

<b>Reference:</b>	17/00195/UNAU_B and 21/00141/UNAU_B	
<b>Ward:</b>	Chalkwell	
<b>Breach of Control:</b>	Raised roof parapet and balustrade forming a roof terrace	
<b>Address:</b>	78 Beach Avenue, Leigh-On-Sea, Essex, SS9 1HW	
<b>Case opened :</b>	20.07.2017 and 16.05.2021	
<b>Case Officer:</b>	Hayley Thompson	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	

78 Beach Avenue, Leigh-On-Sea, Essex, SS9 1HW



## **1 Site location and description**

- 1.1 This report relates to a two-storey detached building on the north-eastern side of Beach Avenue. The surroundings steeply slope from north to south-east. The site is not located within a conservation area or subject to any site-specific planning policies.

## **2 Lawful Planning Use**

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

## **3 Relevant Planning History**

- 3.1 18/00442/FULH - Retain remodelled roof parapet and minor increase of balustrade height (Retrospective) – Application refused.

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

- 4.1 Without planning permission alterations to a roof parapet were carried out to increase the height to 1.2 metres above roof level and the installation of a part glazed infill balustrade in association with the use of the flat roof as a terrace.
- 4.2 It was found through determination of a planning application that the development would allow direct views into rear private amenity spaces of surrounding dwellings to the north and east resulting in a harmful loss of privacy.
- 4.3 Some supporting evidence was submitted during the planning application process that on the balance of probability access to the flat roof has been long-established and the access arrangements to the flat roof indicate that it has been easily accessible to occupiers of the dwelling via a substantial internal stair and a small doorway for a considerable period of time.
- 4.4 As a result of the alterations to the roof including the balustrade rail and raised parapet height, a formalisation of the existing roof as an amenity space has taken place encouraging an intensification of the use of the roof for general social use and living space and allowing longer dwell times by individuals at the edge of the roof, in relative safety, and facilitating the ability to look directly over the edge of the roof. This has caused an increase in direct overlooking over neighbouring private amenity spaces.
- 4.5 It appears that historic use of the roof has been informal and intermittent but it is considered that the existence of the access for maintenance purposes and not as an intended useable liveable space, does not necessarily imply the formalisation of the use of the entire flat roof as a roof terrace. It is understood therefore that the harm caused directly relates to the unauthorised installation of the balustrade and raised parapet which formalises use of the roof as a roof terrace and causes a harmful loss of privacy to neighbouring private amenity space.

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

- 5.1 In July 2017 an enforcement case was raised regarding an alleged unauthorised roof terrace which was in the process of being constructed.
- 5.2 In June 2018 planning application 18/00442/FULH seeking to retain the unauthorised works to the roof was refused. A copy of the officer report is attached as Appendix 1 Permission was refused on the following ground:

*The development leads to a change in the character of the use of the roof, facilitating its social use as an extension to the dwelling's living space. It would allow direct views from the edges into rear private amenity spaces at surrounding dwellings to the north and east, leading to a material loss of privacy to occupiers therein to the detriment of amenities. This is unacceptable and contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).*

- 5.3 In May 2021 a complaint was received indicating that the roof terrace was still in situation thereby resurrecting the 2017 case with fresh reference 21/00141/UNAU\_B.
- 5.4 An enforcement site visit undertaken in May 2021 confirmed that the roof terrace is still in situation.
- 5.5 To date, no further planning application has been submitted to seek to overcome the reason for refusal of the retrospective planning application or otherwise to seek to regularise the position and no appeal was submitted against the refusal of planning permission.

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

- 6.1 The appended officer's report for planning application 18/00442/FULH sets out fully the basis for refusal of planning permission due to the identified harm. The policy context has not changed materially in the interim in any relevant regards.
- 6.2 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 roof parapet and balustrade 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 18/00442/FULH

<b>Reference:</b>	18/00442/FULH
<b>Ward:</b>	Chalkwell
<b>Proposal:</b>	Retain remodelled roof parapet and minor increase of balustrade height (Retrospective)
<b>Address:</b>	78 Beach Avenue Leigh-On-Sea
<b>Applicant:</b>	Mr Lee Cooper
<b>Agent:</b>	Mr Steven Kearney
<b>Consultation Expiry:</b>	26.04.2018
<b>Expiry Date:</b>	07.05.2018
<b>EoT Date:</b>	11.06.2018
<b>Case Officer:</b>	Robert Lilburn
<b>Plan Nos:</b>	494 P01 revision B
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

## **1 The Proposal**

- 1.1 Planning permission is sought for alterations to a roof parapet, including raising its height to 1200mm above roof level and installation of a part-glazed infill balustrade.
- 1.2 The parapet is finished externally at the north, east and south elevations in white painted render, while the west-facing portion is finished externally in red tiles to match the existing adjacent roof.
- 1.3 The alterations are in association with the use of the flat roof as a terrace by occupiers of the property.
- 1.4 The application has been submitted following planning enforcement enquiries. The applicant has agreed an extension to the determination date of the application in order to provide further evidence of the former condition of the roof and parapet prior to the works being commenced.

## **2 Site and Surroundings**

- 2.1 The subject building is a two-storey detached dwelling house with a part-flat roof and part-ridged roof. It is finished externally in white painted render with red roof tiles.
- 2.2 The surrounding area is characterised by larger dwellings situated in close proximity to one another. Rear gardens are generously proportioned at approximately 13m in depth.  
  
The surroundings are steeply sloping from north to south-east.
- 2.3
- 2.4 The site is not located within a conservation area or subject to any site specific planning policies.

## **3 Planning Considerations**

- 3.1 The key considerations in relation to this application are the principle of the development, design and impact on the character of the area, and impact on residential amenity.

## **4 Appraisal**

### **Principle of Development**

**National Planning Policy Framework, Policies KP1, KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.1 The dwelling is located within a residential area. Extensions and alterations to the property are considered acceptable as a matter of principle.
- 4.2 Other material planning considerations are discussed below.

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

#### **National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.3 Paragraph 56 of the NPPF states 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”.
- 4.4 The importance of good design is reflected in Policies KP2 and CP4 of the Core Strategy and also in Policies DM1 and DM3 of the Development Management Document. These policies seek to maintain and enhance the amenities, appeal and character of residential areas.
- 4.5 Policy DM1 seeks development that adds to the overall quality of the area and respects the character of the site, its local context and surroundings in terms of its architectural approach.
- 4.6 Policy DM3 seeks development that responds positively to local context. It also states that alterations and additions to a building will be expected to make a positive contribution to the character of the original building and the surrounding area.
- 4.7 The raising of the roof parapet height and installation of the glazed balustrade with metal rail cause no material harm to the appearance of the building or wider area.
- 4.8 The proposed external materials match the parent building and are considered acceptable.
- 4.9 This proposal is acceptable and policy compliant in this regard.

### **Impact on Residential Amenity**

#### **National Planning Policy Framework, Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009)**

- 4.10 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.
- 4.11 Policy KP2 of the Core Strategy seeks to secure improvements to the urban environment through quality design. Policy CP4 seeks to maintain and enhance the amenities, appeal and character of residential areas.
- 4.12 Policies DM1 and DM3 of the Development Management Document seek to support sustainable development which is appropriate in its setting, and that protects the amenity of the site, immediate neighbours, and surrounding area, having regard to matters including privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight”.

- 4.13 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”*.
- 4.14 The proposal supports the use of the flat roof as a terrace. The use of the flat roof as a terrace has not formed part of the application. However, it is a relevant consideration.
- 4.15 The access arrangements to the flat roof indicate that it has been easily accessible to occupiers of the dwelling via a substantial internal stair and a small doorway for a considerable period of time. This has been confirmed in statements by the applicant and a neighbour.
- 4.16 On the balance of probability it is considered that access to the flat roof has been long-established. Therefore it would be unreasonable to seek to restrict access to the roof.
- 4.17 However, the balustrade rail and raised parapet height would allow longer dwell times by individuals at the edge of the roof, and facilitate the ability to look directly over the edge in relative safety, especially at the north and east edges. In turn it encourages the use of the roof for gatherings and general social use and living space in fine weather. This would allow an increase in direct overlooking of neighbouring rear private amenity spaces, particularly no.23 Cliff Road and no.76 Beach Avenue, and a perception of reduced privacy for surrounding occupiers.
- 4.18 It appears that use of the roof has in the past been informal and ad hoc, and its surfacing and parapet characteristics, shown in evidence supplied by the applicant, indicate that it was not intended as a useable living space. It is considered that the existence of the access which would allow maintenance, for example, does not necessarily imply that the formalisation of the use of the entire roof as a terrace, where it may support gatherings and act as an extension to the property, should automatically follow.
- 4.19 Taking account all material considerations, it is considered that the development is materially harmful to the amenities of neighbouring occupiers, by leading to an increase in direct overlooking and an actual and perceived loss of privacy. The development is therefore unacceptable and in conflict with the above policies.

## **Community Infrastructure Levy**

### **CIL Charging Schedule 2015**

- 4.20 The new floor space created by the proposal would be less than 100m<sup>2</sup>. Therefore, the proposed development is not CIL liable.

## **5 Conclusion**

- 5.1 Having taking all material planning considerations into account, it is found that the principle of altering the property is acceptable. The design of the proposal is consistent with the aims of maintaining and enhancing the quality of the residential environment. The proposal would have a detrimental impact on the amenity of the neighbours having regard to overlooking. The applicant has indicated safety considerations in relation to the formation of the parapet, however it is considered that as control of access to the roof is within the applicant's control, this remains a private matter and would not warrant the harm resulting to neighbour amenities from the formation of the parapet, rail and the de facto creation of a roof terrace extension.

## **6 Planning Policy Summary**

### 6.1 The National Planning Policy Framework (2012)

Core Strategy (2007): Policies KP1 (Spatial Strategy) KP2 (Development Principles) and CP4 (Environment & Urban Renaissance)

Development Management Document (2015): DM1 (Design Quality), DM3 (Efficient and Effective Use of Land) and DM15 (Sustainable Transport Management)

Supplementary Planning Document 1: Design & Townscape Guide (2009)

CIL Charging Schedule 2015

## **7 Representation Summary**

### **Consultee comments**

### **Public Consultation**

- 7.1 13 neighbours were notified and one letter of representation has been received. A neighbouring occupier has expressed concern relating to overlooking. It is stated that the development allows the roof to be used more formally as a terrace, with consequent effects of overlooking to nearby back gardens and sitting rooms.

## **8 Relevant Planning History**

- 8.1 None identified.

## **9 REFUSE PLANNING PERMISSION for the following reasons:**

- 1. The development leads to a change in the character of the use of the roof, facilitating its social use as an extension to the dwelling's living space. It would allow direct views from the edges into rear private amenity spaces at surrounding dwellings to the north and east, leading to a material loss of privacy to occupiers therein to the detriment of amenities. This is unacceptable and contrary to the National Planning Policy Framework, Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea 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 discussing those with the Applicant. However, the proposal does not represent sustainable development because the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal and set out in a report prepared by officers, approval has not been possible.**

Appendix 2 – Site photographs 2017/2018







Appendix 3 – Site photograph May 2021

