

# Report

## Planning Committee

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### Part 1

Date: 6 April 2016

Item No: 6

**Subject** **Appeal Decisions**

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

**Author** Head of Regeneration, Investment and Housing

**Ward** Langstone, 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 016/2014.</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 Equalities 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.

### **Consultation**

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

### **Background Papers**

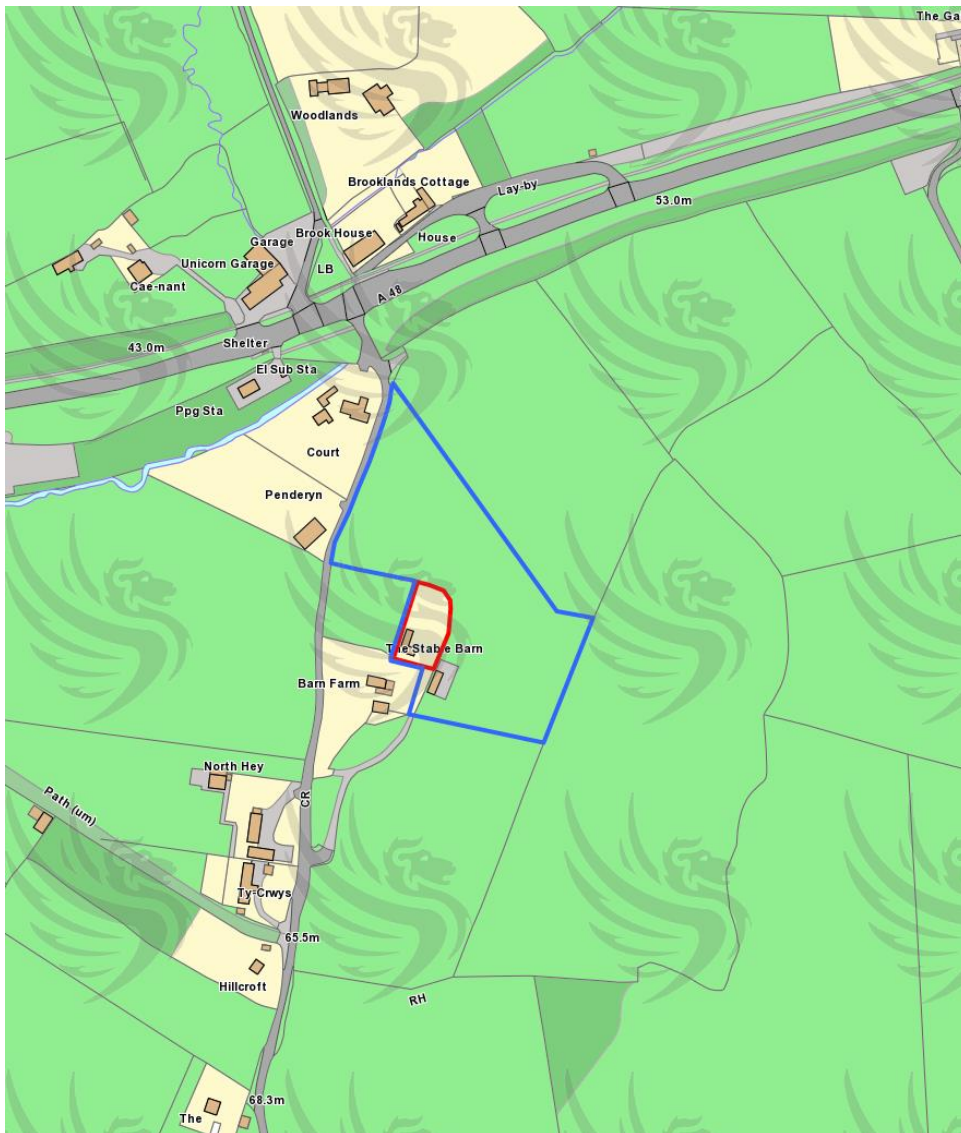
Not applicable

Dated: 6<sup>th</sup> April 2016

## PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0095  
APPEAL TYPE: Written Representations  
WARD: Langstone  
SITE: The Stable Barn, Llandevaud, Newport, NP18 2AD  
SUBJECT: Construction of a two storey front extension  
APPELLANT: Craig Finnerty  
PLANNING INSPECTOR: Alwyn B Nixon  
DATE OF COUNCIL'S DECISION: 6<sup>th</sup> May 2015  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated

## DECISION: DISMISSED



## SUMMARY

The appeal site is a former barn which has been converted to a dwelling and subsequently extended in previous years. The appellants proposed to construct a new two storey front extension. The Inspector considered the main issue in the determination of the appeal to be the effect of the proposal on the character and appearance of the host building and its surroundings.

The Inspector considered Policy H11 to be the most applicable in this appeal; Policies H10, SP5 and GP6 were also considered relevant in the determination of this appeal. The Inspector, taking into account the previous extensions to the property, considered that the proposal would further obscure the plan form and massing of the original barn and seriously undermine this aspect of the building's character which reflects its former purpose. The Inspector therefore concluded that the proposal would be contrary to Policy H11.

The appellant argued that the introduction of Policy H11 in the Local Development Plan (LDP) is unfair as there was no equivalent policy in the former Unitary Development Plan and that it should not be applied to a building which was converted prior to the adoption of the LDP. However the Inspector notes that the policy has been introduced following a full process of consideration and consultation and that it would not be coherent, consistent or effective to solely apply the policy to buildings converted after the adoption of the LDP.

In view of the above, the Inspector concluded that the proposal would undermine the character and appearance of the host building and the wider area. The development would conflict with Policy H11 and would undermine the wider development objectives reflected in Policies SP5 and GP6. For the reasons stated above, the Inspector stated that the appeal should not succeed.

## PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0393  
APPEAL TYPE: Written Representations  
WARD: Marshfield  
SITE: Land at Cefn Llogell Farm, Coedkernew, Newport, NP10 8UD  
SUBJECT: Construction of ground-mounted solar PV generation project (3.8 MW) and associated works  
APPELLANT: Mrs Sarah-Jane Fedarb  
PLANNING INSPECTOR: Clive Nield  
DATE OF COUNCIL'S DECISION: 4<sup>th</sup> November 2015  
OFFICER RECOMMENDATION: Granted with Conditions  
COMMITTEE/DELEGATED: Committee

## DECISION: DISMISSED



## SUMMARY

Planning permission was sought for the construction of a ground-mounted solar PV generation project (3.8MW) and associated works on Land at Cefn Llogell farm in the Marshfield ward. The appeal site comprises of 3 fields of some 7 hectares.

The Inspector considered the main issues in the determination of the appeal to be the effects of the proposed development on the best and most versatile agricultural land and on the visual amenities of users of the adjacent public rights of way, and the benefits of the scheme in terms of the generation of renewable energy.

With regards to the impact of the proposal on best and most versatile (BMV) agricultural land, the Inspector highlighted that Planning Policy Wales (PPW) says that the best and most versatile agricultural land should be conserved as a finite resource for the future and should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable.

The proposed development would be for a finite period of 25 years and would be reversible, as the solar panels would be supported by structures driven into the ground rather than with concrete foundations and these would be removable when use of the panels ceased. The Inspector considered that this would be less damaging to the land than many other types of development and has the potential to conserve its quality as BMV land for the future but there is still a need to avoid the use of BMV land if possible. In order to determine this, a rigorous and comprehensive assessment is needed.

Two studies were carried out, one into brownfield sites and one into sites on agricultural land of lower quality. Seven sites were identified and assessed for the former and ten for the latter, determining that none of the sites provided viable alternatives to the appeal site for a variety of reasons. The studies were limited to land within the administrative boundary of Newport. Apart from a list of criteria sought in a solar farm site, no information was provided to show why the 17 sites were selected for more detailed appraisal or why the search was limited to the administrative area of Newport City Council.

The Inspector concluded that the sequential assessments carried out by the Appellant lack rigour and did not provide compelling evidence that alternative brownfield or lower grade agricultural land is not available and viable and therefore does not justify the use of the BMV land on the appeal site.

The Inspector also considered the impact of the proposed development on the public right of way which runs along almost 700 metres of the northern boundary of the site. The appeal proposal would affect the PROW in several ways. Firstly, the existing hedgerow would be enhanced with additional planting and would be maintained at a minimum height of 3.5 metres in order to screen views of the proposed solar farm from the north. Secondly, a 2 metre high deer fence (with cameras) would be erected between the PROW and the solar panels, along with a hedge to screen views of the solar panels. Thirdly, the arrays of solar panels would extend to a height of 2.5 metres above ground level in views southwards from the PROW. The Appellant's landscape and Visual Impact Assessment assessed the visual impact on the PROW as "moderate adverse" once the additional planting became effective. However, the Inspector disagreed and considered that the impact would be more significant than this. The panels, hedge and fence would substantially obscure views towards the estuary and be detrimental to the open character of the PROW, which would become a narrow enclosed route, substantially changing the experience of users of the PROW and be detrimental to local amenity, contrary to the aims of LDP Policy GP2.

The Inspector also considered the benefits of the scheme in that it would provide a significant amount of renewable energy. This benefit was a material consideration of considerable weight.

In view of the above, the Inspector concluded that inadequate evidence was provided to justify the development of the best and most versatile agricultural land and the proposed scheme would adversely affect the character of the PROW.

The recent appeal decision for application 14/1275 for a solar photovoltaic panels (~10mwp) and associated works at Court Farm, Magor Road, also considered the impact of the development of the supply of BMV land. In this case, the Inspector concluded that as the proposed solar farm would have a life span of 25 years and the methods of construction and decommissioning can be controlled to ensure that there would be no loss of agricultural land quality once the development had been removed. The appeal was allowed in this case.

Since these decisions were made, the Minister for Natural Resources, Carl Sargeant, has advised that when taking decisions on local planning policies and individual development management decisions, consideration should be given to the overall context of helping to tackle climate change and delivering the sustainable development duty placed on all public bodies by the Well-being of Future Generations (Wales) Act. He also highlighted that whilst visual and amenity impact on surrounding communities and properties are important issues, planning decisions need to be taken in the wider public interest and in a rational way, informed by evidence, where these issues are balanced against other factors.