

Report

Planning Committee

Part 1

Date: 7 June 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 and Rogerstone

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: 7 June 2017

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: E10/1021
APPEAL TYPE: Written Representations
WARD: Caerleon
SITE: 9 High Street, Caerleon, Newport, NP18 1AG
SUBJECT: Listed Building Enforcement Notice requiring the removal of smoking shelter and extraction flue and all associated fittings and make good the rear extension of the building with materials to match the remainder of the building

APPELLANT: Llanhennock Investments Limited
PLANNING INSPECTOR: Alwyn B Nixon
DATE OF COUNCIL'S DECISION: 27th October 2016
OFFICER RECOMMENDATION: Issue Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

The property is a Grade II listed building located on the north side of the Market Place in the centre of Caerleon. The listing description identifies it as probably early C18 house retaining significant historic character and having strong group value – with the surrounding buildings.

Without listed building consent, a smoking shelter has been erected and an extractor flue installed on the rear elevation of the property. The smoking shelter is a soft-wood framed structure, largely open-sided with a shallow-pitched roof covering of corrugated clear polycarbonates sheeting. The smoking shelter is of rudimentary form and materials and contrasts starkly with the host building and its appearance seriously detracts from the listed building. The presence of lesser architectural and historic interest at the

rear of the building is not justification for additional poor quality development that would detract further from the listed building.

The external extractor flue is a bulky, incongruous, ugly structure; its position on the rearward part of the building is completely inappropriate to its context. No reasoned justification has been provided which demonstrated that an extractor flue of this size, appearance and position is necessary. As such, the benefit of the extractor flue does not outweigh the harm caused to the listed building.

For the reasons above, the appeal on ground (e) did not succeed.

Turning to the appeal on ground (h), the compliance period specified in the notice is 6 months. The Inspector considered this to be ample time to comply with the requirements of the Notice which required the removal of the smoking shelter and the extraction flue. The appeal on ground (e) also failed.

For the reasons given, and having regard to all matters raised, the appeal is dismissed and the Enforcement Notice upheld.

DECISION: DISMISSED

PLANNING APPLICATION APPEAL – ALLOWED

APPEAL REF: 16/0994
APPEAL TYPE: Written Representations
WARD: Rogerstone
SITE: 3 Birch Grove, Rogerstone, Newport, NP10 9FR
SUBJECT: Creation of driveway and associated alterations
APPELLANT: Mr Desmond Jones
PLANNING INSPECTOR: Janine Townsley
DATE OF COUNCIL'S DECISION: 12th January 2017
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated



SUMMARY

The inspector noted that the main issue was the effect of the development on the safety and convenience of users of the adjacent highway network.

Whilst none of the four single storey dwellings along Birch Grove have off street parking, a number of properties either side of the appeal site have driveways, which weighs in favour of the proposal as users of Cefn Road will be aware of vehicles egressing from driveways.

The councils concern was that visibility splays were not achievable. The inspector found that whilst the splay to the east was achievable, it falls short to the west but not to any significant degree. It was noted by the appellant that cars travelling towards that site at a reduced speed after exiting the mini roundabout which accorded with the inspectors observations on site. This led to the inspector concluding that the extent to which the visibility splays fall short and the particular circumstances of the site means that there would not be an unacceptable harmful impact on highway or pedestrian safety caused by the proposal. This conclusion is in accordance with Policy GP4 of the Newport Local Development Plan 2011-2026.

DECISION: ALLOWED