

Report

Planning Committee

Part 1

Date: 1 June 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 St Julian's, Victoria, Langstone, 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 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

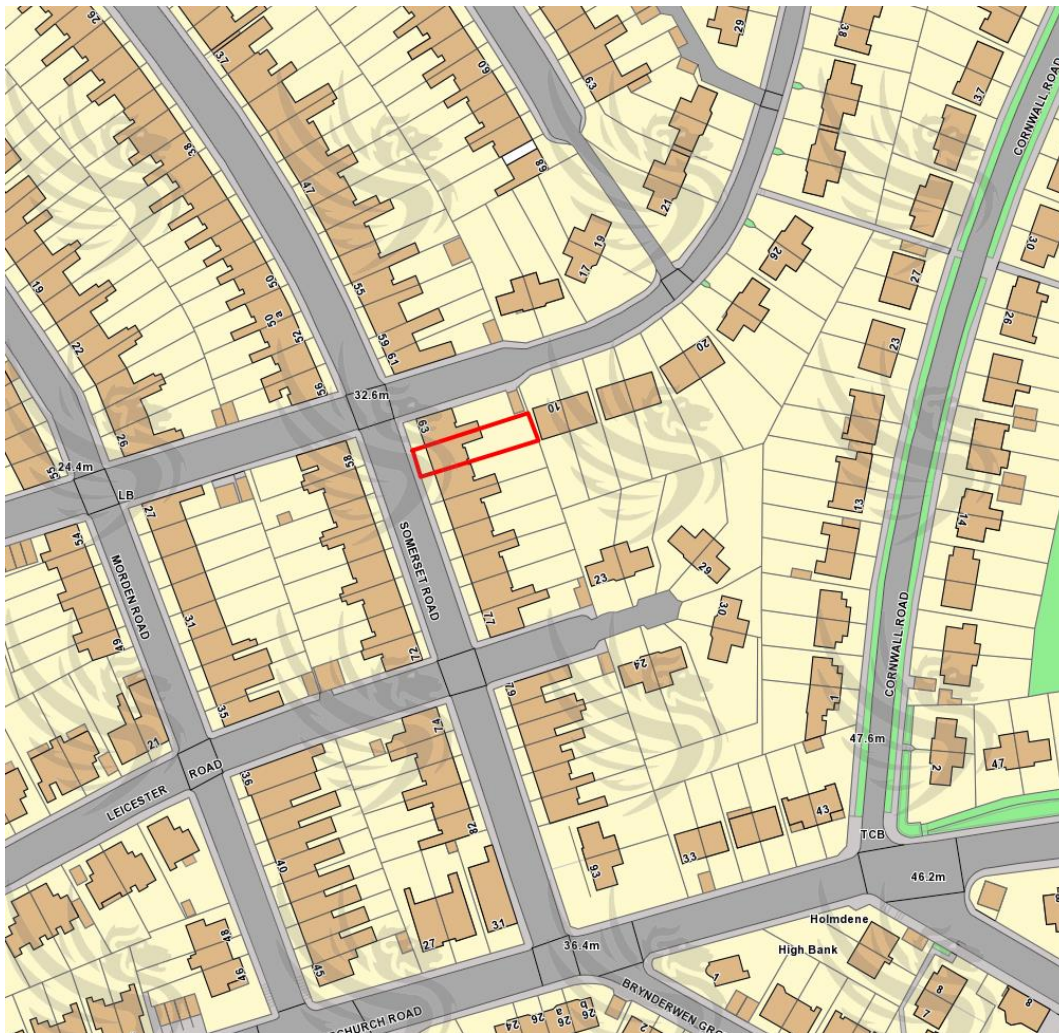
Dated: 1 June 2016

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: E13/0379 & 15/1008
APPEAL TYPE: Written Representations
WARD: St Julians
SITE: 65 Somerset Road
SUBJECT: Change of use from C3 residential to C2 children's care home
APPELLANT: Greenfields Care Group Ltd
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 8th October 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: E13/0379 – ALLOWED (Enforcement Notice Varied)

DECISION: 15/1008 - DISMISSED



SUMMARY

The property has been used to care for children/young adults, generally one to two at any one time since 2008. A retrospective application was received which sought to regularise the use of the dwellinghouse as a children's care home. The Application was refused and an Enforcement Notice was issued requiring the continued use of the dwellinghouse as a children's care home to cease.

The appellants appealed the refusal of planning permission and the Enforcement Notice on the following grounds:

- A – Planning permission should be granted;
- C – That there has been no breach of planning control; and
- G – The time to comply with the Notice is too short.

Firstly the Inspector discussed the matters related to ground c. The appellant argued that there had not been a material change of use and the use still fell within Class C3(b) defined as a 'Use as a dwellinghouse by not more than 6 residents living together as a single household (including a household where care is provided for residents).

The inspector notes that the outward appearance of the property gives no indication that it is used for child care purpose; the interior also has the appearance and character of a dwellinghouse. It was stated by the appellant that all parties took part in daily household activities, which the Inspector had no reason to doubt.

In determining whether the use of the premises fell within Class C2 (Residential Institutions) or Class C3(b), the Inspector considered the legal precedents submitted by each party. The Inspector was minded to agree that the carers are not resident to the appeal premises, even though they spend considerable amounts of time there. For this reason, the Inspector concluded that the occupants did not amount to a single household, and so the use did not fall within Class C3(b). The Inspector then went onto discuss whether the change of use is material. The Inspector noted that it is an established principle in law that fear of crime can be a material consideration in planning; however that fear has to be objectively justified rather than just perceived. Crime statistics were provided by the appellant to identify that police visits to the premises were not a result of activities relating to the children themselves. However, a number of local residents provided detailed information on numerous incidents relating to the behaviour of the children. The appellant argued that such behaviour could also take place if the house was occupied by a family, which the Inspector considered true. However the Inspector stated that it is not unreasonable to consider such issues more likely to occur if the house is used as a care home for vulnerable children. The Inspector therefore concluded that there has been a material change of use and the appeal under ground (c) should be unsuccessful.

Secondly, the Inspector considered the appeal under ground (a) and noted that the planning application was refused on two grounds, one being the impact on the character of the area and the increased fear of crime and anti-social behaviour and two, the effect on demand for on-street parking and associated effects on highways safety. The Enforcement Notice was issued for the same issues. In respect of the first issue, the Inspector noted that it has been previously concluded that the children's care home gives rise to a reasonable fear of crime and anti-social behaviour. Taking this into account, the Inspector concluded that the fear is well justified and is harmful to the character of the area and contrary to Policy GP2 of the Local Development Plan, due to its effect on local amenity.

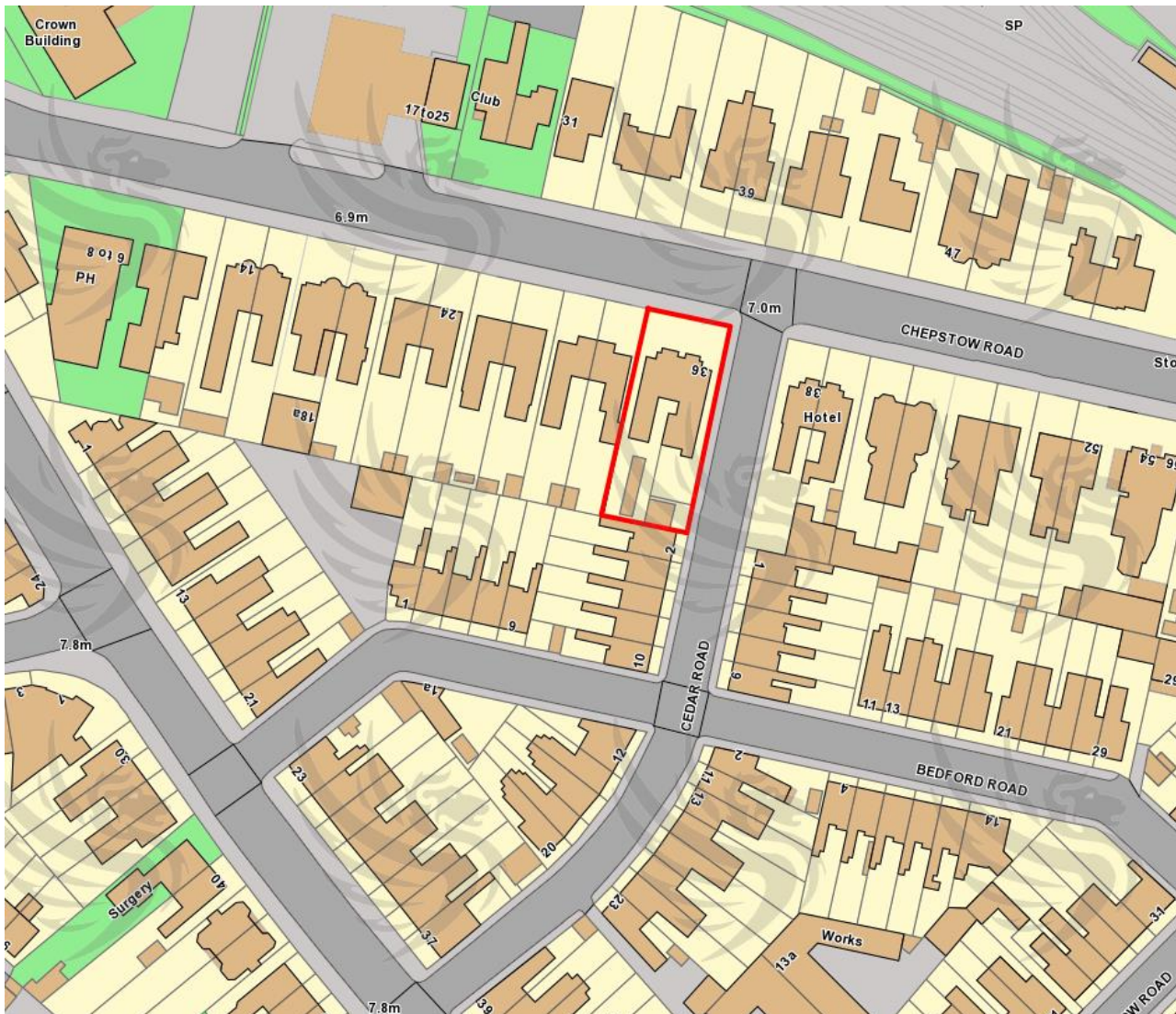
In respect of the second issue, the Inspector did not concur with the Councils view that the use would increase on-street parking pressure significantly more than should it be used as a dwellinghouse. Instead the Inspector took the view that, given the scale of the use, the parking demand generated would not be significantly different from that generated by a 4-5 bedroom dwelling. The Inspector therefore concluded that the Enforcement Notice should be upheld and the deemed application should not succeed.

The Inspector finally considered the appeal under ground (g). The Enforcement Notice specified a compliance period of 6 months, the appellant requested 18 months for alternative accommodation to be found for the children currently residing at the property. The Inspector was mindful of the vulnerability of the children and therefore considered 6 months too short and 18 months excessive. The Inspector instead considered 12 months an adequate timeframe for the use to cease; and the appeal succeeded under this ground.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: E14/0573
APPEAL TYPE: Written Representations
WARD: Victoria
SITE: Land at 34-36 Chepstow Road, Newport, NP19 8EA
SUBJECT: Change of use to hand car wash
APPELLANT: Ghulam Fareed Akhtar
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 2nd November 2015
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated

DECISION: ALLOWED



A hand car wash operates from the rear courtyard of the 34-36 Chepstow Road. The courtyard is accessed from Cedar Road, which is primarily a residential road. An Enforcement Notice was issued requiring the cessation of the hand car wash and the removal of associated equipment.

The Inspector considered the main issue in the determination of the appeal to be the effect of the car wash operations on the amenity of neighbouring residents due to noise and disturbance. The Inspector identified that the rear courtyard is not used for any associated car parking purposes and so offers an opportunity for an alternative purpose.

The courtyard is enclosed on all sides by high walls and fences and to the south by the gable end of No. 2 Cedar Road. The Inspector noted the type of equipment used to clean cars and considered them relatively quiet pieces of equipment. The Inspector noted that the general traffic levels give rise to a noticeable level of background noise and disturbance and concluded it unlikely that the car wash operations would cause noise and disturbance of a level to significantly affect neighbouring residents.

A recent appeal decision in connection with similar operations at the junction of Chepstow Road and Ringland Avenue was brought to the Inspector's attention. The decision demonstrated that the operations would disturb nearby residents. However, the Inspector did not consider the circumstances comparable to the current appeal.

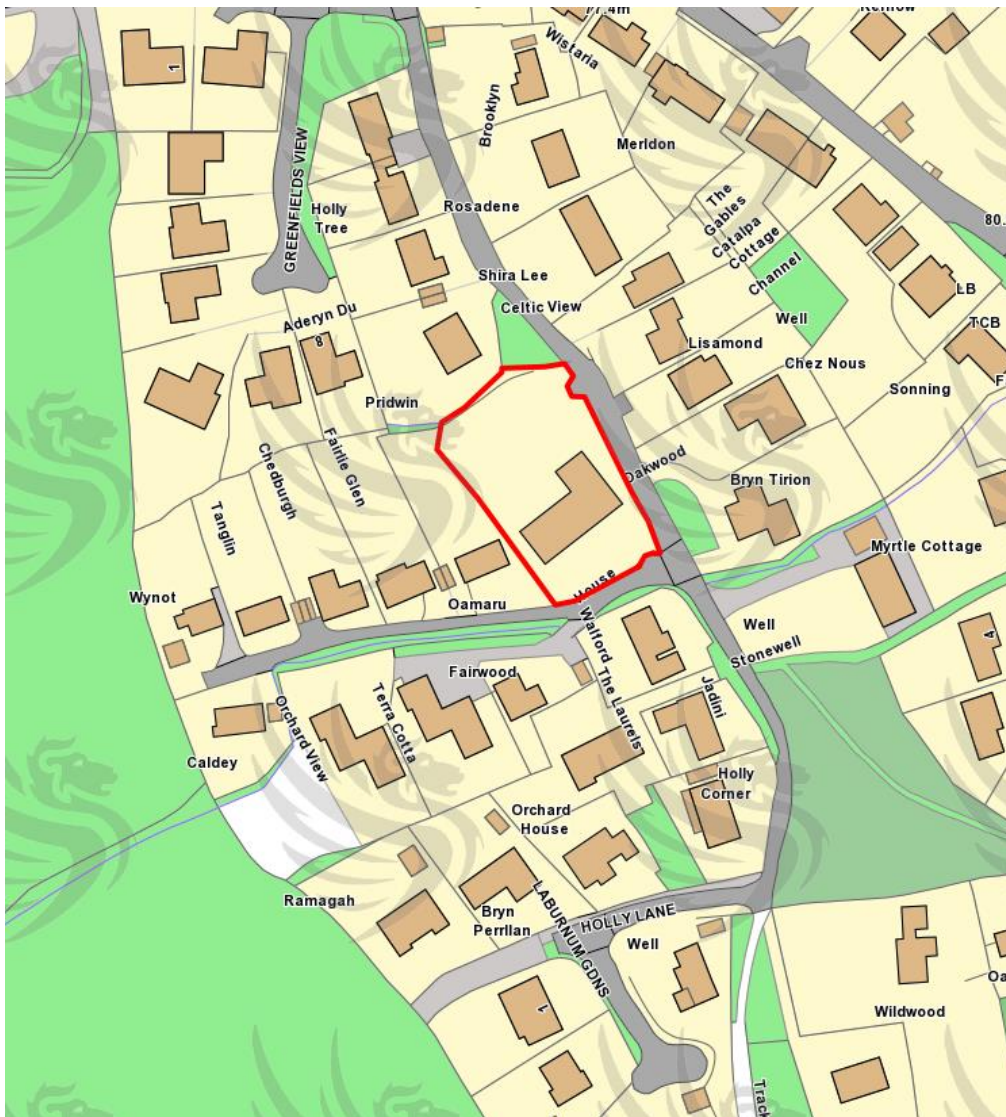
In view of the above, the Inspector considered that nothing outweighs the considerations that the car wash use is unlikely to cause significant harm to neighbouring amenity, or conflict with Policy GP2 (General Amenity) of the Local Development Plan. The appeal has therefore succeeded on ground a, with a condition limiting operation hours between 08:30 to 18:00 Mondays to Saturdays and not at all on Sundays and Bank Holidays.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0953
APPEAL TYPE: Hearing
WARD: Langstone
SITE: High View House, Lower Road, Llandevaud, NP18 2AE
SUBJECT: Construction of a land drainage system and the retention of existing ground levels

APPELLANT: M Evans
PLANNING INSPECTOR: M Hall
DATE OF COUNCIL'S DECISION: 15 October 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



This appeal relates to works which have been undertaken in the rear garden of High View House, comprising the 'construction of a land drainage system and the retention of existing ground levels, as an alternative to the works required by Enforcement Notice E13/0543'.

The Inspector initially made reference to a previous appeal decision concerning the aforementioned Enforcement Notice. It was noted in the decision that the works comprising the raising of ground levels,

including the filling in of a watercourse along the boundary, had a detrimental impact on the surface water drainage at the site, thus contributing to the flooding events at the neighbouring property (Pridwin).

In the determination of this appeal, the Inspector considered the main issue to be the effect of the development on surface water drainage with particular regard to flooding within the neighbouring property.

The Inspector firstly assessed the evidence provided by all parties with regards to the original land levels and drainage scheme. The appellant disputed that the watercourse previously lay within the appeal site in the manner suggested by the Council and other parties or that the alterations to the ground levels affect the drainage regime to the extent that it results in flooding of the neighbouring property. The appellant and a third party provided contradictory OS Plans outlining the location of the water course. The Inspector noted that it is possible that either the line of the drainage ditch or the property boundaries have been altered after the OS survey. The Inspector noted that it was evident from the site visit that both sides of the common boundary appear to have been altered at some point along its length. The appellant therefore asserts that the flooding in the neighbouring property may be as a result of the alterations to the altered ground levels within the boundary of Pridwin. The Inspector considered that given the contradictory evidence, no firm conclusion could be reached with regards to the previous drainage regime and the extent of excavation works which have been undertaken.

The Inspector noted that measures had been put in place by the appellant to deal with surface water run-off from the highway and third party land which crosses the appeal site. The appellant stated that a pipe connecting a highway gully which extended into the appeal site was broken and has been replaced. At the site visit, the inspector observed a pipe which crosses the appeal site and terminates in the garden of Pridwin had silted up and there was a clear indication of water flowing from the appeal site into the garden of Pridwin from a breach under the boundary fence. The Inspector therefore had no doubt that run-off from the appeal site is resulting in excess water pooling in the garden of the neighbouring property.

The proposal also included an open top French drain, however there was some uncertainty as to its exact position as the drain has been covered with earth and there was conflicting locations given for it's by the appellant and a third party member. The Inspector therefore had insufficient information to assess its effectiveness.

The appellant also submitted calculations of surface water storage capacity carried out by a structural engineer, who concluded that the scheme is adequate to deal with the surface water disposal. However, limited technical evidence was provided to support this claim.

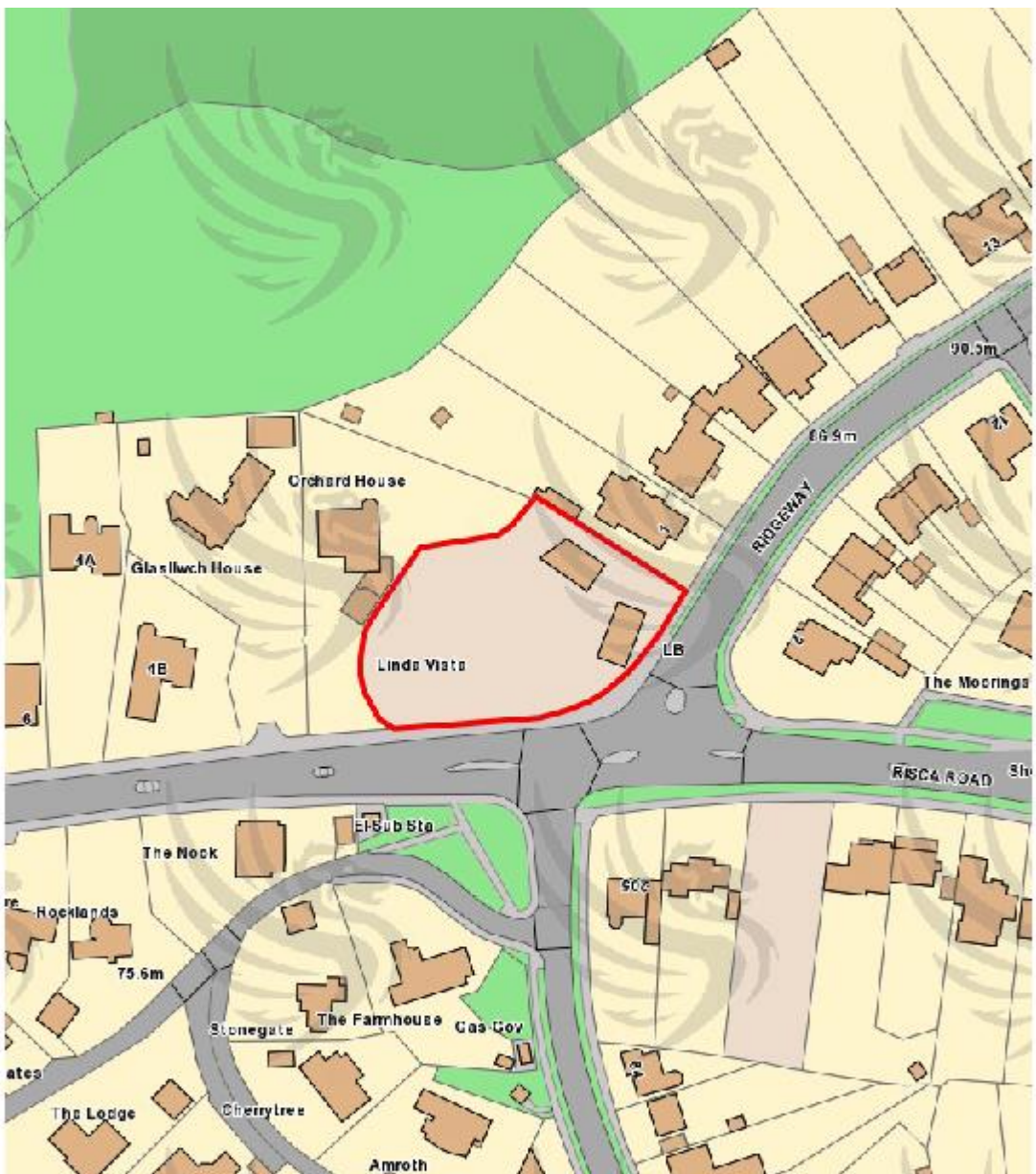
In view of the above, the Inspector was not convinced that the drainage scheme reduces the risk of flooding in the garden of Pridwin or that the risks are being managed. The Inspector therefore concluded that the drainage system to be unacceptable and contrary to Policies GP1, GP2 and GP6 of the Newport Local Development Plan and the appeal was dismissed.

PLANNING APPLICATION APPEAL – ALLOWED

APPEAL REF: 15/1342
APPEAL TYPE: Written Representations
WARD: Allt-Yr-Yn
SITE: Linda Vista, 2 Glasllwch Crescent, Newport, NP20 3SE
SUBJECT: Repositioning of glass balustrade to master bedroom (amendment to planning permission 11/0948)

APPELLANT: L Bigmore
PLANNING INSPECTOR: Paul Selby
DATE OF COUNCIL'S DECISION: 6th January 2016
OFFICER RECOMMENDATION: Granted with Conditions
COMMITTEE/DELEGATED: Committee

DECISION: ALLOWED



SUMMARY

An application was submitted to amend the location of the balustrade for a balcony approved under the original application for the property. The relocation of the balustrade would result in it being set back by

0.2 metres from the edge of the balcony recess, rather than 0.6 metres as agreed under the original application. The application was refused by Planning Committee due to concerns relating to loss of privacy at the neighbouring property of Orchard House.

The Inspector considered that the balcony is recessed behind the rear elevation of the house, preventing direct views to windows in the side elevation of Orchard House, but the position of the balustrade would allow direct views from the balcony into the neighbouring conservatory. The balcony is, however, some 23 metres from the conservatory, which is sufficient to avoid a significant level of perceived or actual overlooking. Furthermore, views into the conservatory would be at an oblique angle and possible only in close proximity to the edge of the balcony.

The rear elevation of Linda Vista is around 11 metres from the property boundary with Orchard House and some overlooking into the neighbouring garden is already possible from the balcony. The effect of the proposal would have a limited impact on the sightlines achieved from the balcony into the garden of Orchard House.

The Inspector concluded that the proposal would not significantly harm the living conditions of neighbouring occupiers with regard to privacy and overlooking.