The Planning Inspectorate

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

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.

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) Order2015 (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 Cockey 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 of 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 Cocky 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