

Our ref: JB/7227

Your ref: APP/W1715/C/23/3329379

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19th January 2024

Dear Mr Maxwell,

APP/W1715/C/23/3329379 – FINAL COMMENTS – 58 BRIGHT WIRE CRESCENT, EASTLEIGH, SO50 5SQ

Thank you for your letter dated 20th December 2023 and email correspondence dated 3rd January 2024 confirming that the deadline for final comments to be received has been extended to 29th January 2024.

In response to the Local Planning Authority's (LPAs) Statement of Case (SoC) and Appendices (1-7), on behalf of Mr Oliver Westwood ('the Appellant'), I wish to provide the following comments.

Local Planning Authority Statement of Case

The LPAs SoC provides reasons for issuing an Enforcement Notice at the above address at paragraph 2, principally because the breach is alleged to have occurred within the last four years (2(i)) and that the outbuilding does not benefit from planning permission granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) due to the removal of permitted development rights associated with planning application ref. Z/04771/124, Condition 5 (2(ii)). Whilst permitted development rights have been removed as part of a blanket removal over the entire estate, I have explained fully within the Appellant SoC why this is not appropriate and would likely to fail the tests of reasonableness and necessity as outlined in the National Planning Practice Guidance (PPG).

At paragraph 2(iii), the LPA consider the outbuilding to be imposing and visually intrusive by virtue of its height, scale, mass and materials used, alleging that it has a detrimental impact on the street scene and character of the area, which the Appellant strongly contends.

Within paragraph 2(iii), the SoC also refers to a fence being considered "*to have a detrimental impact on the street scene and character of the area*", contrary to the

Local Plan. It is not clear why this is included in the SoC as it is not a matter included on the Enforcement Notice.

The Statement also contends that the outbuilding would set a precedent for other residents to erect similar structures (2(iv)).

Paragraph 3 of the SoC identifies that *“there are examples of properties within the estate which have smaller shed structures within their rear gardens, but these are much smaller with only the very tips of pitched roofing visible above boundary fence lines.”* This is largely a speculative assessment of the estate, however, it acknowledges that there are other outbuildings within the estate which have been erected, seemingly also without planning permission being granted prior to their erection. If this is the case, in the interests of impartiality, these outbuildings should also be served with enforcement notices as there are clearly other breaches of Condition 5 of application ref. Z/04771/124 taking place. Paragraph 59 of the NPPF (December 2023) identifies that *“enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.”* It is unclear why in this case, the LPA is pursuing this matter, given the small-scale nature of the outbuilding in the context of the estate and the acknowledge existence of other outbuildings on the estate.

As outlined in the Appellant SoC, the outbuilding has been constructed within the parameters of outbuildings allowed under the provisions of Class E of the GPDO (2015) (as amended) and therefore, should not be considered as having an imposing presence at the foot of the garden, nor being visually intrusive by way of height, scale, mass and materials used. Further, paragraph 3 asserts that the outbuilding is *“standing well above the boundary fence line”*, whilst it may protrude above the fence line, it is not considered to be ‘well above’ this. The Appellant has measured the height and can confirm it is only approximately 68 cm above the fence line. The fence itself measures approximately 1.74 metres from inside the host garden and approximately 1.8 metres from the pavement outside of the appeal site. At 2.48 metres, the height of the outbuilding is within the parameters applicable to outbuildings within two metres of the boundary of the curtilage of a dwelling allowed under Schedule 2, Part 1, Class E of the GPDO, were they not removed.

Paragraph 4 sets out the relevant planning policy in respect of this appeal. Saved Policy DM1 of the Local Plan is considered relevant and seeks to ensure that all new development should not have an unacceptable impact on and should enhance (where possible); (a) residential amenities and the character and appearance of urban areas; and (c) take account of the context of site’s and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, design and siting.

The outbuilding is an appropriate form of development within the residential estate and there are numerous examples of outbuildings located at the rear of gardens within the estate. The outbuilding is not harmful to the amenities of residents and is of a mass, scale and design which is in keeping with the estate and adjoining uses. Were

permitted development rights not unjustly removed, there would be no question over whether the outbuilding as built was suitable and appropriate. Furthermore, the outbuilding is well-designed and uses high-quality materials which are appropriate to the context of the area and improve upon its character.

The outbuilding is therefore considered to accord with Saved Policy DM1.

Paragraph 5 (a – v) provides a summary of the Appellant’s SoC. I do not disagree with its contents and this provides a helpful context to the arguments put forwards for allowing the appeal.

Paragraph 6 identifies relevant guidance contained within the Quality Places SPD. Whilst the guidance identifies that pitched and lean-to roofs are normally preferable to flat roofs, it is considered that the roof design of the outbuilding is not harmful and presents a sympathetic form of development in the context of the main dwelling. Further, it is considered the scale, form, design and external materials are appropriate, with regard to the guidance prescribed by permitted development rights (were they to apply) and responds positively to the character of the area. As such, the outbuilding complies with the aims of the SPD.

Paragraphs 7 to 13 catalogue a timeline of events relating to the outbuilding and the eventual issuing of an Enforcement Notice. Within paragraph 7, the commentary sets out that the outbuilding has *“a glazed door and large window, each without any obscured glazing”*, with *“each visible above the fence line and from outside the property boundary”*. Whilst the top parts of the window and door may be visible from outside of the property boundary, their height certainly does not allow for direct visibility into the outbuilding to the extent where members of the public are able to see the contents of the outbuilding. The boundary fencing at 1.8 metres provides adequate screening of the outbuilding and rear garden space.

Paragraph 14 states that *“planning permission has not been sought for this boundary treatment.”* It is unclear why this statement has been included as it is not relevant in any way to the Enforcement Notice served or the appeal submitted.

Paragraphs 15 to 18 provide a summary of the LPAs position.

The Appellant contends that whilst the outbuilding was erected where permitted development rights were removed to do so, it has been demonstrated in the Appellant’s SoC that the outbuilding is of a size, height and massing which falls within the parameters of outbuildings allowed under the provisions of Class E of the GPDO (2015) (as amended) and that the removal of these rights is, including other rights under Classes C-H, is unreasonable, unnecessary and unjustified.

Paragraph 15 also notes that *“no evidence was provided to the LPA prior to appeal during the course of Enforcement investigations to show that the previous outbuilding structures had been in place for more than 4 years.”* It is understood that this information was not requested at the time and the Appellant sought to provide

responses to the LPAs queries where information was asked for. The LPA state in paragraphs 7 and 8 that 'desktop investigations' were carried out, although it appears that no historic aerial imagery was reviewed as part of this. During the course of preparing the Appellant's SoC, aerial images were obtained courtesy of Google Earth which identified there had been outbuildings present within the site as far back at January 2005 and that therefore, the current outbuilding was clearly a replacement outbuilding. Details of this are provided in the Appellant's Soc and Appendix JB2.

In response to paragraphs 16 and 17, the Appellant considers that the outbuilding fully accords with the relevant saved policy of the Local Plan and guidance contained within the Quality Places SPD. Further, whilst the estate does not benefit from permitted development rights for outbuildings, it has been explained in the Appellant's SoC why the removal of these rights is inappropriate and that there is no good reason for the removal of these rights.

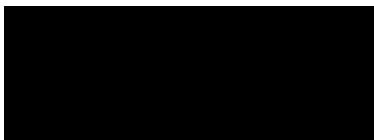
Paragraph 18 highlights the LPAs concern that the outbuilding's erection would set a precedent for future development. This argument is dealt with succinctly at paragraphs 5.12 to 5.13 of the Appellant's SoC.

The Appellant does not agree with the LPAs conclusion within paragraph 18 that the outbuilding as erected creates an imposing presence at the foot of the garden space and is visually intrusive due to its height, scale, mass and materials used. The outbuilding is built within the parameters of what would be allowed under permitted development rights and uses high quality materials which are appropriate for the context of the area and match with other extensions and additions to existing dwellings. The outbuilding is not visually harmful and is not noticeable larger than other outbuildings on the estate.

With regard to the suggested conditions put forwards by the LPA in Appendix 7, the Appellant finds these acceptable.

I trust the information provided in relation to this appeal is useful to the Inspector and would respectfully request that the appeal be allowed and permission granted for the retention of the existing outbuilding on site.

Yours sincerely,



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