

Report

Planning Committee

Part 1

Date: 2 November 2016

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

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

Ward All wards

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.

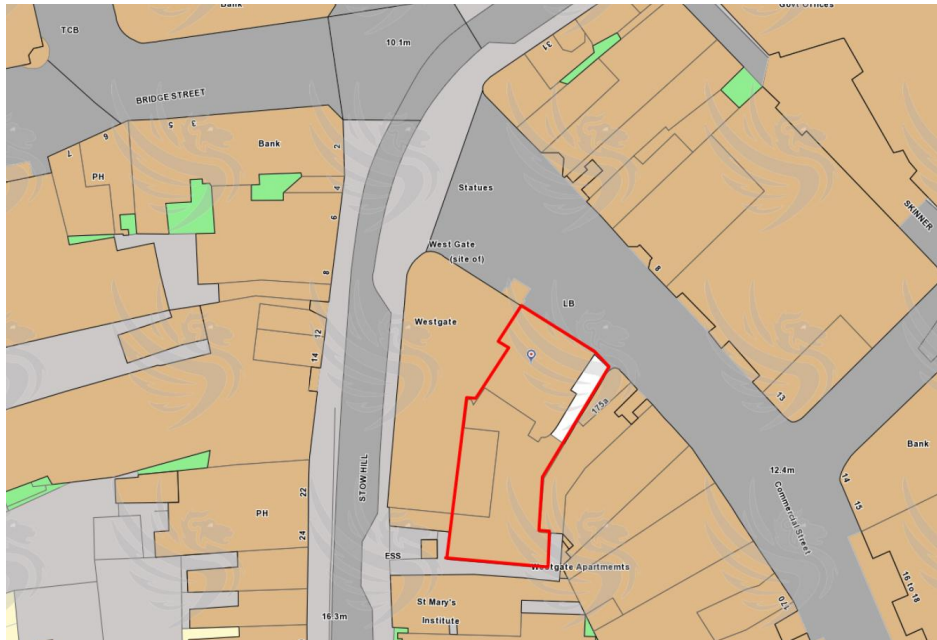
Background Papers

Not applicable

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/1052
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 4 Westgate Buildings, Commercial Street, Newport, NP20 1JL
SUBJECT: LISTED BUILDING CONSENT FOR RETENTION OF INTERNAL SHOP FIT-OUT AND INSTALLATION OF 4NO. NON ILLUMINATED FASCIA SIGNS AND 2NO. ILLUMINATED HANGING SIGNS
APPELLANT: Mr J Monks
PLANNING INSPECTOR: Melissa Hall
DATE OF COUNCIL'S DECISION: 24th August 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

Retrospective Listed Building Consent was refused for the above development at the commercial unit currently trading as Poundworld at this Grade II Listed Building on Commercial Street. Consent was refused in relation to the shop fit-out; the Council did not take issue with the signage installed. Permission was refused as *“The partitioned cupboard to the shopfront and the suspended ceiling result in a loss of clear views into the unit and create an incongruous, obtrusive feature to the shopfront, respectively, to the detriment of the special character and architectural interests of the Listed Building”*.

The Inspector noted that the shopfronts to the building are modern, but in a traditional style and that their proportions and detailing contribute to the special character of the Listed Building and the composition of the prominent and important Commercial Street elevation.

In assessing the application, she comments that the suspended ceiling has been installed to obscure a concrete ceiling, but at a lower height than which previously existed, to the extent that it abuts the glazing and sits below the window heads of the shopfront, with the effect of dissecting the windows and to visually interrupt the full height of the shopfront. Similarly, that the partition introduces a solid element immediately to the rear of one of the windows, which appears at odds with the otherwise open and

unrestricted views into the retail unit. The use of this area to display goods draws attention to the difference in this section of the shopfront.

The Inspector was of the view that the suspended ceiling and partitioned cupboard represent clumsy and inelegant additions, which inappropriately dissect the space and appear to alter the proportions of the ground floor, to the detriment of the character and architectural interest of the listed building.

Despite the arguments put forward by the appellant to justify the works (re-use of a vacant building, that that changes are reversible), the Inspector was not persuaded that the elements at issue are essential for the re-use of the unit and noted that the harm identified is clearly evident now.

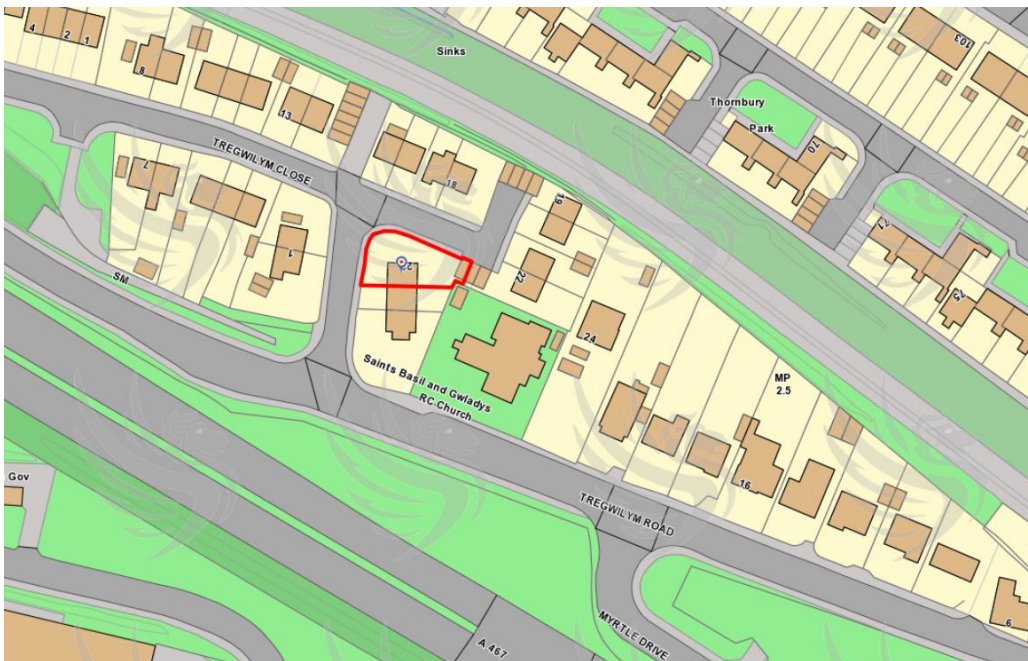
She concluded that, although there are benefits to the scheme (as argued by the appellant), these benefits do not outweigh the harm identified, which causes significant harm to the historic character and special interest of the listed building. The appeal was therefore dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 16/0165
APPEAL TYPE: Written Representations
WARD: Rogerstone
SITE: 23 Tregwilym Close, Rogerstone, Newport, NP10 9DX
SUBJECT: CHANGE OF USE OF DOMESTIC GARAGE TO DOG GROOMING SALON

APPELLANT: Ms A Skinner
PLANNING INSPECTOR: Melissa Hall
DATE OF COUNCIL'S DECISION: 16th March 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

Planning permission was sought for the change of use of a detached domestic garage to a dog grooming salon at 23 Tregwilym Close, Rogerstone, Newport. The garage in question lies at the rear of its associated end of terrace dwelling, and forms part of a group of three garages providing off-street parking to the appeal site and two other properties. Planning permission was refused by the Council due to the impact of the proposal on the character of the area (being solely residential and introducing a commercial operating in to a small residential street), and due to the lack of off-street parking and the resulting impact on highway safety.

Due to the minimal alterations to the garage which have been undertaken, and the restricted scale and nature of the use, the Inspector did not consider that it would result in a serious harm to the character or appearance of the area.

However, she did conclude that there would be insufficient off-street parking provided, in an area where there is limited on-street availability, which would result in vehicles parking on the street and which would likely lead to an increase in the potential for indiscriminate parking, vehicular conflict and dangerous vehicle movements. The Inspector therefore agreed with the Council in concluding that the proposal would conflict with policies GP4 and T4 of the Newport Local Development Plan 2011-2026 (Adopted January 2015). The appeal was therefore dismissed.