

APPEALS

The following appeal has been received since my last report to Committee:

APPEAL NO.	CAS-01413-L0P3D6 (1937)
APPLICATION NO.	P/20/933/FUL
APPELLANT	MR MARK NEWBOLD
SUBJECT OF APPEAL	RETENTION OF THE STATIONING AND OPERATION OF AN A3 MOBILE HOT FOOD RETAIL UNIT: WARD JONES HORSEFAIR ROAD WATERTON INDUSTRIAL ESTATE BRIDGEND
PROCEDURE	WRITTEN REPRESENTATIONS
DECISION LEVEL	DELEGATED OFFICER

The application was refused for the following reasons:

1. The continued use of this land and operation of the mobile hot food retail unit will result in the loss of car parking facilities to serve the Ward Jones Bridgend Ltd office development, resulting in ad-hoc parking on the internal access and on-street parking on Horsefair Road to the detriment of highway safety, contrary to Policies SP3, PLA11 of the Bridgend Local Development Plan, the requirements of Supplementary Planning Guidance 17: Parking Standards and the objectives of Planning Policy Wales – Edition 11 – February 2021 which seeks the provision of appropriate levels of car parking.
2. The lack of car parking spaces to serve the continued use of this land and operation of the mobile hot food retail unit will result in ad-hoc parking on the internal access and on-street parking on Horsefair Road to the detriment of highway safety, contrary to Policies SP3, PLA11 of the Bridgend Local Development Plan (2013), the requirements of Supplementary Planning Guidance 17: Parking Standards and the objectives of Planning Policy Wales – Edition 11 – February 2021 which seeks the provision of appropriate levels of car parking
3. Insufficient information has been submitted with the application to enable an assessment of the impacts of the increased pedestrian and vehicular movements generated by the development onto the access road and through the existing controlled access onto Horsefair Road. Any increase in movement could lead to pedestrian and vehicle conflict to the detriment of highway safety, contrary to Policy SP3 of the Bridgend Local Development Plan (2013).

APPEAL NO.	CAS-01409-G4L2M2 (1938)
APPLICATION NO.	ENF/330/20/ACK
APPELLANT	MR MARK NEWBOLD
SUBJECT OF APPEAL	ALLEGED UNAUTHORISED BURGER VAN: WARD JONES HORSEFAIR ROAD WATERTON INDUSTRIAL ESTATE BRIDGEND
PROCEDURE	WRITTEN REPRESENTATIONS
DECISION LEVEL	ENFORCEMENT NOTICE

The following appeal has been decided since my last report to Committee:

CODE NO. CAS-00516-Y9X4W2 (1932)
APPLICATION NO. P/21/497/FUL

APPELLANT MR & MRS C CHARLES

SUBJECT OF APPEAL TWO STOREY SIDE/REAR EXTENSION WITH JULIETTE BALCONY: 7 BRYNTIRION HILL BRYNTIRION

PROCEDURE HOUSEHOLDER

DECISION LEVEL DELEGATED OFFICER

DECISION THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE DISMISSED.

A copy of the appeal decision is attached as **APPENDIX A**

CODE NO. CAS-01379-M4T9Y9 (1931)
APPLICATION NO. T/21/54/TPO

APPELLANT MR PAUL EVANS

SUBJECT OF APPEAL FELL 33 TREES OF VARYING SPECIES AND PROVIDE REPLACEMENT TREES ALONG THE SOUTHERN, WESTERN AND NORTHERN SITE BOUNDARIES [AMENDED TREE REPORT RECEIVED 3-8-21 AMENDING THE NUMBER OF TREES TO FELL FROM 30 TO 33]

PROCEDURE WRITTEN REPRESENTATIONS

DECISION LEVEL DELEGATED OFFICER

DECISION THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE PART ALLOWED AND PART DISMISSED

A copy of the appeal decision and costs decision are attached as **APPENDIX B**

RECOMMENDATION

That the report of the Corporate Director Communities be noted.

Janine Nightingale
CORPORATE DIRECTOR COMMUNITIES

Background Papers (see application reference number)



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/12/2021

gan A L McCooey BA (Hons) MSc

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24/01/2022

Appeal Decision

Site visit made on 14/12/2021

by A L McCooey BA (Hons) MSc

an Inspector appointed by the Welsh Ministers

Date: 24/01/2022

Appeal Ref: APP/F6915/D/21/3283058

Site address: 7 Bryntirion Hill, Bryntirion, Bridgend, CF31 4BY

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission.
- The appeal is made by Mr Chris Charles against the decision of Bridgend County Borough Council (P/21/497/FUL).
- The development proposed is a double storey rear and side extension with Juliette balcony.

Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant is one of the two original applicants for planning permission. The description of development on the application form has been changed by the addition of the words "with Juliette balcony". As both parties have adopted this description and it is not significantly different, I shall use it in this decision. The appellant refers to several possible amendments to the plans to resolve the issues raised by the Local Planning Authority. However, no revised plans or details have been provided. In any event, Regulation 7 of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017 restricts amendments being made to schemes being submitted on appeal. I cannot therefore take any possible amendments into account in reaching my decision. If the appellants wish to amend or revise a proposal, this should be done by making a new planning application.

Main Issues

3. I consider that the main issues are: the effect of the proposal on the living conditions of the occupiers of nearby dwellings as a result of loss of privacy to two properties and a dominant and overbearing effect on another; and the effect of the proposal on highway safety as a result of the loss of the existing parking provision for the dwelling.

Reasons

4. The appeal property is a semi-detached dwelling on a side road running parallel to the A473. The proposed extension would be L-shaped running along the side of the house and around the back to join an existing single storey extension (to be retained). In general terms, the design of the proposal would be in keeping with the character and appearance of the dwelling and the streetscene. This aspect would accord with Supplementary Planning Guidance 02 Householder Development (the SPG) adopted by the Council.

The effect on living conditions

5. I agree with the Local Planning Authority's assessment that the location and design of the proposal means that it would not have a significant impact on the attached dwelling (no. 5).
6. The proposal would be constructed on the boundary with the adjoining detached dwelling (no. 9). The SPG advises that extensions should be set back at least 0.5 to 1m from the boundary in order to avoid dominance and for ease of access for construction and maintenance. The proposal would not affect any habitable room windows on the side elevation of the dwelling. But it would create a 2 storey extension the full length of the existing dwelling and projecting around 3m further to the rear. The scale and massing of the extension so close to the boundary would be visually dominant and create a tunnel effect when viewed from the adjoining dwelling. Consequently it would have an overbearing impact on that dwelling.
7. The SPG when dealing with overlooking and privacy advises that there should be 10m between habitable room windows and the site boundary and 21m between habitable room windows in any other dwelling. The proposal would comply with the 10m distance. However, the distance from habitable windows of two properties to the rear would be less than the recommended 21m. The appellant points out that this is partly the result of both properties to the rear having been extended. Whilst this is noted, the large rear bedroom window (extending up into the gable) and balcony proposed at first floor level would overlook the windows of the properties to the rear. Its location, size and design would result in an unacceptable impact on the privacy of the occupiers of those dwellings. The appellant has offered to reduce the scale of the window and remove the balcony. For the reasons set out above, amendments cannot be accepted. In these circumstances the proposal would have a detrimental impact on the living conditions of the occupiers of the two dwellings to the rear as a result of loss of privacy.

Highway safety and parking

8. Policy PLA 11 of the Bridgend Local Development Plan requires proper parking provision in line with the Council's standards. It is argued that 3 spaces would be required, especially as some of the existing parking provision would be lost as a result of the proposal. The proposed plans show a driveway that would accommodate one parking space. I consider that as two spaces are available on the existing drive and there is on-street parking available on this side road, then two off-street spaces should be provided. The appellant indicates that it would be possible to provide an additional space within the site at the front of the dwelling. No details of the proposed parking arrangements are provided. The Council is concerned that there is not sufficient depth available and that the front boundary wall (which is a positive feature of the area) would need to be demolished. It would not therefore be appropriate to address this issue by condition. In these circumstances I consider that the proposal would have a detrimental impact on highway safety as a result of the loss of the existing parking provision for the dwelling.

9. I conclude that the impact of the proposal on the living conditions of the occupiers of nearby dwellings as a result of loss of privacy to two properties and a dominant and overbearing effect on another would be unacceptable for the reasons given above and would be contrary to Policy SP2 of the Bridgend Local Development Plan and the advice in the SPG. I also conclude that the proposal would have a detrimental impact on highway safety due to increased demand for on-street parking as a result of the loss of the existing parking provision for the dwelling. The proposal would be contrary Policy PLA11 of the Bridgend Local Development Plan and the advice in the SPG for this reason. I recognise that this is a family home and have taken account of the benefits of the proposal for the appellants, but these private benefits do not outweigh the significant detrimental impacts of the proposal.

Conclusion

10. Having taken all relevant matters into consideration, I conclude that the appeal should be dismissed for the reasons given above.
11. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

A L McCooey

Inspector



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 17/01/22

gan R Duggan BSc (Hons) DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17/02/2022

Appeal Decision

Site visit made on 17/01/22

by R Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 17/02/2022

Appeal Ref: CAS-01379-M4T9Y9

Site address: Trees on Land off Tondu Road (Rear of Pascoes Avenue), Bridgend CF31 4JL

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to trees protected by a Tree Preservation Order.
- The appeal is made by Mr P Evans against the decision of Bridgend County Borough Council.
- The work proposed is to fell 33 trees of varying species and provide replacement trees along the southern, western and northern site boundaries.
- The relevant Tree Preservation Order (TPO) is the County of Glamorgan Tree Preservation (Number 3) Order, 1954 which was confirmed on 1 November 1954.

Decision

1. The appeal is dismissed insofar as it relates to 29No. trees.
2. The appeal is allowed insofar as it relates to four trees identified as T302; T308; T312 and T320 on Drawing No. CA/TR/005 'Tree Location plan' and planning permission is granted to fell these trees at Land off Tondu Road (Rear of Pascoes Avenue), Bridgend CF31 4JL in accordance with the terms of the application Ref: T/21/54/TPO, dated 9 July 2021, subject to the following condition:
 - 1) The removal of the trees shall be carried out not later than 2 years from the date of this decision.
Reason: *To comply with Section 91 of the Town and Country Planning Act 1990.*

Application for costs

3. An application for costs was made by Mr P Evans against Bridgend County Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Council's decision to refuse consent to fell the trees is justified, having regard to the contribution that they make to the character and appearance of the area and the justification put forward for felling.

Reasons

Character and Appearance

5. Although the appeal site is located within the urban area of Bridgend, as identified within the Adopted Bridgend County Borough Council's adopted Local Development Plan (LDP) (2013), it has the appearance of a densely populated woodland comprising trees of various species, age and quality. It is a broadly linear parcel of land located on the south western side of the A4063 dual carriageway (Tondu Road), and slopes steeply down towards the highway. The site also forms part of the Cefn Glas Wood (Graig-y-Casnewydd) Site of Importance for Nature Conservation (SINC) designated for its broadleaved woodland which dominates the site, and is also categorised as a restored Ancient Woodland Site (RAWS).
6. The amenity or aesthetic value of any protected trees will generally depend on their form, size, height, prominence from public vantage points and setting. I agree with the Council that the site forms a woodland area which contributes a significant green feature to the north of Bridgend town centre and provides a green buffer to the Cefn Glas and Bryntirion residential areas. The protected trees provide a green backdrop to the urban form that forms part of a wider dense, planted belt alongside the main A4063 and is highly visible from a number of public vantage points.
7. The trees can be readily seen from surrounding properties and commercial businesses when approaching along Tondu Road, and residents, pedestrians and drivers will have uninterrupted views of the trees. Although the trees to be felled are viewed as being part of a woodland area, they nevertheless, provide a verdant setting to this part of the urban area and contribute positively to the wider locality. In my opinion, the protected trees in the woodland play a significant part in softening public views of the built environment, and their removal would have a harmful effect on the locality and the character and appearance of the area.
8. It is in this context that I consider the potential impact of the trees on the Appellant and whether this justifies felling them.

Justification for Felling

9. The Appellant states that the trees are to be felled for the prevention of danger and abatement of a nuisance, and has indicated that there are health and safety concerns due to disease and from trees failing. In support of the appeal, the Appellant has submitted a tree survey prepared by Rowan Tree Arboricultural Consultancy (RTAC). The tree survey provided by the Appellant is based on a site survey undertaken on 22 January 2020, but the project name clearly shows the report as being an updated report dated 19 July 2021. This update report recommends that all trees should be felled to ground level, however, no supporting statement or text from RTAC has been provided to support these recommendations.
10. In the context of this update report, the Appellant asserts that the appeal trees are specimens with significant height, some are diseased, and some have asymmetrical shape, covered in ivy and some have severe lean to the carriageway of the A4067 Tondu Road, and that these conditions would lead to a significant risk of structural failure and are indicators of tree instability.

11. However, I note from the Council's evidence that the tree report author, Liz Phillips of RTAC Consultancy, has contacted the Council by email (19 November 2021 and 23 November 2021). With reference to the update report submitted by the Appellant Liz Phillips states that *"The bulk of the report with site plans and explanatory text has been omitted...The treeworks recommendations for felling are all in the context of there being a proposed development on the site...and I have made no assertions in my report that all the trees are dangerous; at serious risk of instability or a hazard to the general public or should be felled in the interests of good forestry."* The Council has also submitted the original tree report dated 28 January 2020, and it is clear from this report that RTAC recommends that only trees identified as T302; T308; T312 and T320 (Category U trees) should be felled to ground level at that time and that no action should be taken on the remaining 29No. trees.
12. It is clear that only extracts of the original report have been submitted by the Appellant as part of this appeal as some of the pages, including those with photographs taken by RTAC are dated 3rd February 2020, and there are pages missing. Whilst I have taken into account the Appellant's assertions that the trees pose a health and safety risk to the users of the A4067 Tondu Road, I see no evidence of this within the tree survey. Given the inconsistencies within the evidence and the fact that the updated report from RTAC was provided within the context of a proposed residential development on the site, I have given the update report dated July 2021 only moderate weight in the determination of this appeal.
13. The RTAC arboricultural evidence does not state that there is a present danger or that there are significant health and safety issues with the trees, and as stated above the report author has confirmed this to be the case. Although I saw that there are a large number of tall trees within the site, exacerbated by the topography of the land and site elevation, and that some trees have asymmetrical crowns or are leaning towards Tondu Road, these factors do not justify felling these trees. I have no evidence to support the claim that these trees are immediately dangerous and hence need to be felled, and I have not been given any further evidence to support felling the trees within the woodland, other than those Category U trees identified as T302; T308; T312 and T320 on Drawing No. CA/TR/005 'Tree Location plan'. Having viewed these trees, I would agree with the RTAC recommendations and I shall allow these trees to be felled.
14. The Appellant has also referred to the trees being overbearing, lead to overshadowing and a nuisance to the adjoining neighbours and the site landowner. I have taken into account the Appellant's arguments in this respect including the photographs taken from Tondu Road and Pascoes Avenue. However, having seen the trees from various viewpoints myself, I consider that the trees do not have any overbearing impact on neighbouring residents or lead to significant levels of overshadowing and loss of light within neighbouring properties.

Other Matters

15. The Council has also raised concerns regarding the impact of felling the trees on the biodiversity characteristics of the site and SINC. The Appellant has submitted a Preliminary Ecological Appraisal (prepared by edp Ltd, dated January 2020) which was prepared to inform a proposed residential development on the appeal site. This report provides an initial assessment of the site with respect to identifying key ecological constraints and opportunities to its proposed development.
16. Whilst I note that no protected species or other notable habitats were recorded at the time of the edp Ltd survey, the appraisal recognises that the site is dominated by semi-natural broadleaved woodland with an associated ground flora community, with only a wall

structure as a secondary habitat present within the site, and that “*such habitats have the potential to support protected/notable species including a breeding bird and bat assemblage, dormouse, badger and common reptiles*”. In respect of the protection afforded to these species/groups, and the potential impacts arising during the construction phase of a proposed development resulting in killing/injury and/or disturbance to protected/notable species, the Ecological Appraisal recommends a number of mitigating measures.

17. As such, the Appellant has prepared an Ecological Construction Method Statement (prepared by BE Ecological Ltd, dated June 2021) which puts forward a range of measures to be implemented prior to and during construction of a residential development in order to ensure no damage or harm to retained habitats and protected species. The purpose of the report is to provide an addendum to the original ecological appraisal undertaken by edp Limited, and sets out appropriate working practices and site safeguards to be adhered to throughout any construction phase of a development in order to protect retained habitats and protected species where identified.
18. Whilst these reports and appraisals have been prepared to inform proposed residential developments on the appeal site and not an application or appeal to fell the trees, it is clear to me that the site does have potential to provide good foraging and roosting opportunities for protected and notable species. The fact that the Appellant’s ecological advisers have put forward recommendations for mitigation measures to protect these species and habitats provides further evidence that the site is of ecological value and should be protected. These species and their resting places are protected by UK legislation under the Conservation of Habitats and Species Regulations, 2017 and the Wildlife and Countryside Act, 1981 as amended by the Countryside and Rights of Way Act, 2000.
19. From the evidence before me, I share the Council’s concerns that the removal of such a large number of trees within this valuable woodland area, irrespective of the proposal to undertake replacement planting along the boundaries of the site, would have a detrimental impact on biodiversity interests within the site and, therefore, would have a negative impact on the SINC contrary to Policies ENV4, ENV5 and ENV6 of the Local Development Plan and guidance contained within Supplementary Planning Guidance 19 (Biodiversity and Development).
20. The Appellant has raised the issue of compensation. However, it is not within my remit to make a determination on compensation in respect of the Council’s decision to refuse consent for the proposed works. This is an issue for the Appellant to address with the Council.

Conclusion

21. With any application to fell protected trees a balancing exercise needs to be undertaken. The need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case insufficient justification has been put forward for the removal of the large amount of trees that make up this attractive woodland area.
22. Felling the trees at this time would diminish the quality of the public realm and such action would mean the removal of trees which otherwise would likely to continue to enhance the visual qualities of the area into the future. I consider that their removal would have a detrimental effect on the local environment and would be harmful to the visual amenity of the area and biodiversity interests within the site.
23. I have taken account of all other matters raised by the Appellant, but do not find anything which materially alters my view as to the merits of the proposal, based on the main

considerations as set out above. For the reasons given above, I conclude that based on the available evidence as presented there are insufficient grounds to justify felling the trees. None of the other matters raised by the Appellant are of sufficient weight, in my view, to alter the balance of considerations in this case, which I consider point conclusively towards the refusal of consent to fell the trees, other than those trees identified as T302; T308; T312 and T320.

24. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives of building a stronger, greener economy as we make maximum progress towards decarbonisation; Making our cities, towns and villages even better places in which to live and work; and embed our response to the climate and nature emergency in everything we do.

R Duggan

Inspector



Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 17/01/22

gan **R Duggan BSc (Hons) DipTP MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17/02/2022

Costs Decision

Site visit made on 17/01/22

by **R Duggan BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 17/02/2022

Costs application in relation to Appeal Ref: CAS-01379-M4T9Y9

Site address: Trees on Land off Tondu Road (Rear of Pascoes Avenue), Bridgend CF31 4JL

The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The appeal is made by Mr P Evans for a full award of costs against Bridgend County Borough Council.
 - The appeal was against the refusal of planning permission to fell 33 trees of varying species and provide replacement trees along the southern, western and northern site boundaries.
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Decision

1. The application for an award of costs is refused.

The Case for Mr P Evans

2. The Local Authority did not allow the Appellant to properly respond to their concerns and objections, have acted unreasonably by making unqualified reasons for refusal, and lacking to properly consider the TPO 1954 in context to the application before it. The applicant also believes that the Local Authority has behaved unreasonably and caused costs to the Appellant as it did not seek appropriate professional advice on the submissions of the Appellant (such as a qualified Tree Officer), and did not review its list of current Tree Preservation Orders and keep its documents up-to-date following changes in the Local Development Plan and Supplementary Planning Guidance and policies within their control.

The Case for Bridgend County Borough Council.

3. No response was made by the Council.

Reasons

4. Section 12.3 of the Welsh Government's Development Management Manual and the associated Section 12 Annex 'Award of Costs' ('the Annex') advise that, irrespective of

the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour.

5. In relation to the Appellant's concerns regarding the Council making unqualified reasons for refusal, a decision notice should be framed and reasons should be complete, precise, specific and relevant to the application. Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations. If they cannot do so, costs may be awarded against them. It is evident from the main decision that I have agreed with the Council's reasons for refusing permission. The Officer Report and accompanying statement sets out an assessment of the indicated harm and how this would conflict with relevant adopted planning policies. I consider that the reasons for refusal are, therefore, precise and relate to the proposals, and sufficient evidence was presented for the Appellant to be clear on the Council's main concerns for the submission of the appeal.
6. Whilst the Council did not seek the advice of a qualified tree officer or specialist arboricultural officer during the determination of the application, the Council's professional planning officers would have experience in dealing with all types of planning applications and would have gained experience with dealing with a wide variety of issues. This would include assessing technical reports such as tree reports and making judgements on their content. The fact that the Council did not seek specific advice on the application from an independent tree specialist or in-house tree officer does not amount to unreasonable behaviour. I do not consider that the Council has acted unreasonably in advancing their case, as it is essentially a planning judgement.
7. It is unclear to me what the concerns of the Appellant are in terms of the Council "*not properly considering the TPO in context to the application before it*". However, the Appellant's appeal statement states that the Council has failed to properly consider the submissions of the Appellant, and in consequence erred under paragraphs 4 and 5 of the TPO.
8. However, from the evidence before me, the Council has clearly assessed the merits of the application to fell the trees against the impact on local amenity, the character and appearance of the area and on biodiversity. It has clearly taken into account and had specific regard to the Appellant's tree survey and other technical reports submitted to the Council as part of the planning application, and it has referred to these within the Officer Delegated Report. The Council has made an assessment of the content of these reports within the context of the TPO, the adopted development plan policies, Planning Policy Wales and other material planning considerations. I find that there has been no unreasonable behaviour by the Council in these circumstances.
9. The Appellant also raises concerns about the manner in which the Council dealt with the planning application and specifically that the Council not allow him to respond to its concerns. However, the manner in which the Council determined the application are not material considerations and are matters that are irrelevant to my determination of the appeal. Such matters do not represent unreasonable behaviour and it is unclear how such matters have resulted in the Appellant incurring unnecessary costs. There is also no requirement for a Council to review TPOs as part of the preparation of new development plans or the review of adopted plans.

10. The matters in dispute are thus ones of disagreement between the parties which could only have been resolved at appeal. As the appeal could not have been avoided no unnecessary or wasted expense has been incurred. The stance the Council took was not unreasonable in terms of costs referred to in the Annex.
11. Having regard to the reasons for refusal put forward by the Council in its decision notice and all other relevant considerations and the provisions of the Well Being and Future Generations Act, I conclude that the Council's decision to refuse permission did not amount to unreasonable behaviour. The application for an award of costs against the Council therefore does not succeed.

R. Duggan

Inspector