

	ITEM NO.
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REPORT OF The Strategic Director for Environment and Community safety

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TO THE PLANNING AND TRANSPORTATION REGULATORY PANEL

ON  
6<sup>th</sup> February 2014

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TITLE: PLANNING AND ENFORCEMENT APPEALS

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RECOMMENDATION: That the report be noted

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EXECUTIVE SUMMARY: To set out details of appeals received and determined

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BACKGROUND DOCUMENTS: (Available for public inspection)

Details of the applications are available on the Council's Public Access Website

<http://publicaccess.salford.gov.uk/publicaccess/default.aspx>

If you would like to access this information in an alternative format, please contact the planning office on 0161-779 6195 or e-mail [planning.contact@salford.gov.uk](mailto:planning.contact@salford.gov.uk)

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KEY DECISION: NO

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DETAILS: See attached schedule

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KEY COUNCIL POLICIES: Performance Management

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EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS: N/A

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ASSESSMENT OF RISK: N/A

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SOURCE OF FUNDING: N/A

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LEGAL IMPLICATIONS Supplied by N/A

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FINANCIAL IMPLICATIONS Supplied by N/A

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OTHER DIRECTORATES CONSULTED: N/A

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CONTACT OFFICER: Viv Prytharch 0161-779-4852

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WARD(S) TO WHICH REPORT RELATE(S): As indicated in the attached schedule .

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**PLANNING AND TRANSPORTATION REGULATORY PANEL**  
**REPORT ON PLANNING AND ENFORCEMENT APPEALS DECIDED**

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APPLICATION No: **13/62728/FUL**

APPELLANT: **Mr Mohammed**

APPEAL SITE: **111 Chaddock Lane Worsley M28 1DH**

PROPOSAL: **Change of use of part of the ground floor to shop, replacement shop front and installation of roller shutters**

WARD: **Boothstown And Ellenbrook**

OFFICER RECOMMENDATION: **Approve**

APPEAL DECISION: **Appeal Allowed**

DECIDED ON: **9 January 2014**

Planning permission was granted, subject to conditions on 8<sup>th</sup> March 2013 for change of use of part of the ground floor to shop, replacement shop front and the installation of roller shutters at 111 Chaddock Lane, Worsley. One of the conditions attached to the planning permission stated:

The use hereby permitted, including deliveries, loading, unloading and other servicing activities shall only be permitted between the hours of 8.00am and 9.30pm on any day.

And the reason for this condition was:

To safeguard the amenity of the neighbouring residents in accordance with policy DES 7 of the City of Salford Unitary Development Plan.

The appellant appealed the decision requesting that this condition be removed.

The inspector considered that it would only be reasonable to seek to impose new controls on the opening hours if it were likely that the character and nature of the retail use would materially change. The inspector was not provided with evidence to suggest that this additional small area would result in a significant change to the operation or nature of the shop. The condition also sought to restrict deliveries. The inspector considered that as the scale of the shop has increased by such a small amount it was not reasonable to impose new servicing requirements.

The inspector acknowledged that this is a residential area and parking in the vicinity inevitably has an impact on the residents of nearby houses. It was also noted that opening the shop early in the morning and late at night could result in more disturbance and earlier deliveries. However, the inspector concluded that opening hours are a management issue and was not persuaded that the change in retail area would make a significant difference in this respect. As the shop could previously open and take deliveries without controls, the concerns raised with regard to comings and goings; parking, servicing and access; and the potential to attract noisy customers, would have applied equally to the original shop.

In light of the above the inspector concluded the application would not conflict with UDP policies DES7 or the NPPF and allowed the appeal with deletion of the condition above.

APPLICATION No: **13/62927/FUL**

APPELLANT: **Mr Colin Ivison**

APPEAL SITE: **Irlam Steel Recreation & Social Club 524-526 Liverpool Road  
Irlam M44 6AJ**

PROPOSAL: **Erection of a smoking shelter**

WARD: **Cadishead**

OFFICER  
RECOMMENDATION: **Refuse**

APPEAL DECISION: **Appeal dismissed**

DECIDED ON: **20 January 2014**

On 3<sup>rd</sup> May 2013 an application for erection of a smoking shelter at Irlam Steel Recreation and Social Club was refused under delegated powers for the following reasons:

1. The proposal, by reason of its design and appearance, would be an incongruous addition to the building, and as such, the proposal would be contrary to DES8 of the adopted Unitary Development Plan.
2. The proposal, by reason of its siting, would lead to an increase in noise and disturbance into the late evening, which would have an unacceptable impact on the amenity of neighbouring residents and as such would be contrary to EN17 of the adopted Unitary Development Plan.

The applicants appealed the decision. The inspector considered the main issues are the effect of the noise and disturbance on the living conditions of nearby residents and the effect of the proposal on the character and appearance of the building.

The Inspector acknowledged the management's efforts to restrain noise but considered that it was highly likely that the shelter would generate noise and disturbance. Given the close proximity of the shelter to the windows of nearby dwellings, the Inspector considered that it would significantly harm the living conditions of the residents. The Inspector considered that, while patrons may use the beer garden in any case, the shelter would enable them to congregate in one concentrated place regardless of the weather. The Inspector was not convinced that enclosing one side of the shelter or omitting seating would significantly reduce the noise and disturbance, and this would also have implications for its appearance.

The Inspector considered that the noise and disturbance would be particularly harmful late into the evenings, when residents can expect ambient noise levels to have reduced. The Inspector also considered that the road, other commercial uses in the area, The Ship Hotel and the Tesco Extra would be unlikely to generate significant noise of the same type.

In terms of the appearance, the Inspector considered the design of the smoking shelter would reflect the horizontal line and colour of the white banding on the existing elevation, and would not appear as incongruous or prominent in the streetscene.

In conclusion, the Inspector upheld the second reason for refusal finding that the shelter would lead to undue noise and disturbance, significantly harming the living conditions of nearby residents, and would therefore be in conflict with Policy EN17 of the UDP. However, the Inspector did not support the first design based reason for refusal finding that the proposal would not harm the character and appearance of the building and therefore was not in conflict with Policy DES1 and DES8 of the UDP.

The Inspector therefore dismissed the appeal on noise and disturbance grounds alone.

APPLICATION No: **13/62892/FUL**

APPELLANT: **Mr Abdul Khaliq**

APPEAL SITE: **Johnson Cleaners UK Ltd 29 Church Street Eccles M30 0BJ**

PROPOSAL: **Change of use of ground floor from dry cleaners to hot food takeaway (A5)**

WARD: **Eccles**

OFFICER  
RECOMMENDATION: **Approve**

APPEAL DECISION: **Appeal upheld - Varied**

DECIDED ON: **18 December 2013**

On the 4<sup>th</sup> April 2013 an application for change of use of ground floor from dry cleaners to hot food takeaway (A5) at 29 Church Street, Eccles was approved by the Planning and Transportation Regulatory Panel, subject to the following conditions:

1. The development shall be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans 'Existing and Proposed Plans/Elevations'.
3. Use of air extraction equipment shall not commence until detailed plans and specifications of the equipment, including measures to alleviate noise, vibration, fumes and odours (and incorporating active carbon filters, silencers and anti vibration mountings where necessary), have been submitted to and approved in writing by the Local Planning Authority. The ventilation system shall be installed in accordance with the approved plans and specifications before the use of the equipment commences and shall be permanently retained thereafter in accordance with the approved specifications.
4. The takeaway shall not operate outside the hours of 11am and 11pm seven days a week.
5. Before the use commences a litter bin shall be provided in accordance with details of its design and siting, to be approved in writing by the Local Planning Authority, and shall be maintained thereafter at all times.
6. Prior to the first use of the premises commencing, the applicant shall have submitted a scheme showing the location, design, appearance and operating details of a CCTV scheme for the written approval of the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development hereby approved and retained as such.

The applicant appealed against conditions 4 and 5 seeking to vary the hours of opening to midnight daily and to remove the requirement to provide a litter bin.

The Inspector considered the main issues in this appeal were whether the conditions in dispute are necessary and reasonable in the interests of the prevention of crime/anti-social behaviour, the avoidance of litter and the living conditions of neighbouring residents.

The Inspector considered the location of the site and the surrounding uses including the public houses and residential flats in the immediate vicinity. The Inspector also considered the council's Hot Food Takeaway SPD (2007), the newly updated draft SPD (2013) and the consultation responses received.

With regard to condition 4 (hours), the Inspector attached considerable weight to the concerns expressed by the police regarding the volume of people present in Church Street in the evening and the potential for the hot food takeaway to become a 'flash point' for crime and anti-social

behaviour. The inspector considered this to be harmful in itself, resulting in unacceptable noise and disturbance. Consequently, the Inspector considered that a condition limiting the opening hours was necessary to comply with DES 7 and DES 10 of the UDP and that the original condition was reasonable and reflected the character and function of the area whilst allowing the takeaway to contribute to both its daytime and evening economy. Condition 4 was therefore retained in its present form.

With regard to condition 5 (litter bin), the Inspector considered that although there are a number of litter bins within the wider area, there is not one immediately outside the appeal premises and, contrary to the statement of the appellant, the nearest litter bin on The Mall is about 20m away. Consequently, in the interests of avoiding litter, the inspector considered that it is reasonable to require the provision of a litter bin in accordance with the requirements of policy EN 17 of the UDP and Policy HFTA 7 of the Hot Food Takeaway SPD. However, given that the change of use has been implemented, the inspector proposed to vary condition 5 to require a litter bin to be provided within 3 months of the date of this decision, in accordance with details submitted to and approved by the council as Local Planning Authority.

The appeal was therefore allowed, however this was only to enact a minor variation to the implementation timescale requirements of condition 5 given that the change of use has already been implemented.

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APPLICATION No: **13/63013/HH**

APPELLANT: **Mr D Jackson**

APPEAL SITE: **Folly Foot Doe Brow Clifton House Road Clifton Swinton  
Manchester M27 6NG**

PROPOSAL: **Retention of a double garage and first floor games room**

WARD: **Pendlebury**

OFFICER  
RECOMMENDATION: **Refuse**

APPEAL DECISION: **Appeal dismissed**

DECIDED ON: **8 January 2014**

On 23 August 2013 a retrospective application for the retention of a double garage and first floor games room in the Green Belt at Folly Foot, Doe Brow, Clifton House Road, Clifton, Swinton, M27 6NG was refused under delegated powers for the following reasons:

- 1. The garage is materially larger than the buildings which it replaced and is therefore, by definition, inappropriate development in the Green Belt and very special circumstances that would justify its retention do not exist. The proposal is therefore contrary to saved Policy EN1 of the City of Salford Unitary Development Plan and paragraphs 87-89 of the National Planning Policy Framework.*

The applicants appealed the decision. The appeal relates to a large detached 2 storey double garage located to the south of the main dwelling, which is a bungalow. The garage has replaced the original garage and stables which occupied the same location within the site. The wider plot comprises of a large grassed area surrounded by a brick wall approximately 2m high. This plot is located in a semi-rural area at the southern edge of the Irwell river valley. The site is next to the entrance to the Clifton House Country Park and is set within a predominantly wooded area with a steep railway embankment immediately to the south.

The Inspector considered that the main issues to consider are whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework (NPPF), the effect of the proposal on the openness of the Green Belt, and, if the proposal is inappropriate development, whether the harm caused 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.

Addressing the issue of whether the garage is inappropriate development, the Inspector noted the NPPF states that replacement buildings within the Green Belt are inappropriate unless they are not materially larger than the buildings which have been replaced. The Inspector considered that because the replacement garage is 50-57% larger in volume than the original buildings, this is clearly materially larger and therefore inappropriate development within the Green Belt.

Considering the development's impact upon the site's openness the Inspector noted that paragraph 79 of the NPPF states openness is an essential Green Belt characteristic, with openness being defined by the absence of built or otherwise urbanising development. The Inspector concluded that given the replacement garage has a significantly increased bulk compared to the original buildings the proposal has thus inevitably reduced the site's openness. Therefore the Inspector concluded that the development harms the openness of the Green Belt.

Finally, the Inspector concluded that having considered all the matters raised by the appellant in

support of the proposal, including the fact that no objections have been received by members of the public, these were not considered to clearly outweigh the totality of harm caused by the development to the Green Belt. As such very special circumstances were not found to exist and the proposal is therefore contrary to the NPPF's and the City of Salford Unitary Development Plan's Green Belt policies.

In light of the above, the Inspector dismissed the appeal on 8 January 2014.

Enforcement Update

There is a valid Enforcement Notice relating to the removal of the unauthorised garage (10/00076/DEVWPP) and the owner was prosecuted in October 2012. The court fined him £5000 for non-compliance with the notice.

Since receipt of the appeal decision, the council's planning enforcement officer has requested that the owner be prosecuted again. The enforcement file is currently being retrieved from archive and the case will actively be pursued through the courts.

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APPLICATION No: **13/62835/FUL**

APPELLANT: **Mr W Khan**

APPEAL SITE: **2 Victoria Road, Eccles, M30 9HB**

PROPOSAL: **Change of use of vacant land to private garden and retrospective application for erection of 2m high wall and gates**

WARD: **Eccles**

OFFICER RECOMMENDATION: **Approved - unconditional**

APPEAL DECISION: **Appeal upheld**

DECIDED ON: **28.01.2014**

On 4<sup>th</sup> April 2013, a retrospective planning application for the change of use of vacant land to a private garden and to retain walls and gates at No.2 Victoria Road, Eccles, Salford, was refused by The Transport and Regulatory Panel for the following reason:

*“The proposed development does not preserve or enhance the character or appearance of the Ellesmere Park Conservation Area. It has resulted in sections of the adopted highway being enclosed by the wall and taken into the curtilage of the dwelling resulting in a loss of features which contribute to the character and appearance of the conservation area. The proposal is therefore contrary to Policy CH3 of the City of Salford Unitary Development Plan, the Ellesmere Park Supplementary Planning Document (policies 3 and 7 in particular) and the National Planning Policy Framework”*

Following the refusal of retrospective planning permission, an enforcement notice was served on 12<sup>th</sup> September 2013 for the following reasons:

*“The council consider it expedient to issue this notice because the walls and gates do not benefit from permitted development pursuant to Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995, as amended. The wall in sections are above 1 metre in height and furthermore has partly been constructed on the footway of Victoria Road, effectively extending the curtilage of the dwellinghouse. The wall and gates taken together does not preserve or enhance the character or appearance of the Ellesmere Park Conservation Area. The breaches have resulted in sections of the adopted highway to become enclosed by the wall and gates and taken into the curtilage of 2 Victoria Road which results in an overall loss of features which contribute to the overall character and appearance of the Conservation Area.*

*The unauthorised development is therefore contrary to policies DES1, CH3 and A8 of Salford City Council’s Adopted Development Plan, Policies 3 and 7 of the Ellesmere Park Supplementary Planning Document and the National Planning Policy Framework”*

The applicants appealed the refusal of planning permission and the enforcement notice. The Inspector linked the appeals as the planning considerations were considered to be the same for both appeals. The Inspector considered the main issue in the appeals was the effect of the development on the Conservation Area and whether the walls and gates and the residential use of the enclosed land to the front of No.2 Victoria Road preserve or enhance the character or appearance of the Ellesmere Park Conservation Area.

The appeal property is a large detached house which fronts Victoria Road. The property is sited close to the junction of Victoria Road and Half Edge Lane. The development subject to the appeal is the residential use of the land enclosed by fronting boundary brick walls and gates and the erection of the walls and gates. The red brick appeal walls have been built to the outer edge of the 1.5m wide footway to Victoria Road. They are about 1m high with approximately 2m high pillars at about 3m intervals. Cappings are dark blue brick. There is a dark painted pedestrian gate and a wide, sliding, vehicular gate in the wall.

The councils main concern was that the development does not respond well to the established character and identity of the area and does not protect or improve important views within and into the conservation area. The council concluded that the development would be contrary to policy CH3 of the UDP and Policy 3 of the Ellesmere Park SPD which require works in conservation areas where they preserve or enhance the character of the area and that new development should maximise the existence and quality of the long and short views into and out of the Ellesmere Park area.

The Inspector acknowledged the need to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area and that this will always be a material consideration when dealing with appeals in Conservation Areas.

The Inspector recognised that the appeal walls had been built with some recognition of the need to fit in with the surroundings but the heavy brick piers in particular failed to match the more modest house fronting walls nearby as they produce a fortress like quality which is at odds with many of the low brick and stone walls which front houses in the vicinity.

He considered that the overall effect of the development fails to preserve or enhance the character or appearance of this part of the Ellesmere Park Conservation Area and conflicts with UDP policies DES1 and CH3. He recognised that lowering the height of the wall to no more than 1 metre high would overcome any highway safety visibility concerns but the intrusion on the street scene by the residential use of the highway would remain.

The Inspector concluded that the relevant national and local planning policies drawn up to protect Conservation Areas should prevail and that planning permission should not be granted.

In light of the above, the appeals failed, planning permission is not granted and the enforcement notice is upheld.

## **ENFORCEMENT**

### **APPEAL AGAINST ENFORCEMENT NOTICE. CASE No. 12/00098/WPP3 ERECTION OF FENCE AT 1 CRICKETFIELD LANE, WORSLEY, M28 0AQ**

On 24<sup>th</sup> June 2013 an enforcement notice was served on the occupier of 1 Cricketfield Lane against the erection of a two metre high fence surrounding the side/rear garden adjacent to the highway, without planning permission. The requirements of the notice were:

- To reduce the height of the timber close board fencing, concrete fence posts and timber close board gate to a maximum height of 1m; and
- Remove from the land all debris and building materials resulting from compliance with requirements (1) above

The period for compliance with the requirements was 3 months.

The occupier appealed the enforcement notice. The appeal was made on ground (f) stating that the steps required to comply with the requirements of the notice were excessive and lesser steps would overcome the objections. The Inspector considered that the Council's main purpose in issuing the enforcement notice was to make the development comply with the terms and conditions of Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

The Inspector acknowledged that the enforcement notice requires no more than what is necessary to bring the development in line with the Town and Country Planning (General Permitted Development) Order 195 (as amended) and only full compliance with the requirements would achieve that purpose.

The Inspector recognised that if the appellant wishes to pursue a scheme for the retention of the fence that she should do so through an application for planning permission to the Council and stated that the appellant's proposals cannot be taken further through the appeal process.

On 23 January 2014 the Inspector concluded that the appeal made under ground (f) should fail.

**PLANNING AND TRANSPORTATION REGULATORY PANEL**  
**REPORT OF NEW PLANNING APPEALS RECEIVED**

APPLICATION No: **13/63230/OUT**

APPLICATION  
DECISION LEVEL: **Panel Decision**

OFFICER  
RECOMMEND'N: **Approve**

APPEAL SITE: **Land Off Vicars Hall Lane And Highclove Lane Boothstown Salford**

PROPOSAL: **Outline planning application with details of reserved matters for the access, construction of up to 100 dwelling houses**

WARD: **Boothstown And Ellenbrook**

APPELLANT: **Peel Investments (North) Ltd - Ms Louise Morrissey**

DATE RECEIVED: **5 December 2013**

The applicant has appealed the decision. The reason for refusal states:

1. The development does not represent a sustainable form of development due to the limited accessibility of the site and where existing traffic congestion on the local highway network is severe. The proposed shuttle bus would provide inadequate mitigation in terms of the long term sustainability of the site and its ability to link with the existing public transport network. As such, it is considered that the development would result in a severe residual cumulative impact upon the local highway network contrary to the National Planning Policy Framework (March 2012).

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APPLICATION No: **13/63883/ADV**

APPLICATION  
DECISION LEVEL: **Panel Decision**

OFFICER  
RECOMMEND'N: **Approve**

APPEAL SITE: **Roundabout At Eastern End Of M602 Regent Road Salford M5 4QH**

PROPOSAL: **Installation of two internally illuminated advertisements measuring 18m x 4.5m and incorporated within a purpose built freestanding structure.**

WARD: **Ordsall**

APPELLANT: **Mr M Stephens - JCDecaux UK Limited**

DATE RECEIVED: **17 December 2013**

The applicant has appealed the decision. The reason for refusal states:

1. The proposed advertisement would distract users of the local and strategic road network to the detriment of highway safety contrary to policies DEV2 and A8 of the City of Salford Unitary Development Plan and the National Planning Policy Framework.

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APPLICATION No: **13/63013/HH**

APPLICATION  
DECISION LEVEL: **Delegated to Officer**

OFFICER  
RECOMMEND'N: **Refuse**

APPEAL SITE: **Folly Foot Doe Brow Clifton House Road Clifton Swinton Manchester M27 6NG**

PROPOSAL: **Retention of a double garage and first floor games room**

WARD: **Pendlebury**

APPELLANT: **Mr D Jackson**

DATE RECEIVED: **18 November 2013**

The applicant has appealed the decision. The reason for refusal states:

1. The garage is materially larger than the buildings which it replaced and is therefore, by definition, inappropriate development in the Green Belt and very special circumstances that would justify its retention do not exist. The proposal is therefore contrary to saved Policy EN1 of the City of Salford Unitary Development Plan and paragraphs 87-89 of the National Planning Policy Framework.

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APPLICATION No: **13/63157/OUTEIA**

APPLICATION  
DECISION LEVEL: **Panel Decision**

OFFICER  
RECOMMEND'N: **Approve**

APPEAL SITE: **Land To The North And South Of Worsley Road And Land At Aviary Field  
Broadoak Worsley**

PROPOSAL: **Outline planning application with details of reserved matters for the access, construction of up to 600 dwellings, marina facilities and basin, class A1 (retail) and class A3 (cafe) uses, associated formal and informal recreation and green space provision, landscaping and drainage works, vehicular access, car parking, diversion and realignment of public rights of way, the creation of new footpaths and connections to adjoining footpath network and the creation of an ecological area at Aviary Field including the formation of a pond and the creation of a recreation area at Aviary Field**

WARD: **Worsley**

APPELLANT: **Peel Investments (North) Ltd And Taylor Wimpey UK Ltd**

DATE RECEIVED: **30 December 2013**

The applicant has appealed the decision. The reason for refusal states:

1. The proposal would be contrary to the provision of saved policy EN2 of the Salford Unitary Development Plan in that the development would fragment the openness and continuity of the Greenway

2. The development is of a scale and nature that would prejudice the outcomes of the current Local Plan process by predetermining decisions about the scale, location and phasing of new development, contrary to Annex 1 of the NPPF paragraph 216 and the Planning System: General Principles document (2005).

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