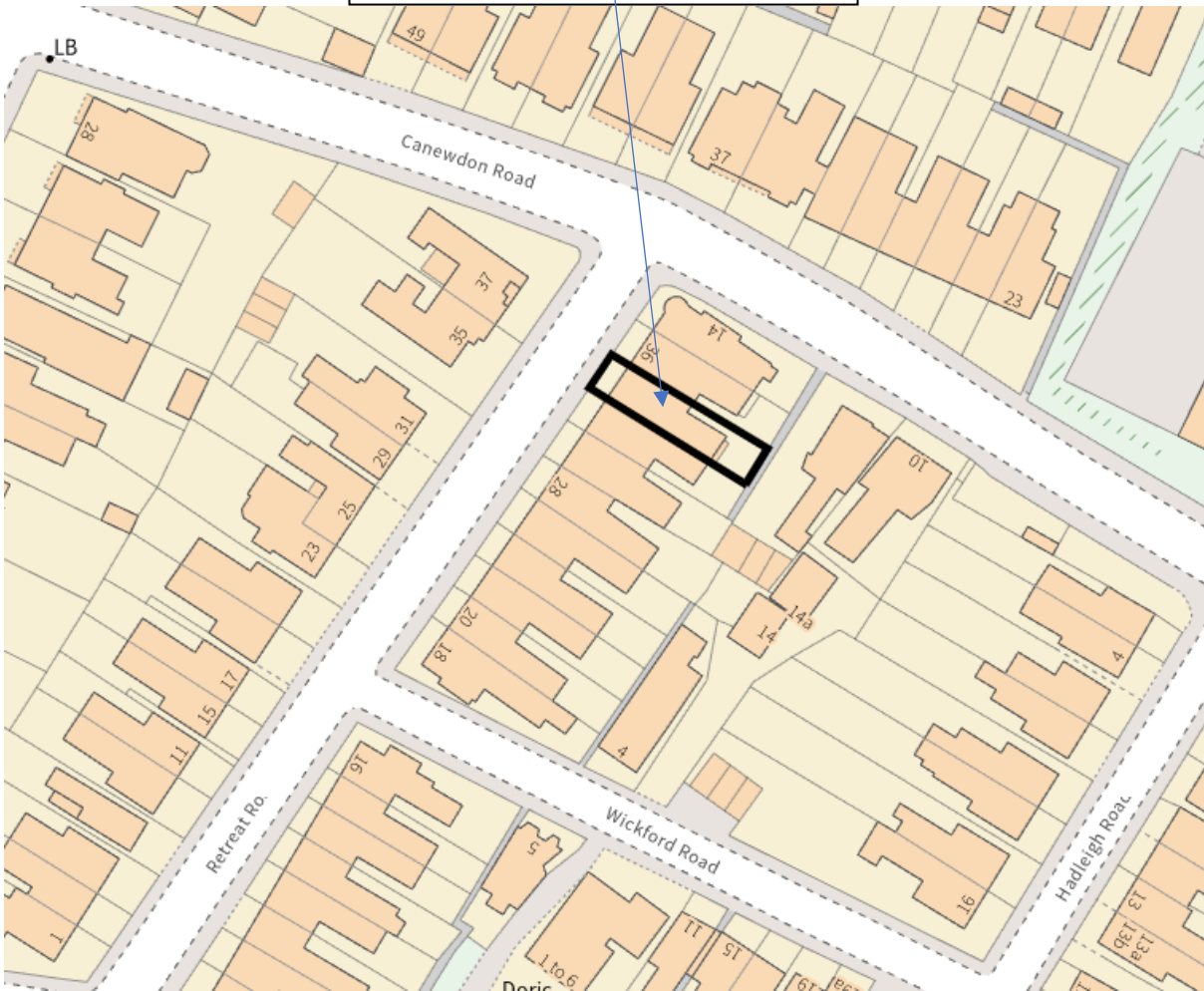


Reference:	19/00204/UNAU_B	
Report Type:	Enforcement	
Ward:	Milton	
Breach of Planning Control:	Erection of a rear balcony	
Address:	34 Retreat Road, Westcliff-on-Sea, SS0 7NN	
Case Opened:	10 July 2019	
Case Officer:	Edward Robinson / Gabriella Fairley	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

34 Retreat Road, Westcliff-on-Sea, SS0 7NN



1 Site and Surroundings

- 1.1 This site on the eastern side of Retreat Road contains a mid-terraced building, which has been converted from a single dwellinghouse into flats. The building is surrounded by traditional residential dwellinghouses. The site is not within a conservation area or a flood zone and is not subject to any site-specific planning policy designations.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 None.

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2021)
- 4.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 4.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)
- 4.5 Southend-on-Sea Design and Townscape Guide (2009)
- 4.6 Community Infrastructure Levy (CIL) Charging Schedule (2015)

5 The alleged planning breach, harm caused and efforts to resolve breach to date

- 5.1 The identified breach of planning control is:
- The erection of a balcony to the rear of the building.
- 5.2 In July 2019 a complaint was received by the Council alleging that a balcony had been created or extended at No 34 Retreat Road. No planning application has been submitted for the balcony and it could not have been created or enlarged under permitted development provisions as the site is a flat.
- 5.3 Contact has been made with the owner/occupier requesting the submission of a planning application for the works on numerous occasions, including reasonably allowing for setbacks due to the Covid-19 pandemic. However, no further action has been undertaken by the homeowner in regard to submitting an application or otherwise remedying the identified harm.

Amenity Impacts

- 5.4 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.

- 5.5 No.34 sits within a row of eleven terraced buildings, originally constructed as dwellinghouses. No.34 has a shared boundary with No. 32 and No.36. The balcony is located to the rear elevation of an existing rear outrigger, which is joined to No.32, and is accessed by a staircase connecting the rear garden to the first floor flat. Whilst a staircase and a landing platform had been a feature of this elevation historically, and is replicated on several properties nearby, the previously installed platform served solely as an access function and was not large enough to allow use as an external seating area and was narrower than the development currently on site. The balcony is along the shared boundary with No.32, sitting directly above the amenity space of that neighbour. Due to the location and size of the balcony as well as the height at which the balcony is positioned, it is considered that the development causes significant harm to the residential amenity of neighbouring occupiers of No.32 in terms of overlooking, loss of privacy and in terms of creating an overbearing relationship.
- 5.6 In regard to No. 36, there is a small separation between the rear outrigger, where the balcony is located, and the shared boundary. Whilst it is noted that No.36 also has a staircase connecting the garden with a first-floor platform at the rear, that platform is not large enough to be used as a balcony. Despite the separation distance from that neighbour, it is considered that any occupiers using the balcony will be able to look directly onto No. 36's rear amenity space. Therefore, it is considered that the development is harmful to the residential amenity of neighbouring occupiers of the ground floor flat at No.36 in terms of overlooking and a loss of privacy.
- 5.7 The relationship with other neighbouring properties is considered acceptable due to the separation distances involved or giving weight to the relationship prior to the balcony being installed at the site.
- 5.8 It is considered that the amenity impacts of the unauthorised development, in terms of overlooking and loss of privacy are of a significant degree and cause significant and demonstrable harm to the residential amenity of neighbouring occupiers at Nos. 32 and 36 Retreat Road. The development has also created an overbearing effect to the detriment of the residential amenity of No. 32 Retreat Road. The unauthorised development is therefore 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) and the National Design Guide (2021).

Enforcement Action

- 5.9 Given the harm identified above, it is reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. Enforcement action in this case will reasonably aim to secure the removal of the unauthorised rear balcony in its entirety and remove from the site all materials resulting from compliance with the removal of the balcony. It is considered that there are no lesser steps that could remedy the identified breach or associated harm. Installing a platform to facilitate access would require separate planning permission and a reasonable timeframe for compliance ought to take this into account.
- 5.10 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served as this will bring further focus to the need for the breach to be regularised and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and

does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm.

- 5.11 Taking enforcement action in this case may amount to an interference with the owner/occupier's human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area in the public interest.

6 Equality and Diversity Issues

- 6.1 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 planning enforcement case 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.

7 Recommendation

7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to:

- a) Remove from the site the rear balcony in its entirety, and
- b) Remove from site all materials resulting from compliance with a)

- 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 5 months is considered reasonable for the removal of the unauthorised balcony and the materials resulting in compliance with this.