



Appeal Decision

Inquiry Held on 12-14 January 2021

Site visit made on 7 July 2021

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State

Decision date: 03 May 2022

Appeal A Ref: APP/Y0435/C/20/3247864

42 Portland Drive, Willen, Milton Keynes, MK15 9JP

- 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 Mr Manoj Srivastava against an enforcement notice issued by Milton Keynes Council.
- The enforcement notice, numbered ENF/18/00283/COMPCH, was issued on 6 February 2020. The breach of planning control as alleged in the notice is:
 - i. The erection of a dwelling house not built in accordance with the approved plans contained within planning permission 17/02142/FUL ("the Approved Plans");
 - ii. The first floor rear right (south-west) elevation obscure glazed window is not fixed shut in breach of condition 4 contained within planning permission reference 17/02142/FUL;
 - iii. The construction of a hardstanding driveway consisting of block paving leading to the dwelling house without planning permission;
 - iv. The removal of a section of the hedgerow situated at the front boundary entrance pillars in breach of condition 4 within planning permission reference 18/00391/FUL.

The requirements of the notice are:

- a) To reduce the roof pitches of the main roof to no more than 30 degrees and reduce the height of the roof of the dwelling house so that the overall height of the dwelling house is no more than 8.535 metres as measured from finished ground floor (entrance threshold) level to ridge level.
- b) To reduce the rear ground floor element of the dwelling house to the scale and dimensions as shown on plan 0071PC213F – the right elevation drawing.
- c) To reduce the size of the garage to the following dimensions (not exceeding): height 4.428 metres, width of 5.787 metres, eaves height of 2.443 metres and depth 8.589 metres. The position of the front elevation of the reduced garage shall remain as sited as currently built. The garage shall have a hipped roof with 25 degree pitch on all 3 slopes.
- d) To reduce the depth rearwards of the first floor section of the dwelling house on the north-east side elevation to align with the rear elevation of the garage as amended by step (c) above, to a depth not exceeding 10.558 metres in accordance with plans 0071PL211E – Left Elevation, 0071PL 210B – Front Elevation and 0071PL212E – Rear Elevation.
- e) To remove the block paved hardstanding driveway from the front and side of the dwelling house.
- f) Fix shut and ensure non opening below 1.7 metres from finished first floor level the obscure glazed window located on the far south western corner first floor right elevation serving a dressing room in order to comply with condition 4 of planning permission 17/02142/FUL.

- g) Replant the section of missing hedgerow adjacent to the right front entrance pillar, as viewed from the street (to match existing hedgerow along the front boundary), that has been removed during construction from the front boundary of the dwelling house in breach of condition 4 of planning permission 18/00391/FUL.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/Y0435/W/19/3236883
42 Portland Drive, Willen, Milton Keynes, MK15 9JP

- 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 Manoj Srivastava against the decision of Milton Keynes Council.
 - The application Ref 19/00124/FUL, dated 18 January 2019, was refused by notice dated 29 July 2019.
 - The development proposed is "Amends to Dwelling".
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Decision A

1. It is directed that the Enforcement Notice be corrected and varied as set out in the Annex to this decision.
2. Subject to those corrections and variations, the appeal is dismissed and the EN is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision B

3. The appeal is dismissed.

Appeal A - The Enforcement Notice

4. There had been three other enforcement notices relating to this development, all of which the council withdrew. This notice, for the avoidance of doubt, was referred to in evidence as EN4 and I have referenced it as such in my decision.
5. Whilst the development permitted by planning permission 17/02142/FUL was commenced with the demolition of the bungalow, it was not implemented and the dwelling on site is unlawful as it represents a substantial deviation from the approved plans. Nonetheless, the 2017 permission serves as an indication of what was acceptable to the council, and consequently it has been referenced in EN4 as a bench-mark. I have also referred to it in a similar way at times in my reasoning.
6. Due to the dwelling's unauthorised location and raised ground levels, full enforcement would entail demolition of the entire property, which the council believes would not be expedient. Accordingly, ENF4 only enforces against certain aspects of the building which the council finds unacceptable.
7. Consequently, s173(11) of the Act comes into play which provides that where an enforcement notice could have required buildings or works to be removed, but has stipulated some lesser requirement that has been complied with, then

planning permission shall be deemed to be granted under s73A for that operation once the notice has been fully complied with.

8. As it stands, EN4 is flawed and invalid, for reasons I will discuss, and requires correcting using my powers under s176(1)(a). I am satisfied that this can be done without causing injustice, as agreed by all parties. Following discussion at the inquiry the parties submitted a corrected version of EN4, which was agreed by the appellant and the council and largely by the rule 6 party.
9. I have corrected EN4, generally as agreed, save for paragraph 3i), which still read "*not in accordance with the terms and conditions of planning permission 17/02142/FUL...*" As the development is without planning permission and falls under s 171A(1)(a) of the Act, it cannot be contrary to planning conditions, which would be covered by s 171A(1)(b).
10. Given that the planning permission was not implemented, there can be no breach of condition and the breach of condition allegation relating to the obscure glazed window has been removed.
11. The alleged breach of condition relating to the other planning permission 18/00391/FUL (boundary wall and entrance to the site) is problematic in that the council is unable to identify the section of hedgerow it says has been removed. Therefore, the requirement is unenforceable due to imprecision. With the agreement of the other parties, the council withdrew this allegation along with the requirement to replant the missing hedgerow. As the paragraphs are sufficiently discrete to allow for their severance without impact on the remainder of the notice, I have removed them.
12. With respect to the hardstanding, the original EN4 plan did not identify the area requiring removal and so the amended plan shows this area.
13. Other sundry corrections generally flow from the above matters.
14. Some minor improvements were also suggested by the parties, which are not necessary, and so I have not included them in the corrected version.
15. I have also varied EN4 to delete some of the requirements, as explained in my "*Reasons*" section below. In doing so I have considered whether they could be removed without impacting on the rest of the notice and have accordingly determined that they are severable.
16. Although the increase in the northerly first floor section of the dwelling impacts on the roof, upholding the notice requirements for both the roof and first floor resolves any issue this may have caused.
17. I have also varied the notice to allow for more time to carry out remedial works.
18. The corrections, variations and a substitute plan are set out in the Annex to this decision.

Preliminary Matters

At the Inquiry

19. The Inquiry proceeded virtually using the *Teams* application.
20. Whilst the appellant had included ground (c) in his enforcement appeal, he withdrew this ground at the Inquiry on the basis of certain corrections being made to the enforcement notice.
21. I heard evidence on oath from the appellant, as it related to both contested factual matters and whether he had the intention of building the unauthorised dwelling. This has the potential consequence of bringing into play the Written Ministerial Statement on *Green Belt protection and intentional unauthorised development* August 2015, which introduces a planning policy to make intentional unauthorised development a material consideration to weigh in my determination.
22. A Statement of Common Ground (SoCG) was submitted at the Inquiry between the appellant and the Council. The rule 6 party, Willen Residents Group (WRG) submitted separate comments on it.
23. The local press was present and they initially requested permission to record. However, as the appellant objected, they agreed to refrain from doing so, indicating that open access would not be unduly impacted so long as they could take notes. I confirmed that note taking was permissible. Upon receiving a written request from them for access to the three main parties' openings, the parties agreed to disclose these documents, and electronic versions were sent to the local press.
24. The council was minded to call a structural engineer, Mr Hitesh Babulal Jethwa, to give evidence. However, upon the appellant's counsel confirming that she had no questions for Mr Jethwa, it was agreed that his proof of evidence would stand unchallenged. Consequently, it is recorded that the evidence shows that it is structurally viable to design and construct a replacement roof on the existing unauthorised building with a roof slope of approximately 30 degrees and a reduction of the existing height by approximately 420mm, which would comply with Building Regulations Part A.
25. With respect to the s78 appeal, the application form describes the development as "Amends to Dwelling". However, with the appellant's consent the description was amended on the Council's decision notice of 29 July 2020 (19/00124/FUL). A further amendment was agreed by all parties at the Inquiry so that the description now reads "*Part retrospective application for the demolition of a bungalow and erection of a new dwelling with proposed alterations to existing roof form.*" This is the description I considered when making my determination.

Post Inquiry Matters

26. The site visit was delayed on health and safety grounds due to COVID restrictions, the need to enter the building, and the long distance I needed to travel to the site. An accompanied visit was undertaken at the first reasonable opportunity, being 7 July 2021.

Changes to National Planning Policy Framework

27. On 20 July 2021 amendments were made to the National Planning Policy Framework (NPPF) including amendments on design policy. A new National Design Guide and a National Model Design Code were introduced.

28. The Planning Inspectorate wrote to the parties on 2 August 2021 asking for any comments they wished to make on the NPPF changes. They were given four weeks to respond, given it was then the summer holiday period, and they did so towards the end of August. The most pertinent changes addressed concerned design.
29. Referring to the changes to NPPF paragraph 134, the appellant cited local guidance and policies in support by referencing the Milton Keynes *New Residential Design Guide* Supplementary Planning Document April 2012 (the SPD) paragraphs 4.11.30 and 4.11.31. This allows for a variety of roof styles across a large development and an alternative roof style for a landmark building, which he submitted the development was.
30. The council highlighted paragraph 8b) and the social objective of fostering well-designed, beautiful and safe places; paragraph 126 and the importance of local expertise and guidance; and paragraph 134, which takes a negative stance towards poor design and emphasises local policy and guidance.
31. The rule 6 party pointed to the overriding revision on design, which emphasises the Government's commitment to making beauty central to the planning system. Like the council, it referenced paragraphs 8b), 126 and 134 with similar comments, adding that the appeal development is not beautiful.
32. After receiving the appellant's comments WRG and the council responded on 10 and 11 September respectively. Amongst other things the council complained that the appellant was attempting to introduce new evidence by making submissions on the SPD, which were not in their written evidence. It then went on to counter those submissions, as did WRG.
33. As all parties have been able to fully comment on the SPD, and as its contents were already before me at the Inquiry, in the interests of natural justice, I have taken all these representations into account.

Linford Lane

34. On 11 September 2021 WRG informed the planning inspectorate of a planning appeal decision at 1 Linford Lane (APP/Y0435/D/21/3267523), which adjoins the appeal property. On 30 September 2021, I asked for comments from the parties. WRG responded on 11 October 2021. I have not seen any responses from the appellant or the council.
35. WRG noted that the appeal was refused. Amongst other things they highlighted similarities between the proposed extension at 1 Linford Lane and the single storey rear extension at 42 Portland Drive in terms of closeness to the rear boundary.

Front Hedge

36. On 10 February 2022 WRG, wrote to the Planning Inspectorate saying that the appellant had carried out further unauthorised development at the property in Autumn 2021. This, they said, consisted of the erection of a close-board fence and an additional pillar at the front of the property together with the further removal of front hedgerow. This was the subject of another retrospective planning application. WAG asked me to take these matters into consideration.

37. The appellant responded by objecting to me considering the letter on the grounds it could be seen as prejudicial, although no basis was put forward for this submission.
38. I accepted the letter and requested comments from the council and appellant.
39. On 9 March 2022 the council responded to say that officer observations indicated that the hedgerow had been trimmed and not uprooted and it did not consider that the situation had materially altered since my site visit. The development was the subject of a separate application, which it believed had no bearing on the appeals before me and which the council was handling as a distinct matter.
40. I took account of the fact that, whilst the enforcement notice alleged a breach of condition relating to removal of part of this hedgerow, the allegation had been withdrawn at the Inquiry, as agreed by all parties. On this basis and due to the council's response, I take the view that it is a matter for the council to determine and I need consider it no further.

Implementation and the fallback position.

Implementation

41. The description of planning permission granted on 17 November 2017 (17/02142/FUL) is: *Demolition of existing bungalow and construction of two storey dwelling.* Condition (2) states that *the development hereby permitted shall begin before the expiration of three years from the date of this permission.*
42. By virtue of section 17 of the Business and Planning Act 2020 (inserting section 93A into the Town and Country Planning Act 1990), the time limit for commencing the development was extended to 1 May 2021. That extended time period has now lapsed.
43. Sections 56(2) and (3) of the 1990 Act provide that for the purposes of s91 (time period by which development must be begun), development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. The phrase "comprised in the development" is pertinent, as works done which are found not to be so comprised, will not cause the development to have begun.
44. Material operations set out in section 56(4) include erection of a building, demolition of a building, digging a trench for foundations, and laying of any main or underground pipe to the foundations.
45. Within the relevant time limit, the bungalow previously on site was demolished, foundations were dug, services were installed, and the building was erected. On the face of it, these works could all constitute "material operations" depending on whether they were "comprised in the development".
46. Very little needs to be done to begin a development, and subsequent deviations from a planning permission do not necessarily mean that a development was not begun. In this case, the development was begun by the demolition. However, this does not mean that it was implemented.

47. To consider implementation, I must consider objectively what has been done in totality, rather than looking at each discrete element of works in isolation. I have to determine, as a matter of fact and degree, whether the works undertaken were so different from the permitted development that they were not "comprised in the 2017 scheme". In this regard, the following cases have been brought to my attention:

1) *Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions and the Royal Borough of Kensington & Chelsea* [2002] EWHC 124 (Admin);

2) *Green v Secretary of State for Communities and Local Government* [2013] EWHC 3980 (Admin); and

3) *Silver v (1) Secretary of State for Communities & Local Government (2) The London Borough of Camden* [241] EWHC 2729 (Admin).

48. To my mind, there are numerous differences between the "as built" scheme and what was permitted in 2017, some of which are substantial. These include significant variations to all of the following: the roof form, the rear extension, the rear first floor extension, the garage, the ground levels, the overall height, and the location of the building within the plot. Because of the considerable deviations identified, the "as built" dwelling would require demolition in order to build out the 2017 permitted scheme. The deviations are so extensive as to conclude that what is now built on site is unlawful in its entirety.

49. Consequently, I find that the 2017 permission has not been lawfully implemented and the building on site stands without planning permission.

Fallback

50. Although the building permitted in 2017 has not been implemented, it was commenced. Accordingly, there is a fallback position of building the dwelling as permitted, although this would require demolition of the existing house, given its location. The appellant submits however, that there is another fallback position with regards to permitted development rights.

51. The building is currently unlawful and therefore does not attract any permitted development rights. However, if EN4 were upheld in full or in part and the requirements complied with, deemed planning permission would be granted under s73A and the building would become lawful. What the appellant appears to be saying is that at that point the building would attract permitted development rights.

52. Whilst that is correct, the permitted development rights would be subject to s181(3) of the Act, which broadly says that reinstatement of works that have been removed/altered in compliance with an enforcement notice shall be subject to enforcement. I therefore need to consider whether the permitted development rights relied on by the appellant would amount to reinstatement of works enforced against.

53. The appellant refers to The Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), Schedule 2, Part 1, Class A, which deals with enlargement, improvement or other alteration of a dwelling-house. It allows for a single storey rear extension on a detached house to extend beyond the rear wall by up to 4m as long as it is not within 2m of the

boundary, and at first floor level by up to 3m as long as it is not within 7m of the boundary.

54. For convenience, I will refer to the ground floor rear protrusion of the “as built” house as “the rear extension”, although technically it is part of the original house and not an extension. Therefore, the rear wall of the original house encompasses the rear wall of the ground floor “extension” for GPDO purposes. The SoCG between the council and the appellant states that the depth of the as built ground floor rear extension measured from its rear wall to the first floor rear wall of the main house is 4.5m (the approved being 3.3m).
55. The argument appears to be that, if the rear element were reduced in depth in accordance with the notice, and the property became lawful, the appellant could extend the ground floor rear element further under permitted development rights. However, it seems to me that these works would come within the definition of reinstatement and would therefore be caught by s181(3), thereby subjecting them once again to enforcement.
56. Similar arguments apply to the northerly section of the first floor of the main dwelling, which has been built just over 0.54m deeper than the permitted scheme.
57. The appellant also argues that the roof could be enlarged by an additional 50m³ under Class B and that other roof alterations could be made under Class C. Whilst this is correct, he also acknowledges that neither would allow for an increased height above that which is permitted or any alteration to the slope of the roof fronting the highway. It is likely that any such works would come within s181(3), but in any event, I do not consider such development to be a realistic possibility given the height and slope restrictions, together with the cost and disruption that would result.
58. In conclusion, for the reasons given above, I find that there is no fallback position relating to permitted development rights that I need to take into account.

Appeal A – ground (a)/the deemed application for planning permission

Main Issues

59. The main issues were agreed by all parties at the inquiry as:

the impact of the as built dwelling on:

- 1) The character and appearance of the street-scene and immediate locality; and
- 2) The living conditions of neighbouring properties.

60. For the hardstanding driveway the issue is the effect on drainage.

Reasons

61. The appeal site is located on the southern side of Portland Drive, a reasonably wide, tree-lined road, containing a variety of detached and semi-detached dwellings of differing sizes. Property styles range from bungalows to two and a half storey houses with dormers in the loft space, and most are set back from the public highway to give a sense of openness.
62. Millington Gate roundabout is close by, which is one of the main entrances into Willen. Larger scale detached dwellings with large garages can be seen around the roundabout
63. The appeal site at number 42 Portland Drive is surrounded by several large, detached properties located on substantial plots. The appeal property is, however, greater in size than the neighbouring houses by some margin.
64. There are essentially four aspects of the "as built" dwelling that the council has enforced against, namely, the roof, the ground floor rear extension, the garage and the most northerly first floor section of the house. In addition, it has enforced against the driveway and a first floor, obscure glazed window located on the south-western corner.
65. I have taken account of the differences in impact of what is built on site now and what would remain if EN4 were upheld. References in brackets to "CD" are to Core Documents within the bundle.

Differences between permitted scheme and development as built

66. The SoCG indicates the following increases in size to the dwelling:

- i) Roof:

Height increase of the roof from 8.52m above the threshold (permitted) to 8.86m (as built); a difference of **34cm**.

- ii) Ground floor rear extension:

Depth increase from 3.3m (permitted) to 4.5m (as built); a difference of **1.2m**.

- iii) Garage:

Height increase of **38cm**; from 4.42m to 4.8m.

Width increase of **22cm**; from 5.78m to 6.0m.

Depth increase of **47cm**; from 8.58 to 9.05.

- iv) Northerly First floor section of the main house:

Depth increase of **54.2cm**; from 10.558 to 11.10

67. The Council Officer's Report (CD4.12) records the following additional deviations:

- i) The location of the dwelling being about 0.6m further back on the site, closer to the rear boundary.
- ii) The ground levels having been raised, by an estimated 0.3m to 0.5m.

- iii) The roof being larger. The depth of the crown roof section having been increased from 2.5m to 5.5m when measured on the right side elevation. The crown having also been increased on the north-eastern part where there is a flat section, rather than the roof reaching a point as approved.

68. It is agreed there was no condition securing slab levels above ground level.

The dwelling – impact on character and appearance of street-scene

Roof

69. The as built roof pitch is around 46-47° as opposed to the predominantly 30° pitch of the planning permission. This much steeper gradient results in substantially longer ridgelines and a building with a huge crown roof. Although it is only about 34cm higher from the threshold than that permitted, the increase in ground levels must also be considered.
70. Whilst there may be other roof pitches in the order of 40° in the vicinity, and some nearby houses are of similar height, none of them have the greatness of bulk and massing as the appeal dwelling.
71. Despite its setback from the road and some softening of impact by surrounding vegetation, the extensive roof nonetheless causes the dwelling to appear overbearing and out of scale with the plot and the surrounding dwellings. Although public views from Millington Gate roundabout are limited, the property is clearly visible from vantage points on Portland Drive where it has a detrimental impact on the street-scene.
72. I have considered the policies of the Milton Keynes Plan (MK 2019 -2031) cited in EN4. The roof as built results in a poorly designed dwelling and so, as built, it does not benefit from the permissive wording in Policies D1 (Designing a High Quality Place), D2 (Creating a Positive Character) and D3 (Design of Buildings), which together permit development that responds positively to its surroundings in terms of character and design.
73. Furthermore, paragraph 126 of the July 2021 NPPF (previously paragraph 124 of the February 2019 NPPF, referred to in EN4) requires good design, with buildings needing to be beautiful, sustainable and of high quality. By virtue of the roof structure, the development is in breach of this national policy provision.
74. Consequently, I uphold requirement 5a) of EN4.

Rear ground level extension

75. Whilst the rear ground extension is 1.2m greater in depth than permitted, it is barely visible from public vantage points. Consequently, it has no significant impact on the street-scene.

Garage

76. On my site visit I noted that the height and overall size of the garage was not out of keeping with its surroundings. Many houses in the area have substantial garages and whilst this one is large, seen in the context of the main dwelling (even as permitted), it does not appear out of scale.

77. As built, the garage is larger than permitted by 0.38m in height, by 0.22m in width and by 0.47m in depth. A reduction by these amounts would not make an appreciable difference to the street-scene.

Northerly First floor section of the main house

78. The first floor wall adjacent to the garage has been built just over 0.54m deeper than permitted. Whilst this addition may seem modest when compared to the scale of the house, it nonetheless increases the bulk at first floor level, adding to the extensive higher-level mass.
79. Furthermore, the parties agreed that it makes some difference to the shape of the roof above the main house and the eastern elevation. To my mind, even taking into account the remedial roof works required by EN4, allowing a greater depth at first floor level would result in a materially greater mass of roof over that which was permitted.
80. Despite its setback from the road, this section of the house is still visible from public vantage points and the increased massing at this height would have an adverse impact on the street-scene.
81. Therefore, it cannot benefit from the positive wording of Policies D1, D2 and D3 of the Milton Keynes Plan, and is contrary to paragraph 126 of the July 2021 NPPF.
82. Consequently, I uphold requirement 5d) of EN4.

Overall cumulative impact on character and appearance of the street-scene

83. Considering all elements together, it is the excessive massing of the roof which has the overwhelming, incongruous effect on the street-scene. The increased size of the northerly first floor section of the main house would still contribute to this impact, even after remedial roof works were undertaken. Therefore, these elements must be rectified.
84. The other elements (rear ground extension and garage) contribute very little to the adverse effect. Consequently, there is no need to enforce against them solely on the basis of impact on character and appearance of the street-scene.

The Dwelling – impact on living conditions of neighbouring properties

Window

85. The appellant agreed that the identified first floor window should be fixed shut and did not challenge the EN4 requirement in this respect. I am also of the view that the window should remain shut for reasons of preserving neighbours' privacy.
86. To allow it to open would be contrary to Policy D5 (Amenity and Street Scene) of the Milton Keynes Plan, which requires development to create and protect a good standard of amenity, including privacy.
87. For this reason, I uphold requirement 5f) of EN4.

Other structures

88. For the remainder of the structures, it is the increased scale which matters and whether the unauthorised changes to what was permitted result in such

material harm to the living conditions of neighbouring properties as to make them unattractive places in which to live. I have again considered each element separately and then together.

Roof

89. Bearing in mind there is no right to a view, I have approached my assessment in terms of outlook. In this regard, the massive roof form presents an imposing, overbearing structure, impacting on the outlook from adjacent dwellings and their gardens. This is particularly so for number 40 Portland Drive, numbers 1 and 2 Linford Lane and number 20 Millington Gate. With the increased roof size, the harm to the living conditions of these dwellings is sufficiently great as to make them unattractive places in which to live.
90. Policy D5 of the Milton Keynes Plan requires development to create and protect a good standard of amenity, including outlook, for buildings and surrounding areas. The existing roof breaches this policy.
91. This is another reason to uphold the requirement of paragraph 5a) of EN4 and I accordingly do so.

Northerly first floor section of main house

92. As with the effect on the street-scene, the increased depth at first floor level and the resulting oppressive roof mass, adversely impacts on neighbouring properties, particularly to the east. In combination with other aspects of the roof, this contributes to an unacceptable outlook. Consequently, it breaches Policy D5 of the Milton Keynes Plan.
93. This is another reason to uphold the requirement of paragraph 5d) of EN4 and I accordingly do so.

Rear ground level extension and Garage

94. Unlike the roof and first floor, the other elements are low enough not to significantly impact on neighbours' outlook, either separately or in combination with the other structures.

Overall Conclusion on the dwelling

95. The requirements of EN4 to reduce the roof, the northerly first floor section of the main house and to fix shut the window are upheld. The rear ground floor element and the garage cause no significant harm to the character and appearance of the street-scene or immediate locality. Furthermore, they do not result in any significant harm to neighbours' living conditions and do not conflict with the development plan or NPPF.
96. As these elements constitute parts of the matters stated in the notice as constituting a breach, planning permission can be granted for them, having regard to s177(1)(a) of the 1990 Act. No conditions are necessary. Whilst it is normal to leave the related requirements in the notice, this is to avoid two inconsistent permissions arising, one under s177(1) and another unconditional permission under s173(11). However, as I have not imposed any conditions, this is not an issue and deleting the related requirements will avoid any possible confusion.

Drive

97. In considering whether the drive might discharge rainwater onto the adjacent public footway in front of the property, I have taken account of drainage on site.
98. Whilst it is unclear whether the paving stones themselves are permeable, they are not concreted in and water can drain in-between them. Also, there is an eco-drain lying across the drive at the entrance to the property and this also drains surface water. Consequently, it seems to me that there is a drainage system in place, sufficient for the area needing to be drained.
99. Policy FR1 (Managing Flood Risk) of the Milton Keynes Plan requires, amongst other things, new development to incorporate a surface water drainage system with acceptable flood control. This has been achieved.
100. Policy FR2 (Sustainable Drainage Systems (SUDS) and Integrated Flood Risk Management) amongst other things, requires new development to incorporate SUDS. Whilst the drainage provided may not reflect SUDS requirements, it would be disproportionate to require removal of the paving when no drainage issues have been demonstrated.
101. Again, the hardstanding drive constitutes part of the matters alleged and I conclude that planning permission should be granted for it and no conditions are necessary. As with the garage and rear element, deleting the related requirement will not result in two inconsistent permissions and it will avoid any possible confusion.

Other matters

102. Whilst I acknowledge the support for retaining the dwelling as built from some interested persons, there are others, including the rule 6 Party (WRG) who object. In any event, local support does not outweigh the identified harm.

Appeal B – the s78 appeal

103. The main issues are the same as those identified on Appeal A in relation to the as built dwelling.
104. From my deliberations above, it is clear that a smaller scheme that retains the garage and rear ground extension, whilst remedying the roof and northerly first floor section of the house as per EN4, is acceptable.
105. The s78 appeal proposal was a part retrospective application, with alterations to the roof to make it smaller than currently built. I have carefully considered the drawings and despite the appellant's contention in closing that the roof dimensions are virtually identical to that which was permitted, I disagree.
106. The proposed roof has a larger crown and longer ridgelines than that which was permitted. The increased northern first floor section contributes to this by giving rise to an additional element of crown roofline where none existed on the permitted scheme. Whilst the alternative is slightly lower than the permitted, its bulk and mass is significantly greater.
107. I have again considered the relevant policies of the Milton Keynes Plan and NPPF as discussed above, as well as the SPD and policies within the Campbell

Park Neighbourhood Development Plan. However, I reach the same conclusion that the roof design runs contrary to policy.

108. The roof as permitted was already at the limits of acceptability and any increase in massing would be unacceptable for the reasons previously outlined above. Consequently, the section 78 scheme is not a reasonable alternative and the appeal is dismissed.

Ground (f)

109. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. Given that the notice does not demand complete removal of the development, but rather under-enforces, I am satisfied that its purpose is primarily to remedy injury to amenity.
110. As I have granted planning permission for some elements of the developments, to avoid any confusion, I have also deleted the related requirements from the notice.
111. I have been invited by the appellant to consider whether the s78 appeal proposal would be an acceptable alternative under ground (f). However, I have decided that planning permission should not be granted for that scheme and it does not therefore justify varying the requirements on ground (f).
112. Alternatively, the appellant suggests that any injury to amenity caused by the height of the roof could be reduced by some 25cm by removing decorative tiles. That would not overcome the injury to amenity identified under ground (a) above.
113. For these reasons, the appeal on ground (f) succeeds in part and I have varied the requirements accordingly.

Ground (g)

114. The works to the roof are likely to be complicated and finding and appointing a builder to undertake them is likely to take some time. Taking account of contingencies, I will allow a period of 12 months for compliance.

Elizabeth C Ord

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms Clare Parry of Counsel

She called

Mr Stephen Connell

BA(Hons), DipTP, MRTPI

Mr Manoj Srivastava

Director of GC Planning Partnership Ltd

The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Forsdick QC

He called

Mr Nikolaos

Grigoropoulos BSc

(hons) MA MRTPI

Councillor John Bint

Planning Consultant

Councillor for Milton Keynes

FOR THE RULE 6 PARTY:

Mr Stephen Whale of Counsel

He called

Mr Andrew Herman BSc

Business Management Consultant and Local Resident

INTERESTED PERSONS:

Brian Greenwood

Hilary Manning

Alison Stainsby

David Tomlinson

Brian Hinsley

John Horne

Chair Chair of Campbell Park Parish Council

Willen Residents Group

Willen Residents Group

Willen Residents Group

Neighbouring Resident

Interested Person

DOCUMENTS

- 1 Campbell Park Neighbourhood Development Plan - full version
- 2 Letter of 11th Sept 20 from Smith Jenkins LLP
- 3 Revised Enforcement Notice and new red line plan
- 4 Draft conditions
- 5 Site visit itinerary
- 6 Statement of Common Ground
- 7 Rule 6 Party comments on statement of common ground
- 8 Stephen Connell addendum/errata
- 9 Appellant opening speech
- 10 Council opening speech
- 11 Rule 6 Party opening speech
- 12 New Residential Design Guide - full copy (include as CD7.3)

- 13 Andrew Herman photo book – included as part of his evidence
- 14 Rule 6 Party response to Stephen Connell’s addendum/errata
- 15 CD27.01 – agenda items, late papers & minutes 4 July 2019
- 16 CD27.02 – agenda items, late papers & minutes 1 August 2019
- 17 CD27.03 – agenda items, late papers & minutes 10 October 2019
- 18 Stonemarket brochure
- 19 Corrected CD01.16 – drawing 0071PL213F
- 20 Rule 6 Party closing submissions
- 21 Council closing submissions
- 22 Appellant Closing Submissions
- Interested Parties’ Statements*
- 23 Jaiprakash Gogineni
- 24 Dr Vatrapu
- 25 Alison Stainsby
- 26 Rasheed Shobande
- 27 Dr Preeti Dewan
- 28 Mr and Mrs Sandhu
- 29 Lissy
- 30 Fran Banfield
- 31 Dr Vineet Batta
- 32 David Tomlinson
- 33 Barry Hinsle
- 34 Kamaljit S. Reehal (1 Linford Lane statement and e-mail)
- 35 Hilary Manning
- 36 Mr Reehal
- 37 Hugh Read
- 38 Mrs Satwant Sokhi
- 39 e-mail Julia Critchley (dated 21.11.20)

ANNEX

Corrections and variations to EN4

At section 1, THIS NOTICE

remove the words "*and (b)*".

At section 2, THE LAND TO WHICH THE NOTICE RELATES

at the end of the sentence add "*(the Plan)*";

remove the original plan and substitute the plan within this annex.

At section 3, THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

remove:

" i) not built in accordance with the approved plans contained within planning permission 17/02142/FUL (the Approved Plans)"

substitute:

"i) built without planning permission"

remove:

" ii) The first floor rear right (south-west) elevation obscure glazed window is not fixed shut in breach of condition 4 within planning permission reference 17/02142/FUL."

"(iv) The removal of a section of the hedgerow situated at the front boundary entrance pillars in breach of condition 4 within planning permission reference 18/00391/FUL."

At section 4, REASONS FOR ISSUING THIS NOTICE

remove:

*"i) Point i) and (iii) above within the last 4 years; and
ii) Point ii) and (iv) above within the last 10 years"*

substitute:

"within the last 4 years"

remove:

"There are also breaches of conditions in the planning permission referred to."

remove:

"Breaches of Condition

- *Condition 4 of permission 17/02142/FUL requires the first floor rear right window in the south western corner to be fixed shut but it is not.*
- *Condition 4 of permission 18/00391/FUL for a brick boundary wall required the retention of a length of hedgerow which has been removed."*

remove:

"and iv) Loss of a section of the front hedgerow to the detriment of the visual quality of the street scene. Landscaping that fails to meet BS 5837:2012"

At section 5, WHAT YOU ARE REQUIRED TO DO:

At paragraph b) remove the whole of the paragraph:

" To reduce the rear ground floor element of the dwelling house to the scale and dimensions as shown on plan 0071PC 213F – the right elevation drawing."

At paragraph c) remove the whole of the paragraph:

" To reduce the size of the garage to the following dimensions (not exceeding): height 4.428 metres, width of 5.787 metres, eaves height of 2.443 metres and depth 8.589 metres. The position of the front elevation of the reduced garage shall remain as sited as currently built. The garage shall have a hipped roof with 25 degree pitch on all 3 slopes."

At paragraph d)

add:

"most northerly" before "first floor section";

remove:

"to align with the rear elevation of the garage as amended by step (c) above"

substitute:

"closest to the garage"

At paragraph e) remove the whole of the paragraph:

" To remove the driveway from the front and side of the dwelling house as shown on the Plan."

At paragraph f)

remove:

"serving a dressing room in order to comply with condition 4 of planning permission 17/02142/FUL."

At paragraph g) remove the whole of the paragraph:

"Replant the section of missing hedgerow adjacent to the right front entrance pillar, as viewed from the street (to match existing hedgerow along the front boundary), that has been removed during construction from the front boundary of the dwelling house in breach of condition 4 of planning permission 18/00391/FUL."

At section 6, TIME FOR COMPLIANCE

remove "six (6)" and substitute "twelve (12)"

