

Report

Planning Committee

Part 1

Date: 6th December 2017

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author **Head of Regeneration, Investment and Housing**

Ward Llanwern and Stow Hill

Summary The following planning appeal decisions are reported to help inform future decisions of Planning Committee

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

Action by Planning Committee

Timetable Not applicable

This report was prepared without consultation because it is to inform Planning Committee of appeal decisions already taken.

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 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, 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 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.

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 Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.</p> <p>Ensure appeal timetables are adhered to.</p>	<p>Planning Committee</p> <p>Planning Committee</p> <p>Development Services 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.	Development Services Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

Not applicable. This report is to inform Planning Committee 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 of the Planning Committee.

Preferred Option and Why

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

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 or enforcement action.

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

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

Staffing Implications: Comments of Head of People and Business Change

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 to inform Planning Committee 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 to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Consultation

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Background Papers

Not applicable

Dated: 6th December 2017

PLANNING APPLICATION APPEAL

APPEAL REF: 17/0614
APPEAL TYPE: Written Representations
WARD: Llanwern
SITE: 2 Church Row, Redwick, Caldicot, NP26 3DE
SUBJECT: Partial discharge of Condition 2 (Materials) of planning permission 16/0983 for the erection of a porch

APPELLANT: Mr G Lloyd
PLANNING INSPECTOR: Ms P J Davies
DATE OF COUNCIL'S DECISION: 17th August 2017
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to the discharge of Condition 2 (materials) of permission 16/0983 which sought the erection of a porch. The Inspector considered the main issue in the determination of the appeal was the effect of the proposed materials on the character and appearance of the Redwick Conservation Area.

The appeal property is a two-storey, stone built, mid-terrace house that is located within a short row of three adjoining properties. Within the wider area, there is no unifying design or character to the buildings which vary considerably.

The Council did not object to the proposed stone roof tiles on the porch; the Inspector agreed with this. However, concerns were raised with regards to the front door, side window and the fascia board.

The door and window would be UPVC; this is not an unusual feature on the terrace or within the Conservation Area as a whole. The window is a small and proportionate feature and given its siting, is not prominent. The proposed door would contain a pattern on the glass, however, overall it would have simple symmetry and due to its dark colour, it would not stand out in the street scene. Turning to the fascia board, its decorative shape would complicate the appearance of the porch and result in overtly fussy detailing that would detract from the simple appearance of the host dwelling and the terrace.

In view of the above, it was concluded that the proposed details relating to the window and roof would be appropriate to the existing building and would ensure that the porch preserves the character and appearance of the Conservation Area. Therefore, these details have been approved. However, the details relating to the fascia board would fail to preserve the character or appearance of the Conservation Area, contrary to Policy CE7 of the Newport Local Development Plan.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF: 17/0178
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 25 Stow Park Circle. Newport, NP20 4HF
SUBJECT: Variation of condition 02
(obscure glazing) of planning permission 04/0425 to allow for 50% of the glazing in the south west elevation to be clear glazed

APPELLANT: Mr Jonathan de Mille
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 20th April 2017
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to the Council's decision to refuse planning permission for variation or removal of condition 2 (obscure glazing) of permission 17/0178 which sought approval of a two storey extension. The Inspector considered that the main issue is the effect that varying or removing the disputed condition would have on the privacy of the occupiers of No 23 Stow Park Circle.

The appeal relates to the south west facing windows on a conservatory style extension positioned at first floor level. The elevation contains six window panes, three of which are obscurely glazed. The clear glass panes are located towards the end of the conservatory near to the external railings. The appeal sought to retain the development in this form. Vegetation exists on the common boundary between No. 25 and No.23, there are visual gaps in the vegetation that allow views of the rear external space of No. 23. Direct views from the clear glazed windows would be affected by a conifer tree which would screen much of the rear garden, however the Inspector states that the retention of the tree cannot be guaranteed and if it were trimmed or removed there would be commanding and elevated views over the adjoining garden. Owing to the height of the conservatory and its relative

proximity to the boundary, there would also be a significant and harmful perception of being overlooked for the occupiers of No 23 while they are using their rear patio area.

The Inspector stated that former patio at first floor level at the appeal property would have resulted in pre-existing overlooking. However, views from an internal habitable space would be more frequent and sustained than an external area, and the resulting loss of privacy would be far more significant. Whilst it was argued that a conservatory has limited weather dependent use, it was considered that it is capable of being heated and / or cooled and therefore it could conceivably be used as an all year round living area. Whilst the degree of intervisibility between properties is not unusual in an urban area , if the clear glazing was retained as proposed there would be an invasive and direct loss of privacy from within the neighboring patio as well as perceived overlooking.

In view of the above , it was concluded that removing or varying the disputed condition would cause material harm to the living conditions of the occupiers of No 23, contrary to the objectives of Policy GP2 of the Newport Local Development Plan and the Council's House Extensions and Domestic Outbuildings Supplementary Planning Guidance.

DECISION: APPEAL DISMISSED

PLANNING APPLICATION APPEAL

APPEAL REF: 17/0350
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 2-4 Llanthwy Road . Newport, NP20 4JR
SUBJECT: Installation of new shopfront, replacement double doors in first floor front elevation and construction of ramp to rear (resubmission of refusal 16/1184)

APPELLANT: Mr Cox
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 12th April 2017
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to the Council's decision to refuse planning permission for a new glazed aluminium screen / shopfront incorporating a pair of bi-parting aluminium door leaves and aluminium goalpost surround. Removal of existing decayed and damaged timber balustrade and replacement with new timber balustrade of similar design finished to match existing. Replacement external doors at first floor and construction of concrete ramp to rear garden terrace area.

The inspector considered that the main issue is the effect of the proposed shopfront on the character and appearance of the surrounding area.

The appeal property is a substantial detached building, formerly operating as a pair of semi-detached properties but now used as a dental practice which occupies both properties. The building displays a

strong symmetry derived mainly from the uniform front gables, matching external finishes, and a consistent window pattern and form. These features are typical characteristics of other buildings along this part of the street scene.

The Council did not object to the replacement timber balustrade, first floor external doors or rear ramp.

The shopfront would extend across the middle ground floor elevations of the building, occupying a central position within the front façade. It would be recessed between the two gables and below the replacement upper floor balustrade and windows. Unlike the traditional finishes of the existing building, the shopfront would use contemporary materials. The Inspector stated that the scale of the shopfront is subordinate to the building as a whole and its central position within the façade would ensure visual balance. The contrast between old and new would distinguish the shopfront from the remainder of the building. The use of modern materials and the understated design would have the effect of emphasising the symmetry of the existing building which would remain visually dominant. The recessed nature of the shopfront and its positioning clearly within the physical parameters of the building would also ensure that the traditional and impressive architecture remains a principal focus of the building, retaining its positive contribution to the street scene.

The Inspector concluded that the proposal would not cause harm to the character or appearance of the surrounding area, and it would comply with the general objective of Policy GP6 of the Newport Local Development Plan to seek good quality design.

The appeal is approved and addition to the standard commencement and plans compliance conditions, I have attached a condition requiring details and samples of the external finishes.

DECISION: APPEAL IS ALLOWED