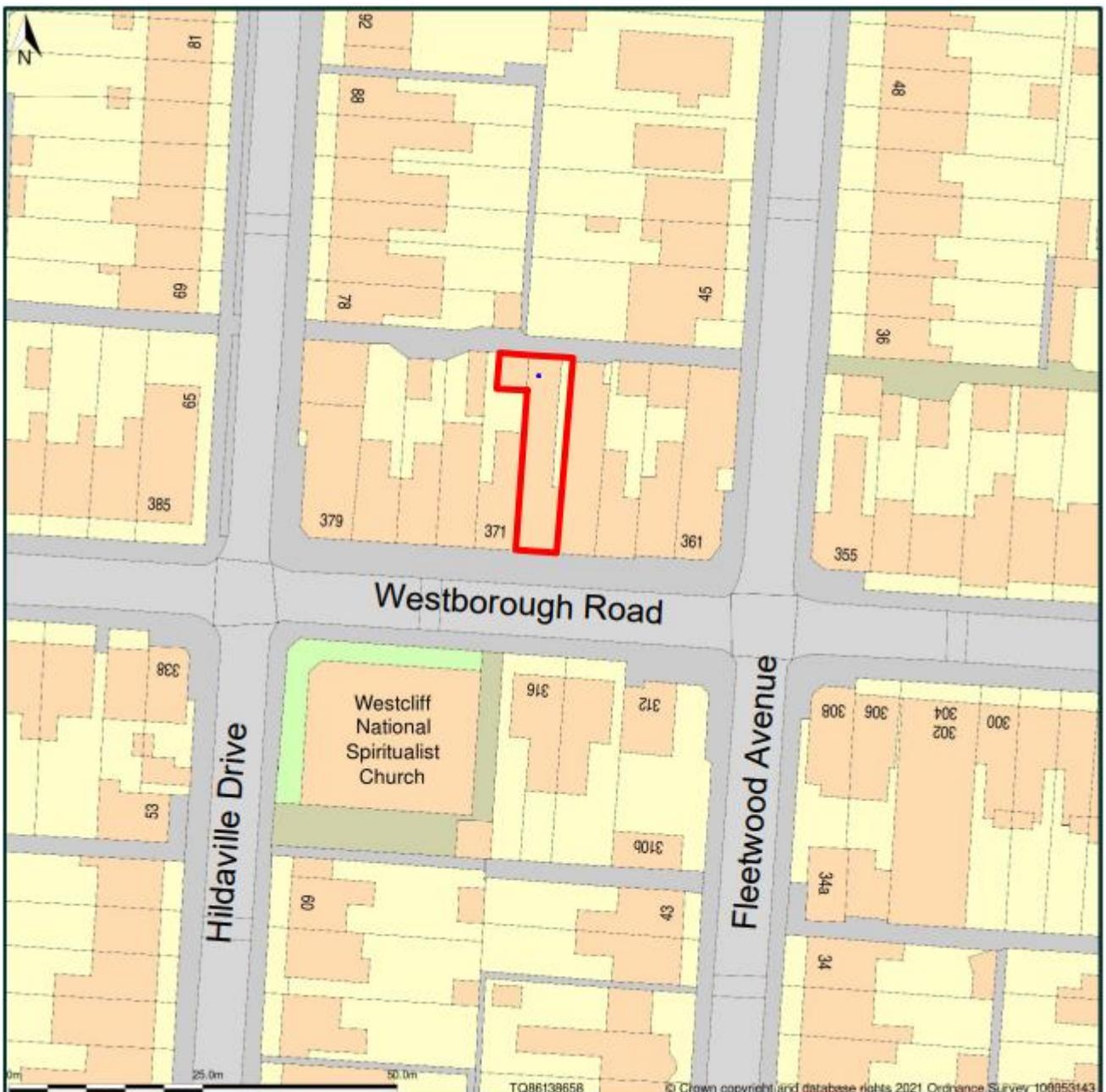


<b>Reference:</b>	20/00098/UCOU_B	
<b>Ward:</b>	Westborough	
<b>Breach of Control:</b>	Use of the rear part of the building as a residential unit	
<b>Address:</b>	369 Westborough Road, Westcliff-On-Sea, Essex, SS0 9TS	
<b>Case opened :</b>	13 <sup>th</sup> February 2020	
<b>Case Officer:</b>	Mark Broad	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site location and description**

- 1.1 The site is on the northern side of Westborough Road currently occupied by a commercial unit to the front with a two-storey part to the rear of the site. The rear part of the building is the subject of this report as it is currently used as residential units. That part of the building appears to formerly have been used for storage and as an office associated with the commercial use.
- 1.2 At the rear of the site is an accessway running between Hildaville Drive and Fleetwood Avenue.
- 1.3 The site is not located within a conservation area or subject to any site-specific planning policy designations. The site is in Flood Zone 1.

## **2 Lawful Planning Use**

- 2.1 The lawful planning use is as a hot food take-away, a sui generis use.

## **3 Relevant Planning History**

- 3.1 21/01988/FUL - Change of use of rear part of ground floor from ancillary storage space to the takeaway (Class Sui Generis) to self-contained dwelling on ground and first floor (Class C3) (Retrospective) - Refused 10.02.2022
- 3.2 08/00868/FUL - Convert front section of premises (Class A1) into Hot Food Takeaway (Class A5) at ground floor and one self-contained flat (Class C3) to first floor - Refused 01.10.2008
- 3.3 08/00867/FUL - Convert ground and first floor workshop/storage area at rear of 369 and 371 Westborough Road into one self-contained flat (Class C3) and alter elevations - Refused 01.09.2008

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

- 4.1 The breach of planning control is the unauthorised material change of use of the rear part of the building on site to a separate residential unit (Use Class C3).
- 4.2 It has been found through the determination of planning application 21/01988/FUL (the "2021 Application") that the development is unacceptable and contrary to the objectives of the relevant national and local planning policies and guidance, even when the "tilted balance" of housing provision is taken into account. It was found that the unauthorised development is out of character with the area, it harms the amenities of neighbouring occupiers, and is harmful to the amenities of current and future occupiers and fails to mitigate impacts on habitats and species. For the above reasons, the development is unacceptable and fails to comply with planning policy. Conditions would not remedy the identified harm.

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

- 5.1 In February 2020 an enforcement case was raised alleging that the rear building at the property was in residential use without planning permission.

- 5.2 On 30<sup>th</sup> September 2021, the 2021 Application was submitted seeking to regularise the self-contained flat on the ground and first floor. On 10<sup>th</sup> February 2022 the 2021 Application was refused for the following reasons:

01 The development by reason of its windows overlooking rear gardens of residential properties to the north, especially at 45 Fleetwood Avenue and 78 Hildaville Drive, is significantly harmful to the amenities of the occupiers of the neighbouring dwellings. This is unacceptable and contrary to the National Planning Policy Framework (2021), 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).

02 By reason of the failure to provide useable private outdoor amenity space, accessibility for all future users, waste storage or secure cycle storage, the development is significantly harmful to the residential amenity of future occupiers. This is unacceptable and contrary to the National Planning Policy Framework (2021), Core Strategy (2007) policies KP1 and CP4, Development Management Document (2015) policy DM8 and the advice contained with the Design and Townscape Guide (2009).

03 The development, by reason of its size, siting and design, represents a cramped and incongruous form of development which is significantly at odds with and harmful to the grain, character and appearance of the site and surrounding area. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and guidance contained within the Southend-on-Sea Design and Townscape Guide (2009).

04 The development offers no reasonable mitigation of the in-combination effect of the net increase of one dwelling on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020). This is unacceptable and contrary to the RAMS, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.

- 5.3 On 17<sup>th</sup> February 2022 an email was received from the owner of the site advising that they intended to submit an appeal against the refusal of the 2021 Application. The owner was advised that the Council would consider whether it would be expedient to issue an Enforcement Notice. A right of appeal would apply to an enforcement notice also.

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

- 6.1 The officer's report for the 2021 Application sets out fully the basis for refusal and is attached at Appendix 1. The policy context and site circumstances have not changed materially in the interim in any relevant regards.
- 6.2 Staff consider that it is proportionate and justified in the circumstances of the case

that an enforcement notice should be served to seek to regularise the breach of planning control and to remedy the identified harm. Service of an enforcement notice carries its own right of appeal and also does not fetter the owner in seeking to gain planning permission for a different proposal which seeks to remedy the identified harm.

- 6.3 It is considered expedient to take enforcement action at this stage as Council Tax records show the property having been brought into banding in May 2019. Any appeal lodged against the planning refusal may take up to a year to be determined. Hence, waiting for any such appeal to be determined would bring the use close to the four-year immunity period which would then mean the use would become lawful and exempt from enforcement action.
- 6.4 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

- 6.5 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 require from anyone with an interest in the land (the site) to:**
- a) cease the residential use of the rear part of the building on site;**
  - b) remove all kitchen appliances from the ground floor of the rear part of the building on site;**
  - c) remove all bathroom facilities from the first floor of the rear part of the building on site;**
  - d) remove all facilities that facilitate the use of the rear part of the building on site as a residential unit; and**
  - e) remove from site all materials and debris resulting from compliance with requirements (a), (b), (c) and (d) 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**

**6 months is considered reasonable for the above works.**

## Appendix 1 – Officer Report application reference 21/01988/FUL

### Delegated Report

<b>Reference:</b>	21/01988/FUL
<b>Application Type:</b>	Full Application
<b>Ward:</b>	Westborough
<b>Proposal:</b>	Change of use of rear part of ground floor from ancillary storage space to the takeaway (Class Sui Generis) to self-contained dwelling on ground and first floor (Class C3) (Retrospective)
<b>Address:</b>	369 Westborough Road, Westcliff-on-Sea, Essex
<b>Applicant:</b>	Mr Stavrinides
<b>Agent:</b>	Miss Sara Boreham of Planning Direct
<b>Consultation Expiry:</b>	18th November 2021
<b>Expiry Date:</b>	10 <sup>th</sup> February 2022
<b>Case Officer:</b>	Jonathan Doe
<b>Plan Nos:</b>	<b>Sheet no. 1 Rev 2 Site location plan at 1:1250 received 21<sup>st</sup> October 2021, Sheet no. 2 Rev 1 Site location plan at 1:500 received 21<sup>st</sup> October 2021, Sheet no. 3 Rev 2 Pre-existing floor plan received 21<sup>st</sup> October 2021, Sheet no. 4 Existing floor plan, Planning Statement.</b>
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

## 1 Site and Surroundings

- 1.1 The site is that of a commercial unit, in use as a fish and chip take away, on the northern side of Westborough Road. The junction with Hildaville Drive is to the west. The junction with Fleetwood Avenue is to the east. The application relates to a two storey building to the rear of the site which appears to formerly have been used for storage and as an office associated with the frontage use.
- 1.2 At the rear of the commercial units is an accessway running between Hildaville Drive and Fleetwood Avenue.
- 1.3 The site is not located within a conservation area or subject to any site-specific planning policies. The site is shown on the Environment Agency's flood risk map as being in Flood Zone 1.

## 2 The Proposal

- 2.1 The application, which is retrospective, seeks planning permission to retain a self-contained dwelling, described as a flat, on the ground floor and first floor.
- 2.2 The dwelling has a kitchen and a lounge on the ground floor and two bedrooms and a bathroom on the first floor. It is accessed via a footway to the rear of a parade of predominantly commercial properties.

- 2.3 The dwelling has a gross internal area of some 70 sq m. One bedroom would have a floor area of some 11.2 sq m, the other bedroom would have a floor area of some 10.8 sq m.

### **3 Relevant Planning History**

- 3.1 20/00098/UCOU\_B – Enforcement investigation - use of rear building as residential unit.
- 3.2 08/00868/FUL - Convert front section of premises (Class A1) into Hot Food Takeaway (Class A5) at ground floor and one self-contained flat (Class C3) to first floor – Refused 01.10.2008
- 3.3 08/00867/FUL - Convert ground and first floor workshop/storage area at rear of 369 and 371 Westborough Road into one self-contained flat (Class C3) and alter elevations – Refused 01.09.2008

### **4 Representation Summary**

#### **4.1 Public Consultation**

14 neighbouring properties were consulted, and a site notice was posted. No letters of representation have been received.

#### **4.2 Highways Team**

There are no highway objections to this proposal.

#### **4.3 Environmental Health**

Conditions recommended.

### **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (2021)
- 5.2 Planning Practice Guidance and National Design Guide (revised 2021)
- 5.3 Core Strategy (2007): Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment & Urban Renaissance) and CP8 (Dwelling Provision)
- 5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM7 (Dwelling Mix, Size and Type), DM8 (Residential Standards) and DM15 (Sustainable Transport Management)
- 5.5 Design & Townscape Guide (2009)
- 5.6 CIL Charging Schedule (2015)
- 5.7 Southend Waste Management Guide (2019)
- 5.8 The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020)

### **6 Planning Considerations**

- 6.1 The main considerations in relation to this application are the principle of the development, the impact on the character and appearance of the area, the standard of accommodation for current and future occupiers, the impact on residential amenity of neighbouring occupiers, any traffic and transportation issues, sustainability, ecology and compliance with the Essex Coast RAMS SPD and whether the development would be liable for CIL.

## **7 Appraisal**

### **Principle of Development**

- 7.1 Paragraph 60 of the NPPF states: “To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed.”
- 7.2 The NPPF states, at paragraph 124, that planning decisions should support development that makes efficient use of land. However, a number of points should be taken into account, including the desirability of maintaining an area’s prevailing character and setting.
- 7.3 The National Design Guide seeks well-designed places in which development integrates and relates well into its surroundings. This accounts for patterns of built form including routes and spaces around buildings.
- 7.4 Policy KP2 of the Core Strategy requires, at point 2, to make the best use of previously developed land, ensuring that sites and buildings are put to best use.
- 7.5 Policy CP4 seeks the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend, including maintaining and enhancing the amenities, appeal and character of residential areas.
- 7.6 Policy CP8 requires that development proposals contribute to local housing needs. It identifies housing targets for Southend and requires the provision of not less than 80% of residential development on previously developed land.
- 7.7 Policy DM1 requires that new development reinforces local distinctiveness. In order to achieve this, it should add to the overall quality of the area and respect the character of its local context 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.
- 7.8 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.
- 7.9 Policy DM7 of the Development Management Document identifies an above average existing supply of 1- and 2-bedroom dwellings.
- 7.10 Paragraph 80 of the Design & Townscape Guide (‘the Guide’) states that proposed accommodation mixes should reflect the local character. Policy DM7 of the

Development Management Document identifies an above average existing supply of 1- and 2-bedroom dwellings.

- 7.11 The site is adjacent to the local centre and therefore is a sustainable location for a new dwelling. The development has added a single dwelling to the supply of two-bed dwellings.
- 7.12 The provision of a new dwelling on previously developed land is a positive aspect of the application. However, although new housing has been created, it is necessary to demonstrate that in reaching a decision an appropriate balancing exercise has been undertaken considering the benefits of the proposal and any harm. The Council has a deficit in housing land supply so the tilted balance in favour of sustainable development is applied when determining the application, as relevant. The test set out by the National Planning Policy Framework is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when considered against the policies of the Framework taken as a whole. The new housing provision is limited, and the identified harm is significant both in areas of principle and detailed impacts. The tilted balance justifies refusal of the application; it is considered that the provision of one two-bedroom dwelling carries limited weight in the balance of planning considerations given its minimal impact in terms of housing supply.
- 7.13 Policy DM3 states, at point 3, *‘All development on land that constitutes backland and infill development will be considered on a site-by-site basis. Development within these locations will be resisted where the proposals:*
- (i) Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents; or*
  - (ii) Conflict with the character and grain of the local area; or*
  - (iii) Result in unusable garden space for the existing and proposed dwellings in line with Policy DM8; or*
  - (iv) Result in the loss of local ecological assets including wildlife habitats and significant or protected trees.’*
- 7.14 The site is considered a ‘backland’ site. Notwithstanding that there are flats within the terrace which has commercial units at ground floor, the free-standing nature of the application building is not consistent with the urban grain at this location. This is discussed below in relation to the impact of the proposal on the character of the area. The proposal, being ‘backland development’, is therefore unacceptable in principle.

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

- 7.15 The NPPF requires new development to respond positively to its surroundings. Policies KP2 and CP4 of the Core Strategy, Policies DM1 and DM3 of the Development Management Document, and the Design and Townscape Guide, advocate the need for new development to respect and complement local character.
- 7.16 Paragraph 130 of the NPPF refers to how planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment, and how developments should maintain a strong sense of place, using the arrangement of streets, spaces, building types to create attractive, welcoming and distinctive places to live, work and visit.

- 7.17 The Design and Townscape Guide ('the Guide') notes at paragraph 193 that backland development can take advantage of access to local facilities and infrastructure, provide natural surveillance and generally lift an area which may be susceptible to crime and disorder. However, such development is required to integrate with the established character including the established grain, density and openness of the townscape.
- 7.18 The surrounding built environment is relatively cohesive, with street-facing frontages, and a leafy rear garden environment. The application site is part of a cluster of outbuildings, additions and extensions that appear to have developed in association with the commercial frontage. No external changes associated with the development are proposed within this application. However, to retain a dwelling at this position would fail to respect the history or general layout and grain of the vicinity. It would be harmful to the visual amenities of the site and wider area and would be contrary to development plan policies in these regards.

### **Impact on Residential Amenity**

- 7.19 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies 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. Further advice on how to achieve this is set out in the Council's Design and Townscape Guide.
- 7.20 To the north of the site, on the far side of an accessway, are residential properties facing onto Fleetwood Avenue and Hildaville Drive. The position of the flat is level with the rear boundaries of rear gardens to these properties.
- 7.21 The flat has two first-floor windows facing these rear gardens, to the north. The windows serve a bedroom and a staircase. A window to the second bedroom faces east.
- 7.22 There appears to be flats above the parade of commercial properties facing Westborough Road. These flats also have rear windows facing north. However, these windows are set further away whereas the windows to the flat in question overlooks rear gardens by only the width of the accessway.
- 7.23 It would be possible to impose a condition that the staircase window be obscure glazed were the development otherwise acceptable. However, the bedroom window facing north is the only window to this room. A condition to require obscure glazing to this window would create a room with no outlook which would be unacceptable in terms of the residential amenity of the occupiers of the flat.
- 7.24 The bedroom window overlooks the rear gardens of 45 Fleetwood Avenue and 78 Hildaville Drive (over distances of some 3m and 7m respectively) and other rear gardens to the north. As such the overlooking and loss of privacy to occupiers of residential properties to the north has a significant adverse impact.
- 7.25 A planning statement forming part of the application documentation makes an argument that planning permission is required for only the change of use of the ground floor since the first floor was converted to residential use in 2008 as Permitted Development. However, no record can be found of this. Also, no

Certificate of Lawful Use has been granted or applied for in this respect so little to no weight is attached to the applicant's case on this point. The application has been determined as it stands.

- 7.26 From examining the planning history, it is evident that a two-storey built form has existed at the site for a considerable time. The application involves no material change to the size or form of this built form. The development causes no significant harm to the occupiers of any neighbouring residential property with regard to outlook and a sense of enclosure or daylight or sunlight.
- 7.27 Occupiers and visitors to the flat would generate some activity but it is considered that in the urban setting of the proposal this would not be to a degree which would create any significant detriment to the amenity of occupiers of neighbouring properties in any relevant regard.
- 7.28 However, with regard to overlooking it is considered that the development significantly harms residential amenity. It is therefore unacceptable and contrary to policy in the above regards.

### **Standard of Accommodation and Living Conditions for Future Occupiers**

- 7.29 The NPPF, at paragraph 130 (f), states that planning decisions should ensure that developments are places with a high standard of amenity for existing and future occupiers. The nationally described space standards replaced the space standards used by local authorities and are afforded significant weight.
- 7.30 The Technical housing standards – nationally described space standard (27 March 2015) for a two-bedroom, three-person dwelling of two storeys is 70 sq m plus 2 sq m of built-in storage. The flat has a gross internal floor area of some 70 sq m. The flat therefore falls minimally below the standard.
- 7.31 The Technical requirements standard also requires that a dwelling with two or more bedspaces has at least one double (or twin) bedroom. A double (or twin bedroom) should have a floor area of at least 11.5 sq m. The room shown on the submitted plans as a master bedroom has a floor area of 11.2 sq m, minimally below the standard. The standard states that in order to provide one bedspace, a single bedroom has to have a floor area of at least 7.5 sq m and is at least 2.15m wide. The room shown on the submitted plans as bedroom 2 comfortably exceeds these requirements with a floor area of 10.8 sq m.
- 7.32 Policy DM1 of the Development Management Document requires that developments provide an internal and external layout that takes account of all potential users. Policy DM8 states that the internal environment of all new dwellings must be high quality and, at (v), states that new dwellings should make provision for useable private outdoor amenity space for the enjoyment of intended occupiers.
- 7.33 Paragraph 138 of the Design and Townscape Guide states that outdoor space significantly enhances the quality of life for residents and an attractive and useable garden area is an essential element of any new residential development.
- 7.34 Other than a path to the side entrance door, the flat has no outdoor amenity space. Whilst this may be acceptable for a first floor flat above commercial premises, it is considered unacceptable for a two-bedroom two-storey dwelling.

- 7.35 Access to the development is via an accessway to the rear of commercial premises. Other than a path to the side entrance door, the flat has no outdoor amenity space. Whilst this may be acceptable for a first floor flat above commercial premises, it is considered unacceptable for a two-bedroom, two-storey dwelling. The sole lounge window of the flat looks onto a brick wall at a close distance and other windows are hard onto the accessway, which is informally used to store waste from the commercial units. It is considered that outlook from the development is poor and unacceptable.
- 7.36 Policy DM8 requires that new dwellings include suitable space for waste storage and secure cycle storage. The Guide notes at paragraphs 196-197 that all development must ensure that appropriate provisions are made for waste collection, and that the site itself must be of a sufficient size and shape to accommodate practical internal space, usable amenity space and sufficient off-street parking for occupiers.
- 7.37 The site lacks reasonable scope for suitable waste storage provision externally and for secure covered cycle storage for the use of occupiers. Access to the unit is via a rear accessway, outside space consists of a walkway shared with the fish and chip shop and outlook from the unit is poor.
- 7.38 Policy DM8 of the Development Management Document states that all new dwellings should meet the Lifetime Homes Standards, which from the 1st of October 2015 have been substituted by Building Regulation M4(2). Part M4(2) of the Building Regulations requires the need to provide adaptable and accessible dwellings. The applicant has not submitted information demonstrating that the proposed dwelling would meet the criteria of building regulation M4(2). However, given that the development is a conversion of an existing building it would not be reasonable to require compliance with Building regulation M4(2) in this instance.
- 7.39 It is therefore considered that the proposal would significantly harm the residential amenity of future occupiers. It is therefore unacceptable and contrary to policy in the above regards.

### **Traffic and Transportation Issues**

- 7.40 Policy DM15 of the Development Management Document requires that dwellings with 2+ bedrooms must provide two parking spaces.
- 7.41 No off-street car parking is provided for the flat. Considering that the site is at a sustainable location, adjoining a retail parade, no objection is raised on parking grounds. The proposal would not harm highway safety in accordance with planning policy.
- 7.42 The proposal is acceptable and policy compliant in the above regards.

### **Sustainability**

- 7.43 Policy KP2 of the Core Strategy states that all new development proposals should demonstrate how they will maximise the use of renewable and recycle energy, water and other resources. A minimum of 10% of the energy demands of the development, where feasible, should be provided by renewables in order to meet Policy KP2.

- 7.44 No details of renewable energy technologies have been described in the proposed submission. There is limited scope on the site to employ such technologies. However, a condition could be attached to any planning permission to ensure the proposal complies reasonably with Policy KP2 of the Core Strategy in these regards were the development otherwise acceptable.
- 7.45 Policy DM2 of the Development Management Document part (iv) requires water efficient design measures that limit internal water consumption to 105 litres per person per day (lpd) (110lpd when including external water consumption). This requirement could be dealt with by condition were the development otherwise acceptable.

### **Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS)**

- 7.46 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), which was adopted by Full Council on 29th October 2020, required 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.
- 7.47 The Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) was adopted by the Council in October 2020. The site falls within the Zone of Influence for one or more European designated sites scoped into the RAMS.
- 7.48 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).
- 7.49 The proposal would involve a net increase of one dwelling within the Zone of Influence. The applicant has failed to agree a mechanism for appropriate mitigation within a reasonable timescale, or for any alternative mitigation.
- 7.50 The application therefore fails to reasonably mitigate the in-combination effect of the development on habitats and species in accordance with the Habitats Regulations as identified in the adopted SPD. This is unacceptable and contrary to the adopted SPD, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.

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

- 7.51 This application is CIL liable; the proposal relates to a dwelling where there is no record of planning permission having been granted for a dwelling. If the application had been recommended for approval, a CIL charge would have been payable. If an

appeal is lodged and allowed the development will be CIL liable. Any revised application would also be CIL liable.

## **Equality and Diversity Issues**

- 7.52 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 application and preparing this report had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

## **8 Conclusion**

- 8.1 Having taken all material planning considerations into account, it is found that the development is unacceptable and contrary to the objectives of the relevant development plan policies and guidance, even when the “tilted balance” of housing provision is taken into account, it is out of character with the area, it harms the amenities of occupiers, and is harmful to the amenities of further occupiers and fails to mitigate impacts on habitats and species. For the above reasons, the development is unacceptable and fails to comply with planning policy. The application is therefore recommended for refusal.

## **9 Recommendation**

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

- 01 The development by reason of its windows overlooking rear gardens of residential properties to the north is significantly harmful to the amenities of the occupiers of the neighbouring dwellings. This is unacceptable and contrary to the National Planning Policy Framework (2021), 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).**
- 02 By reason of the failure to provide useable private outdoor amenity space, accessibility for all future users, waste storage or secure cycle storage, the development is significantly harmful to the residential amenity of future occupiers, especially at 45 Fleetwood Avenue and 78 Hildaville Drive . This is unacceptable and contrary to the National Planning Policy Framework (2021), Core Strategy (2007) policies KP1 and CP4, Development Management Document (2015) policy DM8 and the advice contained with the Design and Townscape Guide (2009).**
- 03 The development, by reason of its size, siting and design, represents a cramped and incongruous form of development which is significantly at odds with and harmful to the grain, character and appearance of the site and surrounding area. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development**

**Management Document (2015) and guidance contained within the Southend-on-Sea Design and Townscape Guide (2009).**

- 04 The development offers no reasonable mitigation of the in-combination effect of the net increase of one dwelling on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) SPD (2020). This is unacceptable and contrary to the RAMS, and Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the Development Management Document which seek to protect the natural environment with specific reference to the coastal habitats.**

**Informatives:**

- 1 Please note that this application would be liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended) if planning permission had been granted. Therefore if an appeal is lodged and subsequently allowed, the CIL liability will be applied. Any revised application might also be CIL liable.**
- 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 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.**