

Southend-on-Sea Borough Council

Agenda
Item

Report of the Corporate Director of Place
To
Development Control Committee
On
06th July 2016

Report(s) Enforcement of Planning Control

A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172

Reports prepared by: Enforcement Officers

1 Introduction

1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

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Reference:	EN/16/00080/UNAU_B
Ward:	Chalkwell
Breach of Control	Without planning permission installed fences on both sides of garden at front of the dwellinghouse
Address:	105 Crowstone Road, Westcliff on Sea Essex
Case Opened:	5 May 2016
Case Officer:	Philip Kelly
Recommendation:	Authorise enforcement action



1 Site and Surroundings

- 1.1 The site is a detached house on the western side of Crowstone Road, between the junctions with Crosby Road and Galton Road. It and its neighbouring houses have large curtilages including deeper than average front gardens. Crowstone Road is a wide road which slopes significantly down to the south at this point. It is a residential area.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as a dwellinghouse.

3 Present Position

- 3.1 On 5 May 2016 a local resident reported the erection of fences at the front of 105 Crowstone Road. An enforcement officer attended the site on 12 May 2016 and confirmed that high fences had been erected on both sides of the front garden. The owner was advised that the fences were in breach of planning control and requested to confirm that the fences would be removed as soon as possible. Although the owner has been in contact no assurance has been given that the fences will be removed.

4 Appraisal

- 4.1 The NPPF, policies KP2 and CP4 of the Core Strategy, policy DM1 of the Development Management DPD, and the Design and Townscape Guide 2009 (SPD1) require alterations to respect the existing character and appearance of the building. DM1 paragraph 2.5 states that the design of the space between buildings is a fundamental component in contributing to successful place shaping, and this includes boundary treatments. DM1 paragraph 2.7 states that design should provide clear sight lines on public routes. These fences are of poor appearance in the street scene, and create a sense of enclosure for neighbouring properties. The height of the fence adjacent to 103 Crowstone Road obstructs any view of pedestrians and traffic to the south, for vehicles leaving the drive of 103 Crowstone Road.
- 4.2 Taking enforcement action in this case may amount to an interference with the owner/occupiers 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 this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised fences at the front of the site.

5 Planning History

- 5.1 No relevant history.

6 Planning Policy Summary

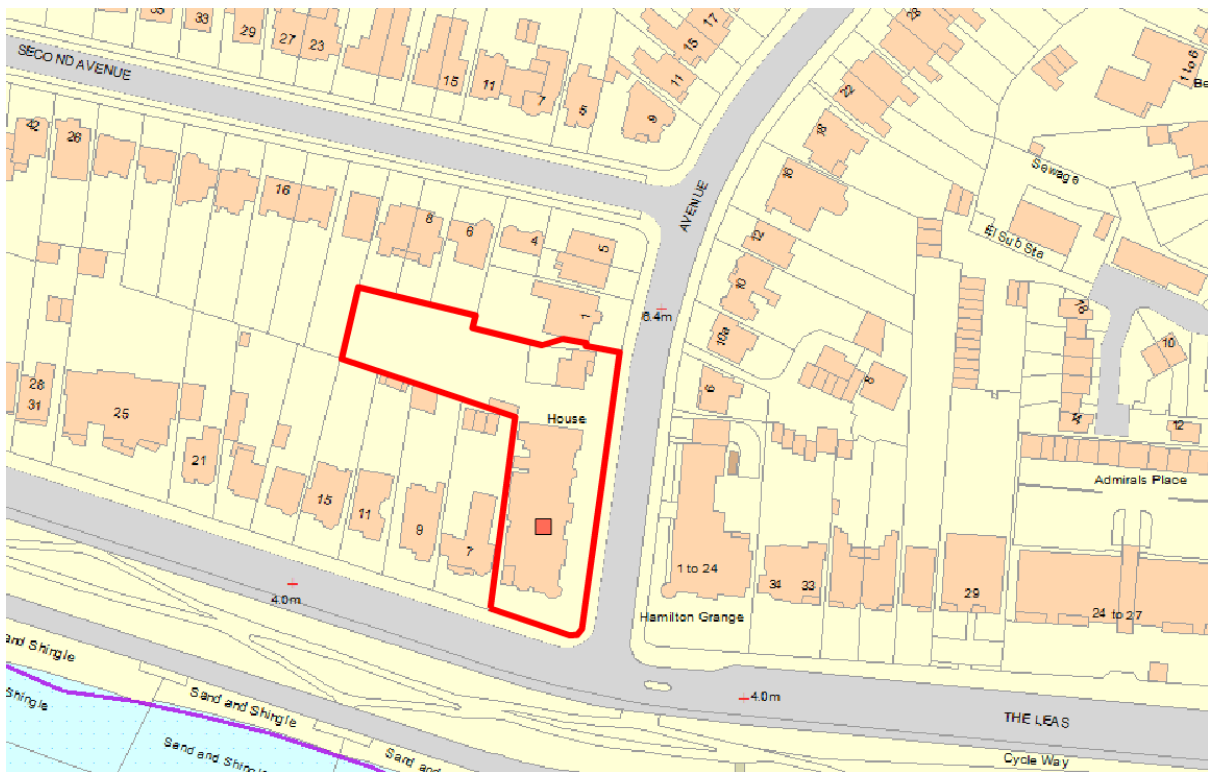
- 6.1 NPPF

CSP Policies KP2 and CP4
Development Management DPD policy DM1.
Design and Townscape Guide

7 Recommendation

- 7.1 **Members are recommended** to authorise enforcement action for the removal of the unauthorised fences at the front of the site. This is because of their poor appearance and height, and loss of sight lines, to the detriment to pedestrian safety, and detriment to visual and residential amenity, contrary to Policy DM1 of the DM DPD, Policies KP2 and CP4 of the Core Strategy, and advice contained within the Design and Townscape Guide (SPD1).
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a one month compliance period is reasonable in these circumstances.

Reference:	EN/15/00277/UNAU
Ward:	Chalkwell
Breach of Control	Without planning permission installed PVC framed windows to front and side elevations
Address:	Crowstone House, Crowstone Road, Southend on Sea
Case Opened:	4 December 2015
Case Officer:	Philip Kelly
Recommendation:	Authorise enforcement action



1 Site and Surroundings

- 1.1 Crowstone House is a locally listed building in the Crowstone Conservation Area. It is a prominent building on a corner plot on the north side of Chalkwell Esplanade and the west side of Crowstone Avenue.

2 Lawful Planning Use

- 2.1 The lawful use of the site is as a care home.

3 Present Position

- 3.1 On 4 December 2015 officers noted that some PVC windows had been newly installed in a piecemeal way at Crowstone House. A meeting was held on site in February 2016 with the owners, care home management, and their architects. They advised that they wished to submit a planning application to retain PVC windows, and it was agreed to defer enforcement action if this was done expeditiously. However no application has been received, and the unauthorised PVC windows remain in place.

4 Appraisal

- 4.1 The NPPF, policies KP2 and CP4 of the Core Strategy, policy DM1 of the Development Management Document DPD, and the Design and Townscape Guide 2009 (SPD1) require alterations to respect the existing character and appearance of the building. This building is on a prominent site within the Crowstone Conservation Area. Policy DM5 states that development proposals that result in harm to buildings within conservation areas will be resisted. The new windows at this site are not in sympathy with the wooden framed windows that remain in the building, and are out of keeping in bay window areas which incorporate masonry pillars of significant width. Also they are not in sympathy with neighbouring properties of similar age and design in Chalkwell Esplanade, visible from the seafront, which have retained sliding sash wooden windows. It is considered that the new windows are not in accordance with the policies above, and are detrimental to the historic and visual appearance of the Crowstone Conservation Area.
- 4.2 Taking enforcement action in this case may amount to an interference with the owner/occupiers 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 this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised windows.

5 Planning History

- 5.1 No relevant history

6 Planning Policy Summary

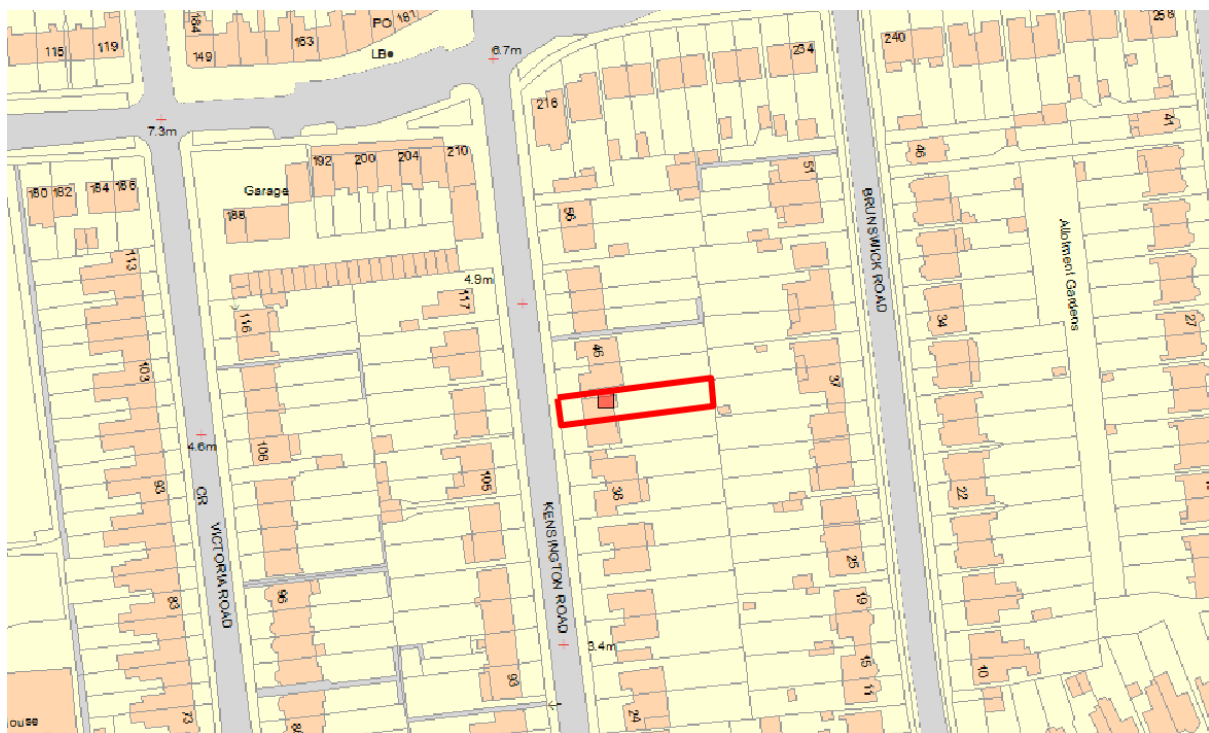
- 6.1 National Planning Policy Framework

- 6.2 Core Strategy (DPD) Policies KP2 and CP4
- 6.3 Development Management (DMP) Policies DM1 and DM5
- 6.4 Design and Townscape Guide 2009 (SPD1)

7 Recommendation

- 7.1 **MEMBERS ARE RECOMMENDED TO AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised PVC windows in elevations facing Chalkwell Esplanade and Crowstone Avenue. This is because of the detriment to the historic and visual character and amenities of the locally listed building and the Conservation Area, contrary to Policies DM1 and DM5 of the DPD, Policies KP2 and CP4 of the Core Strategy, and advice contained within the Design and Townscape Guide (SPD1).
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a three months compliance period is reasonable in these circumstances.

Reference:	16/00048/UNAU-B
Ward:	Thorpe
Breach of Control	Without planning permission, the erection of an outbuilding which exceeds 2.5m in height and is located within 2.0m of a boundary of the curtilage of the dwellinghouse.
Address:	42 Kensington Road, Southend-on-Sea SS1 2SY.
Case Opened:	4 th March 2016
Case Officer:	Neil Auger
Recommendation:	TAKE NO FURTHER ACTION



1 Site and Surroundings

- 1.1 Two storey semi-detached dwellinghouse located to the east side of Kensington Road approximately 90m from its junction with Woodgrange Drive to the north.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a dwellinghouse within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

3 Present Position

- 3.1 On 4th March 2016, an enforcement case was opened as a result of concerns raised by a local resident about an outbuilding which had been constructed within the curtilage of this property.
- 3.2 On 8th April 2016, a site visit was carried out when it was confirmed that an outbuilding with a height of approximately 3.0m had been constructed within 2.0m of the rear and side boundaries of the curtilage of the dwellinghouse.
- 3.3 The householder advised that the outbuilding was proposed to be used for purposes ancillary to the dwellinghouse.
- 3.4 The householder was informed that planning permission was required to retain the outbuilding and a letter confirming this and inviting the submission of a retrospective application was sent on 14th April 2016.
- 3.5 To date, no application for planning permission has been received.

4 Appraisal

- 4.1 In order for outbuildings located within 2.0m of a boundary of the curtilage of a dwellinghouse to benefit from permitted development rights under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (formerly the Town and Country Planning (General Permitted Development) Order 1995 (as amended)), they must not exceed 2.5m in height.
- 4.2 The outbuilding here has a height of approximately 3.0m which means it cannot be classed as 'permitted development' and specific planning permission is, therefore, required. As such, in planning terms, the building is unauthorised.
- 4.3 Members will be aware, of course, that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in demonstrable harm to the amenities of the area.
- 4.4 If a retrospective application for planning permission to retain the outbuilding had been submitted, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential

amenity.

- 4.5 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.
- 4.6 In the Council's Development Management DPD, policy DM1 states that development should "add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features."
- 4.7 The outbuilding is being constructed to a standard design with mono-pitched roof using traditional materials. To date, no windows or doors have been installed nor has the front elevation been finished.
- 4.8 The outbuilding is not visible from the public domain and it is not higher than the outbuilding located in the adjacent garden to the south which has not been the subject of any complaints to the Council. The outbuilding does not appear over-scaled in the context.
- 4.9 If a retrospective application for planning permission had been submitted as invited, it is considered that it would have been recommended for approval (subject to the proposed finishes being acceptable) for the reasons given.
- 4.10 The impact of the building on the residential amenities and character of the area is considered to be minimal due to reasonable garden depths and separation distances between properties.
- 4.11 For the reasons given, it is considered that the development is generally in accordance with Policies CP4 of the Core Strategy and DM1 of the Development Management DPD and, as such, it is not considered expedient, reasonable, proportionate or in the public interest to take enforcement action.

5.0 **Relevant Planning History**

5.1 None.

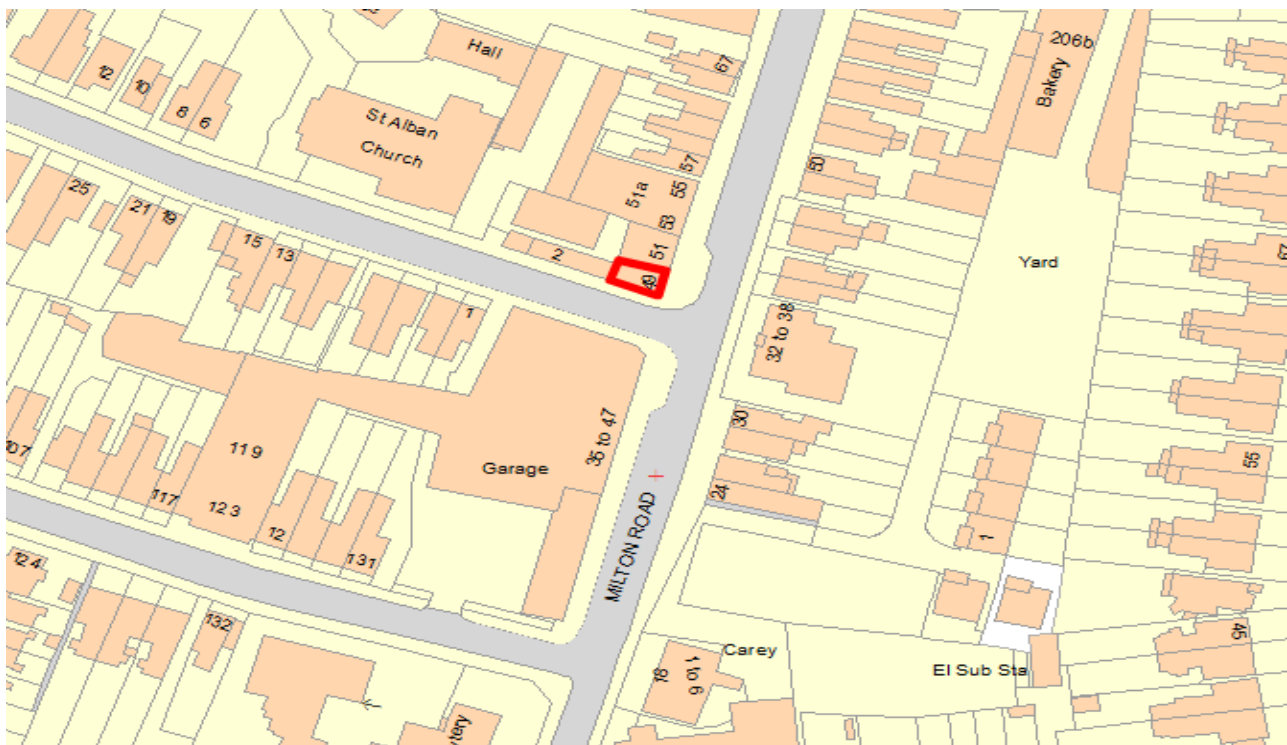
6 **Planning Policy Summary**

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Development Management DPD Policy DM1 (Design Quality)
- 6.4 Design and Townscape Guide 2009 (SPD1).
- 6.5 Community Infrastructure Levy Charging Schedule.

7 Recommendation

7.1 Members are recommended to TAKE NO FURTHER ACTION.

Reference:	16/00108/UNAU_B
Ward:	Milton
Breach of Control	Without planning permission installation of windows, erection of porch and provision of soil pipe to South elevation.
Address:	49 Milton Road,
Case Opened:	15/06/16
Case Officer:	Ian Harrison
Recommendation:	Authorise Enforcement Action



1 Site and Surroundings

- 1.1 The application site is located at the junction of St Johns Road and Milton Road. The size and contents of the application site are described above. The surrounding buildings are used for a variety of community and residential purposes and include buildings of varied scale and architectural detailing, although the majority of the buildings are of two storey scale.

2 Lawful Planning Use

- 2.1 The most recent lawful use of the site has been accepted to be as a cookware distribution place falling within Use Class B8.
- 2.2 Prior Approval was granted under the terms of application 15/01395/PA3COU for the conversion of the buildings at the site to form three dwellings.

3 Present Position

- 3.1 After the refusal of application 15/00932/PA3COU which proposed a similar change of use, application 15/01395/PA3COU gained Prior Approval for the change of use of the buildings at the site to form three dwellinghouses under the terms of Class P of Part 3 of the Town and Country Planning (General Permitted Development) Order 2015. The granting of prior approval does not provide any form of consent for the alteration of the external appearance of the property.
- 3.2 After complaints were received in late October and November 2015, Officer's visited the site and inspected several works that had occurred including:
- The replacement of the shopfront window with windows of domestic appearance.
 - The replacement of first floor windows at the front elevation and windows to all three floors at the side elevation
 - The addition of a soil pipe to the side elevation. The landowner advised that works to the basement were being undertaken that represented repairs to the existing basement, which was not being enlarged.

At that time, landowner stated that the intended use of the building was not certain but that a planning application for the works that had occurred and the use of the building would be submitted. It was made clear that any works occurring without planning permission were being undertaken at the applicant's own risk.

- 3.3 A planning application (16/00184/FUL) was validated on 08/02/16 for the use of the building as a House in Multiple Occupation. Retrospective permission was also sought for alterations to the building that are described above and additional alterations including the erection of dormers and the provision of an open lightwell at the frontage of the site.

3.4 During the consideration of the application it emerged that additional works had commenced at the site including:

- The fixing of battens to the outside of the building (to enable the addition of cladding, which has not subsequently occurred)
- The formation of a downpipe to connect to the sewers, overhanging the public highway.
- The formation of a shallow porch on the public highway.
- The increase of the depth of the basement at the site.

To address these additional works and objections that were raised by Officers with respect to some of the proposals, amended plans were submitted and the subject of public consultation. The application was refused for the following reasons:

1. *The proposed development would have insufficient parking to meet the needs of occupiers and would result in vehicles parking on the highway to the detriment of highway safety and the free flow of traffic. The proposal would therefore be contrary to the National Planning Policy Framework and policies DM3 and DM15 of the Council's Development Management DPD.*

2. *The proposal would result in an additional HMO, further adding to a concentration of HMOs in the vicinity, which would be detrimental to the overall character of the area and residential amenities. This would be contrary to policy KP2 and CP4 of the Core Strategy 2007 and policy DM1 of the Development Management DPD 2015.*

3.5 In the consideration of the application, Officers raised concerns with respect to the design, positioning and detailing of the windows, the enclosure of the soil pipe, the formation of a porch and the cladding of the building. It was however assessed that these matters could be addressed through the imposition of conditions on any planning permission that was granted. In the absence of such a planning permission to address these items it is considered that the merits of enforcement action should be considered.

3.6 Works have been undertaken to remodel the block work that formed the porch, resulting in the side elevations being 'cut back' at two staggered intervals to reduce the projection into the highway to a minimal amount.

4 Appraisal

4.1 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF, policies KP2 and CP4 of the Core Strategy and Policy DM1 of the Development Management (DPD2). The Design and Townscape Guide (SPD1) also states that the Council is committed to good design and will seek to create attractive, high-quality living environments.

4.2 In determining an appropriate contextual relationship with surrounding development, factors such as height, scale, massing and siting are material considerations. Details such as architectural style, along with colour texture of materials, are also fundamental in ensuring the appearance of any new development is sympathetic to its surrounding and therefore wholly appropriate in its context.

4.3 The NPPF states that:

“The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.

4.4 The Design and Townscape Guide (SPD1) states that:

“The successful integration of any new development is dependent upon the appropriate scale, height and massing in relation to the existing built fabric. Buildings that are over scaled will appear dominant... the easiest option is to draw reference from the surrounding buildings.”

4.5 The alterations to the elevations of the building include the installation of new windows and replacement windows. The resultant windows would be of uniform appearance and would replace a jumbled selection of windows that were not consistent in terms of size, detail or arrangement.

4.6 In the consideration of the recent planning application the Council’s Design Officer stated that:

“Recent conversions just in the final stages of construction at numbers 59-61 appear to have been well considered and now make a positive contribution to the streetscene where there were once vacant shop units. The reason that they are successful is because care has been taken to ensure that the new windows are the correct proportion for the property and the wider the terrace and that they match between the floors. Unfortunately this has not been achieved with the proposed scheme, which already has its shopfront removed and new windows inserted. In this instance the windows used are noticeably smaller and in particular shorter than they should be and appear out of place in comparison with the neighbour and other properties in the terrace. This is particularly harmful on the main front elevation to Milton Road which is a key route through the town. These windows need to be replaced by taller and better proportioned windows which match the scale and alignment of the adjacent property. Sash style windows rather than casements with appropriate reveals and sills should be sought if possible. A continuation of this proportion to the side would also be a significant improvement.”

“There is a proposal to over clad with insulation. Whilst improvements to thermal efficiencies are welcomed in principle, clarification should be sought on how this will integrate with the attached property at the join on the front elevation as this needs to be well resolved with minimal increase in profile. It may be better to insulate internally.”

“With regard to materials generally, whilst there is no objection to render in this location, the proposed stucco style decoration to the ground floor would be out of character for the existing property and the wider streetscene and this should be omitted. The proposed window surrounds are less of an issue provided they are well detailed but a simpler frontage with well-proportioned windows would be preferred.”

- 4.7 It is acknowledged that the windows do not replicate the windows in the front elevation of the remainder of the terrace, although neither did the former windows. Whilst it is considered that the lack of uniformity with the neighbouring property would be consistent with the former situation and the windows replicate others that exist within Milton Road, it is considered that the windows that have been inserted at the front elevation do not take the opportunity that was available to improve the appearance of the building and its relationship with the neighbouring property. It was therefore considered that the proportions of the windows that have been inserted causes visual harm and therefore it was recommended that a condition be imposed to require alternative windows to be installed that replicate the neighbouring property to the North. Whilst it would be preferable for the windows in the side elevation to match the front elevation, it is considered that the windows that have been installed are of less visual significance and do not cause visual harm to an extent that would justify the taking of enforcement action in respect of that matter.
- 4.8 In the absence of any planning permission, it has proven impossible to impose conditions to address this matter and therefore it is considered necessary to consider alternative actions to remedy this matter.
- 4.9 The soil pipe that has been affixed horizontally at the side elevation of the building is considered to be a significant and incongruous addition. Due to the prominent positioning of the site at the junction of Milton Road and St. John’s Road, it is considered that the visual impact of the soil pipe is significantly harmful and therefore is not supported by Officers. The applicant has previously suggested that the soil pipe could be ‘boxed in’ and Officers were willing to impose a condition to this effect. However, as there is no ability to impose conditions at this time, it is considered that the unauthorised development should be remedied in an alternative manner.
- 4.10 It is understood that the depth of the basement has been increased. As the definition of development includes works ‘under’ land it is considered that the lowering of the basement would have required planning permission. By definition, the basement is beneath ground and causes no harm to visual or residential amenity as it cannot be seen and has no implications on the light, privacy or outlook of nearby residential properties. Therefore, whilst not benefitting from planning permission, by virtue of the minimal impact of the works that have occurred, it is considered that it is not expedient to take enforcement action in relation to the enlargement of the basement.

- 4.11 The works to reduce the projection of the porch at the side elevation satisfy officers that the structure no is longer harmful in planning terms. The applicant has indicated that the building will be rendered and if this occurs it is considered that the porch would not have an unacceptable appearance at the south side elevation of the building. It is therefore considered that enforcement action should not be taken in respect of the porch at this time.
- 4.12 Section 55(2) of the Town and Country Planning Act makes it clear that internal works to a building shall not be deemed to be development and therefore do not require planning permission. As such, also noting that internal works could legitimately occur to enable the implementation of the Prior Approval that has been granted, it is considered that there is no scope to take enforcement action in relation to any internal works that have occurred.
- 4.13 At the time of writing, the building has not been put to a use. Therefore, whilst the concerns of neighbouring residents are noted and the proposals of application 16/00184/FUL are understood, until such time that an unlawful use commences, there is no ability to take enforcement action. Enforcement Action is reactive and cannot be undertaken in anticipation of a breach of planning control occurring.

5 Planning History

- 5.1 Applications 15/00932/PA3COU and 15/01395/PA3COU sought permission for the change of use of the buildings at the site to use as three dwellings. The first application was refused but the second application was approved.
- 5.2 Planning application 16/00184/FUL proposed the “*Change of use of building from storage and distribution use (Class B8) to a House in Multiple Occupation, erect dormers to front and rear, increase depth of existing basement, creation of lightwells to front, layout cycle parking and alter elevations.*” That application was refused for the reasons set out above.

6 Planning Policy Summary

- 6.1 National Planning Policy Framework and National Planning Policy Guidance.
- 6.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance)
- 6.3 Development Plan Document 2: Development Management Policies DM1 (Design Quality) and DM3 (The Efficient and Effective Use of Land).
- 6.4 Supplementary Planning Document 1: Design & Townscape Guide (2009)
- 6.5 Community Infrastructure Levy Charging Schedule.

7 Recommendation

- 7.1 **Members are recommended** to authorise enforcement action for the removal of the unauthorised windows at the front (east) elevation of the building and the soil pipe to the side (south) of the building. This is because of the prominence and poorly conceived design and appearance of these works which cause material harm to the character and appearance of the site and the surrounding area, contrary to the National Planning Policy Framework, Policy DM1 of the DM DPD, Policies KP2 and CP4 of the Core Strategy, and advice contained within the Design and Townscape Guide (SPD1).
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a three month compliance period is reasonable in these circumstances.

Reference:	EN/16/00027/UNAU-B
Ward:	Victoria
Breach of Control	Without planning permission, the erection of an enclosed raised platform/balcony at first floor level to the rear of the property.
Address:	323a London Road, Westcliff-on-Sea, Essex SS0 7BX
Case Opened:	15 th February 2016
Case Officer:	Neil Auger
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 Mid-terraced property occupying the north-east corner plot at the junction of London Road and Hamlet Court Road comprising ground floor shop premises with residential accommodation at first floor level and in the roofspace. This report relates to the upper floor residential accommodation known as 323a London Road.

2 Lawful Planning Use

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

3 Present Position

- 3.1 On 15th February 2016, a complaint was received by the Council in which it was alleged that an enclosed raised platform/balcony had been erected to the rear of the first floor residential accommodation at the property.
- 3.2 A site visit was undertaken on 18th February 2016 by the case officer when it was established that the allegation was correct. A wooden platform edged by a low enclosure of overlapping wooden boards and supported by posts had been erected to the rear of the property at first floor level. The platform was accessible by way of a door serving the upper floor residential accommodation and by an external staircase from ground level which existed previously.
- 3.3 On 24th February 2016, letters were sent to the occupiers (tenants) and the freehold owner advising that the raised platform required planning permission which was unlikely to be granted because the development is considered detrimental to the amenities of the area by reason of its unsightly appearance and that the unauthorised development should, therefore, be removed.
- 3.4 To date, no contact has been received from either the occupiers or the freeholder and no effort has been made to remove the unauthorised development.

4 Appraisal

- 4.1 Generally, any raised platform which exceeds 300mm in height cannot benefit from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 by reason of condition A.1 (k) of Schedule 2 Part 1 Class A. In any event these permitted development rights do not apply in this case because the lawful planning use of the property is a self-contained flat and not as a single dwellinghouse.
- 4.2 No planning permission has been applied for or granted in respect of the raised platform/balcony so the development is unauthorised.

- 4.3 Members will be aware, of course, that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in demonstrable harm to the amenities of the area.
- 4.4 If a retrospective application for planning permission to retain the raised platform/balcony as constructed had been received, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential amenity.
- 4.5 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.
- 4.6 In the Council's Development Management DPD, policy DM1 states that development should "add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features."
- 4.7 The development here comprises a raised platform edged by a low enclosure constructed in timber with overlapping boards finished in a brown dark stain. It is visible from the public domain and relatively high and this taken together with its bulk, poor design and inappropriate materials is considered to render it an incongruous feature which is out of keeping in the general location.
- 4.8 There are no windows in the side elevation of the property to the rear (196 Hamlet Court Road) and the areas to the rear of the adjacent properties are used mainly for parking and not as amenity spaces so the use of the unauthorised raised platform should not result in significant overlooking and loss of privacy to their occupiers.
- 4.9 There is a sitting out area/balcony at first floor level to the rear of the directly adjacent property at 325 London Road. However, this area lies within the footprint of the building and is not a self-supporting addition. Also, Council archived aerial photographs show that it has existed for many years – certainly since at least 2003. As such, it is lawful in planning terms by virtue of the time limits placed on enforcement under Section 171B of the Town & Country Planning Act 1990 (as amended). In any event, every case needs to be considered on its individual merits and the existence of an adjacent development does not set a precedent and is not grounds for granting planning permission for, or not taking enforcement against, the construction of a new, similar structure.

- 5.0 The unauthorised enclosed raised platform/balcony is considered to be detrimental to the character and visual amenities of the area in that its height, bulk, poor design and inappropriate materials renders its appearance incongruous and out of keeping in the area contrary to the National Planning Policy Framework (NPPF), Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policy DM1 of the Development Management DPD and the Design and Townscape Guide (SPD1).
- 5.1 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 Council 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, proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

5 Relevant Planning History

- 5.1 1988 – permission granted to “erect external staircase to rear” (88/0141).

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Development Management DPD Policy DM1 (Design Quality).
- 6.4 Design and Townscape Guide 2009 (SPD1).

7 Recommendation

- 7.1 **Members are recommended to: AUTHORISE ENFORCEMENT ACTION** to secure the removal of the raised platform/balcony constructed to the rear of the property at first floor level on the grounds that the unauthorised development is detrimental to the character and visual amenities of the area by reason of its height, bulk, poor design and inappropriate materials which render its appearance incongruous and out of keeping in the area contrary to the National Planning Policy Framework (NPPF), Core Strategy DPD Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policy DM1 of the Development Management DPD and the Design & Townscape Guide (SPD1).
- 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, the necessary remedial works would probably require quotes to be obtained and contractors to be engaged so a compliance period of 3 months is considered reasonable.