



Appeal Decision

Site visit made on 18 March 2021

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/C3430/W/20/3253111

Springhill House, Springhill Cottage, Springhill Lane, Lower Penn WV4 4TJ

- 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 Sandhills Investment Ltd against the decision of South Staffordshire Council.
 - The application Ref 19/00048/FUL, dated 23 January 2019, was refused by notice dated 20 May 2020.
 - The development proposed is the construction of a new building for use as a D1 nursery (part retrospective) drainage works to the rear of the nursery (retrospective) and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new building for use as a D1 nursery (part retrospective) drainage works to the rear of the nursery (retrospective) and associated works at Springhill House, Springhill Cottage, Springhill Lane, Lower Penn WV4 4TJ in accordance with the terms of application reference 19/00048/FUL, dated 23 January 2019, subject to the conditions set out in the Schedule at the end of this decision.

Application for costs

2. An application for costs has been made by Sandhills Investment Ltd against South Staffordshire Council. This application is the subject of a separate Decision.

Procedural Matter

3. I note that the application has been made retrospectively. At my site visit I could see that the development subject to appeal was substantially complete and in use.

Main Issues

4. The main issues are:
 - Whether the proposal is inappropriate development within the Green Belt;
 - The adequacy of the BREEAM standard of the building and drainage provision; and,
 - Whether Travel Plan and monitoring requirements can be met.

Reasons

Whether the proposal is inappropriate development

5. Paragraph 145 of the National Planning Policy Framework (the Framework) advises that a local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt. Exceptions are listed which include at point g) the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
6. Policy GB1 of the Local Plan for Staffordshire, Core Strategy Development Plan Document (December 2012) (CSDPD) is aligned with the content of the Framework. The policy indicates that proposals compliant with national guidance will be permitted.
7. The appeal building has replaced an agricultural building which previously stood on the same part of the site and therefore has been erected on previously developed land. I note this was a factor in the approval of planning permission for the nursery building granted by the Council under application reference 18/00354/FUL.
8. I do not have the precise dimensions of the historic agricultural building the nursery has replaced, but the plan information and the delegated report evidenced suggests it was similar in size, albeit a different shape. There is also evidence that a further substantial sized agricultural building (a haybarn) has been demolished to the rear of the nursery, within the red edge boundary.
9. The difference between the building subject to appeal and that to which consent was granted equates to an approximate 1 metre depth increase to the approved footprint. Its overall height remains the same. As currently erected, it is therefore marginally larger than the nursery building which has already obtained planning permission from the Council.
10. The appellant refers me to a further exception relating to proportionate additions to a building within the Framework. However, the approved nursery building cannot be said to exist when applying Green Belt policy. This is because the change is an integral component of the rear elevation of the building currently erected. Furthermore, there is no substantive evidence confirming the building was completed or operational before the change subject to appeal arose. A materially different building has therefore been erected on the site.
11. Nonetheless, considering the plan information before me the nursery building erected is no larger or more conspicuous than the agricultural buildings which previously stood on the site. In gauging both the spatial and visual implications apparent, the overall impact of the size increase is negligible to the openness of the Green Belt.
12. Thus, the development does not fall outside of the exceptions listed by the Framework bearing in mind the site history and the other buildings which have been demolished. Those factors as well as there being no significant impact on openness lead me to the conclusion that the exception listed in paragraph 145 (g) is met.

13. Overall, I do not find that the appeal scheme is an inappropriate form of development within the Green Belt as defined by the Framework. It also accords with Policy GB1 of the CSDPD.

BREAAM standard/ drainage

14. The external dimensions of the building are referenced by the appellant to be approximately 1038 sq m. Policy EQ5 of the CSDPD seeks to encourage the inclusion of low carbon technologies and specifies that non-residential development over 1000 sq. metres should be built to the BREEAM 'Excellent' standard. The approach is broadly consistent with the provisions of the Framework which supports the transition to a low carbon future.
15. I realise that the policy does not specify if the measurement is to be taken internally or externally from a building. However, the use of an external measurement is reasonable. This is because it encompasses the higher value and the wording includes the term 'over' in its specification. I am therefore satisfied reference to the external measurement is warranted.
16. I acknowledge that the building does not achieve the BREEAM Excellent standard but is instead evidenced as being originally designed to achieve a 'Pass' rating. The appellant has stated that this is because the initial design phase did not include such provisions, and that retrospective action to achieve an excellent standard is not feasible. Furthermore, confirmation of a 'pass' rating is still subject to agreement.
17. I appreciate that there would be significant difficulty in seeking to retrofit the property to achieve such an excellent rating. Even so, the policy requirements are clear and facilitate important environmental improvements.
18. With respect to drainage matters. The existing drainage provision system serving the building is suggested by the appellant to have been in use for around 24 months. However, there is no indication from the Council or statutory consultees this arrangement is acceptable, factoring the proximity of controlled waters.
19. Nevertheless, based on the evidence before me there is no reason to discount that adequate drainage provision for wastewater would not be able to be managed or adapted in line with local requirements. Whilst there are separate consenting regimes to cover this issue, they are complementary to the controls within the planning system.
20. Therefore, subject to a condition which ensures appropriate details can be agreed and implemented the development would be able to provide adequate drainage. This would be in accordance with Policy EQ7 of the CSDPD which aims to protect ground water from pollution and to secure appropriate drainage infrastructure for all new development.
21. Overall, I find that there would be conflict with Policy EQ5 of the CS.

Travel Plan

22. I note that Paragraph 111 of the Framework advocates that all developments that will generate significant amounts of movement should be required to provide a travel plan. The development results in a material

uplift in traffic movements on the local highway network and therefore warrants a travel plan to ensure highway safety and transportation management interests are respected.

23. Whilst a travel plan has been submitted in the evidence neither the Council nor the Highway Authority have indicated it meets local monitoring requirements. In that context, I accept there is scope for amendment to the submitted travel plan to be agreed through a planning condition when applying the relevant tests in national guidance. During the appeal process the appellant has also provided a Unilateral Undertaking (UU) securing a financial contribution towards the travel plans monitoring costs.
24. I am satisfied that the completed obligation complies with relevant legal tests indicated in the Framework and Planning Practice Guidance. Accordingly, a combination of a condition and the legal agreement would satisfy travel plan requirements considered as a whole. Subject to such provision I find no conflict with the aims of the Framework in relation to highway safety and transportation interests.

Other considerations

25. The appellant notes that the nursery employs 28 full time staff members, and a further 3 part time staff. Thus, I recognise that the development provides significant employment opportunities and economic benefits to local people.
26. I am also cognisant that working families are reliant on childcare and that such service provision is offered to the local community. I note that there are duties incumbent under Article 8 of the Human Rights Act, and Article 3(1) of the United Nations Convention on the Rights of the Child as further matters raised which I have had regard to. Those legal provisions support the best interests of children and I accept that the nature of nursery service provision is undertaken with that aim in mind. Consequently, all those points are important considerations in my overall assessment of the acceptability of the scheme and carry significant weight.
27. The Council concur that the permission granted under 18/00354/FUL has been implemented. On that basis, the main parties also acknowledge that a fall-back position exists in that subject to alteration to the rear façade of the building it would be able to be adapted to comply with the approved plans. The appellant has indicated the intention to do that should the appeal not be successful. Therefore, in that context I acknowledge that refusal of the appeal would lead to the realistic prospect of similar development still being erected on the land.
28. I note there are public representations to the scheme covering a range of issues including, but not limited to: breaches of planning control; lighting; highway safety issues and consent for the roadworks to allow access; traffic; harm to the character of the area; as well as ecology and biodiversity impacts. I have carefully considered those points, but highway safety, character and biodiversity related matters are not in dispute and the planning history to the site is also material. The access and parking area have already been formed and implemented in accordance with previously consented details. There are also conditions which can be applied in relation to lighting and drainage.

Planning Balance

29. Although there is conflict with Policy EQ5 I am cognisant that the design and build process results in considerable constraints to achieving an excellent standard, retrospectively. There are also components of the scheme which would alleviate its carbon footprint in terms of the photovoltaic roof panels installed, travel plan, cycle storage facilities implementation as well as electric vehicle charging points. I have therefore considered those aspects in my assessment, when measured against the policy shortfall evident.
30. The appeal proposal also provides important services within the area and there is realistic prospect the building could be reduced in size in accordance with the extant planning consent. Moreover, if the building had proceeded in line with the approved design and extended thereafter the main building would still have achieved a BREEAM standard rating.
31. On balance, bringing all relevant points together I find the benefits of allowing the scheme to outweigh the conflict with the development plan taken as a whole.

Conditions and Conclusion

32. The Council have suggested several planning conditions which I have considered. A condition linking the approved development to the submitted plans is required for the avoidance of doubt and to allow an appropriate route for any future modifications, if required.
33. Conditions limiting the operational hours of the business as well as delivery times are necessary to protect neighbouring residential amenity. I have made minor modifications to the suggested external lighting condition which is also required to protect amenity. A condition limiting the number of children attending the nursery is required in the interests of highway safety and management of the road network.
34. Subject to modifications to allow enforceability, implementation and where appropriate retention, conditions requiring: demonstration of a BREEAM 'pass' rating; electric vehicle charging points and cycle storage facilities; travel plan monitoring implementation are necessary in the interests of enabling carbon reduction improvements and promoting sustainable transport provision.
35. The suggested drainage condition is necessary because of potential impacts to controlled waters and because it is complimentary to other consent regimes outside of the planning system.
36. For the reasons given above the appeal succeeds.

M Shrigley

INSPECTOR

Schedule of conditions

1. The works approved under this planning permission are shown on the following plans and documents:

Amended Site Layout Plan Drawing No 700 Rev R; Amended Location Plan Drawing No 100 Rev D; Drawing No 857 Rev A 'General Arrangements Plans Elevations'; Drawing No 851 Rev B2 'Ground Floor Plan'; Drawing No 853 Rev A1 'First Floor Plans'; Drawing No HLS @Hard Landscape Scheme'; Drawing No FWD Rev B 'Foul Water Drainage'; Drawing No SWD 'Surface Water Drainage Plan'; Drawing No BN 'Bin Store Plan'; External Lighting Plan and lighting details by Lighting Design Solutions; Bin Store Plan Drawing No BN; Drainage Tank Specifications (1150-FWKCB47-BIOFICIENT 34 TO 80 SHEET); Drawing No 800 Rev C 'Elevations, Floor Plans and Signage'; Drawing No 856 Rev C 'Front and Side Elevations Showing Solar Panels'; Travel Plan by Banners Gate Dated September 2019; Sandhill Road Sign Entrance Plans; Electric Box Plan CC1429 1150-FWKCB47-BIOFICIENT 47.

2. The use hereby permitted shall only take place between the following hours: 07:30 – 18.30 Mondays to Fridays; and not at all on Saturdays, Sundays, Bank and Public Holidays. Any deliveries to the site shall take place within the above operating hours.
3. Notwithstanding the details shown on the approved External Lighting Plan and lighting details by Lighting Design Solutions 'The lighting plan' the permission hereby granted does not grant or imply consent for the installation of any additional means of lighting on the site or the building. Unless otherwise agreed by the Planning Authority.
4. Within 2 months of the date of this permission evidence of how the development has achieved a BREEAM 'pass' rating shall be submitted to and approved in writing by the Planning Authority. All measures to achieve the minimum of a 'pass' rating shall be fully implemented within 9 months of the date of this permission and retained as such for as long as the development remains in use.
5. The nursery building hereby approved shall maintain a maximum operating capacity for 105 children, unless otherwise agreed in writing by the local planning authority.
6. Within 2 months of the date of this decision, full details of how the approved Travel Plan by Banners Gate dated September 2019 shall be monitored over a 5-year period, shall be submitted to and approved in writing by the local planning authority. The approved details shall be fully implemented thereafter.
7. Within 2 months of the date of this decision, details of active charging infrastructure and cabling for two electric vehicles within the site car park shall be submitted to and approved in writing by the local planning authority. The approved electric vehicle charging facilities shall thereafter be installed within 2 months of approval of the details and thereafter retained for those purposes only, for the life of the development.
8. Within 2 months of the date of this decision, details for a minimum of four cycle parking spaces in a secure and weatherproof store, in an accessible location within the site curtilage shall be submitted to and approved in writing by the local planning authority. The cycle parking facility shall thereafter be installed within 2 months of approval of the details and retained for those purposes only, for the life of the development.

9. Within 2 months of the date of this decision, details of the long-term management and maintenance of foul sewage drainage provision serving the development shall be submitted to and approved in writing by the local planning authority. Within 2 months of approval the agreed foul drainage details shall then be installed, managed, and maintained in accordance with the approved details for the life of the development unless written consent is given to any variation.