



## Appeal Decisions

---

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date of decisions: 2025/04/24

---

### APPEAL A

Appeal reference: CAS-03489-N9P2F0

Site address: 1 Monnow Keep, Monmouth, Monmouthshire, NP25 3EX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act.
  - The appeal is made by Alex Dawson against an enforcement notice issued by Monmouthshire County Council.
  - The enforcement notice, numbered E23/143, was issued on 16 May 2024.
  - The breach of planning control as alleged in the notice is: 1) Engineering works to raise the ground so that it is level with the domestic garden of No.1 Monnow Keep, with associated retaining wall and timber fence above; and 2) Change of use of riverbank to residential use of the land shown edged blue within Appendix B in association with the dwelling known as 1 Monnow Keep.
  - The requirements of the notice are to 1) Remove the retaining wall (as shown edged in purple Appendices B and C) and return the ground to its original condition and levels prior to the breach of planning control occurring. For the avoidance of doubt the original levels are shown in Appendix C; 2) Remove the timber fencing (as shown in green in Appendix B) in its entirety; 3) All resulting materials from the completion of points 1 and 2 above shall be removed from the site in their entirety; and 4) Cease the residential use of the land as shown edged blue in Appendix A.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990, as amended.
  - A site visit was made on 11 March 2025.
- 

### APPEAL B

Appeal reference: CAS-03492-Q9Y8Q4

Site address: 1 Monnow Keep, Monmouth, NP25 3EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

- The appeal is made by Mr Alex Dawson against the decision of Monmouthshire County Council.
  - The application Ref: DM/2024/00285, dated 7 March 2024, was refused by notice dated 22 April 2024.
  - The development proposed is change of use of land into garden and first floor rear extension.
  - A site visit was made on 11 March 2025.
- 

## Decisions

### **Appeal A - Ref: CAS-03489-N9P2F0**

1. The appeal is dismissed and the Enforcement Notice upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

### **Appeal B – Ref: CAS-03492-Q9Y8Q4**

2. The appeal is dismissed.

## Procedural Matters

3. As set out above, there are two appeals at the site. Whilst I shall consider each appeal on its own individual merits, to avoid any duplication, I shall deal with the two cases together in this document, albeit with separate formal decisions. For the avoidance of any doubt, Appeal A relates to an Enforcement Notice which attacks both matters of operational development and a material change of use, as set out in the decision letter template above. Appeal B relates to an appeal lodged under Section 78 of the above Act, against the Council's refusal to grant planning permission.
4. The Welsh Government published a new Technical Advice Note (TAN) 15: *Development, Flooding and Coastal Erosion* (2025) during the processing of the appeals. That document confirms that it should be read in conjunction with Planning Policy Wales (PPW) and the Welsh National Marine Plan and that it replaces TAN14: *Coastal Planning* (1998) and the previous TAN15: *Development and Flood Risk* (2004). However, the Ministerial Written Statement dated 31 March 2025, which accompanied the publication of the new TAN, confirms that there will be a transitional period for its implementation. Specifically, planning applications that were submitted and registered before the publication of the new TAN, such as those subject of these appeals, shall continue to be assessed against the previous version. I shall consider the appeals accordingly.

## Application for Costs

5. Applications for costs have been submitted by the appellant against Monmouthshire County Council. These applications are the subject of separate Decisions.

## Reasons

### ***The Appeal under Ground (e) of Appeal A***

6. An appeal under ground (e) is that the Enforcement Notice was not served on everyone with an interest in the land. It is well-established in law that, in such cases, it is necessary

to consider whether any issue arising from the service of the Notice resulted in substantial prejudice.

7. In this case, the appellant notes that the Council originally served a Notice with conflicting dates. Specifically, the originally served Notice incorporated an issue date of 16 May 2023 and an 'appeal by' date of 22 February 2024. The appellant also contends that two copies of the Notice should have been served on him and only one was served. The Council acknowledges the errors referred to by the appellant and notes that the Notice was served afresh. It has also demonstrated that there is no legislative requirement for two copies of the Notice to be served. Within this context, and in light of the fact that the appellant was clearly aware of the Notice being served, and managed to lodge a valid appeal, I am not aware of any substantial prejudice arising from the concerns raised. As such, and bearing in mind the principles established through caselaw, I find that substantial prejudice has not been demonstrated and that the appeal under ground (e) must therefore fail.

### ***Appeal B and the Appeal under Ground (a) of Appeal A***

8. The proposal subject of Appeal B sought retrospective planning permission for the change of use of land located to the rear of No.1 Monnow Keep to form part of the rear garden area of that property. It also sought planning permission for a proposed first floor extension to the existing garage located to the side of the main dwelling. Planning permission was refused for both elements of the scheme on 22 April 2024.
9. Enforcement action was subsequently pursued against the change of use of the land located to the rear of No.1 and the wider works associated with that act of development. Specifically, an Enforcement Notice was issued on 16 May 2024 attacking: 1) the engineering works associated with the raising of the ground level, the retaining wall and the boundary fence; and 2) the material change of use of the riverbank to residential use.
10. Given that the works to the rear garden area are entirely severable from the proposed first floor extension to the existing garage, and hence raise separate planning issues, I shall consider each matter in turn.

### ***Works to the rear of No.1 Monnow Keep***

11. Having regard to the reasons for issuing the Enforcement Notice subject of Appeal A, and the evidence associated with Appeal B, the main issue in respect of the works to extend the garden area to the rear of the appeal property is whether the development is acceptable having regard to issues of flood risk.
12. The works to the rear of No.1 Monnow Keep include the change of use of the land to form part of the garden area of that property, the raising of the ground level, and the construction of a retaining wall with timber fence above. These works replaced a point of access to the river which runs to the rear of the property. Indeed, the Council object to the works on the basis that the development unacceptably interferes with the ability of Natural Resources Wales (NRW) and other bodies to carry out flood control works or maintenance. In setting out such concerns, both the Council and NRW have noted that the land forms part of a strategic flood alleviation scheme on the River Monnow which provides protection to properties at Monnow Keep and the wider area.
13. NRW and the Council indicate that the land and associated access gate has been used to operate, maintain and repair the flood alleviation scheme for a number of years. This alleged interference is said to compromise NRW's ability to exercise its legal powers of flood risk management and may compromise its ability to effectively manage flood risk in the area. Whilst not forming part of the reason for refusal subject of Appeal B, or the

reasons for issuing the Enforcement Notice subject of Appeal A, the evidence also notes that the land in question forms part of Zone C1 of the 'Development Advice Maps' referenced in TAN15 (2004). It is similarly identified as Flood Zone 2 and 3 Rivers in the more up to date 'Flood Maps for Planning' referenced in the more recent TAN15 (2025).

14. The appellant contends that the works have been undertaken on private land. Specifically, it is submitted that the access gate and fence that have been removed to accommodate the works are privately owned and that NRW and other statutory bodies have no access rights over the land. The appellant also notes that the removal of the access gate does not prevent statutory bodies from accessing the land, with other access points available within a short distance from the appeal site.
15. The dispute over land ownership and rights of access are not matters for me to adjudicate on within the context of either the appeal lodged under Section 78 or that lodged under Section 174 of the above Act. Indeed, it would be beyond my jurisdiction to make comment on such matters within this context and a determination in respect of such arguments would need to be pursued through separate legislative processes. Similarly, the matter of whether or not a Flood Risk Activity Permit should have been obtained is also not a matter that weighs heavily in respect of the appeals given that it is a requirement of separate legislation.
16. However, whilst the change of use only relates to 'garden land', it nonetheless comprises a residential use which is highly vulnerable for the purposes of national policy and, as set out above, the development would be located in an area subject of flood risk. Both PPW and TAN15 (2004) are clear that development proposals should be directed away from Zone C wherever possible. Section 6.2 of TAN15 (2004) goes on to state that development should only be permitted within Zones C1 and C2 if determined to be justified in that location. Specifically, such development would only be justified if it can be demonstrated that:
  - i. Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
  - ii. Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;AND,
  - iii. It concurs with the aims of PPW and meets the definition of previously developed land; and,
  - iv. The potential consequences of a flooding event for the particular type of development have been considered and found to be acceptable.
17. The works in question clearly fail to satisfy the alternative requirements of criteria i) and ii). The development subject of the appeals has also not been subject of a Flood Consequences Assessment (FCA) to determine whether or not the potential consequences of a flooding event would be acceptable. It is clearly relevant to note that Section 11.19 of TAN15 (2004) provides some flexibility for householder applications. However, this would only assist where the development would not be likely to have a direct and adverse effect on a watercourse or its flood defences, would impede access to flood defence and management facilities or where the cumulative impact of such developments could have a significant effect on flood storage capacity or flood flows.
18. Within this context, and even if access to the flood defence and management facilities can be achieved via the alternative routes referenced by the appellant, there are obvious

concerns relating to flood storage capacity and flood flows that have not been properly tested through an FCA. Indeed, the raising of ground levels and the use of retaining walls alongside a riverbank clearly has potential to displace water during a flooding event and thus increase the risk of flooding off-site. On this basis, and in the absence of sufficient evidence to fully assess the consequences of a flooding event, I do not consider that the flexibility provided by Section 11.19 of TAN15 assists the appellant's case. For the avoidance of any doubt, the outcome would not be materially different under the more up to date TAN15 (2025).

19. Such harm and associated policy conflict is not in my view justified by the potential for the antisocial behaviour referenced in the appellant's evidence. The appellant contends that the refusal of planning permission, and indeed the requirements of the Enforcement Notice, interfere with the occupants' rights under Article 1 of the Human Rights Act. However, I am satisfied that the refusal of planning permission would be justified and in pursuit of a legitimate planning aim, namely in the interest of exacerbating flood risks. Indeed, I am satisfied that the decision to refuse planning permission is both reasonable and proportionate and that it is, therefore, justified in light of the available evidence.
20. Therefore, based on the foregoing analysis, I find that it has not been satisfactorily demonstrated that the development would be acceptable in terms of flood risk. The development would therefore conflict with the thrust of Policy SD3 of the adopted Monmouthshire Local Development Plan (LDP). It would also conflict with the clear aims of national planning policy.

#### *Proposed First Floor Extension*

21. Having regard to the evidence submitted in respect of Appeal B, the main issue in respect of the proposed first floor extension is whether the development would preserve or enhance the character or appearance of the Monmouth Conservation Area.
22. In this respect, the extension to the existing garage would, by virtue of its scale, siting, form and overall design, represent an insensitive and visually incongruous addition that would injuriously alter the character and appearance of the host property and the area more generally. Such harm would be accentuated in this instance given the prominent location of the garage at the end of the terrace, adjacent to the neighbouring car park and clearly visible in the wider streetscene. Such public harm would not, in my view, be outweighed by the personal benefits that the development would bring to the occupants of the appeal property.
23. On this basis I find that the proposed development would cause material harm to the character and visual amenities of the area and thus fail to preserve or enhance the character or appearance of the Monmouth Conservation Area. The development would therefore run counter to the thrust of Policies DES1(c), HE1(a and b) and HE2 (c) of the adopted Monmouthshire LDP, as well as the placemaking principles that underpin national planning policy.

#### *Conclusion on ground (a) of Appeal A, and Appeal B*

24. Based on the foregoing, and having considered all matters raised, I find that the appeal under ground (a) of Appeal A should fail and that planning permission should be refused on the application deemed to have been made under Section 177(5) of the 1990 Act, as amended. Appeal B should also be dismissed.
25. In coming to these conclusions, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future

Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that the decisions are in accordance with the sustainable development principle through their contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

***The Appeal under Ground (f) of Appeal A***

26. An appeal under ground (f) is that the steps required to comply with the requirements of the Notice are excessive, and that lesser steps would overcome the objections. In this case, the requirements of the Notice are to: remove the retaining wall and return the ground to its original condition and levels prior to the breach of planning control occurring; remove the timber fencing in its entirety; remove all materials resulting from the previous steps; and to cease the residential use of the land.
27. Much of the appellant's arguments relate to the fact that the land is privately owned and that reinstating an access gate would cause a significant risk of antisocial behaviour. It is also submitted that such an act would represent an intrusion of the Article 1 rights under the Human Rights Act. However, I am not convinced that the requirements of the Notice require public access to be reinstated. Indeed, rights of access could be demonstrated or restricted through separate legislative processes and such matters are beyond my jurisdiction in determining these appeals. I have also found under the assessment of planning merits above that the refusal of planning permission is both reasonable and proportionate, and in pursuit of a legitimate planning aim. For this reason, I do not consider the human rights arguments to warrant lesser steps under the ground (f) appeal.
28. On this basis, and bearing in mind the lack of any appropriate lesser steps being advanced by the appellant, I find that the steps required to comply with the requirements of the Notice are not excessive and that the appeal under ground (f) must therefore fail.

***Overall Conclusions***

29. Based on the foregoing, and having considered all matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

*Richard E. Jenkins*

INSPECTOR