

Agenda



Planning Committee

Date: Wednesday, 2 August 2023

Time: 10.00 am

Venue: Council Chambers - Civic Centre

To: Councillors M Spencer (Chair), M Linton (Deputy Chair), T Harvey, J Reynolds, S Cocks, A Screen, B Perkins, J Jones, M Howells, R Mogford and J Jordan

Item	Wards Affected
1. <u>Apologies for Absence</u>	
2. <u>Declarations of Interest</u>	
3. <u>Minutes of the meeting held on 5 July 2023</u> (Pages 3 - 6)	
4. <u>Development Management: Planning Application Schedule</u> (Pages 7 - 20)	
5. <u>Appeal Decisions</u> (Pages 21 - 26)	

Contact: Pamela Tasker, Governance Officer, democratic.services@newport.gov.uk

Tel: 01633 656656

E-mail: democratic.services@newport.gov.uk

Date of Issue: Wednesday, 26 July 2023

This page is intentionally left blank



Draft Minutes

Planning Committee

Date: 5 July 2023

Time: 10.00 am

Venue: Council Chambers- Hybrid Meeting

Present: Councillors M Spencer (Chair), M Linton (Deputy Chair), M. Howells, R Mogford, A. Screen, J Jordan, S. Cocks, B. Perkins, T. Harvey and J. Reynolds

In Attendance: Andrew Ferguson (Planning and Development Manager), Joanne Davidson (East Area Development Manager), Joanne Evans (Senior Solicitor- Planning & Land), Neil Gunther (Senior Planning Enforcement Officer), Alun Lowe (Planning Contributions Manager), Kevin Jackson (Traffic and Transport Development Engineer), Andrew Hardiman (Traffic, Transport & Development Engineer) (Pamela Tasker (Governance Support Officer), Emily Mayger (Governance Support Officer)

Apologies: Councillor John Jones

1. **Declarations of Interest**

None

2. **Minutes of the meeting held on 7 June 2023**

The minutes of the meeting held on 7 June were submitted.

Resolved

That the minutes of the meeting held on 7 June 2023 be taken as read and confirmed,

3. **Development Management: Planning Application Schedule**

(1) That decisions be recorded as shown on the Planning Applications Schedule attached as an Appendix A

(2) That the Planning and Development Manager be authorised to draft any amendments to/additional conditions or reasons for refusal in respect of the Planning Applications Schedule, attached.

4. **Appeals Report**

Member's attention was drawn to the appeals report, for information.

The meeting terminated at 11:27am

Draft Appendix A
PLANNING COMMITTEE –
DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
23/0327	<p>Site: St Andrew's Primary School, Corporation Road</p> <p>Proposal: Construction of a 3-storey new teaching block incorporating junior teaching accommodation, ancillary facilities, and inclusion zone, and landscape reconfiguration</p> <p>Recommendation: Granted with Conditions</p>	Lliswerry	Presented to Committee as a major planning application.	Granted With Conditions with Condition added to commence discussions with school and officers re potential safety measures along Corporation Road.
21/0258	<p>Site: The Drill Hall, 58 Lower Dock Street</p> <p>Planning Breach: Dangerous structure</p> <p>Recommendation: To undertake the necessary action to draft and serve an urgent works notice under the Planning (Listed Buildings and Conservation Areas) Act 1990. Additionally, if necessary, to undertake the required works in default and recover the associated debt generated.</p>	Stow Hill	Presented to Committee as Urgent Works Notices are not referred to in the officer scheme of delegation.	Recommendation Approved (authorising issue of Urgent Works Notice, authorising Head of RED to take necessary steps in the event of non-compliance and seeking to recover any costs associated).

This page is intentionally left blank

Report

Planning Committee – Hybrid Meeting

Part 1

Date: 2nd August 2023

Subject Planning Enforcement Schedule

Purpose To take decisions on an item presented on the attached schedule

Author Head of Regeneration and Economic Development

Ward As indicated on the schedule

Summary The Planning Committee has delegated powers to take decisions in relation to taking enforcement action. The report contained in this schedule assess the need to take enforcement action and the potential implications of this. The report concludes with an Officer recommendation to Planning Committee.

The purpose of the attached report and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on the proposed course of action having weighed up the various material planning considerations.

The decisions made are expected to benefit the City by preserving its cultural heritage.

Proposal **1. To resolve decisions as shown on the attached schedule.**
2. To authorise the Planning and Development Manager to draft any amendments to the Urgent Works Notice.

Action by Planning Committee

Timetable Immediate

This report was prepared after consultation with:

- Local Residents
- Members
- Statutory Consultees

The Officer recommendations detailed in this report are made following consultation as set out in the Council's approved policy on planning consultation and in accordance with legal requirements

Background

The reports contained in this schedule assess the proposed development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer recommendation to the Planning Committee on whether or not Officers consider planning permission should be granted (with suggested planning conditions where applicable), or refused (with suggested reasons for refusal).

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

Applications can be granted subject to planning conditions. Conditions must meet all of the following criteria:

- Necessary;
- Relevant to planning legislation (i.e. a planning consideration);
- Relevant to the proposed development in question;
- Precise;
- Enforceable; and
- Reasonable in all other respects.

Applications can be granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). This secures planning obligations to offset the impacts of the proposed development. However, in order for these planning obligations to be lawful, they must meet all of the following criteria:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

The applicant has a statutory right of appeal against the refusal of permission in most cases, or against the imposition of planning conditions. There is no third party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where the Planning Committee refuses an application against Officer advice, Members will be required to assist in defending their decision at appeal.

Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, well-being of future generations, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

Financial Summary

The cost of determining planning applications and defending decisions at any subsequent appeal is met by existing budgets and partially offset by statutory planning application fees. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

Risks

Three main risks are identified in relating to the determination of planning applications by Planning Committee: decisions being overturned at appeal; appeals being lodged for failing to determine applications within the statutory time period; and judicial review.

An appeal can be lodged by the applicant if permission is refused or if conditions are imposed. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with the type of major development being presented to the Planning Committee, which often requires a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low.

A decision can be challenged in the Courts via a judicial review where an interested party is dissatisfied with the way the planning system has worked or how a Council has made a planning decision. A judicial review can be lodged if a decision has been made without taking into account a relevant planning consideration, if a decision is made taking into account an irrelevant consideration, or if the decision is irrational or perverse. If the Council loses the judicial review, it is at risk of having to pay the claimant's full costs in bringing the challenge, in addition to the Council's own costs in defending its decision. In the event of a successful challenge, the planning permission would normally be quashed and remitted back to the Council for reconsideration. If the Council wins, its costs would normally be met by the claimant who brought the unsuccessful challenge. Defending judicial reviews involves considerable officer time, legal advice, and instructing a barrister, and is a very expensive process. In addition to the financial implications, the Council's reputation may be harmed.

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry and judicial review can be high.

Risk	Impact of risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect?	Who is responsible for dealing with the risk?
Decisions challenged at appeal and costs awarded against the Council.	M	L	Ensure reasons for refusal can be defended at appeal.	Planning Committee
			Ensure planning conditions imposed meet the tests set out in Circular 016/2014.	Planning Committee
			Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.	Planning and Development Manager and Senior Legal Officer
			Ensure appeal timetables are adhered to.	Planning and Development Manager
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Planning Committee Planning and Development Manager
Judicial review successful with costs awarded against the Council	H	L	Ensure sound and rational decisions are made.	Planning Committee Planning and Development Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The Council's Corporate Plan 2017-2022 identifies four themes, including the aim to be a Thriving City. In order to achieve this, the Council is committed to improving:

- jobs and the economy
- education and skills
- fairness and equality
- community safety and cohesion
- the environment, transport, culture and social well-being

Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling

economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.

The Corporate Plan contains the Council's Well-being Statement and well-being objectives, which contribute to the achievement of the national well-being goals. The Corporate Plan also links to other strategies and plans, the main ones being:

- Improvement Plan 2016-2018;
- Local Development Plan 2011-2026 (Adopted January 2015);

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Newport Local Development Plan (Adopted January 2015) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

Options Available and considered

- 1) To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate);
- 2) To grant or refuse planning permission against Officer recommendation (in which case the Planning Committee's reasons for its decision must be clearly minuted);
- 3) To decide to carry out a site visit, either by the Site Inspection Sub-Committee or by full Planning Committee (in which case the reason for the site visit must be minuted).

Preferred Option and Why

To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate).

Comments of Chief Financial Officer

In the normal course of events, there should be no specific financial implications arising from the determination of planning applications.

There is always a risk of a planning decision being challenged at appeal. This is especially the case where the Committee makes a decision contrary to the advice of Planning Officers or where in making its decision, the Committee takes into account matters which are not relevant planning considerations. These costs can be very considerable, especially where the planning application concerned is large or complex or the appeal process is likely to be protracted.

Members of the Planning Committee should be mindful that the costs of defending appeals and any award of costs against the Council following a successful appeal must be met by the taxpayers of Newport.

There is no provision in the Council's budget for such costs and as such, compensating savings in services would be required to offset any such costs that were incurred as a result of a successful appeal.

Comments of Monitoring Officer

Planning Committee are required to have regard to the Officer advice and recommendations set out in the Application Schedule, the relevant planning policy context and all other material planning considerations. If Members are minded not to accept the Officer recommendation, then they must have sustainable planning reasons for their decisions.

Comments of Head of People, Policy and Transformation

Within each report the sustainable development principle (long term, prevention, integration collaboration and involvement) of the Well-being of Future Generations (Wales) Act has been fully considered.

From an HR perspective there are no staffing issues to consider.

Comments of Cabinet Member

The Cabinet Member for Strategic Planning, Regulation and Housing has been made aware of the report.

Local issues

Ward Members were notified of planning applications in accordance with the Council's adopted policy on planning consultation. Any comments made regarding a specific planning application are recorded in the report in the attached schedule

Scrutiny Committees

None

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The Socio-economic Duty, part of the Equality Act 2010, was also enacted in Wales on the 31st March 2021. This requires the Planning Committee, when making strategic decisions, to also pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage. Inequalities of outcome are felt most acutely in areas such as health, education, work, living standards, personal security and participation.

Children and Families (Wales) Measure

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Wellbeing of Future Generations (Wales) Act 2015

The Well-being and Future Generations (Wales) Act seeks to improve the social, economic environmental and cultural well-being of Wales. Public bodies should ensure that decisions take into account the impact they could have on people living in Wales, in the future. The 5 main considerations are:

Long term: Decisions made by the Planning Committee balances the need to improve the appearance of areas as well as meeting the needs of residents in order to make places safe to live in and encourage investment and employment opportunities. Planning decisions aim to build sustainable and cohesive communities.

- Prevention: Sound planning decisions remove the opportunity for anti-social behaviour and encourages a greater sense of pride in the local area, thereby giving the City potential to grow and become more sustainable.
- Integration: Through consultation with residents and statutory consultees, there is an opportunity to contribute views and opinions on how communities grow and develop, thereby promoting greater community involvement and integration. Planning decisions aim to build integrated and cohesive communities.
- Collaboration: Consultation with statutory consultees encourages decisions to be made which align with other relevant well-being objectives.
- Involvement: Planning applications are subject to consultation and is regulated by legislation. Consultation is targeted at residents and businesses directly affected by a development, ward members and technical consultees. Engagement with the planning process is encouraged in order to ensure that the views of key stakeholders are taken into consideration.

Decisions made are in line with the Council's well-being objectives published in March 2017. Specifically, Objective 9 (Health and Well Being) of the adopted Newport Local Development Plan (2011-2026) links to this duty with its requirement to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the consultation of these guidance documents.

Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

NATIONAL POLICY

Planning Policy Wales (PPW) Edition 11 (February 2021)
 Development Management Manual 2017
 Welsh National Marine Plan November 2019
 Future Wales - The National Plan 2040 (February 2021)

PPW Technical Advice Notes (TAN):

- TAN 2: Planning and Affordable Housing (2006)
- TAN 3: Simplified Planning Zones (1996)
- TAN 4: Retailing and Commercial Development (2016)
- TAN 5: Nature Conservation and Planning (2009)
- TAN 6: Planning for Sustainable Rural Communities (2010)
- TAN 7: Outdoor Advertisement Control (1996)
- TAN 10: Tree Preservation Orders (1997)
- TAN 11: Noise (1997)
- TAN 12: Design (2016)
- TAN 13: Tourism (1997)
- TAN 14: Coastal Planning (1998)
- TAN 15: Development and Flood Risk (2004)
- TAN 16: Sport, Recreation and Open Space (2009)
- TAN 18: Transport (2007)
- TAN 19: Telecommunications (2002)
- TAN 20: Planning and The Welsh Language (2017)

TAN 21: Waste (2014)
TAN 23: Economic Development (2014)
TAN 24: The Historic Environment (2017)

Minerals Technical Advice Note (MTAN) Wales 1: Aggregates (30 March 2004)
Minerals Technical Advice Note (MTAN) Wales 2: Coal (20 January 2009)

Welsh Government Circular 016/2014 on planning conditions

LOCAL POLICY

Newport Local Development Plan (LDP) 2011-2026 (Adopted January 2015)

Supplementary Planning Guidance (SPG):

Affordable Housing (adopted August 2015) (updated October 2021)
Archaeology & Archaeologically Sensitive Areas (adopted August 2015)
Flat Conversions (adopted August 2015) (updated October 2021)
House Extensions and Domestic Outbuildings (adopted August 2015) (updated January 2020)
Houses in Multiple Occupation (HMOs) (adopted August 2015) (updated January 2017)
New dwellings (adopted August 2015) (updated January 2020)
Parking Standards (adopted August 2015)
Planning Obligations (adopted August 2015) (updated January 2020)
Security Measures for Shop Fronts and Commercial Premises (adopted August 2015)
Wildlife and Development (adopted August 2015)
Mineral Safeguarding (adopted January 2017)
Outdoor Play Space (adopted January 2017)
Trees, Woodland, Hedgerows and Development Sites (adopted January 2017)
Air Quality (adopted February 2018)
Waste Storage and Collection (adopted January 2020)
Sustainable Travel (adopted July 2020)
Shopfront Design (adopted October 2021)

OTHER

“Newport City Council Retail Study by Nexus Planning (September 2019) “ is not adopted policy but is a material consideration in making planning decisions.

‘The Economic Growth Strategy (and associated Economic Growth Strategy Recovery Addendum) is a material planning consideration’.

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 are relevant to the recommendations made.

Other documents and plans relevant to specific planning applications are detailed at the end of each application report in the attached schedule and are available to view on the Council’s website using the application reference number.

1.

ENFORCEMENT DETAILS

Ref No: E22/0336

Ward: Pillgwenlly

Site address: The Maltings, East Dock Road, Newport, NP20 2BT.

Description of Breach: Fire damaged and derelict listed building.

Recommendation: To undertake the necessary action to draft and serve an Urgent Works Notice under the Planning (Listed Buildings and Conservation Areas) Act 1990. Additionally, if necessary, to undertake the required works in default and recover the associated debt generated.

1. BREACH OF PLANNING CONTROL

1.1 Fire damaged and derelict listed building.

2. RELEVANT SITE HISTORY

06/0335 REINSTATEMENT OF GRADE II LISTED FIRE DAMAGED BUILDING-
Granted with conditions.

06/0334 LISTED BUILDING CONSENT FOR REINSTATEMENT OF FIRE
DAMAGED BUILDING- Granted with conditions.

05/0885 LISTED BUILDING CONSENT FOR DEMOLITION OF 2NO INTERNAL
SUBDIVIDING GABLE WALLS- Granted with conditions.

3. POLICY CONTEXT

Local Development Plan, Objective 5 Conservation of the Built Environment To ensure that all development or use of land does not adversely affect, and seeks to preserve or enhance, the quality of the historic and built environment.

SP9 Conservation of the Natural, Historic and Built Environment

4. CONSULTATIONS

4.1 Cadw, with regards the condition of the building and the possibility of obtaining a grant. They are supportive of action being taken.

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (BUILDING CONTROL): aware are of the poor condition of the building and the Enforcement Team are working closely with them.

5.2 HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (CONSERVATION OFFICER): supportive of action being taken.

6. ASSESSMENT

6.1 This report sets out the need to serve an Urgent Works Notice under s.54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and is required as the Scheme of Delegation does not include for such a notice. In 2005, whilst refurbishment works were taking place, the building was broken into, and the timber roof and upper timber floored areas were set alight. Since that time, nothing material has changed on site. The fire completely destroyed the roof structure above eaves height. Such a notice is therefore required to safeguard the future of The Maltings, East Dock Road, a grade II listed building. The building comprises of 3 blocks, each elevation articulated by regularly repeating full-height brick pilasters rising to a coggled brick cornice. It occupies a prominent position adjacent to the City Bridge on the Southern Distributor Road, see the photograph below:



The reasons for listing, given by Cadw, is that it is a very good example of a substantial late 19th century maltings, rare in Wales, retaining much of its original form and character, with a group value that includes the Transporter Bridge. Immediately adjacent to the site is the grade II listed Old Town Dock Lock, which when combined with the Riverside Park, encompasses the southern perimeter of the site, with the Southern Distributor Road demarcating the northern. The building acts as an adverse focal point in this area of high historic value and amenity. Effectively the building blights this prominent location much to the detriment of this locale and the wider area of Newport.

- 6.2 The building was, until recently, utilised by homeless people as an informal shelter. This put the occupants at risk from falling masonry and other risks associated with living in a derelict building. Among the issues associated with the premise is: a window lintel to the rear has failed, which has led to the failure of the brick work above it; the western gable end is leaning outwards; the internal concrete floors have been degraded by rusting metal work; vegetation is growing from the wall plate, loosening masonry in the process; and a manhole cover is missing in the rear yard. With reference to the eastern gable end, this is leaning outwards by c. 250mm at the apex. At the western end a structural crack between the gable end and the front elevation is also present (see photographs below). Thieves have removed a large proportion of the supporting steel columns and girders from the third floor of the germination wing; whilst removing these, the upper parts of the brick perimeter wall were damaged. By doing this lateral support for the building was also removed.

Gable eastern end:



Gable western end:



- 6.3 An Urgent Works Notice should generally be restricted to urgent repairs to keep a building wind and weather-proof and safe from collapse, or action to prevent vandalism or theft. The steps taken should be consistent with achieving this objective and not as a route to restoring the building. Should any of the required works be deemed unnecessary the Authority would be unable to recover this element of the debt and it could also be subject to judicial review.
- 6.4 The premise has been targeted by the Empty Property Enforcement Action Group, due to the building's significance in this locale and poor state. Due to officers' concerns, a structural report was commissioned, December 2022, by the owner. In addition to this report, the Authority may require a further report to ascertain what will be required in terms of structurally supportive scaffolding to make the building safe and ensure that the public are also safe. There may well be additional works required to prevent water ingress into the wall plate, amongst other elements. The threat of an Urgent Works Notice has precipitated assurances from the owner that remedial work will be undertaken this August, but in case this stalls, for whatever reason, authorisation is still required so that prompt action can be taken if necessary.
- 6.5 **Financial Implications:**
If the owner does not undertake the works, and the Council implements them, then Section 55 of the 1990 Act enables the Council to reclaim the expenses of the works. The owner has 28 days in which to challenge the reclamation of the expenses on the grounds that some or all of the works were unnecessary, temporary works have continued for too long, the amounts were unreasonable or recovery would cause hardship.
- 6.6 The Council has taken on advice from a consultant employed by the Senedd, and a report produced by one of its structural surveyors. The consultant has been employed by the Senedd to advise local authorities on best practice with regards getting such premises back in to use. In their view, works are urgently required for the proper preservation of the building. A number of quotes from companies will be sought to ensure that the works achieve best value.
- 6.7 The costs of the works will need to be met from existing budgets. However, the Authority has been in talks with CADW with the view of an application being made to a grants scheme that CADW have made available.

The grant can assist with:

- costs associated with preparing and serving Urgent Works Notices under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990, this includes the cost of fees for external advisers only.
- works carried out in default by the Local Authority.
- whilst this grant is primarily focussed on the service of Urgent Works Notices, funding may also be available to assist local authorities to meet the costs of serving other statutory notices, aimed at securing the condition of listed buildings at risk, including Section 215 notices.

It should be noted that this money would only be available after the relevant element has been completed. However, officers will endeavour to work with CADW to ensure the grant process is progressed effectively.

6.8 Legal Implications

Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 enables local authorities to serve Urgent Works Notices for the preservation of listed buildings. This power is restricted to emergency repairs only - for example works to keep a building weatherproof and safe from collapse.

There is no right of appeal against an Urgent Works Notice. However, a right of appeal exists where a local authority is seeking to recover expenses incurred in carrying out works specified in an Urgent Works Notice.

7. Options Considered/Available

The Council has powers under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to issue an Urgent Works Notice requiring various steps to be taken to ensure the preservation of the building. Non-compliance will require the Authority to undertake the required works in default.

Alternatively, the Authority could choose to do nothing, but ultimately the building will collapse and its loss will have a significant adverse impact on the maritime heritage of the area. Additionally, as previously observed this building was listed by CADW on the grounds that it is a rare example of a maltings in Wales. Furthermore, without the necessary work the risk to the public is largely unknown.

8. OTHER CONSIDERATIONS

8.1 ***Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

A Socio-economic Duty is also set out in the Equality Act 2010 which includes a requirement, when making strategic decisions, to pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that enforcement action in this case will not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person

9. ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

10. ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this

application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

11. CONCLUSION

11.1 Should no action be taken this historic building is in danger of collapse and its loss to the historic fabric of the area will be significant. Additionally, there is a risk to members of the public here. Action is therefore required to halt the decline to the structural fabric of the building and to prevent the loss of this grade II listed historic asset. Furthermore, this is one of the few remaining historic links with Newport's maritime past.

12. RECOMMENDATION

Committee is requested to:

- a) Authorise the Head of Law and Standards to take all necessary steps for the preparation, issue and service of an Urgent Works Notice under s.54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or when dealing with the serious health and safety concerns regarding it.
- b) Authorise the Head of Regeneration & Economic Development to take all necessary steps for execution of the works by the Council in the event of non-compliance with the Urgent Works Notice.
- c) Authorise the Head of Regeneration & Economic Development, to take all necessary steps, to issue and serve a notice / demand to recover the Council's costs/expenses incurred in carrying out the works, including an enforced sale.

Reason:

To safeguard this listed building and prevent it from further deterioration and potential collapse. Additionally, to ensure that the public are not at risk from either the collapse of the building or of falling masonry.

EIA Screened – ES Not Needed

The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

This page is intentionally left blank

Report

Appeal Decisions

Part 1

Date: 2nd August 2023

Subject **Appeal Decisions**

Purpose To record the outcome of recent planning appeals

Author **Head of Regeneration and Economic Development**

Wards Bishton and Langstone, Beechwood, Victoria

Summary In consultation with the Chair or Deputy Chair of Planning Committee, the Head of Regeneration and Economic Development has delegated powers to determine planning applications previously determined by Planning Committee. The following planning appeal decisions are reported to help inform future decisions.

Proposal **To accept the appeal decisions as a basis for informing future decisions.**

Action by Planning and Development Manager

Timetable Not applicable

This report was prepared without consultation because it is a record of recent planning appeals to help inform future decisions.

Background

The reports contained in this schedule provide information on recent appeal decisions.

The purpose of the attached reports is to inform future decision-making. This will help ensure that future decisions benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

The applicant has a statutory right of appeal against the refusal of permission in most cases. There is no Third Party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where an application is refused against Officer advice, during this interim arrangement, the Head of Regeneration and Economic Development, along with the Chair/Deputy Chair of Planning Committee will be required to assist in defending their decision at appeal.

Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

Financial Summary

The cost of defending decisions at appeal is met by existing budgets. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

Risks

The key risk relating to appeal decisions relates to awards of costs against the Council.

An appeal can be lodged by the applicant if planning permission is refused, or if planning permission is granted but conditions are imposed, or against the Council's decision to take formal enforcement action. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with major developments, which often require a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low.

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry can be very significant. These are infrequent, so the impact is considered to be medium.

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Decisions challenged at appeal and costs awarded against the Council.	M	L	<p>Ensure reasons for refusal can be defended at appeal;</p> <p>Ensure planning conditions imposed meet the tests set out in Circular 016/2014.</p> <p>Provide guidance to Head of RIH/Chair/Deputy of Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.</p> <p>Ensure appeal timetables are adhered to.</p>	<p>Head of RED with Chair/Deputy of Planning Committee</p> <p>Head of RED with Chair/Deputy of Planning Committee</p> <p>Planning and Development Manager and Senior Legal Officer</p> <p>Planning Officers</p>
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Planning and Development Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Options Available

To accept the appeal decisions as a basis for informing future decisions.

Preferred Option and Why

To accept the appeal decisions as a basis for informing future decisions.

Comments of Chief Financial Officer

In the normal course of events, there should be no specific financial implications arising from the determination of planning applications.

There is always a risk of a planning decision being challenged at appeal. The costs of defending decisions and any award of costs must be met by existing budgets.

Comments of Monitoring Officer

There are no legal implications other than those referred to in the report or detailed above.

Staffing Implications: Comments of Head of People, Policy and Transformation

Development Management work is undertaken by an in-house team and therefore there are no staffing implications arising from this report. Officer recommendations have been based on adopted planning policy which aligns with the Single Integrated Plan and the Council's Corporate Plan objectives.

Local issues

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

An Equality Impact Assessment for delivery of the Development Management service has been completed and can be viewed on the Council's website.

Children and Families (Wales) Measure

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Consultation

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Background Papers

Not applicable

Dated: 2/8/2023

Planning Appeal

Reference	22/0316
Address	12 Corporation Road, Victoria Ward
Development	CHANGE OF USE OF UPPER FLOORS TO 3NO. SELF CONTAINED FLATS (RESUBMISSION FOLLOWING REFUSAL OF 21/1287)
Appellant	Mr Lane
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal dismissed and partial costs award granted to the Council

Planning Appeal

Reference	22/0702
Address	Priory Farm, Priory Lane, Bishton and Langstone ward
Development	CHANGE OF USE OF PART OF FIELD PARCEL TO ACCOMMODATE AN OUTDOOR DOG EXERCISING FACILITY
Appellant	Ms Marciano
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed

Planning Appeal

Reference	E21/0277
Address	102A Victoria Avenue, Beechwood ward
Development	ENFORCEMENT NOTICE RELATING TO CONSTRUCTION OF REAR DORMER
Appellant	Mr Simpson
Officer Decision	Enforcement Notice served
Committee Decision	N/A
Appeal Decision	Appeal Dismissed and full costs granted to the Council

Planning Appeal

Reference	22/0084
Address	Little Whitebrook, Llanvaches, Bishton and Langstone ward
Development	RETENTION OF EXISTING CONSERVATORY AND LOWER GROUND FLOOR EXTENSION
Appellant	Mr and Mrs Humphries
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed

This page is intentionally left blank