

Report

Planning Committee

Part 1

Date: 3 February 2016

Item No: 5

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Caerleon, Langstone and 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 and The Equality Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

An Equality Impact Assessment for delivery of the Development Management service has been completed and can be viewed on the Council's website.

Children and Families (Wales) Measure

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Wellbeing of Future Generations (Wales) Act 2015

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Planning (Wales) Act 2015 (Welsh Language)

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Crime and Disorder Act 1998

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: 3 February 2016

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0411
APPEAL TYPE: Written Representations
WARD: Caerleon
SITE: 19 Old Hill Crescent, Christchurch, Newport,
NP18 1JL
SUBJECT: Demolition of existing dwelling to allow
replacement dwelling, new access road and 2
additional dwellings
APPELLANT: Bill Pratt
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 25th June 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

Outline planning permission was sought for the demolition of an existing dwelling and the creation of a new access road, a replacement dwelling and two additional dwellings. The application contained details of the proposed access, layout and scale. Therefore, appearance and landscaping details are reserved for future determination.

The Inspector considered the main issues in the determination of this appeal to be the effect of the proposed development on the character of the area and the natural buffer between the village and Newport City, the adequacy of usable amenity space for future occupants of the proposed dwellings, the adequacy of the proposed access and its effect on highway safety, and the effects on trees.

With regards to the 'Character of Area and Buffer', the Inspector noted that the Council's first reason for refusal was an 'in principle' objection as part of the site lies outside the defined settlement boundary; the proposal would therefore use land designated as countryside, contrary to national and local plan policy. The Inspector noted that the settlement boundary along the rear of the properties does not follow a straight line and steps out to include extended rear gardens for the appeal property and one of its neighbours. The Inspector stated that although the proposed development would be within the settlement boundary, it would be set substantially further back than the existing houses. The Inspector considered that the proposal would be in a prominent position and clearly visible from a wide area of open countryside, thus having a strong urbanising effect on the countryside edge, detrimental to its local character and giving the impression of erosion of the open countryside buffer, between the village and the City of Newport. The Inspector also agreed with the Council's opinion that the scheme would be likely to set a precedent in the area, and the cumulative effect of several such developments would amount to substantial harm to the natural buffer and the character of the area.

The Inspector noted that the scheme would lie within the accepted extended curtilage of the appeal property, however whilst this counts in favour of the proposal, it does not mean that the development would be acceptable or desirable. Furthermore, the scheme would substantially exceed any development likely to be carried out with permitted development rights.

The Inspector therefore concluded that the proposal would be unacceptably harmful to the character of the area and to the natural countryside buffer between the village and the City of Newport. As such, it would be contrary to Local Development Plan SP5 and GP2 and to National Policy to protect the countryside and the character and appearance of the surrounding area.

With regards to the 'Amenity Space' the Inspector noted that the rear two proposed houses would be sited very close to the rear boundary and would provide very little private amenity space for future occupiers. The Inspector acknowledged the appellants view that adequate amenity space could be provided at the front of the houses. However the space would not enjoy much privacy and that an inadequate provision of outdoor space would be provided. The Inspector therefore considered the scheme to conflict with Local Development Plan Policy GP2.

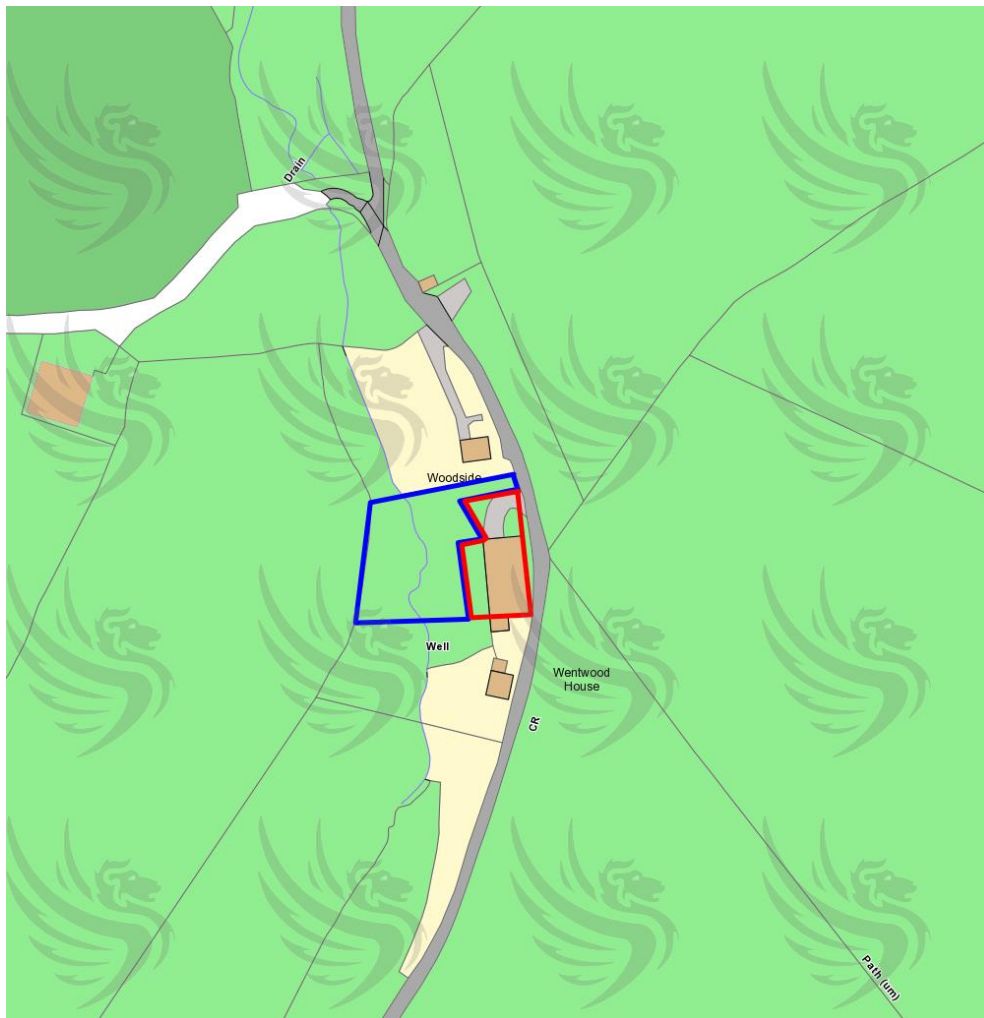
With regards to 'Access and Highway Safety' the Inspector acknowledged that the proposed access was insufficient, however the Inspector considered a condition could overcome this issue. The Inspector also considered that an adequate level of visibility at the junction with Old Hill Crescent would be achieved and that the proposal would not give rise to an increase in off-road parking demand. However, the Inspector did state that the new access would pass close to the side of 21 Old Hill Crescent and would therefore give rise to noise disturbance.

With regards to the effect of the proposal on trees, the Inspector noted from the site inspection that there are no trees of any merit likely to be affected by the scheme. The Inspector was therefore satisfied that no harm would be caused and there would be no conflict with policy.

In view of the above, the Inspector concluded that the proposed scheme would be contrary to Local Development Plan Policies SP5 and GP2 due to the harm it would cause to the character of the fringe of the countryside and the buffer between the village and the city of Newport. The Inspector stated that this 'in principle' objection is sufficient to warrant refusal on its own, however it is further reinforced by the failure to provide adequate private outdoor amenity space. For the reasons stated above, the Inspector concluded that the Appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 14/1127
APPEAL TYPE: Hearing
WARD: Langstone
SITE: Site adjacent to Wentwood House, Hendrew Lane, Llandevaud, Newport, NP18 2AB
SUBJECT: Demolition of existing workshop and the erection of a single new dwelling
APPELLANT: Kevin Watkins
PLANNING INSPECTOR: Iwan Lloyd
DATE OF COUNCIL'S DECISION: 27th January 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated



SUMMARY

Outline planning permission was sought for the demolition of the existing workshop and the erection of a single new dwelling; details of access were considered at this stage. All other matters were reserved for future determination.

The appeal site is located on Hendrew Lane, between Woodside and Wentwood House in the open countryside. The site comprises a lawful, however disused joinery workshop. The appellant identifies a fall-back position, in that the re-establishment of the B2 Use would be less desirable than a dwelling in this location.

The Inspector considered the main issue in the determination of the appeal to be whether there are material considerations sufficient to outweigh any conflict with local and national planning policies that seek to strictly control residential development in the open countryside outside settlement boundaries.

The Inspector notes that Local Development Plan (LDP) Policy SP5 would only permit development in the countryside where the use is appropriate, and respects the landscape character, and housing development, rural diversification and rural enterprise uses will only be appropriate where they comply with National Planning Policy. The appellant did not put a case forward to justify any of the above matters. The Inspector therefore considered the proposal contrary with LDP Policy SP5.

The Inspector stated that, the issue of whether the workshop use could be re-established is based on there being a reasonable prospect of the use being taken up. The appellant produced two lease agreements from April 2015 to March 2015, however neither was pursued. At the hearing, the appellants also indicated that the occupier of Wentwood House has expressed an interest in the workshop, however nothing more had arisen on this matter. Also at the Hearing, the Council provided a copy of marketing information describing the guide price as £300K in July 2014. The appellant asserts that the continuation of the workshop use would have resulted in him defending a case against enforcement action. This factor, the appellant claims, is why the building had not been occupied from 2009, until it was conclusively presumed lawful in 2014.

The Inspector acknowledged that the question over the lawful status of the building may have dissuaded potential buyers/tenants to take up the building from 2009-2014, however the issuing of the Lawful Development Certificate in July 2014 resolved that matter. The Inspector considered that the marketing information identified that the intention to continue the lawful use was not a viable option.

The Inspector noted that there would be harm to interests of local residents should the workshop use be re-established. However, other regulatory powers could be utilised to abate a statutory nuisance. On the issue of highway safety, the Inspector stated that Hendrew Lane is unsuitable for the workshop use, however, this does not mean it is unsafe and dangerous. The Inspector noted that there would be disturbance to local residents from vehicles, however was not convinced that this would be worse than when the workshop was actively used. These factors individually and cumulatively do not outweigh the need to protect the countryside from unjustified housing development.

The Inspector noted arguments on sustainability and visual harm and considered them to be neutral impacts having assessed the scale of the existing building and the proposal and the comparison between the traffic generation.

In view of the above, the Inspector concluded that the material considerations are not sufficient to outweigh the identified conflict with local and national planning policies that seek to strictly control residential development in the open countryside outside settlement boundaries. The appeal was therefore dismissed.

PLANNING APPLICATION APPEAL – PART ALLOWED/PART DISMISSED

APPEAL REF:	15/0325
APPEAL TYPE:	Hearing
WARD:	Allt-yr-Yn
SITE:	Northern Hey Stables, Brickyard Lane, Newport
SUBJECT:	Variation of conditions 1, 2 and 4 of planning permission 12/0047 (for the retention of the mixed use of the land for the siting of a mobile home, siting of 5No. touring caravans and the keeping of horses together with the retention of hardstandings, extension to stable block to create a utility/amenity room and the rebuilding of an ancillary building to create an amenity block) to allow for the siting of 9 No. additional touring caravans.
APPELLANT:	C Rogers
PLANNING INSPECTOR:	Melissa Hall
DATE OF COUNCIL'S DECISION:	14 th May 2015
OFFICER RECOMMENDATION:	Refused
COMMITTEE/DELEGATED:	Delegated



SUMMARY

This appeal related to an application to vary conditions 1, 2 and 4 of planning permission 12/0047 (for the retention of the mixed use of the land for the siting of a mobile home, siting of 5No. touring caravans and the keeping of horses together with the retention of

hardstandings, extension to stable block to create a utility/amenity room and the rebuilding of an ancillary building to create an amenity block) to allow for the siting of 9 No. additional touring caravans.

Condition 1 of planning permission 12/0047 relates to the use of the land for the siting of a mobile home and 5 No touring caravans. Condition 2 names the persons who should occupy the site, while condition 4 refers to a block plan and specifies that no caravan other than those shown should be stationed on the land.

The variation of condition application therefore sought to provide an additional 9 touring caravans at the site, which would increase the overall number of touring caravans at the site to 14 and 1 mobile home.

The appeal site is located to the east of J27 of the M4 and to the north of Glasllwch Crescent. The site has a frontage onto Brickyard Lane, which connects the site to Glasllwch Crescent.

The Inspector considered that the main issues related to whether the new occupants were gypsies in accordance with the definition provided in Welsh Government Circular 30/2007, the need for the provision of gypsy/traveller sites in Newport, the availability of alternative sites and the personal circumstances of the occupants, the effect on highway safety and the effect on the character and appearance of the area.

The Inspector assessed the evidence provided for each of the new occupants on the site and found that on the balance of probability it had not been demonstrated that they met the definition of gypsy/traveller in the circular.

The Inspector in her deliberation on the need, availability of alternative sites and the personal circumstances of the proposed occupants found that until the Hartridge Farm Road site is delivered there is a shortage of available gypsy/traveller sites and an unmet need. Given this situation the Inspector confirmed that she had to have regard to the additional family members of the appellant and paragraph 19 of Circular 30/2007 relating to the need to keep family units together and for opportunities for growth within family units. On this basis she found that the retention of three additional caravans for family members is exceptionally justified.

With regards to highway safety, the Inspector agreed with the Council that in relation to the provision of an additional 9 caravans and a total of 29 occupants that regardless of the gypsy status of the new occupants the highway conditions are sufficiently hazardous to resist granting consent for additional families to occupy the site. However, the Inspector had regard to the need for additional family growth and for them to be kept together and that the associated increase in traffic attributed to 3 additional caravans would be modest, and that there would be no conflict with policy GP4 of the LDP.

In respect of the final issue relating to the effect on the character and appearance of the area, the Inspector found that the siting of additional caravans did not have such an additional and harmful effect on the character and appearance of the surrounding area over and above that which is authorised.

In light of the above, the Inspector concluded that the new occupants at the site are not gypsies or travellers for planning purposes, and that they have no overriding personal needs or circumstances that justify their continued occupation of the appeal site on a permanent or temporary basis. However, she concluded that there was a need to accommodate family growth and allowed the provision of 3 additional caravans, which she felt would not have a detrimental impact on highway safety. The appeal was therefore allowed in part. Three

conditions were imposed relating to the use of the land for the siting of a mobile home and 8 No. touring caravans, names of 19 individuals and that no caravan should be sited to the south of the existing amenity block.