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## Appeal Decisions

Site visit made on 14 February 2024

**by A Veevers BA(Hons) DipBCon MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 April 2024**

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### **Appeal A Ref: APP/C3430/W/23/3327663**

#### **58A 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 Mr Mariusz Wojcik against the decision of South Staffordshire Council.
  - The application Ref is 23/00437/FULHH.
  - The development proposed is erection of outbuilding.
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### **Appeal B Ref: APP/C3430/W/23/3327681**

#### **58A 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 Mr Mariusz Wojcik against the decision of South Staffordshire Council.
  - The application Ref 23/00436/FULHH.
  - The development proposed is erection of boundary fencing.
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### **Decision**

1. **Appeal A** – The appeal is dismissed.
2. **Appeal B** – The appeal is dismissed.

### **Preliminary Matters and Background**

3. As set out above there are two appeals on this site. The proposals differ in terms of the type of development. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two appeals together, except where otherwise indicated.
4. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published. Other than the paragraph numbers, the provisions in the revised Framework relating to 'Proposals affecting the Green Belt' are the same as those that were in the previous version of the Framework when the council made its decision. Therefore, I am satisfied that no one would be prejudiced by this change to the national policy context. I have referred to the updated paragraph numbers.
5. Planning permission has previously been granted for a dwelling now constructed and occupied at the appeal site and a detached garage<sup>1</sup> (the 2018 permission). Evidence details that the garage has not been built but instead a

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<sup>1</sup> Appeal Ref APP/C3430/W/18/3198392

detached outbuilding for purposes ancillary to the use of the dwelling has been constructed in the rear garden, as indicated on the application and plans submitted with Appeal A. In addition, a close boarded timber fence has been erected along the eastern boundary of the site which is the subject of Appeal B.

6. The application forms indicate that the erection of the fence commenced without consent on 1 March 2022 and the erection of the outbuilding on 1 April 2022. Both structures were completed on 31 January 2023. At the time of my visit, I observed that both the fence and the outbuilding had been erected. The outbuilding was in use as a home gym and store and there was no vehicular access to it.
7. I also saw that a timber clad single storey extension had been added to the outbuilding. As I cannot be certain that the works that have taken place thus far are fully in accordance with the submitted plans, for the avoidance of doubt, I have assessed the appeals as proposed developments. The fact that the outbuilding and fence have already been erected does not affect my decision.
8. It has been drawn to my attention by the Council that a Breach of Condition Notice<sup>2</sup> was served on the owners of land adjacent to the appeal site in January 2022 in respect of the failure to comply with condition 2 (plans) of the 2018 permission and a subsequent fine was imposed. However, both appeals before me are appeals under s78 of the Act<sup>3</sup> specific to the appeal site. Neither are applications under s73 of the Act to vary or amend the 2018 permission. It is not within my remit under these appeals to reach a conclusion on such a matter and risk fettering the discretion of any future decision maker/s in this regard.
9. Therefore, my assessments have focussed on the merits of the respective schemes as they have been presented to me irrespective of the status of the 2018 permission and any enforcement proceedings.

### **Main Issues**

10. The Council's decision notices identify similar reasons for refusal for both appeals. Therefore, the main issues in both appeal A and B are:
  - Whether or not the proposal would be inappropriate development in the Green Belt;
  - The effect of the proposal on the openness of the Green Belt;
  - The effect of the proposal on the character and appearance of the area; and,
  - If the proposal is inappropriate development, whether or not there are any other considerations which clearly outweigh the harm by reason of inappropriateness, and any other harm, so as to amount to the very special circumstances necessary to allow the development.

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<sup>2</sup> Under s187A of the Town and Country Planning Act 1990 (as amended)

<sup>3</sup> Town and Country Planning Act 1990 (as amended)

## Reasons

### *Whether inappropriate development*

11. The appeal site comprises a large detached dwelling set back from the road and positioned in a substantial sized plot. It is located within a row of residential development characterised by large dwellings with moderate spacing in-between and bordered by a mix of mature hedging, trees, fences, railings and low walls. The site is accessed to the side off a private access drive and is located in the Green Belt.
12. Paragraph 154 of the Framework states the construction of new buildings in the Green Belt should be regarded as inappropriate in the Green Belt subject to exceptions. There is no dispute between the parties that Appeal B amounts to inappropriate development in the Green Belt and I see no reason to disagree. However, in relation to Appeal A, the appellant argues that the proposal would not be inappropriate.
13. The Council considered Appeal A against exception (d) of paragraph 154 as a replacement building in the Green Belt on the basis that the proposed outbuilding would be materially larger than the garage allowed by the 2018 permission. However, evidence indicates that the garage was never built and therefore the proposal would not replace a building that previously existed on the site, nor does the appeal relate to an application to vary or amend the 2018 permission.
14. More relevant to Appeal A, indeed the basis on which the application was made, is the exception listed in paragraph 154(c) of the Framework - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
15. Criteria A (d) of Policy GB1 of the South Staffordshire Council Core Strategy 2012 (CS) refers to extensions to an existing building and is consistent with the Framework in this regard.
16. Although there is no specific allowance for new detached garden structures within the listed exceptions to inappropriate development at paragraph 154, the Courts<sup>4</sup> have found that it is common practice for ancillary structures to be considered as extensions under paragraph 154(c) where they would amount to a normal domestic adjunct and can include structures that are physically detached from the building of which they are an extension. Having regard to the use of the proposed building and its proximity to the host dwelling, that would be the case here.
17. The Framework does not define what constitutes a disproportionate addition and therefore an assessment of whether a proposal would amount to a disproportionate addition, paragraph 154(c) refers to 'size'. This can, in my view, refer to volume, height, footprint, floorspace or overall perception of size and is a matter of planning judgement. The Council's Green Belt and Open Countryside Supplementary Planning Document 2014 (SPD) is more explicit and advises that anything above the 20-40% increase in floor area over and above the original building would be likely to harm the openness of the Green

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<sup>4</sup> *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin)* and *Sevenoaks DC v SSE & Dawe [1997]*

Belt. It goes on to advise that the reason for applying a floor area figure rather than footprint is because single storeys can have a limited impact on the openness of the Green Belt whereas multiple storey or bulky additions can have a significant impact whilst remaining within the percentage limit.

18. In the absence of any figures being provided by either party in relation to proportionality, my judgement in this case, based on the information before me and observations at my site visit is that, even if the dimensions of the proposed outbuilding fell within the percentage range given in the SPD, the building would still represent a disproportionate addition due to its height.
19. Due to the sloping nature of the site the dwelling is elevated above the outbuilding. Even so, the submitted plans indicate that the outbuilding would be little less than 7m to the ridge. This would be a significant height, essentially to provide a useable first floor, which would result in a considerable bulk and a height not too dissimilar to the height of the dwelling. Moreover, the scale of the building would be exacerbated by the gap between it and the dwelling. In the context of the form and size of the dwelling, the outbuilding would therefore introduce a height and mass that would constitute a disproportionate addition. Consequently, the proposal would not meet the exception criteria in paragraph 154(c) of the Framework.
20. I therefore conclude that both appeal proposals would be inappropriate development which would be harmful to the Green Belt. The proposals would conflict with Policy GB1 of the CS which seeks to protect the Green Belt from inappropriate development. There would also be conflict with paragraph 152 of the Framework in this regard.

#### *Effect on openness*

21. Having concluded that the proposals would be inappropriate development in the Green Belt, while only referred to within the Council's officer reports rather than the decision notices for the appeals, it is necessary to consider the impact of the proposals on the openness of the Green Belt. Paragraph 142 of the Framework states that the essential characteristics of Green Belts are their openness and permanence. The openness of the Green Belt can have both spatial and visual dimensions.
22. In the case of Appeal A, the proposed building would be of a height which would be clearly visible between No.60 Springhill Lane and the appeal property from Springhill Lane when approaching the site from the west. Although the building would be partially screened by trees, the considerable gap between the two properties and gaps between trees would allow clear views of the steeply pitched roof of the outbuilding. Because of surrounding buildings when viewed from other directions, the outbuilding would not be as apparent, although the roof of the building would protrude above the height of the building located close to the rear boundary. The outward expansion of permanent built form at the proposed height would increase the amount of development on the site and would therefore cause some loss of openness in both spatial and visual terms.
23. With regard to Appeal B, no details are before me to indicate the form of any previous boundary treatment on the appeal site. Nevertheless, the erosion of three-dimensional space arising from the overall length and height of the fencing in itself results in an erosion of openness. Views across the site would

be limited due to the height of the fence which further diminishes the openness of the Green Belt.

24. However, the appeal site lies within a ribbon of development and outbuildings, a car park and a nursery building lie to the rear. In this context and taking the appellant's reference to perception set out in the case of Goodman<sup>5</sup> into account, I find both proposals would cause limited harm to the openness of the Green Belt conflicting with the Framework's aims in that regard. Nevertheless, as an essential characteristic of the Green Belt is openness, I give significant weight to that harm.

#### *Character and appearance*

25. The area lies on the edge of the urban area where development becomes more sporadic to the west of the appeal site. Due the elevated position of Springhill Lane, views of the open countryside behind dwellings on the north side of the street can be glimpsed. The buildings in the vicinity of the appeal site primarily comprise two storey dwellings set back from Springhill Lane within generous plots. There is no consistent building line to the nearby properties. Planting within front gardens and grass verges contributes to a green and verdant character to the area. To the rear of the appeal site there are several outbuildings and a large children's day nursery with a substantial car park, although due to the topography of the area, these sit at a lower ground level and are not clearly visible from Springhill Lane.
26. The Council's South Staffordshire Design Guide 2018 advises that new buildings should take opportunities to preserve and enhance existing rhythms in the street scene for example by incorporating subtle changes in height, size and form between buildings. There is a variety in building form and scale in the area.
27. In such a context, the proposed outbuilding in Appeal A, together with the setback behind the appeal dwelling and the distance from Springhill Lane, would not result in an overly incongruous form of development. Although the roof of the outbuilding would be visible, this is not to the extent, when combined with the relatively small footprint of the building and distance from the dwelling, that the site would appear unusually or unacceptably cramped, or that the building would dominate the area or be harmful to the streetscene.
28. In terms of Appeal B, the proposed fence would sit back a considerable distance from Springhill Lane, beyond the gated driveway to the appeal property. While it would extend a significant length rearward, the land descends away from the road. Thus, the fence would be less conspicuous when viewed from the street. I observed at my site visit that a small number of close boarded fences between properties and alongside pavements already exist in the area and a brick wall surrounds Springhill House immediately to the east.
29. Consequently, I conclude on this main issue that, in the context of the surrounding area, whilst the openness of the Green Belt would be harmed, neither Appeal A nor Appeal B would have an unacceptable effect on the character or appearance of the area. In reaching this conclusion, I am also mindful of paragraph 140 of the Framework which, although refers to changes made to a permitted scheme between permission and completion and I have

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<sup>5</sup> Goodman Logistics Developments (UK) Limited v SSCLG [2017] EWHC 947

not assessed the proposal on that basis, seeks to ensure that the quality of approved development is not materially diminished.

30. Both proposals would therefore accord with the design aims of Policies EQ4 and EQ11 of the CS which together seek, amongst other things, seek high-quality design that maintains or enhances local character and distinctiveness. The proposals would also comply with the design aims of paragraph 131 of the Framework.

*Other considerations*

31. Paragraph 153 of the Framework indicates that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
32. In terms of Appeal A, reference has been made by the appellant to the principle of a detached garage building having already been accepted by the Council by virtue of the 2018 permission. Whilst not explicitly set out as a fallback position, based on the information before me, there are some similarities in the design of the appeal proposal and this permission, namely in the palette of materials, similar position and width of the building, and thus these elements of the design have been previously accepted by the Council.
33. Nonetheless, the proposed outbuilding would be significantly higher than the approved garage and would as such, have a more harmful effect on the openness of the Green Belt. Thus, even if there was a reasonable prospect of this element of the 2018 permission being implemented were this appeal to be dismissed, which is unlikely given the appeal proposal has already been constructed on part of the footprint of the approved garage, it would be less harmful than the proposed scheme. Consequently, the existence of the 2018 permission as a fallback would not justify the harm arising from the proposed development in this case.
34. The appellant has put forward a fallback position in relation to Appeal B in the form of permitted development rights under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
35. As in the case in Appeal A, for significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out, but it would also need to be more harmful than what would be allowed by the scheme for which permission is sought.
36. Whilst the Council dispute that a 2m fence could be erected in the location of the appeal proposal as it would conflict with the 2018 permission, the Council does not challenge the matter of permitted development rights. Irrespective of the 2018 permission, the appellant has confirmed that, should the appeal be dismissed, the fence would be reduced to 2m where necessary and I consider there would be a greater than theoretical possibility that this would occur. Accordingly, on the basis of the evidence presented, I find the fallback has significant weight as a material consideration in the determination of the appeal.
37. The additional height of the proposed fence towards the rear part of its length that would be over and above the fallback position would be limited. However,



notwithstanding that the proposal and fallback would be comparable in locational terms, due to the additional height, the proposal would be more harmful to the openness of the Green Belt compared to the fallback. I see no justifiable reasons to outweigh this harm and conclude that the fallback does not weigh in favour of allowing the appeal.

38. I note the appellant's offer to amend the colour of the proposed fence and that this could be controlled by condition should the appeal be otherwise acceptable. However, this would not overcome the harm that I have found in relation to the overall height of the fence.

### *Green Belt Balance*

39. I have concluded that both proposals would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. I have also found that both proposals would cause limited harm to the openness of the Green Belt. These are matters to which I give substantial weight as required by paragraph 153 of the Framework. The lack of harm to the character and appearance of the area in either appeal is a neutral factor.
40. The other considerations that have been put forward for each appeal do not clearly outweigh the substantial weight that I have given to the harm that would be caused to the Green Belt, by reason of inappropriateness and loss of openness that I have identified. Consequently, other considerations amounting to very special circumstances sufficient to outweigh the harm to the Green Belt do not exist.

### **Other Matters**

41. Neighbouring residents have raised several concerns in relation to the appeals. However, given my conclusions on the main issues and that the appeals are dismissed, there is no need for me to address these in further detail.

### **Conclusions**

42. For the above reasons and having regard to all other matters raised, both Appeal A and Appeal B would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan.
43. Therefore, I conclude that both Appeal A and Appeal B should be dismissed.

*A Veevers*

INSPECTOR