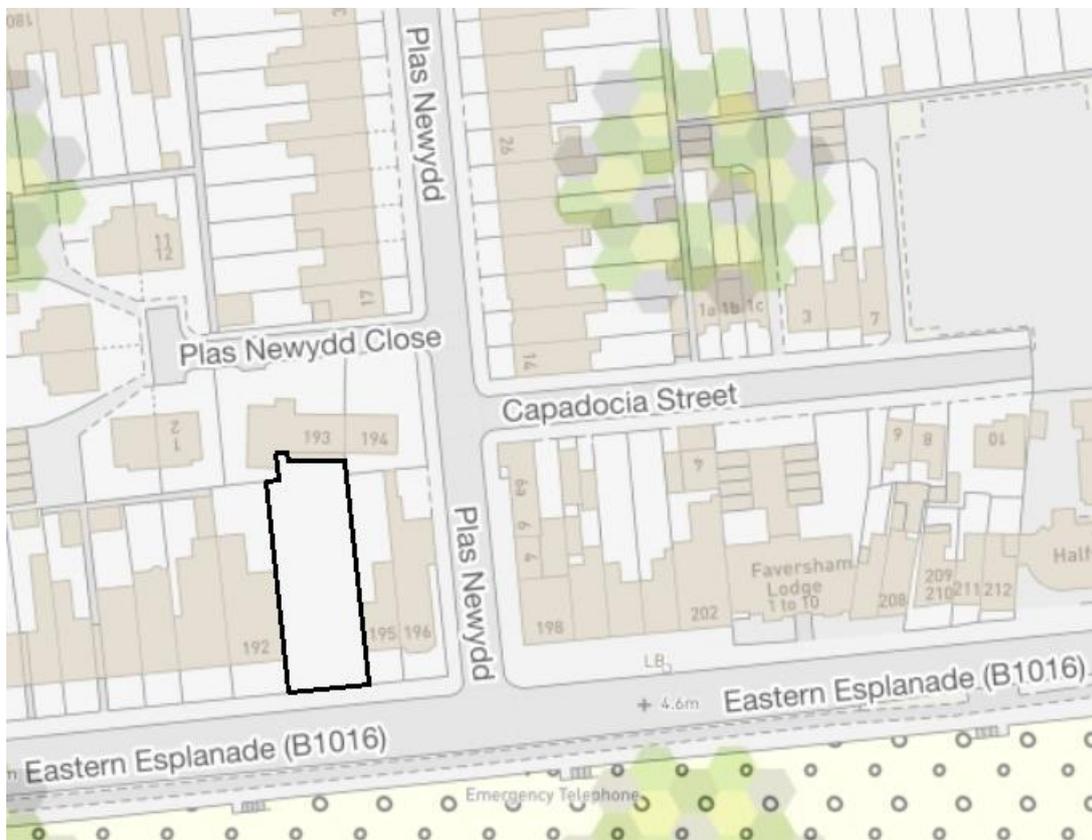


<b>Reference:</b>	21/00061/UNAU_B	
<b>Ward:</b>	Thorpe	
<b>Breach of Control:</b>	Without planning permission the erection of a kiosk and change of use of land to a café and garden area (sui generis)	
<b>Address:</b>	193 Eastern Esplanade, Southend-on-sea, Essex, SS1 3AA	
<b>Case opened:</b>	09.03.2021	
<b>Case Officer:</b>	Hayley Thompson	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	

193 Eastern Esplanade, Southend-on-sea, Essex, SS1 3AA



## **1 Site location and description**

- 1.1 This report relates to a former domestic garden space to the front of 193 Eastern Esplanade, which, due to the set-back position of No 193, appears in the street scene as a gap between the Beach Hotel at no.192 Eastern Esplanade and the dwelling house at no.195 Eastern Esplanade.

## **2 Lawful Planning Use**

- 2.1 Historic maps and publicly available photographs indicate that the space appears to have historically been part of the curtilage of no.193. It is visually separated from the host dwelling by a large privet hedge. The lawful planning use is understood to fall within Class C3 of the Town and Country Planning Use Classes Order 1987 (as amended).

## **3 Relevant Planning History**

- 3.1 21/01165/FUL - Erection of kiosk and change of use to cafe with outdoor seating – Refused.

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

- 4.1 Without planning permission, the erection of a kiosk and related change in use of the land to mixed use as a café (Class E) and residual residential garden (Class C3) so that overall the unauthorised use is regarded as *sui generis*. The kiosk has an associated open area to its front where chairs and tables are available for customer use, together with advertisement signage. The land behind the kiosk has remained open former domestic garden. The business provides drinks for consumption either from that external seating or for off-site consumption. It is understood that the kiosk does not provide any hot food, either for consumption in the external seating area or off-site.
- 4.2 It was found through determination of a retrospectively submitted planning application that sought to regularise the development, that by reason of its use and siting the development is inappropriate within its setting. It integrates poorly with the existing townscape and introduces concentrations of people and activity in its location to a degree which causes harmful noise, disturbance, intrusion, and loss of privacy which is harmful to the amenities of neighbouring occupiers contrary to planning policy.

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

- 5.1 In March 2021 an enforcement case was raised following a public complaint about the construction of a building on the land known as 193 Eastern Esplanade. The purpose of the building was for commercial use as a café. Both that building and the material change of use of the site were unauthorised.
- 5.2 In April 2021 letters were sent to parties with interest in the land advising submission of a retrospective planning application to seek to regularise the development.
- 5.3 Following no response to the letter, a site visit was undertaken in May 2021 to speak with the business owner directly about the unauthorised development. The business

operator explained that an agent had been instructed to submit a retrospective planning application.

- 5.4 In June 2021 a planning application was submitted, reference 21/01165/FUL, seeking to regularise the unauthorised development. That application was refused in October 2021. A copy of the officer report is appended (Appendix 1).

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

- 6.1 It is acknowledged that the development provides employments and economic activity contributing to activity and vibrancy in this seafront location, but the siting and design of the development have been found to be significantly harmful to the townscape and seafront character and to the residential amenity of occupiers of No195 through harmful noise, disturbance, intrusion and loss of privacy. There is no net public benefit of sufficient weight to overcome this identified harm. The appended officer's report for planning application 21/01165/FUL sets out fully the basis for refusal of planning permission due to the identified harm, including the planning policy context against which this has been assessed.
- 6.2 No further planning application has been submitted to seek to address the identified harm. It is understood that no appeal has been submitted. The serving of an enforcement notice would not prevent the site owner applying for planning permission and appeal rights apply.
- 6.3 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) cease use of the land as a café
  - b) require the removal of the unauthorised building in its entirety and removal from the land of all associated seating, tables, signage and similar items
  - c) remove from site all materials resulting from compliance with (a) and (b) 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.

**Delegated Report**

<b>Reference:</b>	21/01165/FUL
<b>Application Type:</b>	Full Application
<b>Ward:</b>	Thorpe
<b>Proposal:</b>	Erection of kiosk and change of use to provide cafe with outdoor seating (retrospective)
<b>Address:</b>	Land Adjacent, 192 - 195 Eastern Esplanade, Southend-on-sea
<b>Applicant:</b>	Ms Beverley Clarke
<b>Agent:</b>	Mr James Collinson of Design Spec Ltd.
<b>Consultation Expiry:</b>	4th August 2021
<b>Expiry Date:</b>	6th October 2021
<b>Case Officer:</b>	Robert Lilburn
<b>Plan Nos:</b>	<b>2987/04/42</b>
<b>Supporting Documents:</b>	<b>Flood Risk Assessment by Fernbrook Consulting Engineers Report No. 21080-FCE-XX-XX-RP-D-0001 Project No. 21080 July 2021</b>
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

## 1 Site and Surroundings

- 1.1 The application relates to an established domestic garden space situated to the front of 193 Eastern Esplanade, which appears in the street scene as a gap between the Beach Hotel at no.192 Eastern Esplanade and the dwelling house at no.195 Eastern Esplanade.
- 1.2 Historic maps and publicly available photographs indicate that the space appears to have historically been part of the curtilage of no.193. It is visually separated from the host dwelling by a large privet hedge. The gap is anomalous in the street scene, whereby the ribbon of development defining the Esplanade has taken place around it.
- 1.3 The site is identified on the policies map of the Development Management Document as within the Sea Front Character Zone 5, and within Flood Zone 3. The associated dwelling is part of a locally-listed building with its adjoining neighbour at nos.193-194 Eastern Esplanade.

## 2 The Proposal

- 2.1 The application has been made retrospectively for the retention of a single-storey wooden structure which has been constructed as a kiosk to principally serve visiting customers. The available information indicates this is for coffee, hot and cold drinks and snacks. As part of the development the site frontage is used for associated outdoor seating, and two access paths have been formed across the site.
- 2.2 The application has not specified seating numbers. Site photographs indicate provision for some twelve customers, however there is scope within the site for this to increase. The application has specified proposed opening hours from 8:00 AM to 6:00 PM Monday to Sunday including bank holidays.
- 2.3 The application has been submitted following planning enforcement enquiries.
- 2.4 It has been noted that the application form incorrectly describes the development as 'Proposed outbuilding with internal alterations for a mobile coffee shop'. The application has been advertised on the basis of the erection of outbuilding to use as a coffee shop, further to confirmation since received from the applicant. This is considered a more satisfactory definition of the development.

### **3 Relevant Planning History**

- 3.1 14/00151/FUL: Erect roof extension with terrace to rear, erect single storey rear extension, install balconies to dormer windows to front, remove external staircase and alter elevations. Approved 11.06.2014.

### **4 Representation Summary**

#### **4.1 Public Consultation**

5 neighbouring properties were notified and a site notice was posted. Letters of representation have been received from 14 addresses, objecting to the application, and letters of support have been received from 4 addresses. The objections are summarised as follows:

- Impact on character and appearance of sea front and street scene;
- Temporary appearance harmful to the character and appearance of the surroundings;
- Impact on heritage asset;
- Impact on neighbour privacy and of noise, as well as of patrons smoking near house windows;
- Impact on traffic and parking conditions;
- Impact on safety of the pavement;
- Littering and waste management concerns;
- Anti social behaviour;
- Impact on other businesses;
- there are already enough food and drink establishments;
- Inaccuracies on application including description of proposal and notices served;
- Signage not included in application;
- Hygiene rating should not be given by the council to an establishment without planning permission;
- No consideration given to health and safety or fire safety;
- Effect on property values.

- 4.2 The letters in support of the application are summarised as follows:
- The business contributes to community as a place to meet;
  - Use of an under used piece of land;
  - supporting a local business;
  - Respectful of neighbours;
  - well run, welcoming and clean;
  - in keeping with the character of the sea front.
- 4.3 Councillor Woodley has commented on the application as follows:
- Provision of live music impacting on neighbours and requires a licence.
- 4.4 These concerns are noted and where relevant to material planning considerations they have been taken into account in the assessment of the application. Other than as they relate to the reasons for refusal set out below the points raised are found not to represent a reasonable basis to refuse planning permission in the circumstances of this case.

#### 4.5 **Environmental Health**

Object on basis of amenity impacts from outdoor seating on neighbouring occupiers.

### 5 **Planning Policy Summary**

- 5.1 The National Planning Policy Framework (NPPF) (2021)
- 5.2 Planning Practice Guidance and National Design Guide (2019)
- 5.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP1 (Employment Generating Development), CP2 (Town Centre and Retail Development), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance)
- 5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend-on-Sea's Historic Environment), DM6 (The Seafront), DM11 (Employment Areas) and DM15 (Sustainable Transport Management)
- 5.5 Design & Townscape Guide (2009)
- 5.6 CIL Charging Schedule (2015)

### 6 **Planning Considerations**

- 6.1 The main considerations in relation to this application are the principle of the development including flood risk considerations, design and impact on the character of the area, including effect on the non-designated heritage asset, impacts on amenities of neighbouring properties, any traffic and transport issues and CIL.

### 7 **Appraisal**

#### **Principle of Development**

- 7.1 The National Planning Policy Framework (NPPF) encourages effective use of land while safeguarding and improving the environment. This is to be achieved by supporting the

development of underutilised land and buildings. Residential gardens are excluded from the definition of previously developed land.

7.2 The NPPF states that significant weight should be placed in planning decisions on the need to support economic growth taking into account both local business needs and wider opportunities for development.

7.3 Core Strategy Policies KP1, KP2 and CP4 seek to promote sustainable patterns of development, to direct the siting of development through a sequential approach, minimising the use of 'greenfield' land.

7.4 Policy KP1 states that appropriate regeneration and growth will be focused in locations including the sea front, to enhance the sea front's role as a successful leisure and tourist attraction and place to live.

7.5 Policy CP4 seek to support the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend.

7.6 Policy DM3 of the Development Management Document seeks the efficient and effective use of land, provided it responds positively to local context and does not lead to over-intensification.

7.7 Policy DM6 states that the development principles of Seafront Character Zone 5 include: '(i) To encourage enhancements that promote this location as a tourist and leisure destination...'

7.8 The use of a domestic garden and its associated loss to the domestic purpose in a primarily residential setting, is a negative aspect of the development.

7.9 It is recognised that the scheme provides an additional leisure offer and employment generating activity in a location well integrated with the seafront. However, these benefits, which it is considered have limited weight, must be balanced against the wider impacts of the scheme. These are considered further below.

7.10 The site is located within Flood Zone 3. The development constitutes a 'less vulnerable' use. Paragraph 159 of the NPPF states that 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere'.

7.11 Paragraphs 162 and 163 of the NPPF state 'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in the area with a lower risk of flooding...If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied'.

7.12 Policy KP1 was adopted further to the Thames Gateway South Essex Partnership Strategic Flood Risk Assessment. The preamble to Policy KP1 notes there are limited options to achieve regeneration and growth within the Borough and that development on flood plains will be considered. Therefore, Policy KP1 directs development into the area which includes the application site.

7.13 The area is promoted for growth subject to compliance with other policies. It is considered that development in the Seafront area is acceptable in principle subject to a site-specific investigation. The proposal is therefore considered to pass the requirements of the sequential test. As a 'less vulnerable' use within Flood Zone 3a it is appropriate in principle.

7.14 Policy KP1 states that all development proposals within identified flood risk zones 'shall be accompanied by a detailed flood risk assessment appropriate to the scale and the nature of the development and the risk'. It states that 'development will only be permitted where that assessment clearly demonstrates that it is appropriate in terms of its type, siting and the mitigation measures proposed, using appropriate and sustainable flood risk management options'.

7.15 The applicant has provided a Flood Risk Assessment by Fernbrook Consulting Engineers Report No. 21080-FCE-XX-XX-RP-D-0001 Project No. 21080 July 2021 (FRA). The FRA specifies the floor levels of the building at 150mm above adjacent ground level and note that further flood resistance and resilience measures could be implemented including raised electrical sockets for example. The FRA notes the external nature of the seating provision. The proposal, as could be controlled through suitable conditions, is acceptable on flooding and flood risk grounds.

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

7.16 The NPPF states that planning decisions "should ensure that developments ...are visually attractive as a result of good architecture and ...are sympathetic to local character including the surrounding built environment while not preventing or discouraging appropriate innovation or change (such as increased densities)".

7.17 The National Design Guide notes that context including the grain of development, landscaping and the natural environment are important aspects of place and good design. Well-designed new development is integrated into its wider surroundings and responds positively to its context.

7.18 Policy DM1 requires development to respect the townscape and contribute positively to the space between buildings and their relationship to the public realm.

7.19 Policy DM5 states that harm to the significance of a non-designated heritage asset will be resisted, but a balanced judgement will be made having regard to the scale of any harm to the significance of the asset and any public benefits.

7.20 No.193 benefits from an uncharacteristically large garden which is anomalous within the urban grain of the wider area. The space has a historic connection to the character of the seafront and the setting of the locally-listed building. The development occupies the space in a semi-permanent manner, but to the casual observer is somewhat divorced from the associated dwelling. By reason of its scale the development has a less than substantially harmful impact on the significance of the locally listed building.

7.21 DM6(3) states that existing buildings along the Seafront that have a historic context or are recognised as key landmarks and/or contribute to a distinctive Southend sense of place will be retained and protected from development that would adversely affect their character, appearance, setting and the importance of the Seafront. Appendix 11 of the

Development Management Document lists 183-195 Eastern Esplanade as one of these sites, and describes it as follows: *This short run of properties on Eastern Esplanade displays consistency in terms of architectural style, scale, and palette of materials. All benefit from balconies, particularly noteworthy to the first floors of 187 – 192 which together form a cohesive frontage. This area is largely comprised of small guest houses which present a traditional seaside character that would be eroded through loss of the fine urban grain, seaside decoration and character (Seafront Character Zone 5).* The Policy notes that the unsympathetic increase in scale in some locations and loss of historic grain has had a detrimental effect on the integrity and character of the Seafront.

- 7.22 The development does not introduce an unsympathetic increase in scale, but it relates uncomfortably to its immediate setting which is principally residential in character. While small kiosks particularly where redolent of a beach hut, are a typical of the seafront area in some locations, the current development bears no reference to its residential context with which it is juxtaposed and in this regard is unsympathetic and harmful despite its small scale.
- 7.23 It is considered that the siting detrimentally intrudes upon the residential garden setting, and the development does not integrate reasonably into the townscape, as an inappropriate development of residential garden space, with a harmful impact on the character and quality of the area. This is unacceptable and contrary to the objectives of the development plan policies in regard to design and character.

#### **Impact on Residential Amenity**

- 7.24 The NPPF seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 7.25 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”.
- 7.26 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”.
- 7.27 The development introduces activity into the front garden setting immediately adjacent to the habitable front rooms of the neighbouring dwelling. It is situated within close proximity.
- 7.28 The site is located on a main road location and proposed opening hours are during the daytime. This would mitigate to a degree the effect of noise resulting from voices for example, but given the existing relatively tranquil residential setting it is a negative aspect of the development. Matters relating to opening times could be dealt with by condition were the scheme found to be acceptable in other regards.
- 7.29 However, the development introduces concentrations of people into close proximity of the neighbouring dwelling in a situation where the visitors are likely to dwell for varying lengths of time. Concerns have been expressed relating to patrons sitting on the garden wall, and smoking near to the dwelling windows for example. It is considered that the development leads to activities causing a perceived loss of privacy and an unneighbourly degree of intrusion, noise and disturbance which is harmful to occupiers of the neighbouring

dwelling at 195 Eastern Esplanade. Potential mitigation measures such as fencing would introduce further visual impacts and are not considered an acceptable response as mitigation.

- 7.30 In light of the above the application is unacceptable and contrary to policy in terms of its impact on neighbour amenities.

### **Traffic and Transportation Issues**

- 7.31 Policy CP3 of the Core Strategy seeks to improve highway safety and accessibility. Policy DM15 sets maximum parking standards for commercial development based on floor space.
- 7.32 There is no parking at the site. Given its location at the sea front, and the character of the development, by which there is strong potential for linked trips, this is considered acceptable.

### **Community Infrastructure Levy (CIL)**

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

## **8 Conclusion**

- 8.1 The proposed development would provide employment and economic activity in this seafront location. However, the siting and design of the development are found to be harmful to the townscape and seafront character, and there is not a net public benefit of sufficient weight to overcome the less than substantial harm to the setting of the neighbouring non-designated heritage asset. The development is harmful to neighbour amenities. No significantly harmful impacts with regard to traffic and parking have been identified. The development meets the sequential test with regard to flood risk and is acceptable on these grounds. Having regard to all material planning considerations it is considered that, the limited benefits of the proposed development do not outweigh its harmful impacts and conflict with policy. The scheme fails to constitute sustainable development when considered in the round, is found to be unacceptable and is recommended for refusal.

## **9 Recommendation**

**REFUSE PLANNING PERMISSION for the following reason(s):**

- 01 The development, by reason of its siting, character and design is an inappropriate use of residential garden space and which integrates poorly with the existing townscape. This is harmful to the character and appearance of the site and wider area. The development causes less than substantial harm to the setting of the associated locally listed building and no public benefits of sufficient weight have been identified to outweigh this harm. This is unacceptable and contrary to the National Planning Policy Framework (2021), the Planning Practice Guidance and National Design Guide (2019), Policies KP2 and CP4 of the Core Strategy (2007),**

**Policies DM1, DM3, DM5 and DM6 of the Development Management Document (2015), and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).**

**02 The development, by reason of its use, design and siting, introduces concentrations of people and activity in this location to a degree which causes harmful noise, disturbance, intrusion and a loss of privacy, in an otherwise relatively tranquil residential setting, to the detriment of the amenities of the occupiers neighbouring residential dwelling at 195 Eastern Esplanade. This is unacceptable and contrary to the National Planning Policy Framework (2021), 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).**

**10 Informatives:**

**1 The development equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable.**

**2 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development.**

Appendix 2 – Site photograph

