

Report

Planning Committee

Part 1

Date: 4 May 2016

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Langstone, Malpas, Rogerstone, Shaftsbury, Stow Hill

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

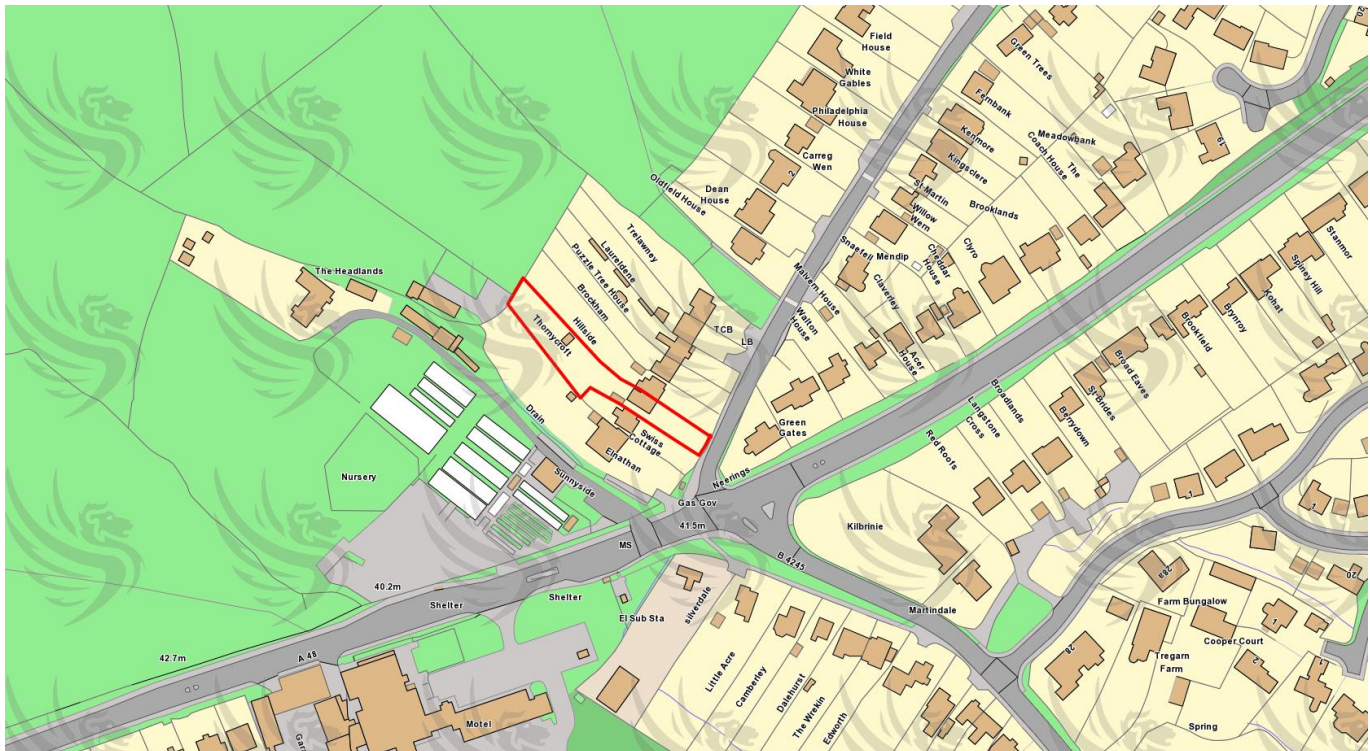
Not applicable

Dated: 4 May 2016

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/1274
APPEAL TYPE: Written Representations
WARD: Langstone
SITE: Thorney Croft, Tregarn Road, Langstone, Newport, NP18 2JS
SUBJECT: Erection of detached garage
APPELLANT: Gareth Pugh
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL’S DECISION: 10th December 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue in the determination of the appeal, would be the effect the proposed garage would have on the character and appearance of the surrounding area.

The appeal property is located close to the junction of Tregarn Road and the A48. It comprises a semi-detached, two storey dwelling, set well back from Tregarn Road. The property follows the same building line as the adjacent dwellings, providing a generous set-back from the highway.

The proposed garage would be located adjacent to the access to the site, behind a mature roadside hedge and would be finished in materials to match the house. The Inspector notes the absence of outbuildings close to the highways in the vicinity of the site and states that the nearby utility boxes are notable exceptions that do not alter the general character of the area.

The Inspector considered that, although the existing roadside hedgerow would mask much of the proposed structure from certain vantage points, its presence would nevertheless be readily visible. Furthermore, the Inspector considered that the screening qualities of the hedge cannot be assured in the long term and the reliance on such mitigation does not justify permitting this harmful development.

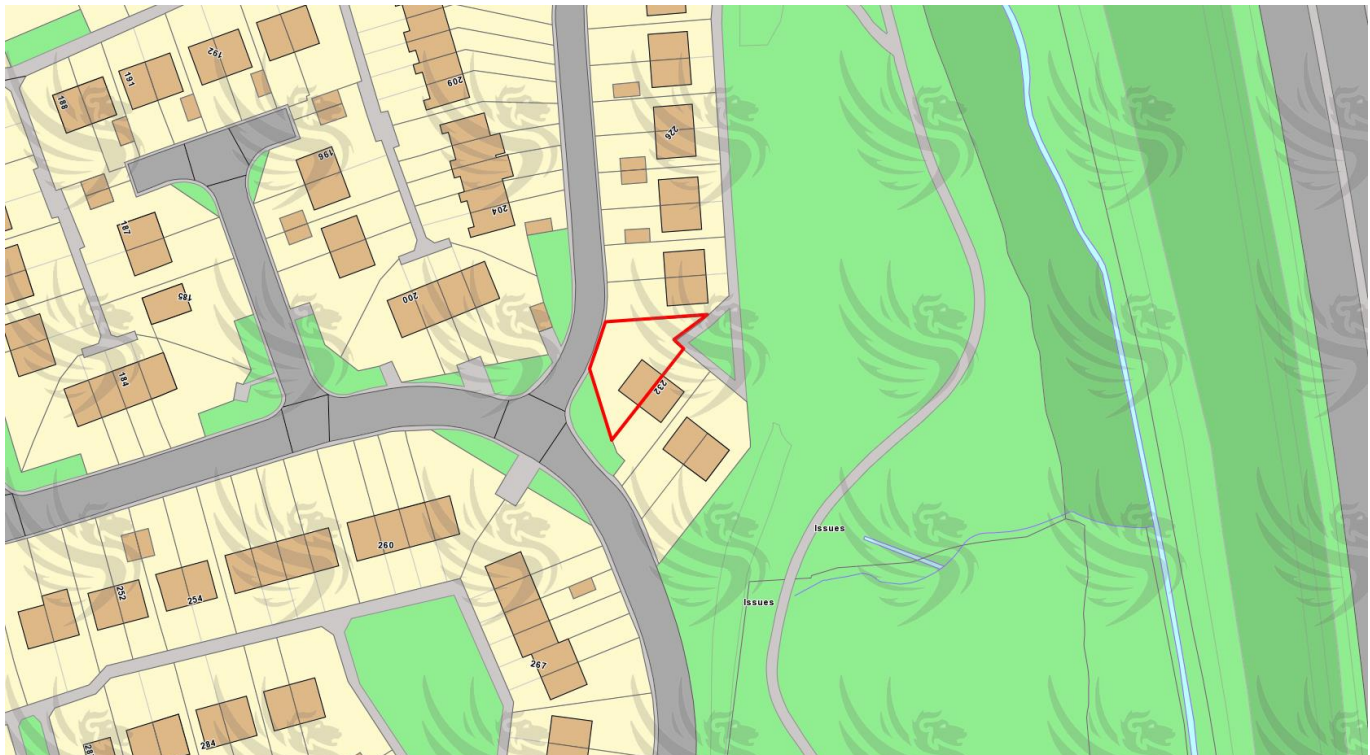
In view of the above, the Inspector considered that the introduction of the proposed garage would be an incongruous feature that would harm the character and appearance of the surrounding area. The proposal was therefore considered to conflict with Policy GP6 of the Newport Local Development Plan 2011-2026 which seeks to secure good design. For the reasons stated above, the Inspector concluded that the appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/1441
APPEAL TYPE: Written Representations
WARD: Malpas
SITE: 231 Pilton Vale, Newport, NP20 6LW
SUBJECT: Two storey side extension (resubmission of 15/0859)

APPELLANT: N. Duke
PLANNING INSPECTOR: James Ellis
DATE OF COUNCIL'S DECISION: 14th January 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the area and the effect of the proposal on the living conditions of the occupiers of No.230 Pilton Vale.

The appeal property is a three-bedroom semi-detached house in an established residential area, where there is a mix of terraced and semi-detached houses and dormer bungalows. The property occupies a corner plot at the junction of Pilton Vale and a cul-de-sac. It is considered the rear and side elevation fronts Pilton Vale, the principal elevation faces a pedestrian access, beyond which is an open area of grass.

The width of the existing house is 5 metres, the width of the extension would measure 4.2 metres; the roof of the extension would be set down from the ridge of the existing house by 0.3 metres. The first floor of the rear elevation of the proposal would be set back from the rear elevation of the existing house by 0.9 metres.

The Inspector notes that the Council's Supplementary Planning Guidance (SPG) states among other things that side extensions should be set back by at least one metre from the front elevation of the original building and that on corner plots, extensions should not breach the established lines in the street scene. The Inspector notes that the front building line of 231 and the attached house has already been breached by a single storey front extension to the neighbouring dwelling. The proposed front elevation would not be set back from the front elevation of the existing house. Given this and the width of the extension, the Inspector considered that the proposal, when seen with the existing house, from the public footpath and grassed area to the front of the house, would be read as a dominant and incongruous feature.

In terms of the rear elevation of the proposal, the Inspector considered that given the special relationship between the rear and side elevations of the proposal and the public highway, and the nature of the screening between the rear elevation and the main road, the set back to the rear elevation would be acceptable in rendering the proposal subservient to the existing house when seen from the highway.

In view of the above, the Inspector concluded that the proposal would result in material harm to the character and appearance of the area contrary to Policies GP2 and GP6 of the Newport Local Development Plan (LDP) 2011/2026 and guidance in the SPG.

The proposed front elevation would have a bedroom window at first floor level, facing the rear garden and first floor windows of No. 230 Pilton Vale. Views from the proposed bedroom window towards windows at the neighbouring property would be oblique and vice versa. Views from the proposed bedroom window towards the neighbouring gardens neighbouring property would, be screened by the existing garage located in the rear garden on No. 230. The Inspector considered that the proposal would not result in additional overlooking of neighbouring properties and therefore not be contrary to Policy GP2 of the LDP.

For the reasons stated above, the Inspector concluded that the benefits do not outweigh the harm caused, and the appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0872
APPEAL TYPE: Written Representations
WARD: Rogerstone
SITE: Limekiln Farm, Cwm Lane, Rogerstone,
Newport, NP10 9GN
SUBJECT: Erection of a Replacement Dwelling
APPELLANT: Mr E Donovan
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 1st October 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

Planning permission was sought for a replacement dwelling to replace the existing static caravan with attached extension at Limekiln Farm in the Rogerstone ward. The application was refused on the grounds that the proposed replacement dwelling, due to its scale and height would increase built form at the site to the detriment of the visual amenities of the

rural landscape contrary to Policies SP5 (Countryside) and H12 (Replacement Dwellings in the Countryside) of the Newport Local Development Plan.

The Inspector considered the main issues in the determination of this appeal to be the effect of the proposed development on the character and appearance of the surrounding area. The site is located in the open countryside and is in close proximity to the Monmouthshire and Brecon Canal Conservation Area, the Fourteen Locks Scheduled Ancient Monument and two listed buildings, Pensarn Bridge and a Lime Kiln.

The existing building is a modest structure of no architectural merit and is screened in part by trees on the canal side boundary and is seen as a subservient element in context of existing farm buildings and other residential buildings in the farm yard. For these reasons it currently has little impact on the prevailing rural setting.

Policy H12 allows for the updating of residential accommodation in the countryside, but in the context of allowing a modest increase in size – no volume increase of more than 30%. Volume increase of more than 30% can occasionally be permissible where they would not have a detrimental impact on the character and appearance of the surrounding area. In this case the proposed dwelling would lie in part on the footprint of the existing structure with a modest curtilage. It would be a taller and bulkier building with dormer features and a detached double garage. The proposed represents an increase in volume of 200%, 250% when including the proposed garage.

The Inspector considered that due to the modest size of the existing building any replacement dwelling would invariably be larger than 30% to due acceptable living standards and good design. However, these factors must be balanced with the impact of the proposal on the character and appearance of the setting. The overall extent and scale of built form was considered to be vastly disproportionate to the existing dwelling and because of its siting away from the existing cluster of dwellings in the farm yard, it would be visually dominant within its immediate setting. The proposal would substantially add to and consolidate existing built form and as a consequence would fundamentally change the character and appearance of the site and its rural setting.

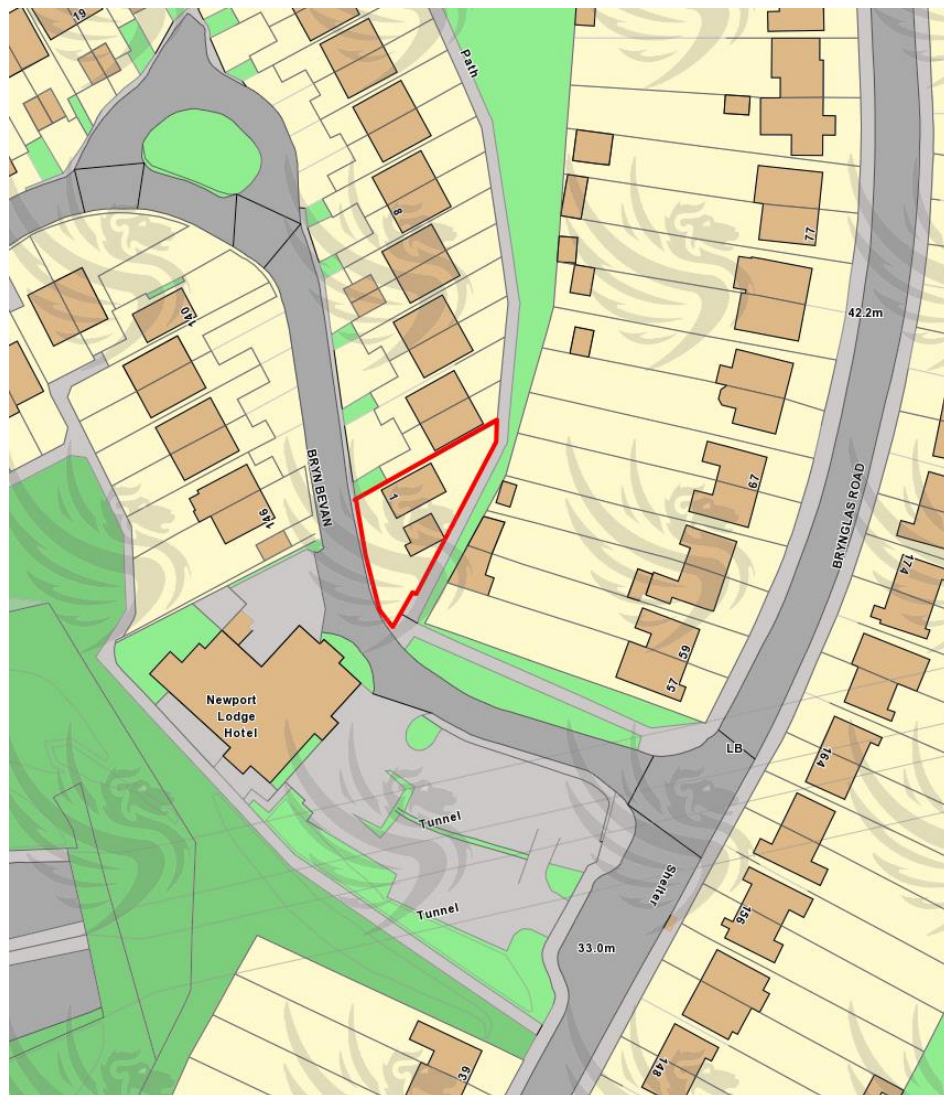
The Inspector also considered the impact of the proposals on the Conservation Area, Scheduled Ancient Monument and listed buildings and due to the distinct physical segregation between them, concluded that the heritage interests would not be unacceptably affected.

In view of the above, the Inspector concluded that the proposed scheme would be contrary to Local Development Plan Policies SP5 and H12 due to the harm it would cause to the character and appearance of the countryside and that the Appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 14/0991
APPEAL TYPE: Written Representations
WARD: Shaftsbury
SITE: 1 Bryn Bevan, Brynglas, Newport, NP20 5QH
SUBJECT: Retention of boundary fence to the front of the property
APPELLANT: B Strachan
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 21st May 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue in the determination of this appeal to be the effect of the fence on highway and pedestrian safety.

The fence is close boarded and 1.8 metres in height along most of its length. It runs along the front, side and rear boundaries of the property. At the front, it runs along the back of a narrow strip of land behind the roadside kerb and at the side and rear, it runs along the side of a public footpath.

The Inspector considered that the fence severely limits visibility for a vehicle leaving the property. The Inspector noted that there is a significant risk of collision with either a vehicle or a pedestrian travelling along the road. Consequently, the fence was seen to conflict with Policy GP4 of the Newport Local Development Plan (LDP).

The appellant argued that the fence replaced a number of tall trees/bushes that affected visibility in and out of the property. However, the Inspector stated that the trees/bushes could have been maintained to achieve a more acceptable arrangement and would have been more transient than a solid fence.

The appellant further argued the requirement of the fence for the maintenance of privacy and protection from anti-social behaviour. The appellant had also expressed concerns regarding personal health issues. After consideration of these issues, the Inspector did not consider them to sufficiently outweigh the significant risks to highway and pedestrian safety. The appellant finally argued the right for freedoms under the Human Rights Act 1998.

The Inspector noted that the objections to the fence as described above could not be overcome by granting planning permission subject to a condition and that the public interest can only be safeguarded by the refusal of permission. Furthermore it was considered that the dismissal of the appeal would not result in a violation of the appellants rights.

In view of the above, the Inspector concluded that nothing could outweigh the unacceptable risk to highway and pedestrian safety posed by the fence and that the appeal should be dismissed.

PLANNING ENFORCEMENT APPEAL – DISMISSED

APPEAL REF: E08/0010
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 14 Hill Street, Newport, NP20 1LZ
SUBJECT: Unauthorised Works to a Listed Building
APPELLANT: Beverley Jeanne Mann and Michelle Jarrett
PLANNING INSPECTOR: James Ellis
DATE OF COUNCIL'S DECISION: 19 November 2015
OFFICER RECOMMENDATION: Issue Listed Building Enforcement Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

Unauthorised works were undertaken at 14 Hill Street, a mid-19th century terraced property, listed for its group value with adjacent listed buildings. A Listed Building Enforcement Notice was served in response to the following unauthorised works:

- The removal of the first floor bay window with covered soffit and the ground floor window from the front elevation of the property and their replacement with hardwood casement windows;
- The removal of the stucco finish from the front elevation of the building and its replacement with pebbledash;

- The removal of a timber window in the front dormer and its replacement with a uPVC window and installation of uPVC cladding;
- The installation of rooflights;
- The installation of uPVC windows to the rear of the building; and
- The removal of a chimney stack to the rear of the building.

The LBEN requires these details to be reinstated.

The owner and occupier appealed the LBEN on the following grounds;

- Ground a – That the building is not of special architectural or historic interest;
- Ground b – That the alleged breach has not occurred;
- Ground d – The works were urgently necessary in the interests of health and safety; and
- Ground g - The requirements of the LBEN exceed what is necessary for restoring the building to its condition before the works were carried out.

The Inspector considered that the appeal on ground a should fail as the building has been listed for its group value and that prior to the unauthorised works being carried out, the evidence suggests that it would have had value in its own right as a distinctive urban terraced house retaining original character.

He also considered that the appeal should fail on ground b. The applicant argued that there was no evidence of a chimney at the property and failed to provide evidence to support this. The Council provided a photograph showing the property in 2001, where a chimney was in place. The inspector concluded that the chimney was removed following listing and the appeal on ground b fails.

The appellant appealed on ground d (that the works were urgently necessary on the grounds of health and safety) however later acknowledged that this was in error and intended to appeal against ground d as outlined in the Town and Country planning Act (that the works occurred so long ago enforcement action could not be taken). Unauthorised works cannot become immune from enforcement action and the appeal therefore fails on this ground.

The Inspector also considered the appeal in respect of ground g, that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. As the appellant did not suggest any lesser steps than those outlined in the LBEN and in light of the evidence, the Inspector considered that the requirement listed in the LBEN are necessary to restore the building to its condition before the works took place.