

Report

Planning Committee

Part 1

Date: 7th March 2018

Item No: Item 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

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

Ward Caerleon, Beechwood, Liswerry, Stow Hill, Marshfield and Allt Yr Yn

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.

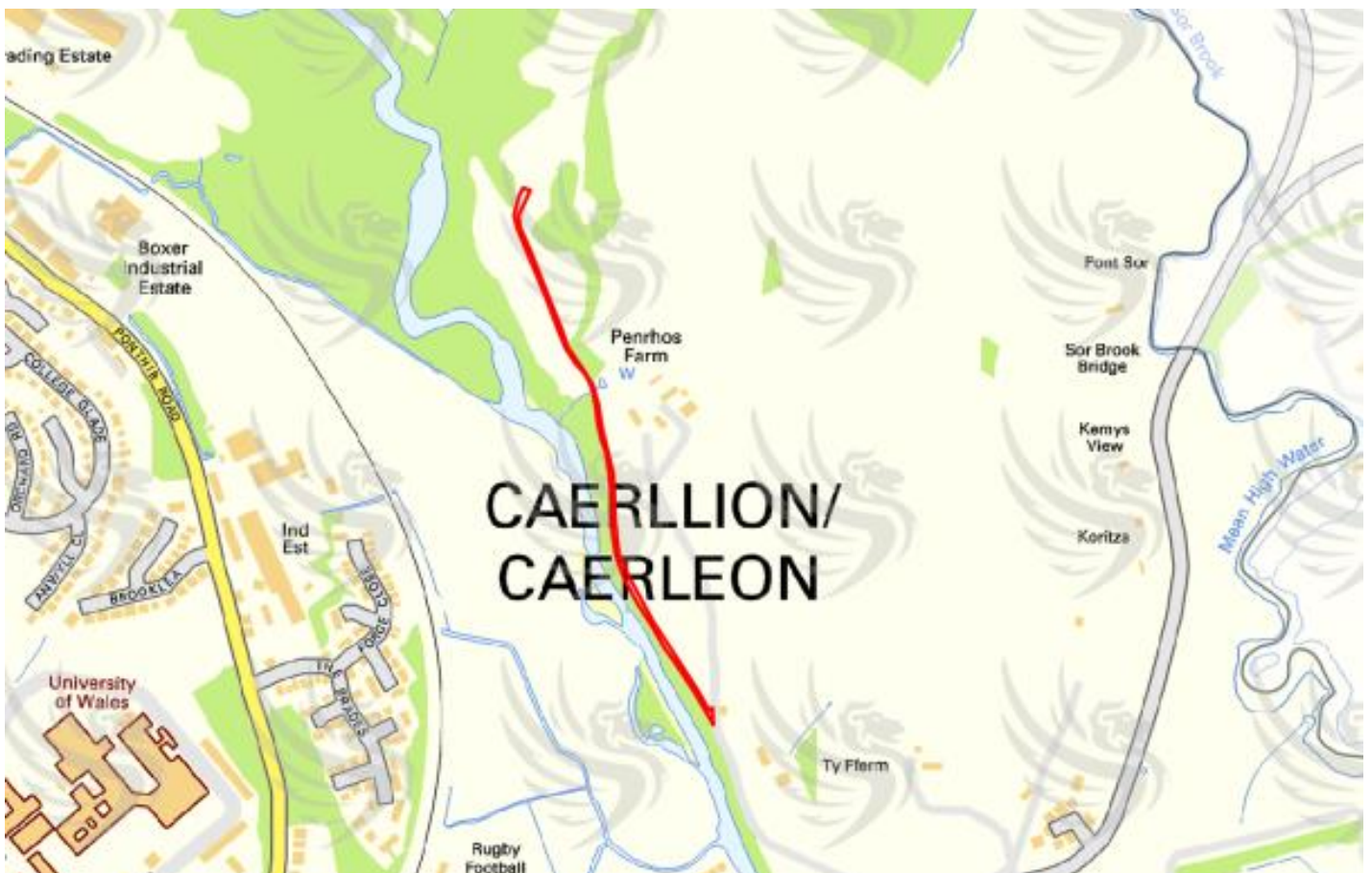
Background Papers

Not applicable

Dated: 7th March 2018

PLANNING APPLICATION AND ENFORCEMENT APPEAL

APPEAL REF: E15/0400
ENFOR REF: 16/0881
APPEAL TYPE: Hearing
WARD: Caerleon
SITE: Land at Former Penrhos Quarry, Usk Road, Caerleon, NP18 1LP
SUBJECT: Laying and formation of concrete track and the erection of gates over two metres in height
APPELLANT: James Norvill
PLANNING INSPECTOR: Mr Richard E. Jenkins
DATE OF COUNCIL'S DECISION: 3rd May 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

A concrete track had been created without planning permission. A retrospective application sought the retention of the track which was refused planning permission. An Enforcement Notice was subsequently issued requiring the removal of the concrete track and debris from the land in its entirety. The appellant has appealed the refusal of planning permission and Grounds A (planning permission should be granted), C (a breach of planning control has not occurred), F (the steps required to comply with the Enforcement Notice are excessive) and G (time given to comply with the Enforcement Notice is too short) on the issuing of the Enforcement Notice.

Ground C

The appellant contended that the development constituted permitted development. Part 9, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended, states that

the carrying out on land within the boundaries of an un-adopted street or private way comprises permitted development.

The Inspector noted from the evidence provided that the previous track did not comprise a hardstanding, but rather a rough track made up of two permeable rutted dirt tyre tracks with a green grass verge through its centre. The works undertaken which include the laying of a granular subbase and concrete surface, have changed the character of the private way. The Inspector therefore considered that given the scale and form of the works undertaken, that the works do not constitute 'maintenance or improvement' and rather represented a new construction. Accordingly, the appeal under ground (c) failed.

Ground A

As defined by the adopted Newport Local Development Plan (LDP) 2011-2026, the access track is located within the countryside. LDP Policy SP5 states development will only be permitted where it respects the landscape character and biodiversity of the immediate and surrounding areas and is of appropriate scale and design.

The appellant argues that the entrance gates, local topography and vegetation serve to limit views of the track from public vantage points. The Inspector acknowledges views of the track are limited, however considered the transformation from a permeable earth track to an extensive and elevated concrete construction has had an injurious impact on the character of the immediate environs.

The appellant further argued that concrete is widely used on agricultural premises. The evidence indicated that the track had been constructed to assist the appellant in accessing his land. The quarrying of the wider site has been abandoned and no information had been provided to indicate that the works are necessary as part of a wider rural enterprise scheme.

The appellant stated that the removal of the access track would be harmful to features of ecological value and be detrimental to local amenity. However, no evidence of such ecological concerns had been provided. In addition, whilst the removal of the concrete track would have inevitable implications for local amenity, such impacts would only be temporary and therefore do not merit significant weight in the planning balance.

For the reasons outlined above, the Inspector found the development to represent an unjustified form of development within the countryside that causes material harm to the character and appearance of the area; such harm cannot be effectively mitigated by the imposition of planning conditions. Accordingly, the development is contrary to policies SP5, SP9, GP2, GP5 and GP6 of the LDP and conflicts with national policy. The appeal under ground (a) therefore fails.

Ground F

The appellant has argued that the requirements of the Enforcement Notice are excessive and lesser steps could be required. No worked out lesser steps were put forward by the appellant. Considering this, the Inspector considered that the corrections to the requirements of the Enforcement Notice would not be excessive and the appeal under ground (f) should therefore fail.

Ground G

The appellant contended that the time given to comply with the requirements of the Enforcement Notice is too short. In this case, the period for compliance is four months. At the Hearing, the appellant conceded that the four month compliance period was acceptable. The Inspector therefore had no reason to dispute the agreed position and the appeal under ground (g) failed.

Conclusion

With respect to the above, the Inspector considered that the Enforcement Notice should be corrected in the interest of clarity and precision and subject to these corrections, the appeals should be dismissed.

DECISION: DISMISSED

PLANNING APPLICATION APPEAL

APPEAL REF: 17/0344
APPEAL TYPE: Written Representations
WARD: Beechwood
SITE: 23 Hove Avenue, Newport, NP19 7QP
SUBJECT: First floor extension above existing garage
APPELLANT: Mr Bevan
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 25th May 2017
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to a first floor extension above an existing garage. The Inspector considered the main issue in the determination of the appeal to be the effect of the proposal on the living conditions of neighbouring residents, having particular regards to outlook. This case had been referred back to the Planning Inspectorate following a successful legal challenge by the Council on the basis that the first appeal decision issued by them was flawed.

The proposed extension would add a first floor over an existing garage attached to the side of the two-storey dwelling. The gap between the garage and the mutual boundary with No. 25 tapers so that the rear corner of the garage virtually abuts the boundary fence. Facing this side boundary is the two-storey side elevation of No. 25 which contains an obscure glazed first floor window and 4 ground floor windows; the largest of these serves a kitchen. The remaining windows do not serve habitable rooms.

No. 25 is set markedly lower than the appeal property. As a consequence, the ground floor windows directly face the side boundary which comprises a high retaining wall surmounted by a timber fence. The garage is readily visible above the fence line; taking this into account, the Inspector considered the visual

impact of the proposal would not have an overbearing impact or an appreciable impact on the outlook of users of the kitchen.

With regards to loss of light to No 25 the Inspector noted the findings of the study undertaken by the appellant and was satisfied that any loss of light would be modest. In addition, the Inspector took account of the Council's SPG and did not consider the kitchen of No. 25 to be a habitable room.

In view of the above, the Inspector concluded that the proposal would not unacceptably affect the living conditions of neighbouring residents and would accord with Policy GP2 of the Newport LDP. The appeal has therefore been allowed.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF: E16/0353
APPEAL TYPE: Hearing
WARD: Liswerry
SITE: Land and Buildings former Carcraft, Langland Way, Newport, NP19 4PT
SUBJECT: Erection of building without planning permission
APPELLANT: Starburst (UK) Limited
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 14th February 2017
OFFICER RECOMMENDATION: Issue Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to two industrial units in the south-eastern most corner of the site which do not benefit from planning permission. The two units form part of a larger terrace of industrial units; the remainder of the units benefit from planning permission. An Enforcement Notice has been issued requiring amongst other things, the removal of the two end units. The appellant has appealed under Ground a (planning permission should be granted for what is alleged in the Notice) and Ground f (the steps required to comply with the requirements of the Notice are excessive).

Ground a

The Inspector considered the main issues in the determination of the appeal to be the effects of the building on the street scene and the visual amenity of the area and on the amenity of the neighbouring commercial property, particularly in respect of outlook.

The appeal unit is of utilitarian design and of a substantial scale and projects considerably further forwards than other buildings of its size in the area. Two other buildings are sited close to the road further along Langland Way, but these are not of the same scale and prominence.

Characteristic of this part of Langland Way is its openness and spaciousness. Travellers along the road get this impression due to the large industrial buildings generally being set well back from the road; this being an attractive characteristic. Its importance is also increased by the fact that Langland Way is also the main arterial route in and out of the International Sports Village. The Inspector considered that this is an important aspect to consider as visitors to the International Sports Village should have a positive experience, and the openness of this part of the industrial estate contributes towards that.

Turning onto Langland Way from the Southern Distributor Road, the units are prominent and protruding much closer to the road than the other buildings in view and significantly reducing the open character of the street scene. Approaching from the opposite direction, the units extend substantially further forward than the neighbouring Euro Foods building and reduces the open character of the road.

In view of the above, the development is unacceptably harmful to the street scene and the character of the area, contrary to Local Development Plan Policies GP2 and GP6.

Turning to the effect of the neighbouring premises, Euro Foods Limited, it is argued that the disputed building is visually overbearing and dominant. Euro Foods has offices at the front with windows on the north and east elevations. Given that permission has been granted for the remainder of the industrial units, the Inspector considered the additional effect of the disputed units to be negligible. In addition, the Inspector did not consider that the disputed building had an overbearing or dominant visual impact on the office workers at Euro Foods.

Finally, the Inspector considered the benefits of retaining the disputed building. Although the disputed building benefits from general policy support, its value is limited by the modest size. The Inspector considered the benefits to be substantially outweighed by the unacceptable harm caused to the street scene and the character of the area. The appeal on Ground a is therefore dismissed.

Ground F

The appellant requested that consideration be made to the partial demolition of the disputed building, rather than full demolition. This would reduce its impact on the amenity of the neighbouring premises. However, the remaining unit would still extend significantly towards the road, occupying a prominent and harmful position. The reduction in length of the side wall alongside the road would do little to alleviate its harmful effect on the street scene and character of the area. The lesser steps would not overcome the concerns raised; appeal under ground f is unsuccessful.

Conclusion

For the reasons given above, the appeal shall not succeed and the enforcement notice is upheld.

DECISION: DISMISSED

APPEAL AGAINST ENFORCEMENT NOTICE

APPEAL REF: APP/G6935/C/17/3178565
ENFOR REF: E14/0436
APPEAL TYPE: Hearing
WARD: Marshfield
SITE: Land and stables adjacent to and North of railway, Green Lane, Peterstone Wentlooge, Newport
SUBJECT: Unauthorised change of use of land for the siting of caravans for use as a gypsy and traveller site
APPELLANT: Mr and Mrs John Janes
PLANNING INSPECTOR: Janine Townsley
DATE OF ENFORCEMENT NOTICE: 12TH May 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



Summary

The appellant appealed Ground G (time given to comply with the Enforcement Notice is too short).

The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a mixed use comprising of a gypsy traveller site and a temporary compound for facilitating works to the Green Lane rail bridge.

The requirements of the notice are to:

- i) cease the use of the land for a gypsy traveller site;
- ii) remove all caravans, structures, fences, gateways, adjacent to Green Lane, materials and equipment brought onto the Land in connection with the unauthorised gypsy traveller use, including sheds and a converted shipping container, and restore the land (including the removal of hard standings) to its condition prior to the breach having occurred and
- iii) remove the septic tank and reinstate the Land to its condition prior to the breach having occurred.

The period for compliance with the requirements was twelve calendar months.

Background

The Enforcement Notice relates to a parcel of land which is owned and occupied by the appellant and his family. Part of the site is occupied, temporarily, by Network Rail as a compound associated with works to the railway.

At the hearing, there was discussion about the wording of the notice. The Inspector was satisfied that the notice is sufficiently clear to enable the appellant to comprehend what action is required of him.

Ground G appeal

The Enforcement Notice stipulates a period of 12 months to cease the use of the site, but it is the Appellant's case that a period of two years is required. The appellant explained that the additional time for compliance sought would allow for the submission of an application for planning permission and if that were unsuccessful, it would allow for time to look for an alternative site. The appellant offered no reason why it would be necessary to await the outcome of a planning application before identifying potential alternative sites. There is no suggestion that an application for permission has already been submitted or that one is imminent. Given the lack of justification put forward, the Inspector does not consider that the appellant's reasons outweigh that harm. The Inspector states that she is satisfied that alternative accommodation could be secured within the compliance period of twelve months.

The Appellant states that he and his wife have six children and a grandchild who live with them. Those children who are old enough attend the local school and travel there by private car. The best interests of the children are to have consistent care and no lasting interference with their development. The Inspector states that she is satisfied that the 12 month period provides a reasonable opportunity to find alternative accommodation and there would be no disturbance in the care available to the children since their parents would move with them. As a result, the best interests of the children would not be compromised in this case.

The Inspector states that she recognises that the dismissal of the appeal would interfere with the Appellant's home and family life. However, this must be weighed against the wider public interest. The EN sets out that the development is an inappropriate form of development in the countryside and adversely affects the openness of the green belt. The steps required by the EN seek to remedy the breach and she considers there to be inadequate reasons to extend the period of time for compliance in these circumstances

Conclusion

The appeal did not succeed and the enforcement notice was upheld. The notice will need to be complied with by 3 January 2019.

DECISION: UPHELD

APPEAL AGAINST ENFORCEMENT NOTICE

APPEAL REF: APP/G6935/C/17/3183793
ENFOR REF: E13/0587
APPEAL TYPE: Hearing
WARD: Allt Yr Yn
SITE: Northern Hey Stables, Brickyard Lane, Newport
SUBJECT: Unauthorised change of various structures to dwellings, gypsy/travellers site

APPELLANT: Mrs Colleen St Helena Rogers
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF ENFORCEMENT NOTICE: 7TH September 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



Summary

The appellant has appealed against C (a breach of planning control has not occurred) and G (time given to comply with the Enforcement Notice is too short)

This appeal is against an enforcement notice which required :

- i) Without planning permission and within the last four years the material change of use of four buildings on the Land (marked A, B, C and D on the attached aerial photograph) to use as single dwellinghouses.
- ii) Without planning permission and within the last ten years the material change of use of the Land through the material change in character of the mix of uses on the Land, which has come about as a result of the material change of use of four buildings on the Land (marked A, B, C and D on the attached aerial photograph) to use as single dwellinghouses and the presence of unauthorised caravans. The current mix of uses is for a gypsy and traveller caravan site facilitated by a hardstanding, use for the use keeping of horses and use for four single dwellinghouses.

The requirements of the notice were:

- i) All touring caravans in excess of 10 shall be removed, together with the area of hardstanding highlighted red on the attached aerial photograph which facilitates their presence on the Land. The resultant hardcore shall be removed from the Land and the area reinstated to its condition prior to the breach having occurred.
- ii) Cease occupation of the Land by persons other than Mr Andrew Nathan Price, Ms Coleen St Helena Rogers, Mr Reuben Rogers, Miss Lucile Olver Ada Price, Miss Michaela Lisa Julie Price, Miss Krystal Coleen Price, Miss Lucy Lorna Price, Mr Ashley Edwards, Mr Steven Podmore, Mr Leonard Moore, Mr Jason Perryman, Mr Adrian Kidman and Mr Di Greenfield and their resident dependents.
- iii) Cease the residential occupancy as a dwelling of the structure labelled "A" on the attached aerial photograph and remove the decking, former static caravan and associated extension from the Land in their entirety.
- iv) Cease the residential occupancy as a dwelling of the building labelled "B" on the attached aerial photograph and demolish the extension to the former "day room" and remove the demolition waste from the Land.
- v) Cease the residential occupancy as a dwelling of the building labelled "C" on the attached aerial photograph.
- vi) Cease the residential occupancy as a dwelling of the building labelled "D" on the attached aerial photograph.

The period for compliance with the requirements is 12 calendar months from the date that the Notice takes effect.

Background

The Inspector stated that the site has been the subject of several planning permissions over recent years associated with the use of the land as a gypsy site, the latest of which was granted on appeal in a decision dated 16 March 2017. In broad terms the effect of that decision is to permit the use of the site for the siting of a mobile home and 10 touring caravans to be occupied by named residents and their resident dependents. (Planning permission exists 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 stable block to create a utility / amenity room and the rebuilding of an ancillary building to create an amenity block).

With regard to the area of hardstanding, the appellant explained that, whilst part of the site had been re-surfaced in recent years, the area of hardstanding within the site had not been extended. In response, and after consulting aerial images spanning a period from 2010 to 2015, the Council confirmed that there was insufficient evidence to pursue the hardstanding allegation. The Inspector corrected the Notice to remove references to this from the allegation and the requirements.

The appellant's case in relation to the use of buildings B, C and D was that they are not used as dwellinghouses. Building B was granted planning permission as a day room. It was agreed that the building was subsequently extended to approximately twice its original size. At the hearing the Council accepted that the extension itself caused no harm and agreed that this requirement could be omitted from the Notice. The appellant explains that buildings B, C and D are all used in a broadly similar fashion. Each resident household is allocated the use of one of the 3 buildings as a utility/day room. This allocation is agreed in weekly residents' meetings and will alter over time according to the varying requirements of the households. The limited storage space in the caravans means that many personal items such as clothes, toiletries and medication are stored in the day rooms. This arrangement is seen as particularly convenient given the distance separating the caravans from these facilities, especially for the infirm or those caring for young children. The appellant emphasised that the bedrooms, which are only used during the day time, are used to provide rest or for particular healthcare reasons by the elderly and infirm, and by young children whilst their carers use the buildings' washing and day room facilities. The appellant confirmed that a room within building D which, at the time of the Inspectors visit, was used as a store room, had been furnished as a bedroom at the time the Notice was served when it was used during the daytime only by the appellant's mother because of her ill-health.

The Council's concern was that the 3 buildings have all the facilities of a dwelling. It accepts that a utility room provision is a reasonable one for the provision of personal and clothes washing, and for food preparation as is a dayroom for leisure time. However, the presence of a furnished bedroom is considered significant in establishing that the buildings are used as dwellinghouses. The Inspector stated that whilst there are occasions when one of the rooms in each building is used as a rest room he found that there is no compelling evidence that any of the buildings have been used as a single dwellinghouse.

On the basis of the available evidence he finds that the use of the 3 buildings has been to provide facilities on a communal basis to the various family units that occupy the site. In reaching this conclusion he is mindful that the site operates as a gypsy site and the appellant's unambiguous confirmation that none of the buildings have been used to provide overnight sleeping accommodation and that neither she nor the other residents would wish to occupy a bricks and mortar dwellinghouse. Thus, whilst buildings B, C and D are all capable of being used as separate dwellings, he concludes that on the balance of probability that such use has not taken place. Accordingly the appeal succeeded and corrected the Notice to delete references to these buildings from the allegations and requirements.

Whilst the mobile home was authorised, the provision of an extension and decking along one side elevation meant that the mobile home no longer constituted a caravan but a dwelling.

The appellant contended that there has been no breach of planning control as the extension to the mobile home constitutes the creation of a twin-unit caravan which does not take the structure as a whole outside the statutory definition of a caravan. The Inspector stated that it seems that the extension, which was constructed on-site, is dependent on the original mobile home and the decking area for its structural integrity. An Engineer's Report submitted by the appellant suggests that the walls and roof are constructed in a similar way to the mobile home. Although it was suggested at the hearing that the structure that has been created is capable of being transported in one piece he does not find the evidence compelling in this respect. Indeed the Engineer's Report refers only to the ability to dismantle the addition and to transport it as a 'flat pack'. The overall width of the structure, including the sizeable overhang of the roof over the extension, measured some 6.56m which exceeds the statutory limitation⁴ on twin-unit caravans by about 0.76m. The appellant pointed out that the exceedance was caused by the roof overhang but as this is an integral part of the extension this consideration does not alter the fact that the structure significantly exceeds the statutory limitation. As there is no planning permission for the extension it constitutes a breach of planning control.

In relation to the 12 month period for compliance with the notice, the appellant argued that this is too short with specific reference to the requirement which seeks to cease unauthorised occupation of touring caravans. A period of 18 months for compliance is sought. The Council has referred to other comparable appeal decisions in the same Authority area which had found that 12 months was a reasonable compliance period. The Inspector was not persuaded that the circumstances of this site differ from those in the other appeal decisions to such an extent as to justify extending the compliance period.

The Council's Housing Officer explained that its Gypsy and Traveller site at Hartridge Farm Road is currently being developed for 9 pitches which reflects the current identified level of need. It was confirmed that, should occupiers of the appeal site present themselves as in need of pitches, arrangements could be put in place to seek funding from Welsh Government to provide additional pitches on that the site which already has planning permission. None of the occupants of the appeal site have chosen to engage with the Council to secure a pitch and, whilst he stated that this public site may not be the preferred choice of some of the residents, it offers a potential option.

The limitation on the number of touring caravan pitches was imposed by previous Inspectors because of the unsatisfactory nature of the site, particularly in terms of highway safety. The appellant suggests that not all of the additional residents own vehicles, partly because of infirmity. He was also told about the frequent visits by health care workers to attend to some of the residents.

However, in line with the aforementioned appeal decisions the Inspector found that the stipulated 12 month period provides sufficient opportunity for alternative accommodation to be sought. It also provides ample time for the submission of the planning application which the appellant's agent confirmed would be submitted soon to permit more touring pitches on the site.

Conclusions

The ground (b) appeal is allowed in relation to buildings B, C and D. The enforcement Notice is corrected in this regard. However, the appeal was dismissed and the enforcement notice was upheld.

The requirements of the notice are that

- i) All touring caravans in excess of 10 shall be permanently removed from the Land.
- ii) Cease occupation of the Land by persons other than Mr Andrew Nathan Price, Ms Coleen St Helena Rogers, Mr Reuben Rogers, Miss Lucile Olver Ada Price, Miss Michaela Lisa Julie Price, Miss Krystal Coleen Price, Miss Lucy Lorna Price, Mr Ashley Edwards, Mr Steven Podmore, Mr Leonard Moore, Mr Jason Perryman, Mr Adrian Kidman and Mr Di Greenfield and their resident dependents.
- iii) Remove the extension to the mobile home labelled "A" on the attached aerial photograph from the Land in its entirety and reinstate the roof of the caravan to its condition before the development of the extension took place."

These requirements have to be implemented by 5 January 2019.

DECISION: UPHELD

PLANNING APPLICATION APPEAL

APPEAL REF: 17/0798
APPEAL TYPE: Written Representations
WARD: Marshfield
SITE: 35 Mallards Reach, Newport, CF3 2NN
SUBJECT: Erection of part first floor, part two storey side extension (resubmission following refusal of 16/1299 and dismissal of associated appeal)

APPELLANT: R Dobbins
PLANNING INSPECTOR: Nicola Gulley
DATE OF COUNCIL'S DECISION: 5th October 2017
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The Inspector considers the main issue to be the impact of the proposed development on the character and appearance to the host dwelling and the surrounding area. The property has been the subject of a previous appeal against the refusal of planning permission for a first floor side extension which was dismissed. This is referred to as the earlier proposal.

The development proposes the construction of a part first floor and part two storey side extension. Unlike the earlier proposal, the first floor extension would be located above the existing annex, set back some 1.2 metres from the front elevation of the property, measure approximately 2.5 metres wide by 6.5 metres long and have a pitched roofline which would be set below that of the host dwelling. The proposed two storey extension would be located at the rear of the host dwelling and would be approximately 2.75 metres wide, 2.5 metres long and have an overall height of 6.3 metres from ground level to the apex of the gable roof. The Inspector agrees with the Council in that no objection is raised to the two storey rear extension on the basis of its impact upon residential amenity and agrees that this

element of the proposal would not adversely impact upon the living condition of the occupiers of nearby properties.

With regard to visual amenity, the Council considered that the scale of the proposed development and the loss of the void space above the annex would have an adverse impact on the character and appearance of the host dwelling and surrounding area. The Inspector considers that the positioning of the first floor extension, which would be set back from the front elevation of the property, coupled with its height, set below the ridge height of the host dwelling, would ensure that the development would appear subservient and respect the modest proportions of the appeal property. Moreover, the level of separation between the development and the shared boundary with No. 37, approximately a metre, together with the staggered arrangement of the building line along this part of Mallards Reach would ensure that the detached character of the dwellings would remain easily distinguishable when viewed in the streetscene.

The proposed development would not have an adverse impact on either the character or appearance of the host dwelling or the surrounding area and would comply with the objectives of Policies GP2 and GP6 of the LDP and Adopted Household Extensions SPG.

Conclusion

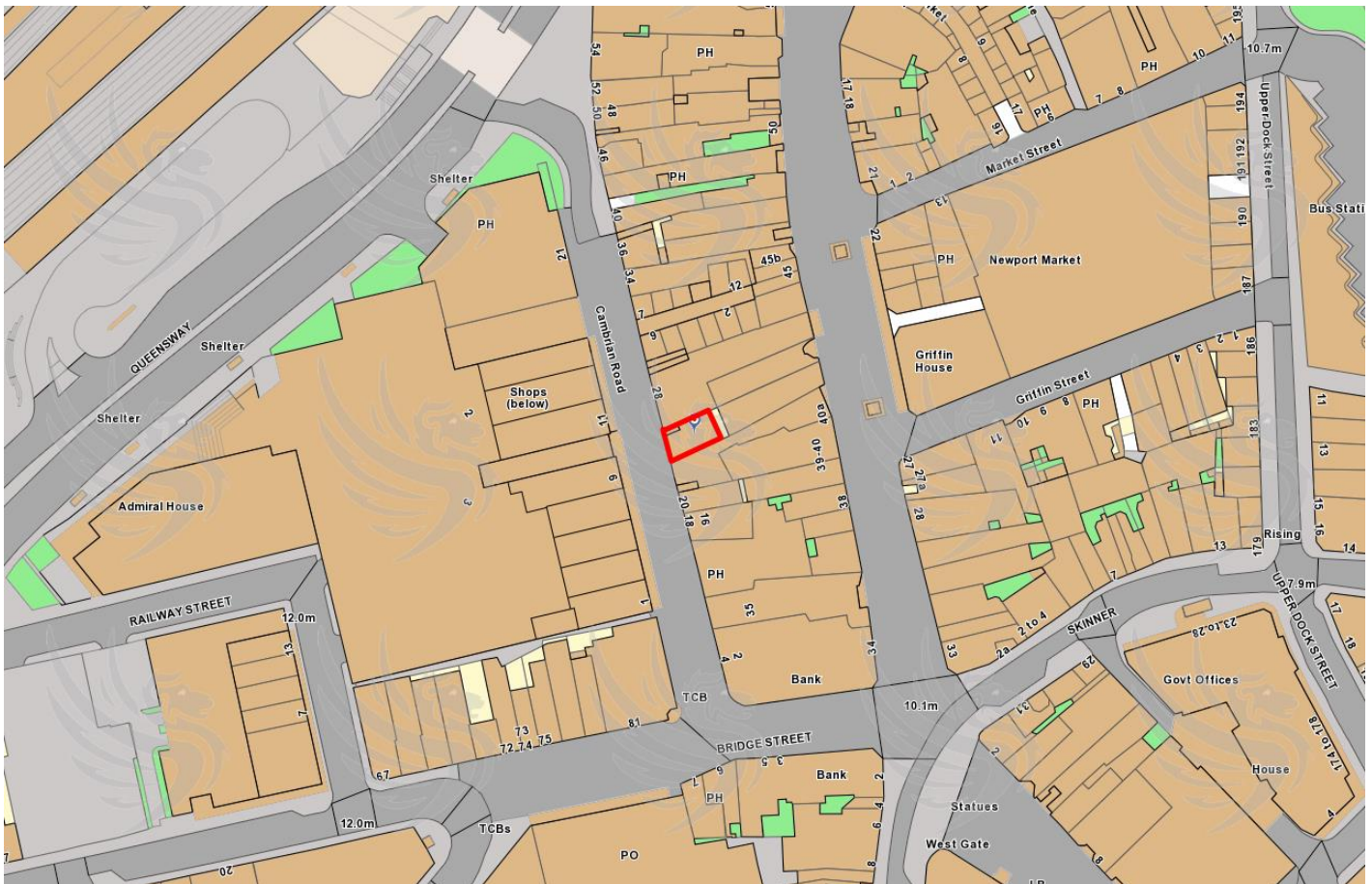
The appeal is allowed subject to conditions.

DECISION: ALLOWED

ENFORCEMENT APPEAL

APPEAL REF: E16/0117
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 24 Cambrian Road, Newport, NP20 4AB
SUBJECT: Unauthorised new aluminium shopfront and illuminated signage

APPELLANT: Mr. Nurretin Gundogdu
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 7th August 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

This appeal is against Ground (g) which relates to the compliance period of the notice.

This appeal is against an enforcement notice which required :

The removal of the unauthorised shopfront and reinstatement of the façade to its condition prior to the unauthorised works being undertaken in accordance with the attached photograph.

The period for compliance with the requirements is: Six months from the date the Notice took effect.

The unauthorised shopfront was the subject of an unsuccessful appeal. The appellant has requested that the period for compliance be increased to 12 months to allow sufficient time for an appropriate planning permission and funding to be secured. The Inspector noted that the Council was not opposed to extending the compliance period however they maintained that 6 months was sufficient time to allow a

new planning application to be determined and an acceptable shopfront to be installed. As it appeared that there was need for further discussion between parties on an acceptable scheme, a modest extension of the time period is considered reasonable. The 12 months sought is not justified and thus the period was extended to 9 months. To this extent the ground (g) appeal succeeds.

DECISION:

The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of "Six calendar months" and the substitution of "Nine calendar months" as the period for compliance. Subject to this variation the enforcement notice is upheld.

DECISION: ALLOWED

PLANNING ENFORCEMENT APPEAL

ENFOR REF: E16/0473
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: Land at 184 Upper Dock Street , Newport, NP20 1DG
SUBJECT: Replacement of timber framed shopfront with aluminium framed shopfront
APPELLANT: Mr Muhmmmed Asif
PLANNING INSPECTOR: Mr Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 14th July 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



Summary

This appeal is against an enforcement notice which required that the previous timber framed shopfront be reinstated in accordance with the drawings and photographs. The Inspector states that the main issue is whether the shopfront preserves or enhances the character or appearance of the Town Centre Conservation Area.

The appeal site occupies the ground floor of a mid-terrace property, whilst the imposing four storey Victorian Terraces that front this side of the street are in need of some renovation. The brick faced upper floor retain much of the original detailing. The commercial frontages at ground floor level are mostly shopfronts. The overall impression is a diversity of facades. The Inspector states that the black coloured frontage of the appeal building represents a simple and relatively elegant appearance which is framed by decorative masonry pilasters. The use of slim aluminium frames to the opening is not harmful to the streetscene given the more prominent timber detailed features of the same colour, such as stallrisers and mullions.

The notice required the reinstatement of the previous shop front which was timber. However the Inspector states that whilst the frame work of the previous shopfront was timber, photographic evidence indicates that shopfront's contribution was not positive. Setting aside its garish painting scheme, the prominent transom bar that extended across the frontage at the height of the top of the door, creating lights above it, together with timber panels above a masonry stall riser, represented horizontal features

at odds with the overall rhythm of the shopfronts along the street. In addition to this the fascia board created an unsightly gap between it and the brickwork face above.

On the main issue the Inspector concludes that the scheme would enhance the Conservation Area thus it would accord with policy CE7 and protect the character of the area in accordance with policies GP2, GP6 of the adopted Newport Local Development Plan (LDP)

Conclusion

The effect of the new shopfront is acceptable and thus allow the ground A appeal, grants planning permission and quashes the enforcement notice.

DECISION: ALLOWED

PLANNING ENFORCEMENT APPEAL

ENFOR REF: E16/0137
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: Land at Ellesmere House, 2 Stow Park Avenue, Newport, NP20 4FH
SUBJECT: Retention of removal of existing chimney stack, front sliding gate and erection of feather edged fencing to rear garden
APPELLANT: Mr Sean Jolley
PLANNING INSPECTOR: Mr Declan Beggan
DATE OF COUNCIL'S DECISION: 16th February 2017
OFFICER RECOMMENDATION: Issue Enforcement Notice
COMMITTEE/DELEGATED: Delegated



Summary

Two Chimney stacks have been removed and a timber sliding gate erected without planning permission. A retrospective application sought the removal of one stack and the retention of the sliding gate which was refused planning permission. An Enforcement Notice was subsequently issued requiring the rebuilding of the two chimney stacks, removal of the timber sliding gate in its entirety and any associated fixtures and fittings. The appellant has appealed the enforcement notice on Grounds A (planning permission should be granted) and F (the steps required to comply with the Enforcement Notice are excessive).

Ground A

At issue is the effect of the development on the character and appearance of the host building, and in particular whether it would preserve or enhance the character or appearance of the Stow Park Conservation Area (CA) taking account of policies GP2, GP6 & CE7 of the adopted Newport Local Development Plan (LDP), and advice contained within Planning Policy Wales Edition 9 (PPW), and Technical Advice Note 24: The Historic Environment (TAN 24).

The appeal property which faces onto Stow Park is a large semi-detached Victorian dwelling which is located within the CA. It's varied slate roofline, architectural detailing and overall proportions make it pleasing to the eye when viewed from the road. The area in which the site is located is known as the Stow Park Estate and dates from 1870 and is a development of suburban villas set within generous plots, with the properties built in a variety of styles and materials, and where many exhibit high levels of ornamentation that is characteristic of the Victorian era; a significant number of the properties survive and retain their original features such as chimneys, gateposts, ornate dormer features and timber sash windows.

The boundary treatment to properties along Stow Park varies in form and appearance which results in varying degrees of screening from the public realm, nonetheless, in general terms the majority of properties and their features can be readily appreciated from the road. In terms of boundary openings these tend to be low level or allow for a more open appearance. The appeal property has retained a historic ornamental gatepost which makes for an attractive addition to the street scene; this feature is evident at a significant number of properties within the CA. The appeal property is typical of the type of buildings found in the CA and reflects the prevailing residential Victorian character of the area, notwithstanding any modern interventions in the wider area. The appeal property makes a positive contribution to the character and appearance of the CA.

As indicated in the appeal submissions, the chimneys that were demolished were typical of the Victorian period with their ornamented brickwork and size; they made a significant contribution in visual terms to an already varied and interesting roofline, and complemented the existing stack that still serves both properties that form the semi-detached block; the Inspector states that the removal of these features has had a significant and detrimental visual impact on the property itself and the CA.

The Inspector acknowledges that the appellant has sought to renovate this previously poorly maintained property but this does not justify the harm caused by the removal of the chimneys. The appellant states that many other properties in the area have removed their chimneys. The Inspector states that this only serves to demonstrate the visual harm that can be caused to the character of the area, and therefore reject these examples in the immediate area as providing justification for development that clearly harms the CA and further erodes its special qualities. The appellant refers to the chimneystacks having to be removed due to structural instability, however he has provided no substantive evidence to support this statement.

The Inspector states that whilst the black metal gates that have been removed had no historic value, they did reflect the style of gates on nearby properties which are open in appearance and sit comfortably within the masonry gateposts. He states that the same can't be said for the gate subject to this appeal due to its solid appearance, height of 2 metres, and relationship with the existing stone boundary wall and masonry gate post which appears awkward and contrived. The overwhelming majority of properties within the CA that have gates are black metal in appearance with a degree of alignment and ornamentation that you would expect to find fronting a property from the Victorian period.

The gate to be retained would therefore not reflect the character and appearance of gates in the area and because of its appearance neither preserves or enhances the character or appearance of the host building or the CA. Whilst some weight is given to security, the Inspector argues that security need could be met by the use of electronic surveillance systems and the risk does not outweigh the harm caused by the unauthorised gates. The proposal therefore does not accord with policies GP2, GP6 & CE7 of the LDP, and advice contained within PPW, and TAN 24, which collectively seek to protect visual amenity and heritage assets. For the reasons given above, I conclude that the demolition of two chimney stacks and installation of a sliding gate the subject of this appeal is detrimental to the host property and fails to preserve or enhance the character or appearance of the CA. The ground (a) appeal and deemed application therefore fails.

Ground F

The appellant argued that should the Enforcement Notice be upheld, its requirements should be reduced. The appellant argues that as all the materials used in the original construction of the chimneys

have been removed from the site it would prove extremely difficult to source replacements. It is also argued that as the house is now painted white there is no reason why the chimneys should not be built as close as possible in shape and form to match the rest of the house using modern materials to reflect those previously in situ. The Inspector states that whilst it may prove difficult to source replacement materials, it is highly likely that suitable materials would be forthcoming that would match those that have been removed. In addition to this it is not unusual within the CA for properties to have different materials or colours on chimneys as opposed to the exterior walls. He is also not convinced that the use of more modern materials would adequately replicate the shape, form or appearance of those that have been removed. The requirements of the notice are clear that it is directed at remedying the breach of planning control, rather than any lesser steps where the purpose might be only to remedy the injury to amenity. No lesser steps than those set out would achieve the purpose of remedying the breach of planning control. The requirements of the notice are not excessive and the appeal fails on ground F.

Conclusion

The enforcement notice is upheld and planning permission is refused on the application for deemed to have been made under S177(5) of the 1990 Act amended.

DECISION: DISMISSED