

Report

Planning Committee

Part 1

Date: 6th September 2017

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**

Ward Liswerry, Caerleon

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 September 2017

PLANNING APPLICATION APPEAL

APPEAL REF: 16/1292
APPEAL TYPE: Written Representations
WARD: Liswerry
SITE: 166-168 Cromwell Road, Newport, NP19 0HP
SUBJECT: Erection of two storey unit for use as A1 with ancillary office and storage space in connection with A1 business

APPELLANT: Mr I Haris
PLANNING INSPECTOR: Mr Richard E. Jenkins
DATE OF COUNCIL'S DECISION: 9th February 2017
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to a vacant plot of land previously occupied by a single storey commercial unit which was demolished in 2015. The area is predominantly residential in character with some commercial units a short distance away. The appeal sought permission to construct a two storey unit for use as an A1 retail store, with ancillary office and storage space in connection with the retail business located at first floor level.

The Inspector considered the main issue in the determination of the appeal to be the effect of the proposal of highway safety, with particular reference to parking provision.

Given the modest scale of the site, the proposal would not provide any off-street parking spaces and as such, the proposal would result in an increased demand for on-street parking within the area. Nevertheless, whilst the public highway located immediately outside of the appeal site is restricted by double yellow lines, there are a number of on-street parking opportunities within the immediate and wider vicinity that would have the potential to serve the modest need that would arise from the proposed

development. The Inspector recognised that there may be periods throughout the day when demand for on-street parking may be more competitive. However no cogent evidence to support the Council's assertion that the development would result in a material threat to highway safety was provided.

In view of the above, it was considered that any parking demand arising from the proposed development could be satisfactorily accommodated on-street without representing a material threat to highway safety and as such, the proposal is considered to comply with Policies GP2 and GP4 of the Local Development Plan.

With respect to the effect of the proposal on existing businesses, the Inspector considered that given the modest scale and the surplus expenditure available within the catchment area, the proposal would not have an adverse impact on the vitality and viability of nearby defined centres. As such, the proposal is considered to comply with Policies SP19 and R8 of the Local Development Plan.

The site is located within a C1 Flood Zone, however, subject to the imposition of a condition requiring the floor levels to be set no lower than 7.15 metres AOD, the Council is satisfied that the tests set out in national policy would be met; the Inspector concurred.

With regards to the matters raised above, the Inspector concluded that the appeal should be allowed, subject to conditions.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF: 15/0432
APPEAL TYPE: Written Representations
WARD: Liswerry
SITE: Black Horse Inn, 56 Somerton Road, Newport, NP19 0JE
SUBJECT: Erection of 8 dwellings with off road parking and associated works

APPELLANT: Harrand Homes Limited
PLANNING INSPECTOR: Richard E. Jenkins
DATE OF COUNCIL'S DECISION: 5th October 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Committee



SUMMARY

The appeal relates to land formerly occupied by the Black Horse Inn which was demolished in 2014 and has since remained vacant. The appeal seeks the erection of 8 dwellings with off street parking and associated works. The Inspector considered the mains issues in the determination of the appeal to be the effect of the proposal of the character and appearance of the area; whether the proposal represents an acceptable form of development, particularly relating to flood risk and the effect of the proposed development upon highway safety.

Character and Appearance

The proposal would comprise a terrace of properties fronting Somerton Road; its layout is reflective of the pattern of development within the area. The Council opposed the development on the basis of detailed design considerations, namely the variation in height of the properties; the use of dormer windows and the drab and unappealing appearance of the front façade. The Inspector acknowledged that whilst dormer windows are not a prominent feature in the local area, however, by reason of the limited number proposed, as well as their well-proportioned scale, they would not be overly prominent in the street scene. Similarly, the variation in height of the proposal, compared to the existing surrounding properties would not cause material harm. The Inspector empathised with the Council's concerns

regarding the porch serving the corner property; however, given the scale of this feature, it was not considered that it would render the scheme unacceptable.

In view of the above, it was concluded the proposal would not cause material harm to the character and appearance of the area and as such, would not conflict with Policy GP6 of the Local Development Plan.

Development and Flood Risk

The appeal site lies within Zone C1. National policy defines residential development as 'highly vulnerable development'; such development should only be permitted in zone C1. Natural Resources Wales raised no objection provided a suitable condition requiring the finished floor levels are set no lower than 7.71 metres above Ordnance Datum (AOD). The Inspector recognised the need for redevelopment of the site and therefore found that proposal would comply with Policy SP3.

Highway Safety

The Council objected to the proposal on the basis that an inadequate level of parking provision would be provided, which would result in discriminate parking to the detriment of residential amenity. The appellant submitted a sustainability assessment to justify the reduced level of parking; the Head of Streetscene and City Services subsequently withdrew the objection to the proposed development.

The Inspector had not seen evidence to justify the Council's departure from the recommendation of the Head of Streetscene and City Services. Furthermore, the Inspector considered the access arrangements to be typical of such an urbanised context and had no doubt the site is located within a highly sustainable location. As such, the Inspector found nothing to indicate that the highways arrangements would cause harm in terms of residential amenity. Accordingly, the proposal complied with Policies GP2 and GP4 as well as the adopted Supplementary Planning Guidance on 'Parking Standards'.

For the reasons discussed above, the Inspector concluded that the appeal should be allowed subject to conditions.

DECISION: ALLOWED

PLANNING APPLICATION APPEAL

APPEAL REF: 16/1042
APPEAL TYPE: Written Representations
WARD: Caerleon
SITE: 19 Old Hill Crescent, Christchurch, Caerleon, Newport, NP18 1JL
SUBJECT: Demolition of existing dwelling and construction of replacement dwelling and new dwelling to the rear
APPELLANT: Mr Bill Pratt
PLANNING INSPECTOR: Vicki Hirst
DATE OF COUNCIL'S DECISION: 5th January 2017
OFFICER RECOMMENDATION: Refuse
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal site is located within the settlement limit, in a sustainable location and comprises previously developed land. The surrounding area is predominantly residential comprising detached dwellings of varied designs and scales. The predominant form of dwellings is of a linear nature set back from and facing the street. The proposal would demolish and replace No 19; access would be provided to the south of the site adjacent to No 17 and would serve a new dwelling located to the rear of No 19. Both properties would be of identical design.

The provision of a dwelling to the rear of No 19, albeit within the settlement limit, would project beyond the defined built form and out into the more open land behind the row of houses. The new dwelling would be visible from a number of viewpoints and appear as an isolated dwelling in the open land behind the houses and appear as a discordant incursion in this context. The provision of an access road between

No 17 and the proposed dwelling at No 19 would appear squeezed in between the properties. The dwelling situated immediately behind No 19 would be clearly visible from the street and would represent a form of back land development that has no relationship with the linear form of dwellings fronting the street.

The Inspector noted that the previous appeal decisions at the site were for different proposals and related to a different number of dwellings and site areas. Nevertheless, the Inspector considered the matters relating to the principle of developing the site remain similar to those in the earlier decisions. The Inspector concurred with the findings of both previous Inspectors that the development would introduce new built development on the edge of an existing settlement and erode the countryside edge to the detriment of the character and appearance of the area.

The Inspector took into account the appellants contention that a substantial amount of development could be carried out as permitted development, which represented a fall-back position. However, the Inspector had no substantive evidence that this would occur or that it would have any greater impact on the character of the area than the proposal for a large independent detached house with its associated new access. As such, limited weight was given to this matter.

The Inspector concluded that proposal would be harmful to the character and appearance of the street scene and surrounding area and thus contrary to Policies SP1, GP2 and GP6.

With respect to the effects of the proposal on highway safety, the Inspector noted that Old Hill Crescent is a relatively narrow street which serves a number of dwellings. The proposed access would be in close proximity to a bend in the road. Nonetheless, given the narrow nature of the road, its alignments and on street parking, it was considered vehicles would likely be travelling at low speeds. As such, visibility was considered acceptable. Furthermore, the Inspector considered the proposal included adequate on-site parking and had no reason to believe the proposal would result in additional on street parking. Therefore, it was concluded the proposal would comply with Policy GP4.

With respect to affordable housing, Policy H4 requires a commuted sum contribution towards affordable housing for sites of fewer than 3 dwellings within the defined village boundaries. A Unilateral Undertaking was provided by the appellant and was considered acceptable by the Council, subject to being signed and dated. However, the Unilateral Undertaking had not been signed; therefore, the Inspector concluded that the proposal failed to comply with Policy H4. Nonetheless, the Inspector considered that should a signed Unilateral Undertaking be provided, that this would not outweigh the harm identified to the character and appearance of the area from the proposed scheme.

For the reasons discussed above, the Inspector concluded that the appeal should be dismissed.

DECISION: DISMISSED

PLANNING APPLICATION APPEAL

APPEAL REF: 16/1236
APPEAL TYPE: Written Representations
WARD: Caerleon
SITE: Broad Towers, Broadway, Caerleon, Newport, NP18 1AY
SUBJECT: Retention of enlargement of first floor side elevation window and installation of balcony

APPELLANT: Mary and Anne Reynolds
PLANNING INSPECTOR: Richard E. Jenkins
DATE OF COUNCIL'S DECISION: 6th April 2017
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated



SUMMARY

The appeal relates to the enlargement of a first floor window and the installation of a balcony on the side elevation at first floor level of Broad Towers. The property is not listed, although is attached to the Grade II listed 'Radford House' and is also located with the Caerleon Conservation Area.

The Inspector considered the main issue in the determination of the appeal to be whether the proposal would preserve or enhance the character or appearance of the Caerleon Conservation Area. The Inspector recognised the development to be visible from the street scene, however, given the lawful fall-back position, coupled with the fact that the windows in that elevation are far from uniform, did not consider material harm had been caused to the character or appearance of the host property, the setting of the adjacent Radford House, or the wider conservation area. Furthermore, whilst it was recognised the balcony was not typical of the character of the host property, it was not considered to represent a prominent feature in the street scene.

For the reasons outlined above, the development was considered to comply with Policies CE7, GP2 and GP6. The appeal has therefore been allowed.

DECISION: ALLOWED