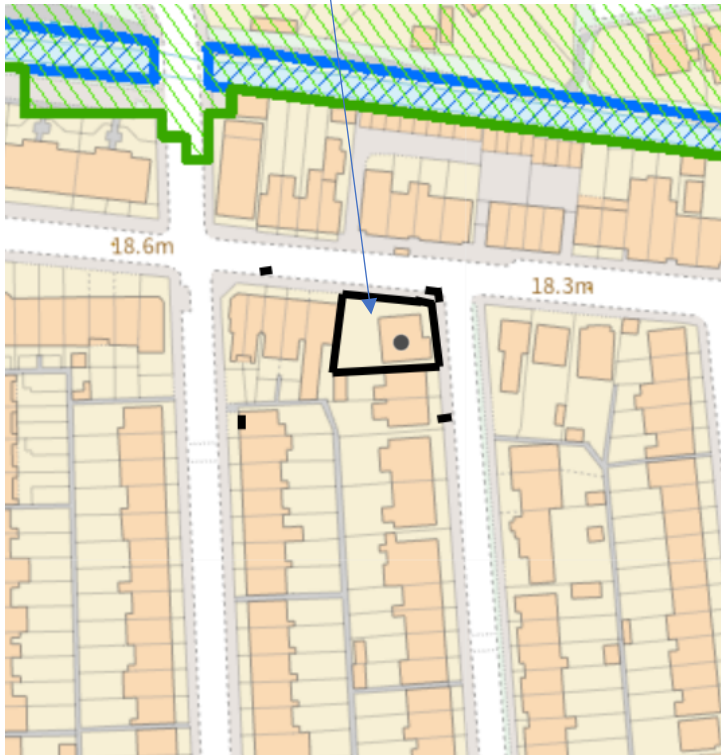


Reference:	22/00328/UNAU_B	
Report Type:	Enforcement	
Ward:	Westborough	
Breach of Planning Control:	Erection of walls	
Address:	141 Inverness Avenue, Westcliff-on-Sea, Essex	
Case Opened:	2 nd December 2022	
Case Officer:	Gabriella Fairley	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

141 Inverness Avenue, Westcliff-on-Sea, Essex



1 Site and Surroundings

- 1.1 This site, on the corner of Fairfax Drive and Inverness Road, is set within a residential area and contains a detached bungalow. Ground levels slope gently down from south to north.
- 1.2 The site is not within a Conservation Area or subject to any site-specific planning policy designations.

2 Lawful Planning Use

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

3 Relevant Planning History

- 3.1 23/00524/FULH (the “2023 Application”) - Erect replacement boundary wall to both Inverness Avenue and Fairfax Drive elevations, erect porch to front elevation and layout hardstanding area (Retrospective). Refused.

Reason for refusal

01 The boundary walls along Fairfax Drive and Inverness Avenue are stark and prominent additions to the streetscene and would be materially out of keeping, resulting in significant harm to the character and appearance of the existing dwelling and the wider streetscene. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policies KP2 and CP4 of the Southend-on-Sea Strategy (2007) and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2021)
- 4.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 4.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)
- 4.5 Southend-on-Sea Design and Townscape Guide (2009)
- 4.6 Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021)
- 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 boundary wall along Fairfax Drive and Inverness Avenue, the creation of a hardstanding and the erection of a porch.

5.2 The boundary wall along Fairfax Drive is some 1.98m high and 13.6m wide, is finished in render and replaces a previous smaller wall some 1m high with a fence above some 1.1m high. The boundary wall along Inverness Avenue has replaced a 1.8m high fence, is a maximum 2m high and minimum 1.1m high, and is finished in brick.

5.3 A brick porch has been erected on the dwelling's Inverness Avenue elevation some 1.3m deep, 1.6m wide and 3.1m high.

5.4 An area of hardstanding has been constructed wrapping around the dwelling some 16m wide and 5m deep, finished in gravel.

5.5 The development is considered not to be lawful under permitted development rights and in the absence of any planning permission, is considered to be unauthorised. That finding has not been tested by way of any application for a Certificate of Lawful Development and is based on reasonable site inspection undertaken by staff for the assessment and determination of the unsuccessful 2023 Application.

5.6 In December 2022 a complaint was received by the Council alleging that a wall had been erected. The homeowner was advised this was unauthorised which resulted in the submission of a retrospective planning application, the 2023 Application (reference 23/00524/FULH), received by the Local Planning Authority (LPA) on 29th March 2023.

5.7 Through determination of the 2023 Application on 29th June 2023 this LPA found that when assessed on their own merits the porch and hardstanding would be acceptable, but that the boundary walling is unacceptable and harmful for the design and character reasons stated in paragraph 3.2 above. The detailed analysis including the development's conflict with design and character policies and guidance is contained in the officer's report for the 2023 Application, attached as Appendix 1 to this report.

5.8 The report in Appendix 1 explains that the site's rendered wall, which now fronts Fairfax Drive, has replaced a former lower brick wall and hedge to the easternmost part of this frontage and a lower brick wall topped with a timber fence to the westernmost part of this frontage. The replacement wall is the same height as the original wall and fence but some 2.4m longer. The Fairfax Drive streetscene is characterised by properties with low brick walls or fences or by open frontages. It was found that the whole of the rendered wall along Fairfax Drive is prominent,

stark, and out of keeping with the streetscene and significantly harms the character and appearance of the host dwelling and this streetscene more widely.

- 5.9 The brick boundary wall along Inverness Avenue has part replaced a former fence (which replaced a part burr brick wall of less extent). A further section some 2.9m wide and maximum 1.8m high and minimum 1m high has been erected north of the porch. The new brick wall is some 0.2m higher than the original fence. Front boundary treatment along Inverness Avenue is characterised by low brick walls with no tall boundary treatment on the opposite side of the Fairfax Road junction. Altogether, due to its height, extent and materials, the walling is prominent, stark and out of keeping with the general Inverness Avenue streetscene and significantly harms the character and appearance of the host dwelling and this streetscene more widely.

Enforcement and Legal Action

- 5.10 Given the harm identified above, it is reasonable, expedient and in the public interest to pursue enforcement action in the circumstances of this case. Enforcement action in this case will reasonably aim to secure the removal of the unauthorised boundary walling in its entirety and remove from site all materials resulting from compliance. Alternatively, any enforcement action must secure the reduction of the walling to no more than 1m in height, which is what can be constructed under the provisions of permitted development in this location. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 5.11 By not enforcing against the installed hardstanding or the erected porch, the LPA is underenforcing. The legal effect of underenforcement is that planning permission is automatically granted for these elements of the development. As discussed in the relevant paragraphs, these elements of the development are not considered to be harmful and there are no conditions that would have to be imposed if planning permission were to be granted. Therefore, the enforcement action does not need to include the hardstanding or the porch.
- 5.12 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.
- 5.13 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.1) Remove from the site the boundary wall treatment along Fairfax Drive and Inverness Avenue in its entirety;

OR

a.2) Reduce to no more than 1m in height the boundary wall treatment at the site along Fairfax Drive and Inverness Avenue;

AND

b) Remove from site all materials resulting from compliance with either a.1) or a.2) 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

Reference:	23/00524/FULH
Application Type:	Full Application - Householder
Ward:	Westborough
Proposal:	Erect replacement boundary wall to both Inverness Avenue and Fairfax Drive elevations, erect porch to front elevation and layout hardstanding area (Retrospective)
Address:	141 Inverness Avenue, Westcliff-on-Sea, Essex
Applicant:	Mr Kalam Bhuiyan
Agent:	Mr Reaz Alam of Jess Design Consultants
Consultation Expiry:	1st June 2023
Expiry Date:	29th June 2023
Case Officer:	Gabriella Fairley
Plan Nos:	AL (00)001, AL (00)002 (Rev A), AL (00)003
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site on the corner of Fairfax Drive and Inverness Road, is set within a residential area and contains a detached bungalow. The front of the dwelling faces Inverness Avenue. Ground levels slope gently from south to north.
- 1.2 The site is not within a Conservation Area or subject to any site-specific planning policy designations.

2 The Proposal

- 2.1 Retrospective planning permission is sought for boundary walls to the Inverness Avenue and Fairfax Drive elevations, a porch to the front elevation and layout hardstanding to the front and side of the site.
- 2.2 A boundary wall has been erected along Fairfax Drive, it is some 1.98m high and 13.6m long and is finished in render. Previously, there was a low wall some 1m high, with a fence above some 1.1m high. along this boundary.
- 2.3 A 1.1m – 2m high brick wall has been erected along the boundary facing Inverness Avenue.
- 2.4 A flat roofed porch has been erected to the front elevation facing Inverness Avenue, it is some 1.3m deep, 1.6m wide and 3.1m high and finished in brick. The

porch has a side window on the northern elevation and an entrance door and window to the front. No floor plans have been submitted for the porch; however, this has not prejudiced the assessment of this application. The porch replaces a smaller, pitched roof porch, approximately 1.3m deep, 1.5m wide and 2.4m to the eaves and a maximum 3m high.

- 2.5 An area of hardstanding has been constructed to the front and side, wrapping around the dwelling, some 16m wide and 5m deep, with a total surface area of some 61.22sqm, finished in gravel. Prior to the development, a smaller paved hardstanding was in place.
- 2.6 The application was submitted following an enforcement investigation.

3 Relevant Planning History

- 3.1 22/00328/UNAU_B – Erection of a wall. Ongoing

4 Representation Summary

Public Consultation

- 4.1 Sixteen (16) neighbouring properties were notified of the application by letter and a site notice was displayed. No letters of representation have been received.

Highways

- 4.2 Objection – Currently, the site does not have an authorised vehicle crossover. It should be noted that it would be unlikely to be approved if the applicant applied for a vehicle crossover as it does not accord with the vehicle crossover guidance and any use of the hardstanding to accommodate a vehicle could lead to enforcement action.
- 4.3 No objection to the wall, as it does not impact on sight lines.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework (NPPF) (2021)
- 5.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 5.3 Core Strategy (2007): Policies KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance).
- 5.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM15 (Sustainable Transport Management).
- 5.5 The Southend-on-Sea Design & Townscape Guide (2009)
- 5.6 Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021)
- 5.7 Community Infrastructure Levy (CIL) Charging Schedule (2015)

6 Appraisal

Principle of Development

- 6.1 The principle of altering and extending an existing dwelling is considered acceptable and policy compliant, subject to the development appropriately addressing the relevant detailed planning considerations.

Design and Impact on the Character of the Area

- 6.2 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.
- 6.3 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.
- 6.4 The replacement porch would be some 0.4m wider and 0.5m higher to the eaves than the previous porch and would have a flat roof rather than a sloping roof. The side window replaces a window that was previously in place. Due to the modest size and scale of the development, it is considered that the porch does not significantly harm the character and appearance of the host dwelling and the streetscene more widely.
- 6.5 The wall which fronts Fairfax Drive replaces a low brick wall and hedge to the eastern most part of the frontage and a low brick wall topped with a timber fence to the westmost part of the frontage. The replacement wall is the same height as the original wall and fence however, it is some 2.4m longer. The Fairfax Drive streetscene is characterised by properties with low brick walls or fences or by open frontages. It is considered that the rendered wall along Fairfax Drive would appear prominent, stark, and out of keeping with the streetscene and would result in significant harm to the character and appearance of the host dwelling and streetscene more widely.
- 6.6 The boundary wall along Inverness Avenue would part replace a fence. A further section measuring some 2.9m wide and maximum 1.8m high and minimum 1m high has been erected north of the porch. The new brick wall is some 0.2m higher than the original fence. Front boundary treatment along Inverness Avenue is characterised by low brick walls. Due to the height of the brick wall and the materials used, the wall would appear prominent, stark and out of keeping with the streetscene and would result in significant harm to the character and appearance of the host dwelling and streetscene more widely.
- 6.7 There are examples of areas of hardstanding along Fairfax Drive, particularly at No. 180, 182 Fairfax Drive, as well as Inverness Avenue. The proposed materials for the hardstanding would be permeable, limiting any surface run-off during heavy

rainfall. The hardstanding is not considered to lead to any significantly harmful impacts on the character and appearance of the host dwelling or the streetscene more widely.

- 6.8 For the reasons set out above, the development is therefore considered to be unacceptable and contrary to relevant policies in terms of its impact on the character and appearance of the site, the street scene, and the area more widely.

Amenity Impacts

- 6.9 Local and national planning policies and guidance seek to secure high quality development which protects amenity. Policy DM1 of the Development Management Document specifically identifies that development should protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight. Further advice on how to achieve this is set out in the Council's Design and Townscape Guide.
- 6.10 The replacement boundary treatment would not result in significant harm to any neighbouring properties in any relevant regards.
- 6.11 The hardstanding is some 13m from No. 173 Fairfax Drive, opposite the site, which is a takeaway restaurant. Due to the ambient noise and light created from the traffic on Fairfax Drive, it is not considered that the hardstanding would result in any new significantly harmful amenity impacts on any neighbouring property in any relevant regards.
- 6.12 The porch is not considered to result in any significantly harmful amenity impacts in any relevant regards.
- 6.13 The development is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Traffic and Transportation Issues

- 6.14 Paragraph 111 of the NPPF states 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'.
- 6.15 Policy DM15 of the Development Management Document requires that all development should meet the minimum off-street parking standards. The Southend-on-Sea Vehicle Crossing Policy and Application Guidance dated November 2021 is not an adopted planning policy but is a consideration which is materially and directly relevant to this application and to which due weight should be given in the assessment.
- 6.16 There is no vehicular access to the hardstanding at present and the application does not include a vehicular access and therefore the hardstanding has not been assessed as parking area. Highways officers raise an objection to the hardstanding being used for parking as currently the site does not have an authorised vehicle crossover. The officer notes that an access would be unlikely to be approved as it does not accord with the vehicle crossover guidance. If the

application were considered to be otherwise acceptable and informative would be added to that effect.

- 6.17 The proposal's impact on highway and pedestrian safety is therefore considered to be acceptable and policy compliant.

Equality and Diversity Issues

- 6.18 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have in considering this application and preparing this report had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

Conclusion

- 6.19 For the reasons outlined above, the development is found to be unacceptable and contrary to the relevant planning policies and guidance. As there are no other material planning considerations which would justify reaching a different conclusion, it is recommended that planning permission is refused.

7 Recommendation

- 7.1 **REFUSE PLANNING PERMISSION for the following reasons:**

- 01 The boundary walls along Fairfax Drive and Inverness Avenue are stark and prominent additions to the streetscene and would be materially out of keeping, resulting in significant harm to the character and appearance of the existing dwelling and the wider streetscene. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policies KP2 and CP4 of the Southend-on-Sea Strategy (2007) and the advice contained within the National Design Guide (2021) and the Southend-on-Sea design and Townscape Guide (2009).**

Informatives:

- 1 You are advised that as the development equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See for further details about the Levy.**

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in

determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action via the pre-application service available at https://www.southend.gov.uk/info/200155/make_a_planning_application_and_planning_advice/365/planning_advice_and_guidance/2