

Report

Planning Committee

Part 1

Date: 3 June 2015

Item No: 5

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Allt-yr-yn, Langstone, Llanwern, Rogerstone

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 11/95;</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	<p>Avoid delaying the determination of applications unreasonably.</p>	<p>Development Services Manager</p>

* 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

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: 3 June 2015

PLANNING ENFORCEMENT APPEAL – DISMISSED

APPEAL REF: E12/0144
APPEAL TYPE: Hearing
WARD: Allt-Yr-Yn
SITE: 6-8, Risca Road, Newport, NP20 4JW
SUBJECT: Installation of solid roller shutters to shopfront
APPELLANT: J. Shah
PLANNING INSPECTOR: Aidan McCooey
DATE OF COUNCIL'S DECISION: 22nd July 2014
OFFICER RECOMMENDATION: Issue enforcement notice
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The appeal site is a Premier Convenience Store located in the lower storey of 6-8 Risca Road, which lies within the Handpost District Centre. The appeal was lodged against an Enforcement Notice issued by the Council which required the removal of two solid roller shutters and external housing which had been installed without planning permission. The shutters were installed in response to an arson attack on the shop in 2011. At the time of the Council's decision the Unitary Development Plan and accompanying Supplementary Planning Guidance (SPG) on Security Measures for Shopfronts and Commercial Premises were in force. The SPG stated that even where exceptional need for heightened security measures is demonstrated, solid roller shutters are never acceptable in district centres. An application to retain the shutters was refused for reasons that the development is contrary to the SPG and harms the character and appearance of the commercial units, street scene and district centre owing to its industrial appearance.

The appellant firstly appealed on the ground (a): that planning permission should be granted for what was alleged in the notice. They highlighted the arson attack in their statement and pointed to the fact that two families live above the shop. They also pointed out that the shutters are only down during the hours of 10.30pm and 7.00am and therefore no visual harm is caused during the day. The LPA's response to this was that appellant had not provided any evidence to demonstrate why alternatively designed shutters with a lesser visual impact would not meet their security needs. The appellant did not however pay the prescribed fee within the specified time period for the appeal to be considered under this ground and therefore the Inspector could only consider the appellant's other grounds of appeal.

The appellant secondly appealed on ground (f): that the steps required to comply with the requirements of the Notice are excessive and lesser steps would overcome the objections. The appellant argued that the visual harm caused by the shutters could be mitigated by painting them and that it could be conditioned that the shutters remain open between 7.00am and 10.30pm, whilst the shop is open. The appellant also suggested that the Notice could require the removal of the shutters and their replacement with a different, SPG compliant shutter.

The appellant's final ground of appeal was ground (g): that the time given to comply with the Notice is too short. The appellant erroneously confused the date which the Notice takes effect with the date of compliance and therefore did not realise the correct length of the compliance period. They stated that a time period of at least three months would be needed to comply with the requirements of the Notice when the Notice in fact stipulates a compliance period of six months.

The Inspector agreed with the Council's stance on the issue. He firstly was not convinced that the alternative measures put forward by the appellant in their ground (f) appeal would resolve the visual harm caused by the shutters. He stated that painting the shutters would make no difference to the fact that they are solid and would not remedy the harm. He meanwhile stated that requiring the shutters to remain open during the times suggested by the appellant would be unduly onerous as this would also apply to successive occupiers who may not wish to open for these extended hours. The Inspector also did not agree that the Notice could require the replacement of the shutters with an SPG compliant alternative as such a requirement would lack precision and insufficient information had been provided to for him to assess the acceptability of a proposed alternative. He therefore suggested that such a course should be pursued by the submission of a fresh planning application for suitable shutters following discussions with the LPA.

The Inspector unsurprisingly also dismissed the appellant's ground (g) appeal due to the error they had made in understanding the compliance period.

The Inspector concluded that there are acceptable alternatives available that would provide the required level of security and that the economic and security considerations do not outweigh the harm caused by the design and appearance of the shutters. The appeal was therefore dismissed and the Enforcement Notice upheld.

APPEAL DISMISSED 16TH APRIL 2015

PLANNING ENFORCEMENT APPEAL – DISMISSED

APPEAL REF: E13/0534
APPEAL TYPE: Hearing
WARD: Langstone
SITE: High View House, Lower Road, Llandeuaud, NP18 2AE
SUBJECT: Raising of ground levels and installation of a concrete drainage chamber
APPELLANT: M. Evans
PLANNING INSPECTOR: Richard Duggan
DATE OF COUNCIL'S DECISION: 15th October 2014
OFFICER RECOMMENDATION: Issue enforcement notice
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The appeal site is a recently constructed replacement dwelling in Llandeuaud village known as High View House, permission for which was granted in 2009. Due to the scale of the replacement dwelling it was sited into the earth bank on which the previous dwelling stood resulting in a large amount of earth being dug out. The remaining earth was used to increase the levels over the site to the rear of the property which resulted in the natural watercourse running along the boundary between High View House and the neighbouring property, Pridwin, being filled in. A condition attached to the permission for the dwelling requires that the surface water drainage system is connected into the watercourse. The applicant installed an alternative drainage system that pipes water from an attenuation tank into a concrete inspection tank, which then leads to a pipe that discharges water into a soakaway and ditch at the bottom of Pridwin's garden. During periods of heavy rainfall, the filling in of the watercourse has caused flood water to have nowhere else to go other than across the top of

the appeal site and into the neighbouring land. The development has consequently caused flooding to Pridwin on several occasions.

The Council served an Enforcement Notice on the owners of Highview House which required that the land is returned to its state prior to the engineering works taking place and that the concrete inspection drainage chamber is removed along with any associated drainage infrastructure that is visible above the reinstated garden level.

The appellant first appealed on ground (a): that planning permission should be granted for what is alleged in the Notice. She alleged that the flooding had been caused by works undertaken by the Council to redirect surface water from properties further up the road to the drain next to her property, which at the same time had been blocked. She also stated that she had undertaken works improve the drainage situation subsequent to the serving of the Notice and since then there has been no surface water flooding.

The appeal was secondly made on the ground (f): that the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections. This was because the appellant claimed that the issue had already been resolved due to the works she has undertaken.

The Inspector firstly concluded that the ground (a) appeal and deemed application should not succeed. He stated that appellant had not provided any evidence provided by a suitably qualified drainage specialist which assesses the suitability or adequacy of the drainage system to cater for the surface water from the dwelling. As such, he did not have any basis to disagree with the Council's assertion that the raising of the site levels and filling in of the watercourse has led to the flooding events at Pridwin. He therefore agreed that the development has had an unacceptable impact on surface water drainage and conflicts with Policy GP1 (Climate Change) of the Newport Local Development Plan (LDP).

The Inspector also dismissed the ground (f) appeal. He stated as no other lesser steps had been put forward by the appellant the requirements of the Notice do not exceed what is necessary to address the issues raised.

The Inspector concluded that for the above reasons the appeal should be dismissed. He also partially awarded costs against the appellant to cover the Council representatives' expense in attending the Hearing. This was firstly due to the fact that the appellant chose to pursue the deemed planning application despite this having little chance of success due to her failure to take the appropriate action. The LPA's statement also forewarned the appellant of its intention to make an application for costs if substantive evidence was not submitted to support her case and at this point it was open to the appellant to either submit this evidence or withdraw the appeal. As the appeal was not withdrawn, the Inspector concluded that the LPA had to incur unnecessary additional expense as a result of its representatives attending the Hearing.

APPEAL DISMISSED 7TH MAY 2015

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 14/0942
APPEAL TYPE: Householder Appeals Service
WARD: Llanwern
SITE: Monkspill Cottage, Station Road, Llanwern, Newport, NP18 2DW
SUBJECT: Alterations and extensions to existing dwelling
APPELLANT: M. George
PLANNING INSPECTOR: Richard Duggan
DATE OF COUNCIL'S DECISION: 15 December 2014
OFFICER RECOMMENDATION: Refuse planning permission
COMMITTEE/DELEGATED: Delegated

DECISION: APPEAL DISMISSED



SUMMARY

Planning permission was sought for alterations and extensions to a dwelling known as Monkspill Cottage which is to the south of Llanwern Village, outside of any recognised settlement boundary. As the dwelling is located within Flood Zone C1 and consequently suffers from surface water flooding, the applicant proposed to extend the dwelling upwards and raise the finished floor level by 1 metre to protect the property from flooding. The other proposed alterations included extensions to the front, north east, and south west elevations, the construction of a balustrade, the insertion of new windows, the replacement of the roof type, the construction of a bund wall, and the raising of the garden level.

The application was firstly refused for the reason that the proposed scale and massing of the scheme was judged to be overly dominant in a location adjacent to a highway and would result in more prominent building in a rural location which would detract from the character

and appearance of the area. This was considered contrary to Policies CE41 (Alterations and Extensions) and SP6 (The Countryside) of the Newport Unitary Development Plan (UDP) as well as Policies SP5 (Countryside) and H13 (Extensions to Dwellings in the Countryside) of the then emerging Local Development Plan (LDP). The application was secondly refused for the reason that insufficient bat survey information had been submitted by the applicant and therefore it could not be demonstrated that the development would not have an adverse effect upon the interests of protected species. This was considered contrary to Policy CE9 (Species Protected by European Legislation) of the UDP and Policy GP5 (Natural Environment) of the LDP.

The Local Development Plan (LDP) had been adopted at the time of the Inspector's decision which superseded the UDP and therefore the LDP policies formed the basis of his decision.

With regards to the first reason for refusal, the Inspector agreed that the extensions would considerably alter the scale and massing of the cottage and would conflict with Policy H13 due to the resulting size of the dwelling. However, he considered that the design and appearance of the extension would be a vast improvement to the existing dwelling, which has been subject to unsympathetic extensions in the past, and would make the overall dwelling much more attractive when viewed from Station Road and other viewpoints close-by. He also commented that the dwelling is not readily visible from the closest built development and dwellings due to a line of tall trees along the boundary of the adjacent sports pitch/ recreation area. The Inspector therefore concluded that the development would respect its semi-rural setting and would not have a harmful impact on the character and appearance of the locality, thus complying with Policy SP5.

Turning to the second reason for refusal, the Inspector noted that both the Council's ecologist and the consultant appointed by the appellant had recommended that further survey work was required to fully assess the impact of the development on bats roosting within the cottage. Mindful of the relevant national policy advice on protected species, he stated that the impact of the scheme on local bat populations is a matter that must be understood before permission is granted, rather than being addressed by planning condition.

The Inspector concluded that development would not have a harmful impact on the character and appearance of the locality. However, this did not negate or outweigh his concern regarding the potentially harmful impact of the development on nature conservation interests, with particular regard to bats. For this reason the Inspector dismissed the appeal.

APPEAL DISMISSED 27TH MARCH 2015

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 13/1290
APPEAL TYPE: Hearing
WARD: Rogerstone
SITE: Land to South of 9, Jessop Close, Rogerstone
SUBJECT: Outline permission for 3No. detached dwellings and associated access

APPELLANT: Dwr Cymru
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 10th July 2014
OFFICER RECOMMENDATION: Refuse planning permission
COMMITTEE/DELEGATED: Delegated

DECISION: APPEAL DISMISSED



SUMMARY

Outline planning permission was sought for the erection of a three dwellings on land in Rogerstone to the north of the Monmouthshire and Brecon Canal between Jessop Close and Marlow Close. The site is owned by Welsh Water and previously housed water storage tanks. On the canal side of the site's southern boundary there is a row of mature deciduous trees that form part of a larger Tree Preservation Order (TPO 58/Mon), comprising silver birch, sycamore, holly, wild cherry and oak. In 2008 an application for four dwellings was refused and the subsequent appeal dismissed for reasons that the overhanging trees would have a significant overshadowing and overbearing impact on the living environment of the prospective occupiers. In 2012, an outline application for three dwellings at the site was refused for the same reason.

In this case the applicant was attempting to address the previous reasons for refusal by setting one of the plots further towards Marlow Close and away from the line of trees. Whilst the Council's Tree Officer was satisfied that the construction of the houses would not directly adversely impact on the health of the trees subject to conditions, Officers maintained their view that the overhanging trees would result in unacceptable living conditions for occupiers. It was considered that the trees would have a particularly unacceptable impact during the summer months when gardens are typically used more and the trees are in full leaf. Officers were concerned that this could lead to pressure to lop or remove the trees, which might be difficult to resist on safety grounds due to the proximity of the trees to homes, which would be detrimental to visual amenity. The application was therefore refused for the reason that the proximity of the dwellings to the trees would severely overshadow the rear gardens, provide a gloomy and depressing living environment, and result in increased pressure for the trees to be lopped or felled.

The Inspector agreed with the LPA's assessment of the application. He stated that the density of the canopies is such that it is likely to significantly reduce the sunlight that could penetrate the southern part of the site. As a result of this, he considered that most of the garden areas and rear elevations would be cast in shadow for most of the day and that the trees would represent an oppressive presence. He also stated that the very modest increase in the distance of one of the dwellings from the trees would make no appreciable difference in the light and outlook that future occupiers would experience when compared to the earlier scheme. The Inspector therefore concluded that the resultant living conditions would fall below the acceptable standards for family sized houses in a suburban location and would be at odds with Policy GP2 (General Amenity) of the Local Development Plan (LDP).

The Inspector went on to consider the effect of the proposed development on character and appearance of the adjacent Monmouthshire and Brecon Canal, which has been afforded conservation area status. The Inspector considered that the row of TPO trees makes a valuable contribution to the conservation area and is a prominent component of its character. He agreed that there was a reasonable prospect that there would be pressure from residents to reduce the visual presence of the trees because of concerns over the structural integrity of the individual trees or limbs. He therefore was reluctant to create a situation that could lead to tensions between the conflicting interests of protecting the living conditions of residents and maintaining the visual amenity of the trees. In addition to the loss of the visually attractive trees, he stated that a reduction in screening between the development and the canal over time would harm the character and appearance of the conservation area owing to the development's increased visual prominence. The Inspector therefore concluded that the development has the potential to adversely affect the conservation area and runs counter to LDP Policies GP5 (Natural Environment) and CE7 (Conservation Areas).

For the reasons stated above the Inspector considered the proposal to be unacceptable and dismissed the appeal.

APPEAL DISMISSED 7TH APRIL 2015