

Reference:	19/00158/UNAU_B	
Ward:	Milton	
Breach of Control:	Unauthorised roof enlargement	
Address:	21 Holland Road, Westcliff-On-Sea, Essex, SS0 7SG	
Case opened:	5 th June 2019	
Case Officer:	Hayley Thompson	
Recommendation:	NO FURTHER ACTION	

21 Holland Road, Westcliff-On-Sea, Essex, SS0 7SG



1 Site location and description

- 1.1 No 21 is on the eastern side of Holland Road, south of Hamlet Court Road and is a first floor flat within a large, end of terrace property.
- 1.2 The surrounding area is residential in character and the streetscene consists mainly of semi-detached and terraced dwellings. A small backland dwelling, 23 Holland Road, is immediately to the rear of No 21 and beyond that is a sheltered flats development, Homecove House.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 18/01188/FUL - Erect dormer to rear and install rooflights to front to first floor flat and convert loft into habitable accommodation – Permission granted.
- 3.2 19/02093/FUL - Extend existing eaves line to promote existing dormer – Refused
- 3.3 19/00158/UNAU_B – Enforcement Notice served. Appeal dismissed.

4 Background

- 4.1 In August 2018 planning permission 18/01188/FUL was granted for the erection of a dormer to the rear roofslope, rooflights to the front and to convert the first-floor flat's extended loft into habitable accommodation.
- 4.2 In May 2019 the Local Planning Authority were notified that the dormer had been constructed larger in height and depth than the approved plans. Flats do not have permitted development rights so any unauthorised structure materially at variance with the approved plans would, in any circumstances, be a breach of planning control.
- 4.3 The roof enlargement built differed materially approved in its form, scale and appearance from the dormer approved under 18/01188/FUL. The approved rear dormer was of flat roofed box design and of limited architectural merit but its limited scale, bulk and positioning within the roof plane set away sufficiently from the eaves, ridge and flanks meant that it was of acceptable design. Additionally, the approved dormer would not be visible from the front elevation and the use of tile hanging and fenestration to match the existing dwelling would ensure the visual impact would be acceptable.
- 4.4 Subject to a condition requiring obscure glazing of its east facing windows it was found that the dormer's impact on the amenity of neighbouring occupiers, notably No 23 to the immediate rear, would be acceptable.
- 4.5 The unauthorised roof enlargement was constructed larger and in a different form from that of the approved dormer, so materially affecting the scale, bulk and positioning of the structure within the roof plane and thereby its visual impact. The

structure was not set back from the eaves of the roof. Instead, it carried straight up vertically from the main rear wall. It was also constructed in line with the roof ridge such that it had a very simple box like form, akin to a full additional storey when viewed from the west, as opposed to achieving an incidental relationship with the main dwelling which underpinned the basis of the dormer's approval. Due to its bulky form and appearance, this Committee found in December 2019 that the unauthorised roof structure harmed the appearance of the building and the character and appearance of the wider surrounding area. It also found its bulky form and position created an unreasonably dominant presence in the setting and outlook from the neighbouring dwelling 23 Holland Road, harmful to those occupiers' amenity. A photograph of the unauthorised dormer is at Appendix 3. This Committee resolved to authorise the service of a planning enforcement notice to seek to remedy that identified harm. A copy of the relevant 11 December 2019 DC Committee report is at Appendix 1. The notice was served and was subject of an appeal to the Planning Inspectorate (PINS). At Appendix 2 is a copy of the 9 November 2020 PINS letter dismissing the appeal and upholding the enforcement notice.

4.6 The steps within the enforcement notice required:

- a) the unauthorised roof enlargement to be removed or reduced to that approved under application reference 18/01188/FUL.
- b) remove from site all materials resulting from compliance with (a) above.

5 The owner's response to the enforcement notice requirements

5.1 Enforcement notices allow a period for compliance. In this case it was 3 months, effective from the date of the appeal decision. The owner undertook work to respond to the breach which has culminated in the unauthorised development being altered so that it now appears as shown in the photographs at Appendix 4. This is broadly consistent with the 2018 approved scheme but not a full match to it. The completed development differs from the planning permission in that it is not set down from the ridge quite so far as in the approval and it also has an extra small horizontal boxed feature along the foot of the dormer which was not in the approved scheme. This extent of non-compliance has continued to generate third party complaint.

6 Assessment

6.1 The key question for the Local Planning Authority is whether the detailed differences identified in the altered dormer are so at variance with the requirements and purpose of serving the enforcement notice, or causing a residual level of harm, that further action would be justified.

6.2 The purpose of the enforcement notice was to seek to remedy the identified harm which was primarily about the looming form and nature of the dormer being built straight up from the building's main rear wall. The differences are confined to the set down of the dormer roof from the ridge being not quite so far as in the approval and the extra small horizontal boxed feature along the foot of the dormer which was not in the approved scheme.

- 6.3 Given the above differences, the development does not fully comply with the steps in the enforcement notice. The notice will remain in force on the land, will remain as a charge on the land for registration purposes and will be declared in response to any future conveyancing for the property. Leaving the enforcement notice in position will also enable this Local Planning Authority to exercise control under that notice should any further development in that part of the roofspace be undertaken in future.
- 6.4 In terms of remedying significant harm, which was the notice's key purpose, the owner has responded to the enforcement notice. The differences between that now completed and the planning permission granted do not cause any significant harm when considered objectively on their merits. Staff have not identified any basis on which it would be reasonable to take any further action based in the public interest. Nor have staff found any reasonable basis on which to seek a prosecution given the facts of the case. Legal requirements are placed on this Local Planning Authority. For a prosecution case to proceed, the view would have to be reached that it would be more likely than not that the Council would win such a prosecution. That has not been found here. Were the Local Planning Authority to pursue a prosecution here, staff judge that it would be likely to fail, so representing a poor use of public monies, which is not acceptable and would be contrary to the Council's obligations as a responsible Authority.
- 6.5 Considering all the factors above and noting that planning enforcement action has resulted in a remedy of the identified harm, it is considered that it would not be in the public interest to seek to prosecute in respect of the remaining limited differences from the approved 2018 scheme. Subject to the steps outlined in paragraph 6.2 above, it is considered that no further action should be taken and that the current enforcement investigation should be closed.

7 Recommendation

- 7.1 Members are recommended to AUTHORISE that no further action be taken and that the current enforcement investigation be closed.

Appendix 1 – Officer Report application reference 18/01188/FUL

Reference:	18/01188/FUL
Ward:	Milton
Proposal:	Erect dormer to rear and install rooflights to front to first floor flat and convert loft into habitable accommodation
Address:	21 Holland Road, Westcliff-on-Sea, Essex, SS0 7SG
Applicant:	Mr D Nyman
Agent:	Mr Dale Perry
Consultation Expiry:	24.07.2018
Expiry Date:	16.08.2018
Case Officer:	Oliver Hart
Plan No's:	1763-01, 1763-04A, 1763-05
Recommendation:	GRANT PLANNING PERMISSION subject to conditions

1 The Proposal

- 1.1 The application seeks permission to erect a dormer to rear and install rooflights to the front of a first floor flat and convert loft into habitable accommodation.
- 1.2 During the course of the application, revised plans were submitted at the request of officers reducing the size of the dormer to approximately 5.8m in width, 3.25m in depth and 2.25m in height.
- 1.3 The proposed materials for use on the development are tile hanging and fenestration to match the existing dwelling.

2 Site and Surroundings

- 2.1 The application site is located on the eastern side of Holland Road, south of Hamlet Court Road and relates to a first floor flat within a large, end of terrace property.
- 2.2 The surrounding area is residential in character and the streetscene consists predominantly of semi-detached and terraced properties of similar mass, form and design characterised by large, two storey front gabled projections.
- 2.3 A small backland development known as 23 Holland Road is found immediately to the rear of the application property and beyond that, a large flatted development known as Homecove House.

2.4 It is noted the roofscape of the surrounding properties remains largely unaltered.

3 Planning Considerations

3.1 The main considerations in relation to this application are the principle of the development, design and the impact on the street-scene and any impact on neighbouring properties.

4 Appraisal

Principle of Development

National Planning Policy Framework (NPPF) 2018, Core Strategy (2007) Policies KP1, KP2 and CP4; Development Management Document Policy DM1 and DM3 and guidance contained within the Design and Townscape Guide (2009)

4.1 The proposal is considered in the context of the NPPF, Core Strategy (2007) Policies KP2 and CP4 and Policy DM1 of the Development Management Document. 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. The dwelling is located within a residential area where extensions and alterations to this property are considered acceptable in principle. Therefore, the principle of extending the dwelling is acceptable subject to the detailed design considerations below.

Design and Impact on the Character of the Area:

National Planning Policy Framework (NPPF) 2018, Core Strategy Policies KP2, CP2 and CP4, Development Management Document Policies DM1, DM3 and DM15. And guidance contained within the Design & Townscape Guide (2009)

4.2 The key element within all relevant policies is that good design should be a fundamental requirement of new development in order to achieve high quality living environments. Its importance is reflected in the NPPF, in the Policies KP2 and CP4 of the Core Strategy and also in Policy DM1 of the Development Management Document. The Design and Townscape Guide (2009) also states that *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.”*

4.3 According to Policy KP2 of the Core Strategy (2007), 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”*.

4.4 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”.

- 4.5 Paragraph 366 of the Design and Townscape Guide (2009) under the heading of ‘Roof Extensions and Dormer Windows’ states that *“dormer windows 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) and the materials should be sympathetic to the existing property.’* Also of relevance is Paragraph 348 of The Design and Townscape guide (2009) which stipulates that *‘Whether or not there are any public views, the design of rear extensions is still important and every effort should be made to integrate them with the character of the parent building, particularly in terms of scale, materials and the relationship with existing fenestration and roof form’*
- 4.6 While the rear dormer is of flat roofed box design and of limited architectural merit, given its limited scale and bulk and positioning within the roof plane; set away sufficiently from the eaves, ridge and flanks so that it sits comfortably in the space available, the proposed dormer is considered to be of acceptable design. Additionally, the dormer would not be visible from the front elevation and the use of tile hanging and fenestration to match the existing dwelling ensures the visual impact will be acceptable. No objections are therefore raised to the design of the roof extension and the impact on the visual amenity of the streetscene.

Traffic and Transport

National Planning Policy Framework (2018); Core Strategy (2007) policies KP2, CP4, CP3; Policy DM15 of the Development Management Document (2015) and the Design and Townscape Guide (2009).

- 4.7 The proposed development would not result in a net increase of bedrooms or a subsequent increase in parking demand. The current situation would be retained and therefore no objection is raised.

Impact on Neighbouring Properties

National Planning Policy Framework (NPPF) 2018, Core Strategy (2007) Policies KP1, KP2 and CP4; Development Management Document Policy DM1 and DM3 and Design and Townscape Guide (2009)

- 4.8 The Design and Townscape Guide (2009) Paragraph 343; under the heading of Alterations and Additions to Existing Residential Buildings) states that 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’.* In addition to this Policy DM1 of the Development Management Document (2015) 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 The application property is neighboured by No.’s 19 (to the north), 23 (to the rear) and 25 (to the south) Holland Road. It is noted concerns have been raised in relation to potential loss of light to No.23, a bungalow immediately to the rear of the

application site separated by a narrow courtyard approximately 4m deep. However, given the existing constricted relationship between the two properties, the proposed dormers modest scale and bulk and positioning within the existing roofslope, it is not considered that the proposed development would give rise to a material increase in overshadowing or loss of light to the neighbouring occupants at this address.

- 4.10 While it is also considered that the proposed rear dormer would give rise to some potential overlooking, the presence of existing first floor rear windows (one clear window serving a bedroom and two obscure windows serving a bathroom and kitchen respectively), suggests a degree of overlooking exists at present. Therefore, the addition of a rear dormer with rear facing windows is not considered to give rise to a material increase in overlooking or loss of privacy to these neighbouring properties. The proposal is therefore acceptable and policy compliant in these regards. It is however considered necessary to continue the existing arrangement of obscuring unhabitable room windows above ground floor level and therefore, a condition will be attached to any successful planning application for the proposed bathroom (En-suite) window to be finished in obscure glazing and retained as such thereafter.
- 4.11 Due to the separations involved, it is not considered that the proposal would harm the light, outlook, privacy or rear garden scene of any other neighbouring properties, in accordance with the National Planning Policy Framework (NPPF), Core Strategy Policies KP2 and CP4, Development Management Policies DM1 and DM3 and The Design and Townscape Guide.

Community Infrastructure Levy

- 4.12 The proposal for the existing property equates to less than 100sqm of new floor space, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

5 Conclusion

- 5.1 Having regard to all material considerations assessed above, it is considered that subject to compliance with the attached conditions, the proposed development would be acceptable and compliant with the objectives of the relevant local development plan policies and guidance as well as those contained within the National Planning Policy Framework (NPPF). Furthermore, the proposed development would have an acceptable impact on the amenities of neighbouring occupiers and the character and appearance of the application site and the locality more widely. This application is therefore recommended for approval, subject to conditions.

6 Planning Policy Summary

- 6.1 National Planning Policy Framework 2018.
- 6.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (Environment & Urban Renaissance).

- 6.3 Development Plan Document 2: Development Management Policies DM1 (Design Quality) DM3 (Efficient and Effective Use of Land), and DM15 (Sustainable Transport Management)
- 6.4 Community Infrastructure Levy Charging Schedule.
- 6.5 Supplementary Planning Document 1: Design & Townscape Guide, 2009.

7 Representation Summary

Public Consultation

- 7.1 17 neighbouring properties were notified and one letter of objection was received. Summary of objections:
- Severe loss of natural light and outlook.
 - Dormers are unsightly and not in character with the property and properties in Holland Road.
 - Will increase overlooking to my property and result in significant loss of privacy.
 - An increase in parking in an area of high stress
- [Officer Comment] All relevant planning considerations are assessed within the appraisal section of the report. (Section 4) These concerns are noted and they have been taken into account in the assessment of the application.

8 Relevant Planning History

- 8.1 None

9 Recommendation

GRANT PLANNING PERMISSION subject to the following conditions:

- 01 The development hereby permitted shall begin no later than three years from the date of this decision.**

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 02 The development hereby permitted shall be carried out in accordance with the following approved plans: 1763-04A**

Reason: To ensure that the development is carried out in accordance with the provisions of the Development Plan.

- 03 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings hereby approved or are required by conditions to this permission.**

Reason: To safeguard the visual amenities of the area, in accordance with policies This is as set out in DPD1 (Core Strategy) 2007 policy KP2 and CP4, DM DPD Policy DM1 and SPD1 (Design and Townscape Guide).

- 04** The bathroom window of the proposed rear dormer facing No.23 Holland Road hereby permitted shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the local planning authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the local planning authority. In the case of multiple or double glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4.

Reason: To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (NPPF), DPD1 (Core Strategy) 2007 policy CP4, Development Management DPD policy DM1 and SPD1 (Design and Townscape Guide).

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework. The detailed analysis is set out in a report on the application prepared by officers.

Informative

- 01** You are advised that as the proposed extension(s) to your property 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 for further details about CIL
- 02** You should be aware that in cases where damage occurs during construction works to the highway in implementing this permission that the Council may seek to recover the cost of repairing public highways and footpaths from any party responsible for damaging them. This includes damage carried out when implementing a planning permission or other works to buildings or land. Please take care when carrying out works on or near the public highways and footpaths in the borough.



Appeal Decisions

Site visit made on 13 October 2020 by **Thomas Shields MA DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 November 2020

Appeal Ref:

APP/D1590/C/20/3251169

21 Holland Road, Westcliff-on-Sea, SS0 7SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
- The appeal is made by Mr Julian Nyman (Wyen Corporation Limited) against an enforcement notice issued by the Southend-on-Sea Borough Council.
- The enforcement notice was issued on 23 March 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a dormer roof enlargement.
- The requirements of the notice are:
 - a) Remove the unauthorised roof enlargement or reduce it to that approved under application reference 18/01188/FUL.
 - b) Remove from site all rubble, materials and equipment associated with complying with this notice.
- The period for compliance is 3 months.
- The appeal proceeds on the grounds set out in section 174(2) (a) and (g) of the Act.

Decision

1. It is directed that the notice be varied in Section 6 by deleting "3 calendar months" and substituting instead "6 months".
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The appeal on ground (a)/deemed planning application

Main Issue

3. An appeal on ground (a) is that planning permission ought to be granted for the dormer roof enlargement. The main issue in the appeal is the effect of the dormer on the character and appearance of the host property and the area.

Reasons

4. No. 21 Holland Road is an extended mid-terraced residential property within an immediate area that is primarily residential in character. Buildings in this area are mainly of traditional construction and form

with some modern flatted developments. The building has been divided into two flats, one at ground floor with the other occupying the first floor and roof accommodation, provided in part by the rear box dormer roof extension subject of the appeal.

5. The dormer is of a considerable height, width and depth, the front wall of which aligns vertically with the rear elevation of the main building. As such, I find it

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to be a significant feature and conspicuously over-sized in the context of the host building. Its overly prominent presence, not set back from the original eaves, appears as an additional full storey and does not sit well with the more modest features and character of the host property, or with other buildings in the surrounding area. As such, it conflicts with the detailed design guidance for dormers in the Council's SPD¹. While I saw other rear roof dormers in the surrounding area, none had resulted in the excessively dominant appearance and relationship with their host properties that is evident in this case. While I acknowledge that public views of the dormer are limited it is nonetheless highly visible from a significant number of nearby properties. Consequently I find it overall to be markedly at odds with the prevailing pattern of development in the area, harmful to its character and appearance.

6. The appellant suggests its appearance could be mitigated by imposing a condition which requires the construction of an extended eaves and fascia along the line of where the dormer joins the rear elevation of the building, thereby adding a line of tiled roof slope below the bottom of the dormer.
7. The proposal to create new false eaves and an extended roof slope over is not properly comparable to the requirement in Schedule 2, Part 1, Class B of the GPDO² to maintain or reinstate eaves of the "original roof". Moreover, it would do no more than add further built form in addition to that which currently exists, and would not have any physical or optical effect of reducing the bulk and prominence of the dormer which I have found to be harmful as set out above. As such, I do not agree with the appellant's contention that the dormer would then be little different in form and appearance from the one previously granted planning permission by the Council (Ref: 18/01188/FUL). Overall, therefore, the appellant's proposed condition does not persuade me that the appeal should be allowed.
8. I have also considered whether the imposition of any other planning conditions would adequately mitigate the harm I have identified but find that there are none that would do so.
9. I note the concerns of occupiers of the bungalow to the rear of No. 21 with regard to their living conditions in respect of loss of light, privacy and outlook. The separation distance over a shared courtyard area between these two properties is approximately 4 metres. Consequently, given this existing constrained relationship, and that which would exist had the dormer been built in accordance with planning application Ref: 18/01188/FUL, I find that the as-built dormer does not result in any significant increase in harm to the living conditions of the neighbouring occupiers.

Conclusion on ground (a)/deemed planning application

10. For these reasons I conclude that the dormer results in unacceptable harm to the character and appearance of the area in conflict with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy(2007), and Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015), which, taken together, seek to secure developments which improve the urban environment through quality design, and maintain and respect the character of residential areas including through height, size, scale, form, massing, and proportions.

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¹ Supplementary Planning Document 1 Design and Townscape Guide 2009, paragraphs 343, 366 ² Town and Country Planning (General Permitted Development) (England) Order 2015

11. The appeal on ground (a)/deemed planning application therefore fails.

The appeal on ground (g)

12. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months, the appellants seek a period of 7 months.
13. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible, and I see no reason why the physical works to achieve compliance with the notice could not ordinarily be carried out within 3 months. No convincing justification as to why this would not be possible is before me.
14. I do not know when the current tenancy agreement with the occupier of the upper level flat expires. However, there is no evidence before me to indicate that the tenant would resist allowing remedial works to take place within the 3 month period, or that the tenant would seek to resist eviction in the event that the appellants subsequently find such action necessary in order to comply with the notice requirements. That notwithstanding, I acknowledge that scheduling builders and completing the remedial works with a sitting tenant could take longer than 3 months.
15. Also, at the time of writing, the Government has introduced a one month period of restrictive measures in respect of coronavirus, during which time I accept it may add further difficulty in commencing the remedial works. Account should also be taken of the Christmas/New Year holiday period.
16. Taking account of all these factors I consider it would be more reasonable to extend the compliance period to 6 months. I see no reason to extend it further than this given that the Council has its own powers to extend the compliance period if they are subsequently convinced that such action would be necessary.
17. The appeal on ground (g) therefore succeeds to this limited extent and I have directed that the notice be varied accordingly.

Thomas Shields

INSPECTOR

Appendix 3 – Site photographs of originally constructed dormer





Appendix 4 – Site photographs of dormer currently constructed

