

Report

Planning Committee

Part 1

Date: 5 October 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 Llanwern, 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: 5 October 2016

would be visually unattractive and would be out of scale and character with the modest and simple proportions of dwellings within its immediate context.

The Inspector noted that the proposal would increase the height and bulk of the existing dwelling. The enlarged dwelling would mainly face a blank side elevation of the adjoining property, 'Applewood'. The main garden space for 'Applewood' would not directly adjoin the proposed extension. There would therefore not be an unacceptable overbearing impact arising from the additional height and scale of the proposal. Similarly, the proposed windows facing 'Applewood', would be obscurely glazed, preventing overlooking of the neighbouring garden. With regards to the effect of the proposal on other neighbouring properties, namely 'Lowmas' and 'The Willows', the Inspector considered there to be adequate separation distances to allow for an acceptable relationship between the dwellings.

For the reasons stated above, the Inspector considered that the proposal would cause material harm to the character and appearance of the area. The proposal would be contrary to Local Development Plan Policies GP2 and GP6. For the reasons stated above, the appeal was therefore dismissed.

JOINT PLANNING APPLICATION AND ENFORCEMENT NOTICE APPEAL

LPA REF: 15/0479 and E12/0189
APPEAL TYPE: Hearing
WARD: Marshfield
SITE: YARD TO EAST OF AND ADJACENT TO TON-Y-PIL FARM, BROADSTREET COMMON, PETERSTONE WENTLOOGE, CARDIFF, CF3 2TN
SUBJECT: THE CHANGE OF USE OF LAND FOR THE SITING OF 4NO. CARAVANS FOR USE AS A GYPSY AND TRAVELLER SITE
APPELLANT: Mr A Cassidy
PLANNING INSPECTOR: Melissa Hall
DATE OF COUNCIL'S DECISION: 16 July 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISIONS: DISMISSED WITH VARIATIONS TO ENFORCEMENT NOTICE



SUMMARY

History

The land in question was granted planning permission for a stable block in 1999, which was subsequently amended under another application in 2000. A 2004 application was refused for the change of the use of the land as residential curtilage and retention of a static caravan, a development which an enforcement notice was served against in 2005. The site was then purchased by Mr Cassidy in the same year. A similar retrospective application was made in 2007 (07/1450) for the retention of the use of land as a residential caravan site and a static caravan, permission for which was refused. An appeal was lodged against that refusal, where an inspector granted temporary planning permission for a period of 3 years as the unmet need, lack of available alternative accommodation and the expectation that the Council would have a clearer view of its Gypsy and Traveller needs at the end of the UDP period weighed in favour of the development being granted temporary permission. Temporary permission expired on 23 December 2011.

Due to the continued residence of the site past the expiration of temporary permission, the Council undertook enforcement investigations and action against the unauthorised use (E12/0189). A retrospective application was submitted under reference 15/0479 for the retention of the use of the land as a Gypsy and Traveller site, which was subsequently refused. The reasons for refusal are as follows;

- 1) The proposal constitutes an inappropriate form of development and adversely affects the openness of the Green Belt.
- 2) Insufficient documentary evidence has been provided to demonstrate that there are very exceptional circumstances that would justify the proposal within this countryside location.
- 3) The provision of a 1.8m high fence around the perimeter of the site is an incongruous feature which has a detrimental impact on the character and appearance of this semi-rural landscape and prejudices the open nature of the Green Belt.
- 4) The tests outlined in Section of Technical Advice Note 15- Development and Flood Risk (2004) have not been complied with and the application has failed to demonstrate that the risks and consequences of flooding can be acceptably managed.
- 5) The proposal results in an intensification of the use of an access with inadequate visibility at the junction with the B4239 to the detriment of highway and pedestrian safety.
- 6) Insufficient information has been provided to demonstrate that the site cannot be connected to the public foul sewer and if no connection can be made there is sufficient capacity within the cesspit/septic tank.

An enforcement notice was then served on the unauthorised development which required the owner, within 6 months, to;

- Cease the unauthorised use of the site for residential purposes,
- Remove all caravans, structures, materials and equipment brought onto the land in connection with the use, including the amenity block, the wooden summerhouse and the c1.8 metre high close boarded fence, and restore the land to its condition prior to the breach having occurred, and
- Plant a hedge along the northern edge of the yard, comprising of native hedge species in accordance with an attached Hedge Planting Scheme.

This appeal was lodged against the refusal of planning permission (15/0479) and the issuing of the enforcement notice (E12/0189). The appeal was made on ground A (that planning permission should be granted for the development) and G (that the compliance period specified in the notice falls short of what should reasonably be allowed).

Considerations

The Inspector found the main considerations for the appeal to be;

- a) Whether the occupants of the site are Gypsies for the purposes of planning policy,
- b) Whether or not the development is inappropriate development in the Green Belt, and if so, whether there are exceptional circumstances which outweigh that harm, or any other harm that might be caused,
- c) The effect of the proposal on the character and appearance of the area,
- d) The effect on highway safety,
- e) Whether the site can offer safe conditions because of the risk of flooding,
- f) Whether the site can be adequately drained,
- g) The need for gypsy/traveller sites and availability of alternative sites, and
- h) Personal circumstances.

a) Gypsy status

Although the authority did not raise doubt on whether or not the occupants of the site were gypsies for the purposes of the definition in circular 30/2007 during the determination of the application, doubt was raised following vague responses to the planning contravention notice (PCN) and the significant gaps in occupation of the site. Evidence was provided to the Inspector and heard at the hearing which indicated that some of the site's occupants had cited a bricks and mortar address in Pinner for convictions, used this address for mail and were on the Electoral Roll at this address, and that some responses on the

PCN were not correct. However, taking in to account all information available, the Inspector was satisfied that, on the balance of probability, the occupants do follow a gypsy lifestyle.

b) Inappropriate Green Belt development

The Inspector noted that the site lies to the rear of a row of dwellings in Peterstone Wentlooge, on land which lies within the Green Belt between Cardiff and Newport. Planning Policy Wales (PPW) makes it clear that Green Belts are noted for their openness and permanence, with development that would serve to diminish those characteristics representing 'inappropriate development'. Further Circular 30/2007 states that Gypsy sites are likely to be inappropriate in such areas.

There was common ground in the appeal as the appellant did not disagree that the development represents 'inappropriate development', although they did dispute the extent of the harm.

The Inspector notes that the site had a degree of immediate visual enclosure, but also that the site is clearly visible from the B4239 and from the sea wall/coastal path; as a result, the site is readily apparent as a further encroachment into the countryside, more so when the touring caravans return to the site. Despite the fact that the hardstanding and 1.2m high fence are now lawful and have an effect on the openness, the effect on the openness of the Green Belt as a result of this development is considerably greater. On this point, the Inspector concludes that the development considerably reduces, and causes significant harm to, the openness of the Green Belt, in conflict with the aim of the Green Belt policy to prevent urban sprawl and keeping the land open.

c) Character and appearance

LDP policy SP5 seeks to restrict new development to uses appropriate in the countryside. The Inspector noted that a mature hedge has been removed from the front boundary of the site and replaced with a 1.8m high timber fence, which has an unfortunate visual impact, although the appellant indicated a willingness to remove the fence and re-plant a hedge along the boundary. Nevertheless, the Inspector considered that allowing sporadic unjustified development which encroaches into the open countryside would undermine its character.

d) Highway safety

The Inspector noted that the B4239 has no footways or street lighting in this section, and that visibility to the north east is restricted by the horizontal alignment of the road and overhanging vegetation. The Council's concern relates to visibility for vehicles emerging from the site on to the B4239. In a previous appeal decision on this site, the Inspector noted that the access would be utilised by slow moving vehicles towing caravans, which could give rise to potentially dangerous situations in terms of highway safety. In this appeal, the Inspector noted third party vegetation overhanging the highway, which made exiting the junction difficult due to poor visibility. She concluded that, despite permission having been granted on site for stables in the past, the day-to-day use associated with the residential use, together with the occurrences of slow moving caravans and visitors to the site, is likely to be greater. It was therefore concluded, on the matter of highway safety, that inadequate visibility, which cannot be improved by the applicant, renders the development unacceptable in highway safety terms.

e) Flood risk

The site lies within a C1 flood risk area adjacent to the sea wall, where 'highly vulnerable' development (such as residential) will only be permitted where it can be justified on the basis set out in TAN15. The Inspector followed the justification tests as set out in TAN15, which in the first instance requires that the development is necessary to assist, or be a part of, a local authority regeneration initiative or strategy required to sustain an existing settlement, or it is necessary to contribute to key employment objectives. This development meets neither justification tests. As such, the Inspector concluded that the development does not meet the justification tests listed at paragraph 6.2 of TAN15, and therefore would not be permissible in this location on that basis that it is highly vulnerable development in an area at risk of flooding, which can't be justified in the context of national planning policy guidance.

f) Drainage

Circular 10/99 states that the first presumption must always be to provide a system of foul drainage discharging into a public sewer on a development site. Where this is shown to be unfeasible, a packed

sewerage treatment plant should be considered. The site was said to be connected to a two different drainage regimes; a cesspool and a sealed unit (which is no longer accessible due to unauthorised tipping). However, it was established on site that the toilet, shower and sinks in the mobile home were not connected to any means of drainage. The concern regarding drainage being the adverse effect on water sources, health hazard or nuisance and damage to the environment or amenity – the absence of any form of drainage from the mobile home raises the potential for such adverse effects. The Inspector found therefore found that the proposal fails to provide appropriate service infrastructure and that exceptional circumstances have not been demonstrated to connect to private facilities in an area served by a public foul sewer.

g) Need for gypsy/traveller sites and availability of alternative sites

The Council's identification of gypsy/traveller sites is based on objectively assessed need. The 2013 Gypsy and Traveller Accommodation background paper to the LDP concluded that 23 residential pitches would be required to meet the immediate need. The most recent Gypsy and Traveller Accommodation Assessment identifies a 5 year unmet need of 32 pitches and an unmet need of 39 pitches (much of which is from unauthorised encampments). The Council has recorded three attempts to make contact with the appellant to ensure the occupants were taken into account in the needs assessment.

Permission was recently granted by Planning Committee for the Gypsy/Traveller site at Hartridge Farm Road, which would provide for the immediate unmet need of 23 pitches, with potential to deliver a total of 35 pitches, allocated on an identified need. However, the funding process involved may result in only 10 pitches being provided with a competition based process on an annual basis thereafter to secure the necessary additional funding to provide further pitches.

The Inspector therefore found that the allocated site is not immediately available, nor is there certainty as to the exact number of plots that will be provided, and that there are no other socially rented sites in the Newport area. There is clearly therefore an identified need for gypsy/traveller sites.

In terms of alternative sites, the appellant states that attempts were made to find other sites before and after temporary permission was granted for 3 years in 2008, but a suitable one was not identified. Other potential sites were considered unsuitable due to conflict between families already on those sites. The appellant informed the Inspector that he wished to stay with his own family unit rather than share a site with other families, and that members of the family would have nowhere else to go if they could not reside at this site.

The Inspector concluded that the family would likely need to move outside of Newport in search of alternative accommodation as there are no other available sites in the borough, given the appellant's resistance to occupy a pitch at the Hartridge Farm Road site.

h) Personal circumstances

The Inspector must have regard to the personal circumstances of the site's occupants in determining the appeal. In terms of the health issues raised at the appeal, the Inspector found that Mr P Cassidy's health difficulties do not appear to have a major influence on his ability to undertake day-to-day activities, nor that they are so severe that his medical care involves anything over and above the routine medical appointments and medication. The Inspector concluded that there is sufficient doubt as to whether any of the medical conditions requiring treatment that can only be carried out by a specific hospital or that the treatment, medication or medical appointments would not be available to him from another site. It was also found that only one child is reliant on local education provision, and therefore that there would not be serious disruption arising if the occupation of the site were ceased. Similarly, there were no reasons on employment grounds why the continued occupation of the site is necessary to accommodate the appellant's work patterns.

Overall, the Inspector concluded that the personal circumstances, although clearly significant for the family, do not amount to the very exceptional circumstances required to justify inappropriate development.

Conclusion

In determining the appeal, the Inspector is required to have regard to all relevant planning considerations, as summarised in the previous section.

The Inspector finds that the development would reduce the openness of the green belt and is inappropriate development and further, it is unacceptable in highway safety terms and in flood risk terms. The balancing exercise must consider whether this harm is outweighed by other considerations, so as to amount to the very exceptional circumstances required to justify the development.

She finds that there is an unmet need for sites within the borough, which carries significant weight in favour of the development, as does the failure of the Council to meet the identified need and the lack of alternative sites. Having regard to the personal circumstances and human rights of the appellant and his family, the Inspector notes that dismissing the appeal would force the family to leave the site and resume an itinerant lifestyle, which would represent an interference with the best interests of the child who is about to start school, the occupants' homes and their family life. However, these rights are qualified and interference may be justified where in the public interest. The Inspector finds that interference would be in pursuit of a well-established and legitimate aim; protection of the Green Belt. She considers the harm to the Green Belt is substantial, as is the effect on highway safety and flood risk, which she concludes outweighs the human rights of the family and the best interests of the children, and that the granting of permanent planning permission would not be appropriate. The aim of protecting the Green Belt cannot be achieved by any means which are less interfering, and thus they are proportionate and necessary.

The Inspector concludes that the considerations in favour of the development do not clearly outweigh the harm identified, and do not represent the very exceptional circumstances needed to justify inappropriate development. She also found that it would not be appropriate to grant temporary planning permission as the situation is unlikely to be resolved at the end of that period owing to the appellant's perception of the unsatisfactory nature of the Council's plans to provide a site for Gypsies and Travellers.

Variations to the enforcement notice

The appellant sought an extended compliance period of 2 years. The Inspector concludes that to extend the compliance period by 2 years would be excessive, but an extension of 12 months should provide sufficient opportunity for the occupants to find alternative accommodation (i.e by 19/08/2017). The notice has been varied accordingly.

Other variations include the clarification on the location of the hedging to be replanted, and the omission of the requirement to remove the wooden summerhouse, as this had already been removed from the site at the time of the appeal.