

Reference:	23/00015/UNAU_B	
Report Type:	Enforcement	
Ward:	Belfairs	
Breach of Planning Control:	Earthworks and formation of retaining wall, steps, walling and hard surfaces to front gardens	
Address:	54 - 56 Arterial Road, Leigh-on-Sea, Essex, SS9 9DA	
Case Opened Date:	07.02.2023	
Case Officer	Gabiella Fairley	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The site is occupied by two terraced buildings, one in use as a single dwelling and the other in use as two flats, on the south side of the A127 Arterial Road, close to the junction with Priory View Road. A service road, parallel to the main highway, to the front of the site, separates the dwellings from the A127 Arterial Road. The area is residential in nature.
- 1.2 The site is not within a conservation area or subject to any site-specific planning policy designations. The A127 is a classified road.

2 Lawful Planning Use

- 2.1 The lawful planning use of the site is for residential purposes as three units within Use Class C3 of the Town and Country Planning (Use Class Order) 1987 (as amended).

3 Relevant Planning History

- 3.1 22/02234/FUL (the "2022 Application") - Layout hardstanding to front with retaining wall and steps (retrospective). Refused (30.01.23).

Reasons for refusal:

- 01 *The hardstanding is not in keeping with and largely sticks out from the rest of the streetscene resulting in a conspicuously incongruent development exacerbated by the absence of any soft landscaping. The development has a detrimental impact on the character of the streetscene and the area more widely. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP4 of the Southend-on-Sea Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Plan (2015); and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).*
- 02 *The hardstanding is contrary to Southend City Council's Vehicle Crossing Policy & Application Guidance (2021). Due to the impermeable materials used in the construction of the hardstanding, and the angle at which the hardstanding is, there would be a significant increase in surface water run-off, which will discharge into the Highway, leading to a significant impact on Highway safety. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP3 of the Southend-on-Sea Strategy (2007); Policy DM15 of the Southend-on-Sea Development Management Plan (2015) and the Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021).*
- 3.2 23/00465/FUL (the "2023 Application") - Remove hardstanding to front, lay out hard and soft landscaping and erect boundary wall and steps to front access door. Refused (10.10.23).

Reasons for refusal:

- 01 *The proposed development by reason of the extent of hardsurface and detailed design, in particular the proposed terracing, would appear prominent and out of keeping with the existing streetscene resulting in a conspicuously incongruent development to the detriment of the character of the application dwellings, the streetscene and the area more widely. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP4 of the Southend-on-Sea Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Plan (2015); and the advice contained within*

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

02 *The application has failed to demonstrate that the proposal as a result of the proposed layout, including the slope of the land, construction details and materials would not result in a significant increase in surface water run-off, which will discharge into the Highway, leading to a significant impact on Highway safety. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP3 of the Southend-on-Sea Strategy (2007); Policy DM15 of the Southend-on-Sea Development Management Plan (2015).*

4 Planning Policy Summary

4.1 The National Planning Policy Framework (NPPF) (2023)

4.2 Planning Practice Guidance (PPG) (2023)

4.3 National Design Guide (NDG) (2021)

4.4 Core Strategy (2007): Policies KP2 (Development Principles), CP3 (Transport and Accessibility); CP4 (Environment and Urban Renaissance)

4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land), DM15 (Sustainable Transport Management).

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

4.7 Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021)

5 The Alleged Planning Breach

5.1 This case is presented to the Development Control Committee because it is considered expedient to issue an enforcement notice and this action requires authorisation by the Committee.

5.2 The identified breach of planning control is:

Earthworks and formation of retaining wall, steps, walling and hard surfaces to these two properties' front gardens.

5.3 The hardsurfacing is some 21.7m wide, across both No. 54 and 56 Arterial Road and some 13.7m long. Engineering works have been undertaken to reduce the ground levels. Steps have been laid out to access the properties and a flat area of hardstanding laid out at the top in front of the dwellings. A new retaining wall has been erected to the edges of the hardstanding and the retaining wall at the highway boundary has been removed. The materials used for the hardstanding have not been demonstrated to be permeable or porous. The hardstanding slopes significantly towards the highway.

6 Efforts to Resolve the Breach to Date

6.1 In February 2023, subsequent to refusal of the 2022 Application, the enforcement case which is the subject of this report was opened. The development now on site is the same as that for which permission was sought and refused retrospectively under the 2022

Application. The development is considered not to be lawful under the provisions of permitted development. 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 2022 and 2023 Applications.

- 6.2 The homeowner was advised the development at the site is unauthorised. The 2023 Application (reference 23/0000465/FUL) was received by the Local Planning Authority (LPA) on 16th March 2023. It proposed to remove the unauthorised hardstanding and to lay out hard and soft landscaping to the front. That application was refused in October 2023 for the reasons set out in the relevant section of this report.

7 Appraisal of the Harm Caused

- 7.1 Through the determination of the 2022 Application this LPA has found that the development on site is unacceptable and contrary to policy for the design and character and highway reasons stated in paragraph 4.1 above. These are expanded upon at paragraphs 6.6, 6.7, 6.9 and 6.10 of the 2022 Application report at Appendix 1.
- 7.2 The reports in Appendices 1 and 2 explain that there are no other dwellings along this section of Arterial Road which have fully hardsurfaced frontages. The surrounding dwellings generally have raised, gently-sloping, soft landscaped frontages, with retaining walls to the highway boundary. The unauthorised development that has taken place is materially out of keeping with and significantly harmful to the character and appearance of the host dwellings and the streetscene more widely.
- 7.3 If has not been demonstrated that the hardstanding is constructed from permeable or porous materials and this combined with the angle of the hardstanding, leads to a lack of infiltration and therefore has the potential to create substantial run off. As a result, the hardstanding presents a material risk of detrimental impacts on the safety of the highway, which it directly borders.
- 7.4 As detailed in the 2022 Application report in Appendix 1, the hardstanding conflicts with the Council's Vehicle Crossover Policy which is not an adopted planning document but is a material planning consideration for the assessment of the development's impacts. The proposal is unacceptable and conflicts with policy in these regards. The Council's Highways team raised an objection to the unauthorised development.
- 7.5 Within the assessment of the 2023 Application, it was noted that the boundary wall that was previously removed is on Council land. This matter will be dealt with under separate legislation available to the Council.

8 Enforcement and Legal Action

- 8.1 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 hardstanding, steps and boundary walls in their entirety, to raise ground levels to the former levels prior to the unauthorised earthworks and to replace the hardstanding with soft landscaping and steps to access the dwellings, together with retaining walls of the same nature as in its previous state and to remove from site all materials resulting from compliance. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated

harm in this instance.

- 8.2 When serving Enforcement Notices the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of six (6) months is considered reasonable for compliance with the above requirements.
- 8.3 Staff consider that taking enforcement action is proportionate and justified in the circumstances of the case and that an enforcement notice should be served on the responsible parties 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 owners in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 8.4 Taking enforcement action in this case may amount to an interference with the owners'/occupiers' human rights. However, it is necessary for the Council to balance the rights of the owners/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 hardstanding, steps and boundary walls in their entirety;**

AND

- b) **Restore the land to its condition before the breach took place including by raising the ground levels, replacing the hard surface with soft landscaping, creating access steps and erecting retaining boundary walls as shown on the existing layout and site section details shown on drawing No P10 for planning application 22/02234/FUL;**

AND

- c) **Remove from site all materials resulting from compliance with both a) and b) above.**

- 10.2 **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 six (6)**

months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.

Appendix 1 – 2022 application ref 22/02234/FUL

Reference:	22/02234/FUL
Application Type:	Full Application
Ward:	Belfairs
Proposal:	Layout hardstanding to front with retaining wall and steps (retrospective)
Address:	54 - 56 Arterial Road, Leigh-on-Sea, Essex
Applicant:	Mr Francesco Sancarolo
Agent:	Mr Paul Aldridge
Consultation Expiry:	5th January 2023
Expiry Date:	31st January 2023
Case Officer:	Gabriella Farney
Plan Nos:	P10
Supporting Documents:	Design and Access Statement
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1 The application site is occupied by two terraced buildings, one in use as a single dwelling and the other in use as two flats, located on the south side of Arterial Road. The dwellings along Arterial Road are set higher than the road, generally accessed via steps through retaining walls and soft landscaping. The site has the only frontage with a different treatment in the immediate locality. A strip of road parallel to the main highway is used to park vehicles, separating the dwellings from the A127. The area is residential in nature, whilst being situated on Arterial Road, which is a classified road. The site is not located within a conservation area or subject to any site-specific planning policy designations.

2 The Proposal

- 2.1 Planning permission is sought retrospectively for the hardstanding to the front of the dwellings. Steps and retaining walls have also been installed to the front of the properties.

3 Relevant Planning History

- 3.1 None.

4 Representation Summary

Public Consultation

- 4.1 Ten (10) neighbouring properties were notified of the application by letter and a site

notice was displayed. No letters of representation have been received.

Parks

- 4.2 No objection

Highways

- 4.3 Object – Concerns regarding surface water run-off on to the highway and potential safety implications, including safe access and egress of vehicles, during adverse weather conditions.

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 and 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 creating a hardstanding is considered acceptable and policy compliant, subject to the proposal 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 Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.
- 6.4 Paragraph 160 of the Council's Design and Townscape Guide regarding parking standards states, "all surfacing materials must be permeable to improve drainage and to prevent excess run off and flooding".

- 6.5 Paragraph 168 of the Councils' Design and Townscape Guide states, "All surfacing materials and construction of parking areas must be porous to allow free draining and minimise run off. All proposals must include provision for soft landscaping to screen and soften the vehicle(s) and to protect the visual amenity".
- 6.6 There are no other dwellings along this section of Arterial Road which have a hardstanding driveway, with parking. This development is not in keeping with the character of the streetscene and largely sticks out. The lack of soft landscaping has led to a visually conspicuous and demonstrably incongruent frontage when compared to the rest of the neighbouring dwellings, which mostly have grass and steps to their front. There is no fallback position to permitted development rights for this development.
- 6.7 It is therefore considered that the design, siting, and appearance of the development are such that it results in significant harm to the character and appearance of the site, the street scene, and the area more widely. The development is therefore considered to be unacceptable in the above regards.

Traffic and Transportation Issues

- 6.8 Policy DM15 of the Development Management Document states: "Development will be allowed where this 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".
- 6.9 The hardstanding is not made up of permeable and porous materials and combined with the angle of the hardstanding, it would lead to a lack of infiltration and therefore substantial run off. As a result, the hardstanding would have potential safety implications on the busy highway, which it directly borders.
- 6.10 The hardstanding is not in accordance with the Council's vehicle crossover policy. That policy is not an adopted planning document but is nevertheless a consideration material relevant for the assessment of this application. The development is unacceptable and not policy compliant in regard to highway issues.

Other Matters

- 6.11 The development has not interfered with any street trees or grass verges. As a result, the works did not have any significant on the ecology and biodiversity of the area.
- 6.12 Due to the nature of the development and ambient traffic noise along this main road it is not considered that the development has resulted in significantly harmful noise and disturbance to the surrounding residential occupiers. The development's impact on residential amenity is therefore acceptable and policy compliant.
- 6.13 As the development has not involved new floorspace or the creation of a new dwelling (Class C3), it benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

Equality and Diversity Issues

- 6.14 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

- 6.15 For the reasons outlined, 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 hardstanding is not in keeping with and largely sticks out from the rest of the streetscene resulting in a conspicuously incongruent development exacerbated by the absence of any soft landscaping. The development has a detrimental impact on the character of the streetscene and the area more widely. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP4 of the Southend-on-Sea Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Plan (2015); and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).
- 02 The hardstanding is contrary to Southend City Council's Vehicle Crossing Policy & Application Guidance (2021). Due to the impermeable materials used in the construction of the hardstanding, and the angle at which the hardstanding is, there would be a significant increase in surface water run-off, which will discharge into the Highway, leading to a significant impact on Highway safety. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP3 of the Southend-on-Sea Strategy (2007); Policy DM15 of the Southend-on-Sea Development Management Plan (2015) and the Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021).

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/200135/make_a_planning_application_and_planning_advice/365/planning_advice_and_guidance/2

Informatives:

1. You are advised that as the proposed extension(s) or change of use to your property equates to less than 100sqm of new floorspace and does not involve the creation of a new dwelling (Class C3), 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 the [Planning Portal \(www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy\)](http://www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy) or the Council's website (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 will result in the Council considering the expediency of enforcement action to seek to remedy the currently identified harm.

Case Officer Signature.....GF.....	Date 30.01.2023
Senior Officer Signature.....SM.....	Date 30.01.2023
Delegated Authority Signature.....PK.....	Date 30.01.2023

Appendix 2 – 2023 application ref 23/00465/FUL

Reference:	23/00465/FUL
Application Type:	Full Application
Ward:	Belfairs
Proposal:	Remove hardstanding to front, layout hard and soft landscaping and erect boundary wall and steps to front access door
Address:	54 - 56 Arterial Road, Leigh-on-Sea, Essex
Applicant:	Mr Francesco Sancarlo
Agent:	Mr Paul Aldridge
Consultation Expiry:	5 th May 2023
Expiry Date:	10 th October 2023
Case Officer:	Gabriella Fairley
Plan Nos:	P10, P11, P12
Recommendation:	REFUSE PLANNING PERMISSION

1 Site and Surroundings

- 1.1** The application site is occupied by two terraced buildings, one in use as a single dwelling and the other in use as two flats, located on the south side of Arterial Road, close to the junction with Priory View Road. The dwellings along this part of Arterial Road are set at a higher level than the highway and are generally accessed via steps, with soft landscaping to the front with a retaining wall to the highway boundary. A service road parallel to the main highway to the front of the site, is used to park vehicles, separating the dwellings from the A127 Arterial Road. The area is residential in nature.
- 1.2** The application site is currently hardsurfaced and engineering works have also been carried out to alter the land levels, these works have been carried out without planning permission and are the subject of an ongoing enforcement investigation.
- 1.3** The site is not located within a conservation area or subject to any site-specific planning policy designations. The A127 Arterial Road is a classified road.

2 The Proposal

- 2.1** Planning permission is sought to replace an existing unauthorised hardstanding to the front of the site with a new landscaped area, incorporating a central path and steps, hard surfacing and stepped grassed areas and to erect a new boundary wall to the front.
- 2.2** There would be an area of hard surface immediately to the front of each dwelling, each some 8m wide, and 4.7m deep. To the front of the proposed hardstanding would be three areas of soft landscaping (grass), which are each stepped down to the

highway, giving a terracing effect. Each grassed area would be some 7.3m wide and 4.1m deep and would be enclosed by brick walls. The brick walls would step down with the grass areas and would vary in height, increasing to some 800mm at the highway boundary. Steps are proposed at the foot of the site, adjacent to the public footpath and at the top of the site, providing access to the dwellings.

- 2.1 The site is subject to an ongoing enforcement investigation reference 23/00015/UNAU_B. The front boundary wall that was previously removed is on Council land and that matter will be dealt with under separate legislation. This application relates to the planning matters only.

3 Relevant Planning History

- 3.1 22/02234/FUL - Layout hardstanding to front with retaining wall and steps (retrospective). Refused (30.01.23)

Reasons for refusal

B1 The hardstanding is not in keeping with and largely sticks out from the rest of the streetscene resulting in a conspicuously incongruent development exacerbated by the absence of any soft landscaping. The development has a detrimental impact on the character of the streetscene and the area more widely. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP4 of the Southend-on-Sea Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Plan (2015); and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2008).

D2 The hardstanding is contrary to Southend City Council's Vehicle Crossing Policy & Application Guidance (2021). Due to the impermeable materials used in the construction of the hardstanding, and the angle at which the hardstanding is, there would be a significant increase in surface water run-off, which will discharge into the Highway, leading to a significant impact on Highway safety. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP3 of the Southend-on-Sea Strategy (2007); Policy DM15 of the Southend-on-Sea Development Management Plan (2015) and the Southend-on-Sea Vehicle Crossing Policy & Application Guidance (2021).

- 3.2 23/00015/UNAU_B - Creation of hardstanding. Ongoing.

4 Representation Summary

Public Consultation

- 4.1 Fourteen (14) 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 Object - The Council takes no responsibility for any future ground movement or subsidence that may occur. The Council will be retaining the boundary wall at the front of the site as this is Council land.

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 and 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 laying out hard surfacing, carrying out landscaping works and the erection of a boundary wall is considered acceptable and policy compliant, subject to the proposal 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 Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved.
- 6.4 Dwellings along this section of Arterial Road mainly have a sloping grassed/soft landscaped area to the front, together with access steps and a low retaining wall to the front. In this context the proposed development would appear prominent and out of keeping. Although the proposal does incorporate soft landscaping in the form of grassed areas, the amount of hardsurfacing and the engineered stepped/terraced design is materially at odds with the gentle, typically informal soft landscaped, slope of neighbouring dwellings. The proposed increased height of the front retaining wall would exacerbate this impact and appear out of keeping, in itself. The proposal would be visually conspicuous and demonstrably incongruent when compared to neighbouring dwellings. This impact is exacerbated by the proposed wide double path, as neighbouring properties have narrow single width paths leading to the front access, which are characteristic in the area.
- 6.5 It is therefore considered that the design, siting, and appearance of the development

are such that it results in significant harm to the character and appearance of the site, the street scene, and the area more widely. The development is therefore considered to be unacceptable in the above regards. The character based reason for refusal of the 2022 application has not been overturned.

Traffic and Transportation Issues

- 6.6** Policy DM15 of the Development Management Document states: 'Development will be allowed where this 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'.
- 6.7** The removal of the highway wall, which is Southern City Council property, is not a planning matter and will be considered under separate legislation. The development would retain pedestrian access to the dwellings.
- 6.8** No information has been submitted with the application to demonstrate how the proposal would address Reason 02 of application 22/02234/FUL. Whilst the application has been amended to include additional soft landscaping and to alter the slope of the land, there remain substantial areas of hard surfacing and furthermore, no construction details and very limited detail of materials have been submitted. The application has failed to demonstrate that surface water run-off from the site would not significantly impact highway safety. The highways based reason for refusal of the 2022 application has not been overturned.
- 6.9** The proposed development is not found to result in any significant parking or highways impacts other than as set out above.

Other Matters

- 6.10** As the development would not involve new floorspace or the creation of a new dwelling (Class C3), it benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

Equality and Diversity Issues

- 6.11** 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 Equality Act 2010 (as amended). They have concluded that the decision recommended will not conflict with the Council's statutory duties under this legislation.

Conclusion

- 6.12** For the reasons outlined, the proposed 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 reason:

- 01** The proposed development by reason of the extent of hardsurface and detailed design, in particular the proposed terracing, would appear prominent and out of keeping with the existing streetscene resulting in a conspicuously incongruent development to the detriment of the character of the application dwellings, the streetscene and the area more widely. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP4 of the Southend-on-Sea Strategy (2007); Policies DM1 and DM3 of the Southend-on-Sea Development Management Plan (2015); and the advice contained within the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009).

- 02** The application has failed to demonstrate that the proposal as a result of the proposed layout, including the slope of the land, construction details and materials would not result in a significant increase in surface water run-off, which will discharge into the Highway, leading to a significant impact on Highway safety. This is unacceptable and contrary to the National Planning Policy Framework (2021); Policy CP3 of the Southend-on-Sea Strategy (2007); Policy DM15 of the Southend-on-Sea Development Management Plan (2015).

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

Informatives:

- 1.** You are advised that as the proposed extension(s) or change of use to your property equates to less than 100sqm of new floorspace and does not involve the creation of a new dwelling (Class C3), 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 the [Planning Portal \(www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy\)](http://www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy) or the Council's website (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 will result in the Council considering the expediency of enforcement action to seek to remedy the currently identified harm.

Case Officer Signature.....	GF.....	Date	04.10.2023
Senior Officer Signature.....	CG.....	Date	09.10.2023
Delegated Authority Signature.....	PK.....	Date	10.10.2023