

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	28 May 2024
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Lodged
between 08/04/2024 and 19/05/2024**



Application No.: 70422/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: In Focus Ltd

Location Pavement outside 46 Haymarket, Bury, BL9 0BX

Proposal Installation of 1no. multifunctional communication hub including defibrillator and advertisement display

Appeal lodged: 08/05/2024

Appeal Type: Written Representations

Application No.: 70423/ADV

Decision level: DEL

Recommended Decision: Refuse

Applicant: In Focus Ltd

Location Pavement outside 46 Haymarket, Bury, BL9 0BX

Proposal Advertisement consent for display integrated into multifunctional communication hub unit

Appeal lodged: 08/05/2024

Appeal Type:

Application No.: 70426/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: In Focus Ltd

Location Pavement outside 61 The Rock, Bury, BL9 0NB

Proposal Installation of 1no. multifunctional communication hub including defibrillator and advertisement display

Appeal lodged: 08/05/2024

Appeal Type: Written Representations

Application No.: 70427/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: In Focus Ltd

Location Pavement outside 1 Union Street, Bury, BL9 0NY

Proposal Installation of 1no. multifunctional communication hub including defibrillator and advertisement display

Appeal lodged: 08/05/2024

Appeal Type: Written Representations

Application No.: 70443/ADV
Decision level: DEL
Recommended Decision: Refuse

Appeal lodged: 08/05/2024
Appeal Type: Written Representations

Applicant: In Focus Ltd
Location Pavement outside 61 The Rock, Bury, BL9 0NB

Proposal Advertisement consent for display integrated into multifunctional communication hub unit

Application No.: 70444/ADV
Decision level: DEL
Recommended Decision: Refuse

Appeal lodged: 08/05/2024
Appeal Type:

Applicant: In Focus Ltd
Location Pavement outside 1 Union Street, Bury, BL9 0NY

Proposal Advertisement consent for display integrated into multifunctional communication hub unit

Total Number of Appeals Lodged: 6

**Planning Appeals Decided
between 08/04/2024 and 19/05/2024**



Application No.: 69415/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr Phil Johnston

Location: Smith Fold Farm, Taylors Lane, Radcliffe, Bolton, BL2 6QS

Proposal: Replacement of existing stables with erection of new stable block (retrospective).

Appeal Decision: Allowed

Date: 11/04/2024

Appeal type: Written Representations

Application No.: 69725/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Beech House Developments Ltd

Location: Land adjacent to 73 Higher Lane, Whitefield, Manchester, M45 7EZ

Proposal: Erection of one detached house to be accessed from Higher Lane

Appeal Decision: Dismissed

Date: 26/04/2024

Appeal type: Written Representations

Application No.: 70154/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr and Mrs Walker

Location: 44A Newcombe Road, Ramsbottom, Bury, BL0 9UT

Proposal: Proposed Loft Conversion with Front and Rear Dormers

Appeal Decision: Dismissed

Date: 14/05/2024

Appeal type: Written Representations



Appeal Decision

Site visit made on 9 April 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2024

Appeal Ref: APP/T4210/W/23/3330749

Smith Fold Farm, Taylors Lane, Bury, Radcliffe, BL2 6QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Phil Johnston against the decision of Bury Metropolitan Borough Council.
 - The application Ref is 69415.
 - The development proposed is described as "Single storey Stables to replace existing stables".
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Decision

1. The appeal is allowed, and planning permission is granted for single storey stables to replace existing stables at Smith Fold Farm, Taylors Lane, BL2 6QS in accordance with the terms of the application, Ref 69415.

Preliminary Matters

2. The development to which this appeal relates has already taken place and I was able to see it on my site visit.
3. The description of development in the heading above has been taken from the planning application form with the narrative element removed. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. In considering Green Belt issues, both the Council and the appellant have referred to paragraph numbers from the previous version of the National Planning Policy Framework (the Framework). In my decision I have referred to the paragraph numbers from the most recent version. The content of these paragraphs has not changed, so I am satisfied that no parties are prejudiced as a result.

Main Issues

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - 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.

- Whether or not emissions from the proposal could be properly dealt with.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. The Framework is clear that new buildings in the Green Belt should be regarded as inappropriate, but for certain exceptions. Both the Council and the appellant set out that the appeal development could fall under either the exception at paragraph 154b of the Framework or that at paragraph 154d.
7. However, given the description of the appeal development, the wording of the Framework and the facts of the case, I consider that the second cited exception, in paragraph 154d, is the relevant one. It is not in doubt that the appeal development is in the same use as the building it replaces, so the first part of that test is passed.
8. As for whether or not it is materially larger, whilst it is on the same footprint as the previous stable, it is taller, having a pitched roof rather than the previous mono-pitched roof. However, whilst the appeal development is plainly larger than the building it replaces having a greater overall volume, given the eaves height is similar, the footprint is the same and its relationship to its surroundings is acceptable, I do not find that it is materially so.
9. As such, the appeal development is not inappropriate in the Green Belt. It would therefore not conflict with Policy OL1/2 of the Bury Unitary Development Plan, adopted in 1997 (the UDP) or national policy in the Framework.

Openness

10. I have found that the appeal development is not inappropriate development in the Green Belt. In line with the relevant exception in the Framework no consideration of openness is required.

Character and appearance

11. The appeal development is a single storey brick-faced stable with a dual-pitched roof under a slate roof. In this, its form, materials, scale and appearance are wholly consistent with those of the other closely located buildings within the same complex and immediate context, as well as the wider area. Although the Council has made specific reference to the facing brickwork being distinct from that used elsewhere in the complex, I do not find any inconsistency in appearance or character. There is plainly a variety of age, type and colour of brickwork within the complex and wider area, and the bricks used in the appeal development are not significantly or harmfully different.
12. The Council has drawn my attention to the Development Control Policy Guidance Note 10 – Planning for Equestrian Development, adopted 2007 (the DCP Note), notably the sections within it concerning roof form and facing materials considered suitable for stables. Whilst I note this, I also note that one of its aims is to ensure that equestrian-related development is sympathetic to its surroundings in terms of, amongst other things, siting, appearance, design, materials and wider landscape effects.

13. As I have set out above, the form, materials, scale and appearance of the appeal development are wholly consistent with its surroundings, causing it to blend in to those surroundings. Its siting is also appropriate, being both in the same location as the building it replaces, and within a well-established complex with limited longer views. In any longer views in which it may appear, it does so as a cohesive part of that already well-established complex. Any wider landscape effect is extremely limited by both its scale, surrounding built form, landscape planting and the form of the landscape itself.
14. I therefore find that the appeal development is not discordant or intrusive, nor does it have a detrimental and long-term harmful impact on the character and appearance of the area, or the Special Landscape Area. The appeal development does not therefore conflict with Policies EN1/1, EN1/2, EN9/1, OL1/2, OL4/7 of the UDP, or national policy in the Framework. The proposal would also not conflict with guidance in the DCP Note.

Emissions

15. As set out in my consideration of Green Belt issues above, the appeal development is a replacement stable. As such, waste management, surface-water run-off and drainage associated with the appeal development simply replicates the previous arrangements. Even if the appeal development had not occurred these would be taking place and there is no suggestion that those arrangements were harmful or otherwise unacceptable. The carrying out of the appeal development has not altered the situation on the site in this respect, and as such, I do not consider that the appeal development therefore conflicts with policies EN7/3, EN7/4 or EN7/5 of the UDP, the guidance in the DCP Note or the principles of the Framework.

Whether very special circumstances exist

16. As I have found that the appeal development is not inappropriate development in the Green Belt, in line with the Framework, it is not necessary to consider whether very special circumstances exist.

Conditions

17. As the appeal development has already taken place, it is not necessary to impose conditions relating to implementation or compliance with plans. The Council has requested the submission of a waste management, surface-water run-off and drainage strategy. However, as the appeal development is a replacement for a previous stable, such a condition would be seeking to address a pre-existing situation, and would therefore fail the tests of necessity, reasonableness and relevance. It has not therefore been imposed.

Conclusion

18. For the reasons given above I conclude that the appeal development accords with the development plan and there are no material considerations which indicate that a decision be taken other than in accordance with it. The appeal should therefore be allowed, and planning permission granted.

S Dean

INSPECTOR



Appeal Decision

Site visit made on 25 April 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/T4210/W/23/3330962

Land adjacent to 73 Higher Lane, Whitefield M45 7EZ

- 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 Charles Ridley (Beech House Developments Ltd) against the decision of Bury Metropolitan Borough Council.
 - The application Ref 69725, dated 5 June 2023, was refused by notice dated 3 August 2023.
 - The development proposed is the erection of one detached house to be accessed from Higher Lane (amended house type to planning permission 68474)
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issue

3. The main issues are the effect of the proposed development on: the character and appearance of the surrounding area; and the living conditions of the occupiers of No. 69 Higher Lane, with regard to outlook and privacy.

Reasons

Character and appearance

4. The site is land off Higher Lane to the north of the single storey dwelling at No. 69 Higher Lane, which is accessed via a long driveway abutting the eastern boundary of the site. Additional properties are located to the west, including the Grade II listed building of No. 73 Higher Lane. Planning permission has previously been granted for a detached two-storey dwelling at the site, which would feature a catslide roof on its eastern side.
5. The proposal seeks permission for a dwelling of the same footprint and siting to that approved, but with a different design, incorporating a continuous double pitched roof with gables. While it would have a comparable ridge height it would therefore introduce additional bulk, resulting in built form at roof level

immediately abutting the driveway to No. 69 and extending in front of the front elevation of that dwelling to a greater extent than the approved scheme.

6. The residential surrounds of the site feature a range of dwelling designs, with numerous two storey double pitched properties. However, even acknowledging surrounding examples of development set back from Higher Lane behind other properties, there nevertheless remains an overall legibility of the dwellings on this side of the road, and a sense of spaciousness among the neighbouring plots alongside which the proposal would primarily be experienced.
7. The approved dwelling at the site ensures that this sense of character would be retained. The catslide roof would limit the overall visual obstruction of the dwelling at No. 69 Higher Lane and, in providing an offset of upper storey built form from the eastern boundary of the site, would retain an sense of spaciousness in the surrounds. Overall, it would read as a well thought design that integrates with, and respects, its immediate surrounds.
8. By contrast, the proposal would have an increased prominence due to the additional upper bulk proposed. Even acknowledging the trees along the boundary with No. 69 and the fencing proposed, in further obscuring No. 69 due to its roof design the proposal would appear as an awkward addition, reducing the legibility of this immediate section of the streetscene and failing to successfully respond to existing surrounding development. In addition, even with the offset of the proposal from the western boundary of the site and its set back from Higher Lane, the placement of the proposed upper storey built form relative to both No. 69 and the eastern boundary of the site would nevertheless create a cramped appearance at this section of the streetscene.
9. The proposal would have a symmetrical appearance and its height, design and materials would be comparable to surrounding dwellings. Nevertheless, for the site specific reasons given, I find that its increased prominence at the site when compared with the approved dwelling, particularly in relation to its placement relative to the dwelling of No. 69 Higher Lane, would be detrimental to the immediate character and appearance.
10. For the reasons given, the proposal would therefore have a significant adverse effect on the character and appearance of the area. As such, it would fail to comply with Policies EN1/2 and H2/1 of the Bury Unitary Development Plan 1997 (the UDP) and Development Control Policy Guidance Note 16 Design and Layout of New Development in Bury (the DCPGN) insofar as they seek to ensure development does not have an adverse effect on character and makes a positive contribution to the form and quality of the area, with regard to: its scale, density and layout; its relationship to the surrounding area; and the position and proximity of neighbouring properties.

Living Conditions

11. The proposal would extend in front of the facing elevation of No. 69 Higher Lane to a greater extent than the approved scheme, projecting in front of a first floor dormer window that facing the site. The appellant asserts that this window serves a bathroom rather than habitable rooms. There is nothing substantive before me to suggest that this would not be the case such that the additional built form relative to the location of this window would not result in detrimental effects to the outlook from a habitable room. In addition, on the evidence, this window is required to be of obscured glazing.

12. Views of the proposal would be possible from the other first floor windows at No. 69 when looking in the direction of the site. However, due to the positioning of the dwelling the main outlook from these rooms would remain unchanged, providing unobstructed views down the driveway associated with the property. Accordingly, there would be no significant harm to the outlook experienced from these spaces. In addition, due to the proposed 2 metre close boarded fence and the presence of existing trees to the rear of the appeal site, views of the additional built form of the proposal would be largely screened from the front garden space of No. 69.
13. I acknowledge that the proposal would result in additional built form through the introduction of a 2 storey gable end abutting the boundary of the appeal site with the driveway of No. 69. From this location this additional bulk would be much more prominent when compared with the catslide roof of the approved dwelling. However, given the long nature of this driveway, and its primary use as an access point to No. 69 rather than dedicated amenity space, I do not consider that the additional built form at a limited section of this driveway would appear unduly overbearing or enclosing.
14. For similar reasons, I do not find that the proposal would result in unacceptable impacts on the living conditions of the occupiers of No. 69 Higher Lane with regard to privacy. The intervening distance between the proposal and this property, in addition to the screening provided along the boundary by the existing trees, would ensure that no undue overlooking of the habitable rooms or amenity space at No. 69 would occur. In addition, the main parties agree that the proposed rooflights, whilst facing across the rear garden of the site, would not have a serious impact on overlooking given their distance from the boundary. Based on my observations, I have no reason to disagree.
15. For the reasons given, the proposal would not have a significant adverse effect on the living conditions of occupiers of No. 69 Higher Lane with regard to outlook and privacy. As such, there would be no conflict with Policy H2/1 of the UDP and the DCPGN insofar as they seek to ensure development makes a positive contribution to the form and quality of the area with regard to the impact of developments on residential amenity.

Other Matters

16. With regard to the listed building of No. 73 Higher Lane to the west of the site, the main parties agree that, as the proposed changes to the approved dwelling are located on the eastern boundary of the site, there would be no resulting significant impact on the setting of this heritage asset. Based on my observations, I have no reason to disagree.

Conclusion

17. I have found that the proposal would not result in significant adverse harm to the living conditions of occupiers of No. 69 Higher Lane with regard to outlook or privacy. This represents a lack of harm, neutral in the planning balance. Even when taken with the other matters outlined above, this would not outweigh the harm identified to the character and appearance of the area.
18. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the

appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR



Appeal Decision

Site visit made on 22 April 2024

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2024

Appeal Ref: APP/T4210/D/24/3337734

44A Newcombe Road, Ramsbottom, Bury, BL09UT

- 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 and Mrs Walker against the decision of Bury Metropolitan Borough Council.
 - The application Ref 70154, dated 3 October 2023, was refused by notice dated 22 January 2024.
 - The development proposed is loft conversion with front and rear dormers.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of the dwelling and the area. The appeal site comprises a three bedroomed detached house that has a boxy form and a contemporary appearance, located within a residential area that includes a variety of dwelling sizes and styles. It is set back in the street scene between a two storey semi-detached house and on the other side a two storey building that comprises a shop unit with living accommodation above.
3. The proposed development would extend the ridge height of the existing pitched roof with a loft conversion and dormers to provide an additional bedroom with en-suite bathroom. The bedroom would have two windows to the rear in a flat roof dormer that would extend across most of the rear roof slope. The Council has not raised any objection to the rear dormer which it says could be built as permitted development and would not be prominent in the street scene. From what I have seen, I have no reason to disagree and that part of the proposal would be acceptable.
4. The Council's Supplementary Planning Document 6 'Alterations and Extensions to Residential Properties' requires that dormers facing a highway should not occupy a disproportionately large portion of the roof. In addition, they should be set in at least 0.5 metres from side/party walls and set back at least 1m behind the main wall. The roof of the dormer should be 0.5 metres or more below the main ridge line. Dormer windows should seek to line up vertically with existing windows and match their style and proportions.
5. The two proposed front dormers would sit only very slightly below the main ridge and would be set back only very slightly from the front eaves and set in only very slightly from the side of the roof. Their width and the placement of

windows would not relate well to the existing dwelling. As such, those dormers would appear disproportionate in size and scale to the dwelling which would appear 'top heavy'. Although the dwelling is set back by some 6.6m according to the appellant from the adjacent shop unit and dwelling in the street scene, it is located on a busy road with bus stops adjacent and opposite and can be clearly seen from the street.

6. I have noted the appellants' wish to increase the head height of the loft space and allow the staircase to work above the existing. They say that the dormer size has been designed to accommodate the stairs and if moved or made smaller it will not allow the stairs to work. However, given the size of the dormer to the rear I am not persuaded that there is no other means of achieving that and the additional accommodation provided by the front dormers would be a private benefit that would not outweigh the wider public harm that would be caused in this case.
7. I conclude then that by reason of the size, scale and windows of the front dormers, the proposed development would cause significant harm to the character and appearance of the dwelling and the area. This would be contrary to the Council's SPD referred to earlier and to development plan policy H2/3 in the Bury Unitary Development Plan (1997) which seeks to ensure that extensions and alterations consider the character of the property and the surrounding area.
8. It is not clear to me that the proposed rear dormer is clearly severable from the front dormer and I am therefore unable to issue a split decision.

Conclusion

9. For the reasons given above, the proposal is contrary to the development plan and there are no material considerations that would outweigh that. The appeal should be dismissed.

Sarah Colebourne

Inspector

**Details of Enforcement Appeal Decisions
between 08/04/2024 and 19/05/2024**



Location: Land at side of 122 Venwood Road & 16 River View Close, Prestwich
M25 CTE (from junction to 220m Butterfield Lane, Prestwich)

Case Ref:
0012 / 23

Issue: Breach of Condition no.2 of Planning Approval 62489, not built in accordance with the approved drawings.

Appeal Decision: Dismissed 29/04/2024



Appeal Decision

Site visit made on 19 February 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2024

Appeal Ref: APP/T4210/C/23/3317629

Land at the side of 122 Venwood Road and 16 River View Close, Prestwich, Manchester M25 9TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Martin Gerard Wright against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The notice, numbered 23/0012, was issued on 1 February 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a building to be used as a residential dwelling on the land.
 - The requirements of the notice are:
 - a) Demolish and permanently remove the building and all garden structures/retaining walls.
 - b) Following demolition required by step 5 (a) above, remove all resulting materials from the site and reinstate to its former condition.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - (i) deleting the word 'Ventwood' and replacing it with 'Venwood'; and
 - (ii) Deleting '60 days' as the period for compliance and replacing it with '6 months'.
2. Subject to that correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

Address

3. The notice incorrectly refers to 'Ventwood Road' rather than 'Venwood Road'. The site targeted by the notice is clear from the map attached to it and I am able to correct this minor error without causing injustice to either party.

Revised drawings

4. The appeal property is a new detached house. It is built in an elevated position, facing Butterstile Lane. A parking area has been created between the house

and the road. The parking area is built roughly at grade with the road and is contained by a retaining wall to the rear. Steps lead up to a pathway which runs along the front of the house.

5. The appellant has submitted drawings showing how the building could be modified. The appellant raises the scheme in respect of the appeal on ground (f) but, since it concerns a revised scheme for which planning permission would be required, it appears to me to be particularly relevant to the appeal on ground (a) and the related deemed planning application.
6. In accordance with section 177(1)(a) of the 1990 Act, under ground (a) I am able to consider granting planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Comparing the revised scheme with what has been built, the key differences are a reduced eaves height and an extended parking area. It appears fundamentally similar to the scheme enforced against and, at first glance, could be regarded as falling within the scope of s177(1)(a).
7. However, I have concerns about the drawings. In particular, they are not fully annotated with dimensions, and I am consequently unable to understand how the increase in the parking area has been achieved. Since the front of the parking space is contained by the footway, its depth can only be increased by moving the retaining wall to the rear. That would narrow the pedestrian access to the front of the house. But, as the Council points out, the access appears to be wider on the drawing than it currently is on site. Thus, it is not clear whether the revised scheme could actually be implemented. Furthermore, there are no plans to show how the internal layout of the building would be affected by the lowering of the eaves. I cannot, therefore, be sure that that would be a viable change to the building as proposed.
8. Overall, I am not satisfied that I can rely on the drawings either for a modified ground (a) proposal or revised requirement under ground (f). It is important that the enforcement notice creates certainty, and that cannot be achieved with these drawings. I have therefore taken no further account of the drawings in determining the appeal.

Ground (a)

Main issues

9. The main issues are the effect of the development on:
 - the character and appearance of the area; and
 - parking and road/pedestrian safety.

Character and appearance

10. Planning permission was granted to construct a dwelling on the site in April 2018. The dwelling now built differs from the permitted dwelling in a number of respects. I am told that it is sited about 1.45 metres further forward and, as a result, there is a reduced parking area at the front. The building is about 0.75m higher and the front elevation has changed, with a bay window feature omitted. Additionally, the pedestrian access arrangements have changed and windows have been added to a side elevation.

11. The higher eaves of the house as built has resulted in an excessive expanse of brickwork above the first-floor windows, resulting in a top-heavy appearance. Furthermore, the front elevation as a whole is bland, lacking variation in form and with minimal detailing to add visual interest. The bay windows of the permitted building would have added visual interest and reflected a characteristic of other dwellings in the locality. The building is highly prominent, occupying an elevated position fronting a road, and it was thus important that a satisfactory design was achieved.
12. I do not share the Council's concern about the location of the steps to the side of the site. I also accept that the siting of the building is in general accordance with the pattern of development on Venwood Road and will have increased the size of the rear garden. Nevertheless, for the reasons given above I find that the building constructed harms the character and appearance of the area. This brings it into conflict with the design aims of policies H2/1 and EN1/2 of the Bury Unitary Development Plan (UDP).

Parking and road/pedestrian safety

13. The scheme as built has created a car parking area with a depth of about 4.55m. This compares to the 6m of the permitted scheme. The house is on higher land and the parking space is contained by a retaining wall. The appellant has provided details of the length of a range of cars which shows that a modest family car, such as a Ford Focus, could fit within the available space. However, I cannot assume that every occupier of the dwelling, either now or in the future, will have only modest-sized cars. Moreover, the retaining wall means that any larger car could only be accommodated by overhanging the footway. Indeed, even a modest car would need to be parked very close to the retaining wall in order to avoid doing so. In practice, it seems likely to me that drivers would tend to leave a gap to the wall to avoid the risk of damaging their car and thereby overhang the footway.
14. Although the footway is reasonably wide at this point, it is plainly desirable that it is retained for its intended purpose, in the interests of the safety and convenience of pedestrians. It is possible that the occupiers of the house could choose not to use the parking space and park elsewhere if necessary, perhaps on Butterstile Lane immediately in front of the property, where there are no parking restrictions. However, that appeared to me to be a reasonably well-used section of road, and is close to a mini roundabout. Consequently, it seems likely to me that people would park at least partially on the footway in order to avoid disrupting the flow of traffic, thereby impinging on the space available for pedestrians. In any event, most car owners are likely to want to make use of the parking space in my view, for their own convenience and for the security of their car. The provision of this space, plainly with car parking in mind, would encourage them to do so.
15. It has not been demonstrated that there is any conflict with local parking requirements. I have been referred to the Council's *Development Control Policy Guidance Note 11 – Parking Standards in Bury*, but this has maximum rather than minimum standards, the maximum for a 4 bedroomed house such as this being 3 spaces. Consequently, there is no conflict with UDP Policy HT2/4, which requires parking provision to be made in accordance with Council standards.
16. In any event, the Guidance Note is now out of date, pre-dating the National Planning Policy Framework (The Framework) and referring to now-cancelled

national policy. In fact, the Framework now discourages the use of maximum car parking standards unless there is clear and compelling justification. Little weight can be attached to compliance or otherwise with the Guidance Note in these circumstances. I am also mindful that the site is located in a reasonably accessible location, with local bus services and a neighbourhood shopping centre nearby. Thus, occupiers of the property need not be wholly reliant on cars for transportation.

17. Nevertheless, the development as built includes unsatisfactory parking arrangements which, in my view, is likely to encourage parking that will overhang the footway. It amounts to poor planning of the site and will potentially lead to conflict with pedestrians. This puts it at odds with UDP Policy H2/2, which requires new residential development to have an acceptable layout, including in terms of car parking provision. There is conflict with the Framework as well, which advises that developments should give priority first to pedestrian and cycle movements and minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Other considerations

18. Although unoccupied when the notice was issued, I understand that the house is now occupied by a family of 2 adults and 2 children. I am told that they have recently signed a contract to extend their tenancy. Thus, it appears that the family's desire is to remain at the property. I have borne in mind the concern that it could prove difficult to find alternative accommodation in the area, which could cause disruption to work arrangements and the schooling of the children. It appears to me that the best interests of the children will lie in remaining in the area, in alignment with the apparent wishes of the adult family members and in order to avoid disruption to schooling. No planning issue is inherently more important than the best interests of a child.
19. Overall, I have no doubt of the important implications of upholding the notice for the occupiers of the property. Loss of their home would represent a serious interference with their right to respect for their private and family life and home in accordance with Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998.
20. However, that is a qualified right. The interference in this case is in accordance with the law, given the provisions of the Town and Country Planning Act 1990. The disruption that compliance with the notice would cause must be weighed against the public interest of ensuring the proper planning of the locality. In my judgement, and bearing in mind also my decision in relation to the ground (g) appeal, dismissal of the ground (a) appeal is a necessary and proportionate response, and would not result in any violation of the rights of the individuals concerned.

Conclusion – ground (a)

21. I have been referred to various other development plan policies, but those I have highlighted are the most relevant in my judgement. The conflict I have found leads me to the view that there is conflict with the development plan as a whole. That conflict is not outweighed by material considerations. Accordingly, the appeal on ground (a) fails.

Ground (f)

22. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the allegation concerns the construction of a building and the notice requires its removal. This is consistent with remedying the breach of planning control in accordance with s174(4)(a). Consequently, I do not regard the requirement as excessive.
23. The appeal on ground (f) is made on the basis that the harm arising from the development could be mitigated by modifying it in accordance with the revised plans submitted. However, as I have already indicated, the plans cannot be relied upon and it is important that the requirements of the notice do not lead to uncertainty. Accordingly, the appeal on ground (f) fails.

Ground (g)

24. The notice specifies 60 days for compliance. In support of this, the Council says that advice was sought from the Building Control department and that similar timeframes have been accepted by the Magistrates Court.
25. Be that as it may, it seems to me that 60 days is a very short timescale for the extent of the work required. It is reasonable to allow the owners the opportunity to get competitive quotes for the work. The selected contractor cannot be expected to start instantaneously and will need to programme in the work. The work required is not insignificant and may take some time to complete.
26. Moreover, since the property is apparently now occupied, it is necessary to allow an appropriate period of time to allow the occupiers to look for alternative accommodation. Given this change in circumstances since the notice was issued, the Council now accepts that a longer period for compliance is appropriate. The appellant suggests a period of 6 months¹. In my judgement, that would strike a proper balance between the needs of the occupiers of the property and practical considerations on the one hand, and the desirability of ensuring the breach of planning control is remedied without undue delay on the other. Accordingly, the appeal on ground (g) succeeds.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed on ground (a) or (f). In my judgement, the refusal of planning permission and the requirements of the notice are a proportionate response to the significant harm arising from the breach of planning control that has occurred, subject to a longer period for compliance. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Peter Willows

INSPECTOR

¹ A period of 9 months is suggested only in the event of success on ground (f)

25 April 2024

Complaint reference:
24 000 269

Complaint against:
Bury Metropolitan Borough Council

The Ombudsman's final decision

Summary: We will not investigate this complaint about how the Council dealt with a breach of planning control. This is because the complainant has not suffered any significant injustice.

The complaint

1. Mr X has complained about how the Council dealt with a breach of planning control and its decision not to take enforcement action against his neighbour. He says there have been delays and the Council failed to keep him updated. Mr X says the unauthorised development impacts his privacy.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse impact on the person making the complaint, which we call 'injustice'. We provide a free service, but must use public money carefully. We do not start or continue an investigation if we decide any injustice is not significant enough to justify our involvement. (Local Government Act 1974, section 24A(6), as amended, section 34(B))

How I considered this complaint

3. I considered information provided by Mr X and the Ombudsman's Assessment Code.

My assessment

4. Planning authorities can take enforcement action where there has been a breach of planning control. A breach of planning control includes circumstances where someone has built a development without permission. It is for the council to decide if there has been a breach of planning control and if it is expedient to take further action. Government guidance stresses the importance of effective enforcement action to maintain public confidence in the planning system but says councils should act proportionately.
5. The Ombudsman does not act as an appeal body against enforcement decisions. Instead, we consider if there was any fault with how the decision was made.
6. In this case, the Council looked into Mr X's concerns and agreed the development was unauthorised. However, the Council decided that while a technical breach

had occurred, it was not significant enough to justify enforcement action and removing the decking would not be in the public interest.

7. I understand Mr X disagrees. But the Council was entitled to use its professional judgement to decide not to take enforcement action.
8. Mr X has complained about how long it took the Council to look into his concerns and says it did not keep him up to date. However, I do not consider Mr X has suffered any significant injustice because of the delays and lack of updates as the Council ultimately decided enforcement action was not necessary.

Final decision

9. We will not investigate Mr X's complaint because he has not suffered any significant injustice.

Investigator's decision on behalf of the Ombudsman