

# Report

## Planning Committee

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### Part 1

Date: 4<sup>th</sup> October 2017

Item No: Insert item number here

**Subject** **Appeal Decisions**

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

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

**Ward** Victoria, Langstone, 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: 4<sup>th</sup> October 2017

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0924  
APPEAL TYPE: Written Representations  
WARD: Victoria  
SITE: 123-125 Chepstow Road, Newport, NP19 8BZ  
SUBJECT: Proposed mixed use as a bakery and pastry business with customer seating area and shisha lounge/smoking area and retention of building to rear service yard.

APPELLANT: Mr Iakender Dogru  
PLANNING INSPECTOR: Mr Richard E. Jenkins  
DATE OF COUNCIL'S DECISION: 8<sup>th</sup> December 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated



## SUMMARY

The appeal site comprises an existing bakery business with an associated customer seating area. The appeal proposes the mixed use of the premises as a bakery business and shisha lounge; the shisha lounge would be incorporated within the new building located within the rear service yard.

The main issues in the determination of the appeal were the effect of the proposed development upon the character and appearance of the area, the living condition of the occupiers of neighbouring properties and highway safety.

### *Character and Appearance*

The service yard is large enough to accommodate the building, however, by virtue of its form and overall design, including the use of material, it would represent an insensitive and poor standard of design that would be out of keeping with both its immediate and wider context. Furthermore, it would appear as a discordant feature from public vantage points along Duckpool Road. The proposal is therefore contrary to Policy GP6 of the Local Development Plan (LDP).

### *Living Conditions*

The proposed opening hours would be 11:00 – 00:00 Monday to Friday and Sunday, with extended hours of 11:00 – 01:00 on Saturdays. The rear yard where the shisha lounge is located is within close proximity to existing residential properties on Duckpool Road. As such, there is no doubt the proposal would adversely affect the living condition of the occupiers of nearby residential properties in terms of increased levels of noise and disturbance. It was recognised that such impacts could be controlled through the imposition of planning conditions. However, given the external toilet, kitchen and shisha preparation rooms, it would be difficult to prevent customers and staff congregating in external areas, to the detriment of the living conditions of the occupiers of neighbouring properties. Furthermore, whilst it is acknowledged the site is located within a District Centre and there are other commercial uses within the vicinity, it is not considered such matters outweigh the need to safeguard the living conditions of neighbouring occupiers. As such, the proposal is considered contrary to Policy GP2 and GP7 of the Local Development Plan.

### *Highway Safety*

The Council contended the proposal would result in the loss of parking within the site and remove the ability of the rear yard to be accessed by large vehicles. The Inspector noted that there is no requirement for the yard to be used for customer or staff parking and in any event, a public car park is located a short distance away. Notwithstanding this, given that the premises is located within a District Centre, it is likely that a number of customers would visit the premises through linked trips, with many utilising sustainable modes of transport.

The appellant stated deliveries are made by a car or a small van; it is evident that such vehicles could still access the yard for such purposes. Moreover, no evidence has been provided to indicate that the proposed shisha lounge would result in a materially increased number of deliveries to the premises. For these reasons, the proposed development would found to comply with Policy GP4 of the Local Development Plan.

In view of all the matters addressed above, the potential harm of the proposal on the character and appearance of the host property and the living conditions of the occupiers of neighbouring properties were compelling reasons to dismiss the appeal.

**DECISION: DISMISSED**

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0665  
APPEAL TYPE: Written Representations  
WARD: Victoria  
SITE: Land formerly known as 21 Kelvedon Street, Newport, NP19 0DW  
SUBJECT: Proposed residential development comprising 2 No. small retail units and undercroft parking to the ground floor and 52 No. apartments to the upper floors.  
APPELLANT: EJL Properties  
PLANNING INSPECTOR: Mr Clive Neild  
DATE OF COUNCIL'S DECISION: 28<sup>th</sup> June 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Committee



## SUMMARY

The Inspector considered the main issues in the determination of the appeal to be the effects of the proposed development on the street scene and on the amenity of neighbouring residents, whether or not provisions for flood evacuation routes, on-site parking and outdoor amenity space are sufficient to provide acceptable levels of safety and amenity.

### *Street Scene*

The proposal would introduce a modern flat-roofed building at a height almost twice that of the neighbouring traditional two storey terraced houses. It was noted that both national and local development plan policies encourage new development to promote creative and innovative design rather than just replicate the styles of neighbouring buildings. However, in this case, the scale and mass of the building would be so dominant and alien to its surroundings that it would go far beyond the bounds of good design and would be detrimental to the street scene. The proposal would therefore conflict with Policies GP2 and GP6 of the Newport Local Development Plan (LDP).

### *Neighbours Amenity*

The proposal has been designed to reflect the traditional layout of buildings in the area which front directly on to the pavements. Consequently, the proposal would only be 14 metres away from the houses on the opposite side of Witham Street. Whilst this is similar to the separation distances between the existing rows of terraced houses, it is considerably less than the minimum 21 metres recommended in the adopted Supplementary Planning Guidance. Front windows of houses along Witham Street would be overlooked from windows in the proposed flats; the impression of being overlooked would be much greater due to it being from many more windows and greater heights than from other 2 storey houses.

In addition, the amenity of existing neighbouring properties would be further harmed by the overbearing visual impact of such a large building just 14 metres from their front façade and by loss of light to the same façade for lengthy periods of time each day. The proposal would therefore conflict with Policy GP2.

### *Flood Risk and Safety*

The site lies within Flood Zone C1 and is at risk of tidal flooding. It is common ground that the development would meet the justification set out in Technical Advice Note 15. The building has been designed with only car parking provision at ground floor level and given a minimum floor level was provided, the risks to the buildings from extreme flood events is considered acceptable. The only concern is in connection with a safe evacuation route from the building. It had not been possible to demonstrate that the tolerable conditions detailed in TAN 15 (on maximum depth, rate of rise, speed of inundation and velocity of floodwaters) would be met. These are important criteria and reflect conditions under which emergency activities could reasonably take place.

Although the site is in an urban area and is surrounded by properties at a similar risk of flooding, the proposed development of flats would increase the number of people at risk, and the lack of comprehensive information to address the criteria in TAN 15 is a shortcoming. Although not considered a problem that would warrant refusal in its own right, it serves to reinforce the conclusions on the first two issues.

### *On-Site Parking*

Based on the location of the site reasonably close to the town centre and small size of the flats proposed, it is common ground that 1 parking space per flat would be sufficient; 6 further spaces would be provided for visitor parking. 11 visitor spaces would be required to meet the requirements of the supplementary planning guidance; however, the Council's Highway Officer raised no concerns on grounds of safety. As such, the provision of 58 spaces for 52 flats was considered acceptable.

### *Outdoor Amenity Space*

The Council stated that the proposal would provide substandard outdoor amenity space for future occupants. The Inspector considered the lack of adequate on-site provision of outdoor amenity space to be a significant shortcoming. This is not sufficient to justify refusal of the scheme, however, again serves to reinforce the conclusions on the first two issues.

For the reasons given above, the Inspector considered that the appeal should be dismissed.

**DECISION: DISMISSED**



## PLANNING APPLICATION AND ENFORCEMENT APPEAL

APPEAL REF:  
APPEAL TYPE: Written Representations  
WARD: Langstone  
SITE: Land to the north of 1 Roundwood Close, Penhow, Cladicot, NP26 3BT  
SUBJECT: Change of use of land for the parking of vehicles and associated engineering works to create an off road parking space  
APPELLANT: Mr David Baldwin  
PLANNING INSPECTOR: Mr Alwyn B Nixon  
ENFORCEMENT NOTICE ISSUED: 12<sup>th</sup> January 2017  
DATE OF COUNCIL'S DECISION: 22<sup>nd</sup> July 2016  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated



This decision relates to an appeal against the refusal of planning permission and the issuing of an Enforcement Notice. The appellant appealed the Enforcement Notice on the following grounds:

- Ground A: That planning permission should be granted for what is alleged in the Notice;
- Ground C: That there has not been a breach of planning control; and
- Ground F: The steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections.

### *Ground C*

The development site relates to an area of land lying on the north side of Roundwood Close, a private road serving a development of 4 dwellings on the edge of a small cluster of properties at Penhow. The land to the north of Roundwood Close is open countryside; the Enforcement Notice relates to a small

area of this land. A number of small structures and enclosures have been erected on part of the field and some excavation work has been carried out forming a parking area which links to the private road.

The Enforcement Notice identifies the development as a change of use of the land to use for the parking of vehicles, which has been accompanied by operational development to facilitate the change of use. The Inspector considered this was the correct way to view the development concerned and not to consider the development as a series of individual components as argued by the appellant.

Schedule 2, Part 6, Class B(e) of the GPDO permits the provision of a hard surface on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares in area. Such development can only qualify under the provision where 'reasonably necessary for the purposes of agriculture within the unit'. The parking area goes beyond this qualification since its purpose is in part to provide parking in connection with the residential occupation of the nearby property. As such, the parking constitutes a material change of use of the land. The appellant argued the development constituted works for the maintenance or improvement of a private way, which is permitted under Schedule 2, Part 9 of the GPDO. The private way in this case being the way into the appellant's field, however, the Inspector noted that it is clear that the works undertaken facilitate the parking of vehicles.

In light of the above, it was concluded that the development alleged in the Enforcement Notice constitutes a breach of planning control; therefore the appeal on Ground (c) did not succeed.

#### *Ground A*

The Ground (a) appeal against the enforcement notice and the appeal against the refusal of planning permission both seek to argue that planning permission should be granted.

The locality of the site has a rural character and whilst not prominent from further afield, the site occupies a prominent position in terms of its more immediate context. In addition, a public footpath passes close by on the site's western side. The Inspector did not consider residential parking on separate land lying beyond the existing residential area as a use appropriate in the countryside. Whilst hedge planting would screen the parking to an extent, the presence of vehicles would still be apparent; the development is therefore considered to harm local visual amenity.

With respect to highway safety matters, the Inspector took account of the narrow and winding layout of Pen-y-Worlord Road and considered any vehicle speeds would more than likely be low. Whilst it is accepted that vehicles leaving 'The Row' have to exercise caution and that there may be occasions when an oncoming vehicle may have to slow or even stop, in the context of the site and likely traffic levels, it is not considered that the existing situation presents a significant risk to highway safety. Additionally, the Inspector considered the current 'tandem' parking arrangement a common layout and as such, did not give overriding weight to this argument. The highways benefits of the development are not considered to outweigh the conflict with the LDP.

Having taken into account all matters raised, it is concluded that the development would have an inappropriate and detrimental urbanising effect on the agricultural land forming part of the open countryside, thereby harming the character and appearance of the locality. Therefore the Ground (a) appeal did not succeed.

#### *Ground F*

The appellant argued that should the Enforcement Notice be upheld, its requirements should be reduced. Firstly, it is argued that the requirements should cease the use of the land for parking except when ancillary to agricultural activity. The Enforcement Notice does not prevent the use of the land for its lawful purpose. Secondly, the appellant suggested a single vehicle should be allowed to park in the field between 7pm and 7am only. Even with this limitation in place, the Inspector considered that harm to the countryside would occur. The appeal on Ground (f) did not succeed.

For the reasons given above, and having taken account of all matters raised, both appeals failed.

**DECISION: DISMISSED**

## PLANNING APPLICATION APPEAL

APPEAL REF: 16/0724  
APPEAL TYPE: Written Representations  
WARD: Stow Hill  
SITE: 19 Commercial Street, Newport, NP19 8BZ  
SUBJECT: Installation of replacement shopfront.  
APPELLANT: Mr Brian John  
PLANNING INSPECTOR: Ms Joanne Burston  
DATE OF COUNCIL'S DECISION: 9<sup>th</sup> March 2017  
OFFICER RECOMMENDATION: Refuse  
COMMITTEE/DELEGATED: Delegated



## SUMMARY

The appeal site consists of a mid-terrace, three-storey building incorporating a shop at ground floor level. Properties on this section of Commercial Street include shops, offices, cafes and dwellings, giving the area a diverse and bustling character.

The main issue is the effect of the proposed development on the character and appearance of the building and whether it would preserve or enhance the surrounding Town Centre Conservation Area.

### *Character and Appearance*

The appeal property forms a prominent part of the terrace, which is situated in a key public space within the Town Centre Conservation Area. Although the Street is dominated by key corner plot buildings, the more modest commercial buildings, including the appeal property, make an important contribution to its overall character.

The proposed shopfront was considered to be uncharacteristic of the area by virtue of the absence of a central door, the presence of a full width fascia and the inclusion of large areas of sheet glazing, which do not respect the scale and proportion of neighbouring properties. The addition of the proposed mullion and stallriser did not adequately compensate for the absence of traditional detailing.

In considering development proposals in such locations there is a statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas such as this. However, the Inspector noted that the use of non-traditional materials, in combination with the design and scale, would exacerbate the discordant appearance, on which painting would have only a limited moderating effect. This would exacerbate the situation by attracting attention away from the traditional fenestration of the building, which further detracts from the historic character of the building as a whole. The Inspector also observed that the proposed shopfront would have a harmful impact on the character and appearance of the Conservation area.

In conclusion, the Inspector considered the main issue to be that the proposed development would fail to preserve or enhance the character or appearance of the Town Centre Conservation Area and would significantly harm the character and appearance of the host building, therefore failing to comply with Local Development Plan Policies CE7 (Conservation Areas), GP2 (Amenity) and GP6 (Quality of Design).

For the reasons set out above and taking into account all matters raised the Inspector concluded that the appeal should be dismissed.

**DECISION: DISMISSED**