

<b>Reference:</b>	23/00069/UNAU_B	
<b>Report Type:</b>	Enforcement	
<b>Ward:</b>	Westborough	
<b>Breach of Planning Control:</b>	Erection of a framed structure	
<b>Address:</b>	419a Fairfax Drive, Westcliff-on-Sea, Essex	
<b>Case Opened:</b>	13 <sup>th</sup> April 2023	
<b>Case Officer:</b>	Gabriella Fairley	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	

419a Fairfax Drive, Westcliff-on-Sea, Essex



## **1 Site and Surroundings**

- 1.1 This previously vacant, roughly ‘L shaped’ site is on the northern side of Fairfax Drive to the rear and eastern side of a detached two storey dwellinghouse No 419 Fairfax Drive. The site contains hardstandings which are the remnants of the foundations of a former workshop/office/store building. To the rear of the site is a line of trees along the bank of Prittlewell Brook and beyond that is the Brook itself, the Greenway and then the grounds of Chase High School. The site is within Flood zone 2 but not subject to any other site-specific planning policy.

## **2 Lawful Planning Use**

- 2.1 The site was previously vacant prior to the unauthorised development with all former building(s) removed such that the land is considered not to have any lawful planning use.

## **3 Relevant Planning History**

- 3.1 93/0582 – Ground floor workshop and store (Class B1) first floor office and store open storage in yard to a height not exceeding 2.5m and ancillary outbuildings – Granted.
- 3.2 09/00422/FUL – Erect part single/part two storey front extension to provide additional workshop/storage/office space (Classes B1 and B8) and layout parking and cycle store - Granted.
- 3.3 10/01103/FUL – Erect part single/part two storey front extension to provide additional workshop and office space (Classes B1) and lay out parking and cycle store – Granted.
- 3.4 11/00941/FUL – Erect part single/ part two storey front and side extension and form new second floor, use store (Class B8) as dwellinghouse (Class C3) – Granted.
- 3.5 17/01994/FUL – Erect two storey building to form workshop/store/office (Class B1) – Granted.
- 3.6 18/00856/FUL – Erect two storey building forming one self-contained flat at first floor level and store at ground floor - Granted.
- 3.7 22/01233/FUL – Erect two storey building forming one self-contained flat at first floor level and storage space and garage to ground floor and B1/B8 use – Refused.
- 3.8 23/01085/FUL (the “2023 Application”) – Erect temporary structure on existing hardstanding. Refused.

### Reasons for refusal

“01 The development by reason of its siting, scale, appearance and form, results in a conspicuously incongruous development significantly out of keeping with its context and significantly harmful to the character and appearance of its surroundings. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice

contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).

02 The development results in an undue sense of enclosure and loss of outlook significantly harmful to the amenities of the occupiers of No 419 Fairfax Drive. This 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 Development Management Document (2015), and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).

03 The Flood Risk Assessment submitted with the application incorrectly identifies the site and has not demonstrated that the development which is within Flood Zone 2 is acceptable or that it would be safe for its lifetime. This is unacceptable and contrary to the National Planning Policy Framework (2021) and Policies KP1, KP2 and CP4 of the Southend-on-Sea Core Strategy (2007)".

#### **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 KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility) and CP4 (The Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM2 (Low Carbon and Efficient Use of Resources), DM3 (The Efficient and Effective Use of Land) and DM15 (Sustainable Transport Management)
- 4.5 Southend-on-Sea Design and Townscape Guide (2009)
- 4.6 Southend-on-Sea Waste Storage, Collection and Management Guide for New Developments (2019)
- 4.7 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 framed structure without planning permission.
- 5.2 The structure has a tent like appearance and is some 5.3m high, 8.1m wide and 8m deep. It has a fabric type material covering but comprises of a metal frame bolted to the hard standing. There are openings in the south elevation including one large enough to allow a vehicle to enter. The site is accessed by an existing vehicle access onto Fairfax Drive to the eastern side of No.419 Fairfax Drive.
- 5.3 During the unsuccessful 2023 application, the applicant stated that the structure is used for storage of domestic paraphernalia, (motor vehicles, tools, ladders, footballs,

paddleboards, tennis rackets etc). The structure was proposed to be in place for 5 years. Photographs of the interior of the structure show it has been used for parking a van and a fork lift vehicle.

- 5.4 Due to its metal frame, its scale and being affixed by bolts to the hardstanding the structure is considered to constitute development as defined under Section 55 of the Town and Country Planning Act. That conclusion also takes account of the degree of intended permanence of the structure including that the unsuccessful 2023 application sought to retain it for a “temporary” period of 5 years. The structure is not considered to fall within the scope of permitted development. In the absence of any planning permission, it is considered to be unauthorised.
- 5.5 In April 2023 a complaint was received by the Council alleging a structure had been erected. The owner of the land was advised this was unauthorised which resulted in the submission of a retrospective planning application 23/01085/FUL received by the Local Planning Authority (LPA) on 27<sup>th</sup> June 2023.
- 5.6 Through determination of that 2023 Application on 22<sup>nd</sup> August 2023 this LPA found that the development is unacceptable and contrary to policy for the design and character, amenity and flood risk reasons stated in paragraph 3.8 above. These are respectively explained at paragraphs 7.19 to 7.15, 7.16 to 7.20 and 7.27 to 7.29 of the officer’s assessment within the 2023 application report at Appendix 1.

#### Enforcement and Legal Action

- 5.7 Given the harm identified above, it is considered reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. Enforcement action in this case aims to secure removal of the unauthorised structure in its entirety and to remove from site all materials resulting from compliance with that. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 5.8 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.
- 5.9 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 framed structure in its entirety;

AND

b) Remove from site all materials resulting from compliance with a) 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 three (3) months is considered reasonable in compliance with any of the above requirements.

## Appendix 1

<b>Reference:</b>	23/01085/FUL
<b>Ward:</b>	Westborough
<b>Proposal:</b>	Erect temporary structure on existing hardstanding (retrospective).
<b>Address:</b>	419A Fairfax Drive, Westcliff-on-Sea, Essex SS0 9LY
<b>Applicant:</b>	Mr P Sooriyakumar
<b>Agent:</b>	Mr Nick Essex of DSB Property Designs Ltd
<b>Consultation Expiry:</b>	18.08.23
<b>Expiry Date:</b>	22.08.23
<b>Case Officer:</b>	Scott Davison
<b>Plan Nos:</b>	2023/06/419AFD Sheet 01 of 01
<b>Supporting Documents</b>	Flood Risk Assessment, Email of 26 <sup>th</sup> July 2023.
<b>Recommendation:</b>	<b>Refuse Planning Permission</b>

### 1 Site and Surroundings

- 1.1 The application site is a previously vacant, roughly 'L shaped' site located on the northern side of Fairfax Drive to the rear and eastern side of a detached two storey [dwellinghouse](#): No 419 Fairfax Drive. The site is partly covered in hardstandings which are the remnants of the foundations of the former workshop/office/store building on the site. To the rear of the site is a line of trees along the bank of Prittlewell Brook and beyond that is Prittle Brook Greenway and then a school and its grounds. The site is located within Flood Zone 2 but is not subject to any other site-specific planning policies.

### 2 The Proposal

- 2.1 The application form states planning permission is sought for the retention of a temporary structure which was erected in March 2023. The structure has a tent type appearance and is some 5.3m high, 8.1m wide and 8m deep. It has a fabric type material covering and a metal frame bolted to the hard standing. There are openings in the south elevation including one large enough to allow a vehicle to enter. The site is accessed by an existing vehicle access onto Fairfax Drive to the eastern side of No.419 Fairfax Drive.
- 2.2 The applicant has stated that the structure is used for the storage of motor vehicles, tools, ladders, footballs, paddleboards, tennis rackets etc, akin to a domestic garage. The items would be stored 24 hours a day, 7 days a week just like in a garage at home and movements into and out of the site would be during daytimes between 8am and 6pm. The applicant has stated that the storage is not associated

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with any existing business and the items stored are owned by the applicant and that the temporary permission is sought for five years. The reasoning given for the proposal is that the applicant does not have storage space at their own property. This application follows from an enforcement investigation into the site, and it has been alleged in representations that vehicle repairs are carried out within the site, however, such uses do not form part of this application.

- 2.3 This application follows the refusal of application Ref: 22/01233/FUL described as *Erect two storey building forming one self-contained flat at first floor level and storage space and garage to ground floor and B1/B8 use* for the following reasons:

*01 The proposed dwelling would provide two single-bedspace bedrooms neither of which would be of double (or twin) bedroom size. The proposal also fails to provide any external amenity space for its future occupiers. In both respects the proposal results in a poor standard of accommodation for its future occupiers. This is unacceptable and contrary to the National Planning Policy Framework (2021), the advice contained within the Technical Housing Standards – Nationally Described Space Standard document (2015), policies KP2 and CP4 of the Core Strategy (2007); Policies DM1, DM3 and DM8 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).*

*02 The proposal would result in overlooking and loss of privacy significantly harmful to the amenities of the occupiers of No 419 Fairfax Drive by reason of the siting of the main habitable room window in the proposed development's first-floor front elevation. This 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 Development Management Document (2015), and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).*

*03 It has not been demonstrated that the proposal would meet Building Regulations 2010 Part M4(2). The proposal is therefore contrary to Policies DM1, DM3 and DM8 of the Development Management Document (2015) and advice contained within the Southend-on-Sea Design and Townscape Guide (2009).*

*04 The proposed development by reason of its siting, appearance and form, including the low-quality detailed design would result in a conspicuously incongruous development significantly out of keeping with its context and significantly harmful to the character and appearance of its surroundings. Such harm is not outweighed by public benefits including the limited creation of new housing. This would be unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).*

- 2.4 The previously refused application was for a permanent structure with part residential, part storage use. This application is for the retention of a temporary structure which is used for domestic storage purposes.

### **3 Relevant Planning History**

- 3.1 93/0582 – Ground floor workshop and store (Class B1) first floor office and store open storage in yard to a height not exceeding 2.5m and ancillary outbuildings – Granted.
- 3.2 09/00422/FUL – Erect part single/part two storey front extension to provide additional workshop/storage/office space (Classes B1 and B8) and layout parking and cycle store - Granted.
- 3.3 10/01103/FUL – Erect part single/part two storey front extension to provide additional workshop and office space (Classes B1) and lay out parking and cycle store – Granted.
- 3.4 11/00941/FUL – Erect part single/ part two storey front and side extension and form new second floor, use store (Class B8) as dwellinghouse (Class C3) – Granted.
- 3.5 17/01994/FUL – Erect two storey building to form workshop/store/office (Class B1) – Granted.
- 3.6 18/00856/FUL – Erect two storey building forming one self contained flat at first floor level and store at ground floor - Granted.
- 3.7 22/01233/FUL – Erect two storey building forming one self-contained flat at first floor level and storage space and garage to ground floor and B1/B8 use – Refused.

#### **Enforcement History**

- 3.8 23/00069/UNAU B Erection of building - Pending Consideration.

#### **4 Representation Summary**

##### **Public Consultation**

- 4.1 Seven (7) neighbouring properties were notified by letter, and a site notice was displayed. Three (3) responses have been received from two (2) separate addresses. These are summarised below:
  - Concerns and queries over the time limit for the proposed temporary building.
  - Concern over use of the temporary building which is stated as being used as a vehicle repair garage (possibly running as a business) and not for storage purposes, and concerns over the times that this use is taking place and the resultant fumes and noise.
  - Concern size of the temporary and proximity of temporary building to neighbouring properties.
  - Concerns relating to the design and appearance of the structure. Eyesore and blot on the landscape.
  - Residential amenity concerns.
  - Impacts outlook and views.
  - Impacts enjoyment of gardens.
  - Breaching planning restrictions and concerns that the application is retrospective in nature.
  - Lack of neighbour consultation.



[Officer comment: These concerns are noted, and they have been considered in the assessment of the application. Public consultation was undertaken in accordance with national and local requirements. Other than those reasons set out in section 9 of the report, the points of objection within the representations are not found to represent a reasonable basis to refuse planning permission in the specific circumstances of this case].

**Essex Fire**

4.2 No objection.

**Environmental Health**

4.3 No objection or comments.

**Lead Local Flood Authority**

4.4 No objection or comments.

**5 Planning Policy Summary**

5.1 The National Planning Policy Framework (NPPF) (2021)

5.2 Planning Practice Guidance and National Design Guide (2021)

5.3 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility) and CP4 (The Environment and Urban Renaissance)

5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM2 (Low Carbon and Efficient Use of Resources), DM3 (The Efficient and Effective Use of Land) and DM15 (Sustainable Transport Management)

5.5 Southend-on-Sea Design & Townscape Guide (2009)

5.6 Southend-on-Sea Waste Storage, Collection and Management Guide for New Developments (2019)

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

**6 Planning Considerations**

6.1 The main considerations in relation to this application are the principle of the development, design, impact on the street scene and character of the area, residential amenity, traffic and parking implications, sustainability, flood risk and CIL.

**7 Appraisal**

**Principle of Development**

7.1 This development is considered in the context of the Council policies relating to design. Government guidance contained within the National Planning Policy Framework encourages effective use of land, in particular previously developed land.

- 7.2 Policy KP2 requires that new development contributes to economic, social, physical and environmental regeneration in a sustainable way through securing improvements to the urban environment through quality design and respecting the character and scale of the existing neighbourhood. Policy CP4 requires that new development be of appropriate design and have a satisfactory relationship with surrounding development. Policy CP8 requires that development proposals contribute to local housing needs.
- 7.3 Policy DM1 seeks design quality that adds to the overall quality of an area and respects the character of a site and its local context. Policy DM3 states; The Council will seek to support development that is well designed and that seeks to optimise the use of land in a sustainable manner that responds positively to local context and does not lead to over-intensification, which would result in undue stress on local services, and infrastructure, including transport capacity.
- 7.4 Policy DM3 paragraph (2) requires that all development on land that constitutes backland or infill development will be resisted where the proposals will:
- “(i) Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents; or  
(ii) Conflict with the character and grain of the local area; or  
(iii) Result in unusable garden space for the existing and proposed dwellings in line with Policy DM8; or  
(iv) Result in the loss of local ecological assets including wildlife habitats and significant or protected trees.”
- 7.5 The development constitutes a backland development and conflicts with criterion (i) and (ii) of Policy DM3, as set out above, as it results in a detrimental impact upon the living conditions and the amenity of existing residents, as found in the assessment below and consistent with the findings of the previously refused 2022 application, it materially conflicts with the urban grain of the local area.
- 7.6 The site is within Flood Zone 2 and the development is considered to constitute a less vulnerable use. The principle of the development would therefore largely depend on whether the applicant can demonstrate that the development would be safe for its lifetime. This matter is discussed further below.
- 7.7 The site has been vacant since at least 2019 following the demolition of the former builder’s store/workshop/office building. This proposal for a storage use and the principle of the then B1 and B8 uses had been established with earlier planning permissions.
- 7.8 Consistent with the findings of the previous 2022 refusal, little to no weight should be applied to previous unimplemented decisions which have since expired and applying the DM3 criteria, the principle of the development of the site is considered unacceptable. Detailed considerations are assessed below.

#### **Design and Impact on the Character of the Area**

- 7.9 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.

- 7.10 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.
- 7.11 The temporary structure that has been installed on the site sits in isolation and is unrelated to other properties in the immediate surrounding area. In terms of character, the surrounding area is comprised of dwellings of a traditional appearance and the temporary structure is incongruous and significantly differs from the prevailing character and appearance of dwellings and associated outbuildings as it has a utilitarian, large tent like appearance.
- 7.12 The front elevation contains a large opening and is 6.9m from the boundary with No 419 Fairfax Drive. Given the 5.3m height of the structure it appears as a prominent feature when viewed from the rear of surrounding dwellings and the rear garden areas especially from those dwellings in Fairfax Drive, from views from the wider public domain including from Ronald Park Avenue to the south, the path on the northern side of the Prittle Brook and the playground to the west of 423 Fairfax Drive and views along the access between Nos 417 & 419 Fairfax Drive.
- 7.13 Consistent with the findings of the previous 2022 refusal, it is considered that the previous expired planning permissions form material considerations of little to no weight in the determination of this current application. In layout terms, the temporary structure with an overall height of some 5.3m, a width of 8m and depth of some 8m is not acceptable in this backland location and has an unacceptable impact on surrounding visual amenity and in this location is out of keeping with the character and is at odds with the urban grain and overall cohesion of the area.
- 7.14 For the reasons set out above, it is considered that the development is incongruous and out of keeping with the urban grain and would have a significantly harmful impact on the character and appearance of the site and surrounding area. Although the development is for a temporary, [5-year](#) period, this harm would be significant which is not outweighed by it being it situ for 5 years only.
- 7.15 The development is therefore considered to be unacceptable and fails to comply with policy in these regards and in turn fails criterion (ii) of Policy DM3.

#### **Impact on residential amenity**

- 7.16 Policy DM1 states 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."
- 7.17 The development is located within a residential area and is bounded by existing dwellings and single storey outbuildings. The structure is some 6.9m from the rear boundary with No 419 Fairfax Drive and to the north of the neighbouring properties along Fairfax Drive. Given its overall size, siting and nature it is not considered that the development causes any material loss of daylight or sunlight. However, given

its proximity to neighbouring dwellings it does result in an unacceptable sense of enclosure for residents of 419 Fairfax Drive and would be a highly visible feature in the outlook from the rear of 419 Fairfax Drive to the significant detriment of their residential amenity. To a lesser extent it also impacts on the gardens and outlook of 421 and 417 Fairfax Drive which is a further negative aspect of the development. There would be no harm to the amenities of properties to the north given the separation provided.

- 7.18 The access from Fairfax Drive between Nos 417 & 419 Fairfax Drive is some 4m wide and 22m long running immediately adjacent to the flank walls of Nos 417 & 419 Fairfax Drive. There are no windows in the flank elevations of these properties. It is therefore considered that the non-commercial pedestrian and vehicular movements associated with the development do not impact harmfully on the amenities of the occupiers of 417 & 419 Fairfax Drive in terms of noise and disturbance.
- 7.19 The application form states that the development is used as a storage space. The proposal is not connected to a neighbouring residential use and could potentially generate levels and types of noise and disturbance materially harmful to the amenity of neighbouring residents. In order to protect the amenities of neighbouring occupiers, consideration has been given as to whether conditions could reasonably be attached to address the above issues. A condition specifying and defining the use of the site could be imposed and a restriction requiring no outdoor storage could be imposed to protect neighbouring amenities and local character. The hours of use and days of use for the development could be limited to daytime hours only for weekdays and could be limited at weekends to Saturday mornings only. Restrictions preventing any plant and equipment being installed could also reasonably be controlled by condition. It is also noted that Environmental Health have raised no objections to the proposal.
- 7.20 The proposal is unacceptable and conflicts with policy in the above regards.

**Highways and Transport Issues:**

- 7.21 The NPPF states (paragraph 111) that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or, the residual cumulative impacts on the road network would be severe."
- 7.22 Policy CP3 of the Core Strategy and Policy DM15 of the Development Management Document aim to improve road safety, quality of life and equality of access for all. Policy DM15 of the Development Management Document states that development will be allowed where there is, or it can be demonstrated that there will be physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner.
- 7.23 The application form states the site has no existing parking spaces and no spaces are proposed within the curtilage of the site. However, parking can be reasonably provided within the curtilage of the site, as demonstrated in the submitted photos included on the plans. Taken this into account, it is considered that the development does not harm highway safety or the local highway network in any relevant regards.

- 7.24 The development is acceptable and policy compliant in the above regards.

#### **Sustainability**

- 7.25 The NPPF states that Local Authorities should promote energy from renewable sources. Policy KP2 of the Core Strategy states that all new development proposals should demonstrate how they will maximise the use of renewable and recycle energy, water and other resources. Policy DM2 of the Development Management Document requires new development to be energy and resource efficient.
- 7.26 No details of renewable energy have been submitted with the application however given that the development is a temporary building, it is considered unreasonable to impose conditions requiring compliance with renewable energy policy.

#### **Flood Risk**

- 7.27 The application site lies adjacent to Prittlewell Brook and is located in Flood Zone 2. The previously refused scheme identified the site as being in this Flood Zone 2 and the Council's GIS Cityview mapping system shows that the site is located in Flood Zone 2. A site-specific Flood Risk Assessment (FRA) has been submitted which states that the site is in Flood Zone 1. However, the FRA as submitted is dated from 2018 and appears to relate to 419 Fairfax Drive, a residential dwelling and not 419A which is located to the north of the dwellinghouses fronting Fairfax Drive and is adjacent to the Prittlewell Brook.
- 7.28 Based on the information submitted the development is likely to be considered as a less vulnerable use in flood risk terms, given the development is temporary in nature and for domestic storage purposes only and does not contain any habitable accommodation. However, in this instance, the submitted site-specific Flood Risk Assessment is inadequate as it does not identify the site correctly and fails to demonstrate that the flood risk associated with the development could be addressed satisfactorily.
- 7.29 In this regard the development is contrary to local and nation planning policy and is therefore unacceptable.

#### **Equality and Diversity**

- 7.30 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.

#### **Community Infrastructure Levy (CIL)**

- 7.31 The development is not CIL liable as the development is for a temporary building.

which fall outside of the scope of CIL under the meaning of planning permission as set out in CIL Regulation 5(2).

## **8 Conclusion**

- 8.1 Having taken all material planning considerations into account, it is found that the development is unacceptable and contrary to the objectives of the relevant development plan policies and guidance. The development is incongruous and out of keeping with the urban grain and has a significantly harmful impact on the character and appearance of the site and the wider surrounding area. The development results in significant harm to the amenities of the neighbouring occupiers at No.419 Fairfax Drive by reason of an undue sense of enclosure and loss of outlook. The submitted FRA incorrectly identifies the site and the Flood Zone for the site and fails to clearly demonstrate that the flood risk associated with the development would be acceptable. The benefits of the development do not clearly outweigh the significant harm identified. The application is therefore recommended for refusal.

## **9 Recommendation**

**REFUSE PLANNING PERMISSION for the following reasons.**

- 01 The development by reason of its siting, scale, appearance and form, results in a conspicuously incongruous development significantly out of keeping with its context and significantly harmful to the character and appearance of its surroundings. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document (2015) and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).
- 02 The development results in an undue sense of enclosure and loss of outlook significantly harmful to the amenities of the occupiers of No 419 Fairfax Drive. This 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 Development Management Document (2015), and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009).
- 03 The Flood Risk Assessment submitted with the application incorrectly identifies the site and has not demonstrated that the development which is within Flood Zone 2 is acceptable or that it would be safe for its lifetime. This is unacceptable and contrary to the National Planning Policy Framework (2021) and Policies KP1, KP2 and CP4 of the Southend-on-Sea Core Strategy (2007).

### **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. 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 detailed analysis is set out in a report on the application prepared by officers.

**Informative**

01 Please note that this application would be liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended) if planning permission had been granted. Therefore, if an appeal is lodged and subsequently allowed, the CIL liability will be applied. Any revised application would also be CIL liable. Further details on CIL matters can be found on the Council's website at [www.southend.gov.uk/cil](http://www.southend.gov.uk/cil).

02 This application is retrospective in nature and is subject to an enforcement enquiry. Unless the breach is remedied, the Council will consider the expediency of enforcement action.

Case Officer Signature.....SD.....Date.....21.08.2023.....
Senior Officer Signature.....CW.....Date...21/08/2023.....
Delegated Authority Signature...KW....Date.....21/08/2023.....