

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED
DEVELOPMENT PROCEDURE) ORDER 1995 - TO DATE
PLANNING AND COMPENSATION ACT 1991
TOWN AND COUNTRY PLANNING ADVERT REGULATIONS 1994
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
ACT 1990
APPLICATIONS FOR PERMISSION FOR DEVELOPMENT**

These are reports and recommendations by Officers for consideration and resolution by the County Planning Authority.

All the applications in respect of the proposals specified in this report will be available for inspection by the Members of the Committee prior to and during the meeting at which the said applications will be considered.

The Background Papers relating to each application, including forms, plans, relevant correspondence, Development Plan and guidance documents are available for public inspection during normal office hours

**COPIES OF APPENDICES AVAILABLE FROM THE HEAD OF
PLANNING AND PUBLIC PROTECTION**

REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

**APPEAL COSTS
2 TUDOR AVENUE/50 GRONANT ROAD, PRESTATYN
AND
THE SHOWFIELD, RHYL ROAD, RHUDDLAN**

1. PURPOSE OF REPORT.

1.1 To advise Members of appeal costs awarded against the Council following appeal decisions at 2 Tudor Avenue/50 Gronant Road, Prestatyn and The Showfield, Rhyl Road, Rhuddlan. This report has been prepared in accordance with normal procedures following the outcome of a decision which has financial implications for the Council.

2. BACKGROUND

2.1 Costs of appeals (dealt with by inquiry or hearing) can be awarded against either main party for unreasonable behaviour. This unreasonable behaviour may be the result of failure to follow proper procedures, but in most cases, where costs are awarded against Councils, the award is made because the Council has failed to provide planning evidence to support their reasons for refusal. Clear guidelines are set out in Welsh Office Circular 23/93.

3. THE APPEALS

2 Tudor Avenue/50 Gronant Road, Prestatyn

3.1 Planning permission was refused for the demolition of the existing dwelling at 2 Tudor Avenue in order to allow an extension to an existing elderly persons residential home at 50 Gronant Road at the Planning Committee on 25th June 2003 following a site inspection panel. The decision was made contrary to the Officer recommendation. The reason for refusal related to the scale, design and siting of the extension and the extent of parking and hard surfaced areas and their unacceptable affect on the residential character and appearance of the area.

3.2 The appeal was dealt with by a hearing on 21st October 2003. The Council was represented by a Senior Planning Officer (not the case officer) and the two Ward Members nominated by the Planning Committee. The appellants were represented by a planning consultant. Interested parties included 12 local residents.

3.3 The Inspector allowed the appeal on the basis that the extension met all the relevant criteria of UDP Policy CF5 and that there would be no significant harmful residential or visual amenity impact.

3.4 In considering the appellants claim for costs on the basis of an unreasonable reasons for refusal, the Inspector reasoned that the Council had not provided any technical evidence to support the impact arguments and had not taken into account the significant changes made during consultation and the mitigation that could be achieved

by a landscaping scheme. He concluded that unreasonable behaviour had been demonstrated. He awarded costs against the Council. The costs claim is around £1,500.

The Showfield, Rhyl Road, Rhuddlan

3.5 Planning permission was refused for a variation of a condition on a previous planning permission granted on appeal to allow a car boot sale to operate on 14 Saturdays in addition to the 28 Sundays previously granted on appeal. The application was refused at Planning Committee on 26th March 2003 for reasons relating to the carrying out of shopping activity on an out of town site in conflict with national and local retail policy with the likely reduction in footfall in Rhyl and other nearby town centres. The decision was made in accordance with the Officer recommendation. A public inquiry into the appeal was held on 7th October 2003. The Council were represented at the Inquiry by the Development Control Manager and the Acting Head of Planning Services. 3 no. County Councillors made representations to the Inspector in support of the reasons for refusal. The Councils case was put by Counsel. The appellants were represented by Counsel and by a planning consultant.

3.6 The Inspector allowed the appeal on the basis that the proposal would not have an unacceptable affect on the vitality and viability of Rhyl town centre and would not conflict with Policy RET 18, the Retail Strategy of the UDP, or National retail policy.

3.7 The appellant made an application for costs on the basis of the Councils unreasonable behaviour. The Inspector concluded that the original condition had been imposed on a cautionary basis and that considering that the current application on its individual planning merits did not in itself amount to unreasonable behaviour. However, he considered that car boot sales are not a retail development best located in a town centre and therefore the tests of national policy do not apply. He did not consider that the Council had produced any substantial evidence to show that the proposal would result in a material reduction in footfall in Rhyl town centre. He awarded costs against the Council. The cost claim had not been settled at the time of writing this report. Members will be updated with any further information at the meeting.

3.8 Officers were concerned about some of the reasoning of the Inspector in reaching his decision and awarding costs and have requested Counsel opinion as to the merits of challenging the decision. Counsels opinion is that some of the Inspectors analysis of retail policy is difficult to understand and that the Inspector has misinterpreted national policy. However, he sets this against the fact that the Council themselves have devised a specific policy for markets and car boot sales that indicates a different approach to other retail uses. In this respect and notwithstanding the interpretation of national guidance he would have reached a similar conclusion and therefore the decision would be unlikely to be quashed on this basis.

3.9 Counsel also considered that the Inspectors approach in failing to consider sequentially preferable sites is open to criticism as is the consideration of the reason for the imposition of the original condition by the previous Inspector but does not consider that a challenge would be entertained on either of these points. The Inspectors treatment of the Denbighshire Retail Study is also of concern to Counsel. He did not appear to consider it as a body of evidence in its own right.

3.10 Counsel conclude that, whilst any challenge to the award of costs would have to be separate from any challenge to the decision itself, it would be difficult to sustain such a challenge if the decision letter itself was not under challenge. Therefore, whilst the Council are justified in feeling aggrieved by the quality of the Inspectors reasoning and thus his determination on both the appeal and costs issues, Counsel would not advise that a High Court challenge to either the decision itself or the costs letter stands a realistic prospect of succeeding.

4. COMMENT

4.1 These decisions illustrate the risks of an award of costs in appeal cases for different reasons. In the first case (Gronant Road), Officers considered that a case could be made against the proposal notwithstanding the initial recommendation such that costs would be avoided. In the second case (The Showfield) the costs decision hinged on an interpretation of retail policy which in Officers and Counsels view could be considered suspect. The cases illustrate the possibility of an award of costs is often difficult to predict and can depend on the particular interpretation of sometimes subjective matters or policy by an Inspector.

5. RECOMMENDATION

5.1 That Members note the contents of the report and that in addition in respect of The Showfield appeal Officers take the following steps :

- i) Seek clarification from Welsh Assembly Government on the correct interpretation of Planning Policy Wales with regard to markets and car boot sales and where they might be best located and;**
- ii) Draw the Planning Inspectorate's attention to the Council's concerns in the reasoning of the Inspector.**

**REPORT BY HEAD OF PLANNING AND PUBLIC
PROTECTION**

APPEAL DECISION UPDATE

1. PURPOSE OF REPORT.

1.1 To advise members of recent appeal decisions.

2. BACKGROUND

- 2.1 The report on the delegation scheme and procedures considered at the Planning Committee on 31st October 2001 and subsequently approved at the County Council meeting on 27th November 2001 proposed that a summary of appeal decisions be reported on a quarterly basis to a set format. Appeal decisions received for October 2003 – December 2003 are set out in the **attached appendix**.
- 2.2 As requested by Members we have included a column indicating the original decision level (Committee or Delegated) and the officer recommendation.
- 2.3 Whilst we are happy to answer questions on the appeal decisions at the Planning Committee, if you have any matters of detail that you would like to discuss please contact Mark Dakeyne or Ian Weaver prior to the meeting.

This report is for Members' information.

LIST OF APPEAL DECISIONS FROM OCTOBER - DECEMBER 2003

DESCRIPTION	DECISION LEVEL/ RECOMMENDATION	LOCATION	TYPE	APPEAL DECISION	DECISION DATE	COSTS	KEY ISSUES
Change of use from office to residential	Delegated - Refuse	Temperance House, High Street, St. Asaph	Written Reps	Allowed	13/10/03	-	Listed building retains strong residential character. Low order shopping centre and use would not detract from vitality and viability.
Change of use of the land by the stationing of a Static Caravan used for residential purposes	Committee - Enforcement Notice Served	Cornel Bach, Lower Denbigh Road, St. Asaph	Hearing	Allowed	23/10/03	-	Exceptional personal circumstances carry significant weight and outweigh UDP policies. Conditions imposed limiting occupation to applicant for temporary period and site screening.
Demolition of an existing dwelling to allow an extension to an existing Residential Home	Committee Officer's rec - Grant	2 Tudor Avenue & 50 Gronant Road, Prestatyn	Hearing	Allowed	12/11/03	COSTS	Limited public views of site. Not overdevelopment and acceptable design. No perceptible loss of outlook or privacy for neighbours.
Erection of 8 No. dwellings and associated car parking area	Delegated - Refuse	Vale View Villas, land in Mona Terrace, Rhyl	Written Reps	Dismissed	10/11/03	-	Cramped form of development with substandard levels of external amenity and private garden space. Existence of recreational facilities in locality would not compensate.
Demolition of garage and re-development of land by the erection of 5 houses and construction of new pedestrian access	Committee Officers rec - Refuse	Clwyd Garage, Llanfair Dyffryn Clwyd	Written Reps	Dismissed	17/11/03	-	Appeal against a condition requiring stonework to be used on the external walls of the whole development. Dismissed on basis of impact on the character and appearance of the surrounding conservation area.

LIST OF APPEAL DECISIONS FROM OCTOBER - DECEMBER 2003

DESCRIPTION	DECISION LEVEL/ RECOMMENDATION	LOCATION	TYPE	DECISION DATE	APPEAL DECISION	COST	KEY ISSUES
Change of use of land to form a caravan site.	Delegated - Refusal	(Land adj. Golf Driving Range, Llanerch Park, St. Asaph)	Hearing	15/12/03	Dismissed	-	Adverse impact on rural landscape, historic park and oak woodland.
Erection of block of 3 dwellings and construction of new vehicular access	Delegated - Refusal	(10A Gronant Road, Prestatyn)	Hearing	16/12/03	Dismissed	-	Out of scale and incongruous appearance in street scene. Inadequate separation distances between properties.
Variation of condition 2 on PP 44/569/99/PF	Committee Officers rec - Refuse	(The Showfield, Rhyl Road, Rhuddlan)	Inquiry	19/11/03	Allowed	COSTS	Not considered a town centre use and therefore retail tests do not apply. . Would not undermine viability of Rhyl town centre or have any significant effect on vitality through footfall.
Garage/Store area/First floor bedroom with bath	Committee Officers rec - Refuse	(23 Maes Collen, Llangollen)	Written Reps	25/11/03	Dismissed	-	Scale and form not subordinate to dwelling, harmful to character and appearance of the estate.

REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

GUIDELINES FOR SITE INSPECTION PANELS

1. PURPOSE OF REPORT.

1.1 This report is to reinforce the guidelines for site inspection panels previously approved by the Council and seek Members approval for a leaflet summarising the guidelines to assist Members and users of the Planning Service.

2. BACKGROUND

2.1 The guidelines for site inspection panels were initially agreed in February 1996 and updated in September 1997 and October 2001. A copy of the current guidelines are attached as **appendix 1** to this report.

2.2 Whilst site inspection panels are a useful tool in arriving at a decision they only ought to be used where they will add value to the decision making process. In this respect it is important to emphasise that the reason for requesting a site inspection panel must be made clear at the Planning Committee and this needs to be reinforced at the commencement of the site inspection panel to ensure Members are clear as to what needs to be seen at the site and in the surrounding area. Officer reports following a site inspection panel include the reasons for the panel, what the panel looked at and where they went, the matters considered and notes on the points considered.

2.3 In order to improve Members understanding of the reasons and procedures for site inspection panels a leaflet has been produced. This leaflet was circulated at the Members Workshop at Henllan on 27th November 2003. A copy of the leaflet is attached as **appendix 2** and should Members have any comments on its content these should be passed to Mark Dakeyne, Development Control Manager, before Planning Committee on 28th January 2004.

2.4 Once the leaflet is finalised it will be translated and copies will be provided to Members and available for customers of the Planning Service at our reception areas and on the Councils website.

3. RECOMMENDATION

3.1 That the previously approved guidelines be reinforced.

3.2 That the attached leaflet be approved for use.

GUIDELINES FOR SITE INSPECTION PANELS

A. THE APPOINTMENT OF SITE INSPECTION PANELS

- (i) To empower the Planning Committee to appoint Site Inspection Panels to investigate and report back on any planning applications or enforcement matter reported for determination by the Head of Planning **of Planning and Protection Services**. Members shall give a clear indication of the planning grounds for appointing a Site Inspection Panel, in each instance.

B. THE COMPOSITION OF SITE INSPECTION PANELS

- (i) The membership shall consist of the Chairman and Vice-Chairman of the Planning Committee together with six (6) other members (the whole politically balanced) selected on a rota basis and the local ward member(s).

C. PROCEDURES AT SITE INSPECTION PANEL MEETINGS

- (i) If the Committee Chairman is absent, Members shall agree on the acting Chairman (this shall be the elected Vice Chairman if present).
- (ii) The Chairman shall formally open the meeting and set out the reasons for appointing the Panel.
- (iii) The Planning Officer shall be requested to outline the proposal or the breach of planning control and main issues and indicate what members should look at taking into account the reasons for appointing the panel. The Officer shall advise the panel of whether it is considered necessary to view the proposal from adjoining land / properties and of any requests from neighbouring occupants to view the relevant site from their land / properties.
- (iv) The Site Inspection Panel shall view the site, relevant buildings and surroundings as necessary.
- (v) Members shall be offered the opportunity to raise questions or seek clarification of points of fact with the Planning Officer and/or local member(s).
- (vi) The Local Member(s) shall be offered the opportunity to comment on the proposal.
- (vii) Members of the Site Inspection Panel shall be offered the opportunity to comment on the proposal or breach of planning control and to debate issues.
- (viii) At the conclusion of the debate, the Chairman shall invite members to agree on matters of fact relating to circumstances on site and the reasons for appointing the Panel.
- (ix) The Planning Officer shall be responsible for taking notes and for preparing the notes of the Panel's meetings for the Planning Committee to consider. These notes shall include the reasons for appointing the panel, a record of those present,

an outline of what was considered, and members conclusions on points considered.

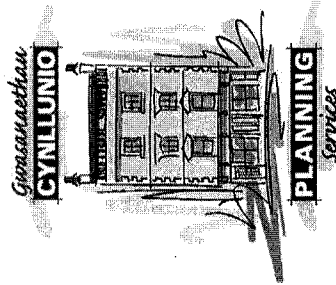
- (x) **Other Members** - Any Members other than those appointed onto the Site Inspection Panel, who wish to attend a site meeting, shall not take part, in any way, in the proceedings of that meeting, but merely observe the meeting.

- (xi) **The General Public/Applicants/Agents** - No members of the public, applicants or their agents, shall be permitted to take part, attend, address or to observe the proceedings of any Site Inspection Panel meeting. In exceptional circumstances, where it is necessary for the Site Inspection Panel to inspect / enter onto buildings or land in the presence of the owner/applicant/neighbouring occupier that person shall be advised at the outset of the meeting that he/she is not able to take part in any of the proceedings of the meeting, other than to answer any factual questions put through the Chairman. The owner/applicant/neighbouring occupier shall be asked to leave the presence of the Site Inspection Panel prior to any comment or debate on a proposal.

- (xii) **Hospitality** - Members of a Site Inspection Panel should not accept any form of hospitality which might be considered as having an influence on the decision making process.

- (xiii) **Confidentiality** - The comments made by Site Inspection Panel shall remain confidential until the notes of the meeting are published in the following Planning Committee reports (i.e. when available for public inspection 3 working days before the date of the Planning Committee).

GUIDELINES FOR SITE INSPECTION PANELS



**The Council has approved Guidelines for
Councillor Site Inspection Panels**

This leaflet provides a summary of the guidelines

When does a site inspection panel take place?

A site panel is appointed by the Planning Committee on an application put before the Committee when Councillors feel that it is important that a site is seen by a group of Councillors before a decision is made. Panels should only be used in exceptional cases where a site visit would add value to the decision.

What format does the site inspection panel take?

Site panels are made up of the Chairman and Vice Chairman of the Planning Committee and 6 other Councillors selected to reflect the political balance of the Council. Local Councillors are also able to attend.

What are the procedures for proposing a site inspection panel?

Members of the Planning Committee, when proposing a site panel, must put clear reasons as to why a site panel should be appointed and how the benefit would be substantial. The reasons need to be related to issues that can be seen on site. A decision will be made by the Planning Committee on whether to defer the application for a site panel for the reason(s) given.

When is a site inspection panel necessary?

A site panel is only likely to be necessary if the impact of the development is difficult to visualise from the report, plans and any supporting material including photographs and the proposal is contentious.

What happens after the site inspection panel?

A Planning Officer attends the site panel and includes notes of the panel, including the reasons for the appointment of the panel, in the report to the next Planning Committee. A decision will be made based on the report, notes of the panel and the officer recommendation.

For further information please contact:-



November 2003

Mark Dakeyne, Development Control Manager
01824 706586 or mark.dakeyne@denbighshire.gov.uk

**A copy of the Guidelines are available at
www.denbighshire.gov.uk or at our Planning Offices**

A REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

DATE OF SITE VISITS

1. PURPOSE OF REPORT

- 1.1 To advise Members of the likely date of any Site Visits requested by the Planning Committee.

2. DATE OF THE SITE VISITS

- 2.1 In consultation with County Clerk's Department, it has been decided that the **Thursday 5th February 2004** is most suitable. This date has been provisionally booked.
- 2.2 You are advised, therefore, that any site visits arranged today will take place on **Thursday 5th February 2004**

3. MEMBERSHIP OF THE SITE VISIT PANEL

- 3.1 This will depend on Political Balance and will include the Chair and Vice Chair of the Committee and the relevant Local Member(s)

4. RECOMMENDATION

- 4.1 **That Members agree to the Site Visits being held on Thursday 5th February 2004**

**Decisions Made by the Acting Head of Planning Services under
Delegated Powers
1st - 31st December 2003**

Item For Information

This is a list of applications where the decision has already been made under delegated powers. If you wish to discuss the application/decision please contact the Case Officer.

DECISION TYPES

GRANT	- grant planning permission
REFUSE	- refuse all types of application
APPROVE	- approve reserved matters or condition
CONSENT	- grant listed building, conservation area, or advert consent
DEEMED	- does not require advert consent
NO OBJ	- no objection to works to tree(s) in conservation area
NOT REQ	- proposal does not require permission/consent
DETERMIN	- determine that prior approval is not required or is granted on determination application (certain telecom or agricultural works)
P DEV	- proposal found to be permitted development after receipt
WDN	- application withdrawn by applicant
INVALID	- application found to be invalid
CERTIFY	- Certificate of lawful use issued
RCERTIFY	- refuse to issue certificate of lawful use

**COPIES OF APPENDIX AVAILABLE FROM HEAD OF PLANNING
AND PUBLIC PROTECTION**