

Report

Appeal Decisions

Part 1

Date: 7th June 2023

Subject **Appeal Decisions**

Purpose To record the outcome of recent planning appeals

Author **Head of Regeneration and Economic Development**

Wards St Julians, Always, Lliswerry, Allt-yr-Yn

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: 5/6/2023

Planning Appeal	
Reference	21/1222
Address	287 Caerleon Road, St Julians ward
Development	CHANGE OF USE FROM 2 FLATS TO A 9 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS USE)
Appellant	Mr Bell
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed

Planning Appeal	
Reference	22/0657
Address	287 Caerleon Road, St Julians ward
Development	CHANGE OF USE FROM 2NO. FLATS TO 4NO. APARTMENTS AND ASSOCIATED WORKS
Appellant	Mr Bell
Officer Decision	Granted with conditions and section 106 Legal Agreement
Committee Decision	Refused
Appeal Decision	Appeal dismissed and costs application refused
<p><u>The appeal has been dismissed on the sole ground that no Section 106 Legal Agreement has been provided and an application for costs has been refused. The Inspector did not agree with the first reason for refusal relating to highway safety and living conditions of neighbouring occupiers and future occupiers of the site. Please refer to attached report and decisions.</u></p>	

Planning Appeal	
Reference	E21/0115
Address	27 Somerton Road Alway
Development	The breach of planning control as alleged in the notice is, without planning permission, and within the last four years, the erection of walls, pillars, railings and gates higher than 1 metre adjacent to the highway and the creation of a vehicular access
Appellant	Mihaela-Silvia Rada
Officer Decision	Enforcement Notice served
Committee Decision	N/A
Appeal Decision	Appeal Dismissed

Planning Appeal	
Reference	22/0988
Address	Newport Retail Park, Unit U1 at tesco, Lliswerry
Development	3No. non-illuminated vinyl signs
Appellant	Mr Jon Hardy
Officer Decision	Refused in respect of Sign 01 only
Committee Decision	N/A
Appeal Decision	Appeal allowed

Planning Appeal	
Reference	E21/0024
Address	108 Melfort Road, NP20 3FS
Development	Creation of a raised patio
Appellant	Mr C L Kenny
Officer Decision	Enforcement Notice Issued
Committee Decision	N/A
Appeal Decision	Appeal allowed – Enforcement Notice Quashed and Planning Permission allowed

Planning Appeal	
Reference	22/1146
Address	Land to rear of 35 Clytha Park Road, NP20 4NZ
Development	Erection of 2 no. non-illuminated advertising hoardings.
Appellant	JFN1 Ltd
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed and express consented granted

Planning Appeal	
Reference	22/0274
Address	54A Ombersley Road, NP20 3EE
Development	Conversion of 2 flats to a single dwellinghouse with single storey rear extension including roof terrace and construction of new garage.
Appellant	Mr A Jones
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal Dismissed



NEWPORT
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1. Purpose of the Report

To inform Planning Committee of a planning appeal and costs decision which has been made by PEDW.

2. Report

Appeals Decided

Appeal by Mr Simon Bell against the refusal of planning permission for the "change of use from 2 flats to 4 apartments and associated works" at 287 Caerleon Road, Newport (22/0657).

Background

The application was reported to the Planning Committee in September 2022 with a recommendation that planning permission be granted subject to conditions and a S106 agreement to secure a contribution towards affordable housing provision.

Planning Committee resolved to refuse the application in September 2022 (highway safety / residential amenity and lack of S106 for affordable housing). Members were concerned the proposal was akin to a HMO as part of the discussion.

3. DECISION: APPEAL DISMISSED

The planning appeal was dismissed on the sole ground that no Section 106 Legal Agreement had been provided by the appellant. The appellant was offered the opportunity to provide one as part of the appeal process, and had they, the appeal would have been allowed.

Highway Safety

There was no increase in demand between the existing lawful use and the proposed use. However, residents had raised significant concerns with regards to parking issues in the area. The Inspector considered that *"it may well be the case that the occupants of the appeal property, especially single persons, young professionals or those on lower incomes who would be attracted to live at the property, would choose not to own a motor vehicle."* He went on to state that *"limited persuasive evidence has been presented by the Council to substantiate its concerns about car parking or the dimensions of Orchard Lane and the Highways department raised no objection."*

He concluded the proposal would not exacerbate on road parking issues.

Living Conditions

The flats proposed all complied with the minimum internal space standards set out in the SPG. A shared garden space was provided, and the nature of the apartments means less of a requirement for outdoor space. Concerns about refuse and cycle storage resulting in noise and disturbance already existed. The Inspector again concluded that *"no convincing evidence has been put before me to suggest that changing the layout of the property from two flats to four apartments would have a harmful effect on the living conditions of the occupiers of adjoining dwellings or have a detrimental impact on the character and appearance of the area."*

The Inspector concluded that no issues of residential amenity arose.

4. COSTS DECISION: REFUSED

Notwithstanding the above, and the clear reference to a lack of evidence in both aspects of the reason instigated by Committee, the Inspector considered that the Council had provided evidence to support its reasons for refusal, which were based on reasonable planning grounds (and reference to the Development

Plan and other material considerations). He stated *“the Council has adequately demonstrated how it considers that the grant of planning permission would result in harm.”*

In conclusion, he stated *“I am broadly satisfied that the basis for the Council’s assessment and deliberations on the planning application were reasonable in the context of the Development Plan and not wholly based on the objections raised by local residents, and the influence this may have had on Councillors who refused the application against the recommendation of officers.”*

In my professional opinion, the Council was fortunate not have costs awarded against us based on the contradictory comments in the planning appeal decision itself stating insufficient evidence had been provided by the Authority.

Recommendation:

- i) That the contents of the report be noted.

Report Author: Andrew Ferguson, Planning and Development Manager