

# Report

## Planning Committee

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### Part 1

Date: 2 August 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** Llanwern, Langstone, Lliswerry, Marshfield and Stow Hill

**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: 2<sup>nd</sup> August 2017

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0983  
APPEAL TYPE: Written Representations  
WARD: Llanwern  
SITE: 2 Church Row, Redwick, Caldicot, NP26 3DE  
SUBJECT: Retention of porch  
APPELLANT: Mr Geoffrey Lloyd  
PLANNING INSPECTOR: Mrs Joanne Burston  
DATE OF COUNCIL'S DECISION: 11<sup>th</sup> January 2017  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Committee



## SUMMARY

The appeal sought the erection of a porch. The Inspector considered the main issue in the determination of the appeal is whether the proposal would preserve or enhance the character or appearance of the Redwick Conservation Area.

The appeal property is a two-storey, stone built, mid-terrace house that is located within a short row of three adjoining properties. The row of properties has been extended which has significantly varied the proportions of the original modest cottages. The buildings within the wider Conservation Area vary considerably in their age, size, design and use with no unifying design or character, though there are distinctive areas within it.

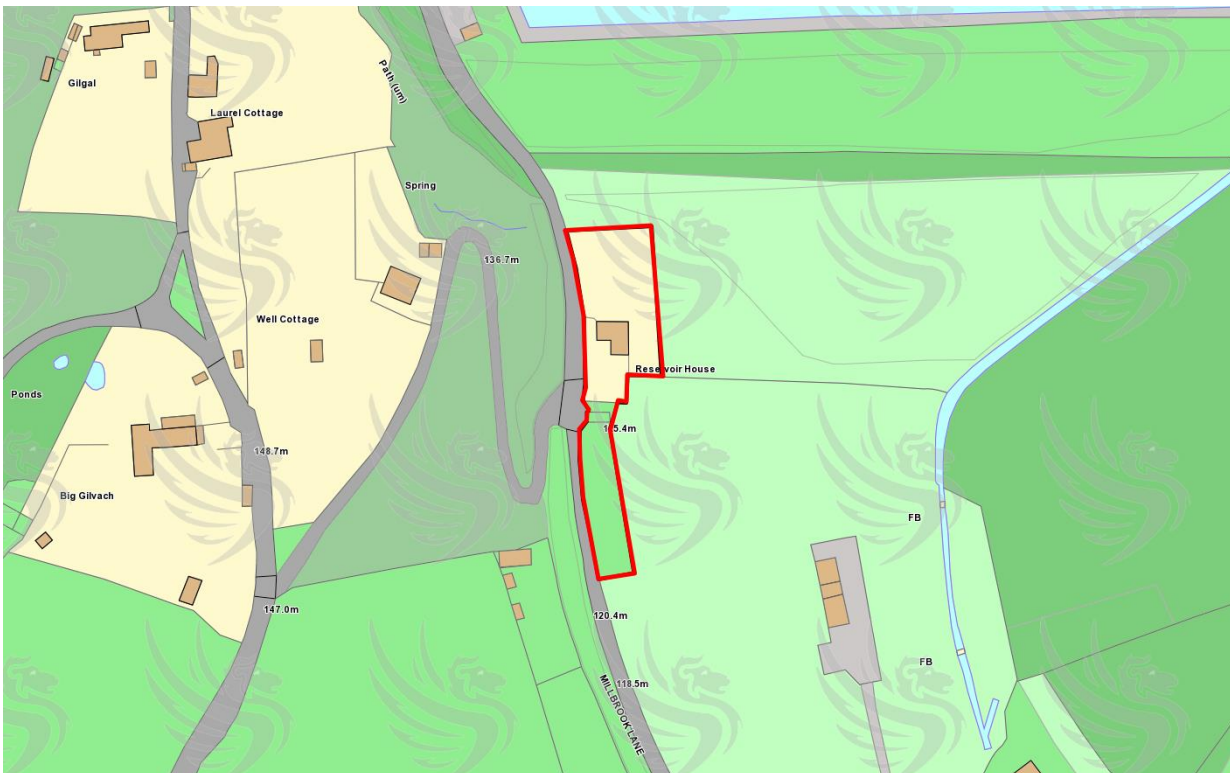
The Inspector considered that the porch is not oversized considering the scale and footprint of the building nor does it block windows or other architectural detailing. Whilst the porch is visible from the public highway, it would be in keeping with the host dwelling. The Inspector noted several dwellings with porches of varying design and scale and therefore did not consider that the porch would be seen as an incongruous addition or out of keeping with the character of the Conservation Area.

In view of the above, the Inspector concluded that the proposal would comply with Policies CE7 and GP6 of the Newport Local Development Plan; as such, the appeal has been allowed.

**DECISION: ALLOWED**

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/1213  
APPEAL TYPE: Written Representations  
WARD: Langstone  
SITE: Reservoir House, Millbrook Lane, Llanvaches, Caldicot, NP26 3AZ  
SUBJECT: Variation of Condition 2 of planning permission 16/0344 to allow positioning of gates closer to the highway  
APPELLANT: Mr Stephen Scott  
PLANNING INSPECTOR: Mr Paul Selby  
DATE OF COUNCIL'S DECISION: 19<sup>th</sup> January 2017  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated



## SUMMARY

The appeal seeks the variation of Condition 2 of planning permission 16/0344 to allow the positioning of gates closer to the highway than 5 metres. The Inspector considered the main issue in the determination of the appeal to be whether the condition is reasonable and necessary in the interests of highway users.

In the vicinity of the appeal site, Millbrook Lane is significantly limited in width, to the extent that most traffic would need to use verges to manoeuvre past other vehicles or pedestrians. Furthermore, a junction lies in close proximity to the proposed access point and a short way to the north drivers are required to negotiate a double bend through which visibility is restricted by a retaining wall. Despite the absence of a speed limit, these factors are likely to influence driver behaviour, substantially limiting vehicle speeds on the lane. Due to the limitations of the lane and the configuration of the local road network, the Inspector had no reason to dispute the appellants' claims that the lane is normally lightly trafficked.

The access would serve a single dwelling and thus the frequency of vehicles entering or exiting the site would be limited. The proposed driveway would be located on the inside of a long bend; a general

absence of visual obstructions would afford approaching drivers a clear view of the access point from both directions.

The Inspector noted that the existing garage is set back from the lane by a similar distance than the proposed gates with an entrance splay with similar dimensions. The Inspector considered that the proposal would represent a modest improvement over the existing situation.

With regards to the points addressed above, the Inspector concluded that the removal of Condition 2 would not result in any unacceptable harm to highway safety and would be in accordance with Policy GP4 of the Newport Local Development Plan. The appeal has therefore been allowed.

**DECISION: ALLOWED**



## PLANNING APPLICATION APPEAL

APPEAL REF: 16/1138  
APPEAL TYPE: Written Representations  
WARD: Liswerry  
SITE: The Shrubbery, Straits Lane, Nash, Newport, NP18 2BY  
SUBJECT: Proposed two storey side extension  
APPELLANT: Ms Bernadette Joynes  
PLANNING INSPECTOR: P J Davies  
DATE OF COUNCIL'S DECISION: 22<sup>nd</sup> December 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated



## SUMMARY

The appeal sought the erection of a two storey side extension. 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 surrounding countryside. The appeal site is located outside of any defined settlement and occupies a large plot adjoining fields on a rural lane where existing development is sporadic.

Policies applicable in the determination of the appeal include policies GP2 and GP6 which among other things seek to ensure that development is not detrimental to visual amenity and that it is of good quality design. Policy H13 is also relevant and in the interests of safeguarding rural character; it limits extensions to a volume of not more than 30% of the original dwelling. However, the supporting text accepts that large increases may be acceptable provided there is no adverse impact on the character and appearance of the area.

The proposed extension would be 50% larger than the original dwelling. However, given the existing dwellings along the lane are spread out and diverse in appearance and form, it is not considered the volume increase would result in any material visual harm. Despite the scale of the proposed dwelling, the extension would have simple lines and the part glazed section of the front elevation would break up its mass. The long sloping roof presents a contemporary feature that marries the extension with the existing bungalow in a harmonious and unobtrusive manner.

For the reasons given above, the proposal would not cause any unacceptable harm to the character or appearance of the countryside and it would comply with the objectives of the applicable policies outlined above.

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

**DECISION: ALLOWED**

## PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 17/0018  
APPEAL TYPE: Written Representations  
WARD: Marshfield  
SITE: Sea View Bungalow, Broadstreet Common, Peterstone  
Wentlooge, Cardiff, CF3 2TN  
SUBJECT: Erection of side extensions and raising of roof to create first floor accommodation  
APPELLANT: Mr Anthony Parsons  
PLANNING INSPECTOR: Clive Nield  
DATE OF COUNCIL'S DECISION: 15<sup>th</sup> March 2017  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated



### SUMMARY

Planning permission was sought for the erection of side extensions and raising of the roof to create first floor accommodation at Sea View Bungalow, Peterstone Wentlooge. The property in question is located adjacent to the Sea Wall flood defences (a Public Right of Way) and on land designated as; archaeologically sensitive, countryside, Green Belt, Special Landscape Area, undeveloped coastal zone, landscape of historic interest and TAN 15 C1 Flood Zone.

Planning permission was refused by the Council due to the proposed development, as a result of its increased scale, massing, volume and visibility, would fail to respect the character of the Countryside and Special Landscape Area and would reduce the openness of the Green Belt, and, as a result of its design, fail to relate sympathetically to the host property or have appropriate proportions or overall appearance, contrary to policies SP5, SP6, SP8, GP2, GP6 and H13 of the Newport Local Development Plan 2011-2026 (Adopted January 2015) as well as the Council's House Extensions and Domestic Outbuildings Supplementary Planning Guidance (Adopted August 2015).

The Inspector found that the main issues in this case are the effect of the proposed development on the appearance of the host property and on the character and appearance of the countryside and the openness of the Green Belt. The proposal amounts to a substantial extension to the appeal property, estimated by the Council as an 85% increase in volume over the existing house and a 190% increase over the original size. Local Development Plan policies H13 and SP6 both refer to a 30% increase in size being acceptable in principle. Raising the roof height would increase the bulk and massing of the roof and it would appear top-heavy. The proposed dormers would be out of scale and their windows would be considerably larger than the ground floor windows. The dormer windows would exacerbate the top-heavy appearance. The Inspector deemed that the proposed extensions were poorly designed and would not be sympathetic to the scale and appearance of the existing property, contrary to LDP policies GP2 and GP6.

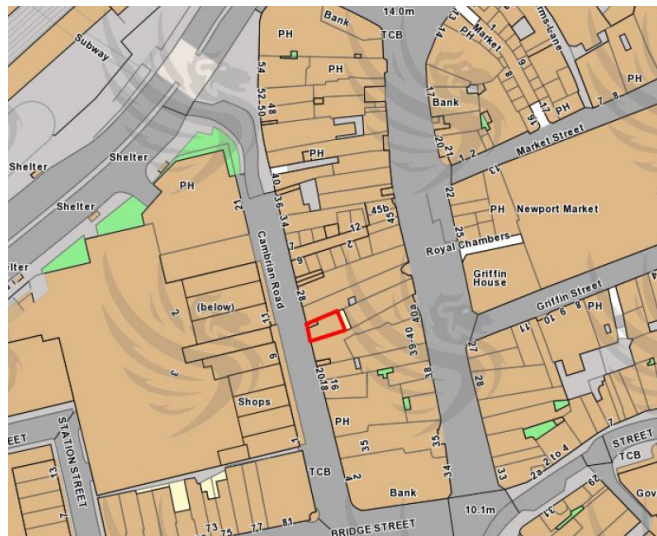
Views of the building from outside the site are limited and partially screened by trees and the features of the waste transfer station. However, some views do exist, particularly from the public right of way, which runs close to the site. The raised and substantially extended dwelling would have a much greater visual impact on its surroundings than the present fairly low-key bungalow, and its unbalanced and unattractive appearance would be detrimental to the character and appearance of the wider area, it would also be detrimental to the Special Landscape Area and Green Belt aims, which would conflict with LDP policies SP8 and SP6. The property lies within an area at risk of coastal flooding. As the development would provide first floor family accommodation where only ground floor accommodation exists, this would represent a useful health and safety benefit but not one of such importance as to outweigh the harm identified above.

The Inspector concluded that the proposed development would be unacceptably harmful to the appearance of the host building and to the character and appearance of the wider area and contrary to development plan policy.

**DECISION: DISMISSED**

## PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 16/1233  
APPEAL TYPE: Written Representations  
WARD: Stow Hill  
SITE: Efes Grill, 24 Cambrian Road, Newport, NP20 4AB  
SUBJECT: RETENTION OF SHOPFRONT  
APPELLANT: Mr Nurettin Gundogdu  
PLANNING INSPECTOR: Paul Selby  
DATE OF COUNCIL'S DECISION: 25<sup>th</sup> January 2017  
OFFICER RECOMMENDATION: Refused  
COMMITTEE/DELEGATED: Delegated



### SUMMARY

The application sought retrospective planning permission for the installation of a replacement shopfront at the mid-terrace commercial property trading as Efes Grill, 24 Cambrian Road, Newport. The property lies within the Town Centre Conservation Area. Planning permission was refused by the Council because the shopfront, by reason of its design, materials and elevation cladding, represents a poor quality, inappropriate and unsympathetic alteration that fails to respect the character or architectural detailing of the host property and one which stands out as an obtrusive addition to the building and wider street scene, to the detriment of the visual amenities of the area and the character and appearance of the Town Centre Conservation Area, contrary to policies GP2, GP6 and CE7.

The inspector determined that the main issue was whether the development preserves or enhances the character or appearance of the Town Centre Conservation Area. The inspector noted that the character and appearance is largely derived from 19<sup>th</sup> century commercial buildings adjoined by original or modern shopfronts that are sympathetic in proportion, materials and details to the original building. The upper floors of the property are largely unaltered; at the ground floor a modern shopfront has been installed. The previous shopfront was not original or traditional in design and lacked any architectural features of merit, however, the new shopfront appears as a cumbersome insertion that overwhelms the original building, isolating the ground floor from the upper part of the property and disrupting the appearance of the wider terrace, with consequent visual harm to the Conservation Area.

It was concluded that the appeal development is a discordant and visually intrusive feature that does not preserve or enhance the character or appearance of the Conservation Area. The development conflicts with the conservation and design objectives of policies GP2, GP6 and CE7 of the Newport Local Development Plan. The Council will now serve an Enforcement Notice on the property requiring the shopfront to be removed.

**DECISION: DISMISSED**

## JUDICIAL REVIEW –

REF:  
TYPE:  
WARD:  
SITE:  
SUBJECT:

## CLAIM DISMISSED

16/1099  
Judicial Review  
Marshfield  
Land North Of And Adjacent To M4, Began Road, Cardiff  
Non Material Amendment to planning permission 14/0337 relating to number and size of solar panels inverter/transformer buildings, site layout, security system, fence design and drainage scheme  
Keep Us Rural  
25<sup>th</sup> January 2017  
Granted  
Delegated

CLAIMANT:  
DATE OF COUNCIL'S DECISION:  
OFFICER RECOMMENDATION:  
COMMITTEE/DELEGATED:



## SUMMARY

Planning permission (ref. 14/0337) was granted in October 2015 for the installation of a ground mounted photovoltaic (solar electricity) plant on land adjacent to Began Road near Michaelstone Y Fedw. A local action group 'Keep Us Rural' sought challenge to the grant of the permission by way of a Judicial Review, but this was dismissed by the Court in January 2016. The Court determined that whilst there was an error in relation to the screening opinion, this was inconsequential in the determination of whether or not the development was likely to give rise to significant environmental impact, and so if the Screening Opinion was to be reconsidered, it would have come to exactly the same conclusion; namely that an Environmental Impact Assessment would not have been required. The planning permission was upheld.

Keep Us Rural sought to appeal this decision, but the Court of Appeal decided to refuse to hear the case in July 2016.

Subsequently, a Non Material Amendment application (ref. 16/1099) seeking changes to permission 14/0337 was approved by the Council on 25<sup>th</sup> January 2017. The changes related to the number and size of the solar panels, the number and size of the inverter /transformer buildings, site layout, security system, fence design and drainage scheme.

Again, 'Keep Us Rural' sought challenge to this decision by way of Judicial Review, and permission for a hearing was granted on one ground, that the screening opinion was flawed both in substance and reasoning. The hearing took place on the 27<sup>th</sup> June 2017 and the decision was made on the 28<sup>th</sup> June 2017. The Court determined that when the screening checklist is read as a whole, it is quite clear that the issue of flood risk had been considered and that the conclusion that the development did not require

an EIA was clear when the screening opinion is read as a whole. The Judge concluded that there was no error of law and so the decision to allow the Non Material Amendment should not be quashed. The claim by 'Keep Us Rural' was dismissed and legal costs of £10,000 were awarded to the Council.

**DECISION: CLAIM DISMISSED**

