

Southend-on-Sea Borough Council

Agenda
Item

Report of the Corporate Director of Place
To
Development Control Committee
On
08th June 2016

Report(s) Enforcement of Planning Control

A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172

Reports prepared by: Enforcement Officers

1 Introduction

1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

WARD	APP/REF NO.	ADDRESS	PAGE
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Enforcement Report			
Milton	15/00176/UNAU_B	1 Warrior Square Southend on Sea	2
St Lukes	15/00177/UCOU_B	161 Westbury Road Southend on Sea	5
Shoeburyness	15/00241/UNAU_B	47 High Street Shoeburyness	10
Victoria	15/00279/UNAU_B	Southend Bowling Club 7 Tunbridge Road	14
Milton	16/00086/UNAU_B	68 London Road Southend on Sea	19
St Lukes	16/00097/UNAU_B	174 Royston Avenue Southend On Sea	24

Reference:	EN/15/00176/UNAU
Ward:	Milton
Breach of Control	Without planning permission installed PVC framed windows to front and side elevations
Address:	1-3 Warrior Square Southend on Sea
Case Opened:	20 July 2015
Case Officer:	Philip Kelly
Recommendation:	Authorise enforcement action



1 Site and Surroundings

- 1.1 The site is in the Warrior Square Conservation Area. Its use is as residential flats. It is at the junction of Warrior Square with Chichester Road.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as residential flats.

3 Present Position

- 3.1 On 20 July 2015 the Council Conservation Officer reported that PVC windows had been newly installed at 1-3 Warrior Square North. The owners were written to advising that the changes were unauthorised, that planning permission was unlikely to be given, and requesting removal of the unauthorised windows. No reply was received at that time. On 9 May 2016 an email was received from the owner's solicitor requesting clarification of the position due to their wish to sell the property. He has been advised that this matter would have to be considered by the Development Control Committee.

4 Appraisal

- 4.1 The NPPF, policies KP2 and CP4 of the Core Strategy, policy DM1 of the Development Management Document DPD, and the Design and Townscape Guide 2009 (SPD1) require alterations to respect the existing character and appearance of the building. This site is within the Warrior Square Conservation Area. Policy DM5 states that development proposals that result in harm to buildings within conservation areas will be resisted. The new windows at this site are not in sympathy with adjoining buildings of otherwise similar appearance, which have retained sliding sash wooden framed windows. It is considered that the new windows are not in accordance with these policies and are detrimental to the historic character and visual appearance of the Warrior Square Conservation Area.
- 4.2 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 remove the unauthorised windows.

5 Planning History

- 5.1 13/01318/FUL dated 13 November 2013 gave permission for conversion of office and retail to 4 self-contained flats. This allowed some external alterations to the rear but no permission was given to remove wooden sliding sash windows from the street facing elevations.

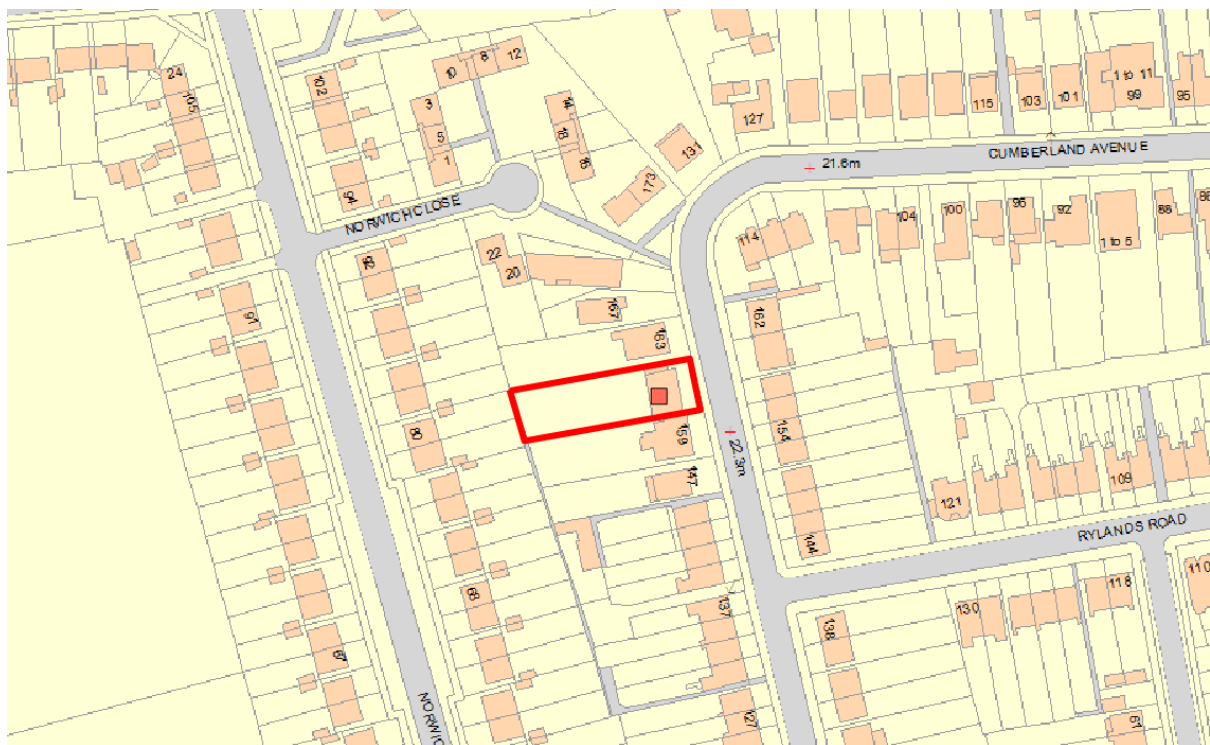
6 Planning Policy Summary

- 6.1 National Planning Policy Framework
- 6.2 Core Strategy (DPD) Policies KP2 and CP4
- 6.3 Development Management (DMP) Policies DM1 and DM5
- 6.4 Design and Townscape Guide 2009 (SPD1)

7 Recommendation

- 7.1 **MEMBERS ARE RECOMMENDED TO AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised PVC windows in elevations facing Warrior Square and Chichester Road. This is because of the detriment to the historic and visual character and amenities of the Conservation Area, contrary to Policies DM1 and DM5 of the DPD, Policies KP2 and CP4 of the Core Strategy, and advice contained within the Design and Townscape Guide (SPD1).
- 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. It is considered that a three months compliance period is reasonable in these circumstances.

Reference:	15/00177/UCOU-B
Ward:	St Lukes
Breach of Control	Without planning permission, the change of use of the land from residential within Class C3 of the Town and Country (Use Classes) Order 1987 (as amended) to day care centre (Class D1).
Address:	161 Westbury Road, Southend-on-Sea, Essex, SS2 4DL
Case Opened:	23 rd July 2015
Case Officer:	Neil Auger
Recommendation:	TAKE NO FURTHER ACTION



1 Site and Surroundings

- 1.1 Single storey dwellinghouse (bungalow) lying to the east side of Westbury Road approximately 50m from its junction with Rylands Road to the south.

2 Lawful Planning Use

- 2.1 The lawful planning use is for residential purposes within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 Present Position

- 3.1 On 23rd July 2015, an enforcement case was opened as a result of complaints received from local residents in which it was alleged that the building was being used as a day care centre for older persons.
- 3.2 On 31st July 2015, a site inspection was carried out when it was established that the allegation was correct. Staff explained to the case officer that vulnerable older persons were collected from their homes in a minibus, brought to the property for the day and returned home in the late afternoon.
- 3.3 The change of use of the land from residential to day care centre requires planning permission so a letter was sent to the proprietor dated 21st August 2015 inviting the submission of a retrospective application.
- 3.4 This was received on 30th October 2015 and given the reference number 15/01828/FUL but was found to be invalid.
- 3.5 Despite reminders, the proprietor did not submit the documentation required to validate the application so it could not be determined.
- 3.6 A further site visit was carried out on 28th April 2016 when it was observed that the day care use was continuing.

4 Appraisal

- 4.1 At the time of site visits by the case officer, it was evident that no material internal alterations had been carried out to enable the use of the premises as a day care centre and it remained laid out as a residential property.
- 4.2 The use of the dwellinghouse as a day care centre is, essentially, a business use and this can only be considered acceptable provided the activities do not significantly impact detrimentally upon the residential amenities and character of the area and do not conflict with Policy DM11 of the Development Management Document.

- 4.3 The intention of Policy DM11 is to ensure that business operations carried out at any residential property should cause no more disturbance than would normally be expected to result from activities carried out ancillary and/or incidental to the enjoyment of the property as a single dwelling.
- 4.4 Whether business activities are detrimental to the residential amenities and character of the area is largely subjective. Clearly, the level of activity deemed unreasonable by one person may be considered acceptable to another.
- 4.5 The use here comprises the provision of basic care including meals and social activities such as playing cards, dominoes and bingo, for up to 12 vulnerable, older persons from approximately 9:00am to 4:30pm Mondays to Fridays only.

The number of clients varies from day to day – for example, during the week of Monday 25th to Friday 29th April 2016, the numbers were 6, 9, 11, 7 and 11.

- 4.6 The clients are generally collected from their homes by a minibus which is parked either on a hardstanding within the curtilage of the property or on the adjacent highway. A small number of clients are occasionally dropped off by relatives.
- 4.7 The number of carers varies from 3 to 4 depending on the number of clients and they arrive at the premises generally between 8:00 and 8:30am and leave at 5:00pm at the latest. (They arrive slightly earlier during the winter months to ensure the heating is adequate).
- 4.8 Only 2 of the 4 carers arrive by car and, of these, only one is parked on the site or in the adjacent highway. The other vehicle is parked some way from the site and the driver walks from there. This is an established procedure aimed at minimising potential parking stress close to the site.
- 4.9 The building is unoccupied during the evenings, overnight and generally at weekends. (There is a provision to offer emergency care over the weekend if essential but, according to the carers, this is extremely rare).
- 4.10 There is no signage displayed which advertises the use, no stock is stored outside and, according to the staff, all waste generated by the operation is stored out of sight and is collected by a specialist waste disposal contractor. At the time of site visits by the case officer, no waste materials were observed from the public domain which would appear to support the latter assertion. It is considered, therefore, that the outward appearance of the property is not materially affected by the care operation.

- 4.11 The Contracts Team within the Department for People were consulted over the issue and their response included the following information:

An officer visited the property recently to meet with Age Concern who had issues raised with them by a local resident concerning the fire exits and his claim that the vehicle used to transport the clients had no MOT (Ministry of Transport road worthiness test). The officer found no problem with the fire exits and although the MOT certificates were not in the relevant folder at the time of the visit, they were produced later in the day and were in date and are now in the correct folder in the premises.

- 4.12 The team also provided the following comments:

“Westbury Day Centre is providing a valuable service to us in Southend and there are now 28 vulnerable older adults attending the services across the week and this accounts for 48 attendances as some go there more than once a week. This number has obviously built up since the centre open back in June last year.

The centre appears very self-contained and I’m advised they have done their best to get on well with neighbours. The service finishes late afternoon and so does not cause any disturbance or disruption in the evening or at weekends. Whilst the centre does have a sizeable garden to use, I would guess that this wouldn’t be every day as older adults often need considerable persuasion to go outdoors but if they did the number of people would resemble a family get together which any of the neighbours could be hosting.

The centre is providing a valuable service to these individuals which we could not commission elsewhere if the centre was unable to continue to operate. A day service provides much needed respite for carers and a social outlet for people who are isolated and not normally able to access the community. The people attending have an enjoyable time and the activities on offer are geared to meet their needs.

The home itself is registered with CQC although there is no requirement for a day centre to be registered with them”.

- 4.13 It is quite probable that the activities carried out at this property will, from time to time, cause a degree of disturbance to the occupiers of adjacent properties. However, whether this would be in excess of what could reasonably be expected from the occupiers of a large family home is a matter of fact and degree.
- 4.14 Given the nature of the activities, that they only take place between Monday and Friday during normal business hours and the vehicular movements to and from the site are not excessive, it is difficult to see how they could be considered to result in demonstrable harm to the amenities and character of the area to the extent that it would be reasonable, expedient, proportionate or in the public interest to pursue enforcement action which could severely impact on the quality of life of the clients and of their respective, usual day to day carers.
- 4.15 Naturally, if the activities intensify significantly at any time in the future, the matter may be revisited.

5.0 **Relevant Planning History**

5.1 None.

6 **Planning Policy Summary**

6.1 The National Planning Policy Framework (NPPF) 2012.

6.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).

6.3 Development Plan Document 2: Development Management Document Policy DM11 (Employment Areas)

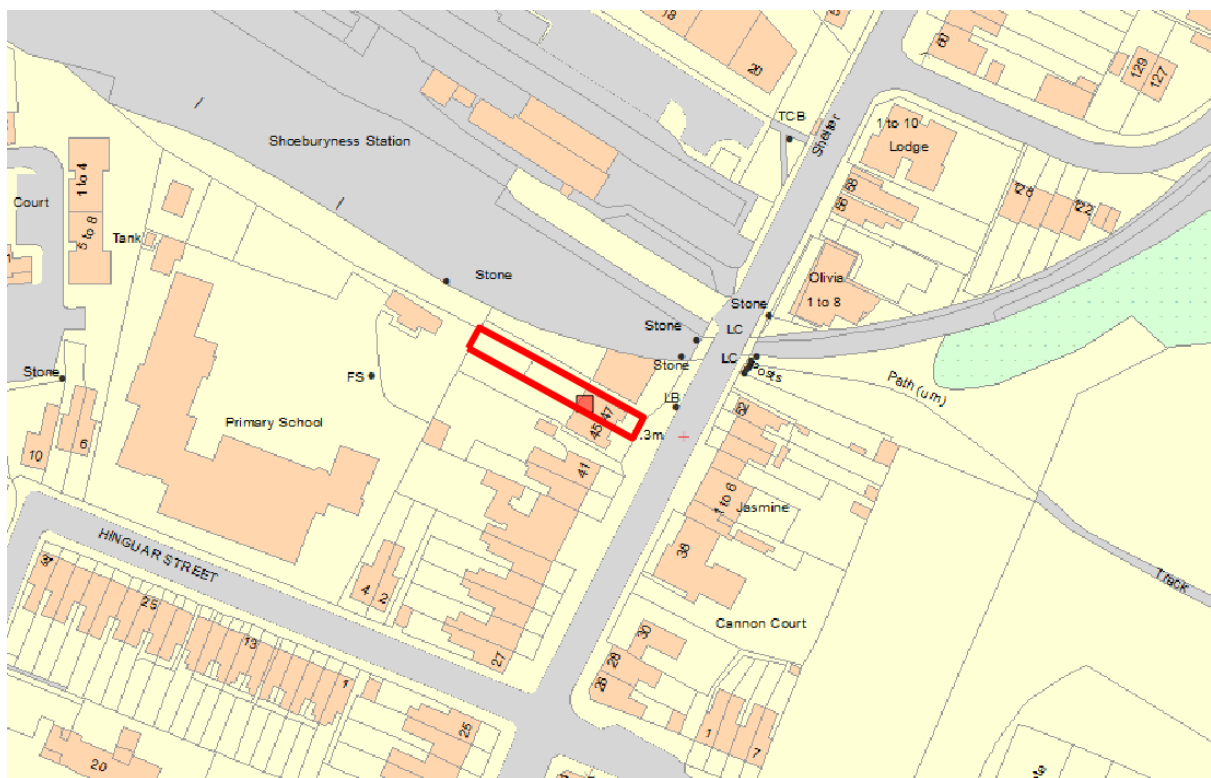
6.4 Design and Townscape Guide 2009 (SPD1).

6.5 Community Infrastructure Levy Charging Schedule.

7 **Recommendation**

7.1 **Members are recommended to TAKE NO FURTHER ACTION.**

Reference:	15/00241/UNAU-B
Ward:	Shoeburyness
Breach of Control	Without planning permission, the erection of an outbuilding which exceeds 2.5m in height and is located within 2.0m of a boundary of the curtilage of the dwellinghouse.
Address:	47 High Street, Shoeburyness, Southend-on-Sea SS9 3RH.
Case Opened:	5 th October 2015
Case Officer:	Neil Auger
Recommendation:	TAKE NO FURTHER ACTION



1 Site and Surroundings

- 1.1 Two storey semi-detached dwellinghouse located to the west side of Shoebury High Street approximately 70m from its junctions with Hinguar Street and George Street to the south.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a dwellinghouse within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

3 Present Position

- 3.1 On 5th October 2015, an enforcement case was opened as a result of concerns raised by a local resident about an outbuilding which had been constructed within the curtilage of this property.
- 3.2 On 14th October 2015, a site visit was carried out when it was confirmed that an outbuilding with a height exceeding 2.5m to the ridge had been constructed within 2.0m of the rear and north side boundaries of the curtilage of the dwellinghouse.
- 3.3 The householder advised that the outbuilding was proposed to be used for purposes ancillary to the dwellinghouse.
- 3.4 The householder was informed that planning permission was required to retain the outbuildings and an email confirming this and inviting the submission of a retrospective application was sent on 15th October 2015.
- 3.5 To date, no application for planning permission has been received.

4 Appraisal

- 4.1 In order for outbuildings located within 2.0m of a boundary of the curtilage of a dwellinghouse to benefit from permitted development rights under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (formerly the Town and Country Planning (General Permitted Development) Order 1995 (as amended)), they must not exceed 2.5m in height.
- 4.2 The outbuilding here has a height of approximately 3.0m which means it cannot be classed as 'permitted development' and specific planning permission is, therefore, required. As such, in planning terms, the building is unauthorised.
- 4.3 Members will be aware, of course, that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in demonstrable harm to the amenities of the area.

- 4.4 If a retrospective application for planning permission to retain the outbuilding had been submitted, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential amenity.
- 4.5 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.
- 4.6 In the Council's Development Management DPD, policy DM1 states that 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."
- 4.7 The outbuilding here is of a traditional form and has been finished to a high standard. Also, it is not visible from the public domain. Whilst higher than the adjacent outbuildings it does not appear over-scaled in the context.
- 4.8 If a retrospective application for planning permission had been submitted as invited, it is considered that it would have been recommended for approval for the reasons given.
- 4.9 The impact of the building on the residential amenities and character of the area is considered to be minimal due to generous garden depths and separation distances between properties.
- 4.10 It is important that the Council adopts a consistent approach when dealing with planning enforcement issues and there is a history of no further action being taken in respect of outbuildings constructed in excess of the maximum 'permitted development' dimensions when they result in minimal impact on the amenities and character of the area.
- 4.11 For the reasons given, it is considered that the development is generally in accordance with Policies CP4 of the Core Strategy and DM1 of the Development Management DPD and it is, therefore, not considered expedient to take enforcement action.

5.0 **Relevant Planning History**

- 5.1 None.

6 **Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).

6.3 Development Management DPD Policy DM1 (Design Quality)

6.4 Design and Townscape Guide 2009 (SPD1).

6.5 Community Infrastructure Levy Charging Schedule.

7 Recommendation

7.1 **Members are recommended to TAKE NO FURTHER ACTION.**

Reference:	EN/15/00279/UNAU-B
Ward:	Victoria
Breach of Control	Without planning permission, the erection of a fence exceeding 1.0m in height to the eastern boundary of the site adjacent to a highway.
Address:	Southend Bowls Club, 7 Tunbridge Road, Southend-on-Sea, Essex SS2 6LT
Case Opened:	16 th December 2015
Case Officer:	Neil Auger
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 Large plot of land accommodating a bowling green, two storey clubhouse and vehicle parking area lying to the west side of Tunbridge Road approximately 50m from its junction with Carnarvon Road to the south. The Council has a freehold interest in the land which is the subject of a long lease in favour of Southend Bowls Club.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a bowls club premises within Class D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 Present Position

- 3.1 On 11th December 2015, a complaint was received by the Council in which it was alleged that a wooden fence had been erected to the boundary between Southend Bowls Club and Tunbridge Road in place of the previously existing substantial hedge.
- 3.2 A site visit was undertaken on 6th January 2016 by a planning enforcement officer when it was established that the allegation was correct. The previously existing hedge had been completely removed and replaced with a 2.56m high fence comprising close boarded wooden panels with concrete gravel boards supported by concrete posts.
- 3.3 A letter was sent on 20th January 2016 informing the club chairman that planning permission was required to retain the development and advising that this would probably not be granted in respect of the fence as built. The chairman was advised to arrange for the submission of an application for planning permission for an alternative style of boundary enclosure - preferably a steel palisade style fence (which allowed views through) with a powder coated, finish perhaps in dark green.
- 3.4 On 14th February 2016, an email was received from a club representative querying the need for planning permission and pointing out that there were many fences/walls in the area which are approximately 2.0m in height. In the penultimate paragraph the writer asked for clarification so that he could ***“take this up with the board”*** and stated that ***“at the moment, my advice would be to apply for retrospective planning permission”***.
- 3.5 A response was sent on 18th February 2016 providing the requested clarification and advising that the Club had the right to submit a retrospective application for planning permission to retain the fence as erected and that, if this was received, it would be reported to the Development Control Committee to enable elected Members to assess it on its planning merits.
- 3.6 A letter, dated 9th March 2016, was received from the club representative enclosing various documents including photographs of various boundary fences/walls located within the Borough.

- 3.7 To date, no planning application either for a replacement enclosure or to retain the existing fence has been received and there has been no further contact by any club representative.

4 Appraisal

- 4.1 Prior to the erection of the fence which is the subject of this report, the boundary treatment between the bowls club and Tunbridge Road consisted of a substantial hedge. As the property is not located in a Conservation Area and the hedge was not the subject of any form of preservation order, planning permission was not required for its removal. As such, the hedge did not fall within the control of the Council in planning terms and there is no legislation available which may be used to require the planting of a replacement hedge.

It should be noted that hedges are not classed as development and are not controlled under the legislation which applies to fences and walls.

- 4.2 The relevant legislation is Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 which succeeds the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and provides that the maximum height without specific planning permission for a boundary enclosure (fence or wall etc.) adjacent to a highway is 1.0m. The fence here is approximately 2.56m high and, therefore, requires specific planning permission. This has neither been applied for nor granted so the fence is unauthorised.
- 4.3 Members will be aware, of course, that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in demonstrable harm to the amenities of the area.
- 4.4 If a retrospective application for planning permission to retain the fence as constructed or an application for planning permission for a replacement boundary structure had been received, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential amenity.
- 4.5 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.
- 4.6 In the Council's Development Management DPD, policy DM1 states that 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."

- 4.7 The fence here comprises close boarded wooden panels with concrete gravel boards supported by concrete posts which have been erected to the top of the previously existing low wall. This is a vernacular form of boundary enclosure commonly used in both domestic and commercial situations. However, It is considered that, in this location, its height at 2.56m is excessive and this, together with its substantial length, renders its appearance incongruous and out of keeping in the streetscene.
- 4.8 The unauthorised boundary enclosure is considered to be detrimental to the character and visual amenities of the area in that its excessive height and substantial length renders its appearance incongruous and out of keeping in the streetscene contrary to the National Planning Policy Framework (NPPF), Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policy DM1 of the Development Management DPD and the Design and Townscape Guide (SPD1).
- 4.9 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 Council 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, proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

5 Relevant Planning History

None.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Development Management DPD Policy DM1 (Design Quality).
- 6.4 Design and Townscape Guide 2009 (SPD1).

7 Recommendation

- 7.1 **Members are recommended to: AUTHORISE ENFORCEMENT ACTION** to secure the removal of the fence constructed to the eastern boundary of the property adjacent to Tunbridge Road or reduce its height to a maximum of 1.0m on the grounds that the unauthorised development is detrimental to the character and visual amenities of the area by reason of its excessive height and length which render its appearance incongruous and out of keeping in the streetscene contrary to the National Planning Policy Framework (NPPF), Core Strategy DPD Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policy DM1 of the Development Management DPD and the Design & Townscape Guide (SPD1).

- 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, the necessary remedial works would probably require quotes to be obtained and contractors to be engaged so a compliance period of 3 months is considered reasonable.

Reference:	EN/16/00086/UNAU
Ward:	Milton
Breach of Control	Installation of external ventilation equipment to the rear of the premises without planning permission
Address:	68 London Road Southend on Sea
Case Opened:	12 May 2016
Case Officer:	Philip Kelly
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The site is on the south side of London Road midway between the junctions with Ashburnham Road and Gordon Road. It is a commercial area, but there are residential flats at first floor level.

2 Lawful Planning Use

- 2.1 The lawful use of the ground floor is as a restaurant, and that of the upper storey is as a residential flat.

3 Present Position

- 3.1 There is a history of a breach of planning control with regard to the installation of a ventilation system at the premises. This was eventually resolved by the current leaseholder of the ground floor unit by removing the unauthorised ventilation system which was located on the rear wall of the building. However, this leaseholder has now relocated the ventilation equipment (using the same materials) to the side of the 'outrigger' at the rear of the building without planning permission. Noise and odour concerns from this system have been raised by neighbouring residents since it was relocated. A meeting with environmental health officers took place on site on 12 May 2016 and the leaseholder was advised that the ventilation system did not benefit from planning permission, although this was disputed by the leaseholder. The leaseholder also confirmed at this meeting that materials from the previously unauthorised ventilation system had been used in the ventilation system that had recently been relocated. The unauthorised equipment remains in place.

4 Appraisal

- 4.1 The history of planning and environmental concerns at the property is extensive. The planning permission granted in 2004 (04/00511/FUL) included a ventilation system to be erected on the back wall of the 'outrigger' subject to condition 5 which required details of the ventilation system to be submitted and agreed prior to its installation. Details of the ventilation system were agreed in 2005, although this system was never installed. An extract ventilation system was subsequently installed on the side wall (in the same location as the current unauthorised system) on the side of the 'outrigger' in 2007 without planning permission however, was then removed. Another ventilation system was installed on the rear wall of the outrigger in 2011 (although details were never agreed prior to its installation) and enforcement action was taken by planning (enforcement notice) and environmental health (statutory nuisance notice) in relation to this installation due to the impact on the amenity of adjacent residents.

- 4.2 Paragraph 2.6 of Policy DM1 of the Development Management Document refers to the need for the amenity of neighbours to be properly considered. It states that amenity takes account of factors such as privacy, overlooking, noise and disturbance, the sense of overbearing, pollution, and daylight and sunlight. Environmental Health officers have expressed concern that this equipment can be expected to cause excessive noise, and also to discharge fumes particularly close to windows of the upstairs flats. Whilst its poor appearance can only be seen by a limited number of people at the rear of the premises, the closeness of this bulky equipment to neighbouring windows also causes an overbearing relationship and intrusiveness. The location and poor functioning of this equipment is considered unacceptable and detrimental to residential amenities.
- 4.3 The current leaseholder had been advised by the planning department (email dated 15 October 2015) that prior to the installation of a new ventilation system, details of the system would need to be agreed through the planning department, in line with condition 5 of planning permission 04/00511/FUL. Whilst attempts were made by the leaseholder to provide this information, it was deficient in its content and the leaseholder was advised accordingly. No further attempt was made to resolve this matter and the unauthorised installation has now occurred (in a location that was not previously granted under planning permission 04/00511/FUL). 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 remove the unauthorised ventilation system.

5 Consultation

Environmental Health (observations from meeting on site; 12 May 2016)

- 5.1 The wife of the food business operator has advised us it is the same system used and removed by them from the back addition rear elevation south.

The evident change is that one of the silencers has not been incorporated in the re-erected system now on the back addition flank elevation west. The upper section of the ducting system though not a planning matter was only secured on one side so the unit is potentially unstable. There is no evidence of the use of any vibrate mount but unless sufficiently secured it is likely to lead to structure borne noise. There seemed to be a green tape under the screwed mountings that are fixed but even if this is a neoprene tape it is unlikely to be sufficient. Mounts would normally be applied or in some cases a neoprene pad and although tapes are used they are not the only measure. Alternatively it might just be an adhesive tape they were unable to give any details. The second silencer is in the lean-to area in a filthy condition. No details of either of the silencers were submitted so there appropriateness cannot be assessed.

The noise level was improved as would be expected by operating the unit at a lower speed than that which was on when we arrived (top level 10) but this may not be practicable if effective ventilation is to be achieved in the food business. A further matter which may compound this is that at present the operator is turning the fan off when they are not cooking. However under gas safety legislation they will be required to install a gas interlock which will prevent the ventilation being turned off when gas appliances are on so in practise once installed the ventilation will operate all day when the gas is flowing to appliances even if they are turned to their lowest setting. They have installed a new gas cooker to the kitchen and also a gas grill the odour from the use of which was apparent in the complainant premises during our visit there but only for short spurts and could not be considered a statutory nuisance at that time. However with increased use then nuisance in respect of odour is likely.

The effective stack height of the system now installed on the back addition flank west elevation is lower than what was achieved on the South elevation for 2 reasons the silencer which lengthen the system before discharge has been removed but also because on the rear elevation there was a reasonable distance before any plume would meet a higher structure/roof. In the new position the plume is almost immediately presented with the main building roof which is higher before there can be much significant dispersion. This is likely to increase the amount of plume/odour which finds its way to the residential units at 68 and 70 although 68 (first floor flat) is currently unoccupied. The fan is at the same level as the rear elevation window of habitable rooms in the first floor flats at both 68 and 70. The final discharge is little in reality above the eaves of the back addition. So close to the top of these sash windows which will be used for ventilation. If you look at the photo from 2007 you will note that the discharge point was significantly higher when this unit or likely parts of it was previously positioned here. Even with this higher level discharge in 2007 we had complaints although statutory nuisance was never substantiated and the operator moved on.

6 Planning History

- 6.1 16 February 2004 Permission given to use ground floor as restaurant and first storey as training room – ref 04/00511/FUL
- 6.2 8 June 2011 Permission given to convert first storey to a residential flat and erect external staircase to rear – ref 11/01376/FUL
- 6.3 2 November 2011 – Enforcement notice served requiring removal of ventilation system to rear of building

7 Planning Policy Summary

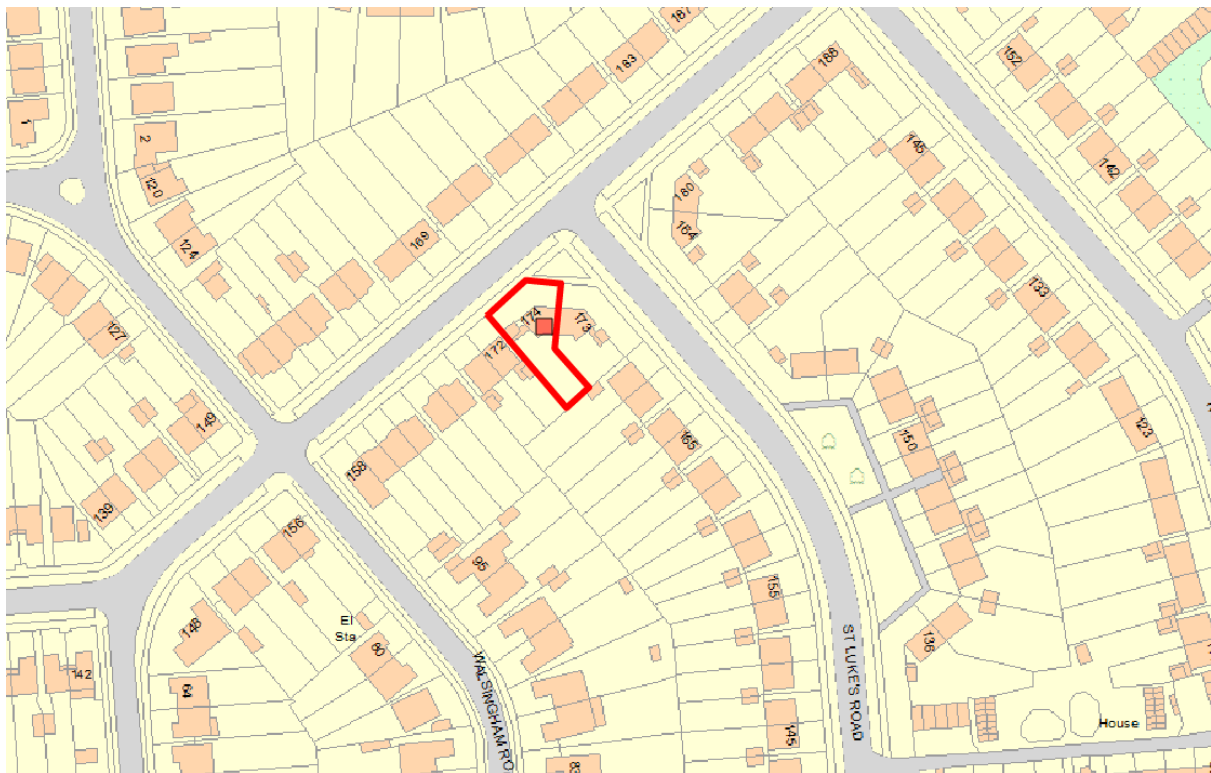
- 7.1 National Planning Policy Framework
- 7.2 Core Strategy (DPD) Policies KP2 and CP4

7.3 Development Management (DMP) Policy DM1

8 Recommendation

- 8.1 **MEMBERS ARE RECOMMENDED TO AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised external ventilation equipment at the rear. This is because of the detriment to residential amenities contrary to the NPPF, Policy DM1 of the DPD and Policies KP2 and CP4 of the Core Strategy.
- 8.2 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.
- 8.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a one month compliance period is reasonable in these circumstances.

Reference:	16/00097/UNAU_B
Ward:	St Lukes
Breach of Control	Without planning permission, the erection of a two storey side extension not in accordance with the approved plans under application 10/01749/FULH.
Address:	174 Royston Avenue, Southend-on-Sea, Essex,
Case Opened:	24 th May 2016
Case Officer:	Ian Harrison
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 The site is located to the West of Royston Avenue and is one of a pair of semi-detached dwellings at the junction with St. Luke's Road.

2 Lawful Planning Use

- 2.1 The lawful planning use is for residential purposes within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 Present Position

- 3.1 Planning permission was granted for the erection of a two storey side extension under the terms of planning application 10/01749/FULH. The side extension was approved to measure 3.55 metres wide and 5.55 metres deep, with an eaves height of 5.1 metres and a maximum height of 7.6 metres. Two dormers were approved on the East elevation of the extension, each measuring 1.2 metres wide and a maximum of 2.2 metres deep, with pitched roofs giving the dormers a maximum height of 1.8 metres. A gap of 0.5 metres would have been retained between the dormers. The approved development also included a two storey rear extension that has not been completed.
- 3.2 Documents sourced from the Council's Building Control Team indicate that works commenced in 2012 and photographic evidence indicate that the shell of the extension was built to a height of approximately 2.5 metres at the end of July 2012 and remained as such until September 2012. No further evidence is available until June 2014 which shows the outside of the extension to have been completed. No evidence exists in relation to the condition of the inside of the extension.
- 3.3 On 03/05/16, it was drawn to the Council's attention that the owner of the site wished to undertake the approved rear extension but not in accordance with the approved plans. From the landowners submissions, it was also established that the dormer of the side extension and the first floor window had not been provided in accordance with the approved plans. The applicant was duly advised that planning permission should be sought.
- 3.4 During a subsequent conversation with the landowner it was suggested that the extension had been completed for more than four years. This led to the investigation of the extension and the identification of the evidence that has been set out above. This demonstrates that the extension has not been substantially complete for a period in excess of four years and therefore the development that has occurred is not immune from enforcement action. The Council's evidence indicates that the extension was not completed in September 2012 but no evidence is available after that date and as such the Local Planning Authority would not be able to confirm, with certainty, when the extension was completed.

- 3.5 The applicant has indicated that he would be willing to submit a retrospective planning application for the works that have occurred. However, this would be likely to take some time for the applicant to submit and eight weeks to determine and as such this would be likely to be determined soon to the time after which the Council's evidence reduces.
- 3.6 Therefore, if it is considered that the extension causes harm in planning terms, in order to ensure that the development does not become immune from enforcement action, it is considered that an Enforcement Notice should be served before September 2016.

4 Appraisal

Principle of Development

National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management DPD Policy DM1 and SPD1

- 4.1 This development should be considered in the context of the National Planning Policy Framework 2012 and Core Strategy Policies KP2 and CP4. Also of relevance are policies relating to design that are contained within the Development Management DPD. These policies and guidance support extensions to properties in most cases but require that such alterations and extensions respect the existing character and appearance of the building. Subject to detailed considerations, the extension to the dwelling is considered to be acceptable in principle. The extension of the dwelling has been supported previously and it is considered that there is no reason to reach a different conclusion in relation to the principle of development.

Design and Impact on the Character of the Area:

National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management DPD Policy DM1 and SPD1

- 4.2 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, in Policy DM1 of the Councils Development Management DPD and in the Policies KP2 and CP4 of the Core Strategy. The Design and Townscape Guide (SPD1) also states that *"the Borough Council is committed to good design and will seek to create attractive, high-quality living environments."*
- 4.3 In the NPPF it is stated that *"good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."* In the Council's Development Management DPD, policy DM1 states that 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."

- 4.4 The side extension that has occurred is largely the same as the development that was granted planning permission. The two significant variations to the approved plans have seen the provision of a larger dormer that measures approximately 3 metres wide and 1.8 metres tall, with a flat roof and two elements of pitched roof to the side. The windows inserted at first floor in the rear elevation and the dormer also do not accord with the approved plans.
- 4.5 Paragraph 366 of SPD1 states that *“Dormer windows, where appropriate, should appear incidental in the roof slope (i.e. set in from both side walls, set well below the ridgeline and well above the eaves). The position of the new opening should correspond with the rhythm and align with existing fenestration on lower floors. It goes on to state that “the materials should be sympathetic to the existing property. The space around the window must be kept to a minimum. Large box style dormers should be avoided, especially where they have public impact, as they appear bulky and unsightly. Smaller individual dormers are preferred.”*
- 4.6 The dormer that has been erected is a box style dormer that has been built with pitched roofs to cut-off the edges of the dormer. Even allowing for the approved rear extension that is yet to be completed, the dormer is visible from St. Lukes Road and Walsingham Road and therefore the visual impact is of increased significance and will remain so. In this instance it is considered that the bulk and design of the dormer has a negative impact on the character and appearance of the dwelling. It is considered that the bulk of the dormer results in it not being incidental to the roofscape of the extension, contrary to the abovementioned design guidance.
- 4.7 The modification of the first floor windows within the rear elevation do not cause harm to the character or appearance of the dwelling or the surrounding area.

Impact on Residential Amenity:

NPPF; DPD 1 (Core Strategy) Policies KP2 and CP4; Development Management DPD Policy DM1 and SPD 1 (Design & Townscape Guide (2009)

- 4.8 Paragraph 343 of SPD1 (under the heading of Alterations and Additions to Existing Residential Buildings) states, amongst other criteria, 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. Policy DM1 of the Development Management DPD also states that development should “Protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.”
- 4.9 Although the amount of glazing would slightly increase and the bulk of the dormer has increased, it is considered that the dormer does not cause a loss of light or privacy within neighbouring properties to that which was approved previously.

Other Matters

4.10 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 Council 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, proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

5.0 Relevant Planning History

5.1 As set out above, planning permission was granted for the erection of a two storey side extension, a two storey rear extension and two dormers windows under the terms of application 10/01749/FULH. Earlier application 10/00582/FULH proposed a similar development, but was refused.

5.2 Application 08/00303/FUL sought permission for the erection of an additional dwelling at the site. That application was refused.

6 Planning Policy Summary

6.1 The National Planning Policy Framework (NPPF) 2012.

6.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).

6.3 Development Plan Document 2: Development Management Document Policy DM11 (Employment Areas)

6.4 Design and Townscape Guide 2009 (SPD1).

6.5 Community Infrastructure Levy Charging Schedule.

7 Recommendation

7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure the removal of the dormer on the grounds that the unauthorised development is detrimental to the character and visual amenity of the area by reason of its bulk and design results in an incongruous addition contrary to the National Planning Policy Framework (NPPF) Core Strategy DPD Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policy DM1 of the Development Management DPD and the Design and Townscape Guide (SPD1).

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, the necessary remedial works would probably require quotes to be obtained and contractors to be engaged so a compliance period of 3 months is considered reasonable.