

# Report

## Planning Committee

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### Part 1

Date: 5 December 2018

Item No: 6

**Subject** **Planning Enforcement Schedule**

**Purpose** To take decisions on items presented on the attached schedule

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

**Ward** As indicated on the schedule

**Summary** The Planning Committee has delegated powers to take decisions in relation to formal planning enforcement action.

The reports contained in this schedule assess the breach of planning control or relevant complaint against relevant planning policy and other material planning considerations, and take into consideration the views of statutory consultees where applicable.

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 enforcement case in the attached schedule having weighed up the various material planning considerations and the expediency of pursuing formal enforcement action.

The decisions made are expected to benefit the City and its communities by pursuing formal enforcement action against inappropriate or poor quality development in the wrong locations, and by improving the appearance of the physical environment and the amenities of the City's residents and businesses by tackling unsightly land and buildings that are detrimental to the amenities of the area.

**Proposal** **1. To resolve decisions as shown on the attached schedule.**  
**2. To authorise the Development and Regeneration Manager to draft any amendments to, additional requirements or reasons for taking enforcement action in respect of the Planning Enforcement Schedule attached**

**Action by** Planning Committee

**Timetable** Immediate

Where required by the Council's Scheme of Delegation, the recommendations detailed in this report were made following prior notification of the relevant Ward Members, who had the opportunity to call the matter to Planning Committee if they disagreed with the proposed action.

## **Background**

The reports contained in this schedule assess the breach of planning control or relevant complaint against relevant planning policy and other material planning considerations, and take into consideration the views of statutory consultees where applicable.

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 enforcement case in the attached schedule having weighed up the various material planning considerations and the expediency of pursuing formal enforcement action.

The decisions made are expected to benefit the City and its communities by pursuing formal enforcement action against inappropriate or poor quality development in the wrong locations, and by improving the appearance of the physical environment and the amenities of the City's residents and businesses by tackling unsightly land and buildings that are detrimental to the amenities of the area.

Where formal enforcement action is taken, the recipient of the Notice has a statutory right of appeal in most cases. There is no third party right of appeal against a decision with the exception of High Hedge Remedial Notices. Appeals are normally lodged with the Planning Inspectorate at the Welsh Assembly Government. Non-compliance with a statutory Notice is a criminal offence against which prosecution proceedings may be sought. The maximum level of fine and/or sentence that can be imposed by the Courts depends upon the type of Notice issued.

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 enforcement appeals. This cost is met by existing budgets.

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 investigating enforcement complaints and pursuing formal action 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.

In the case of Section 215 Unsightly Land Notices, an appeal is lodged with the Planning Inspectorate at the Welsh Assembly Government and the Council will seek to recover all its costs in relation to all such appeals.

In the case of Stop Notices, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development have already been granted planning permission.

## **Risks**

Two risks are identified in relation to decisions to take formal enforcement action: decisions being overturned at appeal with costs awarded; and compensation being awarded if a Stop Notice is issued.

An appeal can be lodged by any recipient of a formal Notice, with the exception of a Breach of Condition Notice. 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.

If a Stop Notice is issued, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development has already been granted planning permission. Legal advice is sought before taking such action, and a cost-benefit analysis is undertaken to fully assess the proposed course of action.

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 high. These are infrequent, so the impact is considered to be medium.

<b>Risk</b>	<b>Impact of risk if it occurs* (H/M/L)</b>	<b>Probability of risk occurring (H/M/L)</b>	<b>What is the Council doing or what has it done to avoid the risk or reduce its effect?</b>	<b>Who is responsible for dealing with the risk?</b>
Decisions challenged at appeal and costs awarded against the Council.	L	L	Ensure reasons for taking formal enforcement action can be defended at appeal.  Ensure appeal timetables are adhered to.	Planning Committee  Development Services Manager
Compensation awarded in relation to a Stop Notice	M	L	Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.  Cost benefit analysis undertaken, and legal advice sought on proposed actions.	Planning Committee  Development Services Manager and Senior Legal Officer  Development Services Manager

\* Taking account of proposed mitigation measures

### **Links to Council Policies and Priorities**

The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.

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'.

Through planning enforcement action, unacceptable unauthorised development is tackled. Without effective enforcement action the whole planning system is meaningless. Planning enforcement decisions can therefore contribute directly and indirectly to these priority outcomes.

The Corporate Plan links to other strategies and plans, the main ones being:

- Single Integrated Plan;
- Local Development Plan 2011-2026 (Adopted January 2015);

The Newport Single Integrated Plan (SIP) is the defining statement of strategic planning intent for the next 3 years. It identifies key priorities for improving the City. Its vision is: "*Working together to create a proud and prosperous City with opportunities for all*"

The Single Integrated Plan has six priority themes, which are:

- Skills and Work
- Economic Opportunity
- Health and Wellbeing
- Safe and Cohesive Communities
- City Centre
- Alcohol and Substance Misuse

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. When considering whether or not unauthorised development should be pursued, it must be assessed against planning policy in the same way as an application for planning permission. Planning enforcement decisions are therefore based primarily on this core Council policy.

### **Options Available**

- 1) To take action (or take no further action) in accordance with the Officer recommendation (with amendments to or additional requirements or reasons for taking formal action if appropriate);
- 2) To take a different course of action (or take no further action) 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**

- 1) To take action (or take no further action) in accordance with the Officer recommendation (with amendments to or additional requirements or reasons for taking formal action if appropriate);

### **Comments of Chief Financial Officer**

In the normal course of events, there should be no specific financial implications arising from decisions to take enforcement action.

There is always a risk of a 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 Enforcement Schedule, the relevant planning policy context and all other material planning considerations. The Committee needs to consider whether the particular enforcement action being recommended is expedient and in the public interest and whether it is proportionate to the breach of planning control identified.

### **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**

Where required by the Council's Scheme of Delegation, the Officer recommendations detailed in this report were made following prior notification of the relevant Ward Members, who had the opportunity to call the matter to Planning Committee if they disagreed with the proposed action.

### **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**

No public consultation is undertaken for enforcement cases.

### **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.

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.

## **Consultation**

The reports contained in this schedule assess the breach of planning control or relevant complaint against relevant planning policy and take into consideration the views of statutory consultees where applicable.

## **Background Papers**

### **NATIONAL POLICY**

Planning Policy Wales (PPW) Edition 9 (November 2016)

Development Management Manual 2016

Minerals Planning Policy Wales (December 2000)

#### *PPW Technical Advice Notes (TAN):*

TAN 1: Joint Housing Land Availability Studies (2015)

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 8: Renewable Energy (2005)

TAN 10: Tree Preservation Orders (1997)

TAN 11: Noise (1997)

TAN 12: Design (2014)

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 (UDP) 2011-2026 (Adopted January 2015)

#### *Supplementary Planning Guidance (SPG):*

Affordable Housing (adopted August 2015)

Archaeology & Archaeologically Sensitive Areas (adopted August 2015)

Flat Conversions (adopted August 2015)

House Extensions and Domestic Outbuildings (adopted August 2015)

Houses in Multiple Occupation (HMOs) (adopted August 2015) (updated January 2017)

New dwellings (adopted August 2015)

Parking Standards (adopted August 2015)  
Planning Obligations (adopted August 2015)  
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)

## **OTHER**

The Colliers International Retail Study (July 2010) is not adopted policy but is a material consideration in making planning decisions.

The Economic Development Strategy is a material planning consideration.

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

# INSTALLATION OF FLAG ADVERTISEMENTS AND A HOARDING ADVERTISEMENT AT LAND TO THE SOUTH OF 35, COURTNEY STREET, NEWPORT E18/0254 – ST JULIANS WARD

## 1.0 Breach of Planning Control

1.1 Eight flag advertisements and an advertisement hoarding have been erected at the above piece of land without the relevant advertisement consent being sought.



## 2.0 Assessment

2.1 Eight flag advertisements and an advertisement hoarding have been erected at the above piece of land. The land in question forms part of the site which gained planning permission for the erection of 251 dwellings and associated works including boundary treatments, retaining walls, vehicular access, parking, pathways and landscaping affecting public right of way 407/1 at land to the South of Glan Usk Primary School, Herebert Road.

2.2 The Advertisement Regulations Class 7(b) :-

Permits the display of advertising flags at housebuilding sites and where new houses remain available for sale, **except in a National Park, Area of Outstanding Natural Beauty, Conservation Area, the Broads or Area of Special Control of Advertisements.**

The rules for class 7(B) are:

- Each flag must be on a single vertical flagstaff,
- A site where 10 houses or less are built may have one flag, 11 to 100 houses may have two flags, and over 100 houses may have three flags;
- The flagstaff's must not exceed 4.6 metres high;
- The flags must not exceed 2 square metres in area;
- The flags and flagstaff's must be removed at the end of one year after construction of the last house is completed.

2.3 The flagstaff's at this site measure 4.60 metres high and the flags measure one square metre. They advertise new development taking place on the site. Therefore the flags and flagstaff's fall within Class 7(b). However, Class 7(b) only permits three flags at this site so at present five flags are unauthorised. The flags range in distance from the nearest dwellings with the closest is 10.66 metres from 16 Courtney Street and the furthest being 28.34 metres from 28 Morgan Street.

2.4 The hoarding at the site does not appear within any class of the Advertisement Regulations and therefore would require advertisement consent. The hoarding measures 4.0 metres in height and is 19 square metres in total. The hoarding is approximately 17.58 metres from the boundary of the closest property, 35 Morgan Street.

2.5 Concerns from a neighbouring property have been received in relation to both the flag advertisements and hoarding. The main areas of impact being;

- Flag noise and noise from youths hitting the sign.
- The nuisance caused by the noise created by the flags. No consideration has been taken into account when deciding about the location of the flags.

2.6 The flagstaff's at the site are finished with a plastic coated material and the flags are attached to the pole via plastic ties. It is possible that during windy periods, the movement of the flags will cause some associated noise but this will not be of excessive duration or unusually loud and intrusive. The area is mixed residential and industrial/commercial and so some background noise can be expected.

2.7 The area where the flags and hoarding are situated does form part of the planting regime that has been approved for the site. The planting for each phase should be implemented during the first full planting season after each phase. The area where the flags are situated forms part of Phase 1 of the development. It is noted that the planting scheme agreed has been implemented on site.

2.8 When Advertisement applications are received by the planning department they are assessed on two grounds, one being amenity and the other being public safety. In terms of amenity the assessment considers the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest, disregarding, if they think fit, any advertisement being displayed there in accordance with the terms set out in the Regulations. The impact of noise from advertisements is not, in our view, a material factor as part of the Advertisement Regulations and would be immaterial to any advertisement consent application. In terms of public safety the assessment considers the safety of any person who may use any road, railway, waterway, dock, harbour or aerodrome and whether any display of advertisements is likely to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air.

2.9 Policy GP2 (General Amenity) of the Newport Local Development Plan 2011-2026 (Adopted January 2015) would be relevant should an application have been submitted to retain these advertisements. Policy GP2 states that "The proposed use and form of development will not be detrimental to the visual amenities of nearby occupiers or the character or appearance of the surrounding area." It is felt that both the flags and hoarding accord with this policy and if an application were to be submitted advertisement consent would be granted for a temporary period. Advertisements of this design are common features of new housing estates and do not appear unduly dominant or obtrusive in this context. They are not overbearing to neighbouring occupiers and whilst visible from some nearby properties they are clearly associated with the new development site and represent temporary advertisements for the duration of the build period. Three flags and posts benefit from temporary deemed consent in any event. They are not permanent features, are well spaced, do not significantly and adversely affect the landscaped verge and do not give rise to demonstrable adverse effects to amenity.

2.10 With regards to public safety it is felt that the advertisements in question do not pose and safety issues for people using the adjacent pavement or road neither do they obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air.

2.11 Therefore both the flags and hoarding accord with the Newport Local Development Plan 2011-2026 (Adopted January 2015) on the basis that they are temporary and it is therefore proposed that no further action be taken regarding the flag advertisements and hoarding at land to the south of 35, Courtney Street, Newport at this time. Prosecution relating to the 5 flags and hoarding would be onerous in this case and is considered unreasonable at this time. However, permanent retention of the flags and hoarding would not be supported and should they not be removed after a period of one year has elapsed since the completion of the final dwelling the Council's position on this matter will be re-visited and action would be considered.

### **3.0 Other Considerations**

#### **3.1 *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 breach of condition. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed enforcement action.

#### **3.2 *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.

3.3 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.

3.4 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

#### **3.5 *Wellbeing of Future Generations (Wales) Act 2015***

Section 3 of the Act 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 (section 5). This duty has been considered in the evaluation of this case. 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

#### **3.6 Planning (Wales) Act 2015 (Welsh language)**

The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not materially affect the use of the Welsh language in Newport.

### **4.0 Options Considered/Available**

4.1 The Council has two options available to it in order to resolve the issue over the unauthorised flag advertisements and hoarding. It can either decide not to take any further action or the alternative is to initiate prosecution proceedings against the offender.

4.2 In this case it is in officer's opinion that due to the reasons outlined above that no further action is taken regarding the unauthorised flag advertisements and hoarding at land to the south of 35 Courtney Street, Newport.

## 5.0 Preferred Choice and Reasons

5.1 In conclusion it is therefore proposed that no further action be taken regarding the flag advertisements and hoarding at land to the south of 35, Courtney Street, Newport at this time and for the period up to one year after the completion of the final dwelling on the site.

## 6.0 Recommendation

6.1 That no further action be taken regarding the flag advertisements and hoarding at land to the south of 35, Courtney Street, Newport at this time and for the period up to one year after the completion of the final dwelling on the site.

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### APPLICATION DETAILS

No: E18/0254 Ward: **ST JULIANS**

Site: **Land to the south of 35 Courtney Street**

Proposal: **BREACH OF PLANNING CONTROL BY INSTALLATION OF FLAG ADVERTISEMENTS AND A HOARDING ADVERTISEMENT**

### 1. LATE REPRESENTATIONS

1.1.1 Officers have been attempting to make contact with the site developer, Pobl, in this enforcement case to discuss the breach of planning control above. In recent days a representative of Pobl has made contact with the Council and confirmed as follows.

1.1.2 *We were planning to submit an application dealing with the additional number of flags erected at Riverside Avenue (3no. permitted, 8no. erected) and advertising in August 2018 but, unfortunately, our architects who were dealing with the plans went into liquidation. Following this, we didn't place much emphasis on progressing the application and decided that we'd look to deal with any issues as they arose. This isn't the approach we'd usually take, however, in light of the pressures of workload elsewhere, we decided to prioritise other matters.*

1.1.3 Pobl has indicated a willingness to engage with any requirements of the Authority.

### 2. OFFICER RESPONSE TO LATE REPRESENTATIONS

2.1 The above provides an explanation for the Association's failure to provide an application in the usual way and is noted. Notwithstanding this, officers consider that the flags and hoarding are acceptable means of advertising the current housing development and do not consider it expedient to pursue prosecution in this case subject to further review post completion of the development. The Association has expressed a willingness to co-operate with the Council in this respect.

### 3. OFFICER RECOMMENDATION

3.1 **NO FURTHER ACTION FOR A PERIOD OF UP TO ONE YEAR AFTER THE COMPLETION OF THE FINAL DWELLING ON THE SITE**

01 The development shall be implemented in accordance with the following plans and documents; Drawing no. SK01 Rev D, Drawing no. SK02 Rev E, Drawing no. SK10 ref F, Drawing no. SK11 revF and drawing no. SK12 rev H.