

Report

Planning Committee

Part 1

Date: 4th December 2019

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**

Wards Beechwood, Caerleon, Graig, Langstone, Pillgwenlly, Shaftesbury, St Julians and Victoria,

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: 4th December 2019

Planning Application Appeal

Reference	19/0151
Address	128-130 Caerleon Road, Newport, NP19 7GS
Development	Demolition of existing double garage/store and erection of a pair of semi-detached dwellings with parking provision
Appellant	Mr Andrew Forbes
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Dismissed

Planning Application Appeal

Reference	18/0381
Address	40-41 Commercial Road, Newport, NP20 2PE
Development	Change of use from A1 to mixed use of A3 and sui generis (shisha bar) and erection of rear extension to create smoking shelter, toilet block and side and rear boundary walls.
Appellant	Lounge 23 Ltd
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Dismissed

Planning Application Appeal

Reference	18/1178
Address	Land adjacent to The Old Post Office, Old Road, Lower Machen, Newport, NP10 8GU
Development	Proposed erection of detached dwelling including removal of part of boundary wall and associated creation of new access and works
Appellant	Mr Chris Davidson
Officer Recommendation	Refuse
Committee Decision	Refuse
Appeal Decision	Dismissed

Appeal Against Grant of Permission Subject to Conditions

Reference	19/0257
Address	20 Corporation Road, Newport, NP19 0AR
Development	Change of use from A1 shop to A3 hot foot takeaway and installation of extraction flue to rear
Condition imposed	No customer shall be admitted to or allowed to remain on the premises outside the following hours; Monday-Thursday 08:00-22:00; Friday-Saturdays 08:00-00:00; Sunday and Bank Holidays 10:00-22:00.
Appellant	Mrs Zeynap Firat
Appeal Decision	Approved

Planning Application Appeal

Reference	19/0548
Address	1 Greenmeadow Drive, Parc Seymour, Penhow, Newport, NP26 3AB
Development	Retention of a close boarded timber fence
Appellant	Mr Jon Taylor
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Allowed

Planning Application Appeal

Reference	19/0256
Address	Eveswell Surgery, 252-254 Chepstow Road, Newport, NP19 8NL
Development	Change of use of doctors surgery to a 10 bedroom house of multiple occupation
Appellant	Mr Matthew Atkin
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Allowed

Planning Application Appeal

Reference	18/0752
Address	Unit 15, Western Industrial Estate, Caerleon, NP18 3NN
Development	Demolition of existing garage workshop and erection of a detached building to accommodate an MOT testing station
Appellant	Mr Philip Spiteri
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Allowed

Planning Application Appeal

Reference	19/0408
Address	7 Pugsley Street, Newport, NP20 5JU
Development	Change of use of a 4 bedroom dwelling to a 4 bedroom HIMO
Appellant	Mrs Lisa Fitzgerald
Officer Decision	Refuse
Committee Decision	N/A
Appeal Decision	Allowed

Enforcement Prosecution

Reference	E15/0330
Address	1a Corporation Road
Breach	Unightly piece of land
Court	Cwmbran Magistrates
Date of hearing	28/10/2019
Defendant 1	Sarah Johnsey
Fine	£5000
Costs	£1042.80
