

Reference:	(A) 22/02340/FUL (B) 21/00222/UNAU_B	
Report Type:	Full Application / Enforcement	
Ward:	Chalkwell	
Proposal:	Replace existing wooden sash windows with uPVC double glazed sash windows at 16 and 16A The Leas (retrospective)	
Address:	16 and 16A, The Leas, Westcliff-on-Sea, SS0 8EB	
Applicant:	Mrs Julie Burgess	
Agent:	Andy Stevens of ASP	
Consultation Expiry:	6 th April 2023	
Expiry Date:	5 th May 2023	
Case Officer:	(A) Gabriella Fairley / (B) Edward Robinson	
Plan Nos:	TL-BU-01, TL-BU-02	
Supporting Documents:	Cover Letter, Heritage Statement, Window Specification	
Recommendation:	<p>(A) DELEGATE to the Director of Planning or the Service Manager – Development Control to REFUSE PLANNING PERMISSION subject to no new material planning considerations being raised by the end of the statutory consultation period</p> <p>(B) AUTHORISE ENFORCEMENT ACTION</p>	



1 Site and Surroundings

- 1.1 This site on the north-eastern side of The Leas contains a three-storey property, which has been converted into flats. The property is surrounded by traditional residential buildings with period design features.
- 1.2 The site is within The Leas Conservation Area and within the Seafront Character Zone 4 (Chalkwell Esplanade to San Remo). No other site-specific planning policy designations affect the site.

2 The Proposal

- 2.1 The application retrospectively seeks planning permission for the installation of white uPVC windows to each elevation, comprising of 14 individual windows at ground floor and 4 doors, 9 windows at first floor on the corner bay and 2 at second floor on the corner gable. Original timber sash windows have been removed. The works have been undertaken without planning permission. Permitted development rights do not apply in this instance because the property is a flat.

3 Lawful Planning Use

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

4 Relevant Planning History

- 4.1 None.

5 Representation Summary

Public Consultation

- 5.1 Thirty-two (32) neighbouring properties were consulted by letter, a site notice was displayed, and a press notice was published. At the time of this report, no letters of representation have been received. If any representations are received before the Development Control Committee, these will be added to the supplementary agenda.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF) (2021)
- 6.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 6.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 6.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM5 (Historic Environment) and DM6 (The Seafront)
- 6.5 Southend-on-Sea Design and Townscape Guide (2009)
- 6.6 Community Infrastructure Levy (CIL) Charging Schedule (2015)

6.7 The Leas Conservation Area Appraisal (2022)

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

7.1 The identified breach of planning control is:

- The installation of uPVC windows.

7.2 In August 2021 a complaint was received by the Council alleging that the owner of No 16 The Leas had installed uPVC windows. Comparing photographs taken during a site visit with those contained in the Conservation Area Appraisal document, it was evident to officers that the original ground, first and second floor timber windows and doors at Nos 16 and 16A The Leas were replaced with uPVC windows and doors.

7.3 After extended correspondence between the owner of the site and planning enforcement staff, a planning application was submitted in December 2022 and was made valid in March 2023. The development is close to immunity from enforcement action.

8 Planning Considerations

8.1 The main considerations for this application are the principle of the development, the design including the impact of the development on the character and appearance of the area including the conservation area. As the development relates to alterations to the materials and appearance of the windows and doors only it is considered that the development had no material impacts on parking or traffic or highway safety or on residential amenity. The development is not CIL liable as no new floorspace has been created.

9 Appraisal

Principle of Development

9.1 Local and national policies and guidance support alterations to properties where such alterations respect the existing historic character of surrounding buildings and preserve or enhance the character and appearance of the wider conservation area. The principle of the development is therefore considered acceptable subject to the detailed considerations set out below.

Design and Impact on the Character of the Area

9.2 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.

9.3 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 Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.

9.4 Section 72 (1) of the Planning and Listed Buildings and Conservation Areas Act 1990 as amended states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 199 of the

NPPF states that “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation”. Policy DM5 states that “Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal and will be resisted where there is no clear and convincing justification for this.”

- 9.5 Policy DM6 states that "Existing buildings along the Seafront that form a cohesive frontage, have a historic context or are recognised as key landmarks and/or contribute to a distinctive Southend sense of place will be retained and protected from development that would adversely affect their character, appearance, setting and the importance of the Seafront. "
- 9.6 No.16 and No.16A The Leas sit on the corner of The Leas and Cobham Road. As a result, the property is highly visible from both The Leas and Cobham Road and due to its elevated position it is also visible from the seafront and Western Esplanade. Originally, the windows and doors on the northern part of the frontage on Cobham Road, on the corner bay window and corner gable end at No 16 were wooden sash windows with curved timber detailing. The decorative lights, which have now been lost due to the alterations, appeared to match the Venetian window above the entrance main entrance on the elevation facing Cobham Road. The alterations made to the windows at first and second floor show a clear difference in design and style when compared to the windows at ground floor, which can be seen from the public highway. The loss of these details, as well as the appearance of the uPVC windows have caused significant harm to the historic character of the building and therefore has had a detrimental impact on the conservation area more widely. Whilst the harm is significant, it is considered to be less than substantial.
- 9.7 It is considered that there are no public benefits created by these alterations that would outweigh the significant harm caused to the character and appearance of the conservation area. It is considered that the impact of the development on the conservation area, in terms of design, are of a significant degree and cause significant and demonstrable harm to the character of the property, the streetscene, and the conservation area more widely. The development is therefore contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1, DM3 and DM5 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

- 9.8 Given the harm identified above, it is considered to be 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 uPVC windows and doors in their entirety. Appropriate time needs to be allowed for an application to be submitted for the replacement of the windows and doors with timber replacements that would be appropriately detailed for the Conservation Area. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm.
- 9.9 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.

- 9.10 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.

10 Equality and Diversity Issues

- 10.1 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.

11 Recommendation

11.1 Members are recommended to:

(A) DELEGATE to the Director of Planning or the Service Manager – Development Control, subject to no new material planning considerations being raised by the end of the statutory consultation period, to REFUSE PLANNING PERMISSION for the following reason:

01 The development, by reason of the detailed design and materials of the replacement windows and doors, has resulted in visually prominent, out of keeping and incongruous alterations to the existing building which are harmful to the character and appearance of the site, the streetscene and the wider area including the conservation area. Whilst this harm is less than substantial, it is nevertheless significant in degree and is not outweighed by any public benefits of the development. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1, DM3, DM5 and DM6 of the Development Management Document (2015) and advice contained within the National Design Guide (2021) the Southend-on-Sea Design and Townscape Guide (2009) and the The Leas Conservation Area Appraisal (2022).

Positive and Proactive Statement

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. The Local Planning Authority is willing to discuss the best course of action via the pre-application service available at

https://www.southend.gov.uk/info/200155/make_a_planning_application_and_planning_advice/365/planning_advice_and_guidance/2

Informatives:

- 01** You are advised that as the proposed development equates to less than 100sqm of new floorspace, and does not involve the creation of a new dwelling (Class C3), the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See www.southend.gov.uk/cil for further details about CIL.
- 02** The applicant is reminded that planning permission will be required for replacement windows and doors following the removal of the unauthorised fenestration subject of this decision. If these areas of the building are left untreated, the Local Planning Authority may consider it expedient to issue a S.215 Notice under the provisions of the Planning Acts. The planning application should demonstrate that replacement windows and doors closely replicate the original timber windows and doors.

(B) AUTHORISE ENFORCEMENT ACTION to:

- a)** Remove the uPVC windows and doors highlighted in red in drawing TL-BU-02, and
- b)** Remove from site all materials resulting from compliance with a) above

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.

When serving an Enforcement Notice the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of nine (9) months is considered reasonable for the removal of the unauthorised uPVC windows taking into account the need to obtain planning permission and manufacture timber sash windows resulting in compliance with this.