

Report

Planning Committee

Part 1

Date: 6 January 2016

Item No: 5

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Victoria, Llanwern

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: 6 January 2016

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0415
APPEAL TYPE: Written Representations
WARD: Victoria
SITE: 21 Excelsior Close, Newport, NP19 0DG
SUBJECT: Erection of garage to front of property
APPELLANT: Richard Lewis
PLANNING INSPECTOR: Richard Duggan
DATE OF COUNCIL'S DECISION: 26th November 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The appeal property occupies a corner plot within a housing estate containing detached, semi-detached and terraced housing which display a distinct uniformity in terms of their architectural style and spacing. Of particular significance, are the regular even gaps between and to the front of the dwellings that maintain the visual rhythm of housing pattern. The appeal property is accessed by a short drive that serves an area of six parking spaces which are located immediately in front of the property.

Planning permission was sought for the erection of a garage, which would be located in the front garden of the property adjacent to the shared boundary with No 7 Willenhall Street. The garage would measure 7.4m in length and 4.4m in width and would have a flat roof. The Inspector considered that the garage would be located in an open frontage and by virtue of its flat roof design and prominent siting, would represent a discordant form of development that would constitute an incongruous addition to the street scene. For these reasons, the Inspector concluded that the proposed development would cause material harm to the character and appearance of the street scene and would conflict with Policies GP2 and GP6 of the Adopted Newport Local Development Plan (LDP), January 2015.

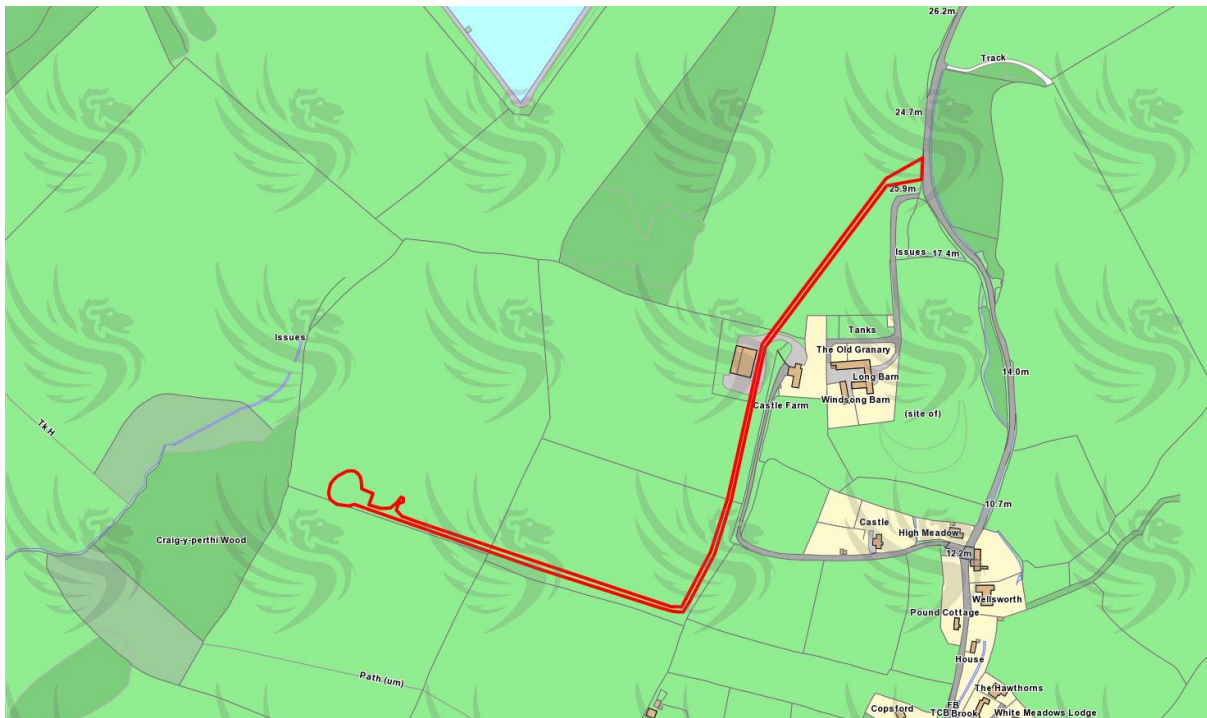
With regards to highway safety, the Inspector noted that the garage door would be installed into the south-west facing side elevation of the proposal immediately adjacent to the parking spaces. The Inspector noted that any small vehicles parked would inevitably come into conflict with cars parked within the spaces nearest to the garage. This could result in the spaces in front of the garage being kept free from parked cars which would increase on-street parking demand. As such, the proposed garage would have a harmful impact on highway safety in conflict with Policy GP6 of the LDP.

Having considered all matters raised above, the Inspector concluded that the appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 14/0713
APPEAL TYPE: Written Representations
WARD: Llanwern
SITE: Castle Farm, Bishton, Newport, NP18 2DZ
SUBJECT: Single wind turbine measuring up to 77m with ancillary equipment and associated infrastructure

APPELLANT: Martin Webber
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 26th November 2015
OFFICER RECOMMENDATION: Granted with Conditions
COMMITTEE/DELEGATED: Committee



Planning permission was sought for the erection of a single wind turbine, measuring up to 77 metres in height, with ancillary equipment and associated infrastructure. In determining the appeal, the Inspector considered the main issue to be the effect of the proposed development on the character and appearance of the surrounding landscape; its effect on designated heritage assets; and whether any harm in these respects is outweighed by other material considerations, in particular, the scheme's renewable energy benefit.

With regards to landscape and visual impacts of the proposal, the Inspector noted that the wind turbine would be sited on a low hill to the north west of Bishton village, within the Llanwern Park Character Area. The Inspector further noted that the surrounding area is characterised by rounded hills of farmland enclosed by hedges and trees, with pockets of woodland and clustered villages, a housing estate and scattered farmhouses; views to the south from the site are dominated by the Llanwern Steelworks.

The Inspector agreed with the appellant's assessment that factors including the separation distances and intervening screening, mean that the proposed turbine, in combination with other turbines already erected in the area, would not change the landscape character. The

Inspector considered that, despite the relatively elevated position of the turbine, it would be screened from many potential vantage points by nearby topography, vegetation and buildings. However, the Inspector also considered that from some other vantage points, including public rights of way and the Bishton village road, that the turbine's elevated position will accentuate its presence as a locally dominant feature in the landscape. Furthermore, the presence of the steelworks and other man-made features are not readily prominent from the aforementioned vantage points. The Inspector therefore considered that the elevated position and over-sized appearance of the turbine when compared with the low-lying row of housing in the village would represent an uncomfortable juxtaposition, resulting in a harmful effect on the area's character and appearance, contrary to Policy GP ii of the Local Development Plan.

In terms of Heritage Assets, the Inspector noted that the turbine would be located 500 metres from the remains of Bishton Castle, which is a scheduled ancient monument. The Inspector considered that the impact of the turbine on the castle is limited by intervening features, including vegetation and in particular, the prominent complex of buildings at Castle Farm. With regards to the impact on the Llanwern Park, a Grade II historic park and garden and the Gwent Levels Landscape of Outstanding Historic Interest, the Inspector considered that the turbine would not have a significant adverse impact. Finally, with regards to the impact on the Parish Church of St Cadwaladr, a Grade II listed building, the Inspector noted that the turbine would stand on higher ground on the same foothill as the church and would therefore be viewed together from certain vantage points. In view of the above, the Inspector concluded that the turbine would cause limited harm to the setting of the castle and the church and would therefore be contrary to Policy SP9 of the Local Development Plan.

In terms of renewable energy benefits, the turbine would have a capacity of 900kW and is estimated to produce 2,332 MWh/yr, which is the equivalent of the consumption of 585 average Welsh households. Over its 25 year lifespan, it is expected to provide a saving of some 25,000 tonnes of carbon dioxide. In the context of the scheme's contribution towards the Welsh Government's objective of increasing renewable energy generation, the appellant points out that a recent decision by the UK Government to refuse 5 onshore windfarms in Mid Wales will harm the prospect of meeting renewable energy generating targets.

When formulating a conclusion of the proposal, the Inspector reviewed the main issues set out above and identified their weight in determining the appeal. The Inspector also noted that Policy CE10 of the Local Development Plan acknowledges the need to strike a balance between the harm that may arise from the renewable energy projects and their benefits in terms of energy production. In terms of the effect of the proposal on both the landscape and visual impact and heritage assets, the Inspector concluded that the harm identified weighs against the scheme. The Inspector notes that, despite the above, the scheme is acceptable in all other aspects. The Inspector finally took into account the scheme's benefit in terms of its potential contribution to renewable energy generation, which attracts significant weight to the determination of the appeal. However, the Inspector concluded that the potential renewable energy production benefits are not sufficient to outweigh the harm identified and that the appeal should be dismissed.