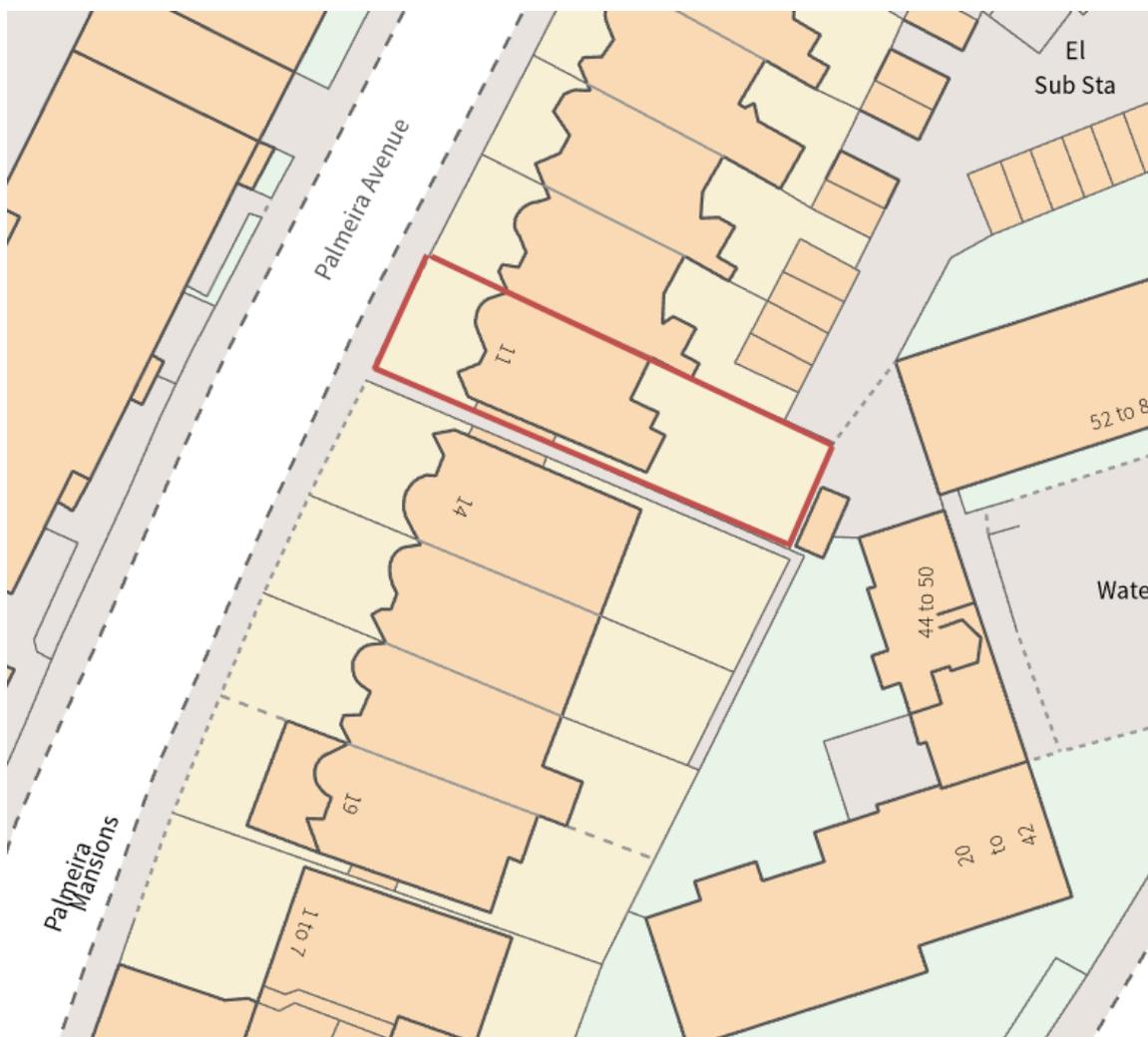


Reference:	22/00019/UNAU_B	
Report Type:	Enforcement	
Ward:	Milton	
Breach of Planning Control:	Infill of rear balcony within a conservation area	
Address:	11C Palmeira Avenue, Westcliff-on-Sea, Essex, SS0 7RP	
Case Opened Date:	20 January 2022	
Case Officer:	Edward Robinson	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is on the eastern side of Palmeira Avenue and contains an end of terrace three storey building divided into 3 flats. This enforcement case relates to the first floor flat.
- 1.2 To the rear of the subject dwelling is a two-storey, part-width rear outrigger with a balcony over. Historically, a balcony belonging to the first floor flat was also present although this has since been enclosed and this forms the basis of this enforcement case. Rear balconies are a characteristic feature of the immediate rear scene of this and neighbouring dwellings.
- 1.3 The site is within the Leas Conservation Area and is locally listed.

2 Lawful Planning Use

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

3 Relevant Planning History

22/01449/FUL – 23/00016/REFN / APP/D1590/W/22/3311297	Erect first floor rear extension (Retrospective)	Application Refused (06.10.2022) Appeal Dismissed (11.09.2023)
---	---	---

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2023)
- 4.2 Planning Practice Guidance (PPG) (2023) – 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) and DM5 (Southend on Sea's Historic Environment).
- 4.5 Southend-on-Sea Design and Townscape Guide (2009)
- 4.6 The Leas Conservation Area Appraisal (2021)

5 Procedural Matters

- 5.1 This case is presented to the Development Control Committee because officers consider it would be expedient to take enforcement action, including by issuing an enforcement notice.

6 The breach of planning control

The identified breach of planning control is:

- infill of a rear balcony.

7 Efforts to resolve the breach to date

- 7.1 In January 2022 a complaint was received by the Council alleging building works taking place at the property to infill a first-floor balcony. A site visit confirmed the works were taking place.
- 7.2 Through extensive correspondence with the owner, a retrospective planning application 22/01449/FUL (the “2022 Application”) was submitted in August 2022. In October 2022 the application was refused, and in March 2023 an appeal was lodged with the Planning Inspectorate against the Council’s decision. In September 2023 that appeal was dismissed.
- 7.3 Following the appeal decision, in September 2023 there was communication between the case officer and the homeowner on what the owner’s next steps were going to be. Despite this the owner did not commit to a way forward that would effectively remedy the breach of planning control and associated harm.

8 Appraisal

- 8.1 Through the determination of the 2022 Application, the Local Planning Authority has previously found that the development on site is unacceptable in relation to design and impact on heritage. The officer’s report for the 2022 Application is attached to this report as Appendix 1. This outcome was supported by the Planning Inspectorate. Their appeal decision is attached to this report as Appendix 2.

Impact on the Character of the Area

- 8.2 As discussed in paragraphs 7.2 to 7.9 of the officer’s report for the 2022 Application (Appendix 1), the unauthorised development was found to be unacceptable in terms of its impact on the character and appearance of the site and found to be detrimental to the area, including the significance of the Conservation Area. This finding is still relevant. Similarly the inspector at paragraphs 10 to 11 agreed with the Council’s analysis.
- 8.3 The loss of the characteristic balcony and the form and design of the rear extension have introduced an unsympathetic and incongruous feature to the detriment of the character and quality of the original dwelling and harm the character and appearance of the terrace and The Leas Conservation Area. This harm is less than substantial but nevertheless significant in degree and is not outweighed by any public benefits. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Development Management Document (2015) Policies DM1, DM3 and DM5 and the advice contained within the National Design Guide (2021), the Southend-on-Sea Design and Townscape Guide (2009) and the Leas Conservation Area Appraisal (2021).

Other matters

- 8.4 The development is not found to result in any significant parking or highways impacts or any significantly harmful neighbour amenity impacts, it is therefore acceptable and policy compliant in these regards.

Enforcement Action

- 8.5 Given the harm identified above, it is reasonable, expedient and in the public interest to

pursue enforcement action in the circumstances of this case. This will aim to secure removal of the unauthorised rear infill extension in its entirety and remove from the site all materials resulting from compliance. No lesser steps that could remedy the identified breach or associated harm have been identified. It is considered that three (3) months is sufficient and reasonable time to allow for compliance with the above-described steps particularly considering that an additional period of at least 28 calendar days has to be allowed before any enforcement notice takes effect.

- 8.6 Staff consider that taking enforcement action is proportionate and justified in the circumstances of this case and that an enforcement notice should be served as this will bring further focus to the need for the breach to cease 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.
- 8.7 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.

9 Equality and Diversity Issues

- 9.1 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.

10 Recommendation

10.1 AUTHORISE ENFORCEMENT ACTION to:

- a) Remove from the site the first-floor rear balcony infill extension in its entirety, and**
- b) Remove from site all materials resulting from compliance with a)**

The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act with time for compliance three (3) months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.

Appendix 1

Reference:	22/01449/FUL
Application Type:	Full Application
Ward:	Milton
Proposal:	Erect first floor rear extension (retrospective)
Address:	11C Palmeira Avenue, Westcliff-on-Sea, Essex, SS0 7RP
Applicant:	Mr Nigel Whistler
Agent:	N/A
Consultation Expiry:	05.09.2022
Expiry Date:	06.10.2022
Case Officer:	Oliver Hart
Plan Nos:	001 Rev C; 005 Rev A
Supporting Documents:	Heritage Statement
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site contains an end of terrace three storey property on the eastern side of Palmeira Avenue. The property has been divided into 3 flats with this application relating to the first floor flat.
- 1.2 To the rear of the application dwelling is a two-storey part-width rear outrigger with a balcony over. Historically, a balcony belonging to the first floor flat was also present although this has since been enclosed and this forms the basis of this application. Rear balconies are a characteristic feature of the immediate rear scene of this and neighbouring dwellings.
- 1.3 The application site lies within the Leas Conservation Area. It is also locally listed.

2 The Proposal

- 2.1 The application stems from a planning enforcement investigation and seeks retrospective planning permission to erect a first-floor rear extension by effectively enclosing an existing balcony feature, 1m deep x 2.8m wide. The extension has been finished in white upvc horizontal cladding.

3 Relevant Planning History

- 3.1 Enforcement No.22/00019/UNAU_B- Infill of rear balcony and new pipe to front

4 Representation Summary

- 4.1 185no. neighbouring properties were notified and 2no. letters of representation have been

received. Summary of comments:

- Design concerns; Out of character
- May set a precedent for similar development which would further erode the Victorian façade.
- Issues with water facilities at the property.

[Officer Comment: The above issues have been taken into account and the relevant planning matters are discussed in the assessment of the development. Other than as reflected in the reasons for refusal at the end of this report, the objecting points raised were not found to represent justifiable reasons for recommending refusal of planning permission in the circumstances of this case.]

Design and Heritage Officer

4.2 Objection raised.

5 Planning Policy Summary

5.1 The National Planning Policy Framework (2021)

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

5.3 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land) and DM5 (Southend on Seas Historic Environment)

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

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

5.6 The Leas Conservation Area Appraisal (2021)

6 Planning Considerations

6.1 The development has not increased the need for parking nor reduced the current off-site parking provision. The key considerations in relation to this application are the principle of the development, design and impact on the character of the streetscene and on the character and appearance of the Conservation Area, impact on residential amenity CIL contributions.

7 Appraisal

Principle of Development

7.1 Within the historic environment extensions and alterations to properties are supported but must respect the existing character and appearance of the building and the historic environment. The dwelling is situated within a residential part of the conservation area and an extension or alteration to the property is considered acceptable in principle, subject to detailed considerations discussed below.

Design and Impact on the Character of the Area including The Leas Conservation Area

7.2 Local and national planning policies and guidance seek to ensure that new development is well designed. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

- 7.3 Local development plan policies seek to ensure that new development is designed so that it adds to the overall quality of the area and respects the character of the site, its local context and surroundings, provides appropriate detailing that contributes to and enhances the distinctiveness of place; and contribute positively to the space between buildings and their relationship to the public realm. Policy DM1 and the Design and Townscape Guide provide further details on how this can be achieved.
- 7.4 The site is located in The Leas Conservation Area and is noted in the accompanying Appraisal statement as a locally listed building. Section 72(1) of the Planning and Listed Building and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Policy DM5 of the Development Management Document states any new development that affects a heritage asset will be required to conserve and enhance its historic and architectural character, setting and the townscape value.
- 7.5 Paragraph 199 of the NPPF states *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”*
- 7.6 Paragraph 202 of the NPPF states *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*
- 7.7 The extension arguably represents a small addition when seen in the context of the three-storey application property. However, concerns are raised with respect to the window that has been installed on site which is inappropriate for the property in terms of both scale (appearing under-scaled and small) and its style and design, as well as exterior materials used and the failure of the eaves to match the existing building such that the addition appears unresolved and out of keeping with the character of the application property and the wider terrace.
- 7.8 The loss of the balcony, which is a key feature of the terrace, is a further concern which weighs against the development. Whilst public views of the development are not overtly visible, overall, the application has not demonstrated that the development has preserved or enhanced the conservation area, instead it would cause harm to the heritage assets comprising the building itself, the terrace of which it forms part and the conservation area. This harm is less than substantial but significant in degree and is not outweighed by any public benefits.
- 7.9 The development is unacceptable and contrary to policy in the above regards.

Impact on Residential Amenity

- 7.10 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.
- 7.11 The application site is bounded by properties above and below, as well as to the north and south. Noting the separations to neighbouring habitable openings, the modest scope of the development which has not extended further than the confines of the existing balcony feature (1m deep x 2.8m wide) is such that it is not considered the development has given rise to any significantly harmful amenity impacts on the neighbouring occupants in any relevant regard.

- 7.12 Due to the separations involved, it is not considered that the development has harmed residential amenity of neighbours in terms of light, outlook, privacy or rear garden scene of any other neighbouring properties in any regard. The development is therefore acceptable and policy compliant in the above regards.

Equality and Diversity Issues

- 7.13 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

- 7.14 The development equates to less than 100sqm of new floorspace. As such, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and no charge is payable.

8 Conclusion

- 8.1 Having taken all material planning considerations into account, it is found that for the reasons outlined above the development is 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.

9 Recommendation

9.1 REFUSE PLANNING PERMISSION for the following reason:

- 1 The loss of the characteristic balcony and the form and design of the rear extension have introduced an unsympathetic and incongruous feature to the detriment of the character and quality of the original dwelling and harm the character and appearance of the terrace and The Leas Conservation Area. This harm is less than substantial but nevertheless significant in degree and is not outweighed by any public benefits. This is unacceptable and contrary to the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007) Development Management Document (2015) Policies DM1, DM3 and DM5 and the advice contained within the National Design Guide (2021), the Southend-on-Sea Design and Townscape Guide (2009) and the Leas Conservation Area Appraisal (2021) .**

10 Informative

- 1 You are advised that as the proposed extension(s) to your property equates to less than 100sqm of new floorspace the development would benefit from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge would be payable. See www.southend.gov.uk/cil for further details about CIL.**
- 2 The applicant is reminded that the development on site remains unauthorised. Failure to remedy this is likely to result in the Council considering the expediency of enforcement action to seek to remedy the currently identified harm.**

Case Officer Signature.....OH..... Date 03.10.2022

Senior Officer Signature.....SM..... Date 06.10.2022

Delegated Authority Signature.....PK..... Date 06.10.2022

Appeal Decision

Site visit made on 17 August 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2023

Appeal ref: APP/D1590/W/22/3311297

11B Palmeira Avenue, Westcliff-on-Sea, SS0 7RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nigel Whistler against the decision of Southend-on-Sea City Council.
 - The application Ref 22/01449/FUL, dated 15 July 2022, was refused by notice dated 6 October 2022.
 - The development proposed is erect first floor rear extension (retrospective)
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form described the proposed development as "The 1st floor extension which is built on an existing small balcony will connect to the existing surface water system". The council changed this to the description used in the heading above, as did the appeal form. I have adopted it as it more clearly identifies the development proposed.

Main Issue

3. The main issue in this case is the effect of the enclosed balcony on the character and appearance of the building and that of the Leas Conservation Area.

Reasons

4. The appeal site is an end of terrace three storey property on the eastern side of Palmeira Avenue. The property has been divided into 3 flats with this appeal relating to the first floor flat. To the rear of the appeal dwelling is a two-storey part-width outrigger with a balcony over. The balcony belonging to the first floor flat has been enclosed. Rear balconies are a characteristic feature of the immediate rear facades of this terrace. The site lies within the Leas Conservation Area.
5. Section 72(1) of the Planning and Listed Building and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Policy DM5 of the Development Management Document states any new development that affects a heritage asset will be required to conserve and

enhance its historic and architectural character, setting and the townscape value.

6. Paragraph 199 of the National Planning Policy Framework (the Framework) states *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"* Paragraph 202 of the Framework states *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*
7. Since the appeal development is at the rear of the building, it is not seen from Palmeira Avenue; nor can it be seen from the roads that run to the east of the property. Whilst there is an intrinsic public interest in maintaining the quality of buildings in a conservation area, in addition there are many properties that have windows which overlook the rear of Palmeira Avenue, together with neighbours' views. Whilst these are not views from the public domain, the occupants of these properties will have sensitivities and their private views amount in total to an additional public interest.
8. The appeal site is part of a Victorian/Edwardian terrace of 3 storeys and naturally, over time, there have been additions and alteration to the rear facades. Nevertheless, there remains an integrity to the buildings that demonstrates their original character and features. The appeal balcony is a feature that deserves care with regard to any alteration to its form and character.
9. The appeal development has enclosed the balcony with a box like structure with a white finish, stated on the application form to be a rendered finish, relieved only by a relatively small and modern window. It has no satisfactory relationship with the form, style or texture of the surroundings. It is an unsympathetic and incongruous feature to the detriment of the character and quality of the exterior of the dwelling, and harms the character and appearance of the terrace. Effectively the balcony has been lost, at least in visual terms, and replaced by a poorly designed enclosure.
10. It will be seen from the above that I disagree with the appellant whose contention is that it is a sensitively designed rear extension, having an acceptable impact on the character and balance of the property, and making use of appropriate materials, fenestration, proportions and detailing. I can appreciate that the flat may have been in a derelict condition at the time of purchase and that the appellant has made improvements since then. However, this does not include the work done on the balcony, which I cannot agree represents a high-quality, well-designed development. I have also noted what is said about a third party's extension, but that is not a matter that is before me.

11. I have noted the paragraphs of the Framework that have been referred to in the appeal statement, the most material ones being 126 and 130 which refer to good design and visually attractive architecture, sympathetic to local character and history. However, the appellant makes no reference to section 16 of the Framework that deals with 'Conserving and enhancing the historic

Appeal Decision APP/D1590/W/22/3311297

environment'. Within this it is stated that heritage assets range from sites and buildings of local historic value to those of the highest significance. Of course, the appeal building is within the first of these categories, and the effect of the extension on the terrace amounts to, in the words of this section of the Framework, less than substantial harm. Indeed, it is minor harm, but harm it is and that should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Framework paragraph 202). In this case, there are no public benefits, and whilst from the appellant's point of view it may be securing its optimum viable use, that consideration is insufficient to outweigh the harm.

12. For the reasons that I have given, I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR

End