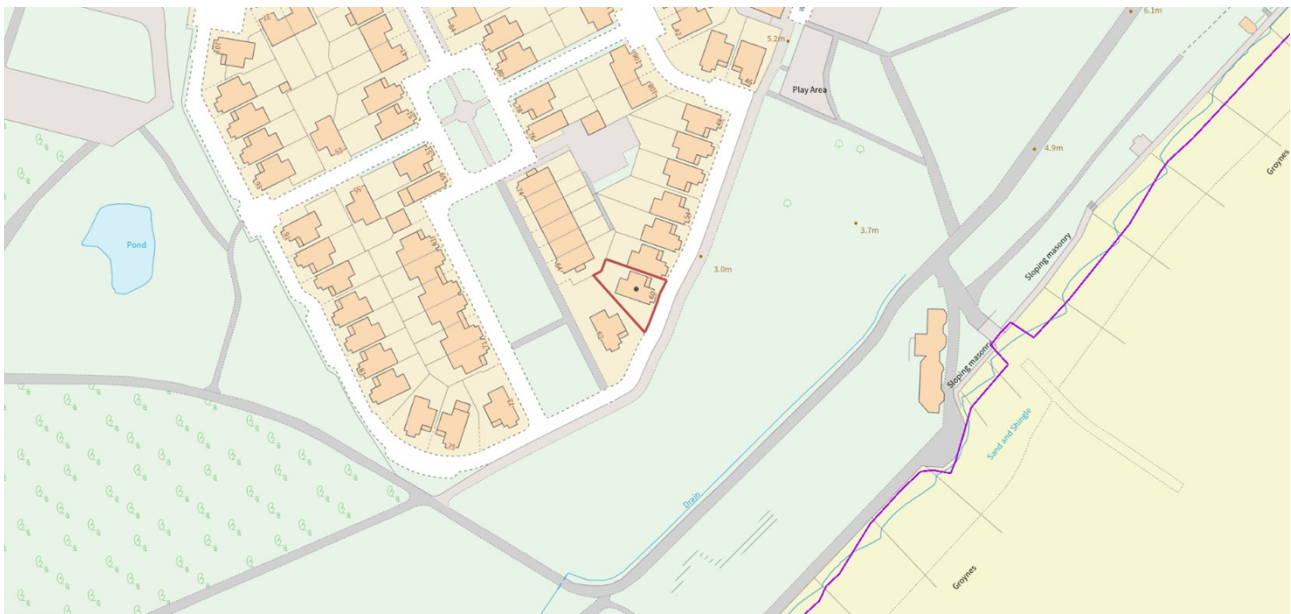


Reference:	(A) 23/00067/FULH (B) 22/00319/BRCN_B	
Application Type:	Householder Application/ Enforcement	
Ward:	Shoeburyness	
Proposal:	Install replacement windows and doors (Retrospective)	
Address:	60 Gunners Rise, Shoeburyness, Essex, SS3 9BY	
Applicant:	Mr Neil Hurrell	
Agent:	Mr Liam Bedwell of Mibe Architects Ltd	
Consultation Expiry:	9th February 2023	
Expiry Date:	7th April 2023	
Case Officer:	Hayley Thompson	
Plan Nos:	122-MBA-PA-A-DR-01000 Revision A, 122-MBA-PA-A-DR-02000 Revision A, 122-MBA-PA-A-DR-02001 Revision A, 122-MBA-PA-A-DR-03000 Revision A, 122-MBA-PA-A-DR-03101 Revision A	
Supporting Documents	Supporting Document	
Recommendation:	(A) REFUSE PLANNING PERMISSION (B) AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The application dwelling is on the north side of Gunners Rise within the Shoebury Garrison area. The dwelling is within an area of 97 similarly designed dwellings that were constructed as part of the Gunnery Hill development. The site is not within but is adjacent to Shoebury Garrison Conservation Area. The site has views over the Thames Estuary and the nature reserve together with the coastline designation of a RAMSAR site and SSSI.

2 The Proposal

- 2.1 The application retrospectively seeks planning permission to retain white aluminium frame windows to each elevation, comprising a ground floor door and bi fold windows to the rear elevation, first and second floor doors within the front elevation and a door within the northeast flank. Original timber sash windows and timber doors have been removed. The works have been undertaken without planning permission. The windows in situation are unauthorised as permitted development rights have been restricted at the site as part of the original planning permission for the wider site development in Gunners Rise.
- 2.2 A planning statement has been submitted advising that the fenestration has been replaced due to the proximity of the site to the estuary which has caused damage to the existing fenestration. It is stated that aluminium windows have been installed to allow for better protection and mitigation against continual maintenance work.

3 Relevant Planning History

- 3.1 22/00319/BRCN_B – Enforcement case pending
- 3.2 10/02099/RESM - Erect 97 dwellinghouses, associated access, lay out amenity area and landscaping (Approval of Reserved Matters following grant of outline permission SOS/00/00777/OUT dated 6/2/04) (Amended Proposal) – Granted.
- 3.3 10/00333/RESM - Erect 97 dwellinghouses, associated access, lay out amenity area and landscaping (Approval of Reserved Matters following grant of outline permission SOS/00/00777/OUT dated 6/2/04) – Refused/Appeal allowed.
- 3.4 00/00777/OUT - Mixed use development comprising conversion of existing buildings and erection of new buildings for: parkland and open space; up to a total of 465 dwellings; up to 23,750sq.m of business floorspace (Class B1(a) and (B)); up to 1625sq.m of non-residential (Class D1) uses, including A. a health centre within the mixed use area, B. the former Garrison Church as a community hall, and C. the former battery gun store as a heritage centre; up to 5,900sq.m of leisure (Class D2) uses; up to 800sq.m of retail (Class A1); up to 600sq.m of financial services (Class A2) use; formation of hotel (Class C1) with approximately 40 bedrooms; land for a new school; erection of landmark residential building; construction of new access roads; and associated works (Outline) – Granted.
- 3.5 The condition restricting permitted development rights was imposed under application reference 10/02099/RESM above:

Condition 04 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any order revoking and re-enacting that Order with or without modification, no development shall be carried out within Schedule 2, Part 1, Class A, B, C, D, E to those Orders.

Reason: To safeguard the character and amenities of the area, in accordance with Policy C11 of the Southend on Sea Borough Local Plan.

4 Representation Summary

Public Consultation

4.1 5 neighbouring properties were consulted by letter. Two letters of representation have been received raising the following summarised objections:

- The windows are not in keeping with the dwelling or surrounding area
- The sliding doors on the balcony is not in keeping in the area
- There are covenants restricting windows and doors
- The new windows have an impact on privacy
- Planning permission was not obtained

[Officer Comment: These concerns are noted and those that represent material planning considerations have been taken into account in the assessment of the application. However, other than as reflected in the last section of this report, they are not found to represent a reasonable basis to refuse planning permission in the circumstances of this case.]

5 Planning Policy Summary

5.1 The National Planning Policy Framework (2021)

5.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)

5.3 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles) and CP4 (Environment & Urban Renaissance)

5.4 Development Management Document (2015) Policies DM1 (Design Quality), DM3 (The Efficient and Effective use of land), DM5 (Southend-on-Sea's Historic Environment)

5.5 The Southend-on-Sea Design and Townscape Guide (2009)

5.6 Shoebury Garrison Conservation Area Appraisal (2020)

5.7 Community Infrastructure Levy (CIL) Charging Schedule (2015)

6 Planning Considerations

6.1 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 adjacent conservation area and CIL. As the development relates to alterations to the materials of the building only it is considered that the development has no material impacts on parking or traffic or highway safety. No additional openings are involved as this application relates to replacement fenestration only. It is not considered that glazing within the same openings has a significantly harmful impact on residential amenity in any relevant regard.

7 Appraisal

Principle of Development

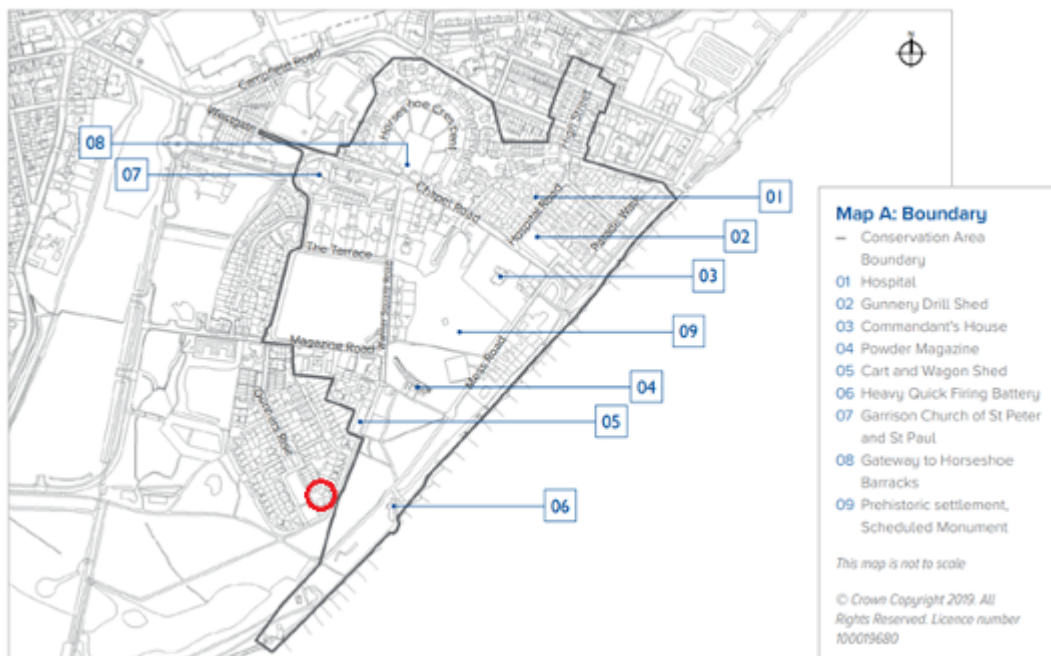
7.1 Local and national policies and guidance support alterations to properties where such alterations respect the existing historic character of surrounding buildings and preserve or enhance the character and appearance of the wider conservation area. The principle of the

development is therefore considered acceptable subject to the detailed considerations set out below.

Design and Impact on the Character of the Conservation Area and other Heritage Assets

- 7.2 Paragraph 126 of the NPPF states *'the creation of high quality, sustainable and beautiful 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 Sections 69 and 72 of the Planning and Listed Buildings and Conservation Areas Act 1990 state that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas and in determining this application the Council has a statutory duty under section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.
- 7.4 The application site is not within the Shoebury Garrison Conservation Area but is located adjacent to it at some 9m east of the site. The location of the site has been circled in red on the map below. It is therefore appropriate to consider the impact of the development on that designated heritage asset.

Appendix A – Map of Shoebury Garrison Conservation Area with site circled in red



- 7.5 Paragraph 199 of the NPPF states *'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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.'*
- 7.6 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.’

- 7.7 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. All developments should respect the character of the site, its local context and surroundings in terms of its architectural approach, height, scale, form and proportions.
- 7.8 The former timber sash windows and timber framed doors have been replaced with white aluminium picture windows. The dwelling is in a prominent location, with views of the site highly visible from the public domain including from the section of conservation area which passes in front of the dwelling as illustrated in the map above. The housing development in which the dwelling is located was specifically designed to pick up references from the Shoebury Garrison built form with traditional detailing and materials. Permitted development rights were removed, encompassing window replacement, in order to prevent unsympathetic and/ or potentially harmful changes. The replacement fenestration has introduced a modern material and windows of a strident contemporary design. These alterations are discernibly different in both materials and character to the traditional fenestration detailing in dwellings in the surrounding area. The replacement windows and doors are at odds with and significantly harmful to the character of the dwelling, the streetscene and the wider area, and due to the positional and visual relationship of this dwelling to the adjacent conservation area fails to preserve or enhance its setting and appearance.
- 7.9 In line with paragraph 199 of the NPPF, when considering the impact of a proposed development, on a heritage asset, great weight should be given to its conservation. In this instance it is considered that the harm to the heritage asset is less than substantial and moderate to significant in degree.
- 7.10 Under such circumstances, paragraph 202 of the NPPF advises that this harm should be weighed against the public benefits of the proposal. The appellant has outlined some benefits associated with the scheme, such as the improved thermal and acoustic efficiency provided by double glazing, and the condition of the existing windows. However, it is not considered that these benefits outweigh the harm to the designated heritage asset.
- 7.11 The site does not benefit from permitted development rights to carry out works to replace existing fenestration and therefore there is no realistic permitted development fallback position in the circumstances of this case and express planning permission is required for such works.
- 7.12 The development is therefore unacceptable and conflicts with policy in this regard.

Community Infrastructure Levy (CIL)

- 7.13 The development has created no new floorspace. The development therefore benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

Equality and Diversity Issues

- 7.14 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 Summary of planning application

- 8.1 For the reasons outlined above the development is found to be unacceptable and fails to comply with the relevant planning policies and guidance. As there are no other material planning considerations which would justify reaching a different conclusion it is recommended that planning permission is refused.

9 Enforcement Action

- 9.1 Given the nature and harmful impact of the breach related to the unauthorised windows and doors, as assessed above, it is considered necessary, proportionate and justified in the circumstances of this case to seek authority for an enforcement notice to be served in respect of that unauthorised operational development as this will bring focus to the need for the breach to be regularised. 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 remedies the identified harm.
- 9.2 Enforcement notices cannot reasonably require the insertion of a particular type of window or doors. This is for the applicant to decide and apply for, as required. If in complying with the enforcement notice, the building is left in a condition that negatively affects the visual amenity of the area, the LPA has powers to take action under Section 215 of the Act to remedy that situation.
- 9.3 The authorised enforcement action to include (if/as necessary) the service of Enforcement Notices 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.
- 9.4 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 operational development and obtaining planning permission for acceptable replacement windows and doors.
- 9.5 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the Local Planning Authority to balance the rights of the owners and/or occupiers against its legitimate aims to regulate and control land within its area. In this particular case it is considered reasonable, expedient, and proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

10 Recommendation

10.1 Members are recommended to:

(A) 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. The development has also resulted in harm to the setting and appearance of the adjacent Shoebury Garrison Conservation Area. Whilst this harm is less than substantial, it is nevertheless moderate to 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 and DM5 of the Development Management Document (2015) and the advice contained within the National Design Guide (2021) the Southend-on-Sea Design and Townscape Guide (2009) and the Shoebury Garrison Conservation Area Appraisal (2020).

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 sash windows which were removed at the site but can still be seen on adjacent properties.

(B) Members are recommended to AUTHORISE ENFORCEMENT ACTION to:

- a) Remove the unauthorised windows and doors outlined in red in the sketch included in Appendix B**
- 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 operational development and obtaining planning permission for acceptable replacement windows and doors.

Appendix B – Sketch with location of replaced windows and doors

