

Reference:	20/00027/UNAU_B	
Ward:	Belfairs	
Breach of Control:	Without planning permission the erection of a building containing a raised platform	
Address:	32 Belfairs Drive, Leigh-On-Sea, Essex, SS9 3AA	
Case opened :	28.01.2020	
Case Officer:	Hayley Thompson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

32 Belfairs Drive, Leigh-On-Sea, Essex, SS9 3AA



1 Site location and description

- 1.1 This report relates to a two-storey detached dwelling on the eastern side of Belfairs Drive. Its garden backs on to the rear gardens of Flemming Avenue dwellings. The site is not in 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 16/00257/FULH - Erect two storey side extension and single storey rear extension – Permission granted.
- 3.2 19/00442/CLP - Dormers to side elevations to form habitable accommodation in roofspace, install juliette balcony to rear, alter elevations –Not lawful.
- 3.3 20/00205/CLP - Dormer to side elevation to form habitable accommodation in roofspace, install juliette balcony to rear and alter elevations –Lawful.

4 The alleged planning breach and the harm caused

- 4.1 Without planning permission, the erection of a building containing a raised platform.
- 4.2 Class E Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) covers provision of a 'building' within the area around a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse. A detached building or structure that is located within 2 metres of the boundary of the curtilage of the dwellinghouse can only measure up to 2.5 metres in total height under permitted development limitations. Class E also restricts the height of raised platforms. A raised platform is any platform with a height greater than 0.3 metres above ground level.
- 4.3 The structure, which in appearance is designed as a play facility for children, is understood to be approximately 4.2 metres high, 2 metres wide and 2.3 metres deep. It is significantly larger than the GPDO dimension restrictions, contains a platform approximately 2.5 metres above ground level and is not permitted development. The structure is positioned directly next to the boundary shared with No 36 Belfairs Drive, enabling views into that rear garden and also, to a lesser extent, views towards the rear garden of No 28 Belfairs Drive. Positioned at the rear of the garden, and notwithstanding the partial screening effect of boundary landscaping, it also impacts the rear garden scene enjoyed by residents in Flemming Avenue to the east as well as within neighbouring Belfairs Drive rear gardens either side. It appears generally as an unusually tall and intrusive feature, out of keeping with the typical scale of incidental rear garden buildings.
- 4.4 The unauthorised development has not been formally assessed against relevant planning policies through submission of a retrospective planning application. The harm caused by the development relates to the impact of the structure on the amenity of occupiers of neighbouring properties.

5 Background and efforts to resolve breach to date

- 5.1 In January 2020 an enforcement case was raised regarding an alleged unauthorised structure which was in the process of being constructed.
- 5.2 Site visits were attempted in February and March 2020 and letters sent following both visits advising the site occupiers of their rights to retrospectively submit a planning application to seek to regularise the development or, failing that, to remove the structure.
- 5.3 A site visit was undertaken in August 2020 during which the occupier was advised that the structure requires planning permission. They confirmed that they had received the two LPA letters advising of this.
- 5.4 In view of no subsequent action on the occupiers' part, a third letter was sent in February 2021 advising submission of a retrospective planning application or removal of the structure.
- 5.5 To date, no planning application has been submitted to seek to regularise the breach of planning control and no direct contact has otherwise been made by the site owner.

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

- 6.1 The structure and inclusion of a raised platform causes overlooking and a significant loss of privacy and harm to rear garden enjoyment for occupiers of No 36 Belfairs Drive and to a lesser degree, No 28. It also significantly harms local character on a wider scale, including within Flemming Avenue to the rear, due to its incongruous scale and intrusive appearance in the rear garden scene. The identified harm to character and amenity is 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).
- 6.2 Given the purpose of the structure, for children's play, the service has taken a reasonably proportionate approach towards the breach, regarding enforcement action as a last resort. However, it should also be recognised that the planning system could not limit the use of the building to only be for children and that the harm identified would result from the use of the building by either children or adults. The structure is not permitted development so needs express planning permission. It causes identified harm to residential amenity. Repeated invites have been offered to the site owners to seek to regularise matters through a planning application. This would enable the impacts to be fully considered and to take account of any neighbour representations raised, plus the ability then to consider whether any planning conditions could be imposed to mitigate and/or control any identified harm. The owners have not responded in any effective way to this, so it is incumbent on the service, as a last resort, to seek to address the identified harm through formal action. This would not prevent the site owner applying for planning permission. Appeal rights would also apply.

- 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. In this instance the action proposed is considered to be reasonable, proportionate and to cause no conflict with human rights legislation.

7 Recommendation

- 7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to
- a) require the removal of the unauthorised play structure in its entirety.
 - 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 – Site photographs



