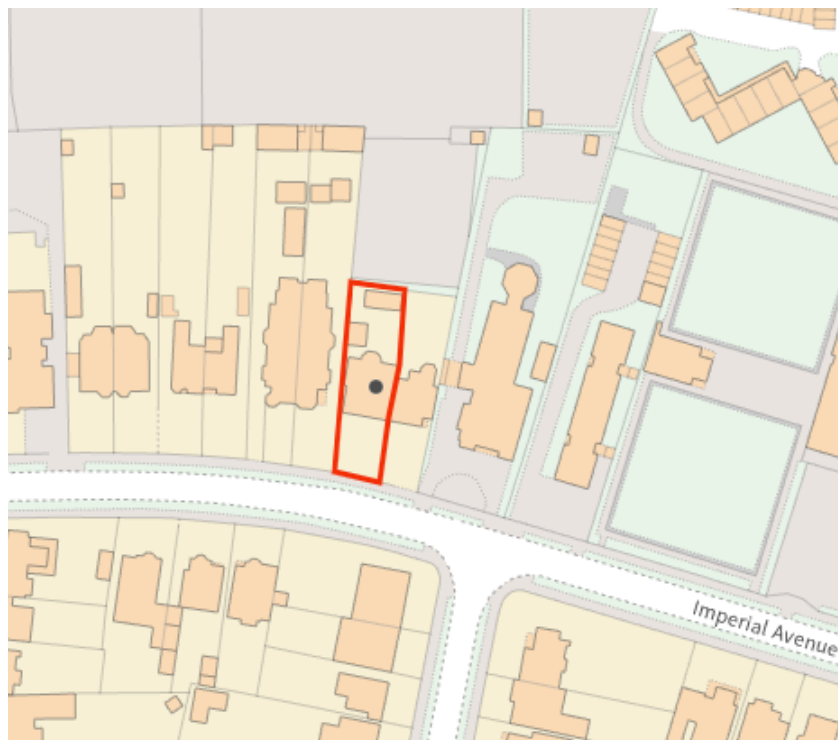


Reference:	23/00946/FUL	
Application Type:	Full Application	
Ward:	Chalkwell	
Proposal:	Layout hard and soft landscaping to front, erect two storage sheds, pergola, bin store, covered store, cycle stand and boundary fencing to front (part retrospective)	
Address:	Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, SS0 8NQ	
Applicant:	Mrs Frances Hickling	
Agent:	Mrs Susan Jones of Susan Jones Consultancy	
Consultation Expiry:	18th August 2023	
Expiry Date:	20th October 2023	
Case Officer:	James Benn	
Plan Nos:	Location Plan; CLA-23260/LP001 Rev B; CLA-23260/LP002 Rev A; CLA-23260/LP0003	
Supporting Documents:	Cover Letter ref. SAJ/SJ/AA626 dated 06.06.2023; Planning Statement dated June 2023	
Recommendation:	REFUSE PLANNING PERMISSION	



1 Site and Surroundings

- 1.1 The application site contains a semi-detached two storey building with rooms in the roof on the northern side of Imperial Avenue. The building is in mixed use with a long-standing day nursery at ground floor level and a residential unit at the upper floors. The works relate to the frontage of the site which is accessed via two existing vehicle crossovers with pedestrian access from Imperial Avenue.
- 1.2 The arrangement of the site's frontage has been obscured in recent years by hoardings and storage of materials etc, which have been the subject of planning enforcement enquiries. More recently the frontage has been reconfigured with hardstanding and substantial fencing, the latter of which is the subject of a recent planning enforcement investigation.
- 1.3 The surrounding area is predominantly residential in character, comprising detached and semi-detached dwellinghouses typically set in generous plots as well as two and three storey high flatted blocks.
- 1.4 The site is not within a conservation area or subject to any site-specific planning policies.

2 The Proposal

- 2.1 Planning permission is sought part-retrospectively to reconfigure the frontage of the site by laying out hard and soft landscaping and erecting two storage sheds, a pergola, a bin store, a covered store, a cycle stand and boundary fencing.
- 2.2 The proposal would subdivide the frontage between the residential unit and the nursery with 1.83m high close board fencing running south to north through the centre. Part of the proposed fencing next to the nursery front entrance door would have a trellis panel attached to the top with an overall height of some 2.13m. There would be three separate pedestrian accesses from Imperial Avenue, one associated with the residential unit and two associated with the nursery. Existing fencing some 1.8m-2.2m high on the eastern and western side boundaries would be retained. The fencing slopes down to some 1m-1.2m high to the front part of the eastern side boundary and it is proposed for the front part of the western side boundary to slope down to match the eastern boundary fencing. To the front part of the western side boundary is an existing hedge which would be retained.
- 2.3 The part of the frontage associated with the residential unit would be towards the western side boundary. It would have close board fencing some 1.8m high and 4.1m wide, an associated pedestrian gate which would front Imperial Avenue and would be set back some 5.8m from the front boundary. To the front of the proposed fencing would be a hardstanding for the off-street parking of 1no. vehicle. The hardstanding would be Charcon Europa (Burnt ker) block paving laid in a herringbone pattern. It would be accessed via an existing vehicle crossover from Imperial Avenue. To the rear of the proposed fencing would be the enclosed private amenity space for the residential unit. Tandur yellow antique limestone paving slabs would be laid in this space. The submitted plans show that some shrubs are proposed within the private amenity space and there are 5no. existing trees.
- 2.4 The part of the frontage associated with the nursery would be towards the eastern side boundary. The front boundary would have a central hedge some 1.6m high and 4.2m wide with low level planting to the front and pedestrian accesses either side which would front Imperial Avenue. Immediately to the rear of the hedge running its full 4.2m width would be close board fencing some 1.5m high. Immediately to the rear of this fencing there would be 2no. commercial bin stores separated by a close board fence some 1.5m high and 0.9m wide which would run south to north, adjacent to the front hedge. This fence would attach to the

front elevation of the proposed covered buggy store which would be timber framed and weather boarded with a felt clad marine ply roof. The buggy store would be some 1.6m high, 4.2m wide and 1m deep. To the flanks of the buggy store there would be two close board fence gates which would provide pedestrian access to and enclose the nursery's front garden area. They would be some 1.5m high and 0.8m-0.9m wide, would front Imperial Avenue when closed and would be set back some 2.9m-3.3m from the front boundary.

- 2.5 Within the nursery's enclosed front garden area set up to the eastern side boundary there would be a timber pergola some 2.2m high, 1m deep and 2.4m wide, 2no. timber clad storage sheds some 1.8m high, 1m deep and 2.7m wide and some soft landscaping consisting of 7no. pleached trees 'Photonia Red Robin' and associated ground cover. To the front elevation of the building there would be shrubs and bird bath and feeding stations enclosed by a white painted picket fence some 0.9m high and a white painted trellis panel some 1.8m high. To the front of the proposed picket fence a cycle stand for 1no. cycle is proposed and the existing semi-mature tree would be retained and its surround would be squared off with bullnose limestone coping stones.
- 2.6 The existing concrete hardstanding to the main nursery area would be infilled as necessary with areas of slab paving replaced with a concrete base and both the existing hardstanding and infilled areas would be finished with a tar spray and shingle dressing. The edges would have concrete black paving in a natural colour. A galvanised steel drainage channel some 0.1m deep would be installed across the width of the main nursery area to the rear of the proposed buggy store.
- 2.7 This application for planning permission has been made following a planning enforcement investigation at the site in relation to the unauthorised fencing and associated storage structures which has been erected. This application seeks an alternative proposal to the existing unauthorised development.
- 2.8 The application is part-retrospective as the existing western and eastern side boundary fencing, and some of the existing soft landscaping, has been undertaken and would be retained.

3 Relevant Planning History

- 3.1 The most relevant planning history of the application site is shown in Table 1 below:

Table 1: Relevant Planning History of the Application Site under the Day Nursery, 43 Imperial Avenue

Reference	Description	Outcome
22/01619/FUL	Extend existing crossover onto Imperial Avenue	Refused.

Table 2: Relevant Planning History of the Application Site under 43 Imperial Avenue

Reference	Description	Outcome
19/00091/FUL	Erect temporary portacabin to front (retrospective) (Amended Proposal)	Permission granted.
18/01583/FUL	Erect temporary portacabin to front (retrospective) (Amended Proposal)	Permission granted.
18/00819/FUL	Erect a temporary portacabin to front (retrospective)	Permission granted.
14/01436/FUL	Erect two storey side extension, roof terrace to rear (Amended Proposal)	Refused.
14/01435/FUL	Erect two storey side extension, roof terrace to rear and balcony to front (Amended Proposal)	Refused.

13/00907/FUL	Erect two storey side extension, roof terrace to rear and recessed balcony to front (Amended Proposal)	Refused.
10/01170/FUL	Erect two storey side extension with roof space accommodation, conservatory, roof terrace to rear and recessed balcony to front.	Refused. Appeal dismissed.
10/01169/FUL	Erect two storey side extension with roof space accommodation, conservatory and roof terrace to rear	Permission granted.
05/00474/FUL	Erect part single/part two storey side extension and conservatory at rear, use part of first floor extension to form office ancillary to ground floor day nursery	Permission granted.
93/0349	Continue use of front lounge by playgroup	Permission granted.
88/1875	Use front lounge by playgroup (25 children 0900-1500 hours)	Refused.

3.2 The most relevant planning enforcement history of the application site is shown in Table 2 below:

Table 3: Relevant Planning Enforcement History of the Application Site

Reference	Description	Outcome
22/00326/UNAU_B	Erection of fences	Under investigation.

4 Representation Summary

Call-in

4.1 This application has been called into Development Control Committee by Councillor Folkard.

Public

4.2 Thirteen (13) neighbouring properties were notified of the application by letter and a site notice was displayed. One representation objecting to the application has been received. Summary of comments:

- Querying whether the application is all retrospective as works have taken place.
- The design and scale of the construction seem to be significantly out of character with the existing architecture on the street. This has created an eyesore in the street.
- The space would be better utilised for parents using the nursery.
- Currently there is illegal parking and disruption to neighbours on the road daily.

[Officer Comment: The comments have been taken into consideration and those matters that are relevant to planning are discussed further in the relevant sections of the report. Other than those stated in the refusal reason of this report, the points of objection raised in the representations were not found to justify refusing planning permission in the circumstances of this case.]

Highways

4.3 No objection.

Environmental Health

4.4 No objection subject to a refuse and recycling condition.

[Officer Comment: If the application was found otherwise acceptable conditions would have

been imposed at the last section of this report which would have been considered to pass the relevant tests of planning law, policy and guidance in the circumstances of this case.]

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 KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment and Urban Renaissance), CP6 (Community Infrastructure)
- 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 and Townscape Guide (2009)
- 5.6 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 and impact on the character and appearance of the area, impacts on neighbours' residential amenity, traffic and transportation matters, and CIL.

7 Appraisal

Principle of Development

- 7.1 The proposal which seeks to provide additional ancillary facilities for the existing day nursery is broadly in line with the central principles of Policies KP2 and CP6 of the Core Strategy which seek that development supports improvements to existing, and the provision of new, facilities to support the needs of education, skills and lifelong learning strategies.
- 7.2 The principle of laying out landscaping and erecting outbuildings, stores and fencing within the curtilage of a building is therefore 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

- 7.3 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.
- 7.4 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 Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.
- 7.5 Policy DM1 of the Development Management Document states that all development should; "add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing,

density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features.”

- 7.6 Paragraph 155 of the Design and Townscape Guide states “Any form of enclosure must be high quality and complementary to the overall scheme design or existing building. Boundary treatment should clearly distinguish between public and private space.”
- 7.7 The streetscene in this part of Imperial Avenue has a strong open character with low front boundary treatments comprising low brick walls and low fences which typically do not exceed 1m high (apart from pillars associated with boundary walls) with some soft landscaping and buildings with relatively deep, spacious frontages. The higher boundary treatments in this part of Imperial Avenue are typically return frontages comprising 1.8m-2m high fences which enclose the private rear gardens of dwellings on corner plots. The proposal would include a substantial amount of close boarded fencing within the frontage varying between some 1.5m-1.8m high (up to 2.13m high where the proposed trellis would be attached to the top of the fencing), which would be solid in appearance and highly visible in the public realm from Imperial Avenue. Other structures proposed in the frontage, including the buggy store some 1.6m high, storage sheds some 1.8m high, trellis some 1.8m high and pergola some 2.2m high would all impact public views from Imperial Avenue to varying material extents due to their height and particularly when the proposed front gates are open. The proposed 2no. bins to the front of the site are poorly sited and without enclosures. Altogether it is considered that the totality of the proposed development, due to its height, layout and extent, and the solid appearance of the proposed fencing, would appear visually prominent, stark, and significantly out of keeping with the spacious setting and overall character of the surrounding area. It would therefore result in significant harm to the character and appearance of the site, the streetscene and the area more widely.
- 7.8 The existing eastern side boundary fencing slopes down towards the front boundary and it is proposed for the western boundary fencing to slope down to the front boundary and to retain the existing hedge to the front part of the western boundary. No objection is raised to these aspects of the proposal which are not considered to cause significant harm to the character and appearance of the site and the surrounding area.
- 7.9 No objection is raised to the proposed soft landscaping in terms of its impacts on the character and appearance of the site and the surrounding area. However, the proposed soft landscaping is relatively limited and it is not considered that it would sufficiently mitigate the harmfully stark and contrived appearance of the proposal.
- 7.10 The extent of the proposed hardstanding is considered a negative aspect of the proposal. However, as it would be generally consistent in appearance with some examples of other such frontages elsewhere in Imperial Avenue and given some soft landscaping is proposed, no objection is raised to it. It is considered that the proposed drainage channel would sufficiently limit any surface run-off during heavy rainfall.
- 7.11 The submitted planning statement claims the proposed fencing would fall under permitted development as it does not exceed 2m in height. Therefore consideration is given to whether the applicant has a realistic permitted development fall-back position. Officers do not consider that the applicant has a fall-back position due to the height and position of the fencing adjacent to the Highway and in the absence of a Certificate of Lawfulness, no material weight for a realistic fall-back position has been identified.
- 7.12 Within the wider streetscene there is a school to the east, Alleyn Court, which has a front boundary fence some 1.8m high. This is a school and not a nursery and as such it benefits from permitted development rights for boundary fences adjacent to the highway up to a maximum of 2m high. This fencing is materially different to the development hereby sought

and does not provide any justification for this development.

- 7.13 The submitted planning statement states that there is lack of space to the rear of the site for the provision of any additional storage. However, it is considered that more discretely located and designed ancillary storage, such as buggy parks and refuse and recycling storage, could potentially be provided at the front of the site in an way which would not result in the significant harm to the character and appearance of the site, or the wider surrounding area that results from this particular proposal. It is similarly noted that any necessary screening/obscurity of the nursery from the public domain, should that be required, could be reasonably achieved in a more sympathetic and appropriate manner than the fencing hereby proposed. No significant public benefits have been identified such as an increased early years provision or education improvement and the public benefits of the proposal are considered limited given its nature. They do not clearly outweigh the significant harm identified as a result of the current proposal.
- 7.14 Within the City there are other examples of nurseries with open frontages with appropriately scaled and sited ancillary storage (e.g. buggy parks and refuse and recycling storage) which has been accommodated and other means of privacy screening, such as opaque window films, which have an acceptable impact on the streetscene. Officers consider that a reasonable remodelling of the frontage including appropriately scaled and sited storage could be achieved within this site however the height, layout and extent of this proposal is unacceptable.
- 7.15 Overall, it is considered that cumulatively the proposed development, by reason of its height, layout and extent, and the solid appearance of the proposed fencing within the frontage, would appear visually prominent, stark, and materially out of keeping with the spacious setting of the surrounding area and would result in significant harm to the character and appearance of the site, the streetscene and the area more widely. Although it is not incumbent on the applicant to do so, no significant public benefits have been identified for consideration such as increased early years provision or education improvement and the public benefits of the proposal are considered limited given its nature. The significant harm identified is therefore not outweighed by the public benefits of the proposal. The proposal is therefore unacceptable and contrary to policy in terms of its impact on the character and appearance of the site, the streetscene, and the area more widely.

Amenity Impacts

- 7.16 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.
- 7.17 The proposal would be separated by some 3.5m from the flank wall of No 45 Imperial Avenue to the west which is subdivided into flats. Noting the some 2m-2.2m height of the existing fencing on this boundary and the separation distance, it is not considered that the development would significantly harm the amenity of the occupiers of the flats at No 45 in any relevant regards.
- 7.18 The proposal would be set up to the shared boundary with No 41 Imperial Avenue to the east. There is an existing fence on this boundary which is some 1.8-2m high. The proposed pergola would be set up to this boundary and would rise marginally above it by some 0.2-0.4m for a length of some 2.4m. Other than the proposed pergola the other aspects of the proposal set up to the shared boundary would be level with or below the existing boundary fencing or would be sufficiently separated from it. Due to the existing boundary relationship and the

marginal height of the proposed pergola above the shared boundary for a length of 2.4m, it is not considered that the proposal would significantly harm the amenity of the occupiers of No 41 in any relevant regards.

- 7.19 All other dwellings are sufficiently removed from the development to prevent any significant harm in any relevant amenity regards.
- 7.20 It is considered that the design, size, siting and scale of the development are such that it does not result in any significant harm to the amenities of the site, the neighbouring occupiers or the wider area in any regard. The development is therefore considered to be acceptable and policy compliant in terms of its amenity impacts.

Highways

- 7.21 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.” 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 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.”
- 7.22 Policy DM15 of the Development Management Document requires that all development should meet the minimum off-street parking standards. A provision of a minimum of one parking space is required for a 2+ bedroom flat. A provision of a maximum of one parking space per full time equivalent staff and waiting facilities where appropriate are required for a nursery.
- 7.23 Inconsistent information has been submitted with regard to the existing parking provision within the submitted documents. The application form states that there is one existing parking space which would be retained. The submitted planning statement states that one parking space would be created for the residential unit. The submitted elevation drawings show a total of three existing parking spaces. The Council’s Highways Team has confirmed that the two existing single vehicle crossovers could accommodate two existing off-street parking spaces. On this basis it is considered that there are two existing off-street parking spaces and the proposal would result in the net loss of one off-street parking space. It is not expressly clear how these existing parking spaces are divided between the residential unit and the nursery.
- 7.24 The proposal would provide one off-street parking space on the frontage for the residential flat which is policy compliant. It would provide one cycle parking space and no off-street car parking for the nursery. The site is in a reasonably sustainable location with bus stops on London Road and Chalkwell Train Station within reasonable walking distance, some 8 minutes and 16 minutes respectively. The submitted planning statement states that most staff and customers live locally and mostly walk to the site. The Council’s Highways Team have raised no objections to the proposal. On this basis, the one cycle parking space provided for the nursery is considered acceptable and would not justify a reasonable reason for refusal of the application in the specific circumstances of this case.
- 7.25 The proposal would not have a harmful impact on parking or highway safety and therefore the proposal is acceptable and policy compliant in highways terms.

Community Infrastructure Levy

- 7.26 The development is not liable for a payment under the Community Infrastructure Levy Regulations 2010 (as amended).

Equality and Diversity Issues

- 7.27 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.

8 Conclusion

- 8.1 For the reasons outlined above the development is found to be unacceptable and fails to comply with the relevant planning policies and guidance. It is considered that cumulatively and in totality that the proposed development, by reason of its height, layout and extent, and the solid appearance of the proposed fencing within the frontage, would appear visually prominent, stark, and materially out of keeping with the spacious setting of the surrounding area and would result in significant harm to the character and appearance of the site, the streetscene and the area more widely. The proposal is therefore unacceptable and contrary to the policy in terms of its impact on the character and appearance of the site, the streetscene, and the area more widely. No significant public benefits have been identified such as increased early years provision or education improvement and the public benefits of the proposal are considered limited given its nature. It is considered that the ancillary features sought from the proposed development and the privacy of the nursery sought from the fencing could be achieved in a more appropriate and sympathetic way to that hereby proposed and as such these matters do not provide any justification for the unacceptable development hereby sought. The significant harm identified is therefore not clearly outweighed by any public benefits of the proposal. Therefore, the application is recommended for refusal.

9 Recommendation

REFUSE PLANNING PERMISSION for the following reason:

01 Cumulatively the proposed development, by reason of its height, layout and extent, and the solid appearance of the proposed fencing within the frontage, would appear visually prominent, stark, and materially out of keeping with the typically spacious setting of the surrounding area and would result in significant harm to the character and appearance of the site, the streetscene and the area more widely. The development is therefore 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 and DM3 and the guidance contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).

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](https://www.southend.gov.uk/info/200155/make-a-planning-application-and-planning-advice/365/planning-advice-and-guidance/2)

Informative

- 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 www.southend.gov.uk/cil for further details about the Levy.**