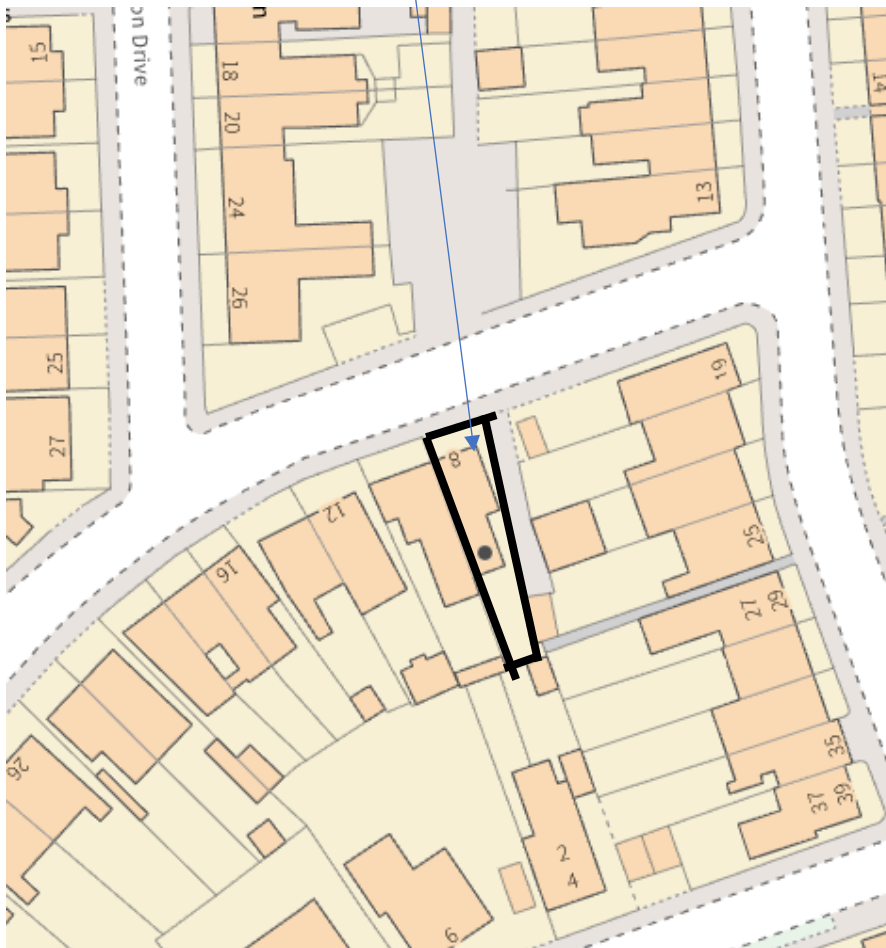


Reference:	22/00338/UNAU_B	
Report Type:	Enforcement	
Ward:	Leigh	
Breach of Planning Control:	Erection of a dormer to the rear	
Address:	8 Somerville Gardens, Leigh-on-Sea, Essex	
Case Opened:	6 th December 2022	
Case Officer:	Gabriella Fairley	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

8 Somerville Gardens, Leigh-on-Sea, Essex



1 Site and Surroundings

- 1.1 This site is on the south side of Somerville Gardens containing a semi-detached dwelling surrounded by traditional 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 dwelling within Class C3 of the Town and Country Planning (Use Class Order) 1987 (as amended).

3 Relevant Planning History

- 3.1 23/00106/FULH - Erect dormer to rear with juliet balcony, rooflights to front and convert loft into habitable accommodation (Retrospective). Refused (14/03/23). Report attached as Appendix 1.

Reason for refusal: *“The rear dormer, by reason of its siting, and in particular its projection above the outrigger, scale, form, poor design and use of unsympathetic materials, results in a development which is visually dominant, lacks subservience to the main dwelling and appears incongruous and out of keeping with and significantly harmful to the character and appearance of the dwelling, the rear garden scene and wider streetscene. The development is unacceptable and 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 National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009)”.*

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 dormer to the rear.

- 5.2 An extension, comprising an “L- shaped” dormer, to the rear of the dwelling, with a Juliet has been erected and the loft converted to form habitable accommodation. A rooflight has been installed to the front elevation. The dormer partly projects above the rear outrigger and is a maximum of some 5m wide at its widest point reducing to 3.6m wide where it projects over the outrigger. It is some 2.9m high and a maximum of 7m deep in total. The dormer has a Juliet balcony and a large rectangular window to the rear facing elevation. There is also a window on the side elevation, which is indicated as being obscure glazed. The dormer is finished in light green weatherboarding. The development is informally considered not to be lawful under permitted development rights and in the absence of any planning permission, it is unauthorised. That finding

has not been tested by way of any application for a Certificate of Lawful Development and is based on reasonable site inspection undertaken by staff for the assessment and determination of the unsuccessful 2023 planning application. The dormer is not permitted development firstly because it is taller than the main roof. This is a modest infringement but one which is legally important and goes to the heart of permitted development entitlement with this based on a strict legal and technical interpretation of the relevant criteria. Secondly, and regardless of the first factor, the dormer is finished in light green weatherboarding, so it has not been finished in materials to match the existing dwelling contrary to conditional requirements within the General Permitted Development Order.

- 5.3 In December 2022 a complaint was received by the Council alleging that a dormer to the rear of the dwelling had been erected.
- 5.4 The homeowner was advised to submit a planning application, and this was received by the Local Planning Authority on 23rd January 2023, reference 23/00106/FULH (the 2023 application).
- 5.5 Through determination of the 2023 application on 14th March 2023 this Local Planning Authority found that the development is unacceptable and harmful for the design and character reasons stated in paragraph 3.1 above. The detailed analysis including the development's conflict with design and character policies and guidance is contained in the officer's report for the 2023 Application, attached at Appendix 1.

Enforcement and Legal Action

- 5.6 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 dormer in its entirety or reposition and amend the dormer so that it fully complies with Permitted Development Rights and remove from site all materials resulting from compliance with either the removal of the dormer or its amendment. It is considered that there are no lesser steps that could remedy the identified breach or associated harm.
- 5.7 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.
- 5.8 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 dormer in its entirety, OR
- b) Modify the dormer so that its position, form, size and external finishes fully complies with all relevant provisions and conditions of permitted development set out within Part 1 Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015

AND

- c) Remove from site all materials resulting from compliance with a) OR b) 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 six (6) months is considered reasonable for the removal of the unauthorised dormer or alternatively its amendment so that it then either fully complies with Permitted Development provisions or with any necessary planning permission which needs to be obtained, together with removal of all materials resulting in compliance with any of those requirements.

Appendix 1

Reference:	23/00106/FULH
Application Type:	Full Application - Householder
Ward:	Leigh
Proposal:	Erect dormer to rear with Juliet balcony, rooflight to front and convert loft into habitable accommodation (Retrospective)
Address:	8 Somerville Gardens, Leigh-on-Sea, Essex
Applicant:	Mr Charlie Stewart
Agent:	Mr Connor Smith
Consultation Expiry:	16th February 2023
Expiry Date:	20th March 2023
Case Officer:	Gabriella Fairley
Plan Nos:	1087/001, 1087/002, 1087/003, 1087/004, 1087/005
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site contains a semi-detached dwelling and is located on the south side of Somerville Gardens. The area is residential in nature.
- 1.2 The site is not located within a conservation area or subject to any site-specific planning policy designations.

2 The Proposal

- 2.1 Retrospective planning permission is sought for an L-shaped dormer to the rear of the dwelling and to convert the loft to form habitable accommodation. The L shaped dormer partly projects above the rear outrigger and measures a maximum of some 5m wide at its widest point reducing to 3.6m wide where it projects over the out rigger. It would be 2.9m high and a maximum of 7m deep in total. The dormer has a Juliet balcony and a large rectangular window to the rear facing elevations. There is also a side window on the side elevation, which is indicated as being obscure glazed. The dormer is finished in light green weatherboarding.
- 2.2 A rooflight are proposed to the front roofslope of the dwelling.
- 2.3 The applicant has been submitted following an enforcement investigation (ref 22/00228/UNAU_B).

3 Relevant Planning History

3.1 The most relevant planning history of the application site is listed below:

- 22/00338/UNAU_B - Enforcement enquiry erection of dormer. Pending.

4 Representation Summary

Public Consultation

4.1 Twenty-Five (25) neighbouring properties were notified of the application by letter. Two letters of representation have been received. The comments have been summarised below:

- The side window is clear glazed and opening, which is contrary to the conditions within permitted development.
- The current occupiers put a piece of plastic in or stuck to the window, which is obscure to some extent, which could easily be removed.
- A completion certificate for the obscure glazing has not been received.
- The side window is an opening window that should be non-opening.
- Unhappy with the new soil pipe that runs diagonally across the entire side wall rather than vertically.

(**Officer comments:** 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 (NPPF) (2021)

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

5.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance).

5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM15 (Sustainable Transport Management).

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

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

6 Appraisal

Principle of Development

6.1 The proposal is considered in the context of the Core Strategy Policies KP2 and CP4. Development Management Document Policies DM1 and DM3 and the guidance contained within the Design and Townscape Guide is also taken into account.

6.2 The principle of extending and altering an existing dwelling is considered acceptable and policy compliant, subject to the proposal appropriately addressing the relevant detailed

planning considerations.

- 6.3 Although the submitted plans show that the dormer does not exceed the height of the original dwelling, following a site inspection, officers have concluded, on balance, that there is no fall-back position in regard to permitted development rights, as the roof of the dormer as built exceeds the height of the ridge of the original dwelling and the dormer's materials do not match the existing dwelling. The lawfulness of the dwelling as built has also not been verified through a Certificate of Lawfulness.

Design and Impact on the Character of the 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 Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.
- 6.6 With specific regard to dormer development, Paragraph 366 of the Design and Townscape Guide (2009) states that "Proposals for additional roof accommodation within existing properties must respect the style, scale and form of the existing roof design and the character of the wider townscape. Dormer windows, where appropriate, should appear incidental in the roof slope (i.e. set in from both side walls, set well below the ridgeline and well above the eaves)."
- 6.7 The Southend-on-Sea Design and Townscape Guide (at 10.2.10) states that dormers should appear incidental in the roof slope and in particular, large box style dormers should be avoided as they result in a bulky and unsightly appearance. Considered on its individual merits the L-shape dormer, due to its height, size, scale, bulk and projection over the outrigger dominates the roofscape, is not incidental to the roof slope and fails to achieve subservience. The impact of the extension is exacerbated by the use of green weatherboarding which contrasts markedly with the materials of the existing dwelling and characteristic materials within the wider locality.
- 6.8 No. 8 sits at the end of Somerville Gardens and is adjacent to an access path that leads to a garage, meaning that the side and rear of No. 8 is exposed, and the rear roof slope is highly visible both within the streetscene and rear garden scene. The roof is also partly visible from Hillside Crescent to the rear.
- 6.9 As a result of the size and design of the dormer, its location on the rear roof slope and above the rear outrigger, the lack of separation between the dormer and the ridge of the roof of the original dwelling and the use of alien materials, the development appears prominent, bulky, over scaled and out of keeping resulting in significant harm to the character and appearance of the existing dwelling, the rear garden scene and the wider streetscene, to the significant detriment of visual amenity.
- 6.10 As described at para 6.3 there is no permitted development fallback position in relation to this development. It is noted that a similar roof extension has been erected at the adjoining dwelling No 10 Somerville Gardens, however this roof extension does not benefit from

planning permission and on the information thus far available appears to be unauthorised. This can be subject of separate investigation. Very limited weight is therefore given to this neighbouring development in the assessment of the development at No 8

- 6.11 There is an existing rooflight to the front roofslope of No. 8 Somerville Gardens. The additional rooflight is not considered to result in any detrimental impacts on the character of the streetscene and the area more widely.
- 6.12 Taking into consideration these factors, it is considered that the design, size, siting, and scale of the development are such that it results in significant harm to the character and appearance of the site, the rear garden scene, the street scene and the area more widely. The development is therefore considered to be unacceptable and contrary to policy.

Amenity Impacts

- 6.13 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.
- 6.14 No 21 and 23 Woodfield Road lie adjacent to the dwelling to the east. There is a high level window within the side of the development facing these properties. This window serves a non-habitable room (a bathroom) and taking this into account together with its siting some 1.8m above floor level and the use of obscured glazing, as indicated on the plans, and which, if the application were otherwise found to be acceptable would be controlled by the use of a relevant condition, it is considered that there is no significant impact in terms of overlooking or loss of privacy from this window in any relevant regard.
- 6.15 The dormer has a large, full length glazed window to the rear, on the elevation above the rear outrigger of the dwelling. Although this window is large, given there are existing already clear glazed windows within the first-floor rear outrigger, which serve habitable rooms and given the separation of some 14.8m from the end of the rear garden and some 25.9m from the rear elevation of No. 2 and 4 Hillside Crescent, it is considered that there would not be any significantly harmful amenity impacts on No. 2 and 4 Hillside Crescent in terms of overlooking or loss of privacy.
- 6.16 Given the siting of the development within the existing footprint of the dwelling and its siting in relation to neighbouring properties it is considered that the size, siting, and scale of the development proposed are such that it would not result in any significant harm to the amenities of the site, neighbouring occupiers, or wider area in any regard.
- 6.17 No. 8 Somerville is located some 11.5m from the boundary of No. 26 Nelson Drive. Due to the separation, and the fact this is a public facing elevation it is considered that the rooflight on the front roofslope would not result in any significantly harmful amenity impacts on any neighbouring property.
- 6.18 The proposal is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Other Matters

- 6.19 The proposed development is not found to result in any significant parking or highways impacts, it is therefore acceptable and policy compliant in these regards.
- 6.20 The development is not liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended).

Equality and Diversity Issues

- 6.21 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.

Conclusion

- 6.22 For the reasons outlined above the development is found to be unacceptable and contrary to 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.

7 Recommendation

7.1 REFUSE PLANNING PERMISSION for the following reason:

- 01 The rear dormer, by reason of its siting, and in particular its projection above the outrigger, scale, form, poor design and use of unsympathetic materials, results in a development which is visually dominant, lacks subservience to the main dwelling and appears incongruous and out of keeping with and significantly harmful to the character and appearance of the dwelling, the rear garden scene and wider streetscene. The development is unacceptable and 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 National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009)**

Informatives

- 1 You are advised that as the development equates to less than 100sqm of new floorspace 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 the Levy.**

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>

Case Officer Signature.....	GF	Date	22.02.2023
Senior Officer Signature.....	CG	Date	14.03.2023
Delegated Authority Signature.....	CG	Date	14.03.2023