

# Report

## Planning Committee

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### Part 1

Date: 11 January 2017

Item No: 7

**Subject** **Appeal Decisions**

**Purpose** To inform Members of the outcome of recent appeals

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

**Ward** Caerleon, Llanwern, Malpas Pillgwenlly

**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: 11 January 2017

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0349  
APPEAL TYPE: Written Representations  
WARD: Caerleon  
SITE: Cwtch Down, 25 Pollard Close, Caerleon, Newport, NP18 3SS  
SUBJECT: Change of use of part of dwelling to day spa and two bedroom of bed and breakfast accommodation with associated parking layout alterations  
APPELLANT: Julie Burgess-Gould  
PLANNING INSPECTOR: Melissa Hall  
DATE OF COUNCIL'S DECISION: 6<sup>th</sup> July 2016  
OFFICER RECOMMENDATION: Approved with conditions  
COMMITTEE/DELEGATED: Committee

## DECISION: DISMISSED



## SUMMARY

The appeal dwelling is a large detached dwelling split over three floors. It lies at the end of a cul-de-sac which is part of a wider housing development comprising detached dwellings of a similar scale and design. The lower ground level of the property benefits from a domestic spa comprising a hot tub, sauna and shower together with a lounge, kitchen, utility room and laundry area, with direct access into the rear garden.

The proposal involves the change of use of the lower ground floor to allow for up to two commercial spa bookings per month for groups of no more than eight people. Furthermore, it was proposed that two of the four bedrooms are used for bed and breakfast accommodation.

The Inspector firstly considered the effects of the proposal on the living conditions of neighbouring properties. The Inspector noted that as a result of the sites context, occupants of neighbouring dwellings should have a reasonable expectation of a quiet living environment. The Inspector noted that the proposed events could result in a maximum of eight people using the facilities at any one time, together with a beautician visiting the premises to provide treatments. Noise resulting from such a number of people, including raised voices, the manoeuvring of vehicles, greeting of guests or the playing of music can have a startle effect on others. The Inspector considered that such activity associated with the use would result in a level of disturbance to the occupants of neighbouring properties over and above that which they should reasonably expect to enjoy. It was therefore considered that the proposal would conflict with Policy GP2 of the Local Development Plan 2015 (LDP).

Finally, the Inspector considered the effects of the proposal on highway safety. The Inspector noted that a requirement of eight off-street parking spaces would be needed based on the Councils Supplementary Planning Guidance 'Parking Standards' (SPG); six spaces should serve the bed and breakfast and spa use and should be independently accessible. The Inspector did not consider this to be an unreasonable requirement. However the Inspector was not of the opinion that this requirement took into account any additional visitors to the property, such as the beautician which would place an additional demand on the parking facilities. The appellants parking plan identified six spaces could be accommodated. The Inspector therefore concluded that the eight off street parking spaces could not be accommodated. The proposal was therefore considered contrary to Policy GP4 of the LDP.

For the reasons stated above, the appeal was dismissed.

## PLANNING APPLICATION APPEAL

APPEAL REF: 15/1249  
APPEAL TYPE: Written Representations  
WARD: Llanwern  
SITE: Land adjacent to barn adjacent to High Meadow and Wellsworth, Bishton, Newport, NP18 2DZ  
SUBJECT: Erection of an agricultural building for the storage of agricultural equipment  
APPELLANT: Edward Spuffard  
PLANNING INSPECTOR: Melissa Hall  
DATE OF COUNCIL'S DECISION: 20<sup>th</sup> June 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated

## DECISION: DISMISSED



## SUMMARY

The appeal site comprises a parcel of agricultural land which lies on the periphery of the village of Bishton, outside the settlement boundaries and in the open countryside. The surrounding area is characterised predominantly by open fields on rising land with mature trees and hedgerows along the field boundaries, together with a small cluster of dwellings fronting the highway adjacent to the site.

The proposal sought the erection of an agricultural building for the storage of agricultural equipment. The Inspector considered the main issue in the determination of this proposal to be the effect of the proposed development on the character and appearance of the area.

The Inspector noted that due to the sites context, the site is relatively well screened from views from both northerly and easterly directions. However the site is readily visible from the highway to the south, due to the low stone boundary wall and field access which provides uninterrupted views of the open, rising agricultural land beyond.

Given the quality of the surrounding landscape, the Inspector considered that such a proposal needs to be carefully sited in order to avoid any adverse visual impact. The Inspector noted that the proposal would be of a utilitarian design, sited in a prominent location and considered that the proposal would be a visually prominent structure, which would appear dominant and imposing when viewed on the approach from the south. The Inspector further noted that the proposed building would materially and unacceptably increase the physical extent of the buildings in this location. For the reasons stated above, the Inspector concluded that the proposal would be contrary to Policies SP5 and GP6 of the Newport Local Development Plan 2015 and to the advice in Planning Policy Wales and Technical Advice Note 12 'Design'.

The Inspector had regard to the economic benefits of the proposal outlined under Technical Advice Note 23 'Economic Development' and 6 'Planning for Sustainable Rural Communities'. Whilst the Inspector did not dispute that the development would create construction jobs in the short term, and contribute to providing a vibrant rural economy, it was not considered that these matters outweighed the harm to the character and appearance of the area.

For the reasons stated above, the Inspector dismissed the appeal.



## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0534  
APPEAL TYPE: Written Representations  
WARD: Caerleon  
SITE: 1 Norman Terrace, Norman Street, Caerleon, Newport, NP18 1BD  
SUBJECT: Proposed dormer to main roof  
APPELLANT: Peter Jenkinson  
PLANNING INSPECTOR: Paul Selby  
DATE OF COUNCIL'S DECISION: 21<sup>st</sup> July 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated

## DECISION: DISMISSED



## SUMMARY

The appeal property is an end-of-terrace two storey dwelling which faces onto a narrow pedestrian pathway leading off Norman Street within the Caerleon Conservation Area. The side elevation of the property is visible from Norman Street across a driveway and a garden/parking area for the neighbouring dwelling. The surrounding area is residential in nature. Simple architecture of traditional two storey dwellings with rendered elevations and relatively unaltered roof forms, combined with stone boundary wall and mature vegetation, contribute positively to the character and appearance of the Conservation Area.

The proposal sought to provide a dormer to the property. The Inspector considered the main issues in the determination of the appeal to be whether the proposal would preserve or enhance the character or appearance of the Caerleon Conservation Area and the effect of the proposal on highway safety.

The Inspector firstly considered the effect of the proposal on the character and appearance of the Conservation Area. The Inspector stated that it appeared that the appeal dwelling and its immediate neighbours to the southeast appear as an infill development; the properties exhibit a different style,

orientation and siting to their neighbours. Nevertheless, the hipped roof of the appeal building complements the pitch of the roofs of the neighbouring terraced buildings.

The dormer extension would extend the existing ridge of the dwelling to just short of the side elevation. The proposal would obscure the symmetry of the existing hipped roof and chimney, materially altering the character of the dwelling at its side elevation. Furthermore, the hip to gable design would create an awkward roof form that would materially alter the simple architecture of the terrace. For the reasons given above, the Inspector concluded that the proposal would not preserve or enhance the character or appearance of the Conservation Area and would thus be contrary to Policies CE7 and GP6 of the Newport Local Development Plan.

Finally, the Inspector assessed the proposals effect on highway safety. The Council stated that the increase in the number of bedrooms would increase the demand for parking; which could not be accommodated on site. A deficit of one parking space would therefore occur according to the Councils Parking Standards Supplementary Planning Guidance (SPG). The Inspector noted that the immediate area suffered from limited parking, however the appeal property is located at the edge of the Caerleon town centre, in close proximity to services and public transport. The Inspector further noted that in such circumstances, the Councils parking standards SPG allows for some reduction in off-street parking. The Inspector therefore concluded that the proposal would not conflict with the highway safety objectives of the LDP Policy GP4 and the Councils Parking Standards SPG.

In view of the above, the Inspector concluded that the proposal would not give rise to an unacceptable impact on highway safety; however these matters did not outweigh the identified harm to the Conservation Area. The appeal was therefore dismissed.

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0202  
APPEAL TYPE: Written Representations  
WARD: Malpas  
SITE: Land adjacent to 11 Curie Close, Malpas, Newport, NP20 6FJ  
SUBJECT: Proposed construction of two semi-detached houses  
APPELLANT: Noal Griffiths  
PLANNING INSPECTOR: Joanne Burston  
DATE OF COUNCIL'S DECISION: 20<sup>th</sup> April 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated

## DECISION: DISMISSED



## SUMMARY

The proposal sought the construction of two semi-detached houses. The appeal site is located to the east of 11 Curie Close, which is a cul-de-sac that serves a number of residential properties. These properties do not benefit from off-street parking. The Inspector considered the main issue in the determination of the appeal, would be the proposals effect on highway safety.

The Inspector noted that Curie Close was well used and a number of cars were parked along its length. Given the narrow width of Curie Close, cars meeting on it would have to reverse back onto the carriageway of Ruthford Hill in order to gain room to manoeuvre and pass safely. Given the level of the existing traffic and the level of adjacent parking which restricts visibility, the increased traffic levels as a result of the proposal would present a risk to road safety and pedestrian safety.

The Inspector acknowledged that the proposal would not harm the living conditions of neighbouring occupiers and is located in a sustainable location in terms of accessibility to local services and facilities. However, the Inspector considered that these matters did not overcome the harm found to highway safety.

In view of the above, the Inspector concluded that the proposal would create a situation that would lead to an overall significant risk to road safety. The proposal would therefore conflict with Policies GP2 and GP4 of the Newport Local Development Plan. The appeal has therefore been dismissed.

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0842  
APPEAL TYPE: Written Representations (Householder appeal)  
WARD: Pillgwenlly  
SITE: 28 Temple Street, Newport, NP20 2GJ  
SUBJECT: CONSTRUCTION OF LOFT CONVERSION INVOLVING A REAR DORMER CONTAINING BEDROOM AND EN SUITE (RESUBMISSION FOLLOWING THE REFUSAL OF APPLICATION NUMBER 15/1503)

APPELLANT: Mr A Hannan  
PLANNING INSPECTOR: Joanne Burston  
DATE OF COUNCIL'S DECISION: 22<sup>nd</sup> September 2016  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated

## DECISION: DISMISSED



## SUMMARY

An appeal was submitted against the Council's decision to refuse planning permission for the development in question at the two storey mid-terraced dwelling. The Council's decision was refused because:

*"It is considered that the proposed dormer would appear incongruous within the street scene and detract from the character and appearance of the area. The proposal is therefore contrary to policies GP2 (General Amenity) and GP6 (Quality of Design) of the Newport Local Development Plan 2011-2026 (Adopted January 2015) and House Extensions and Domestic Outbuildings Supplementary Planning Guidance (Adopted August 2015)"*

The Inspector notes that the appeal site and its neighbour have a pleasant visual symmetry and are an attractive feature of the street scene.

She finds that the development would significantly alter the character and appearance of the existing roofscape as the dormer would fail to respect the design or form of the host property. Due to its size and massing, she considers that it would be seen as a dominant, bulky and prominent addition to the dwelling, and appear as an awkward and incongruous feature which would disrupt from the symmetry of no 28 and 29, significantly detracting from the attractive appearance of the pair.

The Inspector notes that public views of the rear of the building are restricted, and that views of the dormer would largely be limited to rear gardens of neighbouring properties and those in Albion Close, but does not find the lack of public views a basis for allowing the appeal due to the harm it would have on the character and appearance of the host building. She refers to a number of extensions and alterations in the area that the appellant relied on as part of their case, but notes that these illustrate the visual impact that unacceptable development can have on the character and appearance of their host building and surrounding area, and that they justify the Council's concerns.

For the above reasons, the appeal was dismissed.