

Agenda



Planning Committee

Date: Wednesday, 4 May 2016

N.B There will be a short informal meeting following Planning Committee on the Draft Planning Committee protocol

Time: 10.00 am

Venue: Council Chambers, Civic Centre, Newport

To: Councillors P Huntley (Chair), M Al-Nuiami, V Delahaye, D Fouweather, M Linton, J Mudd, R White, O Ali, K Critchley and R Hutchings

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NB: Please click on the link below to view the Planning Code of Practice:-

<http://livepreview.newport.gov.uk/documents/Council-and-Democracy/About-the-council/Planning-Code-of-Conduct/Planning-Code-of-Practice-Final-version-27-May-2015.pdf>

Copies of the Planning Code of Practice will be available at the meeting.

Part 1

Item	Wards Affected
1. <u>Agenda Page - Welsh Cym</u> (Pages 3 - 4)	
2. <u>Apologies for Absence</u>	
3. <u>Declarations of Interest</u>	
4. <u>Minutes</u> (Pages 5 - 10)	
5. <u>Development Management: Planning Application Schedule</u> (Pages 11 - 64)	
6. <u>Appeals Decisions</u> (Pages 65 - 80)	

Contact: Miriam Durkin

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Date of Issue: Wednesday, 27 April 2016



Agenda

Pwyllgor Cynllunio

Dyddiad: Dydd Mercher, 4 Mai, 2016

Amser: 10.00 a.m.

Lleoliad: Siambr y Cyngor, Canolfan Ddinesig

At sylw: Y Cynghorwyr Huntley (Cadeirydd), Delahaye (Dirprwy Gadeirydd), Ali, Al-Nuaimi, Critchley, C Evans, Fouweather, Hutchings, Linton, Mudd and White

HYSBYSIAD GWE-DDARLLEDU

Gall y cyfarfod hwn gael ei ffilmio ar gyfer darllediad byw neu ddarllediad wedi hynny trwy wefan y Cyngor.

Ar ddechrau'r cyfarfod, bydd y Maer neu'r Person sy'n Llywyddu yn cadarnhau os yw cyfan neu ran o'r cyfarfod yn cael ei ffilmio. Efallai y bydd y delweddau a recordiad sain yn cael eu defnyddio hefyd at ddibenion hyfforddiant o fewn y Cyngor.

Yn gyffredinol, nid yw'r ardaloedd eistedd cyhoeddus yn cael eu ffilmio. Fodd bynnag, wrth fynd i mewn i'r ystafell gyfarfod a defnyddio'r ardal seddau cyhoeddus, rydych yn rhoi caniatâd i chi gael eich ffilmio a defnydd posibl o rhai delweddau a recordiadau sain ar gyfer gwe-ddarlledu a/neu ddibenion hyfforddiant.

Os oes gennych unrhyw ymholiadau ynghylch hyn, cysylltwch â Phrif Swyddog Gwasanaethau Democrataidd.

DS: Cliciwch ar y ddolen isod i weld y Cod Ymarfer Cynllunio:-

<http://livepreview.newport.gov.uk/documents/Council-and-Democracy/About-the-council/Planning-Code-of-Conduct/Planning-Code-of-Practice-Final-version-27-May-2015.pdf>

Bydd copïau o'r Cod Ymarfer Cynllunio ar gael yn y cyfarfod.

Eitem

Wardiau dan Sylw

1. Agenda Cym

2. Ymddiheuriadau dros Absenoldeb

3. Datganiadau Diddordeb

4. Cofnodion y cyfarfod (ydd) diwethaf

Pob Ward

5. Rheoli Datblygu: Rhaflen Ceisiadau Cynllunio

Pob Ward

6. Penderfyniadau Apeliadau

Langstone, Malpas, Rogerstone, Shaftesbury,
Stow Hill

Cysylltwch â: Miriam Durkin

Rhif Ffôn: 01633 656656

E-bost: miriam.durkin@newport.gov.uk

Dyddiad Cyhoeddi: 26 Ebrill 2016

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Minutes



Planning Committee

Date: 6 April 2016

Time: 10.00 am

Present: Councillors P Huntley (Chair), M Al-Nuami, V Delahaye, D Fouweather, R White, O Ali, R Hutchings and C Evans

T Brooks (Interim Development Services Manager), J Davidson (East Area Applications Manager), S Williams (West Area Applications Manager), C Jones (Principal Engineer), J Evans (Senior Solicitor) and M Durkin (Democratic Services Officer)

Apologies: Councillors M Linton, J Mudd and K Critchley

1 Councillors Rhys Hutchings and Chris Evans

The Chair, Councillor Huntley welcomed Councillors Rhys Hutchings and Chris Evans to their first meeting of Planning Committee.

2 Minutes

The Minutes of the meetings held on 2 March, 2016 were submitted.

Resolved

That the Minutes of the meeting held on 2 March, 2016 be taken as read and confirmed

3 Development Management: Planning Application Schedule

Resolved

(1) That decisions be recorded as shown on the Planning Applications Schedule attached as an Appendix.

(2) That the Development Services Manager be authorised to draft any amendments to/additional conditions or reasons for refusal in respect of the Planning Applications Schedule, attached.

4 Appeal Decisions

Consideration was given to a report following recent appeals.

Planning Application Appeals – Dismissed

(a) Application 15/0095 – The Stable Barn, Llandevaud – construction of a two storey front extension

(b) Application 15/0393 – Land at Cefn Llogell Farm, Coedkernew – construction of a ground mounted solar PV generation project (3.8MW) and associated works

Members discussed appeals generally and the different decisions made by Planning Inspectors, the Welsh Government stance relating to renewable energy and the balance between that and agricultural land being developed. It was acknowledged that every site had to be considered on its merits.

Resolved

That the appeal decisions be accepted as a basis for informing future decisions of the Planning Committee

5 Planning Site Sub Committee - Appointment of Member

That Councillor Chris Evans be appointed to the vacancy on the Planning Site Sub Committee.

Appendix

PLANNING COMMITTEE – 6 APRIL, 2016

DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
15/1167	<p>Site of former garages, Eastfield Road</p> <p>Erection of two storey residential building to include 8 No. one bedroomed flats, alterations to existing access road, new boundary treatments, external lighting and associated landscaping</p>	Caerleon	<p>The Chair reported that this application had been withdrawn by the Applicant.</p> <p>.</p>	
15/1486	<p>Land north of 10 Ridgeway Rise</p> <p>Construction of 4 No. detached dwellings, new vehicle and pedestrian access</p>	Allt-yr-yn	<p>Mr G Buckle, the Agent on behalf of the Applicant spoke in support of the application.</p> <p>Councillor Ferris, Allt-yr-yn Ward Member spoke objecting to the application.</p> <p>Councillor Fouweather, Allt-yr-yn Ward Member spoke expressing concern regarding the proposed three storey dwellings, preferring two storey dwellings on the site.</p> <p><i>(Councillor Hutchings declared a personal interest in this application and left the meeting).</i></p>	<p>Granted with conditions subject to a legal agreement with delegated powers to refuse in the event that the agreement is not signed within three months of this decision</p>

15/1508	Unit 27, Enterprise Way Change of use from B1 (printing/embroidery) to D2 (Fitness Centre)	Pillgwenlly	Councillor Ali, Pillgwenlly Ward Member spoke in support of the application.	Granted with conditions
16/0021	Newport Auctions Ltd, Usk Way Continuation of use of building for auctions and retention of coffee room extension	Pillgwenlly	Councillor Ali, Pillgwenlly Ward Member spoke in support of the application. <i>(Councillor Hutchings declared a personal interest in this application and left the meeting).</i>	Granted with conditions
16/0044	4 Oakfield Gardens Proposed first floor extensions over existing ground floor garage and kitchen areas, proposed ground floor rear extension, proposed rear balcony, proposed front entrance canopy and associated internal alterations	Allt-yr-yn	Councillors Ferris and Fouweather, Allt-yr-yn Ward Members spoke on the application.	Granted with conditions
15/1066	Flatholme Stables, Penylan Road Demolition of existing outbuildings and erection of horse hospital with associated works	Graig		Refused

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Report

Planning Committee

Part 1

Date: 4 May 2016

Item No: 5

Subject Planning Application Schedule

Purpose To take decisions on items presented on the attached schedule

Author Head of Regeneration, Investment and Housing

Ward As indicated on the schedule

Summary The Planning Committee has delegated powers to take decisions in relation to planning applications. The reports contained in this schedule assess the proposed development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer recommendation to the Planning Committee on whether or not Officers consider planning permission should be granted (with suggested planning conditions where applicable), or refused (with suggested reasons for refusal).

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to 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.

Proposal **1. To resolve decisions as shown on the attached schedule.**
2. To authorise the Head of Regeneration, Investment and Housing to draft any amendments to, additional conditions or reasons for refusal in respect of the Planning Applications Schedule attached

Action by Planning Committee

Timetable Immediate

This report was prepared after consultation with:

- Local Residents
- Members
- Statutory Consultees

The Officer recommendations detailed in this report are made following consultation as set out in the Council's approved policy on planning consultation and in accordance with legal requirements.

Background

The reports contained in this schedule assess the proposed development against relevant planning policy and other material planning considerations, and take into consideration all consultation responses received. Each report concludes with an Officer recommendation to the Planning Committee on whether or not Officers consider planning permission should be granted (with suggested planning conditions where applicable), or refused (with suggested reasons for refusal).

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Committee to make a decision on each application in the attached schedule having weighed up the various material planning considerations.

The decisions made are expected to 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.

Applications can be granted subject to planning conditions. Conditions must meet all of the following criteria:

- Necessary;
- Relevant to planning legislation (i.e. a planning consideration);
- Relevant to the proposed development in question;
- Precise;
- Enforceable; and
- Reasonable in all other respects.

Applications can be granted subject to a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). This secures planning obligations to offset the impacts of the proposed development. However, in order for these planning obligations to be lawful, they must meet all of the following criteria:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

The applicant has a statutory right of appeal against the refusal of permission in most cases, or against the imposition of planning conditions. 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 determining planning applications and defending decisions at any subsequent appeal is met by existing budgets and partially offset by statutory planning application fees. 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

Three main risks are identified in relating to the determination of planning applications by Planning Committee: decisions being overturned at appeal; appeals being lodged for failing to determine applications within the statutory time period; and judicial review.

An appeal can be lodged by the applicant if permission is refused or if conditions are imposed. 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.

A decision can be challenged in the Courts via a judicial review where an interested party is dissatisfied with the way the planning system has worked or how a Council has made a planning decision. A judicial review can be lodged if a decision has been made without taking into account a relevant planning consideration, if a decision is made taking into account an irrelevant consideration, or if the decision is irrational or perverse. If the Council loses the judicial review, it is at risk of having to pay the claimant's full costs in bringing the challenge, in addition to the Council's own costs in defending its decision. In the event of a successful challenge, the planning permission would normally be quashed and remitted back to the Council for reconsideration. If the Council wins, its costs would normally be met by the claimant who brought the unsuccessful challenge. Defending judicial reviews involves considerable officer time, legal advice, and instructing a barrister, and is a very expensive process. In addition to the financial implications, the Council's reputation may be harmed.

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 and judicial review can be high.

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>Planning Committee</p> <p>Planning Committee</p> <p>Development Services Manager and Senior Legal Officer</p>

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?
			Ensure appeal timetables are adhered to.	Development Services Manager
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Planning Committee Development Services Manager
Judicial review successful with costs awarded against the Council	H	L	Ensure sound and rational decisions are made.	Planning Committee Development Services Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a Fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.

Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.

The Corporate Plan links to other strategies and plans, the main ones being:

- Single Integrated Plan;
- Local Development Plan 2011-2026 (Adopted January 2015);

The Newport Single Integrated Plan (SIP) is the defining statement of strategic planning intent for the next 3 years. It identifies key priorities for improving the City. Its vision is: "*Working together to create a proud and prosperous City with opportunities for all*"

The Single Integrated Plan has six priority themes, which are:

- Skills and Work
- Economic Opportunity

- Health and Wellbeing
- Safe and Cohesive Communities
- City Centre
- Alcohol and Substance Misuse

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Newport Local Development Plan (Adopted January 2015) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

Options Available

- 1) To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate);
- 2) To grant or refuse planning permission against Officer recommendation (in which case the Planning Committee's reasons for its decision must be clearly minuted);
- 3) To decide to carry out a site visit, either by the Site Inspection Sub-Committee or by full Planning Committee (in which case the reason for the site visit must be minuted).

Preferred Option and Why

To determine the application in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate).

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.

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

Planning Committee are required to have regard to the Officer advice and recommendations set out in the Application Schedule, the relevant planning policy context and all other material planning considerations. If Members are minded not to accept the Officer recommendation, then they must have sustainable planning reasons for their decisions.

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

Ward Members were notified of planning applications in accordance with the Council's adopted policy on planning consultation. Any comments made regarding a specific planning application are recorded in the report in the attached schedule

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

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Wellbeing of Future Generations (Wales) Act 2015

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (section 5).

Objective 9 (Health and Well Being) of the adopted Newport Local Development Plan (2011-2026) links to this duty with its requirement to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

Planning (Wales) Act 2015 (Welsh Language)

Section 11 of the Act makes it mandatory for all Local Planning Authorities to consider the effect of their Local Development Plans on the Welsh language, by undertaking an appropriate assessment as part of the Sustainability Appraisal of the plan. It also requires Local Planning Authorities to keep evidence relating to the use of the Welsh language in the area up-to-date.

Section 31 clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. The provision does not apportion any additional weight to the Welsh language in comparison to other material considerations. Whether or not the Welsh language is a material consideration in any planning application remains entirely at the discretion of the decision maker.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. Objectives 1 (Sustainable Use of Land) and 9 (Health and Well-being) of the adopted Newport Local Development Plan (2011-2026) link to this requirement to ensure that development makes a positive contribution to local communities and to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

NATIONAL POLICY

Planning Policy Wales (PPW) Edition 8 (January 2016)

Minerals Planning Policy Wales (December 2000)

PPW Technical Advice Notes (TAN):

- TAN 1: Joint Housing Land Availability Studies (2006)
- TAN 2: Planning and Affordable Housing (2006)
- TAN 3: Simplified Planning Zones (1996)
- TAN 4: Retailing and Town Centres (1996)
- TAN 5: Nature Conservation and Planning (2009)
- TAN 6: Planning for Sustainable Rural Communities (2010)
- TAN 7: Outdoor Advertisement Control (1996)
- TAN 8: Renewable Energy (2005)
- TAN 9: Enforcement of Planning Control (1997)
- TAN 10: Tree Preservation Orders (1997)
- TAN 11: Noise (1997)
- TAN 12: Design (2014)
- TAN 13: Tourism (1997)
- TAN 14: Coastal Planning (1998)
- TAN 15: Development and Flood Risk (2004)
- TAN 16: Sport, Recreation and Open Space (2009)
- TAN 18: Transport (2007)
- TAN 19: Telecommunications (2002)
- TAN 20: The Welsh Language: Unitary Development Plans and Planning Control (2013)
- TAN 21: Waste (2014)
- TAN 23: Economic Development (2014)

Minerals Technical Advice Note (MTAN) Wales 1: Aggregates (30 March 2004)

Minerals Technical Advice Note (MTAN) Wales 2: Coal (20 January 2009)

Welsh Government Circular 016/2014 on planning conditions

LOCAL POLICY

Newport Local Development Plan (LDP) 2011-2026 (Adopted January 2015)

Supplementary Planning Guidance (SPG):

- Affordable Housing (adopted August 2015)
- Archaeology & Archaeologically Sensitive Areas (adopted August 2015)
- Flat Conversions (adopted August 2015)
- House Extensions and Domestic Outbuildings (adopted August 2015)
- Houses in Multiple Occupation (HMOs) (adopted August 2015)
- New dwellings (adopted August 2015)

Parking Standards (adopted August 2015)
Planning Obligations (adopted August 2015)
Security Measures for Shop Fronts and Commercial Premises (adopted August 2015)
Wildlife and Development (adopted August 2015)

OTHER

The Colliers International Retail Study (July 2010) is not adopted policy but is a material consideration in making planning decisions.

The Economic Development Strategy is a material planning consideration.

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 are relevant to the recommendations made.

Other documents and plans relevant to specific planning applications are detailed at the end of each application report in the attached schedule

APPLICATION DETAILS

No: 15/0762 **Ward:** LLANWERN, LLISWERRY

Type: FULL

Expiry Date: 10-SEP-2015

Applicant: ST MODWEN DEVELOPMENTS LTD

Site: PHASE 1 GLAN LLYN DEVELOPMENT SITE, QUEENSWAY, LLANWERN, NEWPORT

Proposal: RETENTION OF PUMPING STATION AND MEANS OF ENCLOSURE ASSOCIATED ALTERATIONS TO THE LAYOUT OF THE LEAP AND LANDSCAPING (AMENDMENT TO PLANNING PERMISSION 11/0146 FOR PHASE 1 HOUSING)

Recommendation: GRANTED WITH CONDITIONS

1. INTRODUCTION

1.1 This application seeks full planning permission for the retention of a pumping station compound and means of enclosure with associated alterations to the layout of the LEAP and landscaping (amendment to planning permission 11/0146 for phase 1 housing) at Brinell Square, Phase 1 Glan Llyn Development Site in the Llanwern/Lliswerry Ward.

2. RELEVANT SITE HISTORY

11/0811	PARTIAL DISCHARGE OF CONDITION 10 (BOUNDARY TREATMENT DETAILS) RELATING TO PHASE 1 OF PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION	APPROVED
11/0146	RESERVED MATTERS FOR PHASE 1 RESIDENTIAL DEVELOPMENT AND ASSOCIATED ROADS, PATHS, PARKING AREAS, OPEN SPACE AND OTHER ASSOCIATED WORKS AND ACTIVITIES RELATING TO PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION, INCLUDING DETAILS REQUIRED UNDER CONDITIONS 6 (DETAILS OF RECREATION AREAS), 7 (LANDSCAPING SCHEME), 12 (PARKING DETAILS), 15 (DETAILS OF EMERGENCY ACCESS), 19 (NOISE ASSESSMENT), 22 (STREETLIGHTING), 24 (LEVELS) AND 39 (CARBON REDUCTION STRATEGY AND SUSTAINABILITY STATEMENT) OF THE SAME PERMISSION	GRANTED WITH CONDITIONS
10/0750	PARTIAL DISCHARGE OF CONDITION 4 (SUB AREA MASTERPLAN) RELATING TO PHASE 1 AND PHASE 2 OF PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION	APPROVED
06/0471	REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION COMPRISING: A RANGE OF NEW HOMES (APARTMENTS, HOUSES AND SOME SHELTERED ACCOMMODATION FOR THE ELDERLY - USE CLASSES C2&C3); NEW OFFICES, WORKSHOPS,	GRANTED WITH CONDITIONS

	<p>FACTORIES AND WAREHOUSES (USE CLASSES B1, B2&B8); COMMUNITY FACILITIES INCLUDING NEW SCHOOLS AND COMMUNITY CENTRES (USE CLASSES D1&D2); A LOCAL CENTRE INCORPORATING SHOPS, OFFICES AND COMMERCIAL LEISURE FACILITIES INCLUDING NEW BARS, CAFES AND LICENSED PREMISES (USE CLASSES A1, A2, A3&D2); A NETWORK OF OPEN SPACES INCLUDING PARKLAND, FOOTPATHS, SPORTS PITCHES AND AREAS FOR INFORMAL RECREATION; NEW ROADS, ACCESSES AND PATHS; HEALTHCARE AND FITNESS FACILITIES (USE CLASSES D1&D2); PROVISION FOR A NEW RAILWAY HALT/STATION; OTHER ANCILLARY USES AND ACTIVITIES; AND REQUIRING: SITE CLEARANCE, TREATMENT AND PREPARATION; THE INSTALLATION OF NEW SERVICES AND INFRASTRUCTURE; THE CREATION OF NEW WATER BODIES AND DRAINAGE CHANNELS; IMPROVEMENTS/WORKS TO THE HIGHWAYS NETWORK AND OTHER ANCILLARY WORKS AND ACTIVITIES</p>	
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3. POLICY CONTEXT

3.1 Policy **SP1 Sustainability** - favours proposals which make a positive contribution to sustainable development.

Policy **SP2 Health** - promotes development which has a positive contribution to health and well-being by being in a sustainable location, close to walking/cycling routes and green infrastructure.

Policy **GP2 General Development Principles – General Amenity** states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

Policy **GP3 General Development Principles – Service Infrastructure** states that development will only be provided where necessary and appropriate service infrastructure either exists or can be provided. This includes power supplies, water, means of sewage disposal and telecommunications.

Policy **GP4 General Development Principles – Highways and Accessibility** states that development should provide appropriate access for pedestrians, cyclists and public transport along with appropriate car parking and cycle storage. Development should not be detrimental to the highway, highway capacity or pedestrian safety and should be designed to enhance sustainable forms of transport and accessibility.

Policy **GP6 General Development Principles – Quality of Design** states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.

Policy **CF2 Outdoor Play Space Requirements** - states that when development results in the loss of open space or there is a requirement for additional open space, provision in accordance with the Fields in Trust Standard will be sought.

4. CONSULTATIONS

4.1 None

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF LAW AND REGULATION (POLLUTION): Initially offered no objection with regards to the pumping station as the pumps were noted to be at a considerable depth below ground level and were unlikely to be audible at the surface. Additional clarification with regards to the LEAP proposal was sought and no objections were made as the LEAP is designed for use by young children during daylight hours, would have natural surveillance and, assuming the facility would be used as intended, would not have the potential to result in unacceptable noise impacts on the surrounding residential dwellings. Further advice was given with regards to TAN11 requirements and it is stated that a children's play area located within a residential development would not cause any significant disturbance to surrounding residents and therefore there is no requirement for a noise assessment to be submitted by the applicant.

5.2 HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): Initially queried the heights of the proposed pumping station boundary enclosures and stated that the compound gates should be inward opening only. Following the submission of amended plans no further objection was raised.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties sharing a common boundary with the application site were consulted (30 properties), a site notice was also displayed on 1st September 2015. 13 objections were received from neighbouring occupiers raising the following concerns:

- Several residents claim they were not told about the pumping station and LEAP before they purchased their properties and believe they were lied to by the developer.
- Residents not told about the LEAP believe that properties will be devalued should it be constructed and several residents suggest that compensation should be paid.
- Several residents have raised concerns that noise disturbance will be caused by children and teenagers using the LEAP. Several residents also raise concerns with regards to potential anti-social behaviour taking place (particularly at night when neighbouring residents are sleeping). The current open space area is quiet and should be left as it is (particularly for use by older residents). Several residents work throughout the night so would be disturbed by noise during the day.
- No noise assessment has been submitted by the developer so the potential impact of noise from the LEAP cannot be properly assessed.
- There is no need for the LEAP as there are several other play areas within a short walk of Brinell Square. A MUGA, open spaces areas and additional play equipment are also being provided in the Western Park away from existing houses so the estate will cater very well for young people.
- The proposed LEAP is too close to neighbouring properties and should be relocated (some residents suggest relocation back into the middle of the open space area in accordance with 11/0146).
- Parking problems will be caused as residents not local to the development will drive to use the LEAP and on street parking under resourced in the area. Parking should be provided for the play area.
- The developer and Council did not consider the proposed LEAP correctly under application 11/0146 (in line with industry guidelines and standards).
- One resident states that the proposed LEAP equipment will be for older children and they were told by the developer that it would be for toddlers; this raises the risk for noise disturbance and anti-social behaviour that nearby residents may have to deal with.

- Privacy will be compromised as the play equipment will allow children to look into neighbouring properties.
- The developer misled residents with regards to the pumping station (stating that it would be underground and of a smaller size). The increased size will be unacceptable. The replacement of the previous wall with railings will be unsightly. The tarmacked area is unsightly and will be made worse if a lorry is parked there.
- The pumping station should be relocated as its retention will devalue properties and ruin the aesthetics of the community.
- The area outside of the pumping station will be made unsafe due to the vehicular access.
- Concern is also raised that there is a lack of sufficient street lighting and that additional lighting should be installed to improve safety for walkers using the central footpath (without causing disturbances to existing residents).
- Several residents state that additional street lighting should not be installed.
- The developer did not contact residents with regards to the proposals.
- Several criticisms are made of the developer and the Council's involvement with the Phase 1 development in general as there are a lot of problems.

Following the submission of amended plans and a neighbour re-consultation a further 14 objections were received from neighbouring occupiers raising the following concerns:

- Not every resident has been consulted regarding the changes to the plans.
- The application should not be a delegated decision as it is taking away the right for local residents to decide and have opinions. The Council should not decide the application on behalf of the residents.
- Planning Committee should not take full responsibility for the decision making without any representation from residents. Committee should visit Brinell Square and talk to the residents. The Council should represent the population first and foremost. Committee should recommend substantial recompense to local residents if the pumping station is to remain.
- Several residents again state that they were lied to with regards to the locations of the LEAP and pumping station and they would not have bought their properties if they had known about them.
- Properties will be devalued if the LEAP and pumping station are constructed.
- Several residents again raise concerns regarding noise and use of the LEAP by teenagers at night leading to anti-social behaviour. Properties are not sound proofed and the enclosed residential area will make noise much worse (particularly for residents who work nights).
- Reference is made by one resident to comments (rejections) made by a Senior Environmental Health Officer in 2011 with regards to noise from the Queensway. These comments have been overlooked for the LEAP.
- The play equipment would be damaged by older children leading to an unsightly appearance.
- The play equipment will be too high, over too large an area and too close to neighbouring properties compared with the previous approval (11/0146).
- There is not suitable visitor parking for non-resident users of the LEAP.
- There is no need or legal requirement for the LEAP to be constructed within Brinell Square, particularly when there are substantially sized play facilities within Western Park in very close proximity. The play equipment within the Western Park is already being defaced and slowly being destroyed by teenagers and this would happen to the LEAP in close proximity to residents houses.
- The pumping station does not require additional parking as it is currently maintained by a tanker already able to reach it.
- Given the level of previous objections in relation to the pumping station the recent amendments only propose changes to the LEAP.
- Revised plans have failed to acknowledge residents objections regarding the LEAP and the new proposals will still cause noise and disturbance to residents. The lack of previous assessment of these issues under 11/0146 has not been addressed by the

developer. There is no consistency between the current proposals and what was originally agreed under previous approvals.

- The developer wrote to residents in December 2015 stating that the LEAP plans would revert to the 11/0146 approval, this is clearly not the case.
- The pumping station should be underground as shown on the previous plans, it should not have any visible features above ground.
- One resident questions why the developer initially constructed a solid brick wall around the pumping station with no planning permission and no intention to rectify it. The developer incorrectly informed residents it was permitted development and was part of the plans for the square. Criticism is made of the way that the developer handled the situation with the original wall and the lack of wish to rectify the problems caused by the pumping station.
- The submitted Design and Access Statement is deliberately misleading and does not address any of the former objections to the development.
- The pumping station needs to be sorted out as the current situation is unsightly.
- Use of shrubs surrounding the pumping station is unlikely to be successful as the existing planting on the other side of the square have made little growth since 2014. Some of the existing planting has already died and it is proposed to remove an existing tree that will kill it (one resident states that trees cannot be killed).
- The proposed railings to be erected around the pumping station are not in keeping with the themes of materials used in the area. The developer also has no right to put a boundary there.
- Residents shouldn't have to pay for mistakes made by the developer as it is not their fault. The developer should rectify the problems they have caused at their cost and not cause further problems to residents. If the application is to be approved compensation should be paid to residents by the developer.
- One resident states that the developer had admitted that the pumping station location was an oversight and had been insensitively located, suggesting it should be moved elsewhere.
- Criticism of the nature of the relationship between the Council and the developer is made (suggesting that the developer is able to do whatever they want).
- Mistakes were made within the Council's consultation letters and some residents have only just found out about the proposals that the Council and developer are going to impose on local residents. This is a deliberate mistake to reduce responses to the amended plans. An additional letter explaining the situation should be sent to all occupiers of Brinell Square.
- The Council and developer are not taking residents' concerns seriously and legal advice towards future action is being taken.

After the submission of further amended plans three additional letters of objection were received. Generally these objections raised mostly the same issues that had already been addressed with regards to the previously submitted plans. However, some new concerns were raised:

- It was stated by one resident that the most recent amendments did not alter their previous objections even though the LEAP is now smaller in size.
- Maintenance to the pumping station took place which resulted in an infestation of Crane Fly Larvae (known as "leatherjackets"). This is further proof that the pumping station should not be located in this area.

6.2 COUNCILLOR MARTYN KELLAWAY: Offered objections to the initial consultation raising concerns that:

- The proposals will clearly have a negative impact on the residents of Brinell Square.
- The increased size of the pumping station will reduce the character of the square as it was intended in terms of the amenities and the residents' enjoyment of their homes.

- The original master plan gave no indication of such a structure being outside the front window of homes, it is wrong and is misleading to residents who have purchased properties in good faith and now have such an intrusion nearby.
- The increased size of the LEAP adds to the negative impact in terms of increased noise and the developer has omitted industry guidance and the Council's own guidance on Outdoor Play Space Provision and National Playing Fields Association Standards in support of the LEAP.
- No supporting assessment has been provided for the LEAP other than to provide a recreational area within the development.
- Without such consideration and consultation with residents the application should be refused.

Further comments were received following the submission of amended plans stating that:

- In light of the clear concerns the LEAP and pumping station raises it would be beneficial for the applicant to engage in consultation with the residents of Brinell Square to ensure they have constructive input.
- The proposed fencing is an eyesore not in keeping with the ambience and feel of the square and will encourage anti-social behaviour, notwithstanding that the pumping station was planned to be in a different place.
- The LEAP serves to add to the already sensitive issue of noise and there has been little improvement to the location. Noise generated from the area will be amplified around the square thus increasing the disturbance and preventing the enjoyment of people's homes in Brinell Square.
- Within a short walk lies a large park and consideration should be given to the need for a further play area, perhaps re-siting the LEAP to the larger park.
- The proposed mounds will only serve to become skateboard areas or a gathering point for antisocial behaviour.
- The application is opposed until proper consultation has taken place with residents.

6.3 LLANWERN COMMUNITY COUNCIL: Submitted two objections to the initial consultation stating that:

- The works to remove the red brick wall enclosure for the pumping station commenced before the determination of the current application. The works should not have commenced and the developer should not pre-determine the outcome. Why the works commenced is questioned.
- Original application granted brick wall/metal railings. There is no clarity as to whether the proposed railings would be in keeping with the existing black painted metal fences installed around Brinell Square.
- Questions whether the developer has assessed parking requirements for the LEAP in line with the Council's adopted parking guidance. The developer has not sought to fully comply with the adopted parking standards with regards to 3 and 4 bedroom properties thus reducing any visitors parking.
- It is stated on several occasions that the developer has chosen not to consult neighbours and local communities with regards to the proposals.
- Original application 11/0146 omitted to assess the LEAP location under Newport City Council Play Space Provision and National Playing Fields Association (NPFA) Standards. As such it does not comply. The developer is proposing changes to the LEAP and has not submitted any assessment in accordance with the aforementioned guidance.
- A noise assessment was originally undertaken to satisfy condition 19 attached to 11/0146, but only for plots bordering the Queensway. As the LEAP will be enclosed within Brinell Square additional noise will be created over and above the original noise source. The developer, the Council and Environmental Health have not considered this issue and the detrimental effects of noise disturbance. The developer should submit a noise assessment in accordance with the relevant guidance.

- No means of lighting is currently available for the LEAP. Has the developer considered this?
- Questions the need for a contamination assessment in relation to this application.
- In summary the omission of fundamental industry/adopted standards in relation to the assessment of the LEAP should be addressed by the applicant. The proposed fence surrounding the pumping station should be subject to a separate planning application to allow the developer to consult with residents regarding the LEAP. The application should be refused.

A second objection was received stating:

- During 11/0146 the developer omitted industry and adopted guidelines on outdoor play provision and the current application also provides no supporting assessment other than to provide a recreational area within the development.
- The applicant did not provide a noise assessment with regards to the LEAP under application 11/0146. The LEAP will provide sporadic noise events and the Council and developer have a duty of care that such events do not cause significant or unreasonable disturbance. The applicant has not demonstrated that the LEAP will achieve the lowest possible noise levels in accordance with the relevant guidance. World Health Organisation noise guidance is quoted and it is stated that the design and location of the proposed LEAP should comply with this (and other) guidance. The proximity of the enclosed residential area surrounding the LEAP will exacerbate noise levels through reflection effects. Environmental Health managing noise complaints should not be relied upon as noise events are foreseeable.
- Previous Environmental Health comments from 11/0146 (with regards to noise levels from the Queensway not complying with relevant guidance) should mean that the same questions are asked in this case.
- The omission of street lighting may or may not deter use of the park at night and if poorly lit it may lead to incidents relating to health and safety for users and residents. The perception that the LEAP will not be used at night if poorly lit is unilateral.
- In summary noise assessment guidance should be applied to support the location and construction of the LEAP and the application should be refused.

Following the submission of amended plans additional objections were received stating that:

- The Design and Access Statement does not demonstrate conformity or notify of any departures to 06/0471, 10/0750 or 11/0146 and no impact assessment has been submitted with regards to the relocated LEAP.
- The applicant has omitted to address previous objections by the Ward Councillor.
- The proposed LEAP is not sufficiently far from dwellings and is not integrated with public open spaces to provide separation from dwellings.
- The absence of a noise assessment regarding the LEAP means that conformity with previous permissions and quoted noise guidance is not demonstrated.
- Sections of the Section 106 relating to recreational spaces are quoted and it is stated that the applicant has not demonstrated conformity with condition 19 of planning permission 06/0471.
- The Council's Parking Standards are quoted and it is stated that a number of 3 and 4 bedroom properties were only allocated 2 parking spaces including garages. No visitor spaces were provided for Brinell Square. LCC object to this reduced parking as it will directly impact on residential amenity.
- The applicant has not provided a noise assessment with regards to the LEAP. The LEAP will provide sporadic noise events and the Council and developer have a duty of care that such events do not cause significant or unreasonable disturbance. The applicant has not demonstrated that the LEAP will achieve the lowest possible noise levels in accordance with the relevant guidance. World Health Organisation noise guidance is quoted and it is stated that the design and location of the proposed LEAP should comply with this (and other) guidance as the proximity of the enclosed

residential area surrounding the LEAP will exacerbate noise levels through reflection effects. It is stated that should enforcement action have to be taken regarding noise mitigation measures this action would be on the occupier of the plots and not the developer.

- The applicant has not demonstrated that the three street lights in Brinell Square would provide adequate lighting for the LEAP. The perception that the LEAP will not be used at night if poorly lit is unilateral. Object on grounds of health and safety and loss of amenity.
- Following concerns raised by residents the developer removed the previously installed brick wall without planning permission.
- Original application 11/0146 provided for a brick wall/black painted railings with access and egress to pumping compound via black painted metal rail gates.
- There is no confirmation whether proposed railings would be in keeping with the surrounding area.
- In summary the applicant has re-addressed the LEAP location which would have had to be relocated under sub-area masterplan 10/0750 to demonstrate conformity. LCC has sought clarification from the Case Officer that no enforcement action would be taken on the developer should the LEAP require mitigation measures to comply with quoted noise guidelines. The case officer is still seeking clarification from Environmental Health regarding the need for a noise assessment.

7. ASSESSMENT

Site History

- 7.1 The application site is an area of public open space set within a square of terraced domestic properties known as Brinell Square. The site has been constructed as part of a major mixed-use redevelopment of a former steel works site. The steelworks site redevelopment was initially proposed in 2006 (ref: 06/0471) and granted planning permission in 2010. The original application approved a site master-plan and phasing structure for the development. A subsequent discharge of conditions application submitted in 2010 was approved in relation to the design codes and initial site layouts of the 'Western Sub-Area' in relation to the overall site master-plan. This outlined the various new housing areas, a commercial area (local centre) and community facilities (a primary school and large public open space area known as 'Western Park') that would be provided through phases 1 and 2. The sub-area master-plan also detailed provisions for smaller community play areas such as Local Areas of Play (LAPs), two Locally Equipped Areas of Play (LEAPs) and a larger Neighbourhood Equipped Area of Play (NEAP). Within Phase 1 the sub-area master-plan featured a centrally located LEAP, to be approximately 400 square metres in size, and also featured a pumping station. The sub-area master-plan did not propose any detailed layouts of the Phases as these were left to be dealt with as reserved matters applications or discharges of conditions attached to the original planning application (ref: 06/0471).
- 7.2 A reserved matters application for the detailed site layout of the Phase 1 housing area (along with various discharges of conditions attached to the original application) was approved in 2011 (ref: 11/0146). This application secured the locations of the LEAP and pumping station to be installed within the public open space at Brinell Square. The LEAP was to be centrally located within the square and was approved at approximately 390 square metres. The pumping station was proposed as an underground installation with an area of approximately 100 square metres. A landscaping scheme featuring hedgerow planting around the perimeter of the public open space with several trees to be planted across the grassed areas and an earth mound within the north-western area was also approved under the 11/0146 permission.
- 7.3 A subsequent discharge of conditions application relating to Condition 10 of permission 06/0471 was approved for a mixed wall/metal railings enclosure around the pumping station perimeter to create an external compound (ref: 11/0811). In early 2015 it was reported to the Council that the site developer had constructed a solid wall around the

pumping station area. It was confirmed following a site visit that the wall was not that approved under 11/0811 and had been constructed over a larger site area than that approved under reserved matters 11/0146. The underground pumping station has been installed and is currently in operation. Following informal enforcement action the solid wall was removed and the current application was submitted.

Need for Formal Play Provision

- 7.4 The inclusion of LAPs, LEAPs and NEAPs is part of the sustainability requirement across the entire regeneration site. Providing them within housing areas is generally held to be good practice and improves the local nearby amenities available to residents (who are likely to be the primary users). They are also designed to offer spaces for social interactions between residents which would hopefully encourage better community engagement. If they were not constructed within or adjacent to the housing areas reliance would be placed on residents to use motor vehicles to access facilities elsewhere which would be contrary to policy with regards to sustainable development. As such, the construction of the play areas, with the regeneration site as a whole, is secured via a Section 106 legal agreement. The Section 106 agreement requires 2 NEAPs, 10 LEAPs and 80 LAPs to be constructed across the entire regeneration site. As stated above the 'Western Sub-Area' master plan proposed the construction of two LEAPs within that area with the first being within the Phase 1 housing area (the subject of this application). Should the site developer not provide the LEAP within the Phase 1 development the Council could enforce the Section 106 agreement and require it. Given that LEAPs are not generally designed to cater for toddlers (which LAPs are) and they are not aimed at older age groups (young teenagers who are more likely to use the NEAPs) they are required to be located in accessible locations close to residential properties where good surveillance is afforded. This would minimise walking distances for younger children and parents and allow for safer play environments with less opportunities for anti-social behaviour. However, the 'Western Sub-Area' master plan did outline good practice design guidance for LEAPs in order to minimise any potential harm to the residential amenities of neighbouring occupiers.

Current Proposal

- 7.5 The current proposal is submitted as an amendment to reserved matters application 11/0146 in relation to the locations and scales of the LEAP and pumping station to be installed within Brinell Square. An initial proposal was submitted which proposed the larger pumping station compound area and the LEAP relocated to the north-eastern area of the public open space with no play equipment to be installed within the western area of the open space. At the request of Council Officers the LEAP location was revised and amended plans, showing the LEAP in a more central location comparable with the previous planning approval, were submitted.
- 7.6 The scheme under consideration proposes a LEAP located centrally, in broadly the location previously approved, but extended to the north-east of the square. The proposed LEAP would have an area of approximately 505 square metres. Distances to the closest neighbouring domestic properties would be approximately 17 metres to the western side of Brinell Square, 12 metres to the northern side and 16 metres to the eastern side. The distance from the LEAP to the domestic properties along the southern side of Brinell Square would be over 20 metres with the public highway forming part of the intervening land. Within the LEAP it is proposed to install several items of play equipment with age ranges from 2 plus to 6 plus. The tallest item of play equipment (a climbing frame known as a Kompan Talus) would measure 4.8 metres in height to the highest point. The tallest area where children would be able to stand would be 2.4 metres from ground level (again a platform within the Kompan Talus). The Kompan Talus would be located centrally within the LEAP with equipment for smaller children located closer to the perimeter. Two benches and a picnic table would also be installed. The LEAP would be enclosed by a 1.2 metre high bow topped metal railing with two pedestrian access gates located at north and south

points where the existing path is located. A maintenance gate would also be located within the northern railing section.

- 7.7 The pumping station compound would cover an area of 215 square metres and would incorporate a maintenance area, an above ground control box (currently in place) and an off-street parking area for maintenance vehicle parking. It is located within the south-eastern area of the square with a distance of 9.7 metres to the nearest domestic property at the western side of the square. The pumping station would be enclosed by 2.4 metre high vertical bar railings. The compound would be secured by 1.8 metre high vertical bar railing gates.
- 7.8 The application also proposes a planting schedule as an amendment to the previously approved landscaping scheme. Several new trees will be planted along the western perimeter hedgerow with additional trees planted within the LEAP area (mainly on and around the earth mound). Shrubs will also be planted within areas along the western LEAP perimeter and the southern LEAP area adjacent to the northern boundary of the pumping station. A laurel hedgerow will be planted around the eastern perimeter of the LEAP and the entire pumping station area (bar the gated access).

Visual Impact and Privacy

- 7.9 The proposed LEAP covers a marginally larger area than that previously approved. The original proposal (layout plan - M11.113(k).021 Rev. C) included the relocation of the LEAP entirely into the north-eastern area of the square. It was considered that the original scheme would have resulted in a significant impact on the visual amenities of the occupiers of the north-eastern and eastern areas of the square as the LEAP would have been very close to the front boundaries of the properties with little planting between them to act as a screen. The original site layout proposed was considered to be unacceptable and amended plans were submitted to attempt to address officers' concerns and the significant amount of objections received. The first set of amended plans (layout plan - M11.113(k).021 Rev. D) proposed to relocate the LEAP back into a more central position within the square, but still included a landscaped earth mound area within the LEAP fencing in the north-eastern area of the square. The earth mound was a feature granted permission originally under the landscaping proposals within reserved matters application 11/0146, but was not originally proposed to be included within the formal LEAP area. A further set of amended plans was submitted (layout plan - M11.113(k).021 Rev. E). The current scheme excludes the earth mound from the formal LEAP area resulting in a proposed LEAP that exceeds the previously approved area by 100 square metres. As such the formal play area is now not considered to have the potential to cause any significant additional impacts over and above those of the lawful fall-back position. In all probabilities the earth mound will be used as informal play space by children regardless of its inclusion within the LEAP fencing area, but its exclusion from the formal LEAP space does alleviate some concerns with regards to neighbouring amenities and proximity of the formal LEAP to neighbouring boundaries. The proposed planting on and around the earth mound would help to reduce some direct views to and from the LEAP to adjacent properties along the northern and eastern sides of Brinell Square so privacy would be generally preserved. Similarly, due to the largest item of play equipment (the Kompan Talus) being centrally located within the LEAP and at least partially screened by proposed planting it is not considered that the visual impact or potential overlooking that could be caused by this equipment would be significant. Indeed with regards to general privacy available to the occupiers of Brinell Square it is considered that the proposed LEAP, due to the screen planting and central location away from properties, would offer an improvement over the existing open space situation. It should be noted that the area is public open space so front facing windows within the existing properties do not benefit from a high level of privacy from members of the public using the current open space area or the pathways adjacent to the properties along the perimeters of the square.
- 7.10 The proposed railings to surround the LEAP perimeter are a standard 1.2 metre high bow top design that is commonly used to enclose formal areas of play. In terms of the design

they are considered acceptable as they would be a design commonly associated with this type of development. Similarly the pumping station railings have a more formal appearance, but again this is a common type of design given the nature of the pumping station compound. The 2.4 metres height of the pumping station railings is significant meaning that they would be clearly visible within the street scene at Brinell Square, but given the need for adequate security surrounding equipment of this type it is considered that the need for a secure compound outweighs the potential visual impact of the high railings and considered alongside the screen planting that would at least partially obscure the railings it is considered that the visual impact would be acceptable. The railings surrounding the LEAP are proposed to be installed with a blue galvanised finish; the pumping station railing finishes are not currently specified. Given the general prevalence of black railings within the domestic properties it is considered that the railings surrounding the LEAP and pumping station should be finished in black in order to ensure a better compatibility with the surroundings. This can be achieved through the imposition of a directive planning condition. The play equipment would also be clearly visible, but would be of a design and appearance that is common to small formal play areas so would have a generally neutral impact on the surrounding area and street scene. Overall the proposals are considered to be in accordance with policy GP6 of the NLDP and are acceptable subject to planning conditions.

Noise and Anti-Social Behaviour

- 7.11 The issue of noise from users of the park has been raised by several objectors, the Ward Councillor and Llanwern Community Council. It is acknowledged there is potential for children using the play equipment to generate noise, but this is also true of the existing open space area that currently offers an informal area of play space. The play equipment proposed is for age ranges from between 2 plus to 6 plus (broadly in accordance with the age ranges stated for LEAPs within the original masterplan). It is entirely appropriate and indeed preferred, for younger children's play areas to be situated in accessible and visible areas. This generally means in sight of primary residential frontages with good natural surveillance. The proposed LEAP is considered to achieve this without resulting in any detrimental impacts on neighbouring residential amenities.
- 7.12 The Head of Law and Regulation (Pollution) initially offered no objection with regards to potential noise generated by the development in relation to the pumping station. The pumps were noted to be at a considerable depth below ground level and were unlikely to be audible at the surface. Due to the high level of objections received with regards to potential noise disturbance as a result of the LEAP additional clarification was sought. No objections were made as the LEAP is designed for use by young children to be used during daylight hours. It would also have good natural surveillance and, assuming the facility would be used as intended, would not have the potential to result in unacceptable noise impacts on the surrounding residential dwellings. Further advice was given with regards to TAN11 requirements and it is stated that a children's play area located within a residential development would not cause any significant disturbance to surrounding residents and therefore there was no requirement for a noise assessment to be submitted by the applicant. As such it is considered that the proposed LEAP and pumping station amendments would not result in demonstrable and significant noise disturbances nor pose any adverse impacts on neighbouring residential amenities.
- 7.13 The potential issue of anti-social behaviour occurring within the LEAP has also been raised by a number of objectors. As the Head of Law and Regulation (Pollution) has stated, the LEAP has very good natural surveillance so in the event that any anti-social behaviour would occur (particularly at night) it is likely to be witnessed and reports to the relevant authorities can be made. It is also reasonable to expect that the level of natural surveillance would put-off any people intent on undertaking in anti-social behaviour within the LEAP. The park is also designed for use by small children and would not provide adequate play provision for groups of teenagers, which are better provided for within the Western Park located to the east of Brinell Square further away from domestic properties. The LEAP area is also not reasonably expected to be used during the night and limited street lighting to

illuminate it is present. The LEAP could be used at night and this cannot be controlled through planning legislation, but it is unlikely given its intended purpose and any occurrences are likely to be infrequent. It is acknowledged that the LEAP is designed for a specific purpose and age group, but is not exclusively limited to these purposes. However, in all probabilities the potential for the LEAP to generate significant anti-social behaviour is considered to be low and should it occur it would have to be dealt with by the relevant authorities. Overall the proposals are considered to be in accordance with policy GP2 of the NLDP and are acceptable. In short, a LEAP has been previously approved in this location. This application proposes its enlargement. The proposed equipment is intended to be fit for purpose and there is no evidence to indicate otherwise therefore the LEAP and surrounding open space will encourage community engagement and beneficial social interaction and physical activity. These are significant benefits for the emotional and physical well-being of the community. As with many things, misuse and vandalism could occur but, the layout and design is intended to minimise the potential for this and it is considered acceptable.

Highway Safety

- 7.14 It is not considered that the alterations to the LEAP would result in any significant impacts on highway safety. Several objections have raised concerns that no additional visitor parking is proposed to serve the LEAP within Brinell Square. The facility is to be provided as a small local community facility which is very well connected to the wider housing development by public footpaths. It is reasonable to expect that most of the users will be local families, who would use the LEAP due to the convenience of being within walking distance of their properties. Whilst it is entirely possible (and outside of planning controls) that non-residents of Glan Llyn may choose to visit the LEAP it is unlikely due to the scale and relatively restricted parking available within Brinell Square that this would be a frequent occurrence resulting in on-street parking problems. The LEAP is intended to provide local facilities for the local people to enable and encourage them to use leisure time at facilities within walking distances of their homes. The parking provision required for the development was approved under the previous application (ref: 11/0146), this included assessment of the LEAP in this location. The increased scale of the LEAP does not require any additional visitor parking as it is a small local community play area expected to be accessed by the majority of users on foot (from the local housing area). As such, with regards to off-street parking it is not considered that the current proposal raises any new concerns over that of the fall-back position. The adopted *Parking Standards* SPG does not define small play areas as requiring specific off-street parking provision. Much larger leisure and community uses (leisure centres/fitness clubs) do have specified parking requirements, but small community play areas do not as they are generally considered to be sustainably located to serve the local area. The Head of Streetscene and City Services (Highways) has confirmed this view by offering no objections to the proposals.
- 7.15 Some initial comments requesting additional information with regards to the pumping station access gates (opening inwards) and railings were received by the Head of Streetscene and City Services (Highways). Following the submission of amended plans and additional information no further objections were made. The pumping station compound would create an off-street parking bay for maintenance vehicles to allow them to be able to undertake future maintenance to the pumping station without having to compete with on-street parking (that may have the potential to block access and is outside of the control of the drainage provider). It is believed that the larger compound with parking area is a drainage adoption requirement requested by Dwr Cymru/Welsh Water. The new access would be clearly visible from the highway at Brinell Square and would be infrequently used. The highway at Brinell Square is also relatively quiet and traffic speeds are slow (as there is no through route). As such there is little concern that vehicles entering or egressing the pumping station compound would have any adverse or significant impact on highway safety. The access gates can be controlled by planning condition to be inward opening only to avoid instances where gates would be swung into the path of pedestrians. As such it is considered that, subject to planning conditions, the proposals are in accordance with policy GP4 and are acceptable with regards to highway safety.

Ward Councillor Objections

- 7.16 Objections were received from Ward Councillor Martyn Kellaway to both the originally submitted scheme and the revised plans. The assessment above has considered the material planning considerations with regards to the proposals. Councillor Kellaway's concerns with regards to increased noise and negative impacts due to the visual appearance of the proposals are considered to have been addressed within the assessment above.
- 7.17 The need for the LEAP in this location is questioned. The need for the LEAP is not required to be assessed through the current application as it has been previously assessed and secured by a legal agreement attached to the original planning application 06/0471. Early site layouts and phasing plans of the original application show a LEAP (and pumping station) centrally located within the Phase 1 housing development and the sub-area master plan provides further guidance on the locations and sizes of the various LAPs, LEAPs and NEAPs that would be provided through the various phases and sub-phases. The formal play provision is designed in a hierarchy relating to the potential age of users and distance to properties. This is to promote sustainable development that is accessible to the local residents that would wish to use the play areas. The LAPs are provided for toddlers and very small children. They are generally small areas with limited equipment and are located at strategic points to minimise walking distances to them from the various areas within Phase 1. The LEAP is proposed to provide formal play space for slightly older children (aged 2-8 with the ability to travel further to gain access to the equipment) and is centrally located in an area accessible by most residents on foot. The Western Park play area is a NEAP which provides formal play space and equipment for older children and young teens who require the least supervision and can travel easily to and from the NEAP on foot. The developer would have the option to propose a different LEAP location, but that is not what is proposed so is not under consideration and as the officer assessment of the material planning considerations has concluded no significant concerns with the LEAP alterations there is no reason for officers to request that an alternative location is sought. The LEAP (along with other formal and informal play areas) contributes to the overall sustainability of the mixed-use development as a whole. The development is required to be served by local facilities in order to reduce car dependency for those living within the housing areas. To move the LEAP away from an area that would be accessible to its intended users would reduce the overall sustainability of the development contrary to the design guidelines established through the original master-plan.
- 7.18 Concern is raised that the original master-plan was misleading as it gave no indication of a large structure surrounding the pumping station and residents bought properties in good faith that now have to live with such an intrusion nearby. The original master-plan did not provide information other than establishing the basic principles of design that would be employed within more detailed designs as the phases of development progressed. The LEAP and pumping station were shown in a central location within Phase 1 of the development so the principle of them as a feature of the Phase 1 development was established at an early stage and prior to occupation of properties.
- 7.19 The issue of the developer not providing a detailed assessment referencing industry guidance and the Council's own guidance on Outdoor Play Space Provision and National Playing Fields Association Standards in support of the LEAP is raised. With regards to play space provision, the development is sufficiently small scale and the developer is not required to demonstrate compliance with any additional guidance over and above the Council's adopted planning policies and SPGs. To request additional assessments would be excessive and unreasonable given the proposals.
- 7.20 Councillor Kellaway suggests that the developer should engage with public consultations with local residents in order to address the concerns raised within neighbour objections. He further states that the application should be opposed until these further consultations take place. Planning legislation does not require developers to directly engage with local

residents and stakeholders over proposals of this minor scale. The Council has consulted with local residents in accordance with the planning department's adopted consultation policy and many responses, to both the originally submitted plans and amended plans, have been received and assessed as part of the application. Planning legislation does not allow Council's to request that additional direct consultations take place nor does it allow for applications to be refused if direct consultations have not occurred. Any considerations of the developer's contact with local residents prior to the submission of the application are immaterial and not relevant to the planning assessment the Council is required to undertake.

Community Council Objections

- 7.21 Many similar objections to those raised by Councillor Kellaway are also echoed within Llanwern Community Council's objections to the scheme. Detailed objections are submitted with regards to noise issues and the proposed LEAP. Specific noise guidance is quoted (World Health Organisation and British Standards guidance amongst others) and it is stated on several occasions that the developer did not demonstrate compliance with this guidance in previous applications and does not provide assessments to demonstrate compliance with the current application. This application must be considered on its own merits. Criticism of previous applications should be dealt with via the Council's formal complaints procedure if necessary.
- 7.22 To demonstrate whether a proposed development (or alteration to a development as in this case) would meet the relevant noise guidelines the Council can request the submission of a noise assessment. This additional information would only be requested where it is recognised that a development may be significantly noise producing or noise sensitive. In this case the technical advice received from the Head of Law and Regulation (Pollution) is that due to the scale and design of the LEAP no noise assessment is required to be submitted. The officer assessment above further elaborates on this advice, but in short, to request that the developer demonstrate compliance with the guidance quoted by LCC would be unreasonable for a development of this scale.
- 7.23 The issue of inadequate street lighting is raised and it is stated that the applicant has not demonstrated that the three street lights in Brinell Square would provide adequate lighting for the LEAP. It is also stated that the perception that the LEAP will not be used at night if poorly lit is unilateral. An objection is made on grounds of health and safety and loss of amenity. It is not clear from the objections what loss of amenity would occur, but the officer assessment above finds no reasons to consider that residential amenities would be significantly affected over and above the lawful fall-back position. The lack of street lighting is also not considered to be an issue as the design of the LEAP is clearly aimed at smaller children who would in most reasonable circumstances be using the LEAP during the day under the supervision of parents. To request that additional street lighting is provided is also in direct contradiction with LCC's objection with regards to potential anti-social behaviour and noise disturbance occurring at night. To provide the LEAP with lighting to allow its use after dark would increase potential anti-social behaviour and noise disturbances as would remove the natural deterrents that darkness provides. Since the LEAP is considered to be a small community area of play space, not designed for sustained evening use, it is not considered that it is required to be adequately lit.
- 7.24 An issue is raised with regards to the original wall constructed around the pumping station area. It appears to be suggested that by removing the wall (without planning permission) the developer has pre-determined the current planning application. This allegation is immaterial.
- 7.25 Issues with regards to the conformity with the sub-area master-plan and legal agreements are raised. The sub-area master-plan states that LEAPs will be provided with 20 metre buffers to the nearest residential properties and that the two provided within the Western Sub-Area would be 400 square metres. The departures with the previous approvals and

potential impacts on material planning considerations are assessed in more detail above. The sub-area master-plan was a document produced to provide design guidance on the general design principles for the overall scheme to adopt. The current application effectively gives the detail and the exact design of the proposed LEAP and pumping station. The Section 106 legal agreement secures the provision of the informal and formal play space in accordance with the amounts agreed to be provided within the development as a whole. Should the LEAP not be provided within Brinell Square (as previously approved) the Section 106 legal agreement could be enforced to ensure that it was provided. The developer has the option to vary the legal agreement and propose an alternative location to the LEAP, but they have not chosen to do so and wish to retain the location within Brinell Square subject to the proposed amendments.

- 7.26 It is quoted that inadequate parking provision was granted under reserved matters planning application 11/0146 and it is questioned whether the developer has assessed the parking requirements for the LEAP under the current guidance. No request for additional visitor parking for the LEAP has been made by the Head of Streetscene and City Services (Highways) so there is not considered to be any reason to request submission of a parking assessment/survey from the developer.
- 7.27 The need for a contamination assessment is questioned. Given the scale of the current proposals over and above previous approvals it is unreasonable and unnecessary to seek further contamination assessment.
- 7.28 It is stated on several occasions that the developer has chosen not to consult neighbours and local communities with regards to the proposals. As stated in further detail in the address of Councillor Kellaway's objections this is immaterial to the current assessment.
- 7.29 With regards to the amended plans the previous objections are generally repeated, but it is stated that the amendments do not address the former objections made by the ward councillor. The developer has no requirement to address former objections, but did submit plan amendments following concerns raised with regards to the originally submitted scheme and close proximity of the LEAP to properties along the northern-eastern and eastern side of the square. It is stated that the LEAP is still too close to residential properties and is not integrated within the public open space to provide separation from dwellings. As assessed above it is considered that the impacts posed by the LEAP are not significantly over and above those posed by the lawful fall-back position. The proposed planting would also help to reduce any visual impacts and overlooking that could be caused by the slightly larger LEAP towards the north-eastern area of the square. As such it is considered that the separation of the LEAP from residential properties is acceptable.
- 7.30 Finally it is stated that there is no demonstration of conformity of the railings surrounding the pumping station with other existing railings at domestic properties in the area. This is assessed in more detail above, but it is considered that subject to a planning condition requiring them to be finished in black they are acceptable and would be compatible with the surroundings.

Neighbour Objections

- 7.31 A significant amount of neighbour objections were received in relation to both the initially submitted scheme and subsequently amended plans. An assessment of the material planning considerations has been undertaken above with no significant concerns identified with regards to visual impacts, privacy, noise and anti-social behaviour or highway safety and it has not been concluded that the proposals are contrary to any adopted planning policies or guidance.
- 7.32 Objections raised with regards to the developer lying to residents prior to their house purchase and not notifying potential purchasers of the LEAP or pumping station compound are not material planning considerations. Similar objections stating that properties will be

devalued by the installation of the LEAP and pumping station compound are not material planning considerations.

- 7.33 Several objectors raised the question of the need for the LEAP in this location as the nearby Western Park has formal play provision (located away from domestic properties) and several smaller LAPs are located within walking distance of Brinell Square. This has been addressed in more detail within response to Councillor Kellaway's objections above.
- 7.34 Several objectors have stated that the pumping station and LEAP should be installed in accordance with the previous approvals without any amendments being permitted. The former decisions do provide the developer with a lawful fall-back position. Should members choose to refuse planning permission the developer would have the option to implement the previously approved scheme (albeit subject to the submission of additional details to satisfy the relevant planning conditions). The planning system allows for amendments to be proposed through the submission of new planning applications, which is the case with the current application.
- 7.35 One letter of objection stated that an infestation of crane fly larvae (known as 'leatherjackets') had occurred following maintenance of the pumping station. The objector stated that this was further proof that the pumping station should not be located in this area. Informal advice was taken from the Head of Law and Regulations (Pollution and Pest Control). It was stated that it is unlikely that there is any link between the pumping station and the presence of the 'leatherjackets', but rather the emergence of them is more due to the time of year (spring when they emerge to feed) and that a long wet and mild autumn had allowed them to establish below ground.

Summary

- 7.36 The proposed amendments to the LEAP and pumping station are considered acceptable and will not demonstrably and adversely affect neighbouring residential amenities or highway safety over and above the lawful fall-back position established through previous planning permissions. The LEAP will have a positive impact upon the layout of the estate and the ability of existing and future occupiers to benefit from play facilities and the associated emotional, social and physical merits of having the access to such provision. The provision of a secure compound surrounding the pumping station will not demonstrably and adversely affect neighbouring residential amenities or highway safety and will allow for improved access for maintenance to the benefit of the effective drainage of the development in the future. Objections raised by the Ward Councillor, Llanwern Community Council and local residents do not outweigh this favourable view. As such it is considered that the proposals are in accordance with the relevant planning policies and guidance and it is recommended that planning permission is granted subject to conditions.

8. OTHER CONSIDERATIONS

8.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 *Equality Act 2010*

The Equality Act 2010 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.

- 8.3 Having 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.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

8.6 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

8.7 ***Wellbeing of Future Generations (Wales) Act 2015***

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. CONCLUSION

9.1 The retention of a pumping station compound and means of enclosure with associated alterations to the layout of the LEAP and landscaping (amendment to planning permission 11/0146 for phase 1 housing) by reasons of the scale, location and design are considered to maintain residential amenities for neighbouring occupiers, to maintain the character and appearance of the surrounding area and street scene and to preserve highway safety.

9.2 The proposals are therefore in accordance with policies SP1, SP2, GP2, GP3, GP4, GP6 and CF2.

9.3 Planning permission is recommended to be granted subject to the following conditions.

10. RECOMMENDATION

GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: 102 Rev. C – Pumping Station Location; M11.113(k).022 Rev. A – Persimmon LEAP Construction Details; M11.113(k) 021 Rev. E – Persimmon LEAP and Pumping Station Layout Plan; P13-266-215 – Compound Fencing Details; Kompan Talus details; Kompan Ocean & Jungle Theme with Net and Tower details; Kompan Cwing and Twist details.

Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based.

General conditions

02 The bow top railings surrounding the LEAP and the vertical bar railings and gates surrounding the pumping station compound hereby approved shall be finished in black and shall be retained in that state thereafter.

Reason: To ensure development that is compatible with its surroundings.

03 The planting scheme hereby approved shall be undertaken fully in accordance with the plans hereby approved within the first full planting season following the construction of the LEAP and pumping station compound. The landscaped areas shall be maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants which fail within a period up to 5 years from the completion of the development.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

04 The means of enclosure, vehicular access and gates surrounding the pumping station and the play equipment, outdoor seating and means of enclosure within the LEAP area shall be fully installed in accordance with the approved details within six calendar months of the date of this decision and shall be retained in that state thereafter.

Reason: To secure the provision of the local community facility in the interests of sustainable development, residential amenities and highway safety.

05 The access gates serving the pumping station compound hereby approved shall be installed as inwards opening only and at no time shall they be permitted to open outwards.

Reason: To ensure a satisfactory form of development in the interests of highway safety.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Design and Access Statement; 102 Rev. C – Pumping Station Location; M11.113(k).022 Rev. A – Persimmon LEAP Construction Details; M11.113(k) 021 Rev. E – Persimmon LEAP and Pumping Station Layout Plan; P13-266-215 – Compound Fencing Details; Kompan Talus details; Kompan Ocean & Jungle Theme with Net and Tower details; Kompan Cwing and Twist details; Site Location Plan.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP2, GP2, GP3, GP4, GP6 and CF2 were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

APPLICATION DETAILS

No: 15/0629 **Ward:** STOW HILL
Type: FULL (MAJOR)
Expiry Date: 20-SEP-2015
Applicant: THE TONSTATE GROUP LTD
Site: OLYMPIA HOUSE, UPPER DOCK STREET, NEWPORT, NP20 1PQ
Proposal: CHANGE OF USE OF FLOORS 3 TO 8 FROM OFFICE TO RESIDENTIAL TO FORM 62NO. RESIDENTIAL UNITS WITH ASSOCIATED EXTERNAL ALTERATIONS INCLUDING REMOVAL OF EXISTING EXTERNAL FIRE ESCAPE.

Recommendation: GRANTED WITH CONDITIONS SUBJECT TO A LEGAL AGREEMENT

1. INTRODUCTION

1.1 This application seeks full planning permission for the change of use of floors 3 to 8 of Olympia House, Upper Dock Street (former Passport Office) from an office use to residential units, comprising 31 x 1 bed units and 31 x 2 bed units (62 No in total).

2. RELEVANT SITE HISTORY

02/0109	CHANGE OF USE OF PROPERTY FROM A1 (RETAIL) TO B1 (OFFICES) 178 UPPER DOCK STREET	Granted with conditions
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3. POLICY CONTEXT

3.1 **Newport Local Development Plan 2011-2026 (Adopted January 2015)**

SP1 (Sustainability) favours proposals which make a positive contribution to sustainable development.

SP3 (Flood Risk) ensures development is directed away from flood risk areas.

SP9 (Conservation of the Natural, Historic and Built Environment) protects habitats and species as well as Newport's listed buildings, conservation areas, historic parks and gardens, scheduled ancient monuments, archaeologically sensitive areas and landscape designated as being of outstanding historic interest.

SP13 (Planning Obligations) enables contributions to be sought from developers that will help deliver infrastructure which is necessary to support development.

SP18 (Urban Regeneration) supports development which assists the regeneration of the urban area, particularly the city centre and the reuse of vacant, underused or derelict land.

GP2 (General Development Principles – General Amenity) states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

GP4 (General Development Principles – Highways and Accessibility) states that development should provide appropriate access for pedestrians, cyclists and public transport along with appropriate car parking and cycle storage. Development should not be detrimental to the highway, highway capacity or pedestrian safety and should be designed to enhance sustainable forms of transport and accessibility.

GP6 (General Development Principles – Quality of Design) states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is

developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.

GP7 (General Development Principles – Environmental Protection and Public Health) states that development will not be permitted which would cause or result in unacceptable harm to health.

CE7 (Conservation Areas) sets out the criteria that development proposals within or adjacent to the conservation area must comply with in order to preserve or enhance the conservation area.

H4 (Affordable Housing) sets out the affordable housing targets for the four submarket areas within Newport. For new housing sites of fewer than 10 dwellings within the settlement boundary, and fewer than 3 dwellings within the village boundaries, a commuted sum will be sought.

H8 (Self Contained Accommodation and Houses in Multiple Occupation) sets out the criteria for subdividing a property into self-contained flats. The scheme must be of appropriate scale and intensity not to unacceptably impact on the amenity of neighbouring occupiers and create parking problems; proposals must not create an over concentration in any one area of the city; and adequate noise insulation is provided and adequate amenity for future occupiers.

EM3 (Alternative Uses of Employment Land) protects existing employment sites against development unless it can be demonstrated that the site has been marketed unsuccessfully for 12 months; there remains a sufficient range and choice of employment land to meet LDP requirements and local demand; there is no adverse impact on existing or allocated employment sites; and the proposal has no adverse impact on amenity or the environment.

T4 (Parking) states that development will be expected to provide appropriate levels of parking.

- 3.2 **Flat Conversions Supplementary Planning Guidance (August 2015):** The SPG seeks:
- i) To ensure that occupants of converted flats (excluding houses in multiple occupation, which are licensed by the Public Protection Service) have reasonable living conditions;
 - ii) To ensure that converted flats do not deprive persons in existing dwellings of reasonable living conditions; and
 - iii) To protect the character and appearance of the built environment.

4. CONSULTATIONS

- 4.1 REGIONAL AMBULANCE OFFICER: No response.
- 4.2 STOW HILL COMMUNITIES FIRST: No response.
- 4.3 HEDDLU – GWENT POLICE (ARCHITECTURAL LIAISON OFFICER): No response.
- 4.4 NEWPORT ACCESS GROUP: No response.
- 4.5 SENIOR FIRE PREVENTION OFFICER: No response.
- 4.6 WALES AND WEST UTILITIES: Advise of apparatus in the surrounding area.
- 4.7 DWR CYMRU – WELSH WATER: This application has been discussed with the applicant who is to consider a surface water removal scheme from the current building to free up capacity in the network for the proposed foul flows. These discussions are ongoing so

recommend a condition requiring details of the foul and surface water drainage to be submitted, the details should include an assessment of the potential to dispose of surface and land water by sustainable means.

4.7.1 No problems are envisaged with the waste water treatment works for the treatment of domestic discharges from this site nor the provision of water supply for this development.

4.8 WESTERN POWER DISTRIBUTION: Advise of apparatus in the surrounding area.

4.9 NATURAL RESOURCES WALES: No objection. The application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to in Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). Our Flood Map information, which is updated on a quarterly basis, confirms the site to be within 0.5% (1 in 200 year) and the 0.1% (1 in 1000 year) annual probability tidal flood outlines of the River Usk, a designated main river.

4.9.1 We note from the development proposals that this is a change of use application for floors 3 to 8 from office to residential and that no new development is proposed for the lower floors. Therefore our advice is provided in this context. A Flood Consequences Assessment (FCA) has been submitted (Olympia House, Upper Dock Street, Newport, Flood Consequence Report, project No. 15.3361, Revision A: 28th July 2015) which shows that the highly vulnerable development (residential) on floors 3 to 8 will be flood free during an extreme flood event.

4.9.2 The FCA does however show that the retail units situated on the ground floor and the access/egress surrounding the building will experience a degree of flooding during an extreme flood event. This will have implications for the residents of the units on the upper floors with regards to access and egress from the property during any flood event at this location. Your authority needs to be satisfied that any Flood Warning Plans/Evacuation Procedures are appropriate to the scale and nature of the development being proposed. We advise that flood depths at the entrance to the building may exceed the guidelines in A1.15 of TAN15.

4.9.3 Therefore, we suggest you consult other professional advisors (e.g. Emergency Planners, Emergency Services, Building Control) on the acceptability of proposals and on matters we cannot advise on, such as, emergency plans, procedures and measures to address structural damage that may result from flooding. Please note, we do not normally comment on or approve the adequacy of flood emergency response and procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings to occupants/users.

5. INTERNAL COUNCIL ADVICE

5.1 URBAN REGENERATION MANAGER: No response.

5.2 HEAD OF LAW AND REGULATION (ENV.HEALTH): No objection, however the premises is situated in a busy town centre location and may be impacted by various sources of noise e.g. traffic noise, noise from pubs/clubs/restaurants, delivery noise, plant noise, traffic etc. Additionally it is proposed to retain commercial units on the lower floors of the building.

5.2.1 It is recommended that a condition requiring the submission of an acoustic survey is imposed. Where noise mitigation measures are required in order to protect the amenity of future occupants, full details should be submitted for approval and implemented in full, prior to first occupation of the dwellings.

5.2.2 A further condition is recommended requiring a Construction and Environmental Management Plan to be submitted prior to commencement of development. The CEMP should give full details of noise and dust mitigation measures to be employed during development. The applicant should note that due to the age of the building, there may be asbestos containing materials present. This should be confirmed and factored into the CEMP as necessary.

5.3 PLANNING CONTRIBUTIONS MANAGER: S106 planning obligations are normally required to either carry out works or contribute financially towards measures that mitigate the impact of the development i.e. to make an unacceptable proposal acceptable in land use planning terms.

- Economic viability is an important material planning consideration on the potential scope and scale of planning obligations, especially when considering wider regeneration benefits and whether these issues outweigh the harm caused by the loss of S106 planning obligations.

5.3.1 Affordable Housing

19 Affordable Housing Units would normally be required (at 50% of ACG) and transferred to an RSL zoned to develop in Newport. The proposed properties would be offered on a 'neutral tenure' basis, providing opportunities for applicants to rent or part-purchase their home.

The units would need to be a mix of one and two bed apartments, all to be DQR compliant and meet all Welsh Government requirements

The service charge for the apartments will need to be affordable and details declared so that we can ensure that the properties meet the TAN 2 definition.

5.3.2 Education

Primary: The development falls within the catchment of St Woolos Primary School (deficit of 10 places, as at January 2015). Taking into account the scale and type of development, as well as the current school deficit capacity, a contribution of £32,230 would normally be required for St Woolos Primary School.

Secondary: The development falls within the catchment area of Duffryn High School (deficit of 26 pupil places, as at January 2015). Taking into account the scale and type of development, as well as the current school deficit capacity, a contribution of £18,587 would normally be required for Duffryn High School

5.3.3 Leisure

Owing to the surplus of 'Informal' play provision within the Stow Hill Ward, no contributions are requested for 'Informal' play

Owing to a deficit of 'Equipped' and 'Formal' play provision within the Stow Hill Ward, a commuted sum of £146,923 would normally be required to upgrade and maintain off-site 'Equipped' (£53,424) and 'Formal' (£93,499) play at the Belle Vue Park and Baneswell playground.

5.3.4 Economic Viability

An independent 'open book' viability appraisal has been undertaken by the District Valuer and concludes that the development is "deeply unviable". This is corroborated by the Councils Three Dragons Toolkit.

5.3.5 Conclusion

The level of contributions required will jeopardise the proposal's economic viability and subsequent delivery. In addition, there are wider regeneration benefits to the city centre. These considerations are deemed to outweigh the harm caused by the loss of S106 planning obligations. As such, in order to encourage the development to progress, it is concluded that the S106 planning obligations should be 'waived'. However, a time scale for delivery has to be agreed in a S106 agreement, which, if not met, triggers a viability review.

5.4 PLANNING POLICY MANAGER: No response.

5.5 HEAD OF STREETSCENE AND CITY SERVICES (LEISURE): No response.

5.6 HOUSING AND COMMUNITY REGENERATION MANAGER (AFFORDABLE HOUSING): I can confirm that there is considerable housing need within the City Centre and the requirement for affordable housing is 30% on site provision. I would therefore request 19 units of affordable housing to be transferred to an RSL zoned to develop in Newport at 50% of ACG. The units would need to be a mix of one and two bed apartments, all to be DQR

compliant and meet all Welsh Government requirements. It should be noted that the service charge for the apartments would also need to be affordable and details of this charge would need to be declared so that we can ensure that the properties meet the TAN 2 definition within Planning Policy.

5.7 HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): The building is located within zone 1 (City Centre) and therefore due to the proximity of a range of services, facilities and good public transport links, parking is not required. I also note that secure cycle parking will be provided to the rear of the property. I would therefore offer no objection to the application.

5.7.1 The proposal also includes the removal of the fire escape which is situated on Skinner Street. Skinner Street is an adopted highway and therefore the developer must contact Streetscene regarding any works which will affect the adopted highway and no works can be undertaken until approval has been given and the appropriate highway agreements have been put in place.

5.8 CHIEF EDUCATION OFFICER: No response.

5.9 HOUSING AND COMMUNITY REGENERATION MANAGER (ECONOMIC DEVELOPMENT): No response.

5.10 HISTORIC BUILDINGS AND CONSERVATION OFFICER: In the context of the large scale, 20th century building to which the proposals relate, I do not consider that the Town Centre Conservation Area or the settings of nearby historic buildings will be materially affected and therefore raise no objection.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties within 50m of the application site were consulted (162 properties), two site notices displayed, and a press notice published in South Wales Argus. One response received raising the following concern:

- Whilst there is no objection the owner of a nearby licenced premises queries that it should be with the applicant to resolve any noise issues and not for existing buildings that have been established for over 50 years. States that the developer can resolve noise issues within the refurbishment programme and specification with secondary glazing and upgrading the insulation.

7. ASSESSMENT

- 7.1 In detail the proposals consist of external alterations which include the removal of an existing external fire escape structure on Skinner Street and replacement aluminium windows on floors 3 to 7. On the 8th floor, where the facade steps in a flat roof area around the perimeter of the building would be utilised, the existing windows would be extended to floor level to provide access to the flat roof which would be paved to provide a private amenity area. Around the perimeter of the roof it is proposed to install a glazed balustrade, set slightly in from the existing parapet.
- 7.2 Internally the existing fire escape stairwells and lifts would be retained to gain access/fire escape to/from the flats. The basement of 178 Upper Dock Street (formerly part of the public reception of the Passport Office) would provide an area for cycle storage and the rear portion of the ground floor of this unit would house services associated with the residential units. A corridor to the rear of ground floor units facing Skinner Street would be retained as a fire escape.
- 7.3 The main issues of consideration for this proposed development are the loss of employment floorspace, impact on the Conservation Area, flood risk, residential amenity, noise, parking, affordable housing and planning contributions.
- 7.4 Loss of Employment Land**
- 7.4.1 Policy EM3 states that development proposals promoting alternative uses on existing employment sites will be resisted unless:
- i. the site has been marketed unsuccessfully for employment purposes for a minimum of 12 months;
 - ii. there remains a sufficient range and choice of employment land and premises to meet LDP requirements and local demand;
 - iii. the development has no adverse impact on existing or allocated employment sites;
 - iv. the development has no adverse impact on amenity or the environment.
- 7.4.2 The application building was formerly occupied by the Passport Office. This occupier used floors 3 to 8 and 178 Upper Dock Street. It has remained vacant since the Passport Office left the building in April 2013. The applicant has confirmed that the building has been marketed for 2 years by seeking occupiers of the office space as well as potential purchasers of the building as an asset. Marketing for occupiers of the office space has been unsuccessful.
- 7.4.3 The applicant has submitted an employment land statement which comments that the building struggles to let due to a lack of profile, poor specification and a lack of car parking. They also note that the amount of office space to let is considerable when compared to the whole of the annual Newport occupational take up and the building requires significant refurbishment. They estimate that even with extensive refurbishment the expected rents would not be higher enough to make refurbishment a viable option.
- 7.4.4 The Employment Land Review which was undertaken to inform the preparation of the Local Development Plan supports the comments made in the applicants' employment land statement. The Lands Review states that there is between 7.5 and 9 years' worth of supply of available office accommodation within Newport. There is currently an over-supply of second hand accommodation relative to demand, with a significant proportion located within the city centre. On this basis it is considered that the applicant has sufficiently satisfied Policy EM3. The building has been marketed unsuccessfully for a minimum of 12 months; and a sufficient range and choice of employment land and premises to meet demand would remain following the loss of this office space. Impacts relating to amenity are discussed in paragraphs 7.7.

7.5 Impact of the Conservation Area

7.5.1 The application site is not located within the Town Centre Conservation Area but it does lie adjacent to it. The Council's Historic Buildings and Conservation Officer has no objection to the proposals given the context of the large scale 20th century building. It is also not considered that the Conservation Area or the setting of any nearby historic buildings would be materially affected by the proposals.

7.6 Flood Risk

7.6.1 The application site lies entirely within flood zone C1. Natural Resources Wales flood map information confirms the site to be within the 0.5% (1 in 200 year) and the 0.1% (1 in 1000 year) annual probability tidal flood outlines of the River Usk. In accordance with TAN 15 within zone C1 development can take place subject to the application of a justification test which includes the acceptability of consequences. Whilst the residential development is confined to the third floor and above a precautionary approach as advocated by TAN 15 is considered necessary to assess the policy criteria in section 6.2 of TAN 15. Section 6.2 of TAN 15 refers specifically to justifying the location of development and that such development should only be permitted within zone C if determined by the planning authority to be justified in that location and 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 (PPW fig 2.1); and

iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 6 and appendix 1 found to be acceptable.

7.6.2 For the purposes of this report criterion (i) to (iii) are referred to as Test 1 as this relates to the site justification and criterion (iv) which has a number of tests is referred to as Tests 2 to 12.

7.6.3 The application is considered to satisfy criterion (i) to (iii) and therefore Test 1. Located within the settlement boundary, Officers consider that the proposal would contribute to the Council's strategy to sustain an existing settlement. It also uses previously developed land.

7.6.4 Tests 2 to 12 – Consequences of Flooding

Criterion (iv) refers specifically to the potential consequences of a flooding event for the particular type of development to be considered, and in terms of the criteria contained in sections 5 and 6 and Appendix 1 of TAN 15 found to be acceptable. These are referred to as tests 2 to 12 below.

7.6.5 ***Test 2 - Flood defences must be shown by the developer to be structurally adequate particularly under extreme overtopping conditions (i.e. that flood with a 1 in 1000 chance of occurring in any year).***

NRW's Severn Estuary Flood Risk Management Strategy identifies that the existing defences along the River Usk include earth embankments and walls, and that even if the existing defences are maintained at the current height, by 2060 the risk of tidal flooding to most properties would increase to a 1 in 50 chance in any year. The strategy identifies that NRW aim to work with Newport City Council and local businesses to raise and strengthen the defences to keep pace with climate change. Although the strategy identifies there is a need to improve the defences there are no planned improvements. As a result it is considered that this criterion has not been satisfied.

7.6.6 Test 3 - The cost of future maintenance for all new/approved flood mitigation measures, including defences must be accepted by the developer and agreed with Natural Resources Wales.

No mitigation is proposed as the development is proposed on the upper floors with access and egress at a lower level.

7.6.7 Test 4 - The developer must ensure that future occupiers of the development are aware of the flooding risks and consequences.

The applicant could establish procedures for advising future occupants of the dwellings of the associated flooding risks and consequences. This criterion could therefore be satisfied.

7.6.8 Test 5 - Effective flood warning are provided at the site

Planning Officers are aware that tidal flood warnings are in place and all future occupants could sign up to receive these warnings. NRW do not raise any concerns in their response regarding the effectiveness of the flood warnings. The proposal therefore satisfies this criterion.

7.6.9 Test 6 - Escape/evacuation routes are shown by the developer to be operational under all conditions

The letter from the Welsh Government to Chief Planning Officers identifies that in providing their expert technical advice, NRW will comment on the acceptability of flooding consequences in terms of the risk to people and property within the development. However, they will not comment on whether access and egress can be achieved to and from the site as this is a matter for the emergency services to determine on a site by site basis depending upon operational capabilities and equipment. The letter also states that the Local Resilience Forum for your area may be able to provide further advice in liaison with Local Authority Emergency Planners.

Paragraph A1.15 of TAN 15 provides guidance on what is considered to be tolerable conditions for both property and access under extreme flood conditions (1 in 1000 year event). The following is a summary of the table:

Type of development	Maximum depth of flooding (mm)	Maximum rate of rise of floodwaters (metres/hr)	Maximum speed of inundation of flood risk area (hrs)	Maximum velocity of floodwaters (metres/sec)
	Property Access			Property Access
Residential (habitable rooms)	600 600	0.1	4	0.15 0.3
General	600	0.3	2	0.3

Infrastructure	600			0.3
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Access and egress to the application building is from Upper Dock Street, with fire escape to the rear of the building at basement level. The applicants' FCA state that the floor level at the front of the building is 8.20 metre AOD. Data provided by NRW shows that the predicted maximum velocities are 0.32 metres/second in a 1:1000 year event (2111 – 100 year lifetime of the development) at the point of access which is marginally higher than the threshold in the above table. In respect of depths the data shows this to be 1.68m in the 1 in 1000 year event which exceeds the guidance of 600mm. In terms of the remaining criteria it is understood that there is no data readily available. It is noted that advice from NRW has previously been sought on this matter in relation to a residential conversion scheme just north of the application site (Gloucester Chambers – 15/1276). They advised that the Local Planning Authority should note that Welsh Government have indicated they are in favour of a proportionate level of FCA, reflecting the scale and complexity of the FCA. In light of these comments it is considered that it would be unreasonable to request the applicant to seek to provide the remaining data.

The Gwent Local Resilience Forum and the three emergency services are not intending to provide any comments in relation to issues of access and egress and the ability of these services to rescue people in a flood event. Officers consider that it has not been demonstrated that all escape/evacuation routes are operational under all conditions and there are no comments from the emergency services to provide any comfort in this respect. This criterion has therefore not been satisfied.

7.6.10 Test 7 - Flood emergency plans and procedures produced by the developer must be in place

The developer has submitted a flood evacuation plan. However, the Local Planning Authority (LPA) does not have the in-house expertise to assess such plans. The Local Resilience Forum, the police, fire and ambulance service have confirmed that they are not

willing to participate in the planning process and comment on the flood risk issues relating to applications. The developer carries the responsibility of producing such a plan. The LPA is therefore not in a position to advise further.

7.6.11 Test 8 - The development is designed by the developer to be flood free, which allows for goods/possessions within these buildings to be stored safely away from floodwaters

The application relates to residential use on floors 3 to 8 which would be flood free due to the height of the floor level. The proposal therefore satisfies this criterion.

7.6.12 Test 9 - Development is designed to minimise structural damage during a flooding event and is flood proofed to enable it to be returned to its prime use quickly in the aftermath of the flood

The application relates to residential use on floors 3 to 8 which would be flood free due to the height of the floor level. The proposal therefore satisfies this criterion.

7.6.13 Test 10 - No flooding elsewhere

The application involves the change of use of an existing building and no additional footprint would be created. Whilst NRW has not explicitly covered this matter in their consultation response it is assumed that there would not be any increase in flooding elsewhere.

- 7.6.14 **Test 11 - Paragraph A1.14 of TAN 15 identifies that the development should be designed to be flood free for the lifetime (A1.5) of development for either a 1 in 100 chance (fluvial) flood event, or a 1 in 200 chance (tidal) flood event including an allowance for climate change (depending on the type of flood risk present) in accordance with table A1.14.**

The lifetime of development for a residential use is 100 years. The proposed application involves the use of the upper floors which would be flood free in the 1 in 200 tidal flood event allowing for climate change over the lifetime of the development. The proposal therefore complies with paragraph A1.14 of TAN 15.

- 7.6.15 **Test 12 - In respect of the residual risk to the development it should be designed so that over its lifetime (A1.15) in an extreme (1 in 1000 chance) event there would be less than 600mm of water on access roads and within properties, the velocity of any water flowing across the development would be less than 0.3m/second on access roads and 0.15m/second in properties and the maximum rate of rise of floodwater would not exceed 0.1m/hour.**

- 7.6.16 The maximum velocities of water flowing across the point of access/egress are 0.32 metres/second in a 1:1000 year event (2111- 100 year lifetime of the development) which marginally exceeds the threshold guidance of 0.3 metres/second. In respect of depths the data shows this to be 1.68m in the 1 in 1000 year event which exceeds the guidance of 600mm. Given that the residential development begins on the third floor it is reasonable to assume that the floor levels of the lowest apartments are higher than the predicted flood depths. As advised in paragraph 7.6.9 it is considered that it would be unreasonable to request the provision of additional data. The proposal satisfies the criteria in relation to flood depths within property, but does not satisfy the guidance in relation to velocities and depths of access and egress. The proposal does not fully satisfy this criteria.

- 7.6.17 In summary, NRW do not offer any objection to the proposal. The analysis of criterion set out in TAN 15 with regard to the acceptability of the management of the consequences of flooding shows that the proposal fails 3 of the 13 tests. However, there are significant regeneration benefits to be derived from this scheme for this part of the city centre. The proposal does not involve the erection of new buildings and it comprises the upper use of

floors within an existing building. The upper floors are well above predicted flood depths, but the access / egress is likely to exceed the tolerable threshold. However, the flood risk is tidal and as such the levels would drop when the tide recedes. It is also more predictable and the flood warnings would be more precise. The applicant states that the rate of increase of waters would be dictated by the tidal cycle which occurs over a 6 hour period.

- 7.6.18 The applicant has submitted a flood evacuation plan which, whilst it is not possible to expertly critique, it is noted that it advises future occupiers to sign up to flood warnings. It is considered that with flood warnings it is likely that residents would adequate time to vacate the building during a flooding event. The emergency services would be likely to have time to enter the building if necessary. In terms of safe access and egress it is considered appropriate that future occupiers are made aware of the method of escape including a route to safety. An informative is recommended to make the applicant aware of this addition to the flood evacuation plan. It is likely that any evacuation route would direct residents out of the site in a south easterly direction along Upper Dock Street and then south westerly along Corn Street which rises to flood free levels at a distance of approximately 85m from the point of egress.

7.7 Residential Amenity

- 7.7.1 Policy GP2 states that development will be permitted where:

- i) there will not be a significant adverse effect on local amenity, including in terms of noise, disturbance, privacy, overbearing, light, odours and air quality;
- ii) the proposed use and form of development will not be detrimental to the visual amenities of nearby occupiers or the character or appearance of the surrounding area;
- iii) the proposal seeks to design out the opportunity for crime and anti-social behaviour;
- iv) the proposal promotes inclusive design both for the built development and access within and around the development;
- v) adequate amenity for future occupiers.

7.7.2 Policy H8 also requires the scale of the building and the intensity of the use to not harm the character of the building and not cause an unacceptable reduction in the amenity of neighbouring occupiers or result in on street parking problems; it should also provide adequate noise insulation and adequate amenity for future occupiers.

7.7.3 The Flat Conversions SPG states that the following matters will be considered when assessing applications for flat conversions:

- the availability of on-street and off-street parking;
- neighbours' living standards (with particular regard to noise and privacy);
- future occupants' living standards (with particular regard to internal floor space, outdoor amenity space, parking, bin storage, bicycle storage and noise);
- impact on the character and appearance of the building and the streetscape.

7.7.2 Given the city centre location it is not considered that the use would give rise to a loss of amenity to neighbouring occupiers. There are very few residential uses on the upper floors of nearby buildings, the nearest being the managers accommodation of the Windsor Castle opposite the application building. The arrangement of this accommodation is unknown and it is not clear whether windows in the front elevation serve the residential use. However, the residential conversion of the application building is proposed on the third floor upwards, the Windsor Castle manager's accommodation could be spread across the first and second floors. There would be no direct overlooking windows and there is a 4m step in from the first and second floor blank façade which would further obscure views.

7.7.3 The SPG also makes recommendations regarding internal layout and living conditions. The guidance sets out minimum internal space standards to ensure reasonable living conditions are provided. All of the proposed flats exceed these standards. Future occupiers would have access to a cycle store in the basement (served by a ramped access) and a bin store on the ground floor. The application site cannot provide any off road parking spaces however, its city centre location means that it is highly sustainable location and such

provision isn't required. Given these factors it is considered that the proposed development would provide future occupiers with a good standard of amenity.

7.8 Design

7.8.1 The proposed development does not propose extensive external alterations. The alterations include replacement aluminium windows on floors 3 to 7, new private amenity areas using the existing flat roof for flats proposed on the 8th floor, including a glazed balustrade and new full height glazing units serving the 8th floor flats. None of these alterations are considered to be harmful to the character of the surrounding area. The proposals also include the removal of the existing external fire escape on Skinner Street. This is currently an obtrusive and incongruous feature in the streetscape and its removal is welcomed.

7.9 Noise

7.9.1 The Council's Environmental Health Officer notes that the application building is situated in a busy city centre location and could be impacted by noise from traffic, pubs/clubs/restaurants, delivery noise and plant noise. It is also noted that it is proposed to

retain commercial units on the lower floors of the building. It is recommended that an acoustic survey is carried out which will identify noise mitigation measures to protect the amenity of future occupiers. This is secured by a condition.

- 7.9.2 The Environmental Health Officer also recommends a condition requiring a Construction Environment Management Plan which should include details of noise and dust mitigation measures during construction. The Officer advises that due to the age of the building there may be asbestos containing material present and this should be factored into the CEMP as necessary. The condition is duly attached.

7.9 Highways

- 7.9.1 The Council's Highways Engineer has no objection to the lack of parking provision due to the city centre location and the provision of secure cycle spaces are noted. The Engineer notes that the removal of the fire escape on Skinner Street is with the adopted highway. An informative is added to advise the applicant to contact the Council's Streetscene department to obtain the necessary consents to undertake works which would affect the adopted highway.

7.10 Drainage

- 7.10.1 Welsh Water has commented that the application has been discussed with the applicant who is to consider a surface water removal scheme from the current building to free up capacity in the network for the proposed foul flows. As these discussions are ongoing they recommend a condition requiring details of the foul and surface water drainage to be submitted. The condition is duly attached.

7.11 Planning Contributions/Affordable Housing

- 7.11.1 In line with Policies SP13 (Planning Contributions) and H4 (Affordable Housing) contributions towards education and leisure are normally requested to mitigate the direct impact of development and, thereby, provide sustainable development. In this part of the city 30% of the development should also be affordable housing, which equates to 19 units.
- 7.11.2 The details of the contributions sought are set out in paragraph 5.3. An independent 'open book' viability appraisal has been undertaken by the District Valuer and concludes that the development is "deeply unviable". This is corroborated by the Councils Three Dragons Toolkit.
- 7.11.3 The level of contributions required will jeopardise the proposal's economic viability and subsequent delivery. In addition, it is recognised that residential property investment can help improve the level of economic activity, diversify city centre offer and bring vibrancy to previously empty properties. These considerations are deemed to outweigh the harm caused by the loss of S106 planning obligations. As such, in order to encourage the

development to progress, it is concluded that the S106 planning obligations should be 'waived'. However, a time scale for delivery has to be agreed in a S106 agreement, which, if not met, triggers a viability review.

8. OTHER CONSIDERATIONS

8.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 **Equality Act 2010**

The Equality Act 2010 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.

8.3 Having 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.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

8.6 **Planning (Wales) Act 2015 (Welsh language)**

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

8.7 **Wellbeing of Future Generations (Wales) Act 2015**

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. **CONCLUSION**

9.1 The proposed development is considered to be acceptable and in accordance with Policies SP1, SP3, SP9, SP13, SP18, GP2, GP4, GP6, GP7, CE7, H4, H8, EM3 and T4 of the Newport Local Development Plan 2011-2016 (Adopted January 2015).

10. **RECOMMENDATION**

GRANTED WITH CONDITIONS SUBJECT TO A LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE IN THE EVENT THAT THE AGREEMENT IS NOT SIGNED WITHIN THREE MONTHS OF THIS DECISION

01 The development shall be implemented in accordance with the following plans and documents: P-AL(01)01 rev F, (01)02 rev C, (01)03 rev B, (01)10 rev E, (01)11 rev D, (01)12 rev B, (02)20 rev A, (02)21 rev A and (90)01.

Reason: In the interests of clarity and to ensure the development complies with the submitted plans and documents on which this decision was based

Pre-commencement conditions

02 Prior to the commencement of development (including demolition) a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include:

- dust suppression measures, having regard to BRE guide 'Control of Dust from

- Construction and Demolition Activities;
- noise mitigation measures and;
 - investigation and remediation of any asbestos containing material.

The development shall be carried out in accordance with the approved CEMP.

Reason: To protect the amenity of nearby residents and to ensure that any potential risks to human health or the wider environment are satisfactorily addressed.

03 Prior to the commencement of development an acoustic survey of the areas to be converted to habitable rooms shall be submitted to and approved in writing by the Local Planning Authority. The survey shall identify any noise mitigation measures to protect the amenity of future residents which shall be implemented prior to the occupation of those affected residential units.

Reason: In the interests of residential amenity.

04 No development, other than demolition, shall commence until full details of the foul and surface drainage systems has been submitted to and approved in writing by the Local Planning Authority. The details should include an assessment of the potential to dispose of surface and land water by sustainable means. The details shall be implemented fully in accordance with the approved scheme prior to the occupation of any dwelling.

Reason: To ensure adequate drainage is provided.

Pre – construction conditions

05 No work shall be commenced on the construction of the approved scheme until details/samples of materials and finishes to be used on the external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out using the approved materials.

Reason: To ensure that the development is completed in a manner compatible with its surroundings.

Pre – occupation conditions

06 Prior to the occupation of the residential units hereby approved, the cycle and bin stores shall be provided in accordance with the approved plans. The stores shall be retained for use by the occupants of the residential units thereafter.

Reason: To encourage sustainable transport and to ensure adequate amenity for future occupiers.

NOTE TO APPLICANT

01 This decision also relates to: Flood Consequence Assessment (Austin Partnership, 28 July 2015), Planning and Employment Land Statement (DPP planning, May 2015), TN01, TN02, Technical Note (DW Transportation, May 2015) and Flood Warning and Evacuation Plan.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP9, SP13, SP18, GP2, GP4, GP6, GP7, CE7, H4, H8, EM3 and T4 were relevant to the determination of this application.

03 As of 1st October 2012 any connection to the public sewerage network (foul or surface water sewerage) for the first time will require an adoption agreement with Dwr Cymru Welsh Water. For further advice contact Dwr Cymru Welsh Water on 01443 331155.

04 The applicant is advised that the application site is within flood zone C1. Signing up to Natural Resource Wales Flood warning Scheme is advised. The Flood Warning and Evacuation Plan should include a method of escape including a routes to flood free areas.

05 The Supplementary Planning Guidance – Flat Conversions (Adopted August 2015) was relevant to the determination of this application.

06 The Supplementary Planning Guidance – Planning Obligations (Adopted August 2015) was relevant to the determination of this application.

07 The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

08 The applicant is advised to contact the Council's Streetscene department to obtain the necessary consents for works to take place within the adopted highway.

09 It should be noted that this consent is dependant on the applicant entering into a Planning Obligation under Section 106 of the Town and Country Planning Act 1990.

APPLICATION DETAILS

No: 15/0629 Ward: **STOW HILL**

Type: Full (Major)

Expiry Date: 20-SEP-2015

Applicant: **THE TONSTATE GROUP LTD C/O AGENT**

Site: **OLYMPIA HOUSE, UPPER DOCK STREET, NEWPORT, NP20 1PQ**

Proposal: **CHANGE OF USE OF FLOORS 3 TO 8 FROM OFFICE TO RESIDENTIAL TO FORM 62NO. RESIDENTIAL UNITS WITH ASSOCIATED EXTERNAL ALTERATIONS INCLUDING REMOVAL OF EXISTING EXTERNAL FIRE ESCAPE.**

1. LATE REPRESENTATIONS

1.1 The applicant has confirmed that they agree to the Heads of Terms as set out in paragraph 5.3 of the committee report.

2. OFFICER RESPONSE TO LATE REPRESENTATIONS

2.1 Confirmation is noted.

3. OFFICER RECOMMENDATION

3.1 It is recommended that the application is granted with conditions subject to a legal agreement with delegated powers to refuse in the event that the agreement is not signed within three months of the decision.

APPLICATION DETAILS

No: 15/1496 **Ward:** MARSHFIELD

Type: FULL (MAJOR)

Expiry Date: 10-MAR-2016

Applicant: A PARSONS

Site: SEA VIEW BUNGALOW, BROADSTREET COMMON, PETERSTONE WENTLOOGE, CARDIFF, CF3 2TN

Proposal: REGULARISE USE OF PART OF LAND ADJOINING SEA VIEW BUNGALOW AS A STORAGE AREA FOR SKIPS AND TURNING AREA FOR VEHICLES

Recommendation: REFUSED

1. INTRODUCTION

- 1.1 This application seeks planning permission to regularise the use of land for the turning of vehicles and storage of skips on land adjoining Sea View Bungalow, Broadstreet Common, Peterstone Wentlooge. The land in question is adjacent to and associated with a historic waste transfer station.
- 1.2 This application is considered by planning committee as it falls within the 'major' category.

2. RELEVANT SITE HISTORY

11/0623	RETENTION OF CHANGE OF USE OF LAND TO WASTE TRANSFER STATION	Granted with Conditions
03/0126	ERECTION OF SINGLE STOREY SIDE EXTENSION	Granted with Conditions
00/0785	CERTIFICATE OF LAWFULNESS FOR EXISTING USE AS A WASTE TRANSFER STATION AND SKIP HIRE	Issued
99/0774	CERTIFICATE OF LAWFULNESS FOR EXISTING USE OF PROPERTY AS WASTE TRANSFER STATION AND SKIP HIRE (RESUBMISSION)	Refused (appeal withdrawn)
99/0309	CERTIFICATE OF LAWFULNESS FOR EXISTING USE OF PROPERTY AS WASTE TRANSFER STATION AND SKIP HIRE	Refused
93/0186	USE OF LAND AS TRANSFER STATION	Refused
E10/0079	(i) EXTENSION OF WASTE TRANSFER STATION (RESULTING IN A CHANGE OF USE OF AGRICULTURAL LAND); (ii) ERECTION OF CHICKEN COOP/SHED WITHOUT PLANNING PERMISSION	Enforcement notice issued

3. POLICY CONTEXT

- 3.1 Policy SP1 Sustainability favours proposals which make a positive contribution to sustainable development.
- Policy SP3 Flood Risk ensures development is directed away from flood risk areas.
- Policy SP6 Green Belt restricts development that impacts on the openness of the Green Belt between Cardiff and Newport.
- Policy SP8 Special Landscape Area restricts development that may impact on the characteristics of the six designated Special Landscape Areas.

Policy SP9 Conservation of the Natural, Historic and Built Environment protects habitats and species as well as Newport's listed buildings, conservation areas, historic parks and

gardens, scheduled ancient monuments, archaeologically sensitive areas and landscape designated as being of outstanding historic interest.

Policy SP20 Waste Management ensures that waste is recovered or disposed of without harming the environment, whilst also meeting stringent waste related targets. It supports additional waste treatment facilities in accordance with the 'waste hierarchy' and 'proximity principle'.

Policy GP1 General Development Principles – Climate Change states that development should be designed to withstand predicted climate change and reduce the risks and consequences of flooding, minimise energy requirements, reuse/recycle construction material and meet the relevant BREEAM or Code for Sustainable Homes Level.

Policy GP2 General Development Principles – General Amenity states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light, odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

Policy GP3 General Development Principles – Service Infrastructure states that development will only be provided where necessary and appropriate service infrastructure either exists or can be provided. This includes power supplies, water, means of sewage disposal and telecommunications.

Policy GP4 General Development Principles – Highways and Accessibility states that development should provide appropriate access for pedestrians, cyclists and public transport along with appropriate car parking and cycle storage. Development should not be detrimental to the highway, highway capacity or pedestrian safety and should be designed to enhance sustainable forms of transport and accessibility.

Policy GP5 General Development Principles – Natural Environment states that proposals should be designed to protect and encourage biodiversity and ecological connectivity and ensure there are no negative impacts on protected habitats. Proposals should not result in an unacceptable impact of water quality or the loss or reduction in quality of agricultural land (Grades 1, 2 and 3A). There should be no unacceptable impact on landscape quality and proposals should enhance the site and wider context including green infrastructure and biodiversity.

Policy GP6 General Development Principles – Quality of Design states that good quality design will be sought in all forms of development. In considering proposals, a number of factors are listed which should be considered to ensure a good quality scheme is developed. These include consideration of the context of the site; access, permeability and layout; preservation and enhancement; scale and form of the development; materials and detailing; and sustainability.

Policy GP7 General Development Principles – Environmental Protection and Public Health states that development will not be permitted which would cause or result in unacceptable harm to health.

Policy CE4 Historic Landscapes, Parks, Gardens and Battlefields protects such sites against the impacts of inappropriate development. They are conserved and the policy promotes enhancement where possible.

Policy CE9 Coastal Zone restricts development within the area of the River Usk and Severn Estuary unless development is required to be on the coast to meet an exceptional need or it is demonstrated that the area itself is not at risk of flooding, erosion or land instability.

Policy T2 Heavy Commercial Vehicle Movements states that developments which generate heavy commercial vehicle movements will be favoured in locations which have access to a railway line, wharf or dock. Where this is not appropriate, locations accessible to strategic and principal routes will be favoured. Elsewhere, such development will be resisted.

Policy T4 Parking states that development will be expected to provide appropriate levels of parking.

Policy W2 Waste Management Proposals promotes development of sustainable waste management facilities providing that the proposal would not result in unacceptable harm to nature

and conservation; flood risk can be managed; the proposal is of high quality design; there is no impact on amenity through noise, pollution etc; the proposal does not result in

any risk to human health; traffic generation is managed appropriately; the need for disposing the type, quantity and source of waste is assessed against the requirement being established.

4. CONSULTATIONS

4.1 WALES & WEST UTILITIES: Wales & West Utilities have no apparatus in the area. However, gas pipes owned by other Gas Transporters and also privately owned may be present in this area.

4.2 SOUTH WALES FIRE SERVICE: No response.

4.3 SOUTH WALES AMBULANCE: No response.

4.4 NEWPORT ACCESS GROUP: No response.

4.5.1 NATURAL RESOURCES WALES: We have reviewed the information submitted for the above application and further correspondence from David Williams dated 8 February 2016, and have the following comments to make; Based on the additional submitted information, we do not object to the application as submitted provided suitably worded conditions are implemented on any planning permission your Authority is minded to grant.

SSSI

4.5.2 The application site lies within the Gwent Levels: Rumney and Peterstone SSSI. The SSSI is notified for its range of aquatic plants and invertebrates associated with the reens and ditches of the drainage system. The special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. Any development which has an adverse impact on any of these factors will have an adverse impact on the wildlife for which the area was notified. Due to the proximity of SSSI, it is recommended to incorporate pollution prevention measures to protect ground and surface water. There should be no pollution to the watercourse from any of the activity on site, including spills or leakages. A series of guidance notes giving advice on statutory responsibilities and good environmental practice, which include Pollution Prevention Guidance Notes (PPG's) are available. Further to this, we note that the defined area is for the storage of empty skips only. Due to the location of the development in the SSSI we strongly recommend the inclusion of a planning condition on any planning permission that allows only empty skips to be stored. This is to prevent pollution of the water environment.

Flood Risk

4.5.3 We note the application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). Our Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines. Given the nature of the proposed development we consider the risk could be acceptable subject to the developer being made aware of the potential flood risks, and advised to install flood-proofing measures as part of the development. In areas at risk of flooding, we recommend that consideration be given to the incorporation of flood resistance/resilience measures into the design and construction of the development including access and egress. We encourage the occupiers to sign up for Floodline warning service provided by Natural Resources Wales. Please note, we do not normally comment on or approve the adequacy of flood emergency response and procedures accompanying development proposals, as we do not carry out these roles during

a flood. Our involvement during a flood emergency would be limited to delivering flood warnings to occupants/users.

- 4.6 GWENT POLICE: No response.
- 4.7 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST: The proposed development will be constructed on the Wentlooge Level, an area where evidence for human activity dating

from at least 4000BC has been found. However, the current development entails no ground intrusion works and therefore there is unlikely to be an archaeological restraint to this proposed development. Consequently, as the archaeological advisors to your Members, we have no objections to the positive determination of this application. The record is not definitive, however, and features may be disturbed during the course of the work. In this event, please contact this division of this Trust.

- 4.8 DWR CYMRU/WELSH WATER: The proposed new development would be situated in close proximity to a 1040mm and 1050mm storm overflow sewer where it may result in damage to the public infrastructure and /or our ability maintain it. In order to understand the proposal and the location of any structures on the site we kindly request further plans are submitted to the Local Planning Authority and that we are re-consulted so that we can assess any impact upon the assets crossing the site.
- 4.9 CADW (HISTORIC BUILDINGS & LANDSCAPES): Having carefully considered the information provided with the planning application, our records show that there are no scheduled monuments or registered historic parks and gardens within the vicinity of the proposed development.

5. INTERNAL COUNCIL ADVICE

- 5.1 PUBLIC PROTECTION MANAGER: No objection.
- 5.2 HEAD OF STREETSCENE AND CITY SERVICES (LANDSCAPE OFFICER): Object to the proposal because it would be detrimental to the Wentlooge Levels Site of Special Scientific Interest and to Special Landscape Area 3.
- 5.3.1 HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): Further information is required in terms of the size, type and number of vehicles which will access the site. This is required to determine what improvements are required to the access in terms of its layout and surfacing. Passing points should be provided along the access road to limit potential vehicle conflict and the need for reversing manoeuvres.
- 5.3.2 I note that the applicant has highlighted an area for turning and for skips to be stored. A more detailed plan is however required so that it can be determined whether the turning area is sufficient in size and also so that the retention of such an area can be conditioned. A plan showing the parking areas for the bungalow and the business use must also be submitted for consideration.
- 5.4 HEAD OF STREETSCENE AND CITY SERVICES (ECOLOGY OFFICER): I object to this application as it is located on the Gwent Levels SSSI which has been designated for its unique assemblage of aquatic flora and fauna. Several of the trees have been damaged and the road appears to be 'collapsing' into the ditch, increasing the turbidity of the ditch. There is an area of 'hard standing' which is currently being used to store a skips which are full, as well as a several vehicles and a caravan. This is also encroaching onto the grassland.
- 5.5 HEAD OF STREETSCENE AND CITY SERVICES (DRAINAGE MANAGER): No response.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties within 100m of the application site were consulted (1No property), a site notice displayed and a press notice published in South Wales Argus. One representation was received from a residents group, Peterstone Residents Against Inappropriate Development (PRAID), with the following summarised comments;

- i) PRAID seeks an end to inappropriate development on the Wentlooge Levels and see application 15/1496 a further blight to this rich and unique ecological landscape.
- ii) The proposal constitutes inappropriate development in the Green Belt as it detracts

from its openness and encroaches into the countryside. In addition, it adversely affects the rural character and appearance of the Levels and their attributes as an Outstanding Historic Landscape.

- iii) There is a long history of expansions associated with this site that have taken place without the required permission or advice. It can be seen from Google Earth maps that the waste transfer side of the business has extended beyond the agreed boundary into the open countryside. Not only is this a clear breach of the original planning consent but it also fails to safeguard the countryside from encroachment, which PPW identifies as one of the purposes of a Green Belt.
- iv) The way in which the site has been developed over the years through a number of extensions has resulted in a large and obtrusive feature; it dominates the landscape when viewed from the Wales Coastal Path and destroys the open character of the land in a direct and obvious way. It is having a negative effect on those walking along the path and as a result is harming tourism in the area. Any further expansion would exacerbate this problem and is therefore wholly unacceptable.
- v) Development of this site has resulted in trees and hedging being removed to the rear of the yard. This has allowed a view from the Wales Coastal path which is not conducive with Green Belt with high levels of waste and rubbish which has in recent months been allowed to fall into the drainage ree behind the property. The risk to precious flora and fauna must be mitigated and a substantial part of the hedgerow has already been removed. A continuation of the same hedgerow currently hosts a selection of dog roses; wood sage; narrow buckler fern and wild garlic. These important plants provide shelter and food for a myriad of wildlife that we have witnessed including dormice, voles, hedgehogs, bat colonies and even a family of weasels.
- vi) The site and business is highly vulnerable development which is not justified within this C1 flood area yet there is no up-to-date Flood Consequences Assessment. Much of the information contained in the assessment is out of date which means the degree of risk posed to the applicants and the wider community has not been properly assessed. Furthermore, the applicant's suggested evacuation route of turning left onto the B4239 then left again onto Heol Las is fundamentally flawed. It is a matter of fact that Heol Las poses a 'danger to all, including emergency services' according to the velocity, depth and flood hazard matrix. It is possible that the route would be impassable in a flood event and therefore could not remain operational under all conditions in accordance with TAN 15. It must also be remembered that Green Lane Reen runs parallel with Heol Las and in a flooding event this would attribute to more severe flood conditions than by tidal flood water alone. There is also a risk of the ree becoming submerged if a major flood occurred and this in itself could impact on the safety of emergency evacuation. As no alternative routes have been suggested the applicant has failed to demonstrate that the risks from flooding could be managed or mitigated to an acceptable level for the occupants of this site. TAN 15 makes reference to clay soils being less permeable and at more risk of flooding than sandy or peaty soils, and permeability being further reduced by compaction of soils; for example by vehicle movements. This is important because the heavy vehicular movement associated with the type of business taking place on site will

undoubtedly have a direct impact on associated land thus posing an additional flood risk to others in this category C1 flood zone.

- vii) By their nature the vehicles being retained on site as part of the business activity hold an amount of oil, brake fluids, hydraulic fluids petrol and diesel. These are all liquids that could seep into the ground and over time cause contamination and harm to the environment. Were this to happen and the water table became contaminated the resultant effect on the reed network (and in turn the SSSI) could prove catastrophic. No information has been provided to explain how the applicant intends to prevent this type of incident occurring, now or in the future.
- viii) It is highly questionable whether the combined businesses on site meet even the minimum Health & Safety requirements. NCC should request evidence from the applicant that demonstrates the appropriate health and safety measures and checks have been put in place and are being maintained in accordance with industry standards.

6.2.1 WENTLOOGE COMMUNITY COUNCIL: Wentlooge Community Council recommends refusal of this Application. The area of Peterstone is Green Belt, a designated Site of Special Scientific Interest (SSSI), a Cadw/ICOMOS UK Registered Landscape of Outstanding Historic Interest, an Archaeologically Sensitive Area, adjacent to the new Wales Coastal Path and to the internationally important RAMSAR site of the Severn Estuary. Peterstone's Green Belt is the first, and at the moment only, Green Belt in Wales, the most essential feature of Green Belts being their permanence and their openness (WG Planning Policy Wales Edition 7 July 2014), as such they are protected from inappropriate development and from any lessening of their the qualities of 'openness'/ resistance to 'coalescence' between urban areas. Peterstone's Special Landscape Area is recognised nationally and internationally.

- Wentlooge Community Council (WCC) are concerned that this Application appears to follow a pattern of incremental and unlawful development. WCC is concerned that this pattern will be continued/extended and, whilst it is understood that each application must be judged on its own merits, this history of incremental (unlawful) development does not bode well for the openness of the countryside/Green Belt.
- The vagueness of the boundary/area identified in red on the Site Location Plan is also particularly worrying. There appear to be no specific dimensions marked on the plan, neither is there any form of boundary treatment or specific division indicated to deter further expansion.
- It is stated that there will be an increase from 5 to 10 employees with no consequent increase in vehicle parking space(s) or vehicles on site i.e. the current provision for 3no. cars, 2no. light goods vehicles and 3 no. skip hire lorries.
- The FCA submitted (dated October 2015) appears to be nearly 10 years out of date and perhaps to have been prepared for another site. It talks about the Environment Agency when this Agency has now been replaced by NRW. It refers to the EA's 'Severn Strategy' which was to be published in Sept/Oct 2010 and refers to guidance on tidal event levels taken from a report dated 2003. The FCA says that the 'land adjacent to the development site is not close to the sea wall therefore any flood waters resulting from a breach/overtopping of the sea wall would not immediately impact the site - whereas, in fact, the site in question is actually just 50-60 metres from the sea wall. Contrary to para 2.5 of the FCA a 'Floodline' emergency alarm service does now operate in the area although escaping via Heol Las (Green Lane) would not be advisable as Heol Las poses a *'danger to all, including emergency services'* according to the velocity, depth and flood hazard matrix (c.f. Cardiff Strategic FCA November 2011 and DAM maps 2010)
- Various trees and hedges have already been removed to the rear of the yard without permission contrary to the Hedgerows Regulations 1997 which makes it all the more important that the existing hedgerow running east west in front of Sea View bungalow should remain as the physical and visual barrier to this development consolidating the previous permission granted (ref: 11/0623) and no further expansion northwards of this should be allowed.
- WCC are also concerned, bearing in mind the nature of this type of operation, that further permissions should not be granted to businesses that by their very nature pose a high risk of polluting the environment in a SSSI. WCC notes that surface water runoff will be

disposed of by using the existing watercourse with no reference to filter or sump protective measures.

Comments conclude with the following points.

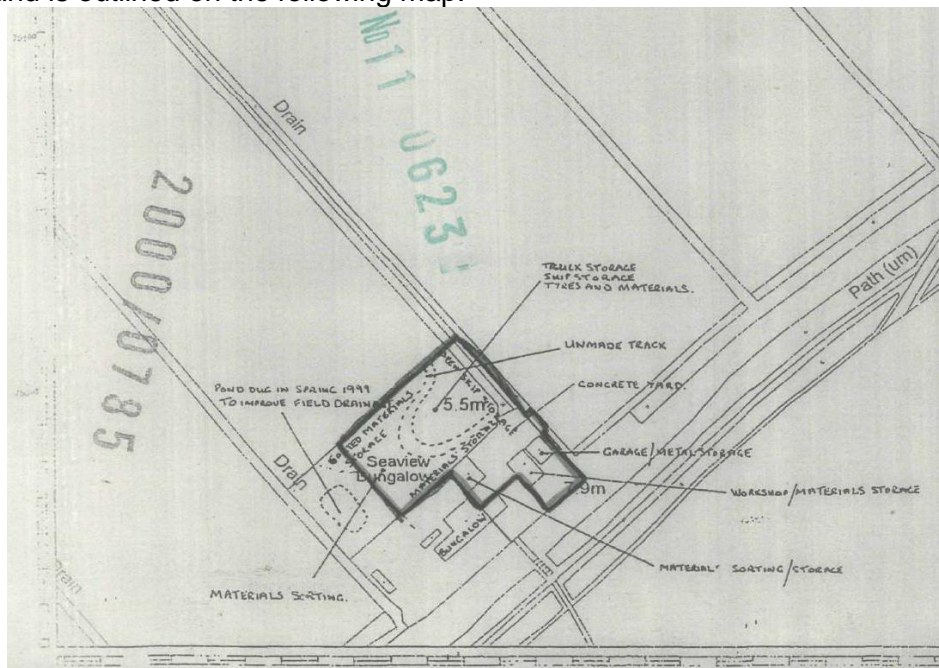
6.2.2 Application 15/1496 should be refused because...

1. The development proposed is one further phase of development in open countryside too far (c.f. Officer's Report regarding application ref: 11/0623 ... '*normally there would be an in-principle objection with this operation within such a setting*');
2. Continued development of this nature represents substantive/systematic erosion of the countryside, landscape and openness of the Levels and Green Belt especially as viewed from the B4329 Coast Road. The view from the Wales Coastal Path walkway will also be adversely affected;
3. Further development of this kind is clearly inappropriate in such an area of Outstanding Historic Landscape;
4. The development lies in a C1 Flood Risk Area and both the levels of the site (so close to the sea wall) and the flawed nature of any mitigation and/or escape plan militate against this application;
5. An expansion in this particular type of business use increases the risk of pollution in the SSSI;
6. The unauthorised site development is already in breach of planning control.

7. ASSESSMENT

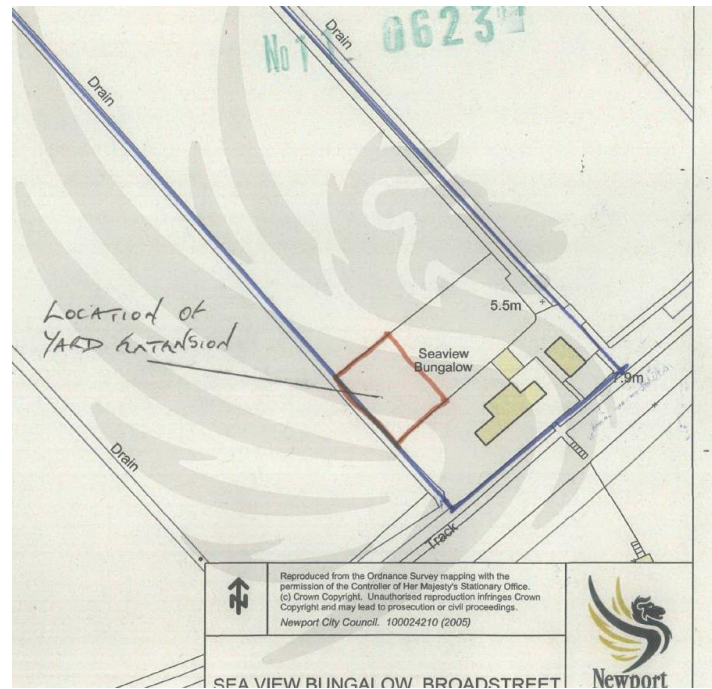
History

7.1.1 An application for planning permission was refused in 1993 for the use of the land as a waste transfer station due to its "*unacceptable intrusion in to the open countryside to the detriment of the rural amenities*". Later Certificate of Lawfulness applications were refused due to a lack of sufficient evidence to prove a lawful use. A Certificate of Lawfulness was then issued under application 00/0785 for the use of the property and land as a waste transfer station, following the applicant providing sufficient evidence to demonstrate that the use was then lawful. The location of that land is outlined on the following map.



7.1.2 A subsequent application was then granted under application 11/0623 for the retention of use for a section of land adjoining the lawful site, expanding the operation on site. The location of that

land is outlined in red on the following map. The combination of both parcels of land shown on the maps illustrates the lawful extent of the site, which was to be contained within a parcel of land adjacent to the bungalow, screened from the north by a mature conifer hedge, which was a key consideration in the determination of the 2011 application.



The proposal

- 7.2 The application seeks permission for the use of the land for the storage of mini skips and for the turning of vehicles. However, a site visit confirms that the area is primarily used for the storage of waste associated with the waste transfer station, including numerous scrap vehicles, a caravan, and skips full with rubble and various other waste. It is clear that this area is acting as an overspill/storage area for the existing lawful operation on site.

Site context and visual impact

- 7.3 The application site is located within the Countryside, Green Belt, Special Landscape Area and Undeveloped Coastal Zone, as designated by the Newport Local Development Plan 2011-2026 (adopted January 2015). It also lies on land designated as archaeologically sensitive, within a C1 flood zone and within the Gwent Levels (Rumney and Peterstone) Site of Special Scientific Interest (SSSI).
- 7.4 The site itself is visible from the B4239 Coast Road and from the Sea Wall/Wales Coastal Path. As mentioned, although a recent expansion was permitted to the site, this was considered acceptable as the visual impact of the development was screened and subject to a natural boundary, being adjacent to the sea wall. The officer's report stated
"The expansion of the waste transfer business into the application site is only apparent from within the existing site area east of the site and this is the land lawfully used as a waste transfer station and for skip hire. While the introduction of a new waste transfer station in a countryside location is not considered appropriate it is considered that the expansion of this existing business can be justified when having regard to policy SP6 as its visual impact is limited and thereby protects the character of the surrounding area. On similar justification it is considered that the expansion of the lawful use into the application site, which is naturally buffered from any obvious further expansion, protects the open character of the green belt."
- 7.5 Turning to the development under consideration, the use of a parcel of land to the north of the lawful site is not screened by a buffer which reduces its impact, and is visible and prominent when viewed from the B4239. The commercial nature of the use, and the appearance of the associated paraphernalia represents an urban intrusion in to this sensitive rural location. It is

therefore considered inappropriate in this location as it is detrimental of the visual amenities of the area.

- 7.6 Similarly, the expansion of the commercial activity is to the detriment of the green belt in which it is placed. Policy SP6 states that “...*WITHIN THIS AREA, DEVELOPMENT WHICH PREJUDICES THE OPEN NATURE OF THE LAND WILL NOT BE PERMITTED....*”. In relation to Green Belts, Planning Policy Wales (PPW) (Edition 8, January 2016) states that the purpose of a green belt is to (amongst other things) prevent the coalescence of large towns and cities with other settlements, manage urban form through controlled expansion of urban areas, assist in safeguarding the countryside from encroachment and protect the setting of an urban area. It continues to state that the most important attribute of a green belt is its openness, that development in these areas must be strictly controlled, and that there is a general presumption against development which is inappropriate in relation to the purposes of the designation, unless other considerations clearly outweigh the harm to the Green Belt.
- 7.7 The encroachment of the commercial use in to the green belt is considered detrimental to its openness and also, in introducing a commercial element to the rural area, is adding to the urbanisation of the countryside. It is therefore considered that the development would be contrary to the purposes of the green belt itself, and therefore is also contrary to policies SP6, GP2 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015). Whilst the expansion was previously approved, this was limited in scale and was parallel with the sea wall and screened from view. The section of land currently under consideration encroaches in to the open countryside, away from the sea wall, eroding the open nature of its setting. It is not considered that the visual impact of the development could be acceptably mitigated by further screening as it would continue to encroach in to the countryside and erode the openness of the green belt.
- 7.8 Furthermore, the land is within the Wentlooge Levels Special Landscape Area (SLA). Policy SP8 designates the SLAs in Newport, and requires that proposals contribute positively to the area, through high quality design, materials and management schemes that demonstrate a clear appreciation of the area’s special features. The supporting text of that policy states; “*The designation of a SLA does not preclude development but any proposals must demonstrate that they have been designed to respect the valued characteristics of the recognised landscape as well as being in accordance with other Policies of this Plan*”. It is clear that the commercial nature of the use, and the aforementioned detrimental impact on the visual amenities of the countryside and green belt, do not respect the special landscape character of the area, being an incongruous addition to the rural setting. It is therefore also considered that the development is contrary to policy SP8 of the Newport Local Development Plan 2011-2016 (adopted January 2015).

Flooding

- 7.9 The application site lies entirely within Zone C1as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). NRW Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines. NRW comment that, given the nature of the proposed development, they consider the risk could be acceptable subject to the developer being made aware of the potential flood risks, and advised to install flood-proofing measures as part of the development. It is therefore considered that the development would be acceptable on flooding grounds, subject to the precautions advised by NRW.

Highways

- 7.10 The Council’s Highways officer has requested further information on size, number and type of vehicles which will access the site, in order to determine what layout and surfacing improvements are required to the access, as well as a more detailed plan to determine whether the turning area is of sufficient size. They also state that vehicle passing points should be provided to limit vehicle conflict and request a parking plan for the bungalow and business use. This information has been requested, although has not been forthcoming. It is therefore not possible to fully assess whether

the site provides suitable access arrangements for the commercial vehicles, nor whether the turning area is of sufficient size to allow safe turning of said vehicles. The application is there considered contrary to policy GP4 and W2 of the Newport Local Development Plan 2011-2026 (Adopted January 2015).

- 7.11 Whilst a plan of the parking arrangements has been requested by the highways officer, it is not considered that this is necessary as the commercial use and bungalow are already in existence and no increase is indicated.

Contamination and Ecology

- 7.12 As previously mentioned, the site lies within the Gwent Levels: Rumney and Peterstone SSSI. The SSSI is notified for its range of aquatic plants and invertebrates associated with the reens and ditches of the drainage system. The special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. Any development which has an adverse impact on any of these factors will have an adverse impact on the wildlife for which the area was notified.

- 7.13 The application intended the use of the land for the turning of vehicles and for the storage of *empty* skips only. However, the site visit has shown a number of scrap vehicles being stored within the area alongside full skips, each containing a number of potential pollutants, such as petrol/diesel, engine oil and brake fluid, which are clearly leaking from the vehicles on to the surface. Further, a section of land adjacent to the access road, which was a bank to the ditch, is now collapsing in to the ditch as a result of a number of trees being damaged/removed, increasing its turbidity. NRW recommended that pollution prevention measures are used to protect ground and surface water, although they were unaware of the situation on site when giving those comments. They did comment that there should be no pollution to the watercourse from any of the activity on site, including spills or leakages in order to prevent pollution of the water environment. They also requested a condition allowing only the storage of *empty* skips. These are due to the location of the development being within the SSSI.

- 7.14 The Council's Ecology Officer has issued an objection to the proposal due to the damage to the ditch and its impact on the SSSI, and the encroachment of the activities on to the grassland.

- 7.15 Considering the damage which has been done to the bank of the ditch, increasing the turbidity of the reen, and the leakages from the vehicles being stored on site (without appropriate pollution prevention measures, such as an oil interceptor), it is considered that the development is contrary to policies SP9, GP5, GP7 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015) due to the unacceptable impact on the SSSI and its water quality.

Welsh Water

- 7.16 A concern has also been raised by Welsh Water with regards to the location of the site and its proximity to their strategic storm sewers, which may result in damage to the public infrastructure and their ability maintain it. They request a more detailed plan be provided to show the precise location of the skips in order for the impact to be fully assessed. However, the site visit has shown that the extent of the development on the land identified by Welsh Water is substantial, and it is without doubt above their assets. Whilst there is potential for damage to the public service infrastructure arising from the development, it is considered that this is a matter between the landowner and Welsh Water.

8. OTHER CONSIDERATIONS

8.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This

duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 ***Equality Act 2010***

The Equality Act 2010 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.

8.3 Having 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.

8.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

8.6 ***Planning (Wales) Act 2015 (Welsh language)***

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

8.7 ***Wellbeing of Future Generations (Wales) Act 2015***

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. **CONCLUSION**

9.1 Having regard to the aforementioned policies of the adopted development plan, it is clear that the development is unacceptable on a number of issues. It represents inappropriate development in the countryside and green belt, it results in a detrimental impact on the SSSI, there is potential damage to the public service infrastructure arising from the development, and there is insufficient highways information in order to assess the impact of the development in terms of access arrangements. It is concluded that the development is contrary to policies SP6, SP8, SP9, GP2, GP4, GP5, GP7 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015). It is therefore recommended that planning permission is refused.

10. **RECOMMENDATION**

REFUSED

01 The development in question represents an inappropriate commercial and urban intrusion in to the countryside, Green Belt and Special Landscape Area, which is detrimental to the visual

amenities of the area, the openness of the green belt and the characteristics of the Special Landscape Area, contrary to policies SP6, SP8, GP2 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015).

02 The works on site have resulted in damage to the bank of the ditch, which forms part of the SSSI, and has resulted in the collapse of the bank in to the ditch, increasing its turbidity. There is also pollution on site arising from the scrap vehicles, without the necessary pollution prevention measures, with the potential to causing further damage to the SSSI, contrary to policies SP9, GP5, GP7 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015).

03 Insufficient information has been provided to demonstrate that the site benefits from suitable access arrangements and that the turning area is of sufficient capacity to accommodate the commercial vehicle movements, contrary to policies GP4 and W2 of the Newport Local Development Plan 2011-2016 (adopted January 2015)

NOTE TO APPLICANT

01 This decision relates to plan Nos: Site Layout Plan, Design and Access Statement, Site Location Plan, Flood Consequences Assessment dated October 2015, and email from David Williams dated 8 February 2016.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP6, SP8, SP9, GP2, GP3, GP4, GP5, GP7 and W2 were relevant to the determination of this application.

03 The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

BEVERLY OWEN
HEAD OF REGENERATION, INVESTMENT AND HOUSING

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Report

Planning Committee

Part 1

Date: 4 May 2016

Item No: 6

Subject **Appeal Decisions**

Purpose To inform Members of the outcome of recent appeals

Author Development Services Manager

Ward Langstone, Malpas, Rogerstone, Shaftsbury, Stow Hill

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 11/95;</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	<p>Avoid delaying the determination of applications unreasonably.</p>	<p>Development Services Manager</p>

* 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 Equality 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.

Wellbeing of Future Generations (Wales) Act 2015

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Planning (Wales) Act 2015 (Welsh Language)

Not applicable. This report is to inform Planning Committee of decisions made by the Planning Inspectorate and/or Welsh Ministers.

Crime and Disorder Act 1998

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

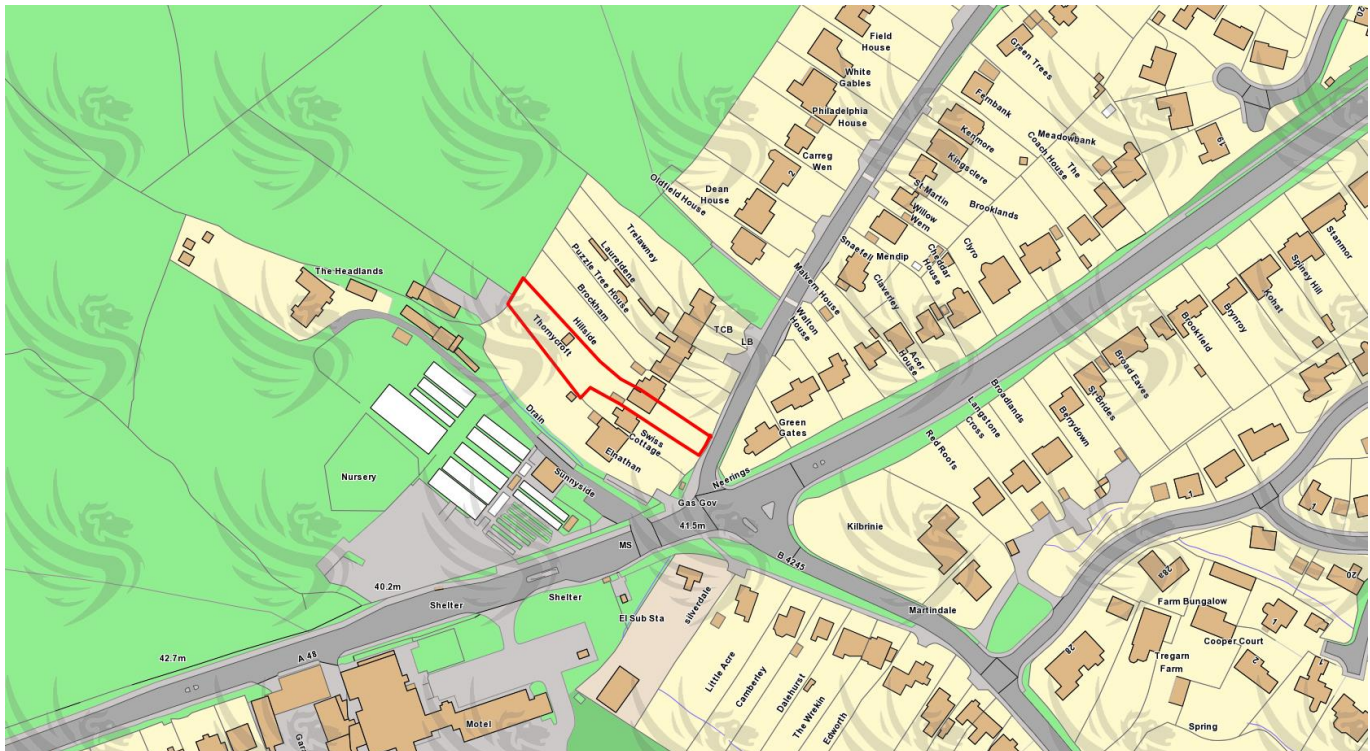
Not applicable

Dated: 4 May 2016

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/1274
APPEAL TYPE: Written Representations
WARD: Langstone
SITE: Thorney Croft, Tregarn Road, Langstone, Newport, NP18 2JS
SUBJECT: Erection of detached garage
APPELLANT: Gareth Pugh
PLANNING INSPECTOR: Hywel Wyn Jones
DATE OF COUNCIL'S DECISION: 10th December 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue in the determination of the appeal, would be the effect the proposed garage would have on the character and appearance of the surrounding area.

The appeal property is located close to the junction of Tregarn Road and the A48. It comprises a semi-detached, two storey dwelling, set well back from Tregarn Road. The property follows the same building line as the adjacent dwellings, providing a generous set-back from the highway.

The proposed garage would be located adjacent to the access to the site, behind a mature roadside hedge and would be finished in materials to match the house. The Inspector notes the absence of outbuildings close to the highways in the vicinity of the site and states that the nearby utility boxes are notable exceptions that do not alter the general character of the area.

The Inspector considered that, although the existing roadside hedgerow would mask much of the proposed structure from certain vantage points, its presence would nevertheless be readily visible. Furthermore, the Inspector considered that the screening qualities of the hedge cannot be assured in the long term and the reliance on such mitigation does not justify permitting this harmful development.

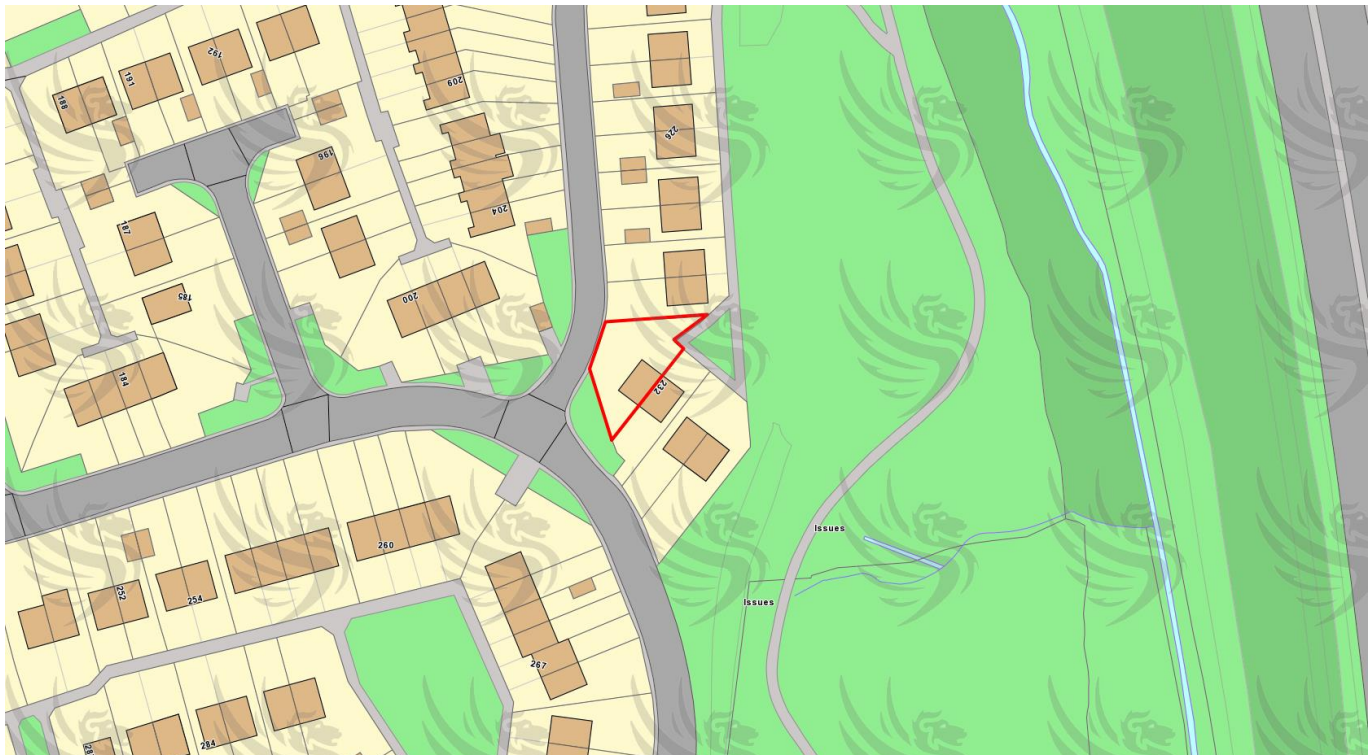
In view of the above, the Inspector considered that the introduction of the proposed garage would be an incongruous feature that would harm the character and appearance of the surrounding area. The proposal was therefore considered to conflict with Policy GP6 of the Newport Local Development Plan 2011-2026 which seeks to secure good design. For the reasons stated above, the Inspector concluded that the appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/1441
APPEAL TYPE: Written Representations
WARD: Malpas
SITE: 231 Pilton Vale, Newport, NP20 6LW
SUBJECT: Two storey side extension (resubmission of 15/0859)

APPELLANT: N. Duke
PLANNING INSPECTOR: James Ellis
DATE OF COUNCIL'S DECISION: 14th January 2016
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the area and the effect of the proposal on the living conditions of the occupiers of No.230 Pilton Vale.

The appeal property is a three-bedroom semi-detached house in an established residential area, where there is a mix of terraced and semi-detached houses and dormer bungalows. The property occupies a corner plot at the junction of Pilton Vale and a cul-de-sac. It is considered the rear and side elevation fronts Pilton Vale, the principal elevation faces a pedestrian access, beyond which is an open area of grass.

The width of the existing house is 5 metres, the width of the extension would measure 4.2 metres; the roof of the extension would be set down from the ridge of the existing house by 0.3 metres. The first floor of the rear elevation of the proposal would be set back from the rear elevation of the existing house by 0.9 metres.

The Inspector notes that the Council's Supplementary Planning Guidance (SPG) states among other things that side extensions should be set back by at least one metre from the front elevation of the original building and that on corner plots, extensions should not breach the established lines in the street scene. The Inspector notes that the front building line of 231 and the attached house has already been breached by a single storey front extension to the neighbouring dwelling. The proposed front elevation would not be set back from the front elevation of the existing house. Given this and the width of the extension, the Inspector considered that the proposal, when seen with the existing house, from the public footpath and grassed area to the front of the house, would be read as a dominant and incongruous feature.

In terms of the rear elevation of the proposal, the Inspector considered that given the special relationship between the rear and side elevations of the proposal and the public highway, and the nature of the screening between the rear elevation and the main road, the set back to the rear elevation would be acceptable in rendering the proposal subservient to the existing house when seen from the highway.

In view of the above, the Inspector concluded that the proposal would result in material harm to the character and appearance of the area contrary to Policies GP2 and GP6 of the Newport Local Development Plan (LDP) 2011/2026 and guidance in the SPG.

The proposed front elevation would have a bedroom window at first floor level, facing the rear garden and first floor windows of No. 230 Pilton Vale. Views from the proposed bedroom window towards windows at the neighbouring property would be oblique and vice versa. Views from the proposed bedroom window towards the neighbouring gardens neighbouring property would, be screened by the existing garage located in the rear garden on No. 230. The Inspector considered that the proposal would not result in additional overlooking of neighbouring properties and therefore not be contrary to Policy GP2 of the LDP.

For the reasons stated above, the Inspector concluded that the benefits do not outweigh the harm caused, and the appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 15/0872
APPEAL TYPE: Written Representations
WARD: Rogerstone
SITE: Limekiln Farm, Cwm Lane, Rogerstone, Newport, NP10 9GN
SUBJECT: Erection of a Replacement Dwelling
APPELLANT: Mr E Donovan
PLANNING INSPECTOR: P J Davies
DATE OF COUNCIL'S DECISION: 1st October 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

Planning permission was sought for a replacement dwelling to replace the existing static caravan with attached extension at Limekiln Farm in the Rogerstone ward. The application was refused on the grounds that the proposed replacement dwelling, due to its scale and height would increase built form at the site to the detriment of the visual amenities of the

rural landscape contrary to Policies SP5 (Countryside) and H12 (Replacement Dwellings in the Countryside) of the Newport Local Development Plan.

The Inspector considered the main issues in the determination of this appeal to be the effect of the proposed development on the character and appearance of the surrounding area. The site is located in the open countryside and is in close proximity to the Monmouthshire and Brecon Canal Conservation Area, the Fourteen Locks Scheduled Ancient Monument and two listed buildings, Pensarn Bridge and a Lime Kiln.

The existing building is a modest structure of no architectural merit and is screened in part by trees on the canal side boundary and is seen as a subservient element in context of existing farm buildings and other residential buildings in the farm yard. For these reasons it currently has little impact on the prevailing rural setting.

Policy H12 allows for the updating of residential accommodation in the countryside, but in the context of allowing a modest increase in size – no volume increase of more than 30%. Volume increase of more than 30% can occasionally be permissible where they would not have a detrimental impact on the character and appearance of the surrounding area. In this case the proposed dwelling would lie in part on the footprint of the existing structure with a modest curtilage. It would be a taller and bulkier building with dormer features and a detached double garage. The proposed represents an increase in volume of 200%, 250% when including the proposed garage.

The Inspector considered that due to the modest size of the existing building any replacement dwelling would invariably be larger than 30% to due acceptable living standards and good design. However, these factors must be balanced with the impact of the proposal on the character and appearance of the setting. The overall extent and scale of built form was considered to be vastly disproportionate to the existing dwelling and because of its siting away from the existing cluster of dwellings in the farm yard, it would be visually dominant within its immediate setting. The proposal would substantially add to and consolidate existing built form and as a consequence would fundamentally change the character and appearance of the site and its rural setting.

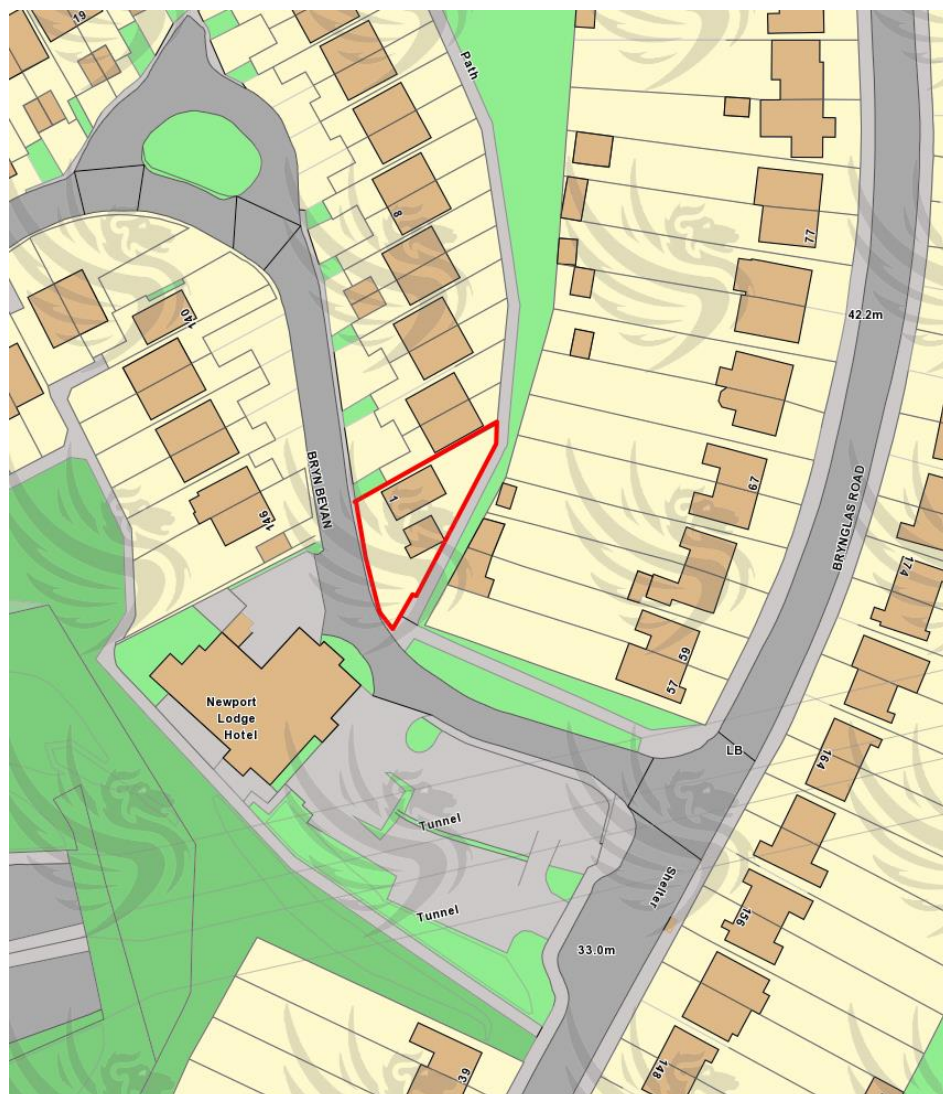
The Inspector also considered the impact of the proposals on the Conservation Area, Scheduled Ancient Monument and listed buildings and due to the distinct physical segregation between them, concluded that the heritage interests would not be unacceptably affected.

In view of the above, the Inspector concluded that the proposed scheme would be contrary to Local Development Plan Policies SP5 and H12 due to the harm it would cause to the character and appearance of the countryside and that the Appeal should be dismissed.

PLANNING APPLICATION APPEAL – DISMISSED

APPEAL REF: 14/0991
APPEAL TYPE: Written Representations
WARD: Shaftsbury
SITE: 1 Bryn Bevan, Brynglas, Newport, NP20 5QH
SUBJECT: Retention of boundary fence to the front of the property
APPELLANT: B Strachan
PLANNING INSPECTOR: Clive Nield
DATE OF COUNCIL'S DECISION: 21st May 2015
OFFICER RECOMMENDATION: Refused
COMMITTEE/DELEGATED: Delegated

DECISION: DISMISSED



SUMMARY

The Inspector considered the main issue in the determination of this appeal to be the effect of the fence on highway and pedestrian safety.

The fence is close boarded and 1.8 metres in height along most of its length. It runs along the front, side and rear boundaries of the property. At the front, it runs along the back of a narrow strip of land behind the roadside kerb and at the side and rear, it runs along the side of a public footpath.

The Inspector considered that the fence severely limits visibility for a vehicle leaving the property. The Inspector noted that there is a significant risk of collision with either a vehicle or a pedestrian travelling along the road. Consequently, the fence was seen to conflict with Policy GP4 of the Newport Local Development Plan (LDP).

The appellant argued that the fence replaced a number of tall trees/bushes that affected visibility in and out of the property. However, the Inspector stated that the trees/bushes could have been maintained to achieve a more acceptable arrangement and would have been more transient than a solid fence.

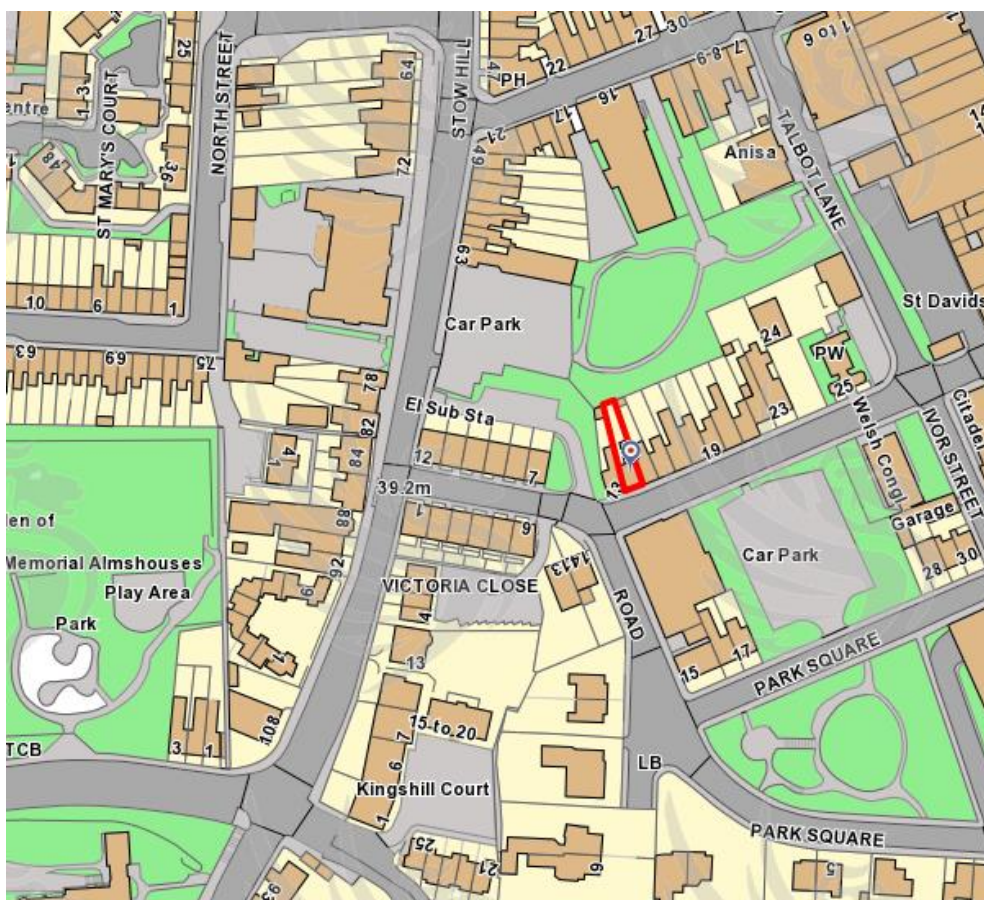
The appellant further argued the requirement of the fence for the maintenance of privacy and protection from anti-social behaviour. The appellant had also expressed concerns regarding personal health issues. After consideration of these issues, the Inspector did not consider them to sufficiently outweigh the significant risks to highway and pedestrian safety. The appellant finally argued the right for freedoms under the Human Rights Act 1998.

The Inspector noted that the objections to the fence as described above could not be overcome by granting planning permission subject to a condition and that the public interest can only be safeguarded by the refusal of permission. Furthermore it was considered that the dismissal of the appeal would not result in a violation of the appellants rights.

In view of the above, the Inspector concluded that nothing could outweigh the unacceptable risk to highway and pedestrian safety posed by the fence and that the appeal should be dismissed.

PLANNING ENFORCEMENT APPEAL – DISMISSED

APPEAL REF: E08/0010
APPEAL TYPE: Written Representations
WARD: Stow Hill
SITE: 14 Hill Street, Newport, NP20 1LZ
SUBJECT: Unauthorised Works to a Listed Building
APPELLANT: Beverley Jeanne Mann and Michelle Jarrett
PLANNING INSPECTOR: James Ellis
DATE OF COUNCIL'S DECISION: 19 November 2015
OFFICER RECOMMENDATION: Issue Listed Building Enforcement Notice
COMMITTEE/DELEGATED: Delegated



SUMMARY

Unauthorised works were undertaken at 14 Hill Street, a mid-19th century terraced property, listed for its group value with adjacent listed buildings. A Listed Building Enforcement Notice was served in response to the following unauthorised works:

- The removal of the first floor bay window with covered soffit and the ground floor window from the front elevation of the property and their replacement with hardwood casement windows;
- The removal of the stucco finish from the front elevation of the building and its replacement with pebbledash;

- The removal of a timber window in the front dormer and its replacement with a uPVC window and installation of uPVC cladding;
- The installation of rooflights;
- The installation of uPVC windows to the rear of the building; and
- The removal of a chimney stack to the rear of the building.

The LBEN requires these details to be reinstated.

The owner and occupier appealed the LBEN on the following grounds;

- Ground a – That the building is not of special architectural or historic interest;
- Ground b – That the alleged breach has not occurred;
- Ground d – The works were urgently necessary in the interests of health and safety; and
- Ground g - The requirements of the LBEN exceed what is necessary for restoring the building to its condition before the works were carried out.

The Inspector considered that the appeal on ground a should fail as the building has been listed for its group value and that prior to the unauthorised works being carried out, the evidence suggests that it would have had value in its own right as a distinctive urban terraced house retaining original character.

He also considered that the appeal should fail on ground b. The applicant argued that there was no evidence of a chimney at the property and failed to provide evidence to support this. The Council provided a photograph showing the property in 2001, where a chimney was in place. The inspector concluded that the chimney was removed following listing and the appeal on ground b fails.

The appellant appealed on ground d (that the works were urgently necessary on the grounds of health and safety) however later acknowledged that this was in error and intended to appeal against ground d as outlined in the Town and Country planning Act (that the works occurred so long ago enforcement action could not be taken). Unauthorised works cannot become immune from enforcement action and the appeal therefore fails on this ground.

The Inspector also considered the appeal in respect of ground g, that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. As the appellant did not suggest any lesser steps than those outlined in the LBEN and in light of the evidence, the Inspector considered that the requirement listed in the LBEN are necessary to restore the building to its condition before the works took place.

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