

# Report

## Planning Committee

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### Part 1

Date: 7 December 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,

**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: 7 December 2016

## PLANNING APPLICATION APPEAL

APPEAL REF: E16/0086  
APPEAL TYPE: Written Representations  
WARD: Ringland  
SITE: 7 Eisteddfod Walk / 13 Springfield Drive  
SUBJECT: High Hedge  
APPELLANT A: Hasan Cetin  
APPELLANT B: Keith Skidmore  
PLANNING INSPECTOR: Melissa Hall  
DATE OF COUNCIL'S DECISION: 8<sup>th</sup> November 2016  
OFFICER RECOMMENDATION: Issue Notice  
COMMITTEE/DELEGATED: Delegated

**APPEAL A: DISMISSED**  
**APPEAL B: DISMISSED**



## SUMMARY

The appeal relates to a high hedge located in the garden of 7 Eisteddfod Walk. The hedge immediately adjoins the eastern boundary of the complainant's property, 13 Springfield Drive. The hedge, predominately made up of Lawson Cypress Cultivar, has a height of around 13 metres, which varies across its length of some 46 metres.

The Inspector considered the main issues in the determination of the appeal to be:

- Whether the high hedge is adversely affecting the reasonable enjoyment of the complainants property;
- Whether the steps required by the Remedial Notice are reasonable; and if so,

- Whether the period specified in the Remedial Notice to carry out the action falls short of what should reasonably be allowed.

A High Hedge Notice involves the concept of an 'action hedge height' (AHH), above which a hedge is likely to block too much light and have an adverse effect on the reasonable enjoyment of a neighbouring property. In this case, the AHH has been measured at two metres. However the Council's Tree Officer advised that reducing the hedge height to the AHH would impact detrimentally on its health; owing to previous works undertaken to the lower part of the hedge. Consequently, the Remedial Notice (RN) required an initial action comprising a reduction in the height of the hedge to 7.9 metres and a preventative action of maintaining the height of the hedge at 8.5 metres through regular cutting (allowing for a 0.6 metre growing margin).

Appellant B alleged that the RN did not remedy the adverse effect of the high hedge on the enjoyment of his property, or prevent a recurrence of its effect. The appellant contended that the hedge is some 11 metres higher than that recommended by the AHH calculation to allow a reasonable amount of light into the property. The appellant further stated that the hedge had been planted in close proximity to the dwelling, and that the failure of the owner to carry out regular maintenance has resulted in the trees becoming out of control.

Whilst sympathising with Appellant B, the Inspector was concerned that the species would lack the ability to produce vigorous regenerative growth when subjected to the harsh pruning required to reduce the hedge to the AHH. The Inspector, in absence of expert evidence to the contrary was not satisfied that the hedge could sustain such a reduction without risk to its survival. Consequently, the Inspector noted that Section 69(3) of the Act prevents among other things, works that would result in the death or destruction of the hedge. The Inspector was therefore bound by Section 69(3) of the Act not to allow the hedge to be cut to the AHH.

Appellant A considered that the RN exceeds what was reasonably necessary or appropriate to remedy the adverse effects of the hedge. Appellant A stated that a reduction in the height of the hedge would result in a loss of privacy and that he cannot afford the costs of the works. The Inspector firstly noted that should the hedge be cut to a height of 7.9 metres, as specified in the RM, sufficient privacy between the dwellings would be retained. The Inspector therefore concluded that the actions required by the RN do not exceed what is necessary to remedy the adverse effects of the high hedge.

Appellant A also appealed the grounds that the period specified in the RN to carry out the action falls short of what should reasonably be allowed. The Council states that it specified within its delegated report that the initial action should be carried out within a time frame of 12 months, and would not therefore take issue with extending the time frame. However, the Inspector noted that no evidence had been provided as to why a compliance period of 3 months is insufficient. The Inspector was also mindful that until the work is carried out, the adverse effects of the hedge will persist. The Inspector, therefore considered a compliance period of three months to be acceptable.

For the reasons stated above, and having regard to all the matters raised, the Inspector concluded that the appeals should not succeed and that the RN be upheld.

## PLANNING APPLICATION APPEAL

APPEAL REF: 15/1197  
APPEAL TYPE: Written Representations  
WARD: Stow Hill  
SITE: 9-12 Commercial Street, Newport, NP20 1SJ  
SUBJECT: PART RETENTION/PART COMPLETION OF THE DISPLAY OF 4NO. INTERNALLY ILLUMINATED FASCIA SIGNS, NON-ILLUMINATED DOOR SURROUND AND VARIOUS WINDOW/FANLIGHT VINYLs AND POSTERS

APPELLANT: SDI (Newport) Ltd  
PLANNING INSPECTOR: N Shepherd  
DATE OF COUNCIL'S DECISION: 24<sup>th</sup> November 2015.  
OFFICER RECOMMENDATION: Part grant/Part refuse  
COMMITTEE/DELEGATED: Delegated

### DECISION: PART ALLOWED/PART DISMISSED



### SUMMARY

An application was submitted for part retention/part completion of various adverts at the commercial property at 9-12 Commercial Street, currently trading as Sport Direct. There are various adverts in question, positioned across the Commercial Street (front) elevation, Corn Street (side) elevation and Upper Dock Street (rear) elevation.

As part of the initial decision, the Council refused all adverts with the exception of the 2No fascia signs located on the corner of Upper Dock Street and Corn Street (the former rear entrance to M&S) as these replaced similar adverts of the former occupier and window posters on the Commercial Street elevation which are set back from the face of the display window (as distinct from window vinyls which are applied to the face). Permission was refused for the following signs;

- Front elevation – fascia sign, fanlight signs and window vinyls,
- Side elevation – fascia/elevation sign, door surround and window vinyl, and
- Rear elevation – window vinyls.

The Inspector noted that fascia signage was a bright and intrusive element in the street scene to the detriment of the views of the building and the area in general. Further, he found it detrimental to the setting of the adjoining Listed Building. It was concluded that the fascia sign (comprising the

SportsDirect, Mega Value, Nike and Adidas elements) failed to preserve the character and appearance of the Conservation Area and were detrimental to visual amenity in general. He therefore dismissed the appeal in relation to these adverts.

In relation to window vinyls, he noted that the windows in question were at right angles and were split horizontally, creating a total of 4No elements on display. He found that these vinyls had a deadening effect on the frontage and appeared cluttered as a result of the horizontal split. It was concluded that these vinyls were detrimental to the look and feel of the shopfront and failed to preserve or enhance the character and appearance of the Conservation Area. These were also dismissed.

However, he had contrasting opinions with regards to the fanlight vinyls. He found that the Karrimor and Slazenger vinyls were set back from the main frontage and more in line with recessed signage of the main windows, which reduces their impact significantly and found that their siting was sufficient to preserve the character and appearance of the Conservation Area. He allowed the appeal in relation to these fanlights. In regards to the other fanlight vinyls adjacent to the Mega Value signage on the north-east end of the building, he noted that these fanlights have 4No elements, as opposed to the 2No elements on the other fanlight. He comments that these add clutter to the frontage and result in a loss of symmetry to the frontage (in reference to the difference to the two element fanlight elsewhere). He dismissed the appeal in relation to these fanlight adverts.

In relation to the side elevation fascia/elevation sign and door surround; he noted that the sign is large and clearly visible from the north-east along Corn Street looking towards the Conservation Area, and found that the sign is an overly large, intrusive element in the general street scene which also drew attention away from Commercial Street and the lines of the host building, and that it disrupts the setting of the adjacent Listed Building. It was concluded that this sign is detrimental to the visual amenity of the area and fails to preserve the character and appearance of the Conservation Area. Similarly, he noted that the door surround would draw attention away from the Conservation Area and obscure architectural elements of the building's elevation, and also fail to preserve or enhance the character and appearance of the Conservation Area.

Finally, in relation to the window vinyls to the corner elevations on Upper Dock Street and Corn Street, the Inspector found that the set back of these vinyls from the frontage of the other units along the terrace would lessen their impact in the street scene, that views were broken up by a pillar, and that these were hosted on a modern section of the building outside of the Conservation Area. He concluded that overall they do not result in an obtrusive element in the street scene and allowed the appeal in relation to these window vinyls.

To conclude;

The Inspector has allowed the appeal in respect of;

- the window and door vinyls on the side and rear elevations, and
- the Karrimor and Slazenger fanlight adverts above the doors on the front elevation.

But dismissed the appeal in relation to;

- the 'SPORTSDIRECT.COM', 'MEGA VALUE' and Nike and Adidas fascia sign on the front elevation,
- the window and fanlight vinyls applied to the left hand side of the shopfront (below the 'MEGA VALUE' fascia sign),
- the window vinyls applied to the right hand side of the shopfront (below the 'adidas' element of the fascia sign),
- the 'SPORTSDIRECT FITNESS.COM' fascia sign on the east elevation, and
- the red door surround on the east elevation.