

# Report

## Planning Committee

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### Part 1

Date: 2 December 2015

Item No: 5

**Subject** **Appeal Decisions**

**Purpose** To inform Members of the outcome of recent appeals

**Author** Development Services Manager

**Ward** Victoria, Marshfield, Allt-yr-yn

**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**

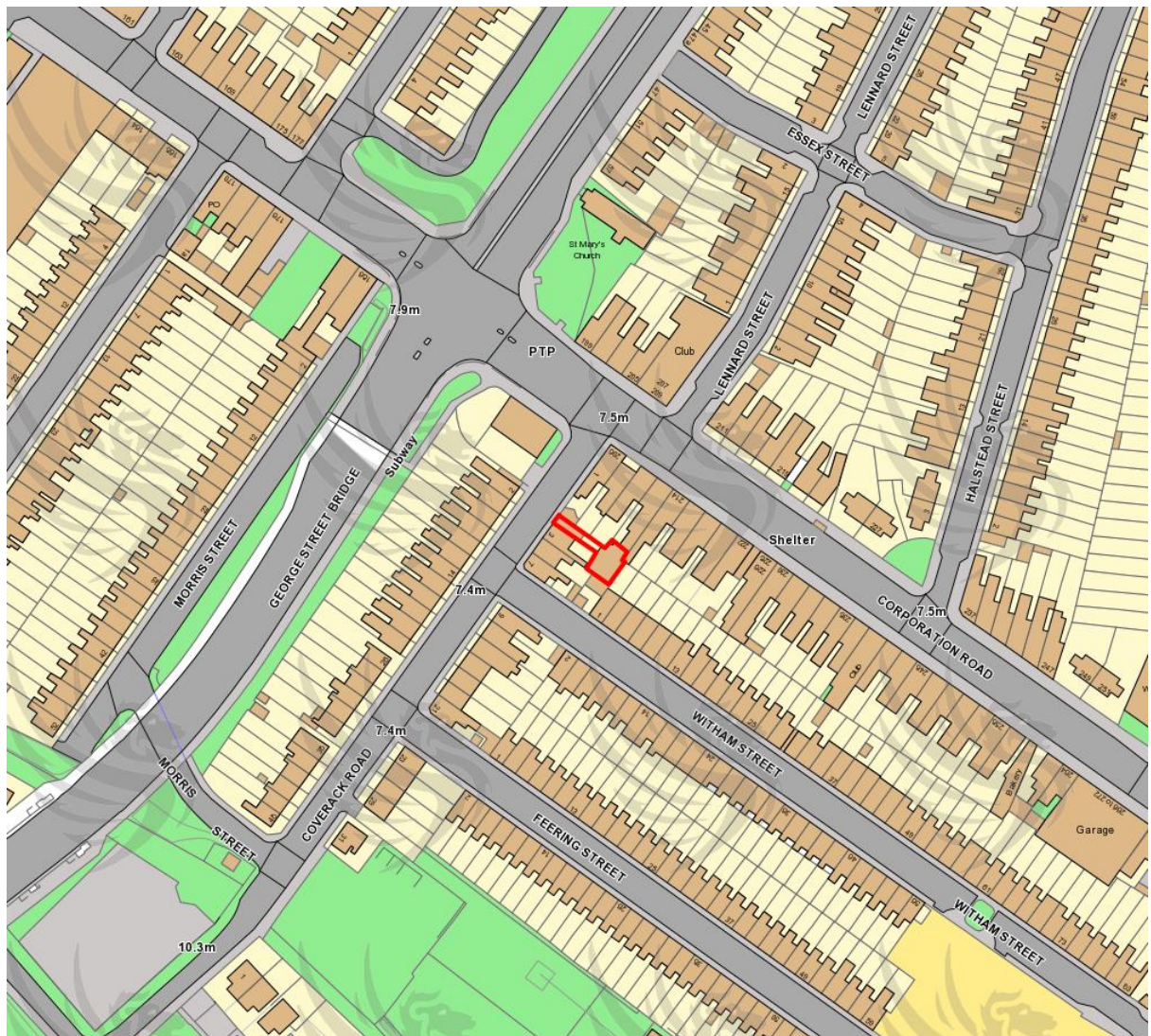
Not applicable

Dated: 2 December 2015

**PLANNING APPLICATION APPEAL – DISMISSED**

APPEAL REF: 15/0478  
APPEAL TYPE: Written Representations  
WARD: Victoria  
SITE: 3 Coverack Road, Newport, NP19 0DS  
SUBJECT: Change of use from lock-up workshop to dance studio  
APPELLANT: Robert Miller  
PLANNING INSPECTOR: Richard Duggan  
DATE OF COUNCIL'S DECISION: 2<sup>nd</sup> July 2015  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated

**DECISION: DISMISSED**



**SUMMARY**

Retrospective planning permission was sought for the retention of the premises as a dance studio; the lawful use of the premises is a lock-up workshop. The appeal site is located

within a densely populated area of terraced housing and is surrounded by the gardens of residential properties.

The Inspector considered the main issues in the determination of the appeal to be the effect of the development on highway safety and whether the proposal represents an acceptable form of development within a flood zone.

The Inspector noted that there is a high demand for on-street car parking along Coverack Road and the surrounding streets. Therefore, in the absence of adequate on-site parking provision, the Inspector considered that the appeal proposal would likely lead to obtrusive and illegal parking close to the junction with Corporation Road. Furthermore, the likely illegal parking would create difficulties for vehicles entering Coverack Road from Corporation Road. The Inspector therefore concluded that the proposal would be likely to result in indiscriminate parking and an increased pressure on on-street parking to the detriment of highway safety and the convenience of local residents and nearby business premises, contrary to Policies GP2 and GP4 of the adopted Newport City Council Local Development Plan (LDP) 2015.

In terms of flooding, the Inspector noted that site lies entirely within Flood Zone C1. In accordance with TAN15, development can take place within such a designation, provided the proposal is justified and, if it is, the provision of evidence that the consequences of the flooding which will occur can be managed to an acceptable level. At the time of determination of the planning application, the appellant had not submitted a Flood Consequence Assessment (FCA). Advice from Natural Resources Wales (NRW) to the appellant suggests that in its opinion, an FCA was not required. However, the Inspector noted that the Council needs to be satisfied that the proposal is justified and that the consequences of flooding are acceptable. Therefore, in the absence of an FCA, the Council considered the proposal contrary to LDP Policy SP3.

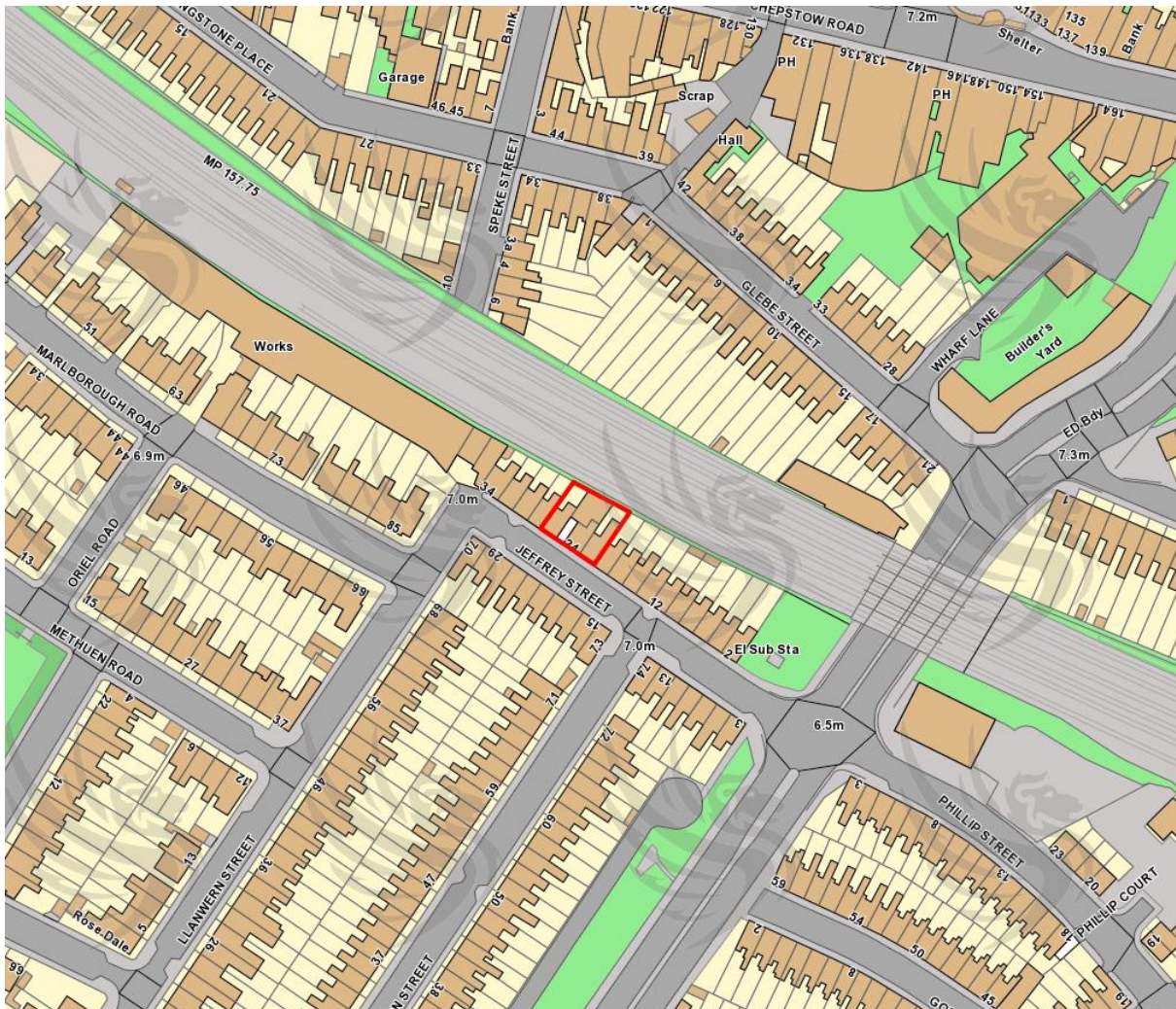
TAN15 advises that whether a development should proceed or not will depend upon whether the consequences of flooding of that development can be managed down to a level which is acceptable for the nature/type of development being proposed. The appellant had not prepared an FCA, however, information had been submitted setting out some detail of an emergency flood plan for the site and the measures to be taken in the event of flood warnings being issued or flooding to occur. The Inspector considered that a more precautionary approach needed to be taken where an assessment should be undertaken to allow for proper consideration of the risks involved. The Inspector therefore concluded the proposal represents an unacceptable form of development having regard to its flood zone location and the provisions of PPW, TAN15 and Policy SP3 of the LDP.

In view of the matters addressed above, the Inspector concluded that the appeal should be dismissed.

**PLANNING APPLICATION APPEAL – ALLOWED IN PART**

APPEAL REF: 15/0250  
APPEAL TYPE: Written Representations  
WARD: Victoria  
SITE: 24-26 Jeffrey Street, Newport, NP19 0DA  
SUBJECT: Variation of conditions 1 and 2 of permission 11/0825  
  
APPELLANT: Mrs Parvin Ali  
PLANNING INSPECTOR: Hywel Wyn Jones  
DATE OF COUNCIL'S DECISION: 4<sup>th</sup> June 2015  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated

**DECISION: ALLOWED IN PART**





The appeal site is a commercial premises benefiting from an A1 (retail) use under planning permission 11/0825. Conditions 1 and 2 restricted the opening hours and delivery hours, respectively, between the hours of 09:00-18:00 on each day. Planning permission was therefore sought to vary the above conditions, to extend the opening hours until 21:00 and the delivery hours until 19:00.

The immediate vicinity of the appeal site is characterised primarily by terraced housing with some commercial premises. To the rear of the site lies a railway line. The wider area also includes more commercial streets such as a Corporation Road.

The Inspector noted that the main issue in this case, is the effect of varying the opening and delivery hours on the living conditions of nearby residents, in terms of noise and disturbance, and highway safety. The Inspector stated that, within this urban environment, there is no reason to believe that the comings and goings of customers to this convenience store would cause unacceptable levels of disturbance to nearby residents. However, the Inspector noted that there is a potential for greater noise disturbance from loading and unloading activities and the associated movement of a delivery lorry. The Inspector further noted from a site visit that delivery activity during the evening would increase pressure for on-street parking, which is when parking demand is at its highest, as local residents return home at night.

In view of the above, the Inspector concluded that the retention of Condition 2 (delivery hours) is necessary in the interests of highway safety and protecting the living conditions of neighbouring residents. The Inspector further concluded that the variation of Condition 2 would be contrary to Policies GP2 and GP4 of the Newport Local Development Plan 2011-2026. However, with regards to Condition 1 (opening hours), the Inspector concluded that the extended opening hours would not harm neighbouring amenities or result in a detriment to highway safety, and would accord with the applicable local planning policies. The appeal is therefore allowed in part, by varying condition 1 only.

**PLANNING APPLICATION APPEAL – DISMISSED**

APPEAL REF: 15/0511  
APPEAL TYPE: Written Representations  
WARD: Marshfield  
SITE: 34 The Shires, Marshfield, Newport, CF3 2AZ  
SUBJECT: Erection of first floor front extension and rear orangery  
APPELLANT: Paul Bailey  
PLANNING INSPECTOR: Richard Duggan  
DATE OF COUNCIL'S DECISION: 25<sup>th</sup> June 2015  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated

**DECISION: DISMISSED IN PART**



The appeal site is a detached residential property which occupies a prominent corner plot within The Shires housing estate, Marshfield. Planning permission was sought for an extension over the garage to the front of the property and a single storey orangery to the rear.

The Inspector considered the main issues in this case to be the effect of the development on the character and appearance of the street scene, and on the living conditions of the occupiers of 36 The Shires, with regard to overshadowing and overbearing impact.

The Inspector noted that the appeal property occupies a prominent corner plot surrounded by detached dwellings which display a distinct uniformity in terms of architectural style and spacing. He considered that the effect of the proposed first floor extension would be to substantially increase the apparent bulk of the appeal building, and to change and obscure its original form. As the property occupies a large corner plot its' prominence serves to accentuate the incongruous nature of the front extension. Overall the proposed extension would not appear subservient to the existing house, would dominate its front elevation and would be a disproportionate addition to the existing house. The development would significantly harm the character and appearance of the existing property and of the street scene as a result.

In terms of the impact on the living conditions of the occupiers of 36 The Shires the Inspector considered that the extension would significantly reduce the sense of space and its additional height and massing above the garage would be brought unacceptably close to the boundary with No 36. As a consequence, the proposed development would have a dominating and overbearing effect on the occupants of this neighbouring property, resulting in an adverse effect on the living conditions of the occupants.

He concluded that the development would conflict with Policies GP2 and GP6 of the Local Development Plan.

The Inspector allowed the appeal insofar as it relates to the Orangery at the rear and planning permission is granted for this. This element of the scheme did not form part of the Councils' reasons for refusal of this application.

## PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0560  
APPEAL TYPE: Written Representations  
WARD: Allt-Yr-Yn  
SITE: Bridge Chambers, 1 Godfrey Road, Newport, NP20 4NX  
SUBJECT: Change of Use from 8 offices over 3 floors to student accommodation shared by six students. Resubmission following refusal of application 14/1213  
APPELLANT: Debra Jeffs  
PLANNING INSPECTOR: Richard Duggan  
DATE OF COUNCIL'S DECISION: 9<sup>th</sup> July 2015  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated



The appeal building is a vacant three storey end of terrace property which extends over an archway at first floor. The archway provides vehicular access to an office building to the rear.

The Inspector considered the main issues in this case to be the effect of the proposed development on the living conditions of the future occupiers of the development through noise and disturbance and access to private amenity space; and whether the development would make appropriate commuted sum contributions towards affordable housing.

In terms of noise and disturbance the Inspector noted that the area surrounding the property is very busy and vibrant with a lot of traffic and pedestrians. He did not agree that the noise and disturbance and light spill from headlights associated with vehicles entering the office development to the rear would have a harmful impact on the living conditions of future occupiers. He considered that there is already high ambient noise levels associated with existing traffic movements and future occupiers would be subject to high levels of noise, disturbance and light spill from headlights as a result of vehicles passing along Godfrey Road. There would also be noise associated with doors slamming from the vehicles parking directly outside the front windows of the building. Any potential noise and disturbance from vehicles accessing the rear office building would not be so materially different to the current vehicular noise levels in the area.

In terms of amenity the Inspector did not agree that the lack of outdoor amenity space would be a critical requirement. He considered that the building would offer relatively spacious living space, reducing the need for outdoor space; and future occupiers would be able to make a balanced judgement on whether the proximity of the property to local facilities would outweigh the lack of outdoor amenity space. He considered that the sustainability credentials of the property (within walking distance to shops, local services and a range of public transport; and close to employment opportunities) coupled with its' vacant status with little interest for office use were significant material considerations in favour of the appeal.

In terms of affordable housing the Inspector agreed that as the Affordable Housing SPG had been adopted since the original application had been refused it is now a material planning consideration in the determination of the appeal. The Council requested a contribution of £20,641 towards affordable housing in accordance with the SPG during the course of the appeal. The appellant was allowed time to submit evidence to address this issue but they disputed whether it was appropriate to negotiate on such matters at this stage of the appeal process. As the Inspector agreed that it was appropriate he found the development to conflict with Policy H4.

Despite the Inspectors favourable conclusion with regard to living conditions and amenity space he did not consider that this outweighed his findings regarding affordable housing contributions. The appeal is dismissed.