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# Appeal Decision

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

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## Appeal Ref: APP/C3430/W/22/3293616

### Sandhill Day Nursery, 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 under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr D Basra against the decision of South Staffordshire District Council.
  - The application Ref 21/00947/VAR, dated 27 August 2021, was refused by notice dated 17 February 2022.
  - The application sought planning permission for 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, without complying with a condition attached to planning permission granted by appeal Ref. APP/C3430/W/20/3253111, dated 21 April 2021.
  - The condition in dispute is No. 4 which states that: *"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."*
  - The reason given for the condition is: *"in the interests of enabling carbon reduction improvements."*
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Due to the issues involved and the information already provided by the parties, I consider the appeal can be determined without the need for a site visit. The appellant and the Council were consulted on this approach and neither have objected to the appeal proceeding on this basis.

### Main Issue

3. The main issue is whether the condition is necessary and reasonable having regard to the requirements of Policy EQ5 of the South Staffordshire Core Strategy (2012) and its aim to minimise the environmental impact of development.

### Reasons

4. Policy EQ5 states that non-residential development over 1000m<sup>2</sup> should be built to BREEAM 'Excellent' standard. The appellant states that the development measures 1038m<sup>2</sup> externally but 958.6m<sup>2</sup> internally. These figures are not

disputed. The policy is not specific as to whether the 1000m<sup>2</sup> threshold should be an internal or an external measurement.

5. The appellant has provided emails from two BREEAM professionals who have confirmed that net internal area is used for BREEAM assessments. However, the threshold for when that assessment is triggered is a separate matter to what area that assessment is based on. There is no inconsistency. It simply means that, when the requirement for the assessment is triggered, the assessment is based on the internal area.
6. The Inspector of the previous appeal also acknowledged that the policy does not specify if the 1000m<sup>2</sup> should be an internal or external measurement, but considered that the use of an external measurement is reasonable. From the evidence provided, I see no reason to come to a different view.
7. The appellant advises that there would be difficulty in retrofitting the property in order to achieve a 'Pass' rating as the work required would be disrupting to the current operation of the business and could necessitate the building being demolished. However, it is apparent from paragraph 16 of the previous appeal decision that the building was originally designed to achieve a 'Pass' rating. As such the disruption of the scale suggested by the appellant seems unlikely. In any case, even if some disruptive additional works would now be required, this does not justify setting aside a long established policy on the basis that the development has proceeded without complying with the condition.
8. In summary, the condition is reasonable and necessary to minimise the environmental impact of development, as required by policy EQ5.

### **Conclusion**

9. For the reasons given above, and taking account of all other considerations, I conclude that the appeal is dismissed and the condition be retained in its original form.

*Andrew Owen*

INSPECTOR