

# REPORT FOR DECISION

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>17<sup>th</sup> MARCH 2015</b>
<b>SUBJECT:</b>	<b>PLANNING APPEALS</b>
<b>REPORT FROM:</b>	<b>DEVELOPMENT MANAGER</b>
<b>CONTACT OFFICER:</b>	<b>JOHN CUMMINS</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	<p>Planning Appeals:</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul> <p>Enforcement Appeals</p> <ul style="list-style-type: none"> <li>- Determined</li> </ul>
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	The Committee is recommended to the note the report and appendices.
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework?      Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	Executive Director of Resources to advise regarding risk management
<b>Statement by Executive Director of Resources:</b>	N/A
<b>Equality/Diversity implications:</b>	No
<b>Considered by Monitoring Officer:</b>	N/A

<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:- Copy Appeal Decisions attached**

**Contact Details:-**

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**Planning Appeals Decided  
between 12/01/2015 and 08/03/2015**



**Application No.:** 57324/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Properties Direct UK Ltd

**Appeal Decision:** Allowed

**Date:** 16/02/2015

**Appeal type:** Written Representations

**Location:** Land at rear of Victoria Lane/Stone Pale, Whitefield, Manchester, M45 6JG

**Proposal:** Retrospective application for siting of 4 no. storage containers

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**Application No.:** 57501/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Mohammed Khan

**Appeal Decision:** Dismissed

**Date:** 18/02/2015

**Appeal type:** Written Representations

**Location:** 27 Hazel Road, Whitefield, Manchester, M45 8EU

**Proposal:** New door and external staircase at rear (retrospective)

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**Application No.:** 57606/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Daniel Bolton

**Appeal Decision:** Dismissed

**Date:** 18/02/2015

**Appeal type:** Written Representations

**Location:** 4 Lomond Drive, Bury, BL8 1UL

**Proposal:** Two storey extension at side and rear (resubmission)

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Copies of the Inspectors Decisions are attached.

Note: 57606 is both a S.78 Appeal and an Enforcement Appeal

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## Appeal Decision

Site visit made on 3 February 2015

**by Richard McCoy BSc MSc DipTP MRTPI IHBC**

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

**Decision date: 16 February 2015**

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**Appeal Ref: APP/T4210/A/14/2224886**  
**Unit 3, Stone Pale, Whitefield, Manchester M45 6JG**

- 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 Mark Hughes against the decision of Bury Metropolitan Borough Council.
  - The application Ref 57324, dated 3 March 2014, was refused by an undated notice.
  - The development proposed is "to allow for 4 no. 20ft shipping containers to be stored within Stone Pale Yard".
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### Procedural matter

1. The Council's refusal notice described the development as "the siting of 4 no. storage containers". I consider this to be a more accurate description of the development which I observed has been partially carried out. While at the time of my visit there where 3 on site, it was confirmed by the parties that the appeal relates to 4 no. containers. I have determined the appeal on this basis.

### Decision

2. The appeal is allowed and planning permission is granted for the siting of 4 no. storage containers at Unit 3, Stone Pale, Whitefield, Manchester M45 6JG in accordance with the terms of the application Ref 57324, dated 3 March 2014 subject to the following conditions:
  - a) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - b) The development hereby permitted shall be carried out in accordance with the following plans: A\_001 Rev A, A\_002 Rev A and A\_003 Rev A.

### Main Issues

3. These are the effect of the development on the character and appearance of the area, the living conditions of the occupiers of the nearby dwellings in respect of any noise and disturbance, and highway safety.

### Reasons

#### *Character and appearance*

4. The appeal site is an area of hardstanding located to the rear of a detached dwelling known as "Fairfield House". The hardstanding extends into the yard

area to the rear of the adjacent commercial premises. The dwelling and commercial premises front onto Victoria Lane. The hardstanding is bordered on its remaining sides by Victoria Park which includes a children's play park. The appeal site is located within an Employment Generating Area (EGA).

5. The area is in mixed use and in my judgement the close association of the containers with the yard to the rear of the commercial premises means they are visually associated with that use, such that they do not appear incongruous in this context. In addition, I observed that the appeal site is screened by mature vegetation such that the containers do not feature prominently when viewed from Victoria Park. As such, they do not appear as an alien intrusion and are not detrimental to the visual amenity of the area.
6. Accordingly, in respect of the effect on the character and appearance of the area, the development would not conflict with saved Policies EN1/2 and EC4/1 of the adopted Bury Unitary Development plan (UDP).

#### *Living conditions*

7. Concerns were raised that the use of the containers would give rise to noise and disturbance being experienced by the occupiers of nearby dwellings. The Council stated that this matter could not be overcome by a condition restricting the use of the containers to a temporary period as the appellant wishes to use them on a long term basis.
8. However, with the exception of Fairfield House, surrounding dwellings are separated from the appeal site by either Victoria Park or intervening buildings. Consequently, I consider that the living conditions of the occupiers of these dwellings are unlikely to be affected by the development in respect of noise and disturbance.
9. In relation to Fairfield House, the area is an EGA and the dwelling stands next to an existing business use and a play park. As such, there is likely to be an existing level of background noise that would be above that found in a purely residential context. Moreover, the claim that the use of the containers, in terms of "opening and closing doors and any activities within" would be likely to give rise to noise and disturbance to the degree that the living conditions of the occupier of the dwelling would be harmfully changed has not been substantiated.
10. I have noted the representation from the occupier of Fairfield House but the matters raised therein appear to relate to anti-social behaviour and alleged criminal damage. Consequently, there is nothing before me to demonstrate that the use of the containers for storage purposes has or would be likely to give rise to noise and disturbance of a magnitude that would harmfully change the living conditions of the occupiers of nearby dwellings. Accordingly, I can find no conflict with saved LP Policies EN7/2 and EC4/1.

#### *Highway safety*

11. With regard to the use of the existing vehicular access, I note that the Council is concerned that the development would lead to the intensification of the use of a sub-standard access onto Victoria Lane. In this regard, I observed at the time of my visit, that Victoria Lane was not heavily trafficked. Given the character of surrounding uses, I would anticipate that being the case at other times of the day. Moreover, there is nothing before to demonstrate that the

existing access is sub-standard in terms of servicing the existing business premises or to substantiate the claim that the development would be likely to intensify the use of the access to the extent that it would compromise highway safety.

12. In my judgement, the use of the containers as set out in the appellant's Statement of Case would be unlikely to hinder the safe and efficient operation of the highway network in the vicinity of the appeal site. Accordingly, in the absence of evidence to the contrary, the development would not be prejudicial to road safety and would not conflict with saved UDP Policy EC/4.

**Conclusion**

13. No conditions have been suggested and other than standard commencement time and carrying out the development in accordance with the approved plans conditions, I do not consider any to be necessary. For the reasons given above I conclude that the appeal should be allowed.

*Richard McCoy*

INSPECTOR



# Appeal Decision

Site visit made on 3 February 2015

**by D R Cullingford BA MPhil MRTPI**

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

**Decision date: 18 February 2015**

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**Appeal Ref: APP/T4210/A/14/2221034**

**27 Hazel Road, Whitefield, Manchester, M45 8EU**

- This appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is by Mr Mohammed Khan against the decision of the Bury Metropolitan Borough Council.
  - The application (ref: 57501 and dated 18 April 2014) was refused by notice dated 21 May 2014.
  - The development is described as the provision of a 'new door and external fire escape staircase at rear of property'.
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## Decision

1. I dismiss this appeal.

## Main issue

2. From what I have read and seen, I consider that this appeal turns on whether the retention of this external steel staircase and the associated entrance arrangements would spoil the prospect or impair the privacy that neighbouring residents might reasonably expect to enjoy, contrary to 'saved' policies EN1/2 and H2/3 of the UDP (1997), the guidance in SPD6 *Alterations and Extensions to Residential Properties* and the Framework (NPPF).

## Reasons

3. I saw that an old straight steel staircase with handrails rose from the back yard to reach the flat roof of a small back addition, now surfaced with decking, providing access to a new door into the middle one of 3 first floor flats above this neighbourhood store. Old wrought iron round-topped railings (reminiscent of those around park lawns) transformed the flat roof into a small balcony. This is now the only entrance to the 'middle' first floor flat, the original entrance having been adapted to provide additional storage for the neighbourhood store.
4. Because this 'external staircase' rises from the back yard behind this modest parade of local suburban shops, it is not a prominent feature in the street scene. It can be glimpsed through the gaps between one or two semi-detached properties nearby, but its' evident presence is largely confined to neighbouring residents and to one or two occupants of Ridge Crescent, where views are available from rear elevations and back gardens through gaps in the intervening foliage. The structure is not a thing of beauty. On the contrary, I am afraid that I consider it to be crude and clumsy, characteristics accentuated by the alien nature of the steel design (being recycled from elsewhere) and the impermanent perception imparted by its 'ladder-like' position against this small back addition. In those circumstances, I consider

that it presents an intrusive and incongruous presence to neighbouring residents, so that its' retention would impair the prospect that they might reasonably expect to enjoy in a suburban area such as this.

5. Worse still, the alignment of the staircase and the position of the flat-roofed addition offer vantage points from where those entering (and to a lesser extent leaving) the first floor flat can peer into the rear windows of neighbouring flats at close quarters. Although drawn blinds and 'dense' lace curtains prevented direct views into those properties at the time of my site visit, such measures for retaining a semblance of privacy are not commensurate with the living conditions that might reasonably be expected amongst these suburban estates. Moreover, although the present occupant of the flat may not wish to use the ballustraded roof as a balcony, it is certainly large enough to be used in that manner and subsequent occupants may well wish to enjoy summer evenings chatting to their friends and surveying the surroundings from such an elevated position. The presence and chatter of people so close to the windows of adjacent dwellings would seriously impair the peace and privacy of neighbouring residents.
6. Taking all those matters into account, I consider that the retention of this external steel staircase and the associated entrance arrangements would spoil the prospect and impair the peace and privacy that neighbouring residents might reasonably expect to enjoy, contrary to 'saved' policies EN1/2 and H2/3 and the guidance in SPD6. Both those policies and that guidance chime with several of the 'core planning principles' of the Framework, especially those seeking ways to enhance and improve the places in which people live their lives and securing high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
7. I have considered all the other matters raised. I saw that this neighbourhood store formed a key element in this local parade of shops and clearly provided a service to the local community; I appreciate that the mainly internal alterations undertaken have been designed to increase the storage utilised. However, although alternative and unobtrusive entrance arrangements had been made for the other two first floor flats, I saw that the options available to reach the middle flat were not so straight forward. Nevertheless, although some ingenuity may be required to find an acceptable means of providing the additional storage sought without sterilising the use of the first floor dwelling, I am not convinced, on the evidence adduced, that it would be beyond the wit of all concerned. Hence, I find nothing sufficiently compelling to alter my conclusion that this appeal should be dismissed.

*David Cullingford*  
INSPECTOR



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## Appeal Decisions

Site visit made on 11 February 2015

**by B.S.Rogers BA(Hons) DipTP MRTPI**

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

**Decision date: 18 February 2015**

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### **Appeal A Ref: APP/T4210/C/14/2225638**

#### **4 Lomond Drive, Bury, BL8 1UL**

- 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 Daniel Bolton against an enforcement notice issued by Bury Metropolitan Borough Council.
  - The notice was issued on 31 July 2014.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a two storey extension at the side and rear of the existing property.
  - The requirements of the notice are: (a) demolish and remove the two storey side and rear extension including all foundations and associated ground works; and (b) following demolition, remove all the resulting materials from the site.
  - The period for compliance with the requirements is 180 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(f) & (g) of the Town and Country Planning Act 1990 as amended.
  - The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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### **Appeal B Ref: APP/T4210/A/14/2223881**

#### **4 Lomond Drive, Bury, BL8 1UL**

- 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 Daniel Bolton against the decision of Bury Metropolitan Borough Council.
  - The application Ref: 57606, dated 24 May 2014, was refused by notice dated 24 June 2014.
  - The development proposed is double storey side and rear extensions.
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## **Decision**

### *Appeal A:*

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### *Appeal B*

2. The appeal is dismissed.

### **Preamble**

3. In the case of Appeal A, the initial appeal on ground (d) was withdrawn by the appellant, as it had no prospect of success.

### **Appeal A, ground (b)**

4. The basis of a ground (b) appeal is that the breach of control alleged in the notice has not occurred as a matter of fact. The appellant appears to have misunderstood this and refers in his representations to a verbal indication from the Council that planning permission had been granted. It is plain that the development in question has taken place as a matter of fact and therefore the appeal on ground (b) must fail.

### **Appeal A, ground (c)**

5. It is not in dispute that planning permission is required for the development which is the subject of this notice. The appellant applied in August 2013 for planning permission for the extensions as now built (application ref: 56670). His agent states that, around 9 weeks after the date of submission, he telephoned the Planning Office to ascertain the progress and he 'obtained verbal approval'.
6. The Council strongly disputes this and points out that the application was, in fact, refused in October 2013; the appellant's agent states that neither he nor his client received this, either in paper or electronic form. However, approval under the Building Regulations was issued in December 2013.
7. The Council appears to have no record of the telephone call in question and the appellant's agent has provided no detail of the date of the call or the name of the person to whom he spoke. There may well have been a telephone call but the Act makes no provision for a 'verbal approval' of an application. It was, in any event extremely unwise to proceed with the development in the absence of written approval; even had the application been approved, there may have been conditions precedent to be satisfied before the permission could have been lawfully implemented. Accordingly, at best, I can conclude that the telephone call may have given rise to a misunderstanding. Any such misunderstanding would not have been helped by the Council's failure to initiate enforcement action until the work was almost complete, despite there having been a Building Regulations application.
8. The onus is on the appellant to substantiate his case, on the balance of probability. I have no reasonable basis to conclude in his favour on ground (c).

### **Appeal A, ground (a) & the deemed application, and Appeal B**

9. The application which is the subject of Appeal B is identical to that made in August 2013, referred to in para.5 above, and relates to the development as carried out and which is the subject of the enforcement notice.
10. The main issues are the impact of the development on the street scene and on the living conditions of neighbouring residents; both of these are matters to which saved Policy H2/3 of the Bury UDP requires regard to be had. The Council has provided more detailed guidance in Supplementary Planning Document 6: Alterations and Extensions to Residential Properties (SPD6), a document which was subject to consultation and formally adopted by the

Council in 2004. It is consistent with the aim of the National Planning Policy Framework (NPPF) in promoting good design and therefore of significant weight.

*Street scene*

11. The appeal property is a brick-built, semi-detached house, on a narrow plot, to which a 'wrap round' 2 storey extension to the side and rear has been constructed. The extension extends virtually to the common boundary with no.6 at the side. In such a case, SPD6 would require the front elevation at first floor level to be set back by at least 1.5m from the main frontage of the original house. This is to avoid a terracing effect should the neighbouring property be extended in a similar manner. At the appeal site, the front elevation is set back only some 220mm and such a nominal set back, with no break in the roof-line, does not give adequate visual separation to avoid a terraced effect. Accordingly, I consider the development has a harmful impact on the street scene, contrary to the aims of SPD6 and, in turn, UDP Policy H2/3.
12. The appellant pointed to 2 nearby extensions which did not have a first floor set-back of the type now required by the policy. However, whilst I agree that they unacceptably conflict with present policy, I have no information as to when they were built and what were the planning policy requirements at that time.

*Residential amenity*

13. The guidance in SPD6 would normally allow a single storey, 3m deep extension to be built abutting the common boundary with no.2. However, a 2 storey extension would be limited to 1m in depth, abutting the boundary. In this case, both floors have been extended rearward by some 3m. However, the first floor bedroom window in the rear elevation of no.2 is positioned a considerable distance away from the common boundary. Whilst the ground floor kitchen window is somewhat closer, I find that the additional 2m depth of the first floor, compared to what is normally acceptable, to be tolerable, with no undue loss of daylight/sunlight.
14. In relation to no.6, the extension appears to encroach slightly into the 45° line from the rear habitable room windows. However, there is a significant gap between the 2 properties and, accordingly, the relationship appears acceptable.
15. The window positioned in the side elevation facing no.2 has a higher than normal cill height. Nevertheless, it still allows a clear view into the rear garden area of no.2, close to the house. To my mind, this unacceptably reduces the privacy which the neighbouring residents should reasonably expect. Had I been minded to allow the appeals, I could have required this to be bricked up by varying the notice or imposing a planning condition to that effect.
16. I conclude that, subject to addressing the side window, the development does not unduly harm the living conditions of neighbouring residents, contrary to the aims of UDP Policy H2/3. However, my conclusion on the first main issue is of greater weight and this leads me to dismiss both appeals.

**Appeal A, ground (f)**

17. The Council has made it clear that the purpose of the notice is to remedy the breach of planning control. The required steps would do this, and no more. The appellant has suggested further meetings with the Council to discuss alternative steps but no such schemes are before me and no alternative steps have been suggested.
18. The Council has indicated its willingness to discuss alternative extensions, as indicated in its response to the ground (g) appeal, although I have been given no indication as to what the Council would consider acceptable.
19. As there has been a ground (a) appeal, there is discretion to look more widely at the available options. I find the rear part of the extension to be acceptable, subject to the bricking up of the side window overlooking no.2. Accordingly, I could have varied the notice to require this, were there 2 separate extensions. However, the extension is a single, 'wrap round' structure and I would need to vary the requirements precisely in respect of both parts of the scheme.
20. In this case, am unable to vary the requirements of the notice with sufficient precision to provide for a minimum 1.5m set-back at first floor level of the side extension; it would have implications for the roof structure, which would need to be lowered commensurately, eg as indicated on page 16 of SPD6, and could affect the roof structure of the rear part of the extension.
21. Accordingly, the appeal on ground (f) fails.

**Appeal A, ground (g)**

22. The appellant here notes that the building works were 95% complete before the Council initiated enforcement action. He seeks an additional 4 weeks for compliance. There appears to be no dispute that the 180 day period provided for in the notice is more than sufficient to allow the required steps to be undertaken. It appears to me that this timescale would also be adequate to enable the appellant to explore an alternative scheme for a more appropriate extension and, if approved, to carry out the works. The Council has the discretion to allow more time if necessary, if suitable progress is being made. However, I see no convincing need for the compliance period to be extended and the appeal on ground (g) fails.

*B.S. Rogers*

Inspector

**Details of Enforcement Appeal Decisions**  
between 08/12/2014 and 08/03/2015



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**Location:** 4 Lomond Drive, Bury, BL8 1UL

**Case Ref:**

14 /0097

**Issue:** Unauthorised side and rear extension

**Appeal Decision:** Dismissed 18/02/2015

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A copy of the Inspectors Decision is attached.

Note: 14/0097 is both a S.78 Appeal and an Enforcement Appeal