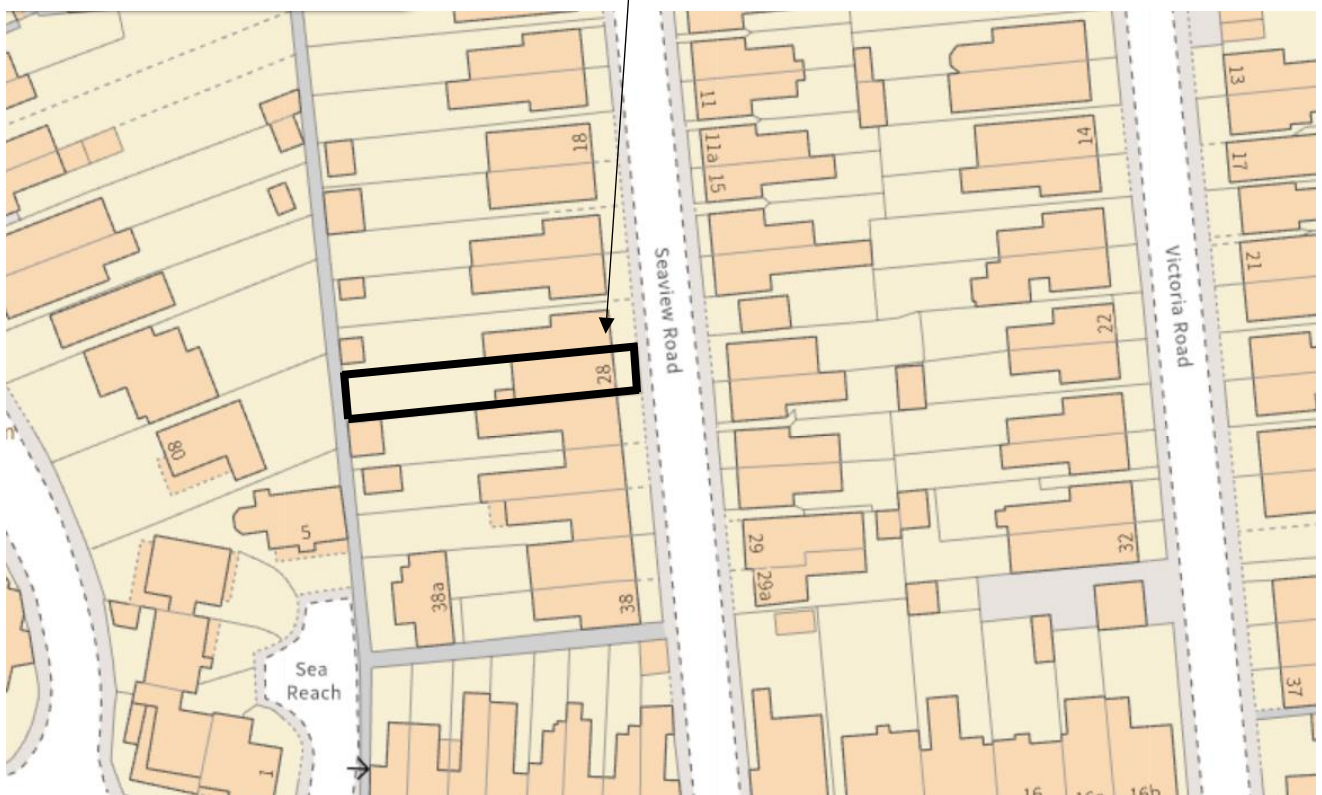


Reference:	22/00062/UNAU_B	
Report Type:	Enforcement	
Ward:	Leigh	
Breach of Planning Control:	Demolition of wall within a Conservation Area	
Address:	28 Seaview Road, Leigh-on-Sea, Essex, SS9 1AT	
Case Opened Date:	09 March 2022	
Case Officer:	Edward Robinson / Oliver Hart	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

28 Seaview Road, Leigh-on-Sea,
Essex, SS9 1AT



1 Site and Surroundings

- 1.1 The application site lies within the Leigh Cliff Conservation Area and within an area under an Article 4 Direction which restricts permitted development for properties. The application site includes one half of what was originally, a pair of semi-detached dwellinghouses which, over the years, have been altered to form part of a wider terrace immediately to the south.
- 1.2 The front elevation of No.28 was completely remodelled in the c.1930's, with a two-storey curved front bay projection and render finish at odds with the prevailing streetscene, although unusually it had retained its distinctive front boundary wall of brick wasters until early 2022 when it was demolished without express permission. The applicant states this was because the wall had become unstable.
- 1.3 The surrounding area is mainly residential in character, consisting of dwellings built in the late Victorian and Edwardian era. There are examples of low brick boundary walls to the front of properties which is considered to inform the character and setting of the immediate street scene in Seaview Road.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 22/01886/FULH- Layout disabled parking to front and form vehicle crossover onto Seaview Road (part-retrospective)- Refused [dated.27.01.2023]
Reasons for refusal (summarised):
 1. The removal of the front boundary wall and formation of a hardstanding in the front garden and vehicle crossover results in less than substantial but nevertheless significant harm to the historic character of the street scene and the Leigh Cliff Conservation Area which is not outweighed by any public benefits.
 2. The proposed development would fail to meet the minimum size requirement for a parking space which should be 2.6m deep and 6.5m wide when a vehicle is parked parallel to the footway and would therefore result in a vehicle overhanging the public highway as well as unsafe vehicle movements harmful to pedestrian and highway safety and the local highway network.
- 3.2 A copy of the officer's report for the above application is included as Appendix 1 at the end of this report.

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) and DM5 (Southend-on-Sea's Historic Environment)

- 4.5 Southend-on-Sea Design and Townscape Guide (2009)
- 4.6 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 4.7 Leigh Cliff Conservation Area Appraisal (2020)

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

- 5.1 The identified breach of planning control is:
 - The demolition of the original front boundary wall within a Conservation Area
- 5.2 In March 2022 a complaint was received by the Council that the original boundary wall at the front of the property had been removed without planning permission.
- 5.3 Contact was made with the homeowner where the homeowner conveyed that they considered removal of the wall had been necessary as it had become unstable. In an attempt to resolve this issue the Planning service advised re-instatement of the original boundary wall or, to provide a suitable alternative boundary treatment. The homeowner however stated they wanted to form parking to the front of the site.
- 5.4 The homeowner was therefore advised to submit a planning application for their proposed development and an application was subsequently received by this Local Planning Authority (ref.22/01886/FULH) to layout parking to the front and install a dropped kerb at the property. Removal of the boundary wall formed part of the development works. This application was refused on 27.01.2023 for the design and character and highway safety reasons summarised above in 3.1 of this report. The full analysis including the development's conflict with design, conservation and highway safety policies and objectives is included in the officer's report at Appendix 1. Paragraphs 6.9 and 6.10 of that report explain how the development was found to cause less than substantial, but significant, harm to the character and appearance of the Leigh Cliff Conservation Area. Irrespective of the separate highway-based reason for refusal, the identified less than substantial harm to the Conservation Area would need to be clearly outweighed by public benefits, which was not the case in this instance.

Enforcement and Legal Action

- 5.5 Given the significant harm identified above in respect of the loss of the front boundary wall, it is reasonable, expedient and in the public interest to pursue enforcement and/or legal action in the circumstances of this case. Given that the materials of the original wall have been kept by the property owner, enforcement action in this case can reasonably aim to secure the re-instatement of the original boundary wall (with the same materials) which is the condition of the land before the breach of planning control took place. Whilst there is potential to provide a suitable alternative front boundary treatment, this cannot be required by an enforcement notice and express planning permission from the Local Planning Authority would be required. If the property owner contends that this is not a reasonable requirement, legal action can potentially be taken. No lesser steps that could remedy the identified breach or associated harm have been identified.
- 5.6 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.

- 5.7 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 In reaching its decision the Local Planning Authority must have regard to the provisions of the Equality Act 2010. 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.
- 6.2 This Act requires the Local Planning Authority to demonstrate that any decision it makes is reached in a fair, transparent or accountable way considering the needs and rights of different members of the community. Based on the information submitted with the previously refused application, the proposed development was intended to result in potential benefits to the applicant or a member of their household who is disabled.
- 6.3 The loss of the boundary wall however is found to be demonstrably harmful to the character and quality of the built environment and the designated heritage asset of Leigh Cliff Conservation Area and the proposed parking space was found to cause harm to pedestrian/highway safety. It is not considered that the private and individual circumstances of the applicant/applicant's household are sufficient to outweigh the significant harm identified in planning terms.
- 6.4 Officers have, therefore, 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) Re-instate the original boundary wall using the same materials and method of construction to restore the land to its condition before the breach of planning control took place.
- 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. The Local Planning Authority may also decide to instigate a prosecution under the provisions of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 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 re-instatement of the wall.

Appendix 1

Reference:	22/01886/FULH
Application Type:	Full Application- Householder
Ward:	Leigh
Proposal:	Layout disabled parking to front and form vehicle crossover onto Seaview Road (part-retrospective)
Address:	28 Seaview Road, Leigh-on-Sea, Essex, SS9 1AT
Applicant:	Mr Jordan Hill
Agent:	N/A
Consultation Expiry:	26.01.2023
Expiry Date:	27.01.2023
Case Officer:	Oliver Hart
Plan Numbers:	22014-100A
Supporting Document:	Design and Access Statement
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site lies within the Leigh Cliff Conservation Area and comprises originally, a pair of semi-detached dwellinghouses which, over the years, have been altered to form part of a wider terrace immediately to the south.
- 1.2 The front elevation of No.28 was completely remodelled in the c.1930's, with a two-storey curved front bay projection and render finish at odds with the prevailing streetscene, although unusually it had retained its distinctive front boundary wall of brick wasters until early 2022 where it was demolished without express permission. The accompanying statement states this was because the wall had become unstable.
- 1.3 The surrounding area is mainly residential in character, consisting of dwellings built in the late Victorian and Edwardian era. There are examples of low brick boundary walls to front of properties which is considered to inform the character and setting of the immediate street scene in Seaview Road. Many of the walls that have been previously removed and the formation of existing vehicular crossovers are historic and pre-date the designation of the area as a conservation area. They carry little weight in the assessment of the current proposal.
- 1.4 The building is neither locally listed nor listed. An Article 4 direction covers Seaview Road removing certain permitted development rights and planning permission is required for the formation of hard-standings for vehicles. The Leigh Cliff Conservation Area appraisal (2020) identifies Nos 26-28 Seaview Road as making a positive contribution to the character and appearance of the Conservation Area.

Appendix 1

2 The Proposal

- 2.1 The front boundary wall has already been removed and therefore, planning permission is sought (part) retrospectively to form a single off-street parking space to the front garden area by demolishing the front boundary wall, installing a new hardstanding (details provided demonstrating use of heritage tumbled tegula block setts) and replacing a short, planted hedge to the southern flank boundary with a 0.6m high boundary wall finished with yellow stock bricks. A vehicle crossover is also proposed from Seaview Road some 4m wide.

3 Relevant Planning History

- 3.1 22/00062/UNAU_B- Demolition of wall within a Conservation Area – Under Investigation

26-28 Seaview Road

- 3.2 20/00392/FUL- Erect part single/part two storey rear extension with balcony to 26 Seaview Road, erect single storey rear extension to 28 Seaview Road, alter elevations (Amended proposal)- Granted.
- 3.3 19/02286/FUL- Erect part single/part two storey rear extension with balcony to 26 Seaview Road, erect single storey rear extension to 28 Seaview Road, alter elevations- Refused

4 Representation Summary

Public Consultation

- 4.1 5 neighbouring properties were notified of the application by letter, a site notice posted and a press advert placed. No letters of representation have been received.

Highways

- 4.2 The application does not meet the criteria for a vehicle crossover as set out within the vehicle crossover policy. Therefore, a highways objection is raised.

Parks

- 4.3 The proposed development results in the loss of established shrub and grassed areas. There is no mitigation planting proposed. Therefore, it results in a biodiversity net loss and an increase in hardstanding with no suitable urban drainage considered.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (2021) and National Design Guide (2021)
- 5.2 Core Strategy (2007): Policies CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance) and KP2 (Development Principles)
- 5.3 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Southend-on-Sea's Historic Environment) and DM15 (Sustainable Transport Management)
- 5.4 The Southend-on-Sea Design and Townscape Guide (2009)

Appendix 1

- 5.5 Community Infrastructure Levy (CIL) Charging Schedule (2015)
- 5.6 Southend Council Vehicle Crossings Policy Document (2021)
- 5.7 Leigh Cliff Conservation Area Appraisal (2020)

6 Appraisal

Principle of Development

- 6.1 Vehicular crossings and hardsurfacing for parking are considered acceptable in principle, providing that highway safety is not adversely affected and there is no adverse visual impact on the character of the surrounding area or upon residential amenity. These matters are considered below.

Design and Impact on Character and the Conservation Area

- 6.2 Section 72(1) of the Planning and Listed Buildings and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 6.3 The site is in the Leigh Cliff Conservation Area. The Leigh Cliff Conservation Area appraisal identifies the application property as one that makes a positive contribution to the character and significance of the Conservation Area.
- 6.4 Local and national planning policies and guidance seek to ensure that new development is well designed. 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.
- 6.5 Local development plan policies seek to ensure that new development is designed so that it adds to the overall quality of the area and respects the character of the site, its local context and surroundings, provides appropriate detailing that contributes to and enhances the distinctiveness of place; and contribute positively to the space between buildings and their relationship to the public realm. Policy DM1 and the Design and Townscape guide provide further details on how this can be achieved.
- 6.6 Special attention must be paid to the desirability of preserving or enhancing the character or appearance of the conservation area as stated in Policy DM5.
- 6.7 The Leigh Cliff Conservation Area Appraisal advises that 'Boundary walls were originally typically built of brick. They were low and topped with railings or picket fences. Hardly any of these now survive. The uprights of some of the original walls can be seen on Seaview Road, though the walls and railings in between have long since been lost. There are a few good replacement walls in the Conservation Area, taking the form of low brick walls with or without railings.'
- 6.8 There are a small number of front gardens that have been hard surfaced and accessed from vehicle crossovers within Seaview Road. These are historic examples which pre-date the adoption of the 2021 Vehicle Crossover Application Guidance. These historic examples of hardstandings in front gardens and vehicle crossovers have harmed the character of the conservation area.

Appendix 1

- 6.9 The loss of front boundary walls is specifically mentioned as being harmful and a potential problem for the future of the conservation area within the conservation area appraisal. It is therefore considered that the proposal is contrary to the objectives of the Leigh Cliff Conservation Area Appraisal, and that the proposed development would harm, rather than preserve or enhance the character of the street scene and the wider conservation area.
- 6.10 The development, which seeks permission for the retention of the removal of the original front boundary wall, to form a vehicle crossover and to form a hardstanding in place of the front garden is therefore found to be contrary to the policies and guidance outlined above which seek to preserve and enhance the historic character of the conservation area. This identified harm to the heritage asset is less than substantial but significant in degree. The identified harm is not outweighed by any public benefits to justify or mitigate the proposed development in this case. The proposal is unacceptable and conflicts with policy in the above regards.

Amenity Impacts

- 6.11 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.
- 6.12 It is considered that the proposal for off-street parking would not result in any significant harm to the amenities of the site, neighbouring occupiers or wider area in any regard. The proposal is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Traffic and Transportation

- 6.13 Policy DM15 of the Development Management Document requires that all development should meet the minimum off-street parking standards. The Southend on Sea Vehicle Crossover Application Guidance is a material consideration.
- 6.14 Parking at the site would take place parallel with the highway and the minimum dimensions required within the Vehicle Crossover Application Guidance are 2.6m deep and 6.5m wide.
- 6.15 Having regard to the two-storey front bay which projects into the front garden area, the available parking area would measure some 2.2m deep and 6.2m wide (reducing to 6m-5.85m wide taking into account the proposed flank wall). Consequently, the proposed parking area would not meet the minimum dimensions and would therefore be contrary to the guidance as it would result in unsafe vehicle movements and vehicles overhanging the public highway that would be to the significant detriment of pedestrian and highway safety. This is unacceptable and refusal is recommended on this basis.
- 6.16 Highways officers have objected to the proposal on this basis.

Equality and Diversity Matters

Appendix 1

- 6.17 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.
- 6.18 This planning application falls to be considered on its planning merits and in reaching its decision the Local Planning Authority must have regard to the provisions of the Equality Act 2010. This Act requires the Local Planning Authority to demonstrate that any decision it makes is reached in a fair, transparent or accountable way considering the needs and rights of different members of the community. Based on the submitted information the proposal is intended to result in potential benefits to the applicant who is disabled. The proposal would be demonstrably harmful to the character and quality of the built environment and the designated heritage asset of Leigh Cliff Conservation Area and pedestrian/highway safety. It is not considered that the individual circumstances of the applicant are sufficient to outweigh the significant harm identified in planning terms and would not warrant a grant of planning permission having regard to the extent of conflict with relevant planning policies and guidance and the absence of any mitigating factors to outweigh this harm.

Community Infrastructure Levy

- 6.19 The development is not liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended).

7 Conclusion

- 7.1 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 local and national planning policies and guidance. The proposal would harm rather than preserve or enhance the historic character of the street scene and the wider Conservation Area. This identified harm to the heritage asset is less than substantial but significant in degree. There are no public benefits to justify or mitigate the proposed development in this case nor to outweigh the harm to highway and pedestrian safety. The application is therefore unacceptable and recommended for refusal.

8 Recommendation

REFUSE PLANNING PERMISSION for the following reason(s):

- 01 **The removal of the front boundary wall and formation of a hardstanding in the front garden and vehicle crossover results in less than substantial but nevertheless significant harm to the historic character of the street scene and the Leigh Cliff Conservation Area which is not outweighed by any public benefits. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007),**

Appendix 1

Development Management Document (2015) Policies DM1, DM3 and DM5 and the advice contained in the National Design Guide (2021), the Southend Design and Townscape Guide (2009) and the Leigh Cliff Conservation Area Appraisal (2020).

- 02 The proposed development would fail to meet the minimum size requirement for a parking space which should be 2.6m deep and 6.5m wide when a vehicle is parked parallel to the footway and would therefore result in a vehicle overhanging the public highway as well as unsafe vehicle movements harmful to pedestrian and highway safety and the local highway network. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policy CP3 of the Core Strategy (2007), Policies DM3 and DM15 of the Development Management Document (2015) and the Vehicle Crossing Policy and Application Guidance (2021).

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.

Informatives

- 01 The applicant is advised to contact the Highways Department to explore the possibility of creating a disabled bay in the vicinity of the applicants address as a potential way forward.
- 02 The applicant is reminded that the demolition of the front wall remains unauthorised and a solution remains necessary. Failure to remedy this is likely to result in the Council considering the expediency of enforcement action to seek to remedy the currently identified harm.