

Report

Planning Site Sub-Committee

Part 1

10 December 2015

Item No 4

Subject **Planning Application Schedule – Site Visit**

Purpose To make decisions on items presented on the attached Schedule.

Author Development Services Manager

Ward As indicated on the schedule

Summary Attached is a Planning Application Schedule, detailing those applications requiring a site visit, as recommended by Planning Committee on 2 December 2015. The Planning Site Sub-Committee will visit the site, listed in the attached schedule, on 10 December 2015 in order to gain a better understanding of the proposal/case so that a decision can be made.

Proposal 1. **To visit the application site detailed in the attached Schedule.**
 2. **To make decisions in respect of the Planning Application Schedule attached.**

Action by Planning Committee

Timetable Immediate

The Officer recommendations detailed in this report are made following consultation with local residents, Members and statutory consultees as set out in the Council's approved policy on planning consultation and in accordance with legal requirements.

Protocol

1. A Planning Protocol for Planning Sub-Committee site visits was approved by Council on 08 April 2008 and amended in February 2013.
2. A Sub-Committee of the Planning Committee will be constituted for the purposes of undertaking site visits on behalf of the Planning Committee. It will be known as the Planning Site Sub-Committee.
3. The Planning Site Sub-Committee shall comprise of six named Councillors of the Planning Committee. Rules of political balance as set down in the Local Government and Housing Act 1989 will apply.
4. A site visit by the full Planning Committee may be undertaken in lieu of the Planning Site Sub-Committee if the scale or sensitivity of the development merits such consideration. The decision to undertake a full Planning Committee visit lies with that Committee.

Purpose of Site Inspections

5. Site inspections by the Planning Site Sub-Committee or full Planning Committee will be undertaken for the following purposes:
 - fact find;
 - investigate specific issues raised in any request for a site inspection;
 - investigate issues arising from the Planning Committee presentation or discussion;
 - enable the Planning Site Sub-Committee to make decisions.

Requests for Site Inspections

6. Any member of the Council may request that a planning application site be visited by the Planning Site Sub-Committee prior to the determination of that application. Such requests must be made in writing [e-mail is sufficient] to the named case officer dealing with the application or the Development Services Manager. Any such request must include specific reasons for the visit.
7. Applications subject to a request for a visit will be reported to the Planning Committee. The report will include details of the request and the reasons given. Planning Committee will decide, following a full presentation of the application, whether or not a site visits is necessary to inform the decision making process.
8. Where no request for a site visit has been made members of the Planning Committee may decide during consideration of an application that a site inspection would be beneficial. The reasons for the visit should be agreed and recorded as part of the minute of the meeting.
9. Occasionally there will be circumstances when timescales for determination will not allow site visits to be programmed in the normal way eg those related to telecommunications development. In such **exceptional circumstances**, at the discretion of the Chairman and Vice-Chairman of the Planning Committee, a site visit may be undertaken prior to the presentation of the matter to the Planning Committee. **As Members of the Sub-Committee will not have received a formal presentation on the application a recommendation cannot be given.** They will be able to report their findings of fact to the Planning Committee. Members should make their written request, with reasons, in the normal way. All other aspects of the protocol will apply.

Attendance at Planning Site Sub-Committee Visits

10. Attendance at Planning Site Sub-Committee visits is to be restricted as follows:

- Members of the Planning Site Sub-Committee;
- Relevant Officers;
- Ward Councillors;
- Single representative of the Community Council [if relevant];
- Applicant/Agent to allow access to the site;
- Neighbour/other Landowner [where access is required to make any assessment].

Representations at Planning Site Sub-Committee Visits

11. A site visit is not an opportunity to lobby on an application. Accordingly, no representations may be made to the Planning Site Sub-Committee by any party. Members of the Sub-Committee may ask questions of those present to establish matters of fact and inform their consideration of the application.

Background

The reports contained in this schedule assess the proposed development or the unauthorised development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer Recommendation.

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Site Sub Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to 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.

Applications can be granted subject to planning conditions. Conditions must meet all of the following criteria:

- Necessary;
- Relevant to planning legislation (i.e. a planning consideration);
- Relevant to the proposed development in question;
- Precise;
- Enforceable; and
- Reasonable in all other respects.

Applications can be granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). This secures planning obligations to offset the impacts of the proposed development. However, in order for these planning obligations to be lawful, they must meet all of the following criteria:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

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.

Where formal enforcement action is taken, the recipient of the Notice has a statutory right of appeal in most cases. There is no third party right of appeal against a decision with the exception of High Hedge Remedial Notices. Appeals are normally lodged with the Planning Inspectorate at the Welsh Assembly Government, with the exception of Section 215 Unsightly Land Notices, for which appeals are heard by the Magistrates' Court. Non-compliance with a statutory Notice is a criminal offence against which prosecution proceedings may be sought. The maximum level of fine and/or sentence that can be imposed by the Courts depends upon the type of Notice issued.

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 or Planning Site Sub 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 determining planning applications, taking enforcement action, carrying out Committee site visits and defending decisions at any subsequent appeal is met by existing budgets and partially offset by statutory planning application fees. 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.

In the case of Section 215 Unsightly Land Notices, an appeal is lodged with the Magistrates' Court and the Council will seek to recover all its costs in relation to all such appeals.

In the case of Stop Notices, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development have already been granted planning permission.

Risks:

Four risks are identified in relating to the determination of planning applications by Planning Committee or Planning Site Sub Committee: decisions being overturned at appeal; appeals being lodged for failing to determine applications within the statutory time period; and judicial review.

An appeal can be lodged by the applicant if permission is refused or if conditions are imposed. 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.

An appeal can be lodged by any recipient of a formal Notice, with the exception of a Breach of Condition Notice. 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.

If a Stop Notice is issued, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development has already been granted planning permission. Legal advice is sought before taking such action, and a cost-benefit analysis is undertaken to fully assess the proposed course of action.

A decision can be challenged in the Courts via a judicial review where an interested party is dissatisfied with the way the planning system has worked or how a Council has made a planning decision. A judicial review can be lodged if a decision has been made without taking into account a relevant planning consideration, if a decision is made taking into account an irrelevant consideration, or if the decision is irrational or perverse. If the Council loses the judicial review, it is at risk of having to pay the claimant's full costs in bringing the challenge, in addition to the Council's own costs in defending its decision. In the event of a successful challenge, the planning permission would normally be quashed and remitted back to the Council for reconsideration. If the Council wins, its costs would normally be met by the claimant who brought the unsuccessful challenge. Defending judicial reviews involves considerable officer time, legal advice, and instructing a barrister, and is a very expensive process. In addition to the financial implications, the Council's reputation may be harmed.

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 and judicial review can be high.

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 or reasons for taking enforcement action can be defended at appeal.</p> <p>Ensure planning conditions imposed meet the tests set out in Circular 35/95.</p> <p>Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.</p>	<p>Planning Committee</p> <p>Planning Committee</p> <p>Development Services Manager and Senior Legal Officer</p>
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Development Services Manager
Judicial review	H	L	Ensure sound and rational	Planning

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?
successful with costs awarded against the Council			decisions are made.	Committee Development Services Manager
Compensation awarded in relation to a Stop Notice	M	L	Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.	Development Services Manager and Senior Legal Officer

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a Fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.

Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.

The Corporate Plan links to other strategies and plans, the main ones being:

- Single Integrated Plan;
- Local Development Plan 2011-2026 (Adopted January 2015);

The Newport Single Integrated Plan (SIP) is the defining statement of strategic planning intent for the next 3 years. It identifies key priorities for improving the City. Its vision is: "*Working together to create a proud and prosperous City with opportunities for all*"

The Single Integrated Plan has six priority themes, which are:

- Skills and Work
- Economic Opportunity
- Health and Wellbeing
- Safe and Cohesive Communities
- City Centre
- Alcohol and Substance Misuse

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Newport Unitary Development Plan (Adopted May

2006) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

Options available

- 1) To determine applications in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate);
- 2) To determine that applications be granted or refused against the Officer recommendation (in which case the Site Inspection Sub-Committee's recommendation and reasoning should be clearly minuted);

With regards to enforcement cases:

- 1) To determine that enforcement action is taken (or no further action is taken) in accordance with the Officer recommendation (with amendments to or additional requirements or reasons for taking formal action if appropriate);
- 2) To determine that a different course of action be taken to that recommended by Officers (in which case the Site Inspection Sub-Committee's recommendation and reasoning should be clearly minuted).

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. 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

Planning Committee are required to have regard to the Officer advice and recommendations set out in the Application Schedule, the relevant planning policy context and all other material planning considerations. If Members are minded not to accept the Officer recommendation, then they must have sustainable planning reasons for their decisions.

Local issues

Ward Members were notified of planning applications in accordance with the Council's adopted policy on planning consultation. Any comments made regarding a specific planning application are recorded in the report in the attached schedule

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

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

NATIONAL POLICY

Planning Policy Wales (PPW) Edition 7 (July 2014)
Minerals Planning Policy Wales (December 2000)

PPW Technical Advice Notes (TAN):

- TAN 1: Joint Housing Land Availability Studies (2006)
- TAN 2: Planning and Affordable Housing (2006)
- TAN 3: Simplified Planning Zones (1996)
- TAN 4: Retailing and Town Centres (1996)
- TAN 5: Nature Conservation and Planning (2009)
- TAN 6: Planning for Sustainable Rural Communities (2010)
- TAN 7: Outdoor Advertisement Control (1996)
- TAN 8: Renewable Energy (2005)
- TAN 9: Enforcement of Planning Control (1997)
- TAN 10: Tree Preservation Orders (1997)
- TAN 11: Noise (1997)
- TAN 12: Design (2014)
- TAN 13: Tourism (1997)
- TAN 14: Coastal Planning (1998)
- TAN 15: Development and Flood Risk (2004)
- TAN 16: Sport, Recreation and Open Space (2009)
- TAN 18: Transport (2007)
- TAN 19: Telecommunications (2002)
- TAN 20: The Welsh Language: Unitary Development Plans and Planning Control (2013)
- TAN 21: Waste (2014)
- TAN 23: Economic Development (2014)

Minerals Technical Advice Note (MTAN) Wales 1: Aggregates (30 March 2004)
Minerals Technical Advice Note (MTAN) Wales 2: Coal (20 January 2009)

LOCAL POLICY

Newport Local Development Plan (LDP) 2011-2026 (Adopted January 2015)

Supplementary Planning Guidance (SPGs):

Affordable Housing (adopted August 2015)

Archaeology & Archaeologically Sensitive Areas (adopted August 2015)

Flat Conversions (adopted August 2015)

House Extensions and Domestic Outbuildings (adopted August 2015)

Houses in Multiple Occupation (HMOs) (adopted August 2015)

New dwellings (adopted August 2015)

Parking Standards (adopted August 2015)

Planning Obligations (adopted August 2015)

Security Measures for Shop Fronts and Commercial Premises (adopted August 2015)

Wildlife and Development (adopted August 2015)

OTHER

The Colliers International Retail Study (July 2010) is not adopted policy but is a material consideration in making planning decisions.

The Economic Development Strategy is a material planning consideration.

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended by the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2008 are relevant to the recommendations made.

Other documents and plans relevant to specific planning applications are detailed at the end of each application report in the attached schedule

Planning Application Schedule

APPLICATION DETAILS

No: 15/0749 **Ward:** MALPAS

Type: RENEWALS AND VARIATION OF CONDITIONS

Expiry Date: 20-AUG-2015

Applicant: JOHN EAGLES, EAGLES PROPERTIES

Site: CLAREMONT COURT CARE HOME, 56, PILLMAWR ROAD, NEWPORT, NP20 6WG

Proposal: VARIATION OF CONDITIONS 01 (PLAN NUMBERS) AND 03 (FENCE DETAILS) OF PLANNING PERMISSION 13/1300 TO ALTER LENGTH AND HEIGHT OF PERIMETER AND COURTYARD FENCING ASSOCIATED WITH APPROVED COURTYARD AND RAMP

Recommendation: GRANTED WITH CONDITIONS

1. INTRODUCTION

- 1.1 This application seeks the variation of condition 01 (plan numbers) and condition 03 (fence details) of planning permission 13/1300 to alter the length and height of the perimeter and courtyard fencing associated with the approved courtyard and ramp at Claremont Court Care Home, 56 Pillmawr Road in the Malpas Ward.

2. RELEVANT SITE HISTORY

12/0887	CONSTRUCT 2NO. FIRST FLOOR SIDE EXTENSIONS TO EXISTING NURSING HOME TO PROVIDE DAYROOM ACCOMMODATION AND A RAISED WALLED COURTYARD AND ASSOCIATED SITE WORKS	GRANTED WITH CONDITIONS
13/1300	MODIFIED DESIGN OF COURTYARD AND PEDESTRIAN RAMP TOGETHER WITH EXTENSION TO SMALL LEAN-TO (AMENDMENT TO PREVIOUS APPROVAL 12/0887)	GRANTED WITH CONDITIONS

3. POLICY CONTEXT

- 3.1 Policy **GP2 General Development Principles – General Amenity** states that development will not be permitted where are has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

Policy **GP6 General Development Principles – Quality of Design** states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.

4. CONSULTATIONS

4.1 None

5. INTERNAL COUNCIL ADVICE

5.1 THE HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): No objection.

5.2 THE HEAD OF STREETSCENE AND CITY SERVICES (TREE OFFICER): No objection.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties sharing a common boundary with the application site were consulted (three properties). Two objections were received from the occupier of the neighbouring property at 54 Pillmawr Road. The first objection raised concerns with regards to the affect the reduced dimensions of the fence would have on the level of privacy previously agreed and whether or not it would be further compromised. Following negotiations and the submission of amended plans the following comments were received:

- The privacy to be provided by original decisions 12/0887 and 13/1300 would be further reduced.
- Questions how professional drawings could be approved by the Council on two occasions when the proposed fence construction was suspect.
- States that in April 2015 a contractor had informed the occupier of 54 Pillmawr Road that the fence was to be installed on his side of the boundary wall. The occupier of 54 Pillmawr Road refused consent for this work to go ahead which prompted the submission of the current application. Raises concern that the wall condition was only raised as an issue when the method of fixing was challenged.
- States that there is no reason to attach a fence to the wall and suggests an alternative fence design.
- Points out that the original design for the current application reduced the length and height of the fence. To balance this, the translucent screen around the courtyard was to be increased along the north side.
- The second amended plans reinstated the length of the fence, but the extension to the courtyard screen was removed so the overlooking issue from the courtyard screen had been reinstated.
- Points out that the purpose of the fence height as approved under 13/1300 was to reduce the overlooking factor from the vantage point created from the courtyard.
- Trees have been temporarily allowed to grow on the side of 54 Pillmawr Road to provide a level of privacy pending the outcome of the fence construction.
- Requests that the translucent screen extension is reinstated as per the original submission of the current application.
- The length of the currently proposed fence is the same as that previously granted, but as the fence is proposed to be lower privacy will be reduced.
- Questions whether a planning condition attached to 13/1300 relating to the replacement of the translucent courtyard fence is still the case.
- States that the access path is used much more than stated in the applicant's DAS. Due to over-zealous building work by the applicant's contractor (removing coping stones at the southern section) privacy has been further deteriorated so a further extension of the fence along the southern section should be undertaken.
- It is proposed that the fence should be at a height of 900mm above the wall and that the translucent courtyard screen should be extended if the fence was to remain at 800mm. The fence should be painted green as per the approved fence of 13/1300. The translucent screen should be replaced with Perspex Polar White Screen as per 13/1300. In the event that the translucent screen is not extended as per (c) above, then at least extend the Perspex Polar White Screen approx 0.5m on the north side to meet with the railing that separates the courtyard area constructed as a breach of the original approved application 12/0887.

- Requests that submitted photos are shown at the planning committee meeting as the photos shown at the committee meeting in March 2015 (13/1300) were from the applicant's DAS and did not truly reflect the actuality of the situation so did not allow committee to make an informed decision.
- The Council should include a sun set clause/condition in the Decision Notice for the completion of the fence and translucent screen.
- A condition that the work is undertaken between normal contract hours Monday to Friday should be imposed. In the past the applicant's contractor has started works on Saturday, Sunday and even Bank Holidays. Sometimes starting as late as 17:00.

6.2 COUNCILLORS CHRISTINE MAXFIELD AND DAVID MAYER: Requested that the application be formally determined by planning committee due to concerns regarding the potential detrimental impact on residential amenity.

7. ASSESSMENT

- 7.1 The property is a residential care home located in a suburban area in the mainly residential area of Malpas. The property shares boundaries with a junior and infant school to the south, the public highway at Yewberry Close to the east and a domestic property at 54 Pillmawr Road to the west.
- 7.2 The property was granted permission for an extension with a raised patio area in 2012 (ref: 12/0887). In 2013 the raised patio area (and adjacent access ramp) was found to have been constructed larger than originally approved and an application was subsequently submitted to retain and complete it (ref: 13/1300). After some negotiation the 2013 application was eventually granted permission by planning committee in March 2015. The 2013 application was granted permission under the condition that a fence (proposed to be installed along a section of the western boundary wall between Claremont Court and 54 Pillmawr Road) was installed within 2 months of the decision date. It was brought to officers' attention after the expiry of the permitted two month period that no fence had been erected.
- 7.3 The current application was submitted following informal enforcement action notifying the landowner of a breach of condition relating to the erection of the boundary fence. The applicant had initially proposed to alter the design of the fence to lower the height and to reduce the length in order to permit a fence that would have less of a potential adverse impact on the structure of the stone wall. Following some negotiation initiated by concerns raised by neighbouring occupiers and local ward councillors, amended plans proposing a fence of a greater length (but still lower in height) than that previously granted have been submitted for consideration.
- 7.4 The currently proposed fence would be at a maximum height of 0.82 metres from the top of the boundary wall and would span a length of approximately 15 metres. The height above the boundary wall varies along the length of the proposed fence as the wall is not of a uniform height. The top of the proposed fence would broadly run parallel to the top of the wall and would decrease in height towards the north (matching the height of the wall, but 0.8 metres above). The last panel at the northern end of the fence would taper down in height to meet the stone wall at a point where the wall height increases. The proposed fence is of a simple close board panel design attached to the boundary wall along the eastern side by aluminium brackets.
- 7.5 The previously granted fence was of a more ornamental design with bow topped trellised panels situated on top of a solid close board fence. The total height of the previously

granted fence above the wall was approximately 1-1.1 metres along the length. The solid close board panels would have been at maximum heights of 0.55-0.65 metres above the height of the wall and would have staggered down in height as the wall height decreased. The previous fence was granted at a length of approximately 13 metres (from the south side of the courtyard extension to the point where the boundary wall kinks and begins to increase to 3 metres in height).

- 7.6 The applicant has stated that once construction began on the previously granted fence it was found that the approved design (with additional trellised panels on top of solid panels) would have been an impractical design to construct without undertaking significant wall stabilising works. Some wall stabilising works have taken place to repair the top of the boundary wall, but it was concluded by the applicant that significant further works would have been likely to have been necessary in order to install the previously approved design. The proposed design would be much simpler to construct and would involve less work to the boundary wall. It is also considered that in practical terms a single panel design (rather than the approved two-panel design) would be far easier to maintain into the future and would be a more sustainable design. In terms of visual appearance it is considered that the new design, following the contour of the top of the wall, is a much less obtrusive design than the staggered ornamental panels so is an improvement to the previously approved fence. The original fence was proposed to be dark green stained. The current proposal does not state that a particular colour stain would be used as a finish, but it is considered that either a dark brown or dark green colour would be most appropriate in order to blend the fence into the dark grey boundary wall. Members have the option to impose a planning condition to require the colour stain even though it is not currently proposed. Overall the currently proposed design is considered to be a much simpler and improved design in visual amenity terms (over that previously approved) and as such is in accordance with policy GP6 of the Newport Local Development Plan (NLDP).
- 7.7 The major concern with regards to this application is whether the proposed fence would protect the privacy of the occupiers of 54 Pillmawr Road to the level the previously approved fence design would. The additional screening along the boundary wall was required (under the previous application) as on the eastern Claremont Court side of the wall an access path has been constructed that raises in height towards the south. At a point adjacent to the southern end of the new extension the path level is approximately 1.5 metres lower than the boundary wall so the average person would be able to overlook the southern area of the neighbouring garden at 54 Pillmawr Road (itself approximately another 1 metre lower in ground level). The proposed 0.8 metre high fence would raise the height of the boundary screening to approximately 2.3 metres which would prevent any direct overlooking into the garden of 54 Pillmawr Road. At the northmost point of the fence it is proposed to extend the length beyond that previously approved and to taper the fence down in height to meet the section of the boundary wall that increases in height to approximately 3 metres. The only potential views over the boundary wall at this point are from the northern access ramp which is not directly adjacent to the wall (and are currently not significant views of the neighbouring garden even without a fence present). Several conifer trees and an apple tree within the neighbouring garden have grown over the height of the boundary wall. They provide adequate privacy screening to most of the garden and since they are within the control of the neighbouring occupier can be maintained at a height to suit the privacy sought from the neighbouring property. They can, however be removed and cannot be controlled through this current application. Overall it is acknowledged that the proposed fence is lower in total than the previously approved design, but in terms of a solid boundary enclosure is higher overall (by approx. 0.2 metres), since the top panel of the previously approved fence was trellised and partially open. On balance this would be an improvement over the previously approved design as it would infill an area where no fence would have been constructed (whilst not previously considered to be an issue with regards to overlooking it is considered to be a further improvement).

- 7.8 Very limited views of the southernmost section of the garden at 54 Pillmawr Road would remain from the southern access path at Claremont Court, but this area of the garden is mostly overgrown and is an area where several greenhouses are located. The applicant has stated that the access path is infrequently used by maintenance staff and would only be used by residents in the event of an emergency (such as an evacuation in the event of a fire). Regardless of the frequency of the use of the path it is considered that as only a small area of the neighbouring garden could receive some overlooking (and given the suburban context of the site where some mutual overlooking is expected) this is not a strong concern. Furthermore the area of the neighbouring garden that may receive some overlooking is also not a lawn or patio that would be in use as a private amenity area so any overlooking to that area of the property would not be harmful. As such privacy would be preserved and the proposed design would remain in accordance with policy GP2 of the NLDP.
- 7.9 Additional planning conditions attached to planning permission 13/1300 related to the installation of a planter on the raised courtyard and the replacement of an obscure glazed screen surrounding the raised courtyard. The conditions relating to these aspects of the development both gave two months for the prescribed works to be undertaken. The planter has been installed so a condition purely requiring that it is retained in place can be imposed to this renewed consent (if committee are minded to approve the scheme). The screen surrounding the raised courtyard has not yet been replaced and (similar to the fence) the two months period has lapsed. Enforcement action can be taken to require the replacement of the screen, but for the purposes of this application it is proposed to re-impose the condition, effectively giving a renewed two month period for the replacement of the screen. Should the screen not be replaced enforcement action would be able to be taken.
- 7.10 Initial comments received from the occupier of 54 Pillmawr Road raised the concern that the level of privacy previously agreed (through the original fence design) would be further compromised by the new proposal. Following concerns raised by ward councillors and the neighbouring occupier negotiations took place to have the length of the fence increased to match the length of the approved fence design. A further objection was made following the submission of the amended plans currently being assessed. Numerous concerns were raised and alternative desirable schemes proposed (such as using an alternative fence design avoiding the need to connect to the boundary wall and reinstating the extension to the translucent courtyard screen). The proposed alternative schemes that would be more desirable to the neighbouring occupier are not what members currently have presented before them so cannot form part of the current assessment. Issues with regards to the impact on privacy of the currently proposed fence have been addressed above and along with the improvements to the visual appearance of the fence it is considered that privacy would be preserved and no additional overlooking would be caused.
- 7.11 The neighbouring occupier questions why two previous decisions granting a boundary fence were approved when it was subsequently found that the approved fence could not be constructed. When assessing planning applications it is not the Council's role to prove that a proposed scheme can be constructed. In this case it is likely that the previously approved fence could have been constructed, but this may have involved costly works to secure the existing boundary wall. As assessed above the amended fence design is considered to maintain privacy and to pose an improvement to the visual appearance over the previous design so regardless of the motivation behind the application (which is not a material planning consideration) it is considered acceptable.
- 7.12 The neighbouring occupier on several occasions suggests that the originally proposed courtyard screen extension should be reinstated. A question is also raised regarding the replacement screen and the conditions attached to planning permission 13/1300. As detailed above the temporary screen was not replaced and so was in breach of condition. It is proposed to re-impose the condition to allow a further two months for the screen to be replaced as agreed under 13/1300. With regards to the extension to the screen, this was not part of the original planning committee approval which concluded that the location and

height of the temporary (and replacement screen of the same height and location) was acceptable in privacy terms. The primary purpose of the proposed fence was to screen views over the boundary wall from the adjacent access path which the proposed design is considered to still do. As a secondary purpose the fence would offer some further screening from views from the raised courtyard, which it would also still continue to do. The views from the raised courtyard that remain are not directly over the neighbouring garden and are over significant separation distances to the rear of the house (approximately 23 metres which guidance states is acceptable). The views are also screened by the boundary wall, the trees within the neighbouring garden (which can be maintained at a height as desired by the neighbour in order to provide some extra screening) and would be further screened by the proposed fence so overall it is not considered that any additional screening is necessary in this case.

- 7.13 It is acknowledged that some of the concerns raised by the neighbouring occupier are material planning considerations. As assessed above the proposed scheme, whilst not providing the scheme as desired by the neighbour, would adequately address the material planning concerns relating to privacy and visual appearance so the proposed scheme is considered to be acceptable, in accordance with relevant NLDP policies and planning permission should be granted.

8. OTHER CONSIDERATIONS

8.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 *Equality Act 2010*

The Equality Act 2010 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.

8.3 Having 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.

- 8.4 The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

8.6 *Planning (Wales) Act 2015 (Welsh language)*

The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not materially affect the use of the Welsh language in Newport.

9. CONCLUSION

- 9.1 The proposed alteration to the boundary fence by reasons of the location, scale and design is considered to maintain visual amenities and privacy to neighbouring occupiers and would preserve the character and appearance of the property and the street scene.
- 9.2 The proposal is in accordance with policies GP2 and GP6 of the Newport Local Development Plan 2011-2026 (adopted January 2015).
- 9.3 Planning permission is recommended to be granted.

10. RECOMMENDATION

GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: 1766(90)01 Rev. J – Site Layout Plan; 1766(04)06 Rev. C – Existing and Proposed Boundary Wall Elevations; 080-AD(90)01 – Proposed Screens; material sample Perspex Frost Polar White (S2 030 3mm).

Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based.

General conditions

02 Within two months of the date of this decision the boundary fence hereby approved shall be fully installed in accordance with the details of approved plan nos. 1766(90)01 Rev. J – Site Layout Plan; 1766(04)06 Rev. C – Existing and Proposed Boundary Wall Elevations and shall be stained either a dark brown or dark green colour.

Reason: To protect privacy to neighbouring occupiers and to ensure development that is compatible with its surroundings.

03 Within 2 months of the date of this decision the replacement privacy screen shall be fully installed on the raised courtyard in accordance with approved drawing no. 080-AD(90)01 – Proposed Screens and material sample Perspex Frost Polar White (S2 030 3mm) of planning permission 13/1300. The screen shall be retained in accordance with those details thereafter.

Reason: In the interests of residential amenity.

04 The planter installed on the raised courtyard shall be retained thereafter in accordance with approved drawing no. 080-AD(90)01 – Proposed Screens of planning permission 13/1300.

Reason: In the interests of residential amenity.

NOTE TO APPLICANT

01 This decision relates to plan Nos: 1766(Loc)01 Rev. A - Site Location Plan; 1766(90)01 Rev. J – Site Layout Plan; 1766(04)06 Rev. C – Existing and Proposed Boundary Wall Elevations; 080-AD(90)01 – Proposed Screens; Perspex Frost Polar White (S2 030 3mm) material sample.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies GP2 and GP6 were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

11. REASON FOR THE SITE INSPECTION

To assess the effect of the fence and whether it preserves the privacy and amenity of the neighbouring occupier at no. 54 Pillmawr Road.
