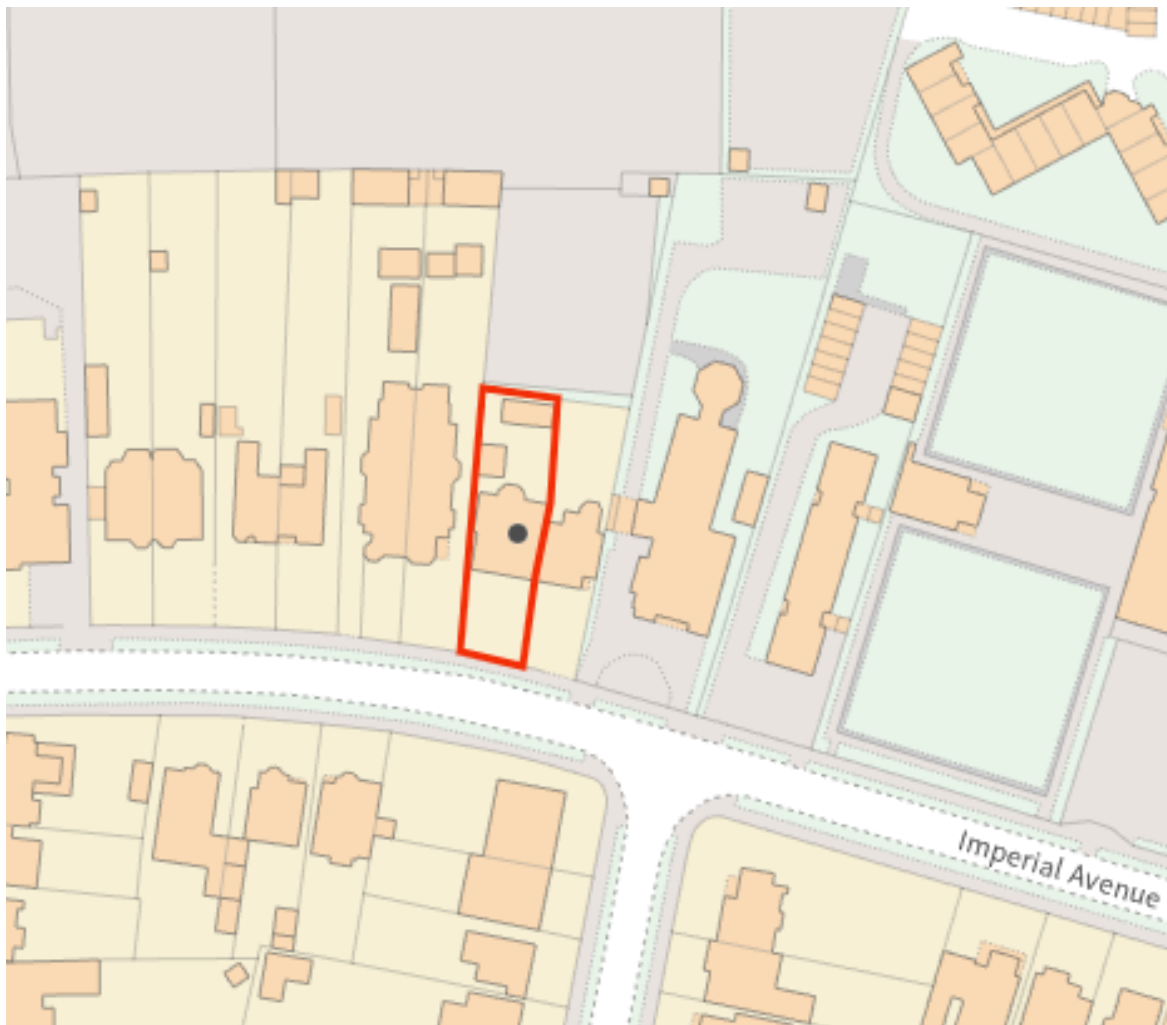


Reference:	22/00326/UNAU_B	
Report Type:	Enforcement	
Ward:	Chalkwell	
Breach of Planning Control:	Erection of fences, sheds, stores and laying out of a hardstanding within the front garden	
Address:	Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, SS0 8NQ	
Case Opened:	25th November 2022	
Case Officer:	James Benn	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The 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 day nursery at ground floor level and a residential unit at the upper floors. The frontage of the site 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 this planning enforcement investigation. Three sheds were also installed within a secluded part of the frontage.
- 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 Lawful Planning Use

- 2.1 The lawful planning use of the site is mixed consisting of a day nursery at ground floor level considered to be within Use Class E and a dwelling at first floor level within Use Class C3 of the Town and Country Planning (Use Class Order) 1987 (as amended).

3 Relevant Planning History

- 3.1 There is extensive planning history for this site. The most relevant items for the determination of this case are listed below.

Planning Applications:

- 3.2 23/00946/FUL (the "2023 Application"): 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). Refused.

Reason for refusal:

"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)."

- 3.3 22/01619/FUL - Extend existing crossover onto Imperial Avenue – Refused

- 3.4 19/00091/FUL - Erect temporary portacabin to front (retrospective) (Amended Proposal) – Approved – Expired 31.03.2019
- 3.5 18/01583/FUL - Erect temporary portacabin to front (retrospective) (Amended Proposal) – Approved – Expired 31.01.2019
- 3.6 18/00819/FUL - Erect a temporary portacabin to front (retrospective) – Approved – Expired 22.09.2018

Enforcement cases:

- 3.7 18/00095/UNAU_B – Temporary portacabin to front – Temporary Permission Granted – Case Closed
- 3.8 21/00259/UNAU_B - Breach of access arrangements to Day Nursery – Arrangements are permitted development whilst construction is taking place – Case closed

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), CP4 (Environment and Urban Renaissance).
- 4.5 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land).
- 4.6 The Southend-on-Sea Design and Townscape Guide (2009)

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:

The erection of a boundary fence on the western side boundary, fences and associated buggy, waste and other stores within the front garden and the laying out of a hardstanding to the frontage.

- 5.3 The western side boundary fence is some 2m-2.2m high. The fences and associated pushchair and waste stores within the front garden are between some 2.2m-2.5m high, apart from the front sections of the fences nearest the highway which slope down to some 1m-

1.2m high. The area of hardstanding is some 175 sqm.

- 5.4 It is understood from publicly available historic images that the eastern boundary fence which is some 1.8m-2m high was erected sometime between 2014-2017 prior to the development identified above and likely under permitted development.
- 5.5 The 3m high trellis structure erected next to the eastern side boundary is temporary and is associated with the shaping of the plants. As they are part of the soft landscaping, they not considered to be development as set out in Section 55 of the Town and Country Planning Act 1990.

6 Efforts to Resolve the Breach to Date

- 6.1 In November 2022, a complaint was received by the Council alleging that fences had been erected. The owner was advised the development including the fences, together with the hardstanding are unauthorised which resulted in the submission of a part-retrospective planning application for an alternative proposal to remodel the front garden. The 2023 Application (ref. 23/00946/FUL) for the alternative proposal was received by the Local Planning Authority (LPA) on 6th June 2023 and was refused at the Development Control Committee meeting on 18th October 2023.
- 6.2 The development at the site 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 inspections undertaken by staff.

7 Appraisal of the Harm Caused

Design and Impact on the Character of the Area

- 7.1 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.
- 7.2 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.
- 7.3 The fences and hardstanding are visible from the public realm. 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. Where they exist, 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 extent, height and layout of the fences and associated pushchair, waste and other stores and sheds within the front

garden of the subject site together with their solid appearance, appears incongruous, stark, and significantly out of keeping with the spacious setting and overall character of the surrounding area. It is considered that they result in significant harm to the character and appearance of the site, the streetscene and the area more widely.

- 7.4 The hardstanding is generally consistent in appearance with some, albeit limited, examples of other such frontages elsewhere in Imperial Avenue. Therefore, no significant harm to the character and appearance of the site and surrounding area has been identified with respect to the hardstanding.
- 7.5 Due to the position of the western side boundary fence set back sufficiently from the public highway, and the soft landscaping to the front section of the western side boundary, it is not considered that this part of the unauthorised development results in any significant harm to the character and appearance of the site and surrounding area.

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 fences within the site and the associated pushchair, waste and other stores and sheds in the front garden in their entirety and remove from site all materials resulting from compliance with the requirements of the notice. As an alternative to the removal of the fences the site owner could reduce them to no more than 1m in height to comply with permitted development limitations. It is considered that there are no lesser steps that could reasonably remedy the identified breach or associated harm in this instance.
- 8.2 By not enforcing against the installed hardstanding or the erected western side boundary fence, 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 western side boundary fence.
- 8.3 When serving Enforcement Notices the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of three (3) months is considered reasonable for compliance with the above requirements.
- 8.4 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.
- 8.5 Taking enforcement action in this case may amount to an interference with the owner/occupier's human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control

land within its area in the public interest.

9 Equality and Diversity Issues

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

10 Recommendation

10.1 AUTHORISE ENFORCEMENT ACTION to:

a) Remove from the site:

- i) The central fencing which runs from the public highway to the nursery front entrance (annotated as Fencing A in Figure 1 below).**
- ii) The central fencing which starts some 5.4m from the public highway and runs to the nursery front entrance (annotated as Fencing B in Figure 1 below).**
- iii) The fencing fronting the public highway set back some 6m from it (annotated as Fencing C in Figure 1 below).**
- iv) The fencing fronting the public highway set back some 5.4m from it (annotated as Fencing D in Figure 1 below).**

OR

b) Reduce the height of the fences stated in step a) above to no more than 1m.

AND

c) Remove from the site the 3no. sheds, pushchair store and bin store (annotated as such in Figure 1 below).

AND

d) Remove from site all materials resulting from compliance with a), b) and c).

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 three (3) months and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**



Figure 1: Drawing no. CLA-23260/LP003 (Existing Site Plan) from refused planning application ref. 23/00946/FUL annotated by LPA officers.