

# REPORT FOR NOTING

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| <b>DECISION OF:</b>                                                                   | <b>PLANNING CONTROL COMMITTEE</b>                                                                                                                                                                                     |
| <b>DATE:</b>                                                                          | <b>9 July 2024</b>                                                                                                                                                                                                    |
| <b>SUBJECT:</b>                                                                       | <b>PLANNING APPEALS</b>                                                                                                                                                                                               |
| <b>REPORT FROM:</b>                                                                   | <b>HEAD OF DEVELOPMENT MANAGEMENT</b>                                                                                                                                                                                 |
| <b>CONTACT OFFICER:</b>                                                               | <b>DAVID MARNO</b>                                                                                                                                                                                                    |
| <b>TYPE OF DECISION:</b>                                                              | <b>COUNCIL</b>                                                                                                                                                                                                        |
| <b>FREEDOM OF INFORMATION/STATUS:</b>                                                 | This paper is within the public domain                                                                                                                                                                                |
| <b>SUMMARY:</b>                                                                       | <p>Planning Appeals:</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul> <p>Enforcement Appeals</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul> |
| <b>OPTIONS &amp; RECOMMENDED OPTION</b>                                               | The Committee is recommended to the note the report and appendices                                                                                                                                                    |
| <b>IMPLICATIONS:</b>                                                                  |                                                                                                                                                                                                                       |
| <b>Corporate Aims/Policy Framework:</b>                                               | Do the proposals accord with the Policy Framework? Yes                                                                                                                                                                |
| <b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b> | Executive Director of Resources to advise regarding risk management                                                                                                                                                   |
| <b>Statement by Executive Director of Resources:</b>                                  | N/A                                                                                                                                                                                                                   |
| <b>Equality/Diversity implications:</b>                                               | No                                                                                                                                                                                                                    |
| <b>Considered by Monitoring Officer:</b>                                              | N/A                                                                                                                                                                                                                   |
|                                                                                       |                                                                                                                                                                                                                       |

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|---------------------------|------------|
| <b>Wards Affected:</b>    | All listed |
| <b>Scrutiny Interest:</b> | N/A        |

**TRACKING/PROCESS**

**DIRECTOR:**

| Chief Executive/<br>Strategic Leadership<br>Team | Executive<br>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 20/05/2024 and 27/06/2024**



**Application No.:** 70229/FUL

**Appeal lodged:** 14/06/2024

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** Mr Bernard Booth

**Location** Saw Mills, off Spring Street, Ramsbottom, Bury, BL0 9JQ

**Proposal** Change of house type application for 68578 to remove dormers, increase the eaves heights to all house types, increase the width of the porches and internal alterations

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**Application No.:** 70710/FUL

**Appeal lodged:** 24/06/2024

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** Mr A Khan

**Location** Performance House, Heywood Street, Bury, BL9 7DZ

**Proposal** Change of use of part car showroom (Sui Generis) to retail (Class E(a)) and office (Class E(g)(i)) single storey extension and external alterations

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**Total Number of Appeals Lodged: 2**

**Planning Appeals Decided  
between 20/05/2024 and 27/06/2024**



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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <b>Application No.:</b> 69884/FUL<br><b>Decision level:</b> DEL<br><b>Recommended Decision:</b> Refuse<br><b>Applicant:</b> Park Avenue Ltd<br><b>Location:</b> Land adjacent to 1 Park Avenue, Ramsbottom, Bury, BL0 0DA<br><b>Proposal:</b> Erection of 1 no. dwelling including driveway                                                                                                                                                                                                                                           | <b>Appeal Decision:</b> Allowed<br><b>Date:</b> 18/06/2024<br><b>Appeal type:</b> Written Representations   |
| <b>Application No.:</b> 69914/FUL<br><b>Decision level:</b> DEL<br><b>Recommended Decision:</b> Refuse<br><b>Applicant:</b> Specscart<br><b>Location:</b> 10 Union Street and 40 The Rock, Bury, BL9 0NY<br><b>Proposal:</b> Modifications to existing window openings                                                                                                                                                                                                                                                                | <b>Appeal Decision:</b> Dismissed<br><b>Date:</b> 13/06/2024<br><b>Appeal type:</b> Written Representations |
| <b>Application No.:</b> 69976/FUL<br><b>Decision level:</b> DEL<br><b>Recommended Decision:</b> Refuse<br><b>Applicant:</b> Mr Raj Singh<br><b>Location:</b> 56 Windsor Road, Prestwich, Manchester, M25 0DE<br><b>Proposal:</b> Loft conversion with rear dormer extension; Two storey extension at side; Addition of first floor window to side elevation; Two storey extension at rear with amendment to balcony; New cladding to front elevation; Installation of 2 ventilation mechanical intake extract units to side elevation | <b>Appeal Decision:</b> Dismissed<br><b>Date:</b> 14/06/2024<br><b>Appeal type:</b> Written Representations |
| <b>Application No.:</b> 70259/FUL<br><b>Decision level:</b> DEL<br><b>Recommended Decision:</b> Refuse<br><b>Applicant:</b> Mr Scott Jones<br><b>Location:</b> 212A Bell Lane, Bury, BL9 6HS<br><b>Proposal:</b> Single storey extension at rear to form 1 no. ground floor flat                                                                                                                                                                                                                                                      | <b>Appeal Decision:</b> Dismissed<br><b>Date:</b> 26/06/2024<br><b>Appeal type:</b> Written Representations |

**Details of Enforcement Appeal Decisions  
between 20/05/2024 and 27/06/2024**



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**Location:** 22 Cockey Moor Road, Bury BL8 2HB

**Case Ref:**  
0054 / 23

**Issue:** Planning application 69189 refused

26/06/2024

**Appeal Decision:** Dismissed/part allowed on ground (a) only

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## Appeal Decision

Site visit made on 2 May 2024

**by R Jones BA(Hons) DipTP MRTPI**

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

**Decision date: 18 June 2024**

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**Appeal Ref: APP/T4210/W/23/3333657**

**Land adjacent to 1 Park Avenue, Ramsbottom, Bury BL0 0DA**

- 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 Park Avenue Ltd against the decision of Bury Council.
  - The application 69884, dated 11 July 2023, was refused by notice dated 3 November 2023.
  - The development proposed is new detached 3 storey house.
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### Decision

1. The appeal is allowed and planning permission is granted for new detached 3 storey house at land adjacent to 1 Park Avenue, Ramsbottom, Bury BL0 0DA in accordance with the terms of the application, 69884, dated 11 July 2023, and the plans submitted with it, subject to the conditions in the attached schedule.

### Application for Costs

2. An application for costs was made by Mr Andrew Gaskill against Bury Council. This application is the subject of a separate decision.

### Preliminary Matter

3. The Places for Everyone Joint Development Plan (PfE) was adopted in March 2024. It replaces some policies, or sections of policies, of the Bury Unitary Development Plan (1997) (UDP). Those UDP policies referred to in the Council's decision notice, namely Policy H2/1, H2/2, EN1/2 and HT2/4, have not been replaced but the Council advise that Policy H2/1 is now supported by PfE Policy JP-H3. The views of the main parties were sought on this matter.

### Main Issues

4. The main issues in this case are the effect of the proposed dwelling on:
  - 1) the character and appearance of the streetscene;
  - 2) the living conditions of the neighbours at No.76 Bury New Road, with regards outlook and privacy;
  - 3) the integrity of the adjacent adopted highway of Bury New Road; and
  - 4) the free flow of traffic and highway safety.

## Reasons

### *Character and appearance*

5. The appeal site comprises land formerly within the curtilage of No.1 Park Avenue (No.1), a semi-detached dwelling, situated on the corner of Park Avenue and Bury New Road. No.1 and its attached pair have recently been remodelled which has included converting the original hipped roof to a gable, new fenestration and a render and grey cladding finish. The semi-detached pair is orientated toward the corner of Park Avenue and Bury New Road and their very contemporary finish and detailing is distinctly different to other dwellings facing Park Avenue.
6. The proposed dwelling would be sited to the side of No.1, similarly, facing the corner, but set slightly forward of the front building line of the semi-detached pair. I observed on my site visit that at either end of Park Avenue (on the corners of Bury New Road and Shipperbottom Lane) a semi-detached pair is orientated at an angle, providing a building line or frontage as the corner is returned. I did not, however, find this established layout to create a particularly distinctive sense of place, and the siting of the proposed dwelling would not cause any particular harm to the group of dwellings on the north side of Park Avenue.
7. Because of its corner location, the appeal site is prominent when travelling from the north-west on Bury New Road, including from the Public Right of Way over the motorway bridge. From the north-west, the large steep gable of No.76 Bury New Road is visible behind No.1 and No.3 Park Avenue. The proposed dwelling would be two-storey in height (with a bedroom in the roofspace) and, although offset from its boundaries, it would largely fill the gap between No.1 and the footway along Bury New Road. It would therefore obscure the view of No.76's gable, but the design of the proposed dwelling with a slate appearance pitched roof, simple porch detail and render finish, would complement the adjoining semi-detached pair. It would further have a similar ridge height and massing to its neighbours. Whilst I note that most existing dwellings on Park Avenue and Bury New Road are semi-detached and primarily red-brick with a hipped roof, the proposed dwelling would form part of a small group or composition with No.1 and 3 Park Avenue. Therefore, although prominent, it would not appear intrusive in, or starkly conflict with, the existing streetscene.
8. Consequently, there would be no conflict with saved policies H2/1, H2/2 and EN1/2 of the Bury Unitary Development Plan (1997) (UDP) of PfE Policy JP-H3 because the proposed dwelling is consistent with the principles of good design, has an acceptable standard of layout and makes a positive contribution to the form, quality and distinctiveness of the surrounding area. Further, there would be no conflict with the principles of good design in Section 12 of the National Planning Policy Framework (the Framework) or with paragraph 41 of the National Design Guide (2021) in so far as it advises that well-designed new development should respond positively to the surrounding context beyond the site boundary, including the layout, form, scale, appearance and materials of existing built development.

### *Living conditions*

9. No.76 Bury New Road (No.76) is a semi-detached bungalow facing Bury New Road to the south-east of the appeal site. I observed on my site visit that

because of the difference in ground level, the ground floor of No.76 broadly aligns with the first floor of No.1 Park Avenue and there is a significant retaining wall along the common boundary (which would be retained). There is a door on the gable of No.76 facing the appeal site, but the orientation of the windows are toward the front and rear of the bungalow.

10. The proposed dwelling would be sited forward of No.76 (closer to Bury New Road) and there is a difference in opinion between the parties about how far it would be offset from the shared boundary; the Council contend that the separation distance would be only 4.7m, compared to the appellant's 9.8m. Irrespective of this difference, from my observations on site, I am satisfied that the proposed distance from the boundary, and its siting at a lower level, means that the proposed dwelling would not appear uncomfortably close to No.76. Nor, despite being sited around 4m forward of No.76 (closer to Bury New Road), would it result in an undue sense of enclosure. The principal outlook from No.76 would remain to the front and rear of the bungalow, and whilst part of the first floor and roof of the proposed dwelling would be visible from the front windows of No.76, it would be at an oblique angle.
11. At first floor, the proposed dwelling would have a window to two bedrooms that would face the common boundary with No.76. However, the siting of the proposed dwelling forward of the front building line, and its offset from the boundary means that these windows would overlook only the front driveway of No.76. I do not therefore find that there would be overlooking such that there would be a material loss of privacy for these neighbours.
12. For these reasons, I conclude on the second main issue that there would be no harm to the living conditions of the neighbours at No.76. Consequently, there would be no conflict with UPD policies H2/1 and EN1/2 in so far as they require consideration of the relationship of the proposal to the surrounding area and the position and proximity of neighbouring properties. Nor would there be a conflict with paragraph 135 of the Framework which seeks to ensure developments create places with a high standard of amenity for existing and future users.

#### *Highway Integrity*

13. The back of the footway along Bury New Road forms the northern boundary of the appeal site and between this and the site itself is a difference in levels, which increases from around 2m to 4m between the front and rear, and an existing retaining wall. The proposed site plan shows that part of this retaining wall (located broadly centrally within the site) would need to be removed to accommodate the proposed dwelling. The Council's concern is that insufficient information has been provided to demonstrate that this could be achieved without affecting the structural integrity of the footway and adopted highway.
14. The details submitted with the planning application show (in section) the rebuilding of the retaining wall in brick, with a traditional strip footing, and a reprofiled embankment behind (up to the footway). The appellant has further provided in their evidence a letter from a Civil Engineer that explains the detail shown in the section. It is not clear from the consultation response from the Council's Head of Engineering why the submitted information is therefore considered insufficient.



15. The submitted Section Location drawing (dwg no. 21.004-008-A) shows that a limited section of the existing retaining wall would be removed, with the proposed dwelling offset a minimum 2m from the back of the footway and around 4m from the adopted highway. There is sufficient space within the appeal site for the retaining walls to be relocated and rebuilt and the land reprofiled. Subject to a condition controlling the details as submitted, I am not therefore persuaded that the proposals would cause any harm to the integrity of the footway, or highway beyond. Any works to the footway itself would in any event require the approval of the highways authority.
16. Consequently, there would be no conflict with UDP Policy H2/2 which requires new residential development to demonstrate acceptable standards of layout including access for pedestrians and design for safety. UDP Policy HT2/4 relates to car parking and servicing requirements and is not therefore relevant to this main issue.

### *Car parking*

17. The proposed site plan (dwg. No. 21.004-003-A) shows sufficient driveway parking for 3no. cars, accessed from the corner of Park Avenue and Bury New Road (using the original access to No.1 Park Avenue). There is no dispute between the parties that the appeal site can accommodate the required number of car parking spaces, but the Council's concern is that there is insufficient space to leave the site in forward gear. I observed on my site visit that the existing retaining wall (shown as retained) limits the width of the driveway and consequently cars would need to reverse into, or from the site. The footway at the corner of Park Avenue and Bury New Road is relatively wide and the location of the existing dropped kerb means it would be possible to manoeuvre a car to and from Park Avenue (in reverse gear), which is a quiet residential road. There would, therefore, be no need to reverse to or from the busy Bury New Road and consequently no conflict with the free flow of traffic.
18. I note that the consultation response from the Council's Head of Engineering does not raise the parking arrangements for the proposed dwelling as a reason for refusal, rather the loss of parking and adequate access for No.1 Park Avenue. As No.1 does not itself fall within the appeal site, this issue is outside the scope of my consideration.
19. For the reasons given, on the final main issue I conclude that the car parking layout is sufficient to ensure the free flow of traffic and road safety. There would therefore be no conflict with UDP policies H2/2 and HT2/4 which together require new residential development to demonstrate acceptable car parking provision and access.

### **Other Matters**

20. PfE Policy JP-S2 replaces policies EN4, EN4/1, EN4/2 of the UDP which relate to energy conservation. The aim of PfE Policy JP-S2 is to deliver a carbon neutral Greater Manchester no later than 2038, supported through a range of measures including an expectation that new development will, unless it can be demonstrated that it is not practically or financially viable, be net zero carbon, applicable to regulated operational carbon emissions. The Policy outlines that new development proposals should set out how this can be achieved in an Energy Statement; the absence of which the Council now raise as an issue with this appeal. Whilst I recognise that the emphasis on reducing carbon emissions

has increased, the relevant saved UDP policies nonetheless encouraged development which contributed to energy conservation, provision of renewable energy sources and energy efficiency. These UDP policies were not listed, or referred to, in the Council's Delegated Report as being relevant to the application, nor was an Energy Statement requested during determination of the planning application.

21. PfE Policy JP-H4 requires new housing to be delivered at a density appropriate to its location. The Council have referred to the policy seeking a minimum of 50 dwellings per hectare in locations between 400m and 800m of a defined centre, and that the onus is on an applicant to provide the site area for all application sites and how they accord with this policy. The site area (372sqm) for the appeal site was provided in the planning application form and whilst the density would be below the minimum sought, for the reasons given above in respect of the character and appearance, the layout and scale of the proposed development is appropriate to its location.
22. The Council have also alleged a conflict with both PfE Policy JP-G7 (Trees and Woodland) and Policy JP-G8 (A Net Enhancement of Biodiversity and Geodiversity) and refer to clearance of the site, considered 'abundant with shrubs and trees.' Save the Street Scene images provided in the Council's evidence, which show shrubs beyond the boundary hedge (which would be retained) I have very limited information regarding the number of trees on site, or the baseline biodiversity value. The site had been cleared by the time of my site visit and no trees are identified on the Site Survey or referred to in the planning application form. On the evidence before me, it is not therefore possible to determine whether there is a conflict with PfE Policy JP-G7 12) in so far as it requires each tree lost to be replaced by two new trees. Nor is it possible to determine whether there would be any harm to biodiversity and therefore a conflict with PfE Policy JP-G8. The mandatory requirement of providing a 10% minimum net gain to biodiversity is not applicable to this case.
23. For the reasons given above, none of these other matters raised by the Council, lead me to form a different conclusion to the one above.

### **Conditions**

24. A set of suggested conditions was submitted by the Council which the appellant has seen and commented on. I have used these as the basis for those I have imposed, having regard to the advice on the use of conditions in the Framework and Planning Practice Guidance.
25. In addition to the standard implementation condition, I have imposed a condition that specifies the approved drawings in the interests of certainty. As the proposed materials are specified on these approved drawings, I do not find it necessary to require samples and further full details of all materials to be used on external surfaces to the submitted to and approved by the local planning authority. To ensure good design and the appearance of the site, I have, however, imposed a condition requiring the provision, and thereafter, retention of the bin store shown on the approved site plan.
26. In the interests of minimising risks from potentially contaminated land, I have imposed conditions requiring an assessment of the risk posed by any contamination to have been submitted to and approved in writing by the local

- planning authority before the commencement of any works; and if contamination is identified that no works should begin until submission and approval in writing of a detailed remediation scheme. In the interest of minimising flood risk, I have imposed a condition that the development must include provision of a potential SuDs option for surface water drainage.
27. For the reasons given in respect of the third main issue, I do not find it necessary to impose a condition requiring an 'Approval in Principle' for the proposed replacement retaining structure on the Bury New Road boundary. The details of these are controlled by the condition specifying the approved drawings. In the interests of highway safety, given the proximity to Bury New Road, I have however imposed a condition requiring the submission and approval of a Construction Management Plan which would also include a photographic dilapidation survey of the footway and carriageways abutting the site in the event remedial work is required.
28. The Council have suggested a condition which would remove Classes A to G of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which includes the enlargement, improvement or other alterations of a dwellinghouse, additions and other alterations to the roof, porches and buildings incidental to the enjoyment of a dwellinghouse. The Council have provided no justification for such as extensive removal of national permitted development rights and consequently, having regard to paragraph 54 of the Framework, the suggested condition has not been imposed.
29. To ensure compliance with PfE Policy JP-H3 the Council have suggested a condition requiring the dwelling to be designed and built in accordance with optional Part M4(2) 'Accessible and adaptable dwellings' of Building Regulations. I agree that such a condition is necessary, but to reflect the requirement of PfE Policy JP-H3 I have amended the Council's suggested wording. The Council have also suggested a condition requiring the provision of 1 Electric Vehicle charge point. However, as Part S of the Building Regulations is now in effect this condition is not necessary.

### **Conclusion**

30. For the reasons given above, I conclude that the appeal should be allowed.

*R Jones*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. 003 Rev. A: Proposed Site Plan; Drawing no. 001 Rev. A: Proposed Plan and Location Plan; Drawing no. 002 Rev. A: Proposed Elevations; Drawing no. 005 Rev. A: Existing and Proposed Block Plan; Drawing no. 004 Rev. A: Proposed Street Scene – LPA NOTE: PARTIAL Street Scene Drawing no. 006 Rev. A: Existing and Proposed Street Scene (Black and White); Drawing no. 006 Rev. A: Existing and Proposed Street Scene (Coloured); Drawing no. 008 Rev. A: Existing and Proposed Section Location; Drawing no. 009 Rev. A: Existing and Proposed Site Section C-C; and, Drawing no. 011 Rev. A: Existing Topographical Survey.
- 3) The bin store facilities shown on the approved site plan (Drawing no. 003 Rev. A) shall be implemented and made available for use prior to the first occupation of the development hereby approved and thereafter maintained.
- 4) The dwelling hereby approved shall be designed and built in accordance with the accessible and adaptable standard in Part M4(2) (Accessible and adaptable dwellings) of the Building Regulations, unless it can be demonstrated to the satisfaction of the Local Planning Authority that specific site conditions make this impractical.
- 5) No development shall commence unless and until:-
  - i. A contaminated land Preliminary Risk Assessment report to assess the actual/potential contamination and/or ground gas/landfill gas risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority;
  - ii. Where actual/potential contamination and/or ground gas/landfill gas risks have been identified, detailed site investigation and suitable risk assessment shall be submitted to, and approved in writing by the Local Planning Authority;
  - iii. Where remediation/protection measures is/are required, a detailed Remediation Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. These works shall be undertaken in accordance with any approved details.
- 6) Following the provisions of Condition 3) of this planning permission, where remediation is required, the approved Remediation Strategy must be carried out to the satisfaction of the Local Planning Authority within agreed timescales; and a Site Verification Report detailing the actions taken and conclusions at each stage of the remediation works, including substantiating evidence, shall be submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.
- 7) The development hereby approved shall be carried out in accordance with a surface water drainage scheme which shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and be designed in accordance with the Non-Statutory Technical Standards for

Sustainable Drainage Systems (March 2015). This must include provision of potential SuDS options for surface water drainage. The drainage scheme shall be implemented prior to first occupation and thereafter maintained.

- 8) No development shall commence until a 'Construction Traffic Management Plan' (CTMP), has been submitted to and agreed in writing with the Local Planning Authority and shall include the following:
- i. Photographic dilapidation survey of the footways and carriageways abutting the site in the event that subsequent remedial works are required following construction of the development and as a result of any statutory undertakers connections to the new dwelling;
  - ii. Access point for construction traffic from the adopted highway;
  - iii. Site hoardings (if proposed) clear of the adopted highway and the visibility splay;
  - iv. Parking on site (or on land under the applicant's control) of operatives' and construction vehicles together with storage on site of construction materials, including any requisite phasing of the development to accommodate this;
  - v. Measures to ensure that all mud and other loose materials are not spread onto the adjacent adopted highways as a result of the groundworks operations or carried on the wheels and chassis of any vehicles leaving the site and measures to minimise dust nuisance caused by the operations.

The approved plan shall be adhered to throughout the construction period and the measures shall be retained and facilities used for the intended purpose for the duration of the construction period. The areas identified shall not be used for any other purposes other than the parking of vehicles and storage of demolition/construction materials. All highway remedial works identified as a result of the dilapidation survey shall be implemented to the written satisfaction of the Local Planning Authority prior to the development hereby approved being occupied.



## Costs Decision

Site visit made on 2 May 2024

**by R Jones BA(Hons) DipTP MRTPI**

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

**Decision date: 18 June 2024**

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### **Costs application in relation to Appeal Ref: APP/T4210/W/23/3333657 Land adjacent to 1 Park Avenue, Ramsbottom, Bury BL0 0DA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Park Avenue Ltd for a full award of costs against Bury Council.
  - The appeal was against the refusal of planning permission for new detached 3 storey house.
- 

### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The applicant is seeking an award of costs on a substantive grounds, namely the Council's alleged inaccurate assessment of the distance between the proposed dwelling and the neighbour at No.76 Bury New Road (No.76) which it is claimed has resulted in the appeal being lodged.
4. It is clear from the evidence that there is disagreement between the parties regarding the distance between the proposed dwelling and the rear boundary shared with No.76. In their Statement of Case, the Council comment that the proposed site plan does not scale electronically at 1:100 (as annotated on the drawing). This discrepancy or error (if it is one) could have been resolved through dialogue with the applicant during course of determination of the planning application. It does, however, form only a part of the Council's consideration and assessment of the effect of the proposals on the living conditions of No.76, and I am not persuaded that a different (agreed) figure would have changed the conclusion. Further, there were also fundamental differences between the parties in relation to the effect on character and appearance, highway integrity and car parking. Thus, the appeal process was unavoidable in this regard.
5. I therefore find that the Council has not acted unreasonably with respect to the substance of the appeal. Consequently, unreasonable behaviour resulting in

unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*R. Jones*

INSPECTOR



## Appeal Decision

Site visit made on 6 June 2024

**by Alison Partington BA (Hons) MA MRTPI**

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

**Decision date: 13 June 2024**

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**Appeal Ref: APP/T4210/W/24/3340182**

**10 Union Street and 40 The Rock, Bury, BL9 0NY**

- 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 Sid Sethi (Specscart Limited) against the decision of Bury Metropolitan Borough Council.
  - The application Ref is 69914.
  - The development proposed is modifications to existing window openings.
- 

### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Mr Sid Sethi (Specscart Limited) against Bury Metropolitan Borough Council. This application is the subject of a separate Decision.

### Main Issue

3. The main issue in the appeal is whether or not the proposal would preserve or enhance the character or appearance of Bury Town Centre Conservation Area.

### Reasons

4. The appeal site is located within Bury Town Centre Conservation Area. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area.
5. The conservation area covers the historic core of the town centre – a medieval market town that grew rapidly during the industrial revolution. In places the medieval street patterns can still be seen and the conservation area contains many fine and imposing civic and commercial buildings which reflect the prosperity of the town during the industrial revolution. These attributes contribute to the historic and architectural significance of the conservation area.
6. The appeal premises consists of two linked buildings on the corner of The Rock and Union Street. Both buildings are in the classical revival style with ashlar stone at the ground floor level and red brick on the upper floors. 40 The Rock is a three storey building, whilst 10 Union Street is 2 storey. Although different in their designs, ornate detailing surrounds the windows and doors on both buildings and there are stone string courses and other fine architectural detailing on the upper floors. No 40 has had some unsympathetic alterations to



facilitate cash machines and a night safe related to its previous use, but otherwise the external appearance of the two buildings remains intact. It is not disputed that both buildings are non-designated heritage assets, and they are characteristic of the fine commercial and civic buildings built at the height of the town's prosperity.

7. The buildings are located on the edge of the conservation area, where the town centre transitions from the historic core to the more modern retail core. Located on a prominent corner, they act as a 'gateway feature' at the start of the conservation area, when approaching westwards along The Rock or on exiting from Millgate shopping centre. Notwithstanding the various items of street furniture on The Rock, the fine architectural detailing of the buildings is clearly visible in the street scene and draws the eye. It provides a marked contrast with the somewhat bland modern shopfronts in the immediate vicinity. As such, both historically and architecturally, the buildings make a positive contribution to the character and appearance of the conservation area.
8. The appeal proposal involves enlarging the 2 ground floor windows on No 10 and the 3 ground floor windows on the elevation facing The Rock on No 40 to create larger shopfront display windows. It would also involve creating display windows in the 2 unused doors on the Union Street frontage.
9. With the ornate arched moulding above, and stone pillars at the side, the windows on No 40 are a prominent feature on the building. The proposed enlargement of the windows on the frontage facing The Rock would lower their cill to plinth level. Whilst the proposed works would have the effect of removing the unsympathetic alterations made to accommodate the cash machine and night safe, they would disrupt the architectural rhythm of the fenestration by creating larger windows on one elevation of the building than the other. Moreover, the proposed windows would sit uncomfortably in their stone surrounds as the glazing would extend further than the columns to the side. Although retaining the vertical emphasis of the fenestration, the proposal would also disrupt the graduated proportions of the windows over the three floors of the building.
10. The creation of window displays within the two former entrances on the Union Street frontage that are currently boarded up would not alter the position or proportion of these openings. However, the windows on No 10 have a horizontal emphasis. In giving the windows on this building a greater height by lowering the cill level the proposal would not respect this. Moreover, it would result in windows that would be out of proportion with the fenestration on the upper floors of the building.
11. In support of the appeal my attention was drawn to the fact that cill heights on buildings vary and that there are a number of commercial buildings in the conservation area whose large modern shop fronts show little or no respect to the architecture of the host property. I do not know when these shop fronts were erected or the policies that applied at the time of their consideration. In any event, those I saw confirmed that inappropriate alterations to such buildings are detrimental to both the host property and the conservation area and so they do not set a precedent that should be followed. Thus, they do not justify allowing the appeal scheme.
12. Overall, the appeal scheme would harm the architectural significance of both these non-designated heritage assets, and in doing so would be detrimental to

the character and appearance of the conservation area. Consequently, the proposal would fail to preserve, and would unacceptably harm, the character and appearance of Bury Town Centre Conservation Area. Accordingly, it would conflict with Policies EN2/1, EN2/2, EN1/1 and EN1/2 of the Bury Unitary Development Plan (adopted August 1997) (UDP) which require that proposals should preserve or enhance the special character and appearance of conservation areas and should not unacceptably harm the character or townscape or public views of prominent and important buildings especially those of architecturally or historic interest.

13. Having regard to paragraph 208 of the National Planning Policy Framework (the Framework) the harm caused to the conservation area would be less than substantial and so should be weighed against the public benefits of the proposal.
14. The proposed development would create larger display windows for the optician's business, with the lower cill level facilitating easier viewing of the window displays from the public realm where the current cill height is approximately eye level. However, this is predominantly a benefit to the business in facilitating customer interest rather than a public benefit. It is clear from the appellant's evidence that the business is currently operating successfully with the current windows on No 10. So, I am not persuaded that larger windows are essential for the business to operate effectively, or that they are a necessity for the business to expand into the ground floor area of No 40. Therefore, I consider that the various economic, social and environmental benefits the appellant has suggested would result from the expansion of the business into this part of No 40 do not weigh in favour of the scheme.
15. The creation of active window displays in No 40 would enhance the vitality of the street scene and provide some limited opportunities for natural surveillance of the street scene. However, larger windows would make negligible difference in this regard over and above using the windows at their current size. Whilst the previous unsympathetic alterations to the elevations to install cash machines and a night safe would be removed by the proposal, larger windows, that in themselves cause harm to the architectural significance of the building, are not necessary to achieve this.
16. The desirability of preserving or enhancing the character or appearance of a conservation area is a matter of considerable importance and weight. In this case, I consider that the very limited public benefits of the proposal would be insufficient to outweigh the less than substantial harm the proposal would cause.

### **Other Matters**

17. The appeal site is located within the primary shopping area of the town centre where various UDP policies seek to protect and enhance the vitality and viability of the centre by encouraging retailing and associated uses. However, the proposal is for modifications of windows on two building not for a retailing or other town centre use. Whilst the refurbishment of the ground floor of No 40 to enable the expansion of the existing opticians business into this floorspace may be waiting for the outcome of this appeal, there is no substantive or persuasive evidence that the appeal scheme is essential to enable the re-use of this part of the building by the business. Therefore, the town centre and

retailing policies referred to by the appellant are not relevant to the determination of the appeal.

18. The appellant has also made reference to UDP Policy EN1/8 which relates to shop fronts. However, this policy requires proposals to alter a shop front to respect the architectural elements of the building and the character of the street. I have concluded above that the proposal would not do this. Moreover, in harming the architectural significance of the building the proposal would not benefit the environmental quality of the town centre.
19. The Council's evidence indicates that restorative works to the building for the former cash machine and night safe could be carried out without requiring planning permission as they would not materially affect the external appearance of the building. The appellant has suggested that this provides a direct comment on the scope of works proposed in appeal scheme and shows that the proposal would not harm the appearance of the building. However, the appeal proposal is not simply just carrying out restorative works but enlarging a number of windows. I have concluded that this work would harm the character and appearance of the building and the conservation area.

### **Planning Balance and Conclusion**

20. The appellant has argued that the various heritage policies within the UDP which are most important for determining the application are out of date and paragraph 11 d of the Framework is engaged. This paragraph indicates that in such circumstances permission should be granted unless either of the 2 situations described in sub-paragraphs d i or ii apply. Paragraph 11 d i indicates that this presumption in favour of permission does not apply where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 indicates that this includes designated heritage assets.
21. I have concluded above that the proposal would not preserve, and would unacceptably harm, the character and appearance of Bury Town Centre Conservation Area and that the public benefits of the proposal would not outweigh this harm. Therefore, even if it considered that paragraph 11 d is engaged, the application of the policies in the Framework relating to designated heritage assets provide a clear reason for refusing the development proposed.
22. For the reasons set out above, I conclude the appeal should be dismissed.

*Alison Partington*

INSPECTOR



## Costs Decision

Site visit made on 6 June 2024

**by Alison Partington BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 June 2024**

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### **Costs application in relation to Appeal Ref: APP/T4210/W/24/3340182 10 Union Street and 40 The Rock, Bury, BL9 0NY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Sid Sethi (Specscart Limited) for a full award of costs against Bury Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for modifications to existing window openings.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is for a full award of costs. It is argued that in various ways the Council did not assess the proposal correctly and it has not properly substantiated the reason for refusal. As a result, the appellant considers that the need to make the appeal represents a wasted expense.
4. The application had a single reason for refusal which relates to the impact the proposal would have on the character and appearance of the conservation area. The reason for refusal sets out both the development plan policies and the paragraphs within the National Planning Policy Framework (the Framework) to which the Council considered the scheme would be contrary. It is therefore clear that in determining the application the Council have had regard to the Framework as well as the development plan.
5. Whilst the Council have not provided an appeal statement, they have stated that this is because they consider the delegated report for the application adequately sets out their reasoning for refusing the application. Within the delegated report whether or not the development plan policies are consistent with the Framework is assessed. The planning history section also sets out the Lawful Development Certificate for No 10, so I am satisfied that, as far as this is relevant, it was taken into account in the determination of the application.
6. The delegated report describes the significance of the buildings and how they contribute to the character and appearance of the conservation area. It clearly sets out why they consider the proposal would cause harm to both the non-designated and designated heritage assets. For example, it indicates that the proposal would cause visual harm to the architectural proportions of the

- buildings, and cause disharmony to the visual rhythm of the fenestration on the two elevations of No 40.
7. In addition, whilst not required in the development plan policies, in accordance with the requirements of the Framework, the report identifies the level of harm to the conservation area and balances this against the public benefits. It identifies that whilst there is a public benefit from the provision of an opticians, this benefit already exists through the current use of No 10 and so would not be a benefit arising from this proposal.
  8. However, there is nothing in the delegated report, either in the heritage balance or elsewhere, that ascribes adverse weight because No 10 is already operating as an opticians or that suggests No 40 should be protected for non-retail uses. Any suggestions with regard to the latter expressed in discussions between the appellant and the Council after the application was determined are the informal views of the Officer and do not represent the formal decision of the Council. It is the formal decision that gave rise to the necessity for the appeal.
  9. As set out in my decision, given that the appeal scheme is for modifications to various existing window openings, not a change of use for a retail proposal, the retail and town centre policies in the development plan are not directly relevant. As a result, I am satisfied that the Council have identified the relevant policies and assessed the proposal against them appropriately.
  10. Whilst the delegated report indicates that the Council considered that restorative works to the building in respect of the cash machine and night safe would not materially affect the external appearance of the building, the scope of the appeal scheme goes far beyond restorative works. As a result, it is reasonable for the Council to consider that the appeal scheme does unacceptably harm the appearance of the building.
  11. The delegated report does not specifically mention that the appeal site lies on the edge of the conservation area, although it does indicate that it adjoins the more modern Millgate shopping centre. Nonetheless, it is indicated that the Officer undertook a site visit and from this they would have been aware of the wider surroundings. As outlined above, the report sets out substantive reasoning for why the Council consider the proposal, in this location, would harm the character and appearance of the conservation area. Whilst the appellant may not agree with the Council's reasoning and conclusion, this does not mean they have behaved unreasonably.
  12. Overall, I consider that the Council has provided substantive reasoning for its decision to refuse the application. I am also satisfied that the Council has met its obligation to give proper consideration to the planning application.
  13. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

*Alison Partington*

INSPECTOR



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## Appeal Decision

Site visit made on 17 May 2024

**by A.Graham BA(hons) MAued IHBC**

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

**Decision date: 14<sup>th</sup> June 2024**

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**Appeal Ref: APP/P4225/D/23/3338142**  
**56 Windsor Road, Prestwich M25 0DE**

- 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 Raj Singh against the decision of Bury Metropolitan Borough Council.
  - The application Ref: 69976 dated 18 September 2023 was refused by notice dated 13 November 2023.
  - The application is for loft conversion with rear dormer extension, two storey extension at side, addition of first floor window to side elevation, two storey extension at rear with amendment to balcony, new cladding to front elevation and installation of 2 ventilation mechanical intake extract units to the side elevation.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Since the determination of this application a revised National Planning Policy Framework (The Framework) was published in December 2023. I have therefore determined this appeal in accordance with the revised provisions within the Framework.
3. The description above is taken from the Council's Decision Notice and differs from that used on the Appellant's original application form. However, the Appellant has confirmed in part E of the Appeal form that the description is still accurate. I consider that the description of development as used by the Council more accurately reflects the nature of the scheme proposed and as such I have used the description used by the Council accordingly.

### Main Issues

4. The main issues are the effect of the proposal upon the character and appearance of the area and the effect upon the living conditions of neighbours.

### Reasons

5. The appeal property is a two storey bow fronted semi detached property. The house has a central pitched roof porch and has been extended both to the roof level to the side and to the rear over recent years. Much of this development has been agreed through previous applications<sup>1</sup> although some elements of the

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<sup>1</sup> Application reference numbers: 65792 and 66998

proposed scheme were subsequently resisted by the Council. This application that is subject to this appeal therefore attempts to rectify some of these concerns with particular reference to elements around the rear dormer and rear balcony. The scheme also seeks permission to retain two mechanical extraction units to the side elevation and the now extant stone type cladding to the front elevation.

6. It appears common ground between the parties that much of the alteration to the rear dormer and balcony that was previously resisted could be remedied through this application subject to conditions. I therefore do not intend to dwell upon these matters and instead will focus upon the areas of contention between the parties as follows.
7. In this regard the main issues are concerned with the effect of the proposal upon the character and appearance of the area through the stone effect cladding that has been implemented to the front elevation as well as the effect of the two extract units mounted above the neighbouring flat roof garage on the side elevation. There are also potential issues around the living conditions of neighbours in light of these mechanical extract units that I shall seek to address.
8. In assessing this appeal I am aware of the Council's Policy H2/3 regarding extensions and alterations. The general approach of this policy is to ensure that the design of such proposals is reflective and responsive to the parent property and to the surrounding areas. This approach reflects the guidance with The Framework in the importance that it places upon distinctive and high quality design that is responsive to its particular context.
9. I saw on my site visit that the works already carried out have created a marked departure between this property and the vast majority of neighbouring houses. The overriding character of the area is one of red brick or rendered properties that would be consistent with the suburban nature of the area. By contrast, the scheme before me has dramatically altered the front elevation material to that of small, irregular and elongated light stone cladding tiles.
10. The scheme has therefore introduced a wholly alien material into this area which badly harms the remaining distinctive character through the introduction of a new material that is unrelated to anything around it. This erodes the sense of place that is so important for the context of this site and the location to which it belongs. As such the proposal represents a harmful introduction into the area that would be in conflict with policy H2/3 of the Council's Local Plan.
11. The mechanical extractor units are located high up to the side elevation. Although this is a secondary elevation the units are still visible from the streetscene and introduce an element of clutter into the area which erodes its character. I have evidence before me that the mechanical units face directly onto the neighbouring property at number 50 Edenfield Road and as a result these units appear both incongruous and intimidating when seen from the rear of this property.
12. As such, although the Council's Pollution Control Officer raises no objection to these devices in terms of noise, I consider that there would at least be a harmfully dominant impact upon both the immediate neighbours and upon the local area through these units being located here.

13. Although I raise no issue with regards the non contentious elements of this scheme to the balcony and dormer that could be conditioned to make them acceptable, the front cladding and the mechanical units to the side elevation would both cause harm to the character and appearance of the area and upon the living conditions of those living at number 50 Edenfield Road. These elements cannot easily be separated as a split decision and as such I find this proposal as a whole would be in conflict with Policy H2/3 of the Bury Unitary Development Plan as well as other guidance in the form of the Alterations and Extensions Supplementary Planning Document. As such this scheme would also be in contravention to the overriding policy approach within the Framework.

#### **Other Matters**

14. The adjoining neighbour has also raised concern with the presence of eaves lighting to the gable elevation of the appeal property. This element of the scheme is not included in the plans before me and as such I must defer to the Council on this matter to deal with howsoever they may wish.

#### **Conclusion**

15. For the reasons given above, and taking into account of all other matters raised, I dismiss the appeal.

*A Graham*

INSPECTOR





# Appeal Decision

Site visit made on 5 June 2024

**by P Eggleton BSc(Hons) MRTPI**

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

**Decision date: 26 June 2024**

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**Appeal Ref: APP/T4210/W/24/3338058**

**Flat A, 212 Bell Lane, Bury, BL9 6HS**

- 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 Scott Jones against the decision of Bury Metropolitan Borough Council.
  - The application Ref 70259, dated 30 November 2023, was refused by notice dated 17 January 2024.
  - The development proposed is a single storey extension to create a ground floor flat.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect on the living conditions of the existing and future residents with regard to privacy, outlook and amenity.

## Reasons

3. The property currently has a commercial use at ground floor level which has direct rear access to its own enclosed yard. There is also a residential flat which is accessed separately. Its main door leads to an entrance corridor and on to the stairs. On the first floor there are two bedrooms and a combined kitchen/living room which has an outlook to the front. Although currently in the process of being separated from the first floor accommodation, there is a downstairs room, accessed from the entrance corridor, which also has a door directly into the enclosed rear yard.
  4. The proposal would formalise the separation of the ground floor room from the first floor accommodation. This room would then serve as a living room/kitchen with an outlook onto the side street. An extension would accommodate a bathroom and a bedroom. The bedroom would have a window facing into the rear yard. Access to the flat would be from the much reduced yard area which would also accommodate the bins of both properties. There is a high wall to both the side and rear, enclosing the yard area and screening it from the adjoining roads.
  5. The two bedroom first floor flat would be retained. Its ground floor room would be lost as would its direct access to the yard. The proposal includes the
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- provision of bin storage within the retained yard. These changes would result in the loss of the relatively large yard area which offers a good standard of private amenity space suitable for sitting out and drying clothes. The loss of the ground floor room and direct access to the yard would be to the detriment of the residents with regard to amenity but also in relation to the size and flexibility of the accommodation overall. The proposal would therefore significantly reduce the quality of the accommodation for the first floor residents.
6. Although there would be a reduction in the quality of the first floor flat, as it lies immediately opposite the park and bin storage provision would be made, I am satisfied that the residents would have an adequate standard of amenity that would not be dissimilar to other first floor flats above commercial properties. It appears likely that this would occur in any event but as it forms part of the proposal, the reduction in quality, compared to the current arrangement, whilst not unacceptably harmful to the living conditions of the residents, weighs against the proposal with regard to amenity.
  7. The new ground floor unit would have a living room that would have an outlook directly over the pavement of the side street. The road has no parking restrictions immediately outside the window. The outlook is likely to be restricted at times and privacy would be limited. The bedroom would have an outlook directly towards the high rear wall of the yard which would be about three metres away. The door to the flat would open into this more constrained yard area which would also accommodate two sets of bins. Having the first floor flat residents access their bins from the relatively narrow retained yard area would be extremely intrusive for the residents of this property, particularly as the access gate would be close to the bedroom window. The retained yard area would have very little quality with regard to residential amenity given its limited depth and being so enclosed.
  8. As with the first floor flat, I am mindful that the property lies immediately opposite a park. Furthermore, the physical works would not result in any harm to the character of the area. However, the outlook from the bedroom into the very limited area of shared yard; and the storage of two sets of bins in this area with shared access, would represent overdevelopment. Privacy within the bedroom would be harmed because of the shared access and it would be unacceptably intrusive when the upstairs residents accessed their bins, particularly when moving them on bin day as the gate would be so close to the bedroom window. This would add to the outlook concerns and limited privacy of the living room. This particular arrangement would result in very poor living standards for the ground floor residents and would represent poor design.
  9. The overdevelopment of the property, resulting in the unsatisfactory rear yard arrangements in particular, would result in conflict with the Bury Unitary Development Plan 1997 design and amenity policies, particularly policy H1/2 as this requires that regard be had to the suitability of the site with regard to amenity; policy H2/1 which includes the need to consider the impact of developments on residential amenity; and policy H2/2 which seeks acceptable standards of layout in relation to density; space about and between dwellings; and open space.

10. The council accept that they cannot demonstrate a five-year supply of deliverable housing land. In these circumstances, paragraph 11dii of the *National Planning Policy Framework 2023* states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework*, taken as a whole.
11. Policy H1/2 includes matters that seek to control the location of development and therefore can, in part at least, be considered out-of-date. The other two policies referred to are design and amenity policies rather than policies seeking to control or restrict the provision of new housing. They generally accord with the design and amenity requirements of the *Framework* and can therefore be afforded considerable weight. It is these policies that are most important in determining this particular proposal.
12. There are benefits to achieving an additional unit of accommodation, particularly given the council's housing land supply position. The additional unit would offer both social benefits from the provision of further housing and economic benefits from its construction and occupation. However, this needs to be set against the loss of a much more satisfactory unit. Furthermore, the poor standard of outlook, privacy and outside amenity space, for the new ground floor flat residents, particularly resulting from the size and shared nature of the yard, would result in unacceptable living conditions.
13. I am mindful of the character of this area and the other developments referred to by the appellant. I accept that there can be instances whereby the provision of outdoor amenity space is not practical and the benefits of a new flat can outweigh this shortcoming. Although measurements have not been provided, I have accepted the appellant's view that the space standards within the units would meet the government's Technical housing standards – nationally described space standard 2015 (as amended). I am mindful also that no objections have been received from local residents and I consider that the concerns of the Highway Authority could be adequately addressed.
14. The proposal conflicts with the design and amenity requirements of the development plan. I am not persuaded that it is appropriate to set aside all of the development plan policies referred to, because of the housing supply position. However, even if they were set aside, I would conclude that the proposal would result in unacceptable conflict with the design and amenity requirements of the *Framework* which seeks a high standard of amenity for existing and future users and is clear that development that is not well designed should be refused. The harm to the amenity of the future occupants, resulting from the unacceptable quality of the accommodation provided by the ground floor flat and yard, would significantly and demonstrably outweigh the benefits of the additional unit. I therefore dismiss the appeal.

*Peter Eggleton*

**INSPECTOR**



## Appeal Decision

Site visit made on 5 June 2024

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26 June 2024**

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**Appeal Ref: APP/T4210/C/23/3324964**

**22 Cockey Moor Road, Starling, Radcliffe, Bury, Lancashire BL8 2HB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by S Postchi against an enforcement notice (EN) issued by Bury Metropolitan Borough Council (the LPA).
  - The enforcement notice, numbered 23/0054, was issued on 30 May 2023.
  - The breach of planning control as alleged in the notice is: the erection of a building to be used as a dwelling and a masonry constructed outbuilding on the land.
  - The requirements of the notice are as follows:
    - a) Reduce the height of the roof of the building to conform with the plans approved under planning permission 68038.
    - b) Reform the roof to the rear with a hip construction to conform with the plans approved under planning permission 68038.
    - c) Remove the rear window at second floor level of the building and reinstate the brickwork within the opening to conform with the plans approved under planning permission 68038.
    - d) Remove the 3 no. 'patio' style windows to the rear elevation at first floor level and reinstate the windows to conform with the plans approved under planning permission 68038.
    - e) Remove the balcony construction to the rear of the property and reform the ground floor 'outrigger' to conform with the plans approved under planning permission 68038.
    - f) Reform the roof to the entrance porch to the front elevation to conform with the plans approved under planning permission 68038.
    - g) Demolish and remove the masonry constructed outbuilding from the land.Copies of the plans approved under planning permission 68038 are attached.
  - The period for compliance with all of the requirements is 120 days.
  - The appeal is proceeding on grounds (a) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The Appeal is allowed to a limited degree on ground (g) only. The notice is also corrected and varied in Parts 3 and 5. Otherwise, the Appeal is dismissed and the enforcement notice is upheld, as corrected and varied. See formal decision below.

### Matters of clarification

2. A Section 78 Appeal (APP/T4210/W/23/3324960) was submitted on 28 June 2023, at the same time as this enforcement appeal. It was the intention that the two appeals were considered together. However, the Planning Inspectorate deemed it to be out of time. By e-mail, dated 7 August 2023, it was confirmed that no further action would be taken on the appeal. It follows that I am only empowered to deal with this enforcement appeal. However, in doing so I have had regard to all of the

relevant material considerations in the submissions, which are common to both the unaccepted S78 appeal and the valid Section 174 appeal on ground (a).

3. It has been confirmed that the Appeal form had been completed in error in relation to the grounds pleaded and that there is no appeal on ground (f). From my interpretation of the submissions I consider, however, that there is an implied ground (g) appeal which I have dealt with below.

4. It is indicated that the masonry constructed outbuilding did not form part of the refused application and should, therefore, be considered separately. However, because it is referred to in the notice, I must deal with it in relation to this appeal. Having seen the outbuilding and having had it measured on site (3.45m x 1.95m x 2.37 maximum height), I consider that it constitutes permitted development under Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). It does not therefore, in itself, constitute a breach of planning control. I shall, therefore, correct the allegation in Part 3 of the notice and also vary the notice by deleting the requirement in Part 5(g).

5. Also, for clarity, I shall correct Part 3 to set out more clearly the matter which actually constitutes a breach of planning control. This is *'The erection of a building to be used as a dwellinghouse, which is not in accordance with the Approval, Reference 68038, which was granted on 28 April 2022'*.

6. During my site visit I was provided with a copy of the approved drawings for Approval 68038 as well as copies of what were stated to be the 'As-Built' drawings. It was agreed that the difference between the approved scheme maximum ridge height of the house and the 'As-Built' maximum ridge height was 1.29m. A dimension was also taken on site from the main front elevation of the house to the back of the front boundary wall. This was agreed to be 13.5m.

7. Whilst accepting these agreed dimensions, from my observations of the house and as noted during my visit, I question the overall accuracy of the 'As-Built' drawings in relation to what is now actually on site. To refer to just a few discrepancies: the rear elevation does not appear to have been drawn accurately; the rear ground floor windows/doors are not as shown on the drawings; there are no 'Juliet' balconies on site to the rear first floor windows; the doors to these balconies appear to open outwards rather than inwards and the second floor plan cannot possibly be accurate since it shows a solid wall between the top of the staircase and the large window which looks out over the rear garden of No 22 and the adjacent neighbouring gardens.

8. However, despite these obvious discrepancies, it is clear from all of the appeal submissions and my own observations that the main concerns raised by the LPA and others relate to the overall size, height, bulk, volume and massing of the house as now built on site. There are no issues regarding the materials and external finishes. But, it is evident to me how the house as constructed on site differs from that approved and it is on that basis that I have considered this appeal.

### **The appeal site and the surrounding area**

9. The appeal site is located within the Green Belt, approximately 3km from the centre of Bury, on the north side of Cockey Moor Road, which forms the B6196 between Bury and Ainsworth Village. This part of the road comprises residential properties on both sides including bungalows, two-storey semi-detached and detached houses of varying dates, designs, and materials. The bungalows tend to be the oldest properties and most have a traditional appearance.

10. The more recent two-storey houses are more modern in their designs and are generally finished in render or natural stone. This stretch of Cockey Moor Road forms a distinctively open, linear settlement pattern between Bury and Ainsworth. It contrasts markedly with the more built-up residential areas of Starling and Elton to the east. To the north of the appeal site lies Cockey Moor and the open countryside. There is a public footpath crossing the field to the rear of the property. To the south, beyond the road and the houses, there are more open fields. During my site visit I had clear views from the field of the appeal site and the neighbouring properties.

### **Planning History and background information**

11. Planning application Ref: 57756 was submitted in July 2014, for the '*Demolition of existing bungalow and erection 2 storey replacement dwelling, with additional living accommodation in the roof space*'. This was refused in October 2014. The Council's refusal referred to detrimental impacts due to height, size and massing.

12. In December of 2014 a Planning Pre-Application was submitted (Ref:01601E) for the '*demolition of the existing bungalow and the construction of a replacement building*'. Advice given by the LPA at the time stated: '*The principle of a replacement house on the site is acceptable subject to the appropriate siting and massing. A house of reduced proportions from that recently refused would be more appropriate. Hipping the roof and lowering the overall ridge height would sit better within the streetscape*'. A revised application (Ref:58590) was submitted in March 2015 and was approved in June 2015.

13. A further application for the '*erection of a detached dwelling*' (Ref: 67322) was submitted in July 2021 and refused in January 2022. Again, the Council's reasons for refusal cited design and massing issues, with particular reference to the height of the roof and a two-storey porch. In February 2022 Planning Application (Ref: 68038) was submitted for the '*erection of a detached dwelling*' and was granted conditional approval in April 2022.

14. This was the latest full planning application/permission for a new dwelling on the site. Condition No 1 required that the dwelling was erected in accordance with the approved plans. However, it was not erected in accordance with those plans and subsequently an application was made in December 2022 (Ref: 69189) to vary condition 1 to read '*increase in the size and height of the second floor and external alterations*'.

15. This was refused in February 2023. The refused application had proposed design revisions to the plans approved under Ref: 68038. The EN, the subject of this appeal, had been issued because the dwelling has not been built in accordance with the approved plans. As referred to above the appeal against that decision (Ref: 69189) was not accepted as being valid. However, the appellant's case in the ground (a) appeal now being made is, in essence the same as that which was made in relation to what has actually been built.

16. Initially the 'As-Built' drawings were not accurate, and it is stated that this has been rectified. However, despite the rectifications, I have noted further discrepancies in the drawings, although the major differences between the approved scheme and the 'As-Built' scheme are now agreed. As indicated above, during the site visit it was agreed that the overall difference in height between the approved scheme and the 'As-Built' scheme was 1.29m

17. I have based my assessment on ground (a) on the design differences between the approved plans and what has actually been built. There is no dispute that the application to vary the condition, attached to application Ref: 68038, was made to regularise the fact that the dwelling had not been constructed in accordance with the approved drawings. I now turn to whether or not planning permission should be granted on ground (a) for the dwellinghouse as built.

### **The appeal on ground (a)**

#### ***Introduction***

18. As referred to above, in reaching my decision under this ground of appeal I have taken into account all of the relevant material considerations relating to the S78 appeal which was turned away. That application (December 2022, Ref: 69189) had been to vary condition 1 of application Ref: 68038 to *'increase in the size and height of the second floor and external alterations'*.

#### ***Relevant Policy***

19. The development plan is the Bury Unitary Development Plan (BUDP) and the most relevant policies are H2/1 (The Form of New Residential Development); H2/2 (The Layout of New Residential Development); H2/6 (The Layout of New Residential Development); EN1/2 (Townscape and Built Design); EN9 (Landscape); HT2/4 (Car Parking and New Development); EN5/1 (New Development and Flood Risk); OL1/2 (Green Belt) and HT6/2 (Pedestrian/Vehicular Conflict). The Supplementary Planning Document 6, SPD6 (Alterations and Extensions to Residential Properties) is relevant as is SD11 (Development Control Policy Guidance Note 11), Parking Standards.

#### ***The Main Issues***

20. The Main Issues in this appeal are as follows:

- Whether the dwelling 'As-Built' constitutes inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the NPPF) and development plan policy.
- The effect on the openness of the Green Belt.
- The effect on the character and appearance of the area.
- The effect on the living conditions of neighbours.
- If the proposal does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

#### ***The gist of the case for the Appellant***

21. It is stressed that the permission (Ref. 68038) established that the principle of replacing the bungalow with a two-storey detached dwelling is acceptable to the LPA and this is confirmed in the Delegated Report for the application. The differences between the approved and the 'As-Built' drawings were said to be as follows:

- Ridge height of main roof should have been 9.65m, instead of 9.10m.
- Window styles including 4 No. windows on first floor (2No. front, 2No.rear) becoming Juliet.
- Lower-level roof at rear should have been a flat roof instead of a lean-to.
- Roof design on porch should have been shown as flat, instead of pitched (LPA has not raised concern about this change).

22. It is contended that, in accordance with the 'Wheatcroft Principle', the substance of the application has not been altered and so changed that the grant of any planning permission would deprive those who should have been consulted on the changed development the opportunity of such consultation.

23. It is indicated that the overarching reason for the design changes is to better utilize the proposed loft space. Thus, the need for the ridge-height increase and changes to the main roof design. It is stressed that the Appellant has a large family, hence the original proposal to create 4No. bedrooms. The aim was to reduce redundant or under-utilized space and, instead, to maximise useable space. The height increase is stated to be required to meet Building Regulations and the change to the roof design, at the rear, is to create a more liveable and functional space including adequate natural light and ventilation.

24. It is indicated that changing the rear roof from lean-to to flat roof, allows for the installation of large sliding glazed-doors. The approved lean-to roof design would have prohibited the installation of these doors, which are preferable, because they will allow for much higher levels of natural light and ventilation.

25. In granting planning permission it is inferred that the LPA determined that replacing the bungalow that was on the site with a two-storey detached dwelling '*would not result in disproportionate additions over and above the size of the original dwelling*' (Policy OL1/2) and that, it was acceptable as part of a street-scene and that it was materially larger than the bungalow.

26. It is contended, therefore, that the principal test is whether or not the differences between the Approved Plans and the 'As-built' Plans results in greater impact on the openness of the Green Belt. If it does the question is to what degree and whether the increase in impact, on balance, is acceptable or not?

27. It is highlighted that the footprint of the 'As-built' Plans has not changed from that of the Approved Plans. The change to the design of the main-roof and the ridge height has, however, increased the internal volume of the roof space and consequently increased the overall massing of the dwelling.

28. Turning to the LPA tests relating to an assessment of 'openness', prominent among these will be factors relevant to how 'built-up' this part of the Green Belt is and how built-up it would be if the 'As-Built' scheme is allowed to remain. It is stressed that the appeal site forms part of a residential road and this particular part of the Green Belt is, therefore, already quite built-up. It is not an isolated dwelling in the Green Belt. It is considered that the design changes have resulted in a very limited change to the degree that the locality is 'built-up'.

29. It is indicated that the SPD guidance was prepared in the context of national guidance that has now been superseded. However, if considered to be material it is contended that in terms of the section on 'Materials and Colour' the natural stone is '*sympathetic with the location, minimising visual impact*'. When viewing the dwelling from the land at the rear in particular, the stone finish assimilates better with the background sky than some of the neighbouring dwellings. Similarly, the design complies with '*The use of dark colours for window and door frames, guttering and other such elements is often preferable to lighter colours.*'

### ***The gist of the case for the Council***

30. It is contended that the design of house as built is unbalanced and discordant with the character and context of the street scene. The Council was initially also



concerned about the siting of the property in a more forward position and whether there was sufficient space for parking.

31. Reference is made to the NPPF section relating to development in the Green Belt and to UDP Policy OL1/2 New Buildings in the Green Belt. Both indicate that replacement dwellings are acceptable where they are not disproportionate in scale to, or materially larger than, the original dwelling. It is also indicated that where new development is deemed to be inappropriate, in that it would have a detrimental impact on the openness of the Green Belt, it would need to be justified as 'Very Special Circumstances (VSC)'.

32. It is stressed that the SPD 'New Buildings and Associated Development in the Green Belt', still supports national Green Belt policies and indicates that, where a replacement dwelling is proposed, the new dwelling should reflect the original dwelling in terms of massing, siting and area of footprint, height. In effect it should not be materially larger than the one it replaces.

33. It is accepted that the house as built constitutes a replacement building of the same use on previously developed land. These exemptions, however, are subject to the replacement building not having a greater impact on the openness of the Green Belt. It is stressed that the approved scheme for a replacement dwelling on the site was considered to be the maximum size and volume that could be accommodated, given the existing development along Cockey Moor Road, particularly with regard to the neighbouring properties on either side.

34. It is considered that the property 'As Built' takes the size and volume beyond that which is considered to be reasonable within the Green Belt, particularly in view of its height and massing. The dwelling is now significantly taller and larger than the original dwelling and, in terms of its relationship with the openness and character of the Green Belt, is considered to be disproportionate and to have a seriously detrimental impact on the character and openness of the Green Belt. The dwelling is now considered to be over-dominant and out of scale with its surroundings. It therefore constitutes unacceptable inappropriate development and is contrary to both national and local Green Belt policies.

35. It is accepted by the Council that there is a mix of different house styles and sizes of dwellings along this part of Cockey Moor Road and that, in terms of siting, the house is centrally positioned and generally in line with the other properties along the road. However, the main concerns centre on the roof design; the two-storey front outrigger/porch; the appearance from the rear and the overall height of the building in relation to properties on either side. It is contended that the heightened roof design, with its steep pitch appears incongruous and out of character within the street scene.

36. It is also considered that the two-storey porch/outrigger on the front elevation of the house is over dominant and adds to its incongruous appearance within the streetscape. In terms of visual amenity, it is contended that the design and scale of the house has had a detrimental impact on the character and appearance of this part of Cockey Moor Road. It is therefore contrary to policies EN1/2 and H2/1 of the UDP, and the guidance set out in SPD6.

37. The previously approved scheme indicated a two-storey rear outrigger extending out centrally from the rear elevation and set down below the ridge of the main roof. This gave it a clearly subordinate appearance and reduced the visual impact of the building when viewed from the properties on either side.

The house as built increases the size and massing of the rear outrigger resulting in an over dominant impact, particularly when viewed from the neighbouring properties.

38. It is considered that this over dominant element has a seriously detrimental impact on the residential amenity of the neighbours on either side and is unacceptable and contrary to UDP Policies H2/1, H2/2 and guidance in SPD6.

### ***My assessment***

#### *Introduction*

39. In its Enforcement Statement the Council has not specifically referred in detail to the relevant local and national Green Belt policies. However, these matters are dealt with in the Officer Report. I have, therefore, considered the Council's submissions relating to the Green Belt on the basis of that Report.

#### *Development in the Green Belt*

40. Paragraph 154 of the NPPF sets out that the construction of new buildings in the Green Belt is inappropriate. However, it also sets out that there are exceptions to this. The appeal building can be considered against two of these exceptions. The first is *'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces'* and the second is *'limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development'*.

41. As referred to above, in granting planning permission for a new dwelling on the site, the LPA considered that the approved scheme fell into the categories of both of these exceptions and, therefore, that the initial proposal did not constitute inappropriate development. However, what must now be considered is whether or not the changes in design to the roof and the resulting increase in height of the dwelling is *'materially larger'* than the bungalow it replaced and whether or not this has resulted in the overall development having had a greater impact on the openness of the Green Belt. If so, it would constitute inappropriate development.

#### *Effect on the openness of the Green Belt*

42. Clearly the replacement building is in the same residential use as was the bungalow. However, it is evidently materially larger than the bungalow. It is greater in overall height, volume, bulk, and massing. It is distinctly noticeable when seen against the adjacent neighbouring properties (Nos 20 and 24) and the other remaining bungalows along this section of the road. I accept that a difference in size is inevitable given the comparison made is between a bungalow and a two-storey house. However, having seen the new house from both near and distant viewpoints, I consider that it is perceived as a building that is far too large and bulky positioned between the existing house and bungalow at Nos 20 and 24.

43. Because of the increases in height, bulk, and massing and, due to the resulting unbalanced physical relationship with its neighbours, I consider that the house is perceived as being unacceptably out of scale and proportion on this particular site. This is evident when viewed from Cocky Moor Road, but even more so when seen from the field and the public footpath to the rear. In fact, when seen from these latter viewpoints the house is perceived as towering over and completely dominating the neighbouring properties. It is clearly seen as an out of scale three-storey structure

rather than as a two-storey dwelling or bungalow typical of most of the other dwellings along this part of Cocky Moor Road.

44. It is clear that the LPA had sought to avoid such a detrimental effect by refusing earlier proposals which were considered too high, voluminous and bulky. The differences between the initially approved development and what is now on site have resulted in a building that is well over the original height and completely out of scale, particularly to the rear. From the garden and the field the 'towering' elevation has the appearance of a three-storey structure which would be more likely to be located in a more urban setting. It is also of a different unacceptable design and completely at odds with what the LPA had considered appropriate in the first instance. In my view it is the rear elevation that most obviously results in the perception of a grossly oversized and out of scale building which detrimentally affects the openness of the Green Belt.

45. The courts have held that 'openness', in terms of its effect on the Green Belt, can comprise both a visual and spatial dimension. In this case the unacceptable visual impact is clear to see, with a much higher and more voluminous building having been erected on this fairly tight site which formally only accommodated a bungalow. Due to its excessive mass and volume, the unauthorised dwelling has clearly reduced the spatial openness of this part of the Green Belt. Again, I stress that this effect on openness is most evident when viewed from the field and the public footpath which crosses the land to the rear of the site.

46. However, in terms of its size, height and volume, the masonry outbuilding is seen as a relatively small garden shed which I have concluded complies with permitted development rights, albeit within the Green Belt. In itself I consider that it is acceptable and I shall, therefore, correct and vary the notice accordingly.

47. However, I find that the effects of the unauthorised design changes to the house itself are harmful to the openness of the Green Belt. It follows that what might have been acceptable, in terms of the exceptions set out in the NPPF, have resulted in the house, now on site, being inappropriate development in the Green Belt. Thus, it is also contrary to the NPPF section relating to development in the Green Belt and to the UDP Policy OL1/2 New Buildings in the Green Belt.

*Effect on character and appearance of the area*

48. It follows that, in my view, the increase in height and volume; the resulting bulkier appearance and the three-storey rear elevation of the house have had a significant detrimental impact on the character and appearance of this section of Cocky Moor Road. I acknowledge that there are other properties, including No 26, which are larger in footprint than the appeal dwelling and I was able to see all of these during my site visit. However, the roofscapes and overall massing of these other new houses generally respect the form and scale of the neighbouring properties.

49. I was also able to view this length of the road from both near and distant viewpoints and noted that the road rises from east to west between Nos 22 and 26. Despite the levels indicated on the 'As-Built' drawing, from the opposite side of Cocky Moor Road the ridge height of No 22 is still perceived as being higher than that at No 26. From the field the rear three-storey elevation of No 22 completely dwarves the adjacent semi-detached house at No 20 and the bungalow at No 24. Having clearly noted the differences in height during my site visit, it is difficult to accept that the levels shown on the 'As-Built' Street drawing are accurate.

50. The same is the case when viewed from the south side of the road. I consider that it is the contrast of the specific bulk, height and massing of the house, as built, with its immediate neighbours that has resulted in a dwelling that is perceived to be unacceptably out of scale and character on this particular site.

51. In conclusion on this issue I find that the house as constructed is, therefore, contrary to policies EN1/2 and H2/1 of the UDP; the guidance set out in SPD6 and the policies within the NPPF which seek to ensure good design.

*Effect on the living conditions of the neighbours ie. occupants of the properties on either side (20 and 24) and those on the opposite side of Cocky Moor Road.*

52. Some of the neighbours who live on the opposite side of the Cocky Moor Road contend that the rooflights to the front elevation will detrimentally affect their privacy. However, the distance from No 22 to the nearest properties opposite is over 40m. Having seen this physical relationship I do not consider that this will result in any unacceptable loss of privacy for the residents on the opposite side of the road. This dimension is well over the minimum distance allowed between windows of habitable rooms. Furthermore, views from rooms and/or spaces with rooflights are restricted by the fact that the windows are angled. In any case, the approved drawing showed two rooflights to the front elevation.

53. However, turning to the rear elevation, I share the Council's and others' concerns about the effect that the unauthorised house has had on the living conditions of the nearest neighbours. I acknowledge that, on the inaccurate 'As-Built' drawings, the rear bedroom and the walk-in wardrobe are shown as having 'Juliet' balconies with the doors opening inwards. However, unlike those to the front bedrooms, these have not been installed. I note that the doors to the front balconies have no handles externally, which infers that they open inwards.

54. Those to the rear on the other hand have external handles which, together with the external appearance of the doors, suggests that they could open outwards onto the flat roof either side of the windows to the master bedroom. This could clearly lead to the potential for use of these flat roofed areas to be used as balconies and in these particular positions they would look directly over the gardens of the two neighbouring properties. This would definitely be detrimental for neighbours and could affect their privacy. However, I accept that if the 'Juliet' balconies were to be installed this would be no different to the situation shown for the rear windows on the approved drawing and accordingly no such loss of privacy would occur.

55. However, turning to the large rear window at the second floor, due to the excessive height and potential to look both ways into the adjoining gardens, it is my view that this will affect the privacy of those using the adjacent gardens. Having seen these gardens from that of No 22 and having noted the ground levels, heights and physical relationships between the properties, I consider that significant areas of the adjoining gardens would be unacceptably overlooked, leading to a noticeable and unacceptable loss of privacy for those using the gardens.

56. Furthermore, I consider that the excessive and 'towering' height of the central bay of the rear extension will also have an obtrusive and overbearing effect for anyone enjoying the gardens. Other new dwellings along this part of the road appear to have respected the physical relationships with neighbouring properties so as to ensure that situations resulting in loss of privacy, overlooking and overbearance are limited. Unfortunately, in this instance, the opposite is the case. The house as constructed is perceived as a development which is completely out of scale; unduly noticeable

between the neighbouring semi-detached house and the bungalow (Nos 20 and 24) and is harmful in terms of loss of privacy and being overbearing.

57. I agree with the LPA that this rear, over-dominant element of the house has had a seriously detrimental impact on the residential amenity of the neighbours on either side. It is, therefore, unacceptable and contrary to UDP Policies H2/1, H2/2 and guidance in SPD6. Again, it follows the appeal also fails on this issue and that I do not consider that the 'As-Built' scheme should be granted permission.

#### *Parking*

58. Although Council had initially referred to the fact that house had been moved forward and that, as a result, there was inadequate space for the parking of vehicles, this is clearly not the case. During my visit an agreed measurement of 13.5m was taken from the main frontage to the back of the front boundary wall and this must mean that there is more than sufficient frontage space for the parking of vehicles.

#### *Whether the harm identified is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development within the Green Belt*

59. For the reasons set out above, I have concluded that the house as built constitutes inappropriate development in this part of the Green Belt. The development is, therefore, harmful in principle. I have also identified harm to the openness of the Green Belt; to the character and appearance of this section of Cockey Moor Road and to the living conditions of some neighbours.

60. In support of the appellant's case for retention of the development as built, other considerations, in addition to policy matters, have been set out. These include the desire and family needs to better utilise the roof space of the dwelling; the need to meet the height requirements of the Building Regulation; design changes to the rear roof to enable different doors which can provide better light and ventilation levels; the fact that the design complies with required materials set out in the SPD; the fact that this part of the Green Belt is quite well built up and that the dwelling is not an isolated dwelling in the Green Belt.

61. However, having considered these matters in detail I have concluded that none of these matters, either singularly or jointly, can outweigh the harm to the Green Belt which I have identified above. It follows, therefore, that the 'very special circumstances' required to justify the unauthorised works as carried out, do not exist.

#### *Conclusion on the ground (a) appeal for the house 'As-Built'.*

62. I conclude that the 'As-Built' works, as carried to the house and which do not accord with the approved drawings, are contrary to policies H2/1; H2/2; EN1/2; HT2/4 and OL1/2 of the BUDP, as well as to relevant policies within the NPPF relating to the Green Belt; the character of the area and residential amenities. Thus, the works do not comply with the development plan when considered as a whole. Furthermore, the material considerations put forward in support of the 'As-Built' scheme are far outweighed by the harm to the Green Belt, to the character of this part of Cockey Moor Road and to residential amenity. It follows that the appeal must fail, therefore, on ground (a) and that the deemed application under Section 177(5) must be refused for the house 'As-Built'.

### **The appeal on ground (g)**

63. I do not agree with the LPA that 120 days is a reasonable compliance period. In my view it will take considerably longer to work out in detail and to plan how the necessary required physical changes (in order to comply with the notice), are to be carried out. Time will also be required for the appellant to get quotations. I consider, therefore, that it is reasonable and appropriate that a period of 12 months be allowed. I shall vary the notice accordingly.

### **Other Matters**

64. I sympathise with the predicament in which the Appellant now finds himself and stress that the enforcement regime is not in place to be punitive. However, it is evident that the LPA had been concerned from the start about the scale and massing of the Appellant's proposal for this site. Unfortunately changes to the approved scheme were carried out without planning permission being sought. This led to the harm I have identified; complaints to the LPA and to the LPA considering that it was expedient to issue the notice. I have agreed with the reasons for the issuing of the notice and see no alternative but to uphold the EN in the public interest.

65. In doing so I have had regard to the rights of the Appellant and his family under the European Convention on Human Rights. In particular I have had regard to Articles 1 and 8. Article 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with, save as is necessary in the public interest. Article 8 requires that there shall be respect for an individual's private life and home, save for that interference which is in accordance with the law and necessary in a democratic society. In relation to both of these rights and any others, I am satisfied that I have dealt with this appeal in the light of relevant statute and case law and that the interference resulting from my decision is not disproportionate.

66. With regard to the comments on the 'Wheatcroft Principle', I disagree with the points made on behalf of the Appellant. In my view there are major and significant design changes between the approved scheme and the one 'As-Built'. I consider that the neighbours and other objectors to the house now on site have been deprived of a reasonable chance to be consulted on these design changes.

67. In reaching my conclusions on the grounds of appeal and the main issues, I have taken into account all of the matters referred to by, and on behalf of the Appellant; by the Council and by Interested Persons. These include the full planning history; the details relating to the refused application (and out of time appeal); the detailed statements; all references to local and national policies; the final comments and all of the photographic evidence. However, none of these carries sufficient weight to alter my conclusions on the grounds pleaded. Nor is any other factor of such significance to change my decision.

### **Formal Decision**

68. I direct that the enforcement notice be corrected in Part 3 (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) by deleting in full the allegation as set out therein and by replacing it with the following:

*'Without the benefit of planning permission, the erection of a building, to be used as a dwellinghouse, which is not in accordance with the Planning Approval, reference 68038, granted on 28 April 2022'.*

69. The Appeal is allowed to a limited degree on ground (g) only. I direct that the enforcement notice be varied in Part 6 (TIME FOR COMPLIANCE) by deleting the figure and

word '120 days' and by inserting therefor the figure and word '12 months'.

70. I also direct that the notice be varied in Part 5 (WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH OF PLANNING CONTROL) by deleting the requirement at Part 5 (g).

71. Otherwise the Appeal is dismissed, and the enforcement notice is upheld as corrected and varied. Planning Permission is refused for the application deemed to have been made under Section 177(5) of the Act.

*Anthony J Wharton*

Inspector