

<b>Reference:</b>	18/00142/UNAU_B	
<b>Ward:</b>	West Leigh	
<b>Breach of Control:</b>	External staircase and access to flats without planning permission	
<b>Address:</b>	1595 London Road, Leigh-On-Sea, Essex, SS9 2SG	
<b>Case opened :</b>	5 <sup>th</sup> May 2018	
<b>Case Officer:</b>	Hayley Thompson	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	

1595 London Road, Leigh-On-Sea, Essex, SS9 2SG



## **1 Site location and description**

- 1.1 This report relates to a two storey building located within a terrace on the south side of London Road which contains a bar at ground floor and residential use at first floor. An external staircase, erected without planning permission, is located at the rear of the site and is visible from Barnard Road.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use is as a bar within Class A4 use at ground floor and a flat at first floor level within Class C3 of the Town and Country Planning Use Classes Order 1987 (as amended).

## **3 Relevant Planning History**

- 3.1 18/01690/FUL - Erect metal staircase to rear - Application refused and appeal dismissed.
- 3.2 19/00771/FUL - Erect metal staircase to rear, decking, glazed screen and railings to roof – Application refused.

## **4 The alleged planning breach and the harm caused**

- 4.1 Without planning permission an external staircase has been erected to the rear of the site. From the top of the staircase users walk along the roof of the single storey element of the building to a first floor door in the rear of the building.
- 4.2 It has been found through determination of two planning applications and dismissal of a subsequent appeal against the first refusal that the external staircase is unacceptable as the sole, primary access to the flat due to its impracticality, unsafe nature and tortuous nature of the access path to the residential unit. It results in demonstrable harm to the living conditions of the current and future occupiers, does not provide an acceptable standard of accommodation and represents poor design.

## **5 Background and efforts to resolve breach to date**

- 5.1 In May 2018 an enforcement case was raised regarding an alleged unauthorised external staircase which required planning permission but had not been obtained.
- 5.2 In September 2018 a planning application was submitted seeking to retain the unauthorised staircase, reference 18/01690/FUL and is attached as Appendix 1, and in November 2019 was refused permission on the following ground:

*The proposed external staircase is unacceptable as the sole, primary access to the flat due to its impracticality, unsafe nature and the tortuous nature of the access path to the residential unit. For this reason it is considered that the proposed development results in demonstrable harm to the living conditions of the current and future occupiers, does not provide an acceptable standard of accommodation and represents poor design. This is unacceptable and is in conflict with the provisions of the National Planning Policy Framework 2018, Policy KP2 and CP4 of the Core Strategy (2007), policies DM1 and DM3 of the Development Management Document (2015) and advice contained within the Design and Townscape Guide*

(2009).

- 5.3 In December 2018 an appeal was submitted to the Planning Inspectorate, reference 18/00098/REFN, and was dismissed in March 2019. The full decision is attached as Appendix 2. The inspectorate found that the proposal was not compliant with local or national policies and concluded that:

*The staircase would be fairly steep and it would be difficult to use while carrying shopping or other items. There would be only one handrail and there would be wide gaps between the vertical rails which would hamper access with young children and for the mobility impaired. In addition, these shortcomings would be amplified during inclement weather or in the hours of darkness. In combination the staircase and flat roof would not provide a satisfactory access for residents. I conclude that the development would not provide acceptable living conditions for existing and future occupants of the appeal site with particular regard to access.*

- 5.4 In April 2019 an amended proposal, reference 19/00771/FUL was applied for and refused planning permission on the same grounds as application 18/01690/FUL in June 2019.
- 5.5 Correspondence has been exchanged between the Local Planning Authority and the owner of the site who has confirmed their intention to remove the staircase. However to date, no further planning application has been submitted in order to seek to overcome the reason for refusal of the retrospective planning applications and dismissed appeal and the external staircase is still in situation.

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

- 6.1 The appended officer for planning application 18/01690/FUL sets out fully the basis for refusal of planning permission due to the identified harm.
- 6.2 The appended appeal decision concurs with those findings of harm.
- 6.3 While it is understood that the external staircase forms the sole primary access to the first floor flat, staff consider that it is proportionate and justified in the circumstances of the case that an enforcement notice should be served as this will bring further focus to the need for this harmful breach to be regularised. Service of an enforcement notice carries its own right of appeal and also does not fetter the owner in seeking to gain planning permission for an alternative means for access.
- 6.4 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.

## **7 Recommendation**

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to
- a) require the unauthorised external staircase to be removed
  - 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 3 months is considered reasonable for the above works.

Appendix 1 – Officer's report 18/01690/FUL

<b>Reference:</b>	18/01690/FUL
<b>Ward:</b>	West Leigh
<b>Proposal:</b>	Erect metal staircase to rear (Retrospective)
<b>Address:</b>	Montys Bar, 1595 London Road, Leigh-On-Sea
<b>Applicant:</b>	Mr Steven Abbott
<b>Agent:</b>	A9 Architecture
<b>Consultation Expiry:</b>	10.10.2018
<b>Expiry Date:</b>	13.11.2018
<b>Case Officer:</b>	Kara Elliott
<b>Plan Nos:</b>	1186/01/A, 1186/02/A, 1186/03, 1186/04, 1186/05, 1186/06
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

## **1 The Proposal**

- 1.1 Retrospective planning permission is sought for an external staircase with landing to the rear of the existing building.
- 1.2 The metal staircase and landing has an overall width of approximately 6 metres, projects approximately 1.2 metres from the rear of the existing building and has a height of 4.2 metres, measured to the top of the balustrading from ground level. The landing has an overall floorspace of approximately 2.2 metres.

## **2 Site and Surroundings**

- 2.1 The application site relates to the two storey building located within a terrace along London Road. A bar is located at the ground floor with residential above
- 2.2 The staircase is located at the rear of the application site and is viewed within Barnard Road. The applicant has confirmed that the staircase provides the primary, sole access to the first floor flat. From the top of the staircase, users walk along the roof of the single storey element of the building to a door at the rear of the building. The agent for the application has stated that, prior to the installation of the staircase the only way to access the flat was via a neighbour's external staircase which then required the occupier to walk over the neighbour's roof to be able to gain access to the property.
- 2.3 The site is not located within a conservation area or subject to any site specific planning policies.

## **3 Relevant Planning History**

- 3.1 Extensive history mainly in relation to the bar at ground floor. None relevant to current application. It is noted that this application is made following planning enforcement investigations.

## **4 Planning Considerations**

- 4.1 The key considerations in relation to this application are the principle of the development, design and impact on the character of the area, impact on residential amenity, standard of living conditions for occupiers and CIL contributions.

## **5 Appraisal**

### **Principle of Development**

**National Planning Policy Framework 2018; Core Strategy (2007) Policies KP1, KP2 and CP4; Development Management Document (2015) Policies DM1 and DM3.**

- 5.1 The application site is located within a residential area whereby extensions, alterations and ancillary additions to dwellings are considered acceptable in principle. The determining material planning considerations are discussed below.

## **Design and Impact on the Character of the Area**

### **National Planning Policy Framework (NPPF): Core Strategy (2007) Policies KP2 and CP4; Development Management Document (2015) Policies DM1 and DM3 and guidance contained within the Design and Townscape Guide (2009)**

- 5.2 Paragraph 124 of the NPPF (2018) states that; *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 5.3 Policy DM1 of the Development Management Document states that all development should *“add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features”*.
- 5.4 Policy DM3 of the Development Management Document states that alterations and additions to a building will be expected to make a positive contribution to the character of the original building.
- 5.5 Policy KP2 of Core Strategy states that new development should *“respect the character and scale of the existing neighbourhood where appropriate”*. Policy CP4 of the Core Strategy requires that development proposals should *“maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development”*
- 5.6 The proposed development consists of a metal staircase located to the rear of the building. The stairs and landing are only partially visible from the streetscene as they are concealed behind a gate located within Barnard Road.
- 5.7 It is considered that as they are largely unavailable from the public view and as the scale and character of the staircase and platform satisfactorily respects the established characteristics of the site and surroundings, the proposal is therefore acceptable and consistent with the objectives of the policies and guidance outlined above in that regard.
- 5.8 It is considered that the proposed development would not result in a detrimental impact on the character and visual amenity of the dwelling or the wider area in compliance with The National Planning Policy Framework (2018), Core Strategy (2007) Policies KP2 and CP4; Development Management Document (2015) Policies DM1 and DM3 and The Design & Townscape Guide (2009).

### **Impact on Residential Amenity**

#### **National Planning Policy Framework, Core Strategy (2007) Policies KP2 and CP4 Development Management Document (2015) Policies DM1 and DM3 of Design and Townscape Guide.**

- 5.9 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.

- 5.10 Policy DM1 of the Development Management Document requires all development to be appropriate in its setting by respecting neighbouring development and existing residential amenities *“having regard to privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”* Policy DM3 of the Development Management Documents seeks to avoid over-intensification and to resist a detrimental impact on the living conditions of existing, future and neighbouring residents
- 5.11 The Design and Townscape Guide also states 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”*.
- 5.12 The development is not considered to result in demonstrable harm to the amenities of neighbouring occupiers from perceived or actual levels of loss of privacy or overlooking due to its use as a staircase i.e. not an area where one would spend time.
- 5.13 There is a window to the flank elevation of 8 Barnard Road which overlooks the staircase. However, for the reasons set out above and due to this window not serving a habitable room (obscure glass window serving staircase), it is not considered that the development results in a material loss of amenity to the occupiers of the neighbouring property.
- 5.14 The development is therefore considered acceptable and policy compliant on neighbour amenity grounds.

### **Standard of Accommodation**

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

- 5.15 Paragraph 124 of the NPPF states that; *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 5.16 Paragraph 217 of the Design and Townscape Guide states that entry to any building should be equally accessible to all users including pedestrians, cyclists, pushchairs, as well as those with specific needs.
- 5.17 Policy DM1 of the Development Management Document states that development must ensure safe and accessible entrances and routes.
- 5.18 The proposed external staircase provides the sole, primary pedestrian access to the first floor flat. This requires users to ascend the staircase and walk approximately 14 metres along the roof of the single storey part of the building to the entrance door to the flat. The roof is not enclosed by any form of guarding or

balustrading. The access arrangement is considered unacceptable due to its tortuous, impractical and unsafe nature.

- 5.19 It is noted that the previous access arrangement, as confirmed by the applicant, meant that occupiers had to use a neighbouring staircase accessed from Barnard Road and then walk over a neighbour's roof. This has been taken into account in the assessment of the application. However, this is not considered to outweigh the material harm identified within the current proposal when considered on its individual merits.
- 5.20 The development results in a substandard form of accommodation of demonstrable harm to the living conditions of the current and future occupiers and in failing to provide a decent form of access does not provide a good standard of accommodation, in conflict with the provisions of the National Planning Policy Framework (2018), Policy KP2 and CP4 of the Core Strategy (2007), policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the adopted Design and Townscape Guide (2009).

### **CIL Charging Schedule 2015**

- 5.21 As the development equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil) for further details about CIL.

## **6 Planning Policy Summary**

- 6.1 The National Planning Policy Framework (2018)
- 6.2 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles) and CP4 (Environment & Urban Renaissance)
- 6.3 Development Management Document (2015): Policies DM1 (Design Quality), Policy DM3 (Efficient and Effective Use of Land) and DM15 (Sustainable Transport Management)
- 6.4 The Design & Townscape Guide (2009)

## **7 Representation Summary**

### **Leigh Town Council**

- 7.1 No objection

### **Public Consultation**

- 7.2 13 neighbours were notified and one letter of objection has been received which makes the following points;
- No right of way for freeholder or leaseholder to alleyway at the rear of the site or land in front of the bar;
  - Noise complaints in regard to ground floor bar;

- Should be noted the name of the bar is Belfair's not Monty's.

Officer Comment: The application does not relate to the ground floor bar use and noise complaints are controllable under separate legislation. The name of the bar is noted. It should be noted that ownership of land and right of way matters do not form material considerations in planning terms. The concerns are noted and they have been taken into account in the assessment of the application.

## 8 Conclusion

- 8.1 Having taken all material planning considerations into account, it is found that the proposed development is unacceptable and would be contrary to the development plan and is therefore recommended for refusal. The proposed external staircase provides the sole, primary pedestrian access to the first floor flat. This requires users to ascend the staircase and walk approximately 14 metres along the roof of the single storey part of the building to the entrance door to the flat. The roof is not enclosed by any form of guarding or balustrading. The access arrangement is considered unacceptable due to its impracticality, unsafe nature and the tortuous nature of the access path to the residential unit. The previous access arrangement has been considered. However, this is not considered to outweigh the harm identified within this report.
- 8.2 The development results in a substandard form of accommodation of demonstrable harm to the living conditions of the current and future occupiers and does not provide a good standard of accommodation nor good design and is in conflict with the provisions of the National Planning Policy Framework (2018), Policy KP2 and CP4 of the Core Strategy (2007), policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the adopted Design and Townscape Guide (2009).

## 9 Recommendation

### **REFUSE PLANNING PERMISSION**

- 1 The proposed external staircase is unacceptable as the sole, primary access to the flat due to its impracticality, unsafe nature and the tortuous nature of the access path to the residential unit. For this reason it is considered that the proposed development results in demonstrable harm to the living conditions of the current and future occupiers, does not provide an acceptable standard of accommodation and represents poor design. This is unacceptable and is in conflict with the provisions of the National Planning Policy Framework 2018, Policy KP2 and CP4 of the Core Strategy (2007), policies DM1 and DM3 of the Development Management Document (2015) and advice contained within the 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 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. The Local Planning Authority is willing to discuss the best course of action.

Case Officer Signature.....	Date.....
Senior Officer Signature.....	Date.....
Delegated Authority Signature.....	Date.....



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## Appeal Decision

Site visit made on 12 February 2019 by **Sarah Dyer BA BTP MRTPI MCMi**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 March 2019**

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### Appeal Ref:

**APP/D1590/W/18/3217960 1595**

**London Road, Leigh-on-Sea SS9 2SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Steven Abbott against the decision of Southend-on-Sea Borough Council.
  - The application Ref 18/01690/FUL, dated 6 September 2018, was refused by notice dated 20 November 2018.
  - The development is a rear staircase
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. During my site visit I observed that a metal staircase was present on the site. The design of the staircase is not as shown on the submitted plans. For that reason, I have made my decision on the basis of the 'proposed' development as shown on the plans, rather than what has actually been constructed.
3. Revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal. Whilst the revised version was published in February 2019 (the revised Framework), no changes have been made to the content directly relevant to the subject matter of this appeal. Consequently, I consider that no prejudice would occur to any parties as a result of me taking the revised Framework into account in my assessment of the appeal.

### Main Issue

4. The main issue is whether or not the development would provide acceptable living conditions for existing and future occupants of the appeal site with particular regard to access.

### Reasons

5. 1595 London Road (No. 1595) fronts the road and in common with other buildings in the terrace is in commercial use on the ground floor with residential accommodation above. To the rear of No. 1595 and the adjacent buildings are single storey flat roof structures which infill most of the space between the street facing parts of the terrace and the boundary.

6. The proposed staircase would provide access to the upper floors from the rear of the building. The top platform of the staircase would be at a similar level to the top of the parapet wall of the ground floor element of the building and the route from this point to the entrance to the living accommodation would be via the flat roof. Accordingly, the staircase would form an integral part of the access to their accommodation for residents.
7. The appeal scheme does not include any works to the flat roof. I have very limited details of the works to this area which the appellant refers to in his statement, thus I can only give these comments very limited weight in my determination of the appeal.
8. The staircase would be fairly steep and it would be difficult to use while carrying shopping or other items. There would be only one handrail and there would be wide gaps between the vertical rails which would hamper access with young children and for the mobility impaired. In addition, these shortcomings would be amplified during inclement weather or in the hours of darkness. In combination the staircase and flat roof would not provide a satisfactory access for residents.
9. I conclude that the development would not provide acceptable living conditions for existing and future occupants of the appeal site with particular regard to access. The development is therefore contrary to Policies KP2 and CP4 of the Southend on Sea Borough Council Core Strategy (2007) and Policy DM1 of the Southend on Sea Borough Council Development Management Document (2015) (the DM document). These policies jointly, amongst other things, require development to secure good relationships with existing development and to provide an external layout that takes account of all potential users.
10. The development would also not comply with the Southend on Sea Borough Council Supplementary Planning Document 1 Design and Townscape Guide (2009). This document, amongst other things, recommends that entry to any building should be equally accessible to all users. Similarly, the development would not provide a high standard of amenity for existing and future uses as set out in the National Planning Policy Framework.
11. I do not find Policy DM3 of the DM document, which deals with the efficient and effective use of land, to be relevant to the appeal. The effect of the development on the design and character of the appeal site or the surrounding area is not an issue upon which the Council based its reason for refusal and it is not, therefore, a matter before me.

## **Conclusion**

12. For the reasons set out above the appeal is dismissed.

*Sarah Dyer*

Inspector

Appendix 3 – Site photograph

