

Report

Planning Committee

Part 1

Date: 2 March 2016

Item No: 5

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Marshfield

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 | Avoid delaying the determination of applications unreasonably. | Development Services Manager |

* 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: 2nd March 2016

PLANNING APPLICATION APPEAL – PART DISMISSED/PART UPHELD

APPEAL REF: 15/0361

APPEAL TYPE: Written Representation

SITE: Church Lodge, Church Lane, Marshfield, Cardiff, CF3 2UF

SUBJECT: Appeal against the Council's refusal of planning permission for the retention of fencing and gates

APPELLANT: Ms L Dovey

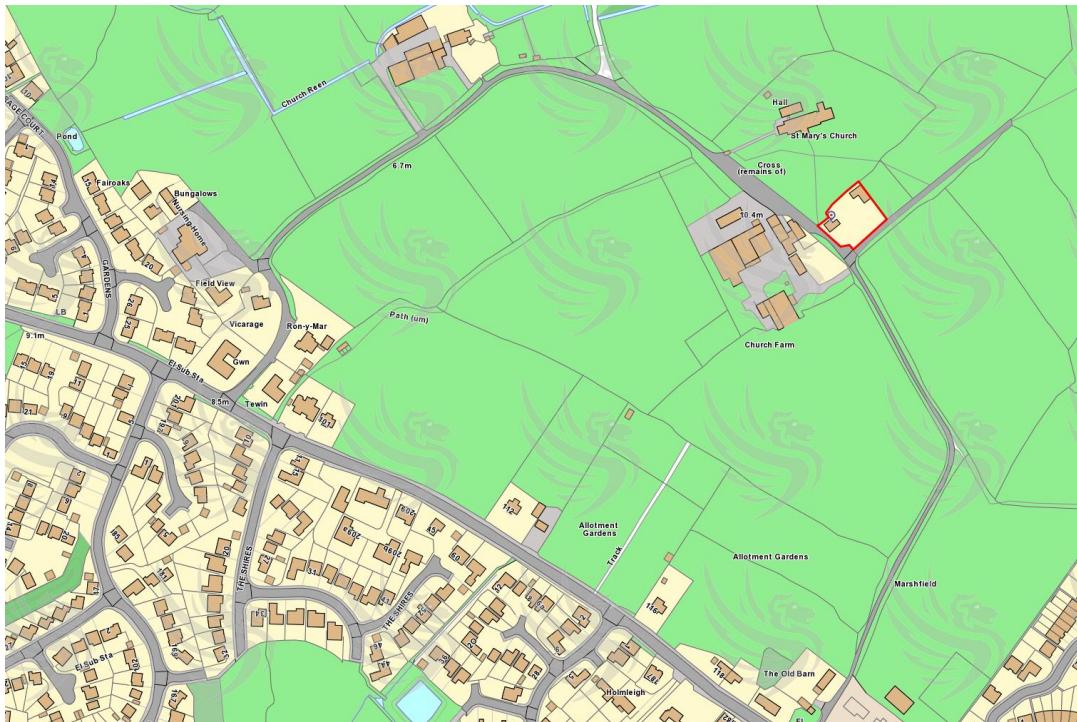
PLANNING INSECTOR: Anthony Thickett

DATE OF COUNCIL'S DECISION: 30th March 2015

OFFICER RECOMMENDATION: Refuse

COMMITTEE/DELEGATED: Delegated

DECISION: PART DISMISSED/PART UPHELD



SUMMARY

Planning permission was sought for the retention of fencing and gates at Church Lodge, one of a small group of buildings including the listed St Mary's Church, which lie to the east of and separated from the main village of Marshfield by fields. Church Lodge adjoins the southern boundary of St Mary's Church.

It was proposed to retain a fence consisting of curved top fence panels ranging from 1.3 metres to 1.8 metres and timber gates set between stone piers.

The application was refused on the grounds that the retention of the suburban style close boarded fencing and gates would have an unacceptable impact on the character and

appearance of this rural area and would have a detrimental impact on the setting of the Grade II* listed St Mary's Church and the amenity of surrounding occupiers. As such, the proposals were considered contrary to policies SP5, GP2 and GP6 of the Newport Local Development Plan 2011-2026 (Adopted January 2015).

The Inspector considered that the appearance and design of the fence is in keeping with a modern suburb rather than a historic rural setting. It contrasts sharply with the traditional walls enclosing the churchyard and Church Farm and comprises a feature wholly unsympathetic to its attractive rural surroundings. He also considered that the gates are set back from Church Lane, and subject to staining them a darker colour, are of a design more sympathetic to their surroundings. They are also separated from the church by Church Lodge.

The Inspector concluded that the appeal should be dismissed insofar as it relates to the fence and allowed insofar as it relates to the gates and piers.

APPEAL PART DISMISSED/PART ALLOWED

APPLICATION FOR JUDICIAL REVIEW

APPLICATION REF: 14/0337

SITE: Land North Of And Adjacent To M4, Began Road, Cardiff

PROPOSAL: Installation Of A Ground Mounted Photovoltaic (Solar Electricity) Plant (4.85mw), Including The Erection Of Transformers And Other Ancillary Equipment, Tracks, Drainage, Fencing, Cctv, Landscaping And All Associated Building And Engineering Operations, For Use For A Period Of Up To 25 Years Affecting Public Rights Of Way 400/61, 400/62 And 400/63. Amendment To Original Proposal, Comprising A Reduction In Site Area And Amendment To Proposed Access Point.

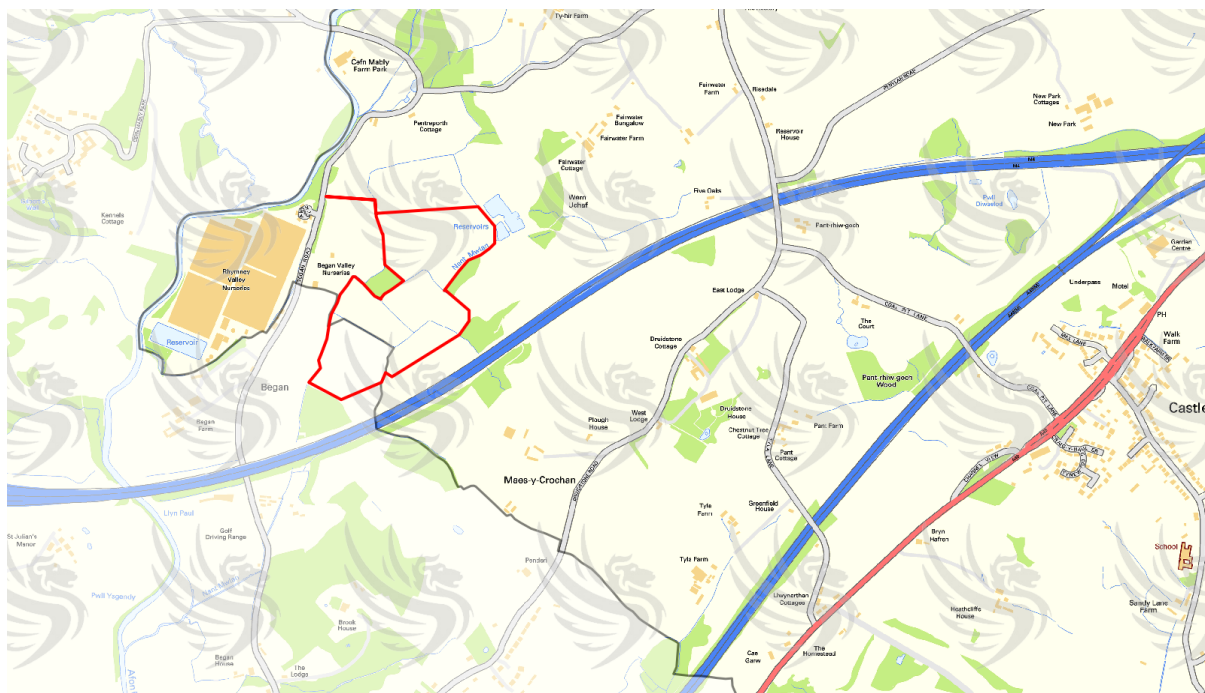
DATE OF COUNCIL'S DECISION: 22nd October 2015

OFFICER RECOMMENDATION: Granted with conditions

COMMITTEE/DELEGATED: Committee

DECISION: By Court not sufficient grounds to quash Newport Council's decision to grant planning permission.

DATE: 19th January 2016



SUMMARY

The Application related to a 4.85MW solar development on 17.5ha of agricultural land, comprising the installation of 19,400 no.250kW solar panels, the construction of 5 transformers, the construction of a switchroom, and ancillary equipment and fencing,

connected to the grid via a 33kV single circuit to the St Mellons primary substation approximately 2km away.

Following the decision of Planning Committee to grant planning permission in October 2015, the action group known as Keep us Rural applied for Judicial Review. A “Rolled Up” hearing (a fast tracked hearing which deals with the permission to review and the hearing in one process) took place in January 2016. The Judicial Review application was condensed into four grounds which were as follows :

GROUND 1 refers to an “Error of Fact” with regard to the need for an Environmental Impact Assessment. The Screening Opinion Application reference 13/1072, was incorrect in that the section which refers to Flooding states that the application site is not within a flood zone when part of the site was within a flood risk zone.

GROUND 2 refers to potential alternative sites Policy CE10 (Renewable Energy) of the Newport Local Development Plan Adopted January 2015 which states that large scheme “may” be more appropriately located outside a settlement boundary, if no “appropriate” brownfield sites exist. A sequential test was applied which only restricted its scope to four brown field sites and that the council rejected the proposed alternative Alexandra Dock site.

GROUND 3 Flood Risk, there was an “Error in Fact” in the assessment of flood risk. The Flood Consequence Assessment stated that there were no sewers which crossed the site which was incorrect. The flood risk arising from sewers was not considered.

GROUND 4 the decision was irrational in that the application put before Planning Committee had no access to the southern part of the site and in order for the application to proceed , a further access point would need to be created.

The Judges decision was that :

GROUND 1 whilst there was an error it did not justify an exercise of discretion to quash the decision. The error of fact was inconsequential in the determination of whether there were likely to be environmental effects from the proposed development. The outcome of the screening opinion would not have been substantially different.

GROUND 2 there was no error of law. The council rejected the Alexandra docks site and whilst the claimant disagreed with this judgment, there was no error of law.

GROUND 3 whilst at one point in the consideration of the planning application, there was an error in relation to the presence of sewers on the site, that error was perfected, the other criticisms over flood risks, were disagreements over planning merits.

GROUND 4 reached a decision without the inclusion of the short link road which interested parties sought to introduce at a late stage. There was no error in law and it was not unreasonable for committee to proceed to approve the application leaving to subsequent determination any application if needed, to be considered on its merits.

Outcome

The Judge did not quash the planning application and did not grant Keep Us Rural Leave to appeal. Keep us Rural have applied to the Court of Appeal for leave to appeal and the Court of Appeal are currently considering whether to hear the appeal.