

Report

Planning Committee

Part 1

Date: 7 September 2016

Item No: 06

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Head of Regeneration, Investment and Housing

Ward Ringland, Stow Hill and 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

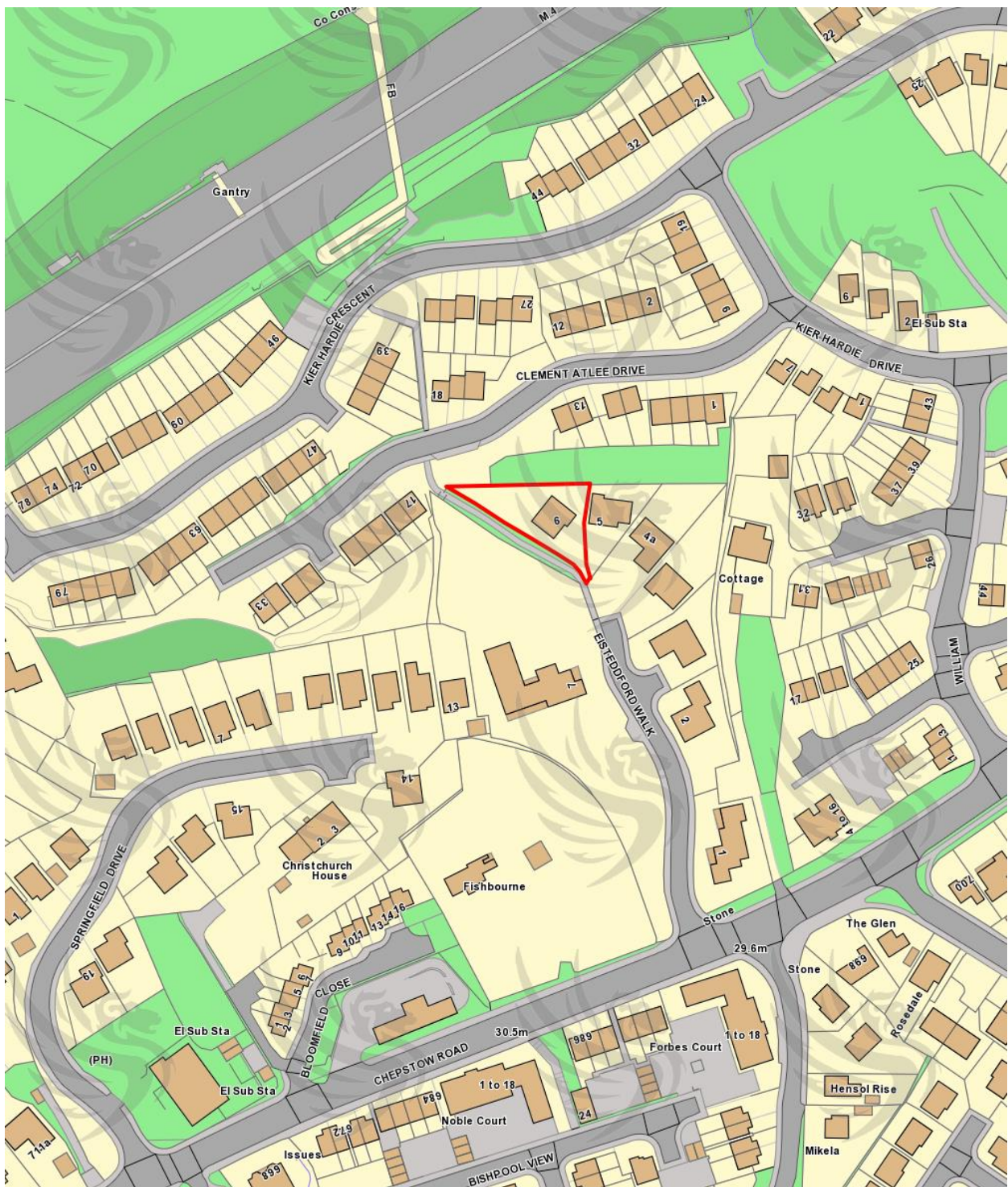
Not applicable

Dated: 3rd August 2016

PLANNING APPLICATION APPEAL

APPEAL REF: 15/1413
APPEAL TYPE: Written Representations
WARD: Ringland
SITE: 6 Eisteddfod Walk, Newport, NP19 9EU
SUBJECT: Proposed part change of use of residential premises (C3) to include kennels for dog breeding in part of the rear garden
APPELLANT: Anthony Chambers
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 14th January 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

A number of dog kennels have been erected in the rear garden for the purposes of breeding dogs on a commercial scale. The Inspector considered the main issues in the determination of the appeal to be the effect of the proposal on the character and appearance of the area, residential amenity and highway safety.

Eisteddfod Walk is a cul-de-sac containing a small group of substantial detached dwellings with a high degree of privacy and spaciousness. The appeal property occupies a corner plot adjacent to a footpath. The rear garden of the appeal site contains a number of dogs housed in wire pens. The site is well screened by established trees; public and neighbouring views into the rear garden are restricted. The Inspector considered that the scale of the ten dog cages, combined with the stark block work wall enclosing would give a dominant utilitarian appearance to this domestic rear garden. Furthermore, the requirement for general waste, feed and equipment storage, the proposal would exhibit an overwhelmingly commercial character at odds with the residential nature and appearance of its setting. The Inspector noted that, although the proposal would not be seen, does not justify development that would be visually inappropriate and detrimental to its context. The Inspector therefore concluded that the proposal would be harmful to the character and appearance of the area, contrary to the objectives of Policy GP6 of the Newport Local Development Plan.

With regards to residential amenity, the Inspector noted that up to ten dogs would be kept at the premises and bred on a two year cycle which could yield around 50 puppies annually. The Inspector noted that the dogs barked and whined during the site visit and the noise generated was significant in an otherwise quiet and private residential setting. The Inspector noted the proximity of the adjacent footpath and considered it likely that the dogs would be disturbed throughout the day and feeding and exercise times would create an especially noisy environment. Moreover, the keeping of the dogs would generate a substantial amount of waste and associated odours. The Inspector therefore considered that the proposal would cause unacceptable harm to the residential amenities of the area contrary to LDP policies GP2, GP6 and GP7.

With regards to highway safety, the Inspector noted that the appeal site benefits from a large forecourt parking area and a substantial garage. Traffic flows are light and pedestrians are largely segregated by a footpath. The Inspector considered the development would only generate small van deliveries which could be accommodated by the shared drive and off street parking area without undue disruption or harm to highway safety. The proposal would therefore comply with the objectives of LDP Policy GP4.

The Inspector considered the proposal contrary to Policies GP2, GP6 and GP7 of the LDP. The appeal was therefore dismissed.

PLANNING APPLICATION APPEAL

APPEAL REF: 16/0116
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 9-12 Commercial Street, Newport, NP20 1SJ
SUBJECT: Retention of 1No. internally illuminated fascia sign, 1No. internally illuminated projecting sign and 1 No. poster sign
APPELLANT: SDI (Newport) Ltd
PLANNING INSPECTOR: Richard E Jenkins
DATE OF COUNCIL'S DECISION: 6th April 2016
OFFICER RECOMMENDATION: Part grant/Part refuse
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

A retrospective application was submitted for the retention of an internally illuminated fascia sign, an internally illuminated projecting sign and a poster sign to the commercial property at 9-12 Commercial Street, currently trading as Sport Direct. The adverts in question are sited on the well-detailed stonework side elevation of the building on Corn Street and relate to the basement level gymnasium.

The Council did not take issue with the poster sign, but refused consent for the fascia and projecting signs as a result of their bulky design, positioning, materials and means of illumination, which are unsympathetic to the visual amenities of the host property and the surrounding Conservation Area. The projecting sign was also considered unacceptable in terms of public safety due to its insufficient height above the level of the ground below.

The Inspector noted that the fascia sign partially obscures the stone façade which contributes a great deal to the design of the building. For this reason, and coupled with the contemporary design and its prominent siting, he concluded that it is unsympathetic to the architectural detailing of the host property and fails to respect the wider context of the Conservation Area and setting of the neighbouring Listed Building and, as a result, causes harm to the character and appearance of the area.

Similarly, the Inspector considered that the projecting sign, by virtue of the scale of its projection, use of materials and means of illumination, represents a prominent and obtrusive feature within the street scene. He concluded that it is unsympathetic to the visual amenities of the host property, the setting of the neighbouring Listed Building and the character and appearance of the Conservation Area.

He noted that the sign has been installed in excess of the 1.8m in height above the ground level as specified on the drawings, and it therefore does not pose a threat to public safety. Nevertheless, the Inspector concluded that the signage had an unacceptable impact on amenity. The appeal was therefore dismissed.

PLANNING APPLICATION APPEAL

APPEAL REF: 16/0117
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 9-12 Commercial Street, Newport, NP20 1SJ
SUBJECT: Retention of replacement door and roller shutter
APPELLANT: SDI (Newport) Ltd
PLANNING INSPECTOR: Richard E Jenkins
DATE OF COUNCIL'S DECISION: 7th April 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: ALLOWED



SUMMARY

A retrospective application was submitted for the retention of a replacement door and roller shutter to the commercial property at 9-12 Commercial Street, currently trading as Sport Direct. The shutter and door in question are sited on the well-detailed stonework side elevation of the building on Corn Street and relate to the basement level gymnasium.

The Council did not object to the replacement door, but found that the solid style roller shutter was unacceptable by virtue of its design and appearance, as it would have a detrimental impact on the visual amenities of the host property, the street scene and the character and appearance of the Conservation Area.

The Inspector considered that the scale of the entrance in question is modest relative to the other openings within the wider street scene, and therefore did not consider the entrance to be a prominent feature on Corn Street. In addition, the shutter is set back from the building's elevation, meaning that it is not visible from longer vistas, and that its solid design would only be visible when the shutter is closed.

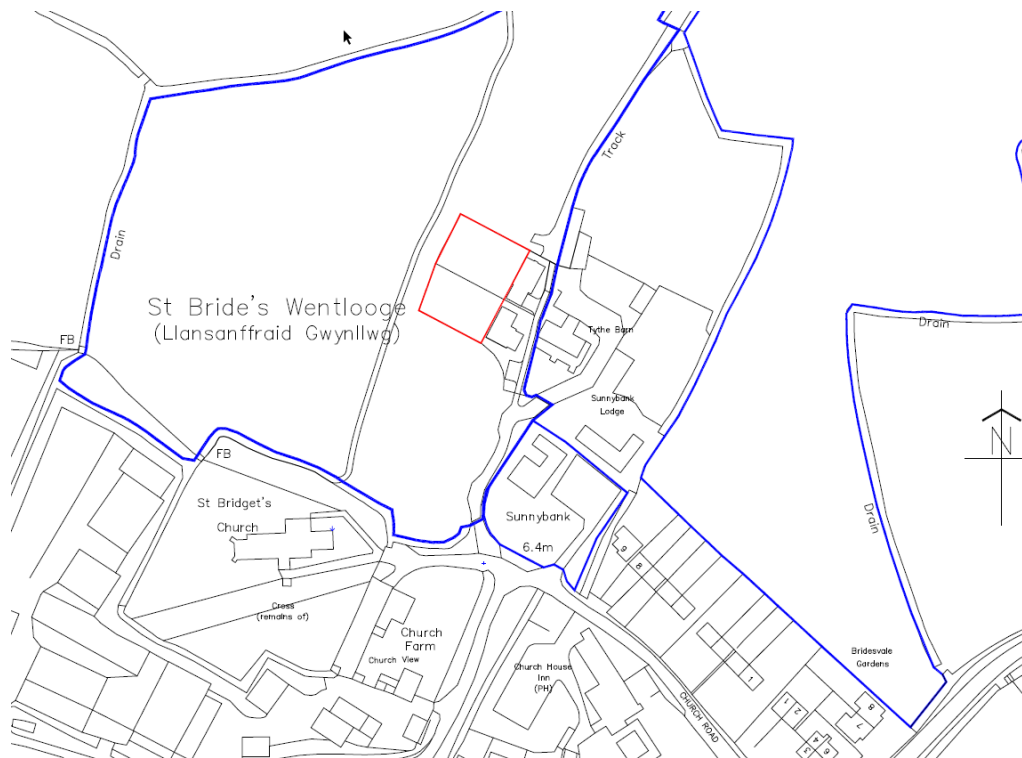
The Inspector concluded that, due to the modest nature of the opening and the set-back from the elevation, the roller shutter would not be a discordant or incongruous feature relative to the host property or street scene, and was therefore satisfied that it would also preserve the special interests of the nearby

Listed Buildings and the character and appearance of the Conservation Area. The appeal was therefore allowed.

PLANNING APPLICATION APPEAL

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| APPEAL REF: | 15/1033 |
| APPEAL TYPE: | Written Representations |
| WARD: | Marshfield |
| SITE: | Land west of and adjacent to Tithe Barn, Church Road, St Brides Wentlooge, Newport. |
| SUBJECT: | Retention of change of use of land to form residential curtilage for 2 No. dwellings permitted under application 13/0658 |
| APPELLANT: | EVOL (Wales) Ltd |
| PLANNING INSPECTOR: | Richard E Jenkins |
| DATE OF COUNCIL'S DECISION: | 14 th October 2015 |
| OFFICER RECOMMENDATION: | Refused |
| COMMITTEE/DELEGATED: | Delegated |

DECISION: DISMISSED



SUMMARY

An application was submitted to regularise an area of curtilage that was created to serve 2 No recently erected dwelling houses in the village of St Brides. Due to the proximity of the houses to the edge of the settlement boundary, the houses were originally granted permission with only very small back gardens, and the amenity areas were to be provided at the front and side of the dwellings. A retrospective change of use of a large section of land to the rear of these properties was sought, with the land in question adjoining the dwellings, but being outside of the defined settlement boundary, in the Green Wedge and a Special Landscape Area (SLA).

The Council refused permission for the development due to its detrimental impact on the character of the area and that it represents an urban intrusion into the countryside. In contrast, the appellant's case was that the extension of the garden areas does not cause material harm to the character of the area and

that the settlement boundary and green wedge designations were originally drawn to correspond with a reën that has subsequently been relocated to facilitate the development of the two dwellings. The appellant contended that the relocation of this reën justifies an extension of the residential amenity areas because the defined settlement and green wedge boundaries no longer correspond to 'defensible boundaries'.

The Inspector acknowledged that the reën no longer corresponds with the settlement/green wedge/SLA boundary, but did not consider that this fact warrants such an extension of the amenity areas, which amount to some 28m depth and 1100m² in area. With regard to the 'limited extensions' exception to the definition of 'inappropriate development' in Planning Policy Wales, the Inspector considered that such an area could not be considered limited in scale in this context.

The Inspector found that the land benefitted from an open nature and unspoilt character and that there would be an inevitable change in its character if the appeal were allowed, not least because it would be impossible to control the use of residential paraphernalia. In addition, he considered that the land has a greater affinity to the open countryside to the west, than it does to the built form which is within the settlement boundary, and also that the day to day use of the land would have an incremental urbanising impact that would conflict with the prevailing rural character of the open countryside, running contrary to the purposes of including it within the Green Wedge.

The Inspector concluded that, for the reasons outlined above, the development is contrary to policies SP5, SP7, SP8 and GP2 of the Newport Local Development Plan 2011-2026 (Adopted January 2015) and Planning Policy Wales (Edition 8, January 2016) and decided to dismiss the appeal.