

# REPORT FOR DECISION

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>22 November 2016</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>- Determined</li> </ul> <p>Ombudsman Decisions</p> <ul style="list-style-type: none"> <li>- Determined</li> </ul> <p>Enforcement Appeals</p> <ul style="list-style-type: none"> <li>- None</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

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

**TRACKING/PROCESS**

**DIRECTOR:**

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

**1.0 BACKGROUND**

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

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

**2.0 CONCLUSION**

That the item be noted.

**List of Background Papers:-**

**Contact Details:-**

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 Planning Services, Department for Resources and Regulation,  
 3 Knowsley Place ,Bury BL9 0EJ

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**Planning Appeals Decided  
between 17/10/2016 and 13/11/2016**



**Application No.:** 59160/FUL

**Decision level:** COM

**Recommended Decision:** Approve with Conditions

**Applicant:** Thumbs (Up) Bury Ltd

**Location:** Greenfields, Dumers Lane, Bury, BL9 9UT

**Proposal:** Construction of lorry parking area, open material storage area, landscaping and security fencing

**Appeal Decision:** Withdrawn

**Date:** 27/10/2016

**Appeal type:** Public Inquiry

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**Application No.:** 59337/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Darren Galliano

**Location:** Land at rear of 3 Stephen Street South, Bury, BL8 2NT

**Proposal:** Change of use of land to residential with boundary fence/gate (retrospective)

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**Appeal Decision:** Dismissed

**Date:** 25/10/2016

**Appeal type:** Written Representations



# The Planning Inspectorate

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[www.gov.uk/planning-inspectorate](http://www.gov.uk/planning-inspectorate)

Your Ref: 59160

Our Ref: APP/T4210/W/16/3157273

Mark Kilby  
Bury Metropolitan Borough Council  
Planning Division  
3 Knowsley Place  
Duke Street  
Bury  
BL9 0EJ

27 October 2016

Dear Mark Kilby,

**Town and Country Planning Act 1990**

**Appeal by Thumbs (Up) Bury Ltd**

**Site Address: Thumbs up (Bury) Ltd, Greenfields, Dumers Lane, BURY, BL9 9UT**

I enclose for your information a copy of a letter received withdrawing the above appeal(s).

I confirm no further action will be taken.

Yours sincerely,

***Kerr Brown***

Kerr Brown

*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through the Planning Portal. The address of our search page is - [www.planningportal.gov.uk/planning/appeals/online/search](http://www.planningportal.gov.uk/planning/appeals/online/search)*

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# Appeal Decision

Site visit made on 23 September 2016

**by F Rafiq BSc (Hons), MCD, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 October 2016**

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## **Appeal Ref: APP/T4210/W/16/3153420**

### **3 Stephen Street South, Elton, Bury, Lancashire BL8 2NT**

- 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 Darren Galliano against the decision of Bury Metropolitan Borough Council.
  - The application Ref 59337 dated 26 October 2015 was refused by notice dated 14 January 2016.
  - The development proposed is described as *"To change the use of land at back of number 3 Stephen Street South to residential with a new boundary fence/gate. The land is wasteland, of which the owner cannot be established. The new boundary does not obstruct pedestrians or vehicles from passing"*.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matter**

2. The development had already been completed at the time of my visit and for clarity, I have considered the appeal based on the submitted plans.

### **Main Issue**

3. The main issue is the effect of the proposal on highway safety.

### **Reasons**

4. The appeal site is an area of land to the rear of a mid-terrace property that is situated on Stephen Street South. The area is predominately residential and the properties have modest front and rear yard and garden areas. To the rear of the appeal site, beyond an access road is a garage colony consisting of various garages and buildings.
  5. The development has enclosed an area of land to the rear of the dwelling, No. 3 Stephen Street South, to form an extended rear yard area to this property. The Council have referred to the enclosed area as an unadopted access road and whilst I note the reference by the appellant to the lack of maintenance over a long period of time, it was clear from my site visit that the enclosure of this space by the fencing and gate has reduced the space available to manoeuvre in and out of the garages.
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6. Whilst this appeal development may not affect the end garage and the appellant also owns the garage to the rear of the appeal site, this does not alter the potential difficulty that is caused to vehicles manoeuvring out of this and other neighbouring garages as well as restricting access to other land that the Council refer to, broadly to the south-east of the site. The consequences of having restricted manoeuvrability is likely to result in vehicles reversing with limited visibility on to Back Bolton Road South from the unadopted access, and coming into conflict with other road users.
7. I therefore conclude that the proposal has an unacceptable harmful impact on highway safety. Of the policies quoted in the refusal notice, I consider Policy HT6/2 of the Bury Unitary Development Plan to be of most relevance to this development. The appeal scheme is contrary to this, which seeks, amongst other matters, to reduce pedestrian and vehicular conflicts. It would also be contrary to the Paragraph 35 of the National Planning Policy Framework, which advises that development should create safe and secure layouts which minimise conflict between traffic and cyclists or pedestrians.
8. For the reasons given above, and having considered all other matters raised, including visual amenity benefits, the appellant following the correct procedures in terms of land ownership and that pedestrians are not obstructed from passing, I conclude that this appeal should be dismissed.

*F Rafiq*

INSPECTOR

**Complaint reference:**  
15 020 267

**Complaint against:**  
Bury Metropolitan Borough Council

## **The Ombudsman's final decision**

Summary: There was no fault by the Council when it considered and investigated the removal of trees from the site near the complainant's home. Nor was there fault in the consideration of unauthorised works to a car park which formed part of the same development.

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## **The complaint**

1. Mr B complained the Council did not ensure that mature trees were not removed as part of a development near to his home. He says this has altered his outlook and his property is now more exposed to adverse weather.
2. He also complains about the extension of an existing car park at the site. This has meant that a secondary access to his property has been blocked. And the lighting causes light pollution to his property.

## **What I have investigated**

3. Some of the events about which Mr B complains happened more than 12 months before he made a complaint to the Ombudsman. I consider there is sufficient information to enable a decision to be made and the earlier events have a direct bearing on the later events. I have therefore exercised our discretion to consider events relating to the trees from the grant of planning permission.

## **The Ombudsman's role and powers**

4. The Ombudsman cannot investigate late complaints unless she decides there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. (*Local Government Act 1974, sections 26B and 34D*)
5. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

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## **How I considered this complaint**

6. I considered the complaint and spoke to Mr B. I asked the Council for its comments on the complaint and additional information. I sent a copy of a draft of this statement to Mr B and the Council and invited their comments.

## **What I found**

### **Background**

7. Mr B lives in a rural area. He lives in a detached house and nearby there is a business. The Council granted planning permission to the business for a large extension. The Council imposed various conditions on the planning permission. Some related to the trees on the site. There was a requirement that before work started the developer should notify the Council and submit a list of intended tree protection measures and tree works. Development was not to start until the Council had agreed the tree protection scheme and the specified tree protection measures were in place.

### **Removal of trees**

8. Over a year after the Council granted planning permission the developer put in the tree protection plan. It showed almost 70 fewer trees than were shown in the tree schedule submitted as part of the planning application. The Council partly discharged the condition relating to the protection of trees. It could not completely discharge it as the tree protection measures were not in place.
9. A few months later Mr B complained to the Council that the business had removed various trees. He was concerned about the removal of the trees in general on the site and in particular the removal of one large tree near his home. The Council inspected the site. The Council accepted some trees had been removed but because this was before the development had started there was no action it could take under the terms of the planning permission.
10. The general position would be that someone can remove or do work to trees on land under their control without any approval from the Council. If the Council has imposed a Tree Preservation Order (TPO) then it will need to give permission before any works are done.
11. Mr B's position is that the Council should have imposed a TPO when it granted the planning application. The Council's position is that it would not routinely impose a TPO and would only do so where it considered there was some risk to trees. It imposed a condition that provided a means of protecting the trees from any work associated with the development. I consider the Council had due regard to the trees on the site and I do not consider there was any fault in the Council not imposing a TPO when it granted planning permission.
12. When the revised tree schedule was submitted the Council was then on notice that trees had been removed – or were intended to be removed – from the site as there were almost 70 fewer shown on the revised schedule. The Council has commented that it still did not consider a TPO was necessary as the trees were retained on the perimeter of the site and the residential amenity of the neighbouring properties was unaffected. There was no indication of any direct threat to the remaining trees. This was a decision the Council was entitled to take based on the information it had at that point. There is no evidence of fault in how it was reached.



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13. When Mr B reported the loss of trees an officer visited the site. He was satisfied the planning permission had not commenced so the requirements under the conditions were not triggered. The works done were just works that any landowner could do to trees not subject to a TPO.
  14. Mr B next contacted the Council after about a further nine months. He reported the developer was going to remove further trees and habitat. The Council imposed a temporary TPO ten days later. That was later confirmed. There was no fault in the action taken by the Council at this point.

### **Car park**

15. Mr B complains that a secondary access to his property has been blocked because of works to the existing car park. When he first raised this with the Council it contacted the developer. From the information provided by the developer the Council considered the works proposed were not of such a scale or type that planning permission was needed. When Mr B complained again as works had progressed the Council decided that the works did need planning permission. The developer submitted a planning application and the Council has now granted planning permission.
16. It was not fault for the Council to rely on the description of the intended works given by the developer. Once it was clear, following Mr B's further complaint, the works were more extensive then the Council took the appropriate action of asking for a planning application to be submitted. There was no fault by the Council here.
17. As part of the works to the car park lights have been installed. Mr B considers they are intrusive. The Council has granted planning permission for the works. If Mr B considers there was fault in how the Council considered the planning application then he should, first, raise that with the Council. If he is not satisfied with the Council's response then he could make a further complaint to the Ombudsman.
18. Mr B considers the works that have been done have blocked an access to his property. This is not a matter for the Council. It is a private land matter between Mr B and his neighbour.

### **Final decision**

19. There was no fault by the Council when it considered and investigated the removal of trees from the site near the complainant's home. Nor was there fault in the consideration of unauthorised works to a car park which formed part of the same development.

### **Investigator's decision on behalf of the Ombudsman**