

# Report

## Appeal Decisions

---

### Part 1

Date: 7<sup>th</sup> September 2022

**Subject** **Appeal Decisions**

**Purpose** To record the outcome of recent planning appeals

**Author** **Head of Regeneration and Economic Development**

**Wards** Langstone, Malpas, Beechwood, Caerleon, Marshfield and Tredegar Park

**Summary** In consultation with the Chair or Deputy Chair of Planning Committee, the Head of Regeneration and Economic Development has delegated powers to determine planning applications previously determined by Planning Committee. The following planning appeal decisions are reported to help inform future decisions.

**Proposal** **To accept the appeal decisions as a basis for informing future decisions.**

**Action by** Development Services Manager

**Timetable** Not applicable

This report was prepared without consultation because it is a record of recent planning appeals to help inform future decisions.

## **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 an application is refused against Officer advice, during this interim arrangement, the Acting Head of Regeneration, Investment and Housing, along with the Chair/Deputy Chair of Planning Committee 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 major developments, which often require 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 Head of RED/Chair/Deputy of Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.</p> <p>Ensure appeal timetables are adhered to.</p>	<p>Head of RED with Chair/Deputy of Planning Committee</p> <p>Head of RED with Chair/Deputy of 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 a record 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.

### Preferred Option and Why

To accept the appeal decisions as a basis for informing future decisions.

### 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.

There is always a risk of a planning decision being challenged at appeal. The costs of defending decisions and any award of costs must be met by existing budgets.

### **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 a record 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 a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### **Consultation**

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### **Background Papers**

Not applicable

Dated: 1<sup>st</sup> June 2022

---

## **Planning Application and Enforcement Appeal**

Reference

E20/0159 and 21/0207

Address	Sunnyside Nurseries Langstone
Development	The retention of 1No. storage/workshop building ancillary to existing use, 3 No. cabins for retail use and extension of existing hardstanding.
	Enforcement Notice issued for following reason: Without planning permission and within the last ten years the change of use of the Land to a mixed use of nurseries and A1 use facilitated by the erection of three wooden cabins.
Appellant	A Halse
Officer Decision	N/A
Committee Decision	Refuse and enforcement notice issued
Appeal Decision	Dismissed

#### Planning Application Appeal

Reference	21/1241
Address	Copley White Hart Lane Caerleon
Development	Removal of condition 02 (archaeological mitigation) of planning permission 21/1241 for garage conversion
Appellant	D Huggett
Officer Decision	N/A
Committee Decision	N/A
Appeal Decision	Allowed

#### Planning Application Appeal

Reference	21/0923
Address	329 Pilton Vale Malpas
Development	Two storey rear extension
Appellant	J Smith
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Dismissed

#### Planning Application Appeal

Reference	21/0931
Address	4 Firbank Crescent, Beechwood ward
Development	Proposed two storey side extension
Appellant	N Tilley
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Dismissed

---

### Enforcement Notice Appeal

---

Reference	E19/0092
Address	Land to the East of New House Farm, Lighthouse Road, NP1 9SF
Development	Erection of a concealed dwelling
Appellant	Mr S Gibbons
Officer Decision	Enforcement notice served
Committee Decision	N/A
Appeal Decision	Allowed but enforcement notice varied and upheld. Partial costs awarded.

---

### Prosecutions

---

Reference	E22/0024
Address	Badgers Wood, Began Road, Cardiff
Offence	Deliberate large-scale destruction over a protracted period; wilfully destroyed & damaged trees that were protected by tree preservation order, tipped rubble and building waste in root zone, chemical leaches, suffocation etc.
Appellant	Mr P. Welch
Officer Decision	Prosecute
Court Fine	Fined £30,000 reduced to £20,000 for an early guilty plea and costs were awarded to the Authority. Victim surcharge £190.
Court Found	We accept the Council's position that there has been a high level of harm and deliberate destruction to a protected woodland. We agree Culpability is high as you were fully aware of the TPO and were refused PP previously. We have noted the points about the wildlife corridor etc. We accept there has been a degree of financial gain.