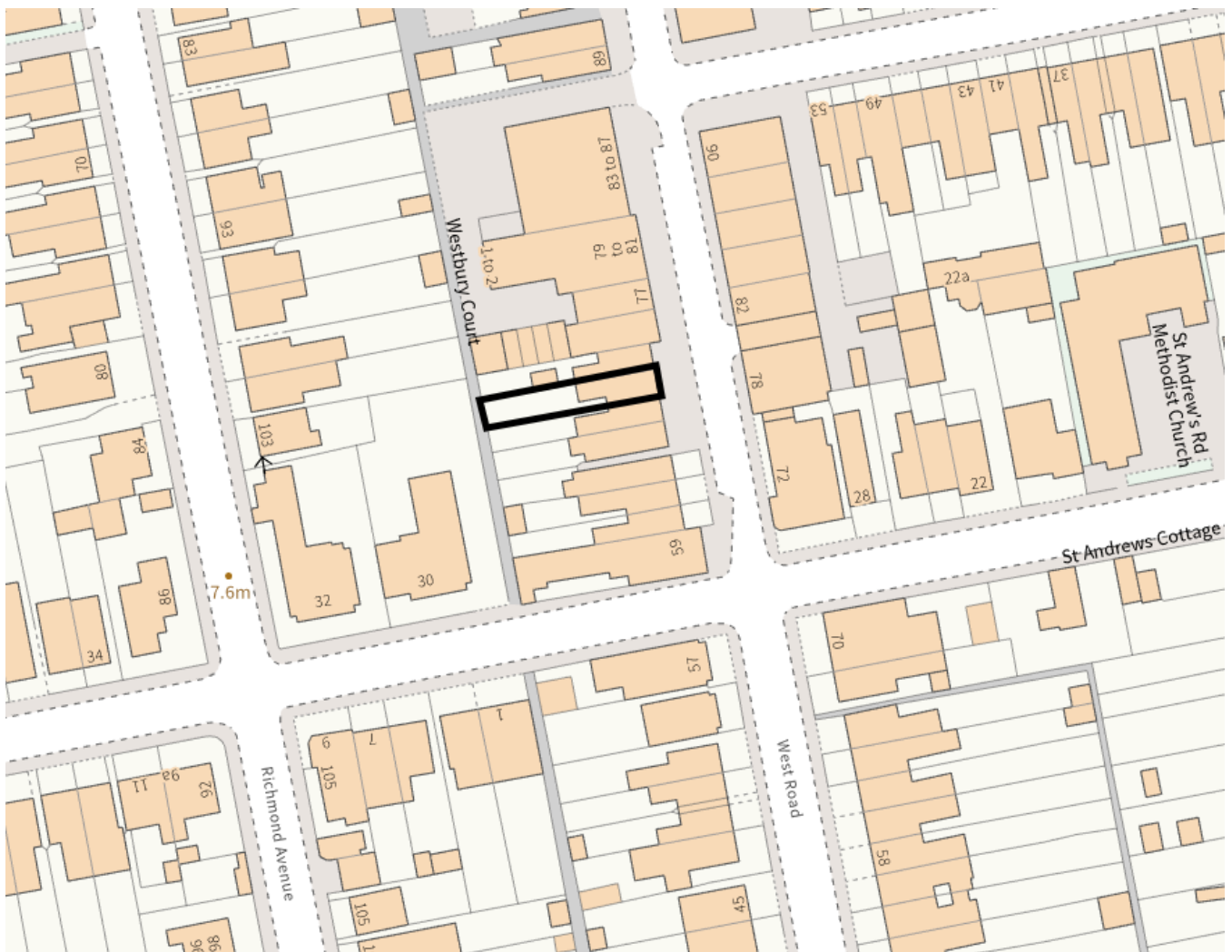


Reference:	20/00339/UNAU_B	
Report Type:	Enforcement	
Ward:	West Shoebury	
Breach of Planning Control:	a. Material change of use from shop (Use Class E) to dwellinghouse (Use Class C3). b. Replacement of shopfront. c. Erection of rear dormer	
Address:	71 West Road, Shoeburyness, SS3 9DT	
Case Opened Date:	10 November 2020	
Case Officer:	Edward Robinson / Author: Oliver Hart	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is on the western side of West Road in Shoeburyness and is occupied by a terraced, two-storey building. The main subject of this report is the ground floor of the building which was originally used as a shop and has been converted to a residential unit. The report also concerns the rear roof of the building.
- 1.2 The site is part of a parade of four shop fronts which are part of the designated Primary Shopping Frontage on West Road. The units to the south of the site have also been converted to dwellings from shops without planning permission and they are being investigated under separate planning enforcement cases. The site is not located within a conservation area. Other than the designation as a Primary Shopping Frontage no other site-specific designations affect the site.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a Commercial, Business and Service within Use Class E of the Town and Country Planning Use Classes Order 1987(as amended).

3 Relevant Planning History

- 3.1 20/00990/CLP - 'Use ground floor of existing shop/s at 69 as residential (Lawful Development Certificate - Proposed)'. - Received: 22.06.2020 – Returned
- 3.2 20/01220/PA3COU- 'Change of use from Cafe (Class A3) to one self contained flat (Class C3) (Prior Approval)'. This application was returned due to being too deficient in information to validate and non-payment of fees.

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2023).
- 4.2 Planning Practice Guidance (PPG) (2024).
- 4.3 National Design Guide (NDG) (2021).
- 4.4 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP1 (Employment Generating Development), CP2 (Town Centre and Retail Development) and CP4 (Environment and Urban Renaissance)
- 4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM6 (Seafront), DM8 (Residential Standards), DM10 (Employment Sectors) and DM13 (Shopping Frontages)
- 4.6 Technical Housing Standards – Nationally Described Space Standards (2015).
- 4.7 Technical Housing Standards Policy Transition Statement (2015).
- 4.8 Southend-on-Sea Design and Townscape Guide (2009).
- 4.9 Waste Storage, Collection and Management Guide for New Developments (2019)
- 4.10 The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

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

- 6.1 The identified breaches of planning control are the:

- Material change of use from shop (Use Class E) to dwellinghouse (Use Class C3).
- Replacement of shopfront.
- Erection of a dormer to the rear roof slope

7 Efforts to resolve the breach to date

- 7.1 In November 2020, an initial complaint was received by the Council alleging erection of a dormer to the rear roof slope without planning permission. In July 2021, a letter was sent to the registered owner inviting submission of a retrospective planning application to retain the dormer. No form of communication from the owner was received. Additional correspondence was subsequently sent in July 2022 to attempt to resolve the issue to which no response was received.
- 7.2 Following subsequent visits to the site, it also became apparent to officers that a change of use of the property, from commercial to residential was well underway following changes to the shopfront. New correspondence was and sent to the owner again advising that the unlawful development cease, and for the shopfront to be returned back to its original appearance. Again, no form of communication from the owner was received.

8 Appraisal

Impact on the Primary Shopping Frontage and Commercial Character of the Area

- 8.1 The building is within a designated Primary Shopping Frontage (as contained in the Development Management Document) which is protected by Policy DM13 which states that:
- 8.2 "Primary and secondary shopping frontages within Southend will be managed to reinforce their attractiveness, vitality, and viability within the daytime and night-time economies. The character and function of both types of frontage will be protected and enhanced".
- 8.3 The premises contained an active frontage with a typical shop front at ground floor. The site is within a row of premises with lawful commercial uses at ground floor level and forms part of a local centre location on West Road. Allowing this unit to become a dwelling would erode and compromise the commercial character of the area. The importance of the commercial character of the area is significant considering that the area is designated as a Primary Shopping Frontage. Whilst there is no requirement for a certain percentage of uses within these areas, a residential use on the ground floor level to the front of the site would have a detrimental impact on the vitality, vibrancy, viability, and sustainability of the key shopping area. Furthermore, it has not been demonstrated that the unit cannot be used for any use falling within Use Class E.
- 8.4 The removal of the traditional shopfront has exacerbated the harm identified above. Whilst it

is noted that a more residential appearance was permitted at No.67 (22/02355/FUL), that unit historically had a less traditional shop frontage hence the permission did not result in erosion of the Primary Shopping Frontage significantly over and beyond the established situation.

- 8.5 Taking the above analysis into account, it is considered that the unauthorised development is detrimental to the sustainability of a key shopping area. The development is therefore unacceptable and contrary to local and national policies in this regard.
- 8.6 The dormer installed is of a size, scale and appearance which is suitably integrated within the main body of the rear roofslope and is considered to be acceptable such that it would not be expedient to take any enforcement action on that specific element.

Impact on Occupier Amenity

- 8.7 As the proposal represents an unauthorised change of use from commercial to residential with limited information being available through site inspections which did not allow full collection of information from within the site, there is limited information to enable officers to assess the quality of the residential accommodation provided; whether it meets the minimum overall and room size requirements as set out in the minimum Technical Housing Standards and whether habitable rooms would receive acceptable light, outlook and ventilation.
- 8.8 Considering the plans submitted for the application in 2020, which was never validated, it is considered that the residential unit would in all probability fail to meet the overall minimum space standards for a one-bed home. If the property is laid out the same or materially similar to those plans submitted in 2020, the bedroom is also likely to suffer from poor outlook and limited reception of light.
- 8.9 With these factors in mind, the development is considered to offer unacceptable living conditions for current and future occupiers. Whilst the development relates to the provision of housing, for which there is significant need in the city, the potential harm identified is substantial. The tilted balance described in the NPPF is engaged in this instance, but the potential harm would significantly and demonstrably outweigh the public benefits arising from the development when considered against the policies of the NPPF as a whole. The development is unacceptable and contrary to policy in the above regards.

Recreational disturbance Avoidance Mitigation Strategy (RAMS).

- 8.10 New residential development in the city has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations (2017).
- 8.11 The development involves the net increase of one dwelling within the Zone of Influence. No mechanism for appropriate mitigation within a reasonable timescale, or for any alternate mitigation has been established.
- 8.12 The development therefore fails to reasonably mitigate the in-combination effects of the development on habitats and species in accordance with the Habitats Regulations and as required in the adopted RAMS SPD. This is unacceptable and contrary to the relevant policies which seek to protect the natural environment with specific reference to the coastal habitats.

Other matters

- 8.13 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

- 8.14 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 reasonably aim to secure the cessation of the unauthorised use and remove at least one of the key services that facilitate the use. No lesser steps that could remedy the identified breach or associated harm have been identified.
- 8.15 By not enforcing against the rear dormer in-situ, the Local Planning Authority is underenforcing with the effect that planning permission is automatically granted for this element of the development.
- 8.16 The Local Planning Authority must allow a reasonable timeframe for compliance with the requirements of any enforcement notice. Given that the building is occupied residentially the minimum time allowed for compliance with the notice should be at least two months in line with case law related to human rights. Allowing three (3) calendar months is considered 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.
- 8.17 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 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.
- 8.18 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.

Equality and Diversity Issues

- 8.19 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.

9 Recommendation

- 9.1 **AUTHORISE 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) to require those issued with a copy of the Enforcement Notice to:

- a) Cease the use of the ground floor part of the building as a self-contained dwelling (Use Class C3); and
- b) Remove from the building all residential fixtures and fittings which facilitate the use including but not limited to:
 - i. Shower/bath tab and/or any other item which can be used for washing (showering or bathing); and
 - ii. Oven and/or hob and/or any other item which can be used for cooking; and
 - iii. Fridge and/or freezer or other items which allows the storage of food; and
 - iv. Clothes washing and/or drying equipment; and
 - v. Beds and/or sofa/beds and/or other items which can be used for sleeping; and
- c) Restore the front elevation of the ground floor part of the building to its condition before the breach took place; and
- d) Remove from the site all materials resulting from the compliance with the above requirements.

9.2 With time for compliance:

- Three (3) calendar months.

9.3 For the following reasons:

- 01 The development has disrupted the continuity of the Primary Shopping Frontage and reduced activity in a key shopping area. No evidence has been provided to show that there is no reasonable prospect of the re-use of the premises as shops or services within Use Class E. It is therefore found that the development, including the material change of use of the site and the removal of the traditional shop frontage, is significantly and demonstrably harmful to the character, function and thus the sustainability of the Primary Shopping Frontage in a key shopping area. The development is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP1, KP2, CP1, CP2 and CP4 of the Core Strategy (2007) and Policies DM1, DM3 and DM13 of the Development Management Document (2015).
- 02 It has not been demonstrated that the residential unit would not result in significant shortfall(s) against the minimum standards for the overall size of the home and the bedroom sizes, and in an unacceptable outlook and receipt of light at the bedroom which would be to the substantial detriment of living conditions of current and future occupiers at the site. The identified adverse impacts of the development would significantly and demonstrably outweigh the benefits of the development taking into consideration the presumption in favour of sustainable development. This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP2 and CP4 of the Core Strategy (2007), Policies DM1, DM3 and DM8 [as amended with the Technical Housing Standards Policy Transition Statement (2015)] of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Technical Housing Standards – Nationally Described Space Standards (2015).
- 03 The development offers no suitable mitigation of the in-combination effect of the net increase of one dwelling on habitats and species in accordance with the

Conservation of Habitats and Species Regulations (2017), as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020). This is unacceptable and contrary to the National Planning Policy Framework (2023), Policies KP1, KP2 and CP4 of the Core Strategy (2007), Policy DM6 of the Development Management Document (2015) and the guidance contained within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020), which seek to protect the designated habitats and species with specific reference to the coastal environment.