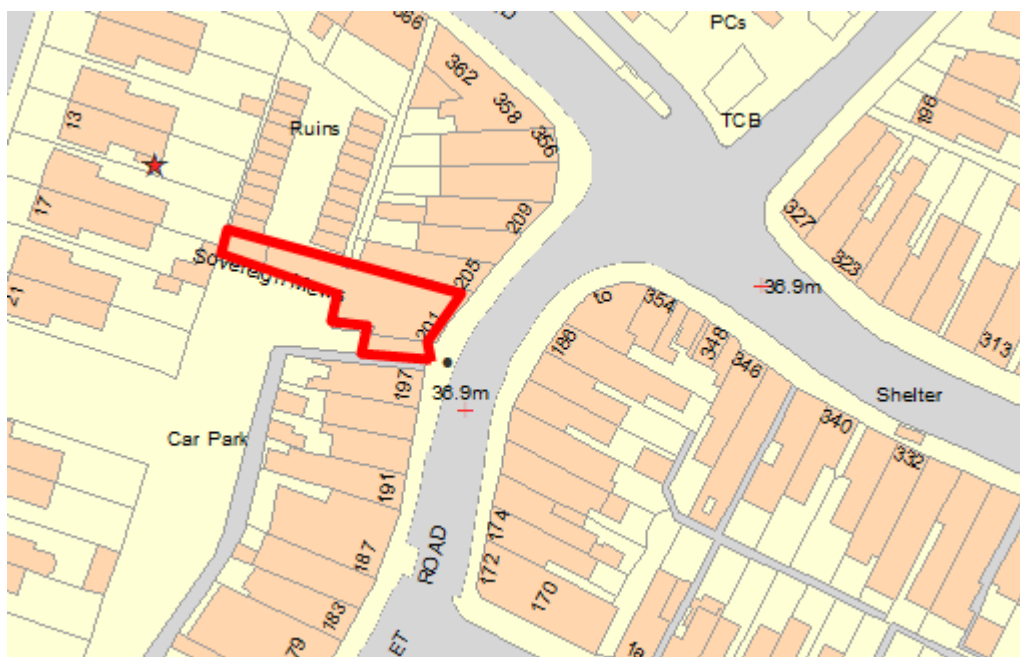


Reference:	19/00033/UNAU_B	
Ward:	Milton	
Breach of Control	Without planning permission the formation of 2 self-contained flats on the ground floor, construction of a garage/workshop to rear, installation of an external door and formation of balcony to serve rear first floor flat and breach of planning condition 7 of planning permission SOS/98/0509 requiring 7 on-site parking spaces to be permanently reserved for residential occupiers of mixed retail and residential development	
Address:	Sovereign Mews, 201-203 Hamlet Court Road, Westcliff on Sea, Essex. SS0 7FZ	
Case Opened:	15 th February 2019	
Case Officer:	Steve Jones	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site Location and description

- 1.1 The site contains a 4 storey building containing 12 authorised flats plus two retail units on its ground floor, the latter towards the building's Hamlet Court Rd frontage. A pedestrian undercroft to the side of the ground floor leads from Hamlet Court Rd through to a private and then public car parking area at the rear, Vehicular access to these areas is gained from Ceylon Rd and also from Anerley Rd towards the south. Originally a mixed use development of offices and warehouse, planning permission was granted in 1999 to convert the building into 12 flats on the 1st, 2nd and 3rd floors, to sub divide the ground floor into 2 retail shops with ancillary stores and offices and to lay out 7 parking spaces to the rear 4 in a new undercroft beneath the first floor, two in an open area behind the rear western elevation of the main building and one to the south side of the building 6m in front of the undercroft parking area..
- 1.2 The surrounding area of Hamlet Court Road is mainly commercial at ground floor with flats over 3 floors above. Pedestrian access to these flats is generally gained from a mix of external and internal staircases to the rear of these buildings.
- 1.3 The site is not subject of any site specific policy designations and is not within a Conservation Area.

2 Lawful Planning Use

- 2.1 The authorised use of the development is residential (Class C3) on floors 1, 2 & 3 and retail (Class A1) on the ground floor within the Town and Country Planning (Use Classes Order) 1987 (as amended).

3 Relevant Planning History

- 3.1 SOS/98/0509 – Remove staircase and dormer window, install new windows to front and side elevations, install new roof lights at third floor level and install new shopfront to front and side; sub divide part of ground floor into two retail shops with ancillary stores and offices, convert first, second and third floors into 12 self-contained flats and lay out 7 parking spaces at rear. - Approved

4 The alleged planning breaches and the harm caused

- 4.1 ***The unauthorised formation of 2 self-contained flats on the ground floor.***
- 4.2 Two self-contained flats, numbered 203A & 203B Hamlet Court Road, have been formed without planning permission within the ground floor undercroft which was designed to accommodate 4 of the 7 on-site parking spaces for the residential flats on the upper floors created as part of 1999 approval for a mixed use development. Condition 6 of that 1999 planning permission required the 7 parking spaces to be provided before use of the approved flats and condition 7 requires those approved spaces to be permanently reserved for residential occupiers. Both unauthorised flats contain a residential style door and a single modest window in their south elevation, facing into the car park area. It is known that flat 203A is currently occupied but no response has been received at 203B so occupancy and internal layout and use have not been fully established at this time.

- 4.3 Although it has not been possible to carry out a detailed measurement of the two unauthorised flats, reference to the 1999 approval suggests that they each measure in the region of 5.8m x 5.25m (Some 32m²). Even if designed for single person occupancy, this would be undersized. External views of the building and its relationship to neighbouring buildings suggest that, on the balance of probability, the south facing window in each unit is likely to be the only source of light and outlook for the internal habitable accommodation. This suggests that the internal environment and quality of living conditions would not meet policy requirements. This solitary source of outlook for each unit is directly onto a third party parking and vehicle manoeuvring area again fundamentally lacking the required quality of residential environment for new flatted development. Furthermore neither unit has any external amenity provision. Refuse recycling and cycle storage arrangements for the two unauthorised flats is also unknown and may be non-existent.
- 4.4 Based on the available evidence it is found that the unauthorised flats provide an environment which is harmful to the living conditions of any current and future occupiers. This is unacceptable and contrary to policy requirements.
- 4.5 As a consequence of the unauthorised flats, 4 of the 7 required parking spaces have been removed from provision and availability for use by occupiers of the authorised flats on the upper floors of the development in breach of condition 7 of the 1999 planning permission. This creates additional demand for on street parking both due to the lost spaces and from additional parking demand associated with use of the two unauthorised flats.
- 4.6 Some allowance was made in the 1999 approval for the fact that the development neighbours a public parking area. The loss of parking caused by the current breach will have a negative impact on local parking and highway safety conditions. The parking situation on site is now also harmful to the amenity of occupiers of the authorised flats. These concerns represent conflicts with development plan policies.
- 4.7 No planning application seeking to regularise these breaches of planning control has been submitted although given the interdependency and nature of the areas of harm caused by the breaches it is difficult to see how the identified harm could be reasonably overcome.
- 4.8 ***The unauthorised installation of an external door and formation of a balcony to serve existing first floor flat***
- 4.9 The development does not benefit from any householder permitted development rights and the installation of a door in the west elevation on the first floor of an existing authorised flat constitutes operational development requiring planning permission. This door leads onto a flat roof element to form a balcony on top of an otherwise pitched roofed ground floor extension (see separate section below) forming, what is believed to be a garage/workshop. These elements do not have planning permission so are unauthorised.
- 4.10 In design and amenity terms the installation of the door of itself could be acceptable for example if it were enclosed by a Juliet balcony across the rear elevation. However use of the flat roof as a balcony creates overlooking into neighbouring properties particularly to the west. The design of the balustrades is utilitarian and appears out of character with the host building both in terms of design and the materials used. This is

in conflict with planning policies on design. The balcony could potentially be screened to address overlooking to an acceptable degree but in the absence of any planning application there is no mechanism for this to be secured and acceptability or otherwise of screens would depend on consideration of related impacts such as the sense of enclosure created for neighbouring properties.

- 4.11 The unauthorised garage / workshop is in the form of a single storey extension some 7.4m in length constructed to the west elevation. Satellite imagery shows that this was an open space in 2010 and should have been permanently retained for use as 2 of the 7 car parking spaces required under the 1999 planning approval. Subsequent imagery shows the formation of a shorter rear extension before the current version which in itself has undergone a conversion from a flat roof to a pitched roof in the last 12 months. Neither the initial construction nor subsequent alterations have been subject of any planning applications.
- 4.12 In built form terms this structure in itself may possibly be acceptable subject to clarification of its exact purpose and imposition of appropriate planning conditions. Notwithstanding this however, it removes the 2 of the total 7 parking spaces required under condition 7. So for the same reasons as explained previous sections of this report, this is materially harmful to parking conditions, highway safety and the amenity of residents of the flats. This is unacceptable and contrary to policy as further explained in subsequent sections of this report.

5 Background and efforts to resolve breach to date

- 5.1 In February 2019 an investigation began following complaints about the installation of the 1st floor external door to access the newly constructed balcony.
- 5.2 In March 2019 staff visited the site and then wrote to the freeholder about the installation of the external door and the formation of the balcony over the outbuilding roof. The owner was invited to return the building to its former state or to submit a retrospective planning application within a month of the letter. A copy of the letter was also sent to the freeholders managing agent.
- 5.3 The freeholder did not respond to the initial letter so in May 2019 a further letter was sent to the freeholder and his agent concerning the same issues identified previously but with the additional identified planning breaches relating to the unauthorised formation of 2 additional flats to the ground floor, the unauthorised construction of a garage extension to the west side and for a breach of condition relating to the 7 parking spaces.
- 5.4 The freeholder was advised to submit an application for a Certificate of Lawful development (Existing) if they believed any aspect of the allegedly unauthorised development or use benefited from a time exemption. (4 years in respect of development and 10 years in respect of 'use' unrelated to use as a dwelling which is 4 years)
- 5.5 A further 28 days was given to respond but no response has since been received nor any application submitted.
- 5.6 On 28th June 2019 a formal 'Notice of Intended Entry' was sent to both the freeholder and their agent. This is a formal notice under powers conferred by Section 196A (1) of

the Town and Country Planning Act 1990 (as amended) and is used when entry to a dwelling is required. The date and time for the intended entry was 10:00am on 3rd July 2019

5.7 At 09:50am on 3rd July 2019 Enforcement staff attended the area of 203A and 203B Hamlet Court Road and waited in that area until 10:20am. Neither the freeholder nor their agent appeared or contacted staff to explain why they had not attended.

5.8 As of 24th July 2019 neither the freeholder nor his agent have made contact with enforcement staff, submitted any planning applications or made any other apparent efforts to regularise the identified breaches.

6 Harm caused by the breach as assessed against relevant planning policies and justification for enforcement action

6.1 The unauthorised developments and significance of the issues arising have been assessed against the following policy background :

6.2 The National Planning Policy Framework (NPPF) (2019)

6.3 Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development principles) CP3 (Transport and Accessibility) CP4 (Environment & Urban Renaissance) CP8 (Dwelling Provision)

6.4 Development Management Document (2015): Policies DM1 (Design Quality) DM3 (The Efficient and Effective Use of Land) DM8 (Residential Standards) and DM15 (Sustainable Transport Management)

6.5 Design & Townscape Guide (2009)

6.6 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.

6.7 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.

6.8 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”.

6.9 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”.

6.10 Policy DM8 states that the internal environment of all new dwellings must be high quality and flexible to meet the changing needs of residents. Further to this, from the 1st October 2015 the national Technical Housing Standards have been adopted and state that 39sqm internal floorspace per 1 bedroom (1 person) dwelling is required (reduced to 37sqm where there is a shower instead of a bath) to ensure the

development is in line with planning requirements.

- 6.11 Policy DM8 of the Development Management Document states that all new dwellings must make provision for usable private outdoor amenity space for the enjoyment of intended occupiers. The Council's Design and Townscape Guide states that "Outdoor space significantly enhances the quality of life for residents and an attractive useable garden area is an essential element of any new residential development".
- 6.12 Policy DM15 of the Development Management Document sets minimum parking standards for new residential development but allowing for a flexible approach towards provision within sustainable locations served by a range of transport modes.
- 6.13 In summary the unauthorised development is poorly designed and fails to provide new residential units of an acceptable quality and standard. Whilst a degree of flexibility may be applied towards the parking needs of the development the unauthorised development displaces 6 of the 7 on site parking spaces designed for use by residential occupiers for the upper floors in direct contravention of condition 7 of the 1999 planning permission while adding the two new dwellings. The unauthorised development harms the amenity of occupiers of neighbouring development due to overlooking and invasion of privacy. The design and appearance of the balcony is also unacceptable.
- 6.14 Efforts to remedy the breaches of planning controls through concerted attempts to contact the freeholder have not resulted in the submission of an amended scheme or the removal of any of the unauthorised development.
- 6.15 In view of the lack of response from the freeholder it is now considered necessary and justified to take enforcement action to seek to resolve the harm caused by the identified breaches.
- 6.16 Taking enforcement action in this case may amount to an interference with the owner/occupier's 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, proportionate and in the public interest to pursue enforcement action to remove the unauthorised development. Consideration has been given to whether some limited elements of the identified breaches such as the first floor door formation could be accepted on their merits but due to the interdependencies between the breaches and the absence of any mechanism for attaching planning conditions to mitigate harm, all of the issues in this report are proposed to be enforced against.

7 Recommendation

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to;
- a) secure the removal of the unauthorised external door in the first floor west elevation
 - b) secure the removal of the balcony and enclosures formed on the first floor west elevation
 - c) removal in their entirety of the two ground floor flats known as 203A & 203B Hamlet Court Road and reinstate as a 4 parking space undercroft to serve the upper floor flats in the building
 - d) demolish the ground floor rear extension to the west side of the building and

reinstate 2 parking spaces to serve the upper floor flats in the building.

e) remove from site all materials resulting from compliance with a) to d) above

- 7.2 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.
- 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 4 months is considered reasonable.