

Report

Planning Committee

Part 1

Date: 4 November 2015

Item No: 5

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Head of Regeneration, Investment and Housing

Ward Langstone, Caerleon

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: 4th November 2015

PLANNING APPLICATION APPEAL – ALLOWED

APPEAL REF:	14/1275
APPEAL TYPE:	Written Representations
WARD:	Langstone
SITE:	Court Farm, Magor Road, Newport, NP18 2EB
SUBJECT:	Proposed development of solar photovoltaic panel (-10mwp) and associated works, access tracks, security fencing and cameras, affecting public right of way 394/59 and 394/60 Llanmartin (resubmission following refusal of 13/1203)
APPELLANT:	Robert Ayres
PLANNING INSPECTOR:	A Thickett
DATE OF COUNCIL'S DECISION:	1 st April 2015
OFFICER RECOMMENDATION:	Approve
COMMITTEE/DELEGATED:	Committee

DECISION: ALLOWED



SUMMARY

Planning permission was sought for the development of solar photovoltaic panels (-10mwp) and associated works, access tracks, security fencing and cameras, affecting public right of way 394/59 and 394/60.

The appeal site covers 14.3 hectares (35.3 acres) of agricultural land to the north of the B4245 and to the east of Langstone. 70% of the site is classified as Grade 2 and 3a agricultural land, the remainder is classified at 3b. Grades 1, 2 and 3a are classed as the best and most versatile agricultural land.

In view of the above, the Inspector considered the main issue in the determination of this appeal was the impact of the proposed development on the supply of the best and most versatile agricultural land in the area. The proposed solar farm would have a life span of 25 years and the methods of construction and decommissioning can be controlled to ensure that there would be no loss of agricultural land quality once the development has been removed. Furthermore the land would not be lost to agriculture; the fields will be used for silage production and sheep will graze between the solar panels.

The Inspector noted that the proposal would prevent the land being used to its full agricultural potential for 25 years. The Inspector was however satisfied that the impact of the proposal is reversible and that there would not be a permanent loss of the best and most versatile agricultural land.

With regards to the availability of brownfield or lesser quality agricultural land, the appellants commissioned a sequential test which concluded, among other things, that no suitable brownfield land is available. This claim was not disputed by the Council. Turning to lesser quality agricultural land, the sequential test firstly assessed sub-station capacity levels, which led to the conclusion that applications to connect to the grid around Newport were most likely to be successful. However, only the substation at Magor was identified as being able to accommodate the proposed solar farm. The test then went on to assess sites in the vicinity of the Magor sub-station, which favoured the appeal site. The Inspector concluded that the sequential assessment was robust and based on reasonable assumptions and saw no reason to dispute the findings.

The Inspector noted that other matters relevant to this appeal were the visual impact, effects on residential amenities and ecological issues. In terms of the visual impact, the appeal site is mainly bounded by mature trees and hedges, the density and size of which, combined with the height of the arrays and the topography, would limit views from Langstone and Llanbedr. The Inspector therefore concluded that, given the above, combined with proposed hedging along the western and northern boundaries, the proposal would not have an unacceptable impact on the character and appearance of the area. The Inspector further noted, that given the features outlined above, the proposal would not have an unacceptable impact on local residents. In terms of ecological issues, the appellant commissioned an ecological report, which found no evidence of badger activity and no setts were found that could be affected by the proposed works.

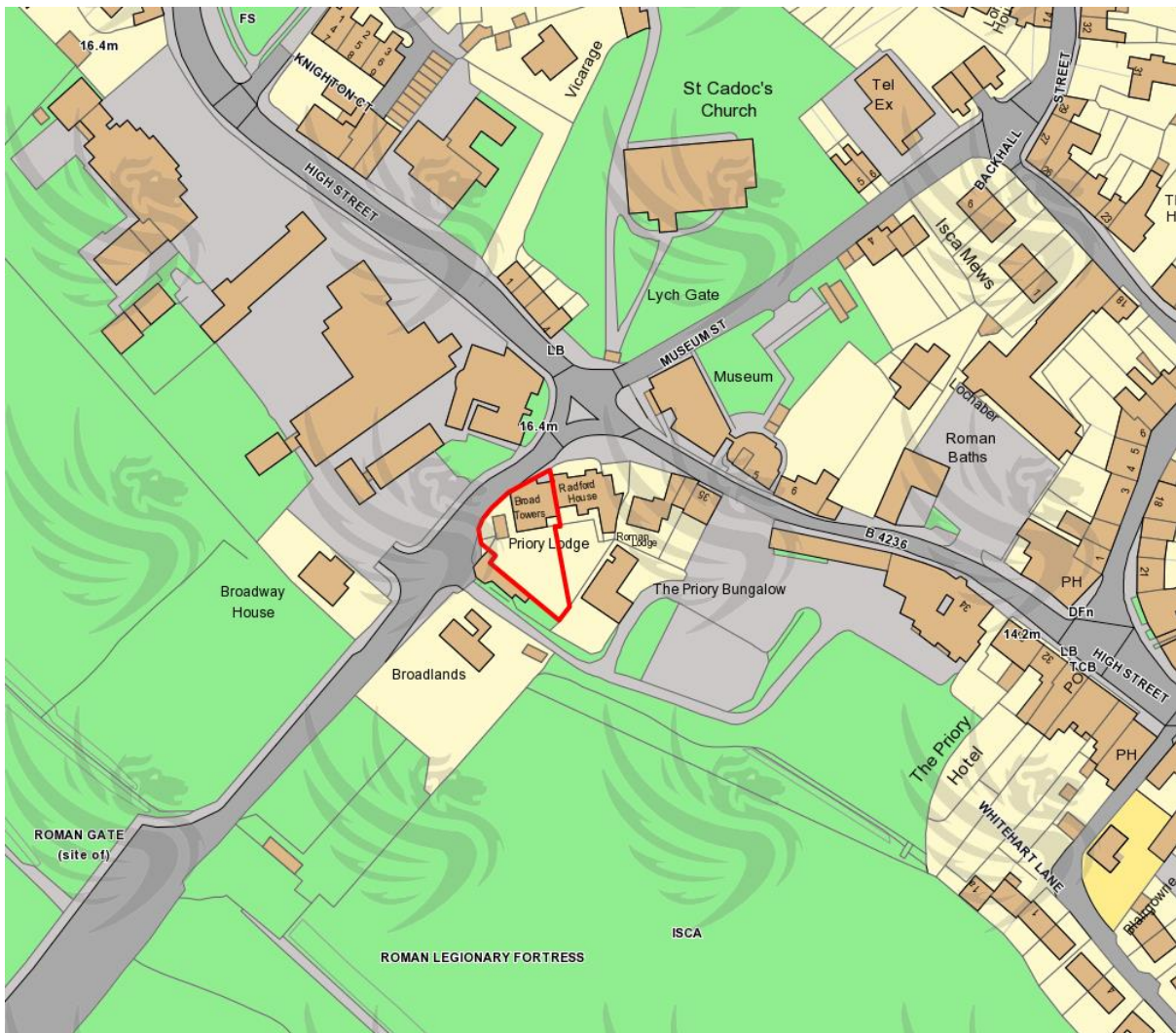
In view of the above, the Inspector concluded that the proposal complies with Planning Policy Wales and the Newport Local Development Plan and the appeal should be allowed.

APPEAL DISMISSED 9th OCTOBER 2015

PLANNING APPLICATION APPEAL

APPEAL REF: E13/0502
APPEAL TYPE: Hearing
WARD: Caerleon
SITE: Broad Towers, Broadway, Caerleon, Newport, NP18 1AY
SUBJECT: High Hedge
APPELLANT A: Dr Mary Reynolds and Miss Anne Reynolds
APPELLANT B: David Gilfillan
PLANNING INSPECTOR: Iwan Lloyd
DATE OF COUNCIL'S DECISION: 25th November 2014
OFFICER RECOMMENDATION: Issue High Hedge Notice
COMMITTEE/DELEGATED: Delegated

DECISION (APPEAL A): ALLOW IN PART
DECISION (APPEAL B): DISMISSED



SUMMARY

Appellants A, the owners of the hedge (Dr Mary Reynolds and Miss Anne Reynolds) and Appellant B, the complainant (David Gilfillan) appealed against the Remedial Notice (RM)

issued by the Council. The Inspector therefore dealt with both appeals simultaneously. The RM was issued by the Council because the hedge is adversely affecting the reasonable enjoyment of appellant B's property, Radford House. The high hedge is located to the south eastern boundary of Broad Towers, the occupants of which are the owners of the high hedge and subject to the RN.

The Inspector firstly dealt with the point Appellants A raised, which stipulated that the complainant's property did not fall within the definition of a domestic dwelling. Planning permission 01/0223 was granted in 2001 for the change of use of the complainant's property to a guest house; Condition 2 limited the use to no more than 3 guest bedrooms. During the site visit, the Inspector noted that the dwelling use had a separate entrance, staircase and that there was sufficient separation between the guest house use and the dwelling use to conclude that the complainant's property fell within the definition of a domestic property.

Appellants A secondly stated that the hedge in question did not constitute a high hedge. The Inspector noted that a high hedge is defined as 'so much of a barrier to light or access' and 'a line of evergreens is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level'. The Inspector noted that the line of trees had no significant gaps between them and formed a barrier to light above 2m in height. The Inspector therefore concluded that the hedge constituted a high hedge.

Appellants A, thirdly stated that the Council should not have proceeded with the complaint, as the complainant had not taken all reasonable steps to resolve the matters. During the Hearing, appellants A accepted that the high hedge required a reduction in height, which the hedge could tolerate without causing it to die or be destroyed. The Inspector noted that by accepting such an approach, appellant A acknowledges that the Council's action to issue a RN was correct; this issue was therefore not given any further consideration.

The Inspector then discussed the method of calculation for the Action Hedge Height (AHH). The Inspector noted that the Council's calculations were based on Building Research Establishment's Hedge Height and Light Loss. Appellants A indicated the Council's method of calculation was prone to error. The Council's assessment derived an AHH of 2.59m. The Council acknowledged the hedge would not survive a cut to the AHH; the RN therefore reflected this and required an initial action of 7.4 m and a preventative height of 8m.

In view of the above, the Inspector considered the one area of dispute to be whether the hedge could tolerate the reduction in height set out in the RN. The Inspector noted that the Council gave consideration to the health of the hedge, as the AHH was significantly below that set out in the RN. The Council stated that the high hedge could tolerate a cut down to 7.4m (initial action), appellant B indicated 6m and appellants A indicated 11.5m. After considering the health of the trees, the Inspector considered that the trees would not survive the cut specified in the RN. In view of this, the Inspector concluded that the trees could tolerate an initial cut not exceeding 10m, with an allowance of 1m growth margin; the hedge is therefore to be maintained at a height of 11m.

Having considered the above matters, the Inspector concluded that Appeal A should be allowed in part and that the remedial notice be varied in the corrected form attached and the Appeal B should be dismissed.

APPEAL (A) ALLOWED IN PART 12th OCTOBER 2015
APPEAL (B) DISMISSED 12th OCTOBER 2015