

Report

Planning Committee

Part 1

Date: Wednesday 1st May 2019

Item No: Insert item number here

Subject **Appeal Decisions & Prosecution Report**

Purpose To inform Members of the outcome of recent appeals and prosecutions

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Wards Llanwern, Caerleon.

Summary The following planning appeal decisions and prosecution outcomes 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 March 2019

Planning Application Appeal

Reference	18/0959
Address	3 Penrhos Farm, Usk Road Caerleon
Development	Retrospective Planning Application for the Replacement and Enhancement of Pre Existing Raised Decking Structure to Rear and Side of Dwelling
Appellant	R Johnstone
Officer Recommendation	Refused
Committee Decision	N/A
Appeal Decision	Allowed
Costs Decision	N/A

Planning Application Appeal

Reference	18/0878
Address	Green Street Farm, Green Street, Redwick
Development	Demolition of Existing Outbuilding and Erection of Detached Two Storey Garage and Hobby Room
Appellant	D Williams
Officer Recommendation	Refused
Committee Decision	N/A
Appeal Decision	Dismissed.
Costs Decision	N/A

Planning Application Appeal

Reference	18/0257
Address	5 Beacons Close, Rogerstone
Development	Variation of condition 02 (obscure glazing) of planning permission 02/0659 for the erection of a first floor rear extension
Appellant	M Sparrey
Officer Recommendation	Refused
Committee Decision	N/A
Appeal Decision	Dismissed
Costs Decision	N/A

Planning Application Appeal

Reference	18/0707
Address	30-31 Clytha Park Road
Development	Change of use of A1 (shop) to A3 (restaurant)
Appellant	I F Ismail
Officer Recommendation	Refused
Committee Decision	N/A
Appeal Decision	Dismissed
Costs Decision	N/A

Enforcement Prosecution

Reference	E17/0423
Address	Land to the west of Catsash Road, Langstone, Newport
Breach	Without planning permission, the tipping of material, engineering works (including creation of makeshift tyre tracks and stream crossing points), creating of new

	vehicular access and widening of existing vehicular access.
Fine	£4,576.90

Enforcement Prosecution

Reference	E16/0049
Address	The Sycamores, Usk Road, Caerleon, Newport, NP18 1LP
Breach	Breach of Condition 10 (prior to occupation of the dwelling hereby approved, all existing buildings and structures on site shall be cleared/demolished in their entirety) of planning permission 11/0939
Fine (Defendant one)	£741.50
Fine (Defendant two)	£741.50

Enforcement Injunction

Reference	E12/0189
Address	Mobile Home, Ton-y-pill Farm, Broadstreet Common, Peterstone Wentlooge, Cardiff, CF3 2TN
Breach	Without planning permission and in breach of the injunction the occupation of land for residential purposes.
Sentence	4 month custodial sentence, suspended for a period of 12 months, with the requirement that the caravan and adjoining buildings are removed within 6 weeks
Costs	£1246.50

Enforcement Prosecution

Reference	E13/0070
Address	39 Commercial Road, Newport, NP20 2PE.
Breach	Non-compliance with a s.215 notice requiring: <ul style="list-style-type: none"> • Repoint all brickwork, • Repair the roof of the property, • Remove all vegetation from the property and clear all resultant debris from the land, • Repair and repaint the front door, • Repair or replace rainwater goods, and • Repaint the fascia sign the same colour as the roller shutter door.
Fine	£200.00
Victim surcharge	£30.00

Enforcement Prosecution

Reference	E18/0043
Address	Land to west of Berryhill Cottage, Cardiff Road, Newport, NP10 8UD
Breach	Non-compliance with an enforcement notice requiring: <ol style="list-style-type: none"> i) Cease the unauthorised use comprising a mixed use of residential caravan site and non-agricultural activities including storage and the burning of waste. ii) Remove all caravans, materials and equipment brought onto the land in connection with the unauthorised residential use and non-agricultural activities and restore the Land to its condition prior to the breach having occurred.
Fine	£800.00
Victim surcharge	£80.00

Costs

£814.50
