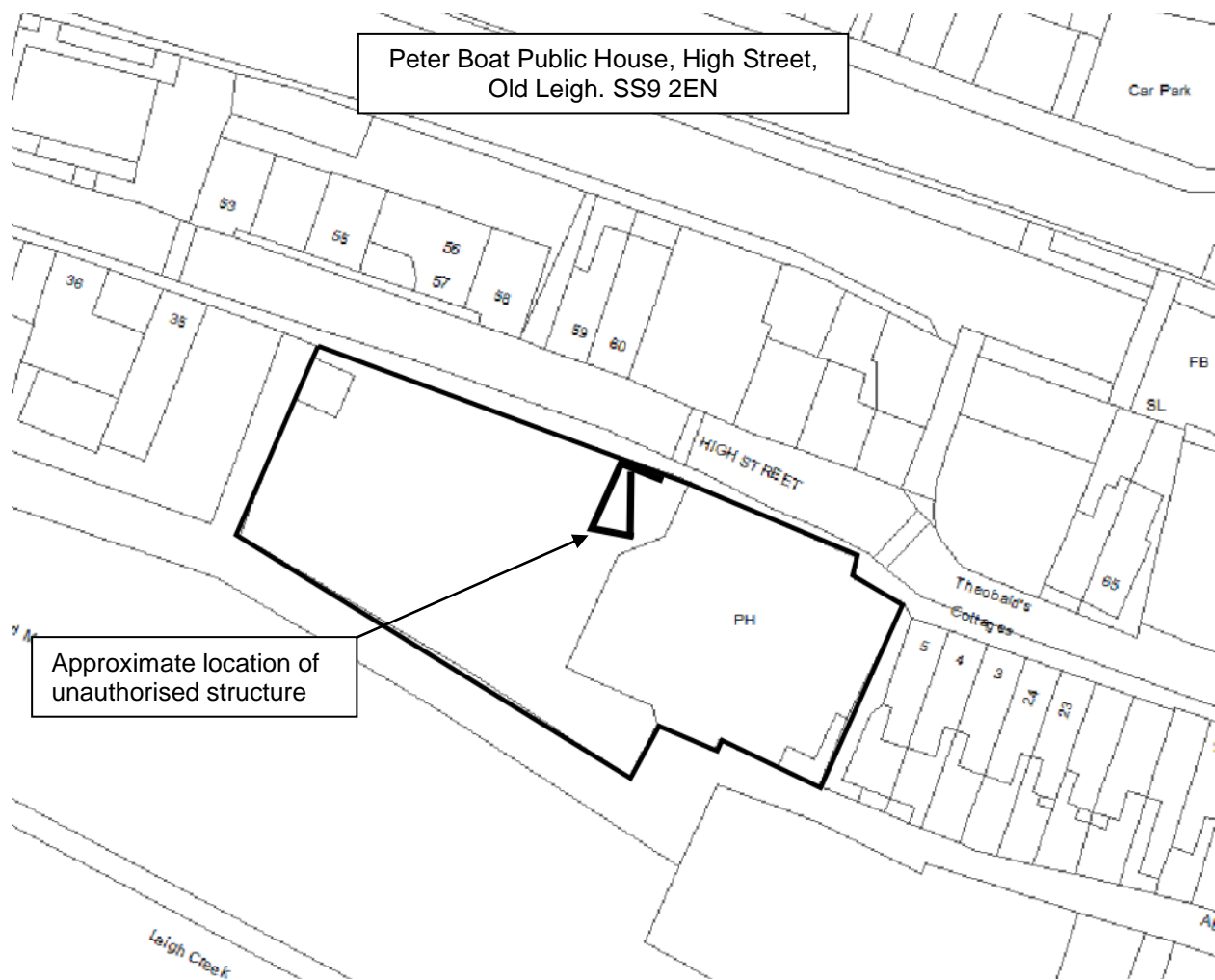


<b>Reference:</b>	19/00328/UNAU_B	
<b>Ward:</b>	Leigh	
<b>Breaches of Control</b>	Without planning permission, the construction of a smoking shelter in the forecourt of the public house car park	
<b>Address:</b>	The Peter Boat Inn, 27 High Street, Leigh on Sea, Essex. SS9 2EN	
<b>Case Opened:</b>	5 <sup>th</sup> December 2019	
<b>Case Officer:</b>	Steve Jones	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site and Surroundings**

- 1.1 The Peter Boat Public House at 27 High Street, Leigh-on-Sea within the Old Leigh Conservation Area (see Appendix A) dates from the late C19. It makes a positive contribution to the character and appearance of the conservation area. The open area to the west of the pub is used for outside seating in the summer and parking in the winter.
- 1.2 Directly to the south of the site is the Thames Estuary mudflats which are covered by a number of nature designations. The site is separated from the sea wall by a public footpath which runs into Alley Dock a historic cobbled route. To the north and east is the High Street which includes a variety of small scale mostly historic residential buildings and terraces.
- 1.3 As well as being within Leigh Old Town Conservation Area the site also falls within the Leigh Old Town Article 4 Direction (See Appendix B) which controls the “erection, extension, alteration of a gate, fence, wall or other means of enclosure to any part of a property”, albeit the structure, subject of this report, requires planning permission in any event.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use is as a public house within Class A4 of the Town and Country Planning Use Classes Order 1987 (as amended)

## **3 Relevant Planning History**

- 3.1 18/00605/FUL - Retain Glazed Screening and Parasols to south elevation – Granted
- 3.2 Erect single storey front extension, single storey extension and bin store to side and alter elevations - Granted (17/01454/FUL)
- 3.3 Erect single storey extension to west elevation - Refused (17/00890/FUL)
- 3.4 Erect single storey extension to front - Refused (16/00907/FUL)
- 3.5 Erect bin store to side- Refused (16/00906/FUL)
- 3.6 Install raised decking and raised planter's to front and side (Part-Retrospective) - Granted (16/00905/FUL)
- 3.7 Install extract ducting to existing rear flat roof, bin store and timber fence enclosure to rear - Granted (14/02088/FUL)
- 3.8 Erect single storey extension to rear - Refused (14/01753/FUL)
- 3.9 Erect single storey extension, and relocate existing entrance to north elevation and alter elevations - Granted (13/00113/FUL)

3.10 Demolish existing Cockleshed and erect shell fish stall and cafe (Class A3) (application to extend the time limit for implementation following planning permission 10/01060/FUL dated 11/08/2010 - Granted (13/00094/EXT)

#### **4. Background**

- 4.1 In November 2019 a complaint was received that a structure was being built in the car park close to the roadside.
- 4.2 On 4<sup>th</sup> December 2019 Enforcement Staff attended the site and saw the structure in question. Constructed of wood, the lower 40% is made up of planters and the top 60% of a horizontal trellis with a triangular roof. The structure measures approximately 2m wide narrowing to 1m by 2.5m in length and 2.2m high. It is positioned on the boundary of the car park and the High Street and its purpose is for use as a smoking shelter.
- 4.3 It is considered that the structure is of sufficient size and permanence to be regarded as 'operational development' as defined by the Town and Country Planning Act 1990 (as amended). It is also regarded as an 'enclosure' of the general type controlled by the Article 4 Direction covering the site. The structure requires express planning permission.
- 4.4 On 4<sup>th</sup> December 2019 Enforcement Staff contacted the site owners informing them that the structure should be removed within 7 days as it was considered that a retrospective planning application for the structure 'as built' would be most unlikely to be approved.
- 4.5 On 5<sup>th</sup> December 2019 an email was received from the company advising the structure would be removed.
- 4.6 On 20<sup>th</sup> December 2019 the structure was still in situ. Contact was made with the company and they were advised that the structure above the height of the planters should be removed by the 27<sup>th</sup> December 2019 or formal enforcement action would be considered.
- 4.7 On 20<sup>th</sup> December 2019 plans were received from the company architect proposing a demountable, temporary structure at the site of the current structure. The company and the architect were advised that the current structure on site amounts to 'development' and whether it is demountable or temporary in purpose it is harmful and needs to be removed.
- 4.8 On 20<sup>th</sup> December 2019 the company stated in an email that it 'supported' the Council and wanted to find the best solution to move forward. Enforcement staff sought clarity of that statement by asking if that meant the structure would be removed in the next 7 days.
- 4.9 On 24<sup>th</sup> December 2019 an email was received from the planning agent stating that the company were seeking independent planning advice to define the term 'development' and if that advice accorded with the view of the Council the shelter would be removed.

- 4.10 On 8<sup>th</sup> January 2019 Enforcement Staff responded to the planning agent and the company re-asserting that the structure does amount to operational development and that a report would be taken to Development Control Committee seeking authority to issue an Enforcement Notice unless the structure were removed in the meantime.
- 4.11 On 19<sup>th</sup> January 2019 the structure was still in situ. During each visit to site it was noted that the shelter was not being used by anyone on that occasion.

## **5 Appraisal and Policy Considerations:**

- 5.1 **National Planning Policy Framework (2019) ; Core Strategy (2007) Policies KP1, KP2 and CP4; Development Management Document (2015) Policies DM1, DM3, DM5, DM6 and the Southend Design and Townscape Guide (2009)**
- 5.2 The key issue relating to this enforcement case is the impact on the character and appearance of the site and the Conservation Area.

## **6 Harm caused by the identified breaches:**

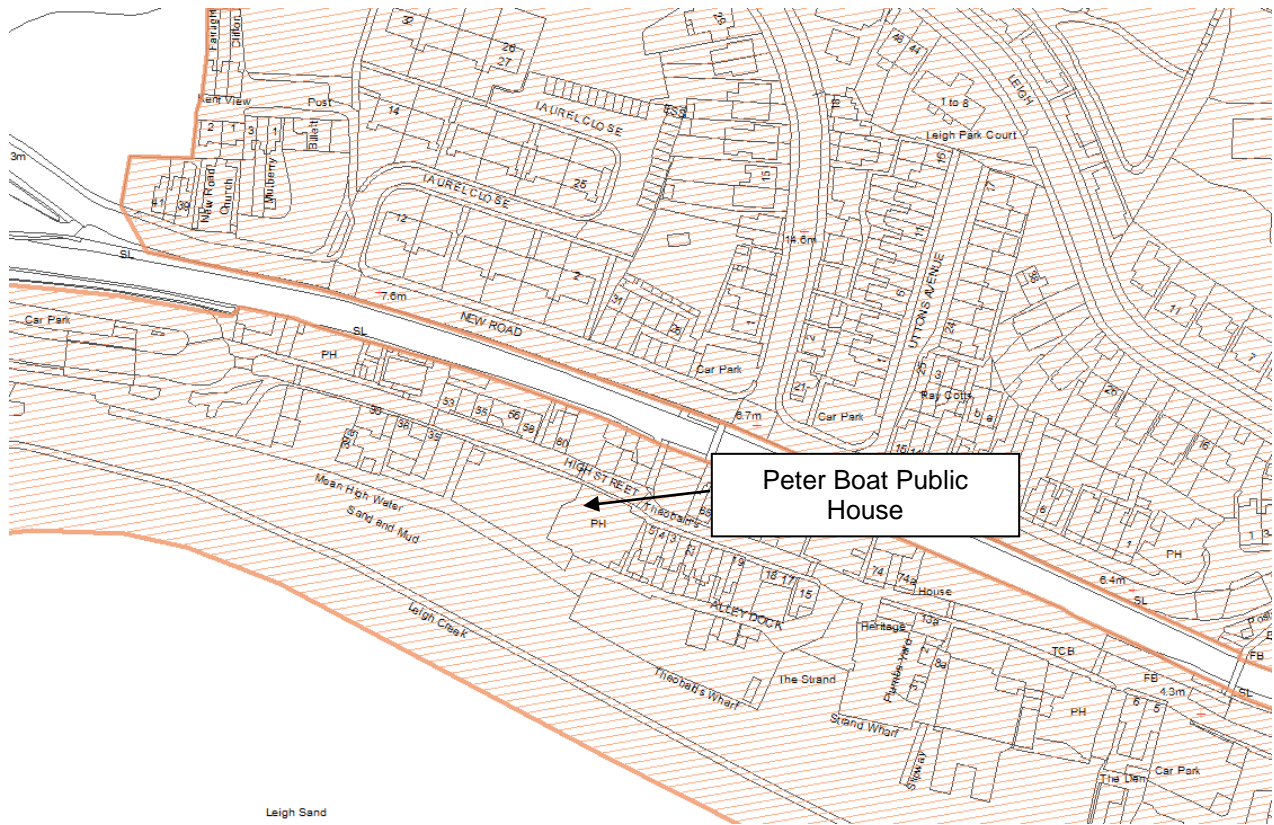
- 6.1 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. All developments should respect the character of the site, its local context and surroundings in terms of its architectural approach, height, scale, form and proportions.
- 6.2 The structure consist of 3 main elements, the lower section is made up of wooden planters. Attached to the planters to form the remaining sides of the 3 sided shelter are 5 upright posts to which slatted pieces of wood have been attached horizontally. A triangular roof has been added to provide some limited shelter from the rain. Internally a bench has been constructed and attached to the body of the structure for seating. It should be noted that there is no obligation under licencing or other legislation for pubs to have smoking shelters
- 6.3 Although somewhat makeshift in appearance the structure is solidly made and substantial in form and cannot be moved unless it is deconstructed. Its siting to the west side of the public house close to the main entrance and on the border with the High Street makes this unauthorised structure highly visible.
- 6.4 Section 72(1) of the Planning and Listed Buildings and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Extensions and alterations to buildings within conservation areas therefore must respect the existing historic character of the buildings and the wider conservation area. Development which achieves this will generally be supported subject the detailed consideration.
- 6.5 Policy DM5 of the Development Management Document states that all development proposals that affect a heritage asset will be required to include an assessment of its significance and to conserve and enhance its historic and architectural character, setting and townscape value.

- 6.6 Policy CP4 of the Core Strategy requires development to safeguard and enhance the historic environment, including Conservation Areas.
- 6.7 Paragraph 302 of the Design and Townscape Guide states that development in conservation areas will be required to respect its character by preserving or reinstating traditional features or materials and enhancing the area with good quality design. It is also stated that opportunities should be taken to enhance the area by reinstating original designs, materials and features which have previously been altered unsympathetically. New buildings, extensions and alterations visible from public places should positively enhance the character and appearance of the Old Leigh Conservation Area.
- 6.8 Policy DM6 of the Development Management Document seeks that the Leigh Port and Old Town be preserved stating:
- “(i) To maintain a thriving fisheries and working port by resisting the loss of existing marine industrial activities.*
- (ii) To enhance the leisure and tourism offer, but in a manner that does not compromise the marine industrial activities and character of Leigh Old Town.*
- (iii) To preserve and enhance the special character of Leigh Old Town Conservation Area.*
- (iv) Measures that maintain an appropriate balance between the working port and leisure and tourism activities, when considered in conjunction with points (i), (ii) and (iii) will be supported”.*
- 6.9 In light of the above, the principle of alterations or additions is considered acceptable subject to detailed planning considerations.
- 6.10 Leigh Old Town Conservation Area has generally retained a good proportion of its original features including timber weatherboarding and this makes an important contribution to the special character and significance of the conservation area. Although constructed from wood which has been stained to match the existing boarding of the pub, the unauthorised structure is of a rudimentary and incongruous form and design. Spacing between the slats is not characteristic of the surrounding area and is somewhat at odds with the timber features present on the main building. The harm caused to the building and its contribution to the character and appearance of the Conservation Area is emphasised due to the structure’s prominence, size and position. No public benefits to outweigh the harm to the Conservation Area have been identified.
- 6.11 Given the nature and harmful impact of the breach and the owners failure to remove or otherwise regularise the unauthorised development it is considered to be necessary and proportionate for enforcement notices to be served.

## **7 Recommendation**

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to;
- a) secure the removal of the unauthorised wooden structure (smoking shelter)
  - b) remove from site all materials resulting from compliance with a) 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 1 month is considered reasonable for the removal of the unauthorised shelter.
- 7.4 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.

# Appendix 1 – Old Leigh Conservation Area Boundary



Appendix 2 – Old Leigh Article 4 Direction Boundary

