

Report

Planning Committee

Part 1

Date: 5 April 2017

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Head of Regeneration, Investment and Housing

Ward Caerleon, Malpas, Victoria, Allt-yr-Yn, 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: 5th April 2017

PLANNING APPLICATION APPEAL

APPEAL REF: APP/G6935/C/16/3161464
APPEAL TYPE: Written Representations
WARD: Caerleon
SITE: Berry Field House, Lodge Road, Caerleon, Newport, NP18 3QW
SUBJECT: Erection of shed forward of principal elevation
APPELLANT: Mr Alan Cresswell
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 14th October 2016
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal was against the issuing of an Enforcement Notice which required the removal of an outbuilding, forward of the principal elevation of the dwelling. The Inspector considered the main issues in the determination of the appeal to be effect of the shed on the character and appearance of the area and the street scene.

The outbuilding is 4.3 metres wide, 2.8 metres in height; constructed with timber walls and a felt shingle roof and is located two metres behind the front boundary wall, which is 1.2m-15m metres high. The appellants house lies in an elevated position about 16 metres back from the front boundary wall.

The outbuilding is largely concealed behind the front boundary wall; however its top section can clearly be seen from the public highway. The appellant has planted shrubs which will further screen the outbuilding in due course. The appellant's house is of a substantial size and at an elevated position appearing as the dominant feature of the site. The wider area is characterised by a variety of house designs elevated above road level and varied boundary treatments alongside the road. Several other properties have substantial ancillary buildings in the front gardens.

In view of the above, it is considered that the outbuilding is a subservient structure and is not detrimental to the character and appearance of the main dwelling or the street scene. The appeal has therefore been allowed on ground (a).

As the Enforcement Notice has been quashed and planning permission granted for the retention of the outbuilding, the appeal under ground (g) was not considered.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF:	APP/G6935/D/17/3166405
APPEAL TYPE:	Written Representations
WARD:	Malpas
SITE:	21 Graig Park Road, Malpas, Newport, NP20 6HD
SUBJECT:	Proposed erection of first floor extension to side and rear
APPELLANT:	Mrs Sharon Ahern
PLANNING INSPECTOR:	Melissa Hall
DATE OF COUNCIL'S DECISION:	8 th November 2016
OFFICER RECOMMENDATION:	Refuse
COMMITTEE/DELEGATED:	Delegated



SUMMARY

The appeal sought the erection of a first floor side and rear extension. The Inspector considered the main issues in the determination of the appeal to be the effect of the proposed development on the character and appearance of the area and on the living conditions of neighbours.

The appeal property is a modest, semi-detached dwelling of simple design, scale and form. Although there have been a number of alterations and extensions to the dwellings in the vicinity, there remains a degree of uniformity in terms of their external appearance. The adjoining semi-detached property (No 23) has not been subject to any alterations to its front or side elevations. The appeal property benefits from an existing garage extension, however, given the subordinate nature of the side extension, the symmetry and balance of the pair of semi-detached properties is retained overall.

The proposed extension would not be set back resulting in an uninterrupted elevation. Such design would fail to represent a subservient addition to the existing dwelling and when read in context of the attached dwelling; the proposal would have an unbalancing effect on the pair to the detriment of their appearance.

Given the siting relationship between the appeal property and the neighbouring pair of semi-detached properties, it was not considered that the proposal would result in a terracing effect. However, this does not overcome the harm previously described. For these reasons, the proposal was considered to be contrary to Local Development Plan Policies GP6.

The Inspector noted that the Council took issue with the overbearing impact of the extension on the occupants of No 19, by reason of its scale, location and design. The Inspector noted No 19 to be orientated at an oblique angle to the appeal dwelling and has a lower slab level. Nevertheless, the siting relationship is such that there would be no direct outlook onto the extension from the rear habitable room windows serving the neighbouring dwelling. Furthermore, the single storey garage in the intervening side garden of No 19 would obscure the massing of the two storey elevation to some extent, such that it would not be read in its entirety from the garden of this neighbouring property.

In view of the above, it was considered that the design, scale or siting of the extension would not have a significant harmful overbearing impact which would adversely affect the living conditions of neighbours. The proposal was therefore considered to comply with Policy GP2. However, this matter does not outweigh the harm to the character and appearance of the area.

For the reasons given above, the appeal has been dismissed.

DECISION: DISMISSED

PLANNING APPLICATION APPEAL

APPEAL REF: APP/G6935/A/16/3162542
APPEAL TYPE: Written Representations
WARD: Victoria
SITE: 148-152 Chepstow Road, Newport, NP19 8EG
SUBJECT: Retention of roller shutters
APPELLANT: Mr A Ryzinski
PLANNING INSPECTOR: Janine Townsley
DATE OF COUNCIL'S DECISION: 20th May 2016
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal sought the retention of pinhole roller shutters and associated shutter housing on the shopfront. The Inspector considered the main issue in the determination of the appeal to be the effect of the proposal on the character and appearance of the appeal site and the surrounding area.

The appeal property comprises a building in retail use set within the district centre. The appeal shopfront comprises two large display windows and a glazed door area. The shutters have been designed to cover the whole shop frontage, which is wider than many other premises in the area. The appeal building is surrounded by other commercial and retail premises along a busy road and this establishes the character and appearance of the area. The Inspector noted that similar roller shutters in the vicinity of the appeal building does not justify the development.

Evidence demonstrating two attempted break-in incidents within a 12 month period was provided by the appellant. The incidents related to a break through the front door and a side window within the recessed main entrance. The Council stated that such evidence did not justify exceptional circumstances and therefore the need for a pinhole roller shutter across the whole shop front was not considered acceptable. However, the Inspector considered the shutters were installed in response to more than one security breach and the fact that one of the incidents related to a side window is insufficient to dismiss the appeal for that reason alone.

The Inspector noted that the roller shutters only covered glazed sections of the shopfront and its colour matched that of the shopfront. The roller shutters were therefore considered to comply with the Council's 'Security Measures for Shop Fronts and Commercial Premises Supplementary Planning Guidance'. The scale of the shopfront dictates the width of the shutters and this justifies their size. The development is therefore considered to accord with Policy GP6 of the Newport Local Development Plan.

For the reasons given above, the appeal has been allowed.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF: 16/0107
APPEAL TYPE: Hearing
WARD: Allt-yr-Yn
SITE: Northern Hey Stables, Brickyard Lane, Newport, NP20 5EJ
SUBJECT: Variation of conditions 1 (number of caravans) and 2 (occupants) of planning permission 15/0325 (part allowed by appeal) to allow for the siting of 8no. additional caravans (16 No. in total)

APPELLANT: Ms C Rogers
PLANNING INSPECTOR: Vicki Hirst
DATE OF COUNCIL'S DECISION: 16th June 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: PART ALLOWED/PART DISMISSED



Summary

The site is an authorised gypsy and traveller site limited to 8 touring caravans for occupation by the individuals listed in the previous permission. The appeal was against a refusal to grant planning permission under Ref 16/0107.

Gypsy and Traveller Status

The inspector concluded that based on the evidence before them, that neither Mr Richards or Miss Timmins met the definition of gypsies and travellers for planning purposes and they have no overriding personal needs or circumstances that would justify their occupation of the appeal site. The inspector concluded that Mr and Mrs Rafferty, who are existing residents, have demonstrated a gypsy and traveller lifestyle and that the appeal site would provide a suitable site in principle for two additional caravans to accommodate them and their children.

The need for gypsy and traveller sites in Newport, other alternative sites and the personal circumstances of the proposed occupants

Hartridge Farm Road is an authorised gypsy and traveller site that was allocated by the council. None of the four proposed occupants have registered for a pitch on this site.

Highway Safety

Visibility is restricted and falls considerably short of the recommended standards. Additional occupants are likely to generate additional movements to and from the site irrespective of whether or not they drive. Whilst the inspector concludes that highway safety would not be unacceptably compromised by two

additional caravans for the existing residents, in the assessment, any additional caravans for new occupants would have a significant effect on highway safety.

Conclusion

The appeal is allowed in part relating to two additional caravans for existing residents, the omission of reference to named children and their replacement with a generic reference to dependents. Planning permission is granted for the mixed use of the land for the siting of a mobile home, siting of touring caravans, and the keeping of horses together with the retention of hardstandings, extension to the stable block to create a utility/amenity room and the rebuilding of an ancillary building to create an amenity block in accordance with application Ref 16/0107.

Decision: PART ALLOWED/PART DISMISSED

PLANNING APPLICATION APPEAL

APPEAL REF: E16/0069 and 15/0761
APPEAL TYPE: Hearing
WARD: Marshfield
SITE: Land adjacent to and north of Green Farm, Green Lane, Peterstone Wentlooge, Cardiff CF3 2TN
SUBJECT: Retention of the use of the land for the siting of 1no. mobile home and 2no. touring caravans for use as a private gypsy and traveler site
APPELLANT: Mr and Mrs W and M Cassidy
PLANNING INSPECTOR: Richard E Jenkins
DATE OF COUNCIL'S DECISION: 26th February 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Committee

DECISION: PART ALLOWED/ PART DISMISSED



Summary

The appeal was made against enforcement notice E16/0069 and against a refusal to grant planning permission for the change of use of land to a private gypsy and traveller caravan site. Planning permission was granted for a temporary period of three years. This temporary permission expired on 31st December 2014. An enforcement notice was issued on the 8th of March 2016, the appellant alleges that the compliance period is too short and that planning permission should be granted.

The inspector recognised that the appellant and the other proposed beneficiaries comprise Gypsies and Travellers, as defined by Welsh Government Circular 30/2007. The introduction of a mobile home, touring caravans and other structures has materially altered the character of the site and its immediate surroundings. The inspector concludes that the relatively isolated location does not render the scheme unacceptable, the use does injuriously alter the character and appearance of the areas. As such, it runs counter to the general thrust of Policy SP5.

The appellants had not engaged with the process of applying for a pitch on the council's authorised gypsy and traveller site Hartridge Farm Road as they felt it would be unsuitable in meeting the needs of their eldest son. Nothing was shown to the inspector by way of medical evidence that would suggest that a well-designed pitch at the Hartridge Road site would not represent a suitable solution to the family's needs. The inspector found that the development would fail to maintain the openness of the Green Belt

and concluded that the harm to the greenbelt was substantial and as such the very exceptional circumstances did not outweigh this harm.

The development is contrary to both national and development plan policy relating to flood risk. The appeal site falls within the Zone C1 flood area. Residential caravan sites are deemed to be highly vulnerable development and should be directed away from Zone C.

With regards to the compliance period in the enforcement notice, the inspector considered that a period of 12 months would strike an appropriate balance between restricting the harm identified and providing a realistic timeframe for alternative accommodation to be found

Conclusion

The enforcement notice is varied by the deletion of the 6 months compliance period and the substitution of 12 months as the period for compliance. The planning application was dismissed and so planning permission is refused for the change of use of land to a private gypsy and traveller caravan.

Decision: PART ALLOWED/PART DISMISSED