



Appeal Decisions

Site visit made on 25 April 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 16 May 2025

Appeal A: Ref APP/D1590/C/24/3347242

Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, Essex SS0 8NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Frances Hickling (Imperial Day Nursery) against an enforcement notice issued by Southend-on-Sea City Council.
 - The enforcement notice, numbered 22/00326/UNAU_B_01, was issued on 6 June 2024.
 - The breach of planning control as alleged in the notice is erection of fences, sheds, stores and laying out of a hardstanding within the front garden.
 - The requirements of the notice are 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 Annex C attached to the notice).
 - 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 Annex C).
 - iii) The fencing fronting the public highway set back some 6m from it (annotated as Fencing C in Annex C 1).
 - iv) The fencing fronting the public highway set back some 5.4m from it (annotated as Fencing D in Annex C).
 - 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 Annex C).
 - AND
 - d) Remove from site all materials resulting from compliance with a), b) and c).
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (g) of the Town and Country Planning Act 1990 as amended. Since the appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Appeal B: Ref APP/D1590/W/24/3336412

Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, Essex SS0 8NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Frances Hickling against the decision of Southend-on-Sea City Council.
 - The application Ref 23/00946/FUL, dated 6 June 2023, was refused by notice dated 20 October 2023.
 - The proposed development is hard and soft landscaping, boundary fencing, pergola, 2 no storage sheds, bin store for 2 no commercial wheelie bins, covered buggy store, 1 no parking space and 1 no cycle stand on site frontage.
-

Decisions

1. It is directed that the enforcement notice be corrected by:
 - removing "sheds" in Section 3;
 - replacing "C 1" with "C" in Section 5 a) iii);
 - removing Section 5 a) iv); and
 - removing "3no. sheds," in Section 5 c).
2. Subject to the above corrections, Appeal A is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely: the erection of fences, stores and laying out of a hardstanding within the front garden on the land shown edged black on the plan at Annex B attached to the notice.
3. Appeal B is allowed and planning permission is granted for hard and soft landscaping, boundary fencing, pergola, 2 no storage sheds, bin store for 2 no commercial wheelie bins, covered buggy store, 1 no parking space and 1 no cycle stand on site frontage at Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, Essex SS0 8NQ in accordance with the terms of the application, Ref 23/00946/FUL, dated 6 June 2023, subject to conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; CLA-23260/LP001 Rev B; CLA-23260/LP002 Rev A; CLA-23260/LP0003.

Applications for costs

4. Applications for costs were made by the appellant against Southend-on-Sea City Council. These applications are the subjects of separate Decisions.

Procedural Matters

5. I am making several corrections to the notice, chiefly due to success under ground (c). I am also making a correction of what appears to be a simple typographical error (there is no Annex C 1) without any prejudice caused to the parties.
6. Appeal B comprises an alternative scheme as regards the site frontage relative to the 'as built' scheme under Appeal A.

Appeal A ground (c)

7. For success on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice do not constitute breach a planning control.

Sheds

8. The three small sheds are modest in size, apparently have no physical attachment to the ground and (given these features and the evidence I seen that they are moved around the appeal site from time to time) do not appear to have any significant degree of permanence. Indeed, one seems to have

moved position since the issue of the notice and the plan contained in Annex C. Consequently, I do not find them to be operational development requiring planning permission and their presence is not a breach of planning control.

9. For these reasons, Ground (c) succeeds in respect to the sheds and I am correcting the notice accordingly.

Fencing D

10. This fence is set back some 5.4m from the highway, providing as it does provision for vehicle parking between it and Imperial Avenue. Accordingly, and as a matter of fact and degree, I do not consider that the function of the enclosure is to clearly define the boundary of the property from the highway - and it is not perceived in that regard. I do not therefore conclude, according to well-established principles, that the fence is adjacent to the highway.
11. It is not in dispute that the fence is less than 2m in height. Therefore it benefits from general planning permission afforded by Article 3(1), Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) and does not constitute a breach of planning control.
12. For these reasons, ground (c) succeeds in respect to Fencing D and I am correcting the notice accordingly.

Appeal A ground (d)

13. For success under this ground, I must be satisfied on the balance of probabilities that no enforcement action was possible on the date the enforcement notice was issued. However, as this appeal submissions on ground (d) relate only to the sheds which have been the subject of a successful ground (c) appeal, it is no longer necessary for me to consider this ground of appeal.

Appeal A ground (a) and the deemed planning application; Appeal B

Main Issues

14. The main issue in each appeal is the effect of the appeal developments upon the character and appearance of the site, streetscene and area.

Reasons

15. Notwithstanding the Council's general submissions, locally there is a diverse range of boundary treatments and property frontages visible from the highway with no particularly predominant character which either of the appeal developments fails to respect.
16. Notably, several local boundary treatments are high where they fall adjacent to the highway¹ whereas the fencing of the 'as built' scheme in Appeal A is largely set back by several metres by parking bays which afford an element of openness upon the frontage abutting the highway. The front bay arrangement and moderate heights of the proposed enclosures in Appeal scheme B (including the front hedging and entrance gates) are similarly acceptable.

¹ Including the very extensive close-boarded fencing serving the Essex County Bowling Club, with very long sections directly abutting the highway, quite close to the appeal property and on the same side of Imperial Avenue at No 21.

17. Neither the bin store or the buggy store are visible upon the streetscene in either appeal scheme (or, at least, not more than to a very limited degree). Each are, in any respect, neatly designed and aesthetically pleasing.
18. The degree of fencing upon the frontage under both schemes is reasonably necessary to separate the private residential section from the commercial nursery section. It does not in any respect appear excessive or incongruous. Such arrangements reflect the appeal property's lawful uses and an observer would appreciate the appearance within that context, and not on the basis of a sole residential use. Commercial properties, and those which contain both residential and commercial activities, often appear as just that with little expectation for them to appear otherwise. Further, close-boarded fencing (which is the predominant feature in both schemes) is a common feature which is not alien to property frontages and enclosures, as seen locally.
19. Even the highest enclosures under Appeal scheme A are not in my view substantially taller than would be permitted under the GPDO, and that is also an important consideration. Further, the stepping down of upper sections of fencing towards the highway successfully reduces their visual effect.
20. For all of the above reasons, I do not find that either appeal scheme appears (or would appear) visually prominent, stark or materially out of keeping within the local context. No harm is caused (or would be caused) to the character and appearance of the site, streetscene and area. Accordingly, there is no conflict with Policies KP2 and CP4 of the Council's Core Strategy (2007) or with Policies DM1 and DM3 of the Council's Development Management Document (2015) as supported by the National Design Guide (2021) and the Southend-on-Sea Design and Townscape Guide (2009). For the same reasons there is no conflict with the design principles of the National Planning Policy Framework.
21. The appeal schemes (Appeal A and B) accord with the development plan as a whole, and there are no other considerations which outweigh this finding. Accordingly, ground (a) succeeds in respect of Appeal A and I will grant planning permission in respect of the developments in both Appeal A and Appeal B.

Conclusions

Appeal A

22. For the reasons given above I conclude that the appeal should succeed on grounds (c) and (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The enforcement notice will be quashed. In these circumstances, ground (d) does not need to be considered (as I have explained above) and it is no longer necessary to consider ground (g).

Appeal B

23. For the reasons given above I conclude that the appeal is allowed, and I will grant planning permission (with commencement and plans conditions).

Andrew Walker

INSPECTOR