

Report

Planning Committee

Part 1

Date: 6 July 2016

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Head of Regeneration, Investment and Housing

Ward Ringland, Llanwern

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

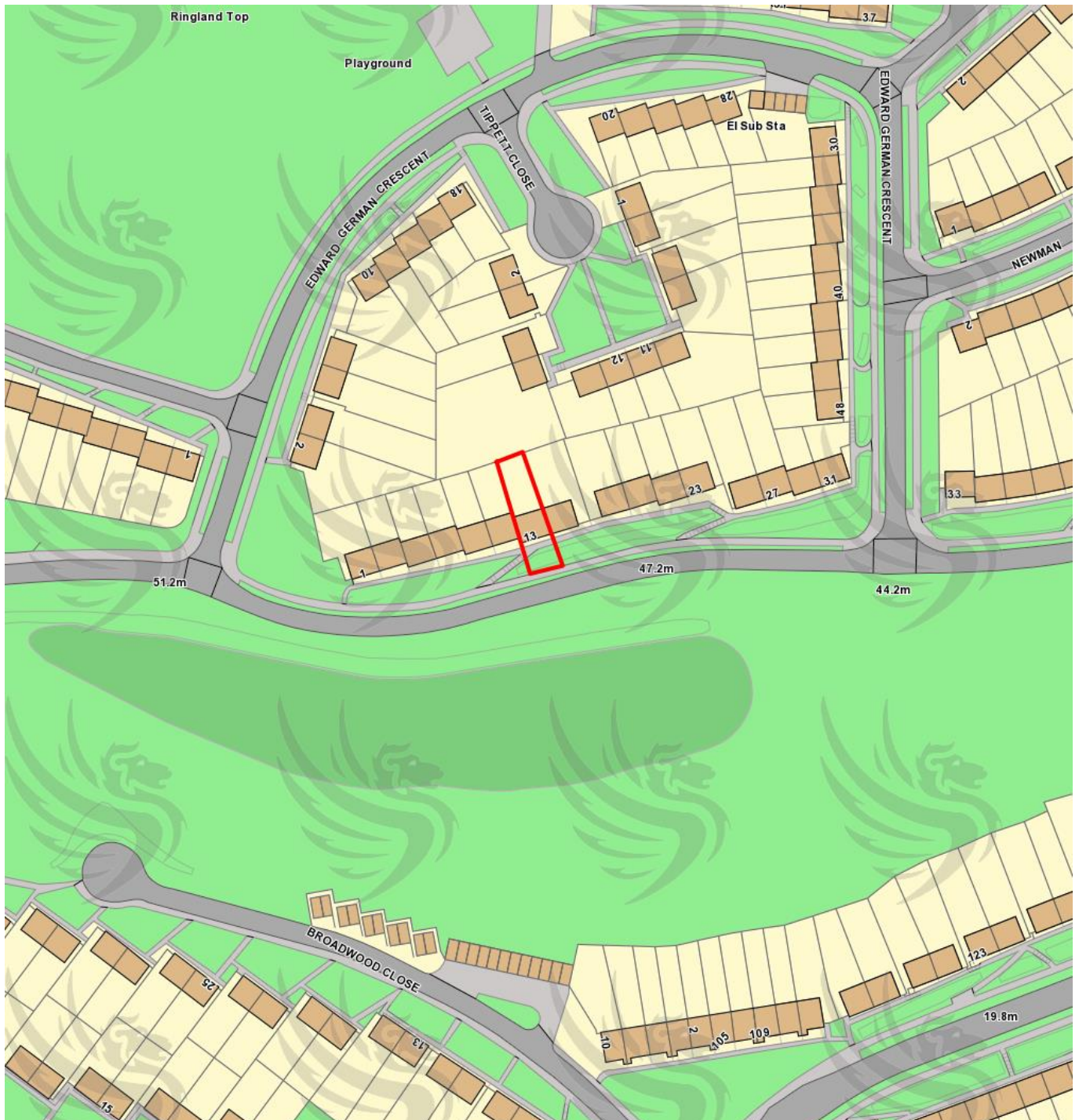
Not applicable

Dated: 6th July 2016

PLANNING APPLICATION APPEAL

APPEAL REF: 15/1290
APPEAL TYPE: Written Representations
WARD: Ringland
SITE: 13 Sterndale Bennett Road, Newport, NP19 9LX
SUBJECT: Retention of bike store forward of principal elevation
APPELLANT: Gareth Hall
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 17th December 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: ALLOWED



SUMMARY

A bike store has been erected forward of the principal elevation of the property. The Inspector considered the main issue in the determination of the appeal to be the effect of the development on the character and appearance of the area.

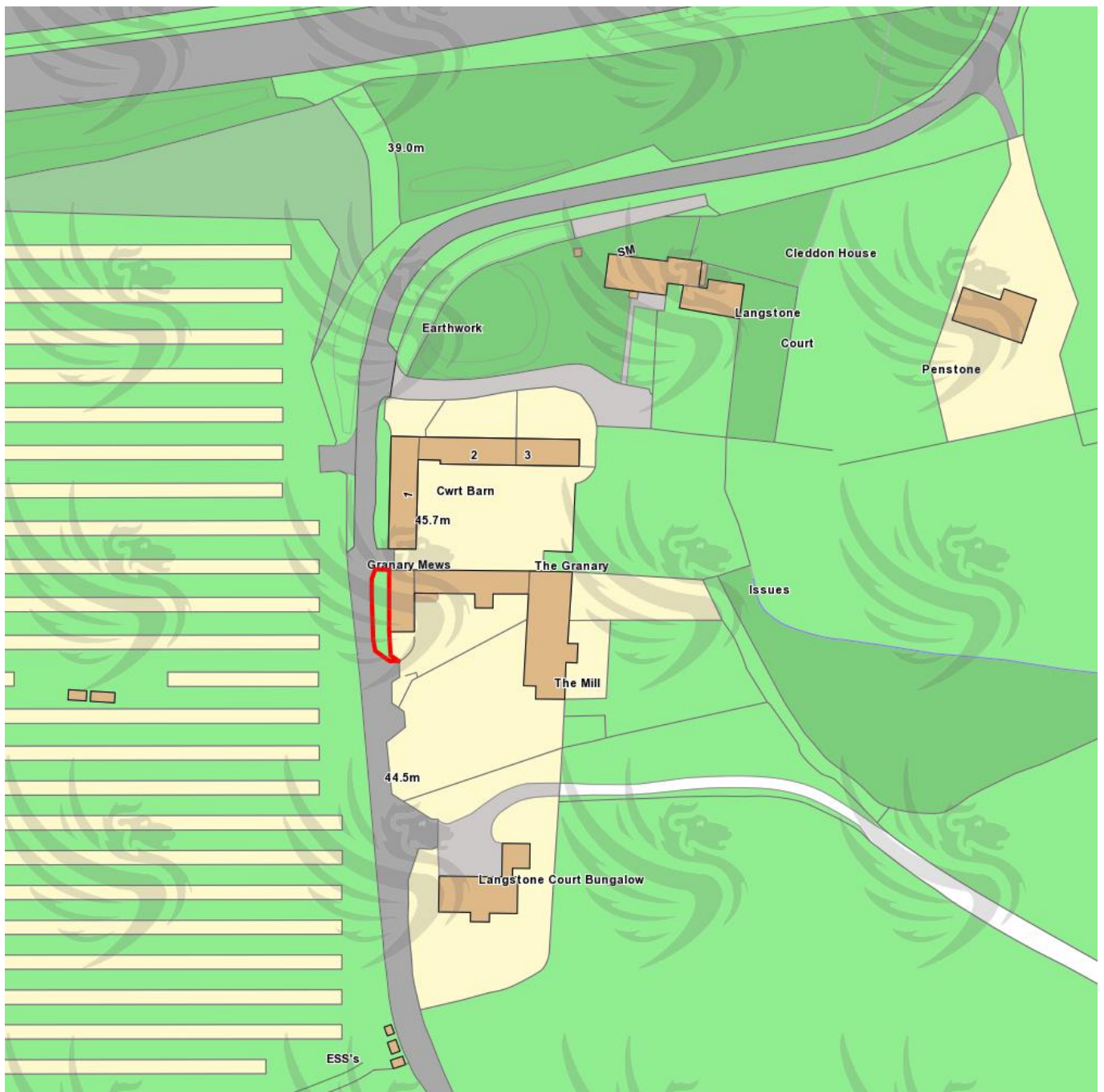
The Inspector noted that due to the location of the bike store, at the front of the property, it is readily visible from the street. Nonetheless, despite its siting, it is a small structure that sits well below the elevated height of the host dwelling and adjoining terraced housing, which are substantially more visually dominant as a consequence. The bike store is cut partly into the steep front garden and this further mitigates its prominence in views along the street. An established hedge in a neighbouring property and the slight curvature of the road also provide some screening in views from the west and from the east it is also seen with the hedge in the background. Moreover, it is screened on one side by planting. Owing to the topography of the housing frontages along this part of the road and having regard to its small scale, the bike store is a visually subservient structure that does not intrude harmfully into the streetscene. It therefore complies with the objectives of Policy GP6 of the Newport Local Development Plan.

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

PLANNING ENFORCEMENT APPEAL

APPEAL REF: E14/0480
APPEAL TYPE: Written Representations
WARD: Langstone
SITE: The Granary Mews, Langstone, Court Road, Langstone, Newport, NP18 2NE
SUBJECT: Erection of fence facilitating extension of curtilage
APPELLANT: Robert Chard
PLANNING INSPECTOR: Janine Townsley
DATE OF COUNCIL'S DECISION: 19th November 2015
OFFICER RECOMMENDATION: Issue Notice
COMMITTEE/DELEGATED: Delegated

DECISION: ALLOWED



SUMMARY

The appeal site comprises a semi-detached dwelling, a conversion of a former agricultural building. The appeal property forms part of a small group of residential properties. The surrounding area is predominately rural in character. Between the front of the dwelling and the highway is a grassed area which is owned by the appellant but falls outside the curtilage of the dwelling. This area has been enclosed by a post and rail fence together with some hedge planting.

The Inspector firstly assessed the appeal on ground c; this ground of appeal is that there has not been a breach of planning control. The Council's position is that the fence facilitates a material change of use of the land, since it enables the use of the land as domestic curtilage. It was a requirement of the Notice to remove the fencing and hedge enclosing the land facilitating the change of use. However the Inspector noted that there has been no evidence provided to suggest that the change of use did not result in a breach of planning control and therefore considered that the appeal fail on ground c.

The Inspector finally assessed the appeal on ground a; this ground of appeal is that planning permission should be granted. The Inspector considered the main issues in the determination of this ground to be the effect of the development on the character and appearance of the site and surrounding area and the impact on the safety and convenience of users of the adjacent access road.

The Inspector noted that there was nothing in the Council's evidence to suggest an objection to the use of the land for residential purposes; rather its visual impact, particularly in terms of domestic garden accoutrements in a rural setting. The Inspector further noted from a site visit that a neighbouring dwelling also has a similar sized grassed area which is adjacent to the highway, designed in an open plan format. The Inspector considered that as the verges are adjacent to the dwellings and are maintained in such a manner, that they relate visually to the dwelling houses as opposed to the surrounding countryside. As a result, the Inspector concluded that the domestic use of the land would not be harmful to the character and appearance of the dwelling and the surrounding area. It was therefore concluded that the development complied with Policies SP5 and GP6 of the Newport Local Development Plan 201102026 (LDP).

The Council's evidence suggested that the fencing is harmful to highway safety and insufficient information has been submitted to mitigate this objection. However the Inspector noted that no assessments appear to have been carried out as to the actual impact of the fence and hedge as constructed. Therefore the Inspector concluded that it was not possible to assess the development against the requirements of Policy GP4 of the LDP. Despite this, the Inspector concluded that the set-back, combined with the relative low height of the fence and hedge means that visibility is not is not compromised to such a degree as to justify a refusal of the development.

The appeal therefore succeeded on ground a. The Enforcement Notice is therefore quashed and planning permission is granted with a condition restricting the height of any boundary planting to 1 metre.