

Reference:	20/00009/UNAU_B	
Ward:	Chalkwell	
Breach of Control:	Without planning permission the erection of first floor extensions to the rear	
Address:	84 - 90 The Ridgeway, Westcliff-On-Sea, Essex, SS0 8NU	
Case opened:	6 th January 2020	
Case Officer:	Hayley Thompson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

84 - 90 The Ridgeway, Westcliff-On-Sea, Essex, SS0 8NU



1 Site location and description

- 1.1 This report concerns a mid-terraced shop unit with two flats at first floor. The site is situated within a secondary shopping frontage facing The Ridgeway and close to Chalkwell railway station. The surroundings are otherwise residential in character.

2 Lawful Planning Use

- 2.1 The lawful planning use is for residential purposes within Class C3 at first floor and Class E (Commercial, Business and Service) at ground floor, as defined in the Town and Country Planning Use Classes Order 1987 (as amended). Prior approval has been granted for 2 additional flatted units at ground floor (Ref. 20/00571/PA3COU).

3 Relevant Planning History

- 3.1 21/01110/FUL - Erect first floor rear extensions with Juliette balconies and alterations to existing flank windows – Refused.
- 3.2 21/00982/FUL Install entrance doors and windows to ground floor side elevations (part-retrospective) – Approved.
- 3.3 20/01581/FUL Erect first floor rear extensions and raise roof height to match level of existing extension and alterations to existing flank windows (Part Retrospective) - Refused.
- 3.4 20/01425/FUL Alter and convert existing ground floor shop to reinstate as 2 shops (Class A1) with entrance to front (Part Retrospective) – Granted.
- 3.5 20/01074/FUL- Raise roof height to form new second floor and create no.2 self-contained flats, erect single storey rear extensions to flats at first floor, form roof terraces to rear at first and second floors, layout soft landscaping, bin store and cycle store (part retrospective) – Refused.
- 3.6 20/00571/PA3COU- Part change of use to rear of existing Shop (Class A1) into 2 self-contained flats (Class C3)(Prior Approval) - Approved.

4 The alleged planning breach and the harm caused

- 4.1 Two first floor rear extensions have been erected without planning permission. The extensions each measure 3.4m deep, 2.7m high and 2.5m wide. They are combined with an existing rear outrigger, resulting in an overall 8.8m wide rear projection.
- 4.2 It was found through determination of three planning applications seeking in various ways to retain the extensions, either as they are built or with modification, that by reason of their design, form and size they appear as an incongruous feature and would not be subservient to the main building resulting in significant harm to the character and appearance of the host building.
- 4.3 It has also been found that the degree of projection of the first-floor rear extension beyond the nearest first floor rear habitable room window at the flat above No.92 results in a demonstrable loss of outlook, light and overshadowing (particularly in the morning hours) to neighbouring habitable room windows, and an unacceptable sense

of enclosure and dominant impacts to the occupiers of that property, significantly harmful to their residential amenity. The side facing windows to the west facing flank elevation of the first-floor rear extension give rise to actual and perceived overlooking and a material loss of privacy to neighbouring habitable accommodation to the detriment of neighbours' residential amenity.

- 4.4 There is a concrete slab with brick course to the rear of the ground floor which is shown as a patio on plans approved under application 21/00982/FUL and was constructed without planning permission and is not permitted development.
- 4.5 Separate to the above it has been identified that there are some other current breaches related to the development being undertaken on the rear ground floor following the prior approval for two flats. The new flat on the western side (nearest to No.92) has been completed and appears occupied. It has not been ascertained whether the approved flat on the eastern side (to 80/82) has been built out and occupied.
- 4.6 A door opening on the rear elevation of the ground floor (west) has, at the time of report preparation, not been filled in to comply with plans approved under application 21/00982/FUL in association with the conversion of the two ground floor flats.
- 4.7 Conditions 3 & 4 for the prior approval, reference 20/00571/PA3COU, to part change the use of the existing ground floor commercial unit into two flats required that, prior to occupation, refuse and waste & cycle stores be provided and made available for use on site. At the time of report preparation these have not been provided and a breach of condition notice can separately be served under delegated powers should compliance not be achieved within a reasonable timeframe.
- 4.8 In February 2022 it has been noted that a detached structure has been constructed in the rear garden which will form part of the ongoing enforcement investigation.

5 Background and efforts to resolve breach to date

- 5.1 In January 2020 an enforcement case was raised regarding the alleged unauthorised rear extensions that had been constructed.
- 5.2 A site visit was undertaken in February 2020 to view the development and letters were sent to relevant parties advising on the breach of planning control.
- 5.3 Three successive planning applications, references 20/01074/FUL, 20/01581/FUL and 21/01110/FUL were subsequently submitted seeking to retain the unauthorised extensions in varying capacities and have included other proposed works.
- 5.4 The most recently submitted application, reference 21/01110/FUL, sought to retain the first floor rear extensions as built but with proposed alterations to the finished materials. This application was refused on two grounds and the officer's report is appended to this report as Appendix A.
- 5.5 The applicant and agent have been contacted regarding the outstanding breaches relating to the first floor rear extensions, raised patio and the breach of condition regarding conditions 3 and 4 of the prior approval application.

5.6 In January 2022 an appeal was submitted in relation to application 21/01110/FUL which is currently in progress. No planning permission to retain any of the unauthorised developments discussed has been granted.

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 21/01110/FUL sets out fully the basis for refusal of planning permission due to the identified harm caused by the two unauthorised first floor rear extensions. 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.

Equality and Diversity Issues

6.3 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have, in considering this enforcement case and preparing this report, had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the recommended enforcement action will not conflict with the Council's statutory duties under this legislation.

7 Recommendation

7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to

- a) require the removal of the unauthorised first floor rear extensions
- b) require the removal of the unauthorised patio
- 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.

Appendix 1 – Officer’s report 21/01110/FUL

Reference:	21/01110/FUL
Ward:	Chalkwell
Proposal:	Erect first floor rear extensions with Juliette balconies and alterations to existing flank windows (Part Retrospective) (Amended proposal).
Address:	84 - 90 The Ridgeway, Westcliff-On-Sea, Essex, SS0 8NU
Applicant:	Dr Aval
Agent:	Mr Maz Rahman
Consultation Expiry:	29.06.2021
Expiry Date:	20.07.2021
Case Officer:	Scott Davison
Plan Nos:	112 P2, 410.P2, 411.P2 & 412 P1
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application relates to a mid-terraced shop unit with two flats at first floor and approval granted for 2no. additional flatted units at ground floor (Ref. 20/00571/PA3COU). It is situated within a secondary shopping frontage facing The Ridgeway. The building has an art deco-style facade with a relatively modern shop front at ground level and an undercroft access leading to the rear, which is gated at the eastern end of the premises.
- 1.2 The site is located close to Chalkwell railway station. The surroundings are otherwise residential in character.
- 1.3 The roads in the immediate surroundings are subject to waiting restrictions, demarcated by yellow lines. Bollards prevent vehicular access and egress onto the pavement at this location. On-street parking is available within the vicinity; much of this is subject to time limits.
- 1.4 The site is identified on the policies map of the Development Management Document as located within a secondary shopping frontage. The site is not located within in a conservation area and the subject property is not a listed building. The site is located within flood zone 1.
- 1.5 Council tax records indicate that there is self-contained residential accommodation at first floor of the building, comprising two flats. Publicly available photograph records show that the ground floor shop use is long-established. The works to convert the rear of the ground floor into two separate flats has commenced and the

western flat is now occupied.

2 The Proposal

- 2.1 The application seeks retrospective planning permission to retain two first floor rear extensions with Juliette balconies and alterations to existing flank windows and flank elevations proposed.
- 2.2 The first-floor rear extensions have already been constructed and this aspect of the application is retrospective in nature. They each measure 3.4m deep, 2.7m high and 2.5m wide and combined with the outrigger, there would be an 8.8m wide rear projection. The submitted plans show the rear facing elevation of the extensions, each have folding bi-folding doors with 3 panelled windows with fanlights on each of the flank elevations. It is proposed to inset obscure glazing to the windows in the flank elevations. These extensions facilitate enlarged habitable accommodation for the existing first floor flats to be used as dining rooms.
- 2.3 This application follows the refusal of application Ref: 20/01581/FUL described as *Erect first floor rear extensions and raise roof height to match level of existing extension and alterations to existing flank windows (Part Retrospective)*. The application was refused for the following reasons:

01 The proposed first floor rear extensions, by reason of their significant size and scale and detailed design, fail to suitably integrate to the host building and appear as visually prominent and incongruous features harmful to the character and appearance of the existing building and the wider surrounding area. The proposal is therefore unacceptable and contrary to the National Planning Policy Framework (2019); Policy CP4 of the Core Strategy (2007); Policies DM1 and DM3 of the Development Management Document (2015); and the advice contained within the Design and Townscape Guide (2009).

02 The proposed first floor rear extension adjacent to the west flank boundary with No.92 The Ridgeway would, by reason of the increased size and scale of built form, projection beyond the rear of the first floor flat above No.92 The Ridgeway and incorporation of a series of side windows adjacent to the shared flank boundary, result in a material loss of light, overshadowing, outlook, loss of privacy and an unacceptable sense of enclosure to neighbouring first floor rear habitable accommodation. This harm to the neighbours' amenity is unacceptable and contrary to the National Planning Policy Framework (2019), Core Strategy (2007) policies KP2 and CP4, Development Management Document (2015) policies DM1 and DM3 and the advice contained with the Design and Townscape Guide (2009).

- 2.4 The main differences between the refused scheme and the development proposed are:
- The proposal seeks to retain the first-floor rear extensions as built but plank cladding on the side elevations would be replaced with render.
 - The previous application sought to increase the height of the extensions by 0.2m to match the height of the existing first floor outrigger forming one continuous roof.
 - It is proposed to use obscure glazing in windows on the flank elevations of the extensions as opposed to the use of an applied obscure film on the refused scheme.
 - Juliette balconies are now proposed to the rear elevations.

3 Relevant Planning History

- 3.1 21/00982/FUL Install entrance doors and windows to ground floor side elevations (part-retrospective) Approved
- 3.2 20/01581/FUL Erect first floor rear extensions and raise roof height to match level of existing extension and alterations to existing flank windows (Part Retrospective). Refused.
- 3.3 20/01425/FUL Alter and convert existing ground floor shop to reinstate as 2 shops (Class A1) with entrance to front (Part Retrospective). Granted
- 3.4 20/01074/FUL- Raise roof height to form new second floor and create no.2 self-contained flats, erect single storey rear extensions to flats at first floor, form roof terraces to rear at first and second floors, layout soft landscaping, bin store and cycle store (part retrospective). Refused
- 3.5 20/00571/PA3COU- Part change of use to rear of existing Shop (Class A1) into 2 self-contained flats (Class C3)(Prior Approval). Approved.

Enforcement History

- 3.6 20/00009/UNAU_B Single Storey Rear Extension

4 Representation Summary

Public Consultation

- 4.1 14 neighbouring properties were notified, and 1 letter of representation has been received. It is summarised below:
- Amenity concerns; the glass structure has already been constructed and results in a loss of privacy, overlooking and amenity of the occupiers of adjoining properties. The use of obscure glazing would not overcome these concerns.

[Officer comment]: The concerns raised are acknowledged and have been taken into assessment of the application.

Environmental Health

- 4.2 No objection

Essex Fire

- 4.3 No objection

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF) (2019).
- 5.2 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), Policy CP3 (Transport and Accessibility) CP4 (Environment and Urban Renaissance)

- 5.3 Development Management Document (2015) Policy DM1 (Design Quality), Policy DM3 (Efficient and Effective Use Of Land) & DM15 (Sustainable Transport Management).
- 5.4 Design & Townscape Guide (2009).
- 5.5 CIL Charging Schedule 2015.
- 5.6 Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) (2020).

6 Planning Considerations

- 6.1 The main considerations for this application are the principle of the development, design, the impact on the character and appearance of the area, traffic and transportation, impact on residential amenity, and Community Infrastructure Levy (CIL) considerations and whether the development overcomes the previous reasons for refusal. The principle of the development, considerations regarding, traffic and highways issues and whether the development would be liable for CIL were considered within the 2020 application were found to be acceptable. Given the similarities between this proposal and the previously determined application the application is considered acceptable in these regards.

7 Appraisal

- 7.1 The proposal is considered in the context of the NPPF and Policies KP2, CP4 & DM1 which addresses design quality. 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. Since the refusal of the previous application, the RAMS Supplementary Planning Document (SPD) has been adopted however it is not considered that this alters the findings on the principle of development. Consistent with the basis of previous planning decisions for the site, the proposal is considered to be acceptable and policy compliant in this regard subject to the development being in accordance with the considerations set out below.

Design and Impact on the Character of the Area

- 7.2 Paragraph 124 of the NPPF states *‘the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations and how these will be tested, is essential for achieving this.’*
- 7.3 Policy KP2 of the Core Strategy advocates the need for all new development to *“respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design”*. Policy CP4 of the Core Strategy states *“development proposals will be expected to contribute to the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend by maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development.”*

- 7.4 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”*.
- 7.5 The Design and Townscape Guide states that *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.” Paragraph 348 of The Design and Townscape Guide under the heading of Rear Extensions, it is stated that “whether or not there are any public views, the design of the 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.”*
- 7.6 The first-floor rear extensions have already been constructed and combined with the existing outrigger span virtually the full width of the rear elevation projecting to a depth of some 3.5m. It is not proposed to increase in the height of the roofs of the extensions to match the height of the existing central outrigger and the use of render would be an improvement over the plank cladding. The development would still retain the appearance of a single design feature at first floor level and would have lightweight design with large folding doors to the front and large window openings to the flanks. Given the significant size and scale of the first-floor rear extensions, this has resulted in boxy additions to the rear elevation of the building at first floor level. Consistent with the basis of previous planning decisions for the site, the first-floor extensions would by reason of their design; form and size appear as an incongruous feature and would not appear subservient to the main building resulting in material harm to the character and appearance of the host building. The proposal therefore fails to overcome reason one of the previously refused application.
- 7.7 The development provides additional living space for the occupants of the first-floor flats. The extensions are described as dining rooms and are not considered to have a negative impact on the living conditions for the occupants of those flats. The provision of additional living accommodation for each flat does not outweigh or overcome the concerns as outlined within the report.
- 7.8 It is considered that the development is unacceptable and would fail to comply with policy in the above regards.

Impacts on Residential Amenity

- 7.9 Policies DM1 and DM3 of the Development Management Document and CP4 of the Core Strategy refer to the impact of development on surrounding occupiers. High quality development, by definition, should provide a positive living environment for its occupiers whilst not having an adverse impact on the amenity of neighbours. Protection and enhancement of amenity is essential to maintaining people's quality of life and ensuring the successful integration of proposed development into existing neighbourhoods.
- 7.10 Paragraph 343 (Alterations and Additions to Existing Residential Buildings) of The Design and Townscape Guide states 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.” Paragraph 349 states: “Rear extensions can sometimes adversely affect neighbouring properties through overlooking and blocking of light. The design should therefore ensure that these are kept within reasonable limits. Each application will be assessed on a site by site basis. Extensions on the boundary can have a significant effect on the neighbouring property and may not be considered appropriate”.

- 7.11 Adjoining properties to the application site comprise commercial units at ground floor (a shop at No.92 and a physiotherapist at No.80-82). Both neighbouring properties have residential units at first floor level.
- 7.12 The first-floor rear extension would not project beyond the rear of the attached neighbour (No.82) to the extent that it would have a harmful impact on neighbouring habitable room windows. It is considered that the development would not result in an unacceptable sense of enclosure or dominant impacts to the occupiers of that property that would be harmful to their amenity.
- 7.13 The degree of projection of the first-floor rear extension beyond the nearest first floor rear habitable room window at the flat above No.92 The Ridgeway results in a demonstrable loss of outlook, light and overshadowing (particularly in the morning hours) to neighbouring habitable room windows, and an unacceptable sense of enclosure and dominant impacts to the occupiers of that property, harmful to their amenity. The side facing windows to the west facing flank elevation of the first-floor rear extension give rise to actual and perceived overlooking and a material loss of privacy to neighbouring habitable accommodation. The submitted plans state that the fanlights are above 1.7m in height and that obscure glazing would be inserted into the side facing windows. No details of the glazing have been submitted to demonstrate that an acceptable degree of opacity to the windows i.e., Level 4 on the Pilkington Levels of privacy or equivalent. This could be dealt with by condition however the obscurity of the side facing windows would not address the issue of the perceived overlooking that would occur from these windows given the relationship with neighbouring properties.
- 7.14 It is considered that the development fails to overcome the second reason for refusal of application 20/01581/FUL and is therefore unacceptable and would fail to comply with policy in the above regards.

Community Infrastructure Levy

- 7.15 The proposed extension(s) to the property equate to less than 100sqm of new floorspace therefore the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable

Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS)

- 7.16 The site falls within the Zone of Influence for one or more European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). It is the Council's duty as a competent authority to undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation. Any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation.

This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017. The RAMS Supplementary Planning Document (SPD) adopted in October 2020, requires that a tariff of £127.30 (index linked) is paid per dwelling unit. This will be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement.

- 7.17 No RAMS tariff is required in this instance as no additional dwellings are proposed beyond those already exist.

8 Conclusion

- 8.1 Having taken all material planning considerations into account, it is found that the proposed development would be unacceptable and contrary to the objectives of the relevant development plan policies and guidance. The rear extensions appear visually prominent and incongruous features harmful to the character and appearance of the existing building and fail to integrate acceptably with the host dwelling. The rear extension would cause an undue sense of enclosure and material loss of privacy for the occupiers of the first floor flat at No's 92 The Ridgeway, materially harmful to their amenity. For the above reasons, the proposal has not fully addressed the previous reasons for refusal and fails to comply with the development plan and is unacceptable and the benefits of the proposal do not outweigh the material harm identified. The application is therefore recommended for refusal.

Recommendation

9

REFUSE PLANNING PERMISSION for the following reasons:

- 01 **The proposed first floor rear extensions, by reason of their significant size and scale and design, fail to suitably integrate to the host building and appear as visually prominent and incongruous features harmful to the character and appearance of the existing building and the wider surrounding area. The proposal is therefore unacceptable and contrary to the National Planning Policy Framework (2019); Policy CP4 of the Core Strategy (2007); Policies DM1 and DM3 of the Development Management Document (2015); and the advice contained within the Design and Townscape Guide (2009).**
- 02 **The first floor rear extension adjacent to the west flank boundary with No.92 The Ridgeway would, by reason of the increased size and scale of built form, projection beyond the rear of the first floor flat above No.92 The Ridgeway and incorporation of a series of side windows adjacent to the shared flank boundary, result in a material loss of light, overshadowing, outlook, perceived loss of privacy and an unacceptable sense of enclosure to neighbouring first floor rear habitable accommodation. This harm to the neighbours' amenity is unacceptable and contrary to the National Planning Policy Framework (2019), Core Strategy (2007) policies KP2 and CP4, Development Management Document (2015) policies DM1 and DM3 and the advice contained with the Design and Townscape Guide (2009).**

Appendix 2 – Site photographs

Site photograph taken 16th February 2022



Site photographs taken July 2021



