

# Agenda



## Cabinet Member for Regeneration & Investment

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Date: Wednesday 4 January 2017

Time: 4.00 p.m.

Venue:

To: Councillor J Richards

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Item		Wards Affected
1	<u>Supplementary Planning Guidance (SPG) to Support the Adopted Local Development Plan (Pages 3 - 70)</u>	All Wards

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# Report

## Cabinet Member for Regeneration and Investment

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### Part 1

Date: 4 January 2017

Item No:

**Subject** **Supplementary Planning Guidance to support the Adopted Local Development Plan.**

**Purpose** To formally adopt 4 Supplementary Planning Guidance documents to support the LDP.

**Author** Planning Policy Manager

**Ward** All wards

**Summary** The Local Development Plan (LDP) was adopted by Council on 27 January 2015 and is now the development plan for Newport. Four Draft Supplementary Planning Guidance (SPG) documents have been prepared to provide additional detail and guidance on policies in the LDP. The SPGs have been through a 6-week public consultation. Comments have been received and the Council has made a number of minor amendments. It is now proposed that the SPGs are formally adopted by the Council. The SPGs to adopt are:

- Outdoor Play Space Provision SPG;
- Mineral Safeguarding SPG;
- Trees, Woodland, Hedgerows and Development Sites SPG; and
- Houses in Multiple Occupation SPG.

**Proposal** **That Cabinet Member notes the comments received and any proposed amendments the Council is seeking to make and agrees for the SPGs to be formally adopted.**

**Action by** Head of Regeneration, Investment and Housing

**Timetable** Immediate

This report was prepared after consultation with:

- All Council Members
- Statutory Consultees
- Internal Council Departments
- Community Councils
- Neighbouring Authorities
- General Public

**Signed**

## 1. Background

- 1.1 The Local Development Plan was adopted by Full Council on 27<sup>th</sup> January 2015 and is now used for development management purposes and determining planning applications. The LDP will be accompanied by Supplementary Planning Guidance (SPG) covering topic areas and policies which require more detailed guidance. 4 Draft SPGs have been prepared and were subject to a 6-week public consultation from 19<sup>th</sup> August 2016 to 30<sup>th</sup> September 2016.
- 1.2 Comments have been received and considered by officers. The tables noting all comments received and the Council's proposed responses are available to view in Appendix 1. A summary of the main proposed changes to the SPGs are below.

## 2. Summary of Proposed SPG Changes

### 2.1 Outdoor Play Space Provision SPG - No proposed changes

### 2.2 Mineral Safeguarding SPG

- Minor typographical errors and need for further clarification within the text.

### 2.3 Trees, Woodland, Hedgerows and Development Sites SPG

- A Community Council highlights the need to protect trees and hedgerows on small scale development sites rather than focusing on large scale developments as the document currently does. This is to protect the ecological and amenity value at the domestic scale. There are however restrictions as to the scale of protection that can be afforded to hedgerows therefore the SPG cannot apply any further protection than legislation allows.
- The Home Builders' Federation and Persimmon homes have raised concerns with the requirement for additional tree planting where a tree is lost from the development. They suggest a like for like replacement of any trees lost through development is more reasonable. It is recognised that the loss of a tree requires replacement but due to the variances between those trees being lost, a degree of negotiation is required i.e. that the loss is judged on its level of impact. What is clear is that through the Council's own policy (Green Lung Policy), the impact on trees from development should provide additional planting to offset its impact. The SPG has been amended to reflect this stance.

### 2.4 Houses in Multiple Occupation SPG

- The use of the Council's mapping system to calculate thresholds has become overly complex and only confuses current users. It is therefore accepted that the removal of reference to the system and for the user to seek an up to date position from Council Officers would provide the best approach.

## 3. Financial Summary

- 3.1 There was a small financial cost associated with the consultation, mainly the cost of advertising in the South Wales Argus, however there will be no cost associated with adoption. Following adoption, it might be desirable to print hard copies of the SPG as office copies, but this will be a modest fee. The majority of users will download the SPGs electronically from the Council website.

#### 4. Risks

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?
Clarity on the LDP policies is not provided and therefore potentially more open to interpretation and challenge.	M	L	The 4 SPGs will help to provide clarity and offer further guidance to certain areas and policies of the LDP.	Head of Development Services/Planning Policy Manager
Draft SPGs will carry less weight by Planning Inspectors in the determination of planning appeals.	H	L	The SPGs have been through public consultation and are now ready for adoption.	Head of Development Services/Planning Policy Manager

#### 5. Links to Council Policies and Priorities

- 5.1 The Local Development Plan is one of the statutory plans the Council has to prepare. It determines Newport's land use policies up to 2026. Liaison has been maintained with those preparing the other plans to ensure consistency and common purpose. The SPGs produced supplement and support the overarching principles set out in the LDP, adding more detail and clarification where required.
- 5.2 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, including Health and Wellbeing and Safe and Cohesive Communities. The LDP and supporting SPGs has had regard to these principles and will help deliver them through the determination of planning applications.
- 5.3 Newport City Council has five corporates objectives including a Fairer City, Greener and Healthier City and Safer City. The SPGs will help deliver the corporate objectives through the provision of planning obligations and affordable housing to provide mixed communities, and ensuring development of all scales is appropriately designed for its use and area.

#### 6. Options Available and considered

- 6.1 Approve the 4 draft SPGs for adoption.
- 6.2 Approve/modify some, but not all of the SPGs for adoption.
- 6.3 Do not approve the SPGs for adoption.

#### 7. Preferred Option and Why

- 7.1 To approve and adopt all 4 SPGs. The documents have been subjected to public consultation and comments have been considered and in some instances, amendments have been made to the documents. Adopted SPGs will assist the Council in determining planning applications.

## **8. Comments of Chief Financial Officer**

- 8.1 The report is requesting that the Supplementary Planning Guidance (SPG) documents be adopted. As noted in the report, the adoption of the SPG documents has no financial implications to the Council.

## **9. Comments of Monitoring Officer**

- 9.1 The proposed SPG's provide more detailed practical and technical guidance regarding the application of the strategic land use policies contained in the LDP and should provide a consistent approach for the determination of future planning applications. The draft SPG's have been the subject of public consultation for a period of 6 weeks and the responses received are set out in the report. The Cabinet Member is required to have regard to those responses and consider whether to adopt the SPG's with or without amendment. Some minor amendments are recommended, where appropriate, to provide greater clarity and the respond to relevant comments received. Subject to these minor changes, it is recommended that the Cabinet member formally adopts these 4 SPG's. The final SPG's will then be a material planning consideration in the determination of relevant applications and greater weight can be attached to them now that they have been subject to public consultation, prior to their adoption.

## **10. Comments of Head of People and Business Change**

- 10.1 The four draft SPG's provide in-depth technical guidance on specific planning policy areas, which fall under the Local Development Plan. Each of the four SPGs are relevant to the Wellbeing of Future Generations Act which seeks to implement sustainable development principles in Welsh public services. Specifically, the SPG relating to Trees and Hedgerows and the Mineral Safeguarding SPG both have particular relevance to the 'resilient Wales' wellbeing goal and the balancing of 'environmental' and 'social' concerns with land use pressures and development objectives. The Houses in Multiple Occupation SPG deals with decisions relating to the creation of HMOs and as such relates to possibly conflicting 'social', 'environmental' and 'economic' concerns. The Outdoor Play Space SPG relates to 'social', 'environmental' and 'economic' concerns and the wellbeing goals on 'a healthier Wales', 'cohesive communities' and 'vibrant culture'. The draft SPGs should provide clarification for decision making in relation to these wellbeing concerns.
- 10.2 The involvement of stakeholders is emphasised under the Wellbeing of Future Generations Act 2015 and this has been taken forward through the recent consultation. We anticipate that undertaking a Fairness and Equality Impact Assessment (F&EIA) will bring to the foreground any issues arising through consultation, and bring clarity to any conflicting priorities under the Well-Being of Future Generations Act.

## **11. Comments of Cabinet Member**

- 11.1 Cabinet Member has been briefed.

## **12. Local issues**

- 12.1 The SPGs will affect all wards in Newport.

## **13. Scrutiny Committees**

- 13.1 The SPGs have not been through are Scrutiny Committees.

## **14. Equalities Impact Assessment and the Equalities Act 2010**

14.1 The LDP as a whole has been subjected to an Equalities Impact Assessment. The SPGs supplement the LDP. It is not considered necessary to have separate EIAs for every SPG.

## **15. Children and Families (Wales) Measure**

15.1 No consultation has taken place specifically with children and young people. Children and young people will be eligible to comment on the SPGs during the formal 6 week consultation. The subject areas of the SPGs are not considered to be particularly relevant to children and young people.

## **16. Wellbeing of Future Generations (Wales) Act 2015**

16.1 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). The Local Development Plan is considered to provide a policy framework for the achievement of sustainable development. These guidance documents provide detail as to how the policies should be applied; therefore it is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the adoption of the supplementary planning guidance.

## **17. Crime and Disorder Act 1998**

17.1 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. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the adoption of these guidance documents.

## **18. Consultation**

18.1 Extensive public consultation has taken place and comments have been received from statutory bodies, planning consultants and other interested parties. Consultation has also taken place within the Council, particularly with Development Management, Green Services, Housing and Streetscene.

## **19. Comments from Non Executive Members**

None received.

## **20. Background Papers**

- Outdoor Play Space Provision SPG;
- Mineral Safeguarding SPG;
- Trees, Woodland, Hedgerows and Development Sites SPG; and
- Houses in Multiple Occupation SPG.



## APPENDIX 1 – COMMENTS RECEIVED ON THE SPGs AND THE COUNCIL’S PROPOSED RESPONSE

### General Comments

Representor	Comments	Council Response
Natural Resources Wales	<p>Thank you for consulting Natural Resources Wales / Cyfoeth Naturiol Cymru on the Newport Local Development Plan 2011-2026, Draft Supplementary Planning Guidance (SPG). We note the following draft documents have been prepared to supplement policies in the Adopted Local Development Plan.</p> <p>Outdoor Play Space Provision</p> <p>Minerals Safeguarding</p> <p>Trees, Woodlands, Hedgerows and Development Sites</p> <p>Houses in Multiple Occupation</p> <p>We have reviewed the above submitted documents and have no additional comment to make.</p>	Noted.

### Outdoor Play space Provision Supplementary Planning Guidance

Representor	Comments	Council Response
HBF	<p>Further to your consultation on a number of SPG’s the HBF would in principle support the use of SPG’s particularly those identified in LDP policies which are designed to add additional information to assist developers understanding of the likely Council requirements.</p> <p>In terms of a general comment we note that the ‘Outdoor Play Space Provision’ and ‘Trees, Woodlands, Hedgerows and Development Sites’ are the two most relevant to HBF Members. With regard to these we are aware that they are being developed alongside CIL and would request that both documents do not contradict one another or lead to the possibility of confusion over possible double payment for the same requirement. Below are two areas identified in the Draft 123 list which seem to also be covered by the SPG’s.</p>	<p>Noted.</p> <p>The Council intends to implement CIL on 1 April 2017. Officers are currently preparing a governance and expenditure process with the intention of taking this to Full Council for consideration in January 2017. As part of this process, the Regulation 123 List is likely to be modified. The Inspector (in his CIL report) suggested that the Council should modify the Regulation 123 List to make it clearer with respect to what infrastructure will be funded via CIL and what infrastructure should be funded via S106. It is our intention to carry out the inspector’s recommendation.</p>

	<p>Newport Draft Infrastructure Development Plan (Reg 123 List)</p> <p>H. Recreation &amp; Sport The Council is not under a statutory requirement to provide sports and leisure facilities. However, given the strategic nature of such provision and the need to 'pool' any contributions, the Council should consider using CIL contributions to facilitate new provision, as well as improve existing facilities, to meet additional demand generated by new development.</p> <p>J. Green Infrastructure Green infrastructure is the term used to identify the networks of accessible green spaces and semi-natural habitats located within and connecting towns and villages. In urban areas, green infrastructure and open space assets include public parks, woodland, civic spaces, allotments, informal open spaces, churchyards and cemeteries. Outside urban areas green infrastructure and open space broadly comprises natural and semi-natural green spaces, such as woodlands, wetlands and grasslands. River and canal corridors, footpaths, bridleways and cycle ways provide links, which thread through our towns and villages and connect into the countryside beyond. Formal leisure facilities, such as recreation grounds, playing fields and children's play spaces, are also important components of our green infrastructure. Given the strategic nature of such provision, the Council should consider using CIL toward such provision.</p>	
<p>Persimmon Homes</p>	<p>Whilst we are broadly supportive of the aforementioned documents, we have a number of concerns surrounding the application of the draft guidance when considered in the context of the limitations prescribed by regulation 122 &amp; 123 of the Community Infrastructure Levy Regulation 2010.</p> <p>Outdoor Playspace Provision</p> <p>Whilst we do not dispute the principle of providing contributions in lieu of on-site provision we are concerned that regulation 123 of the Community Infrastructure Levy would preclude such</p>	<p>The Council intends to implement CIL on 1 April 2017. Officers are currently preparing a governance and expenditure process with the intention of taking this to Full Council for consideration in January 2017. As part of this process, the Regulation 123 List is likely to be modified. The Inspector (in his CIL report) suggested that the Council should modify the Regulation 123 List to make it clearer with respect to what infrastructure will be funded via CIL and what infrastructure should be funded via S106. It is our intention to carry out the inspector's recommendation.</p>

	<p>an arrangement given the generic nature of the project / infrastructure type; the pooling restrictions imposed; and the duplication that exists between the obligation and the 'Green Infrastructure' and 'Sport and Recreation Facilities' items identified in the Council's draft regulation 123 list.</p> <p>We would therefore welcome clarification of the relationship between section 106 planning obligations and the items identified on the Council's draft regulation 123 list in order to avoid the potential for duplication and ensure compliance with the requirements of the regulations.</p>	
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### Mineral Safeguarding Supplementary Planning Guidance

Representor	Comments	Council Response
Minor Comments	<ul style="list-style-type: none"> <li>Change from Mineral Planning Policy Wales to Planning Policy Wales Para 1.5 – MPPW now PPW Chapter 14 paras 14.2.1, 14.7.3.</li> <li>Para 2.1 – delete 'there'</li> <li>Page 6 footnote – provide a definition of sensitive development.</li> </ul>	<ul style="list-style-type: none"> <li>Agree, update to reflect chapter 14 of Planning Policy Wales.</li> <li>Agree.</li> <li>Agree to provide definition to aid the reader.</li> </ul>

### Trees, Woodlands, Hedgerows and Development Sites Supplementary Planning Guidance

Representor	Comments	Council Response
Council Tree Officer	<p><b>Existing mature and specimen trees (TPO'd) on Development sites ( after Arb Method Statement 5:8)</b></p> <p><b>Wherever possible mature and specimen trees should be retained in areas designated as public open space rather than being contained within an individual's garden.</b></p> <p><b>This is for the following reasons:-</b></p> <p>-Trees on development sites (usually TPO'd) should be for the benefit of all and be on a publically accessible area.</p> <p>-One of the key tenets of a TPO is that the tree/s should be highly visible to the public. This is particularly important where there are few trees on the development site. A public open space</p>	<p>It is considered that section 5.8 – 5.15 of the draft SPG 'Trees adjacent to play areas on public open spaces' be amended to reflect these points concerning the preference of trees being sited in public spaces rather than private spaces.</p> <p>The SPG has been amended to read:</p> <p><i>It is recognised that trees need space to grow and that they will need to be maintained. To provide landscape amenity, specimen trees should be sited on Public Open Space (POS) to that they</i></p>

	<p>ensures this.</p> <p>-Trees require a larger area than an average garden on a new development to grow to their full potential and a public area provides character to the streetscene of overall development.</p> <p>If trees are in a garden they cannot easily be viewed by all nor can they be enjoyed by the community.</p> <p>- Trees in an individual residence carry a considerable burden of responsibility /duty of care and the cost of any tree work must be borne by the property owners ( this can be very expensive)</p> <p>- Repeated applications for TPO'd trees to be trimmed are received for the following reasons – potential storm damage, lack of sunlight, shading and leaf fall.</p> <p>In addition, trees overhanging neighbouring gardens also experience the same aforementioned issues.</p> <p>All of this puts continued pressure on the trees to be trimmed thereby impacting on the trees aesthetic value and the reasoning for them being TPO'd.</p> <p><b>Examples of TPO'd trees on POS on development sites -</b></p> <p>TPO'd Large oak tree( oak one of the best specimen oaks in Newport) – Priory Crescent , Langstone  Former Alcan site – TPO'd beech and Willow tree  TPO'd beech trees adjacent to 62a Marshfield Road  Tpo'd trees at former Llanwern steel works site. Hornbeam at Playford Cresent  Historically all the trees on open spaces on former Council Housing Land e.g. Bettws, Ringland, Always and Malpas</p>	<p><i>can be enjoyed by all and are not a financial or practical burden to an individual.</i></p> <p><i>This stance recognises that trees on development sites should be for the benefit of all. One of the key tenets of a TPO is that the tree/s should be highly visible to the public and this beneficial relationship should be shared by all trees within a development. This is particularly important where there are few trees on the development site. Trees also require a large area to grow to their full potential much larger than an average garden on a new development. As well as the benefit to residents trees sited in a public area provides character to the street scene of overall development.</i></p>
<p>Graig Community Council</p>	<p>Thank you for your invitation to comment on the SPG draft document. My Council has studied this and would like to make one small but important comment.</p> <p>In the Draft Trees, Woodland, Hedgerows and Development Sites document, it mentions protecting hedgerows and trees on new development sites, but this does not seem to include small infill developments taking place on reasonably large plots of land with one house where owners either sell or self-develop large</p>	<p>Hedgerows cannot be protected in domestic settings because they are exempt as stated in the 1999 Hedgerow Regulations.</p> <p>It is the Council's intention to ensure that trees are placed in areas of public open space rather than private gardens. It is the intention of the SPG to ensure that trees are considered as part of the overall design of the development</p>

	<p>gardens to include more houses.</p> <p>This has happened in our ward recently whereby a cottage on a large plot of land was demolished and 4 large detached houses are being built in the divided up grounds. The cottage had been there for a very long time and included a large hedgerow along one side of the plot which had probably been in existence for more than a century. The hedgerow was demolished to enable the boundary to be taken as far out as possible resulting in the loss of this key element. It's loss was detrimental to the local wildlife habitat, and as it was replaced by a long wooden boarded fence, it looks visually very unappealing. Additionally, due to the topography of the site, the hedgerow previously provided valuable stability for the ground which is set high on a hill with a PROW immediately behind it. It's removal and severe cutting back of the banking to accommodate housing has made the ground less stable and more susceptible to subsidence.</p> <p>My Council feels your document should also cover sites such as this to better protect our valuable trees and hedgerows on the smaller scale developments as well as the larger ones, and ask that you consider amending the document to include better protection for sites such as the one mentioned above.</p>	<p>site, whatever scale, to ensure their benefits are utilised. Tree Preservation Orders are served on individual trees where appropriate.</p>
<p>HBF</p>	<p>Further to your consultation on a number of SPG's the HBF would in principle support the use of SPG's particularly those identified in LDP policies which are designed to add additional information to assist developers understanding of the likely Council requirements.</p> <p>In terms of a general comment we note that the 'Outdoor Play Space Provision' and 'Trees, Woodlands, Hedgerows and Development Sites' are the two most relevant to HBF Members. With regard to these we are aware that they are being developed alongside CIL and would request that both documents do not contradict one another or lead to the possibility of confusion over possible double payment for the same requirement. Below are two areas identified in the Draft 123 list which seem to also be covered by the SPG's.</p> <p>Newport Draft Infrastructure Development Plan (Reg 123 List)</p> <p>H. Recreation &amp; Sport The Council is not under a statutory requirement to provide sports and leisure facilities. However,</p>	<p>Noted. (See above)</p>

	<p>given the strategic nature of such provision and the need to ‘pool’ any contributions, the Council should consider using CIL contributions to facilitate new provision, as well as improve existing facilities, to meet additional demand generated by new development.</p> <p><b>J. Green Infrastructure</b>  Green infrastructure is the term used to identify the networks of accessible green spaces and semi-natural habitats located within and connecting towns and villages.  In urban areas, green infrastructure and open space assets include public parks, woodland, civic spaces, allotments, informal open spaces, churchyards and cemeteries. Outside urban areas green infrastructure and open space broadly comprises natural and semi-natural green spaces, such as woodlands, wetlands and grasslands. River and canal corridors, footpaths, bridleways and cycle ways provide links, which thread through our towns and villages and connect into the countryside beyond. Formal leisure facilities, such as recreation grounds, playing fields and children’s play spaces, are also important components of our green infrastructure. Given the strategic nature of such provision, the Council should consider using CIL toward such provision.</p> <p><b>The HBF would ask the Council to consider some additional/amended wording to clarify this issue.</b></p> <p>The HBF would raise a specific point relating to the ‘Trees, Woodlands, Hedgerows and Development Sites’ SPG, the requirement under Design Principle 3: Compensation states ‘As stated in the Councils adopted Green Lung Policy; ‘where trees are felled then three replacement trees will planted’’. (we note the footnote which states that the Green Lung policy applied to Council owned land). If this is a policy the Council wish to impose on their own land this is in their power, however we do not feel that a 3 for1 replacement can be justified as a general principle. S106 legislation requires clauses of the agreement to past five tests ‘ necessary, relevant to planning, directly related to the propose development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other aspects. The HBF would argue that a 3 for 1 replacement ratio fails these tests.</p> <p><b>The HBF would ask that this requirement should be reduced to a 1 to 1 ratio or</b></p>	<p>Newport Council’s Corporate Plan 2012 – 2017 and Improvement Plan 2012 – 2013 have commitments to create a greener and healthier city.</p> <p>The corporate plan recognises the impact of climate change and effects of globalisation and how they affect our local environment. The improvement plan sets out in detail initiatives that will build towards achieving those goals. One of those initiatives is the ‘Green Lung Programme’ which is a tree planting programme across Newport.</p> <p>To achieve the aim of the Green Lung Programme a number of measures have been agreed by Council which includes:  <b>Development Mitigation:</b> tree loss through development will continue to be mitigated not only through like for like replacement, but also in seeking additional planting compensation, where feasible.</p> <p>It is recognised that the loss of a tree requires replacement but due to the variances between those trees being lost a degree of negotiation is required i.e. that the loss is judged on its level of impact. For example the loss of a poor quality specimen may be suitable for like for like replacement but an established and high quality loss would result in the need for high quality replacement of more than one tree</p>
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	<p><b>clarification be provide that this only applies on Council owned land.</b></p>	<p>in order to go some way to offset this impact. What is clear is that through the Council's own policy (Green Lung Policy) the impact on trees from development should provide additional planting to offset its impact. The SPG has been amended to reflect this stance.</p>
<p>Persimmon Homes</p>	<p>Whilst we are broadly supportive of the aforementioned documents, we have a number of concerns surrounding the application of the draft guidance when considered in the context of the limitations prescribed by regulation 122 &amp; 123 of the Community Infrastructure Levy Regulation 2010.</p> <p>Trees, woodlands, Hedgerows and Development Sites</p> <p>Whilst we acknowledge the need to mitigate the ecological impact of development we are concerned that the requirement to provide three trees for every tree felled is not proportionate to the harm caused and as such is not justified. We would also content that off-site provision at a rate of 3:1 would exceed the limitation on the use of planning obligations prescribed by regulation 123 as the requirement goes beyond what is necessary to make the development acceptable in planning terms. On that basis, we would suggest that the ration for the provision of replacement trees should be revised to 1 tree for each tree felled, i.e. 1:1.</p> <p>Notwithstanding the above, contributions towards the provision of replacement trees in lieu of on-site provision would also fall foul of the limitations imposed by regulation 123 of the Community Infrastructure Levy given the generic nature of the project / infrastructure type; the pooling restrictions imposed; and the duplication that exists between the obligation and the 'Green Infrastructure' item identified on the Council's draft regulation 123 list.</p> <p>We would therefore welcome the clarification of the relationship between section 106 planning obligations and the items identified on the Council's draft regulation 123 list in order to avoid the potential for duplication and ensure compliance with the requirements of the regulations.</p>	<p>Newport Councils Corporate Plan 2012 – 2017 and Improvement Plan 2012 – 2013 have commitments to create a greener and healthier city.</p> <p>The corporate plan recognises the impact of climate change and effects of globalisation and how they affect our local environment. The improvement plan sets out in detail initiatives that will build towards achieving those goals. One of those initiatives is the 'Green Lung Programme' which is a tree planting programme across Newport.</p> <p>To achieve the aim of the Green Lung Programme a number of measures have been agreed by Council which includes:  <b>Development Mitigation:</b> tree loss through development will continue to be mitigated not only through like for like replacement, but also in seeking additional planting compensation, where feasible.</p> <p>It is recognised that the loss of a tree requires replacement but due to the variances between those trees being lost a degree of negotiation is required i.e. that the loss is judged on its level of impact. For example the loss of a poor quality specimen may be suitable for like for like replacement but an established and high quality loss would result in the need for high quality replacement of more than one tree in order to go some way to offset this impact. What is clear is that through the Council's own policy (Green Lung Policy) the impact on</p>

		trees from development should provide additional planting to offset its impact. The SPG has been amended to reflect this stance.
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**Houses in Multiple Occupation Supplementary Planning Guidance**

<b>Representor</b>	<b>Comments</b>	<b>Council Response</b>
Internal Comment	Paragraph 6.1.2 sets out how the applicant can use the ishare mapping system to get a general idea as to how to calculate the threshold. There have been changes to the ishare system that make this a complex process so for clarity it is suggested that the paragraph is reworded to exclude reference to the ishare mapping system.	Agreed, it is important that the document does not confuse its readers.





**DRAFT MINERAL SAFEGUARDING  
SUPPLEMENTARY PLANNING  
GUIDANCE**

NOVEMBER  
2016

*Regeneration Investment and Housing*

*Newport City Council*

*Civic Centre*

*Newport*

*South Wales*

*NP20 4UR*

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## **1. INTRODUCTION AND POLICY BACKGROUND**

- 1.1 This Supplementary Planning Guidance provides information to assist with the consideration of planning applications on minerals safeguarding areas for hard rock, sand & gravel within Newport Council.
- 1.2 The safeguarding areas for hard rock and sand & gravel have been designated by Local Authorities in Wales based on the British Geological Survey (BGS) Aggregates Safeguarding Map of Wales, funded by the Welsh Government. The information from the maps have been taken to form the safeguarding areas outlined on the LDP proposals maps.
- 1.3 These safeguarding maps were developed at the national level and as such they are mostly inferred from available geological information.
- 1.4 The safeguarding map for Wales provides a sound basis for the safeguarding areas however it should be acknowledged that the specific mineral may be absent, overlain by significant levels of overburden or not be of sufficient quality. Therefore the applicant could evidence that the mineral doesn't actually merit safeguarding.
- 1.5 At the national level Planning Policy Wales (PPW) introduces the principle of safeguarding access to mineral resources that may be needed by future generations and requires that mineral resources are safeguarded or extracted prior to development proceeding.
- 1.6 Locating development away from safeguarding mineral areas and outside relevant buffer zones is the key means to protect the long term future of the mineral sources. Some development proposals may contain non-sensitive elements<sup>1</sup>. Schemes should be designed to place these non-sensitive elements within buffer zones thereby protecting the mineral resource from sterilisation. Sensitive aspects of developments should be located outside of identified buffer zones.
- 1.7 In some cases a different site should be sought for the development. This approach is justified on the basis that non-mineral developments are able to be undertaken in other areas whereas minerals can only be worked where they are found. In exceptional cases the application can be refused. The policy seeks to ensure that prior extraction has been considered and undertaken where necessary. This is the basis for LDP policy M1 and the mineral safeguarding information included on the associated LDP Proposals Map.
- 1.8 Policy M1, its reasoned justification and the associated map layers, set the context for decision making within areas of mineral safeguarding. The Local Development Plan Proposals Map shows the spatial extent of the safeguarded mineral resource.
- 1.9 The Local Development Plan Policy

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<sup>1</sup> A definition of sensitive development is set out in MTAN 1, available at [www.wales.gov.uk](http://www.wales.gov.uk)

## **M1 Safeguarding of Mineral Resource**

**DEVELOPMENT THAT WOULD BE INCOMPATIBLE WITH SAFEGUARDING HARDROCK OR SAND AND GRAVEL RESOURCES WITHIN THE MINERAL RESOURCE AREAS AS SHOWN ON THE PROPOSALS MAP WILL NOT BE PERMITTED UNLESS:**

- i) THE DEVELOPER CAN DEMONSTRATE THAT WORKING THE RESOURCE IS ECONOMICALLY OR PHYSICALLY IMPRACTICAL OR WOULD BE ENVIRONMENTALLY UNACCEPTABLE; OR**
- ii) THE MINERAL RESOURCE WILL BE EXTRACTED SATISFACTORILY BEFORE THE DEVELOPMENT IS UNDERTAKEN; OR**
- iii) THE DEVELOPMENT IS OF A TEMPORARY NATURE AND CAN BE COMPLETED AND THE SITE RETURNED TO A STATE THAT DOES NOT INHIBIT EXTRACTION WITHIN THE TIMESCALE THAT THE MINERAL IS LIKELY TO BE NEEDED; OR**
- iv) THERE IS AN OVERRIDING NEED FOR THE PROPOSED DEVELOPMENT; OR**
- v) THE DEVELOPMENT CONSTITUTES HOUSEHOLDER DEVELOPMENT OR WOULD CONSTITUTE LIMITED INFILLING WITHIN AN EXISTING BUILT UP AREA.**

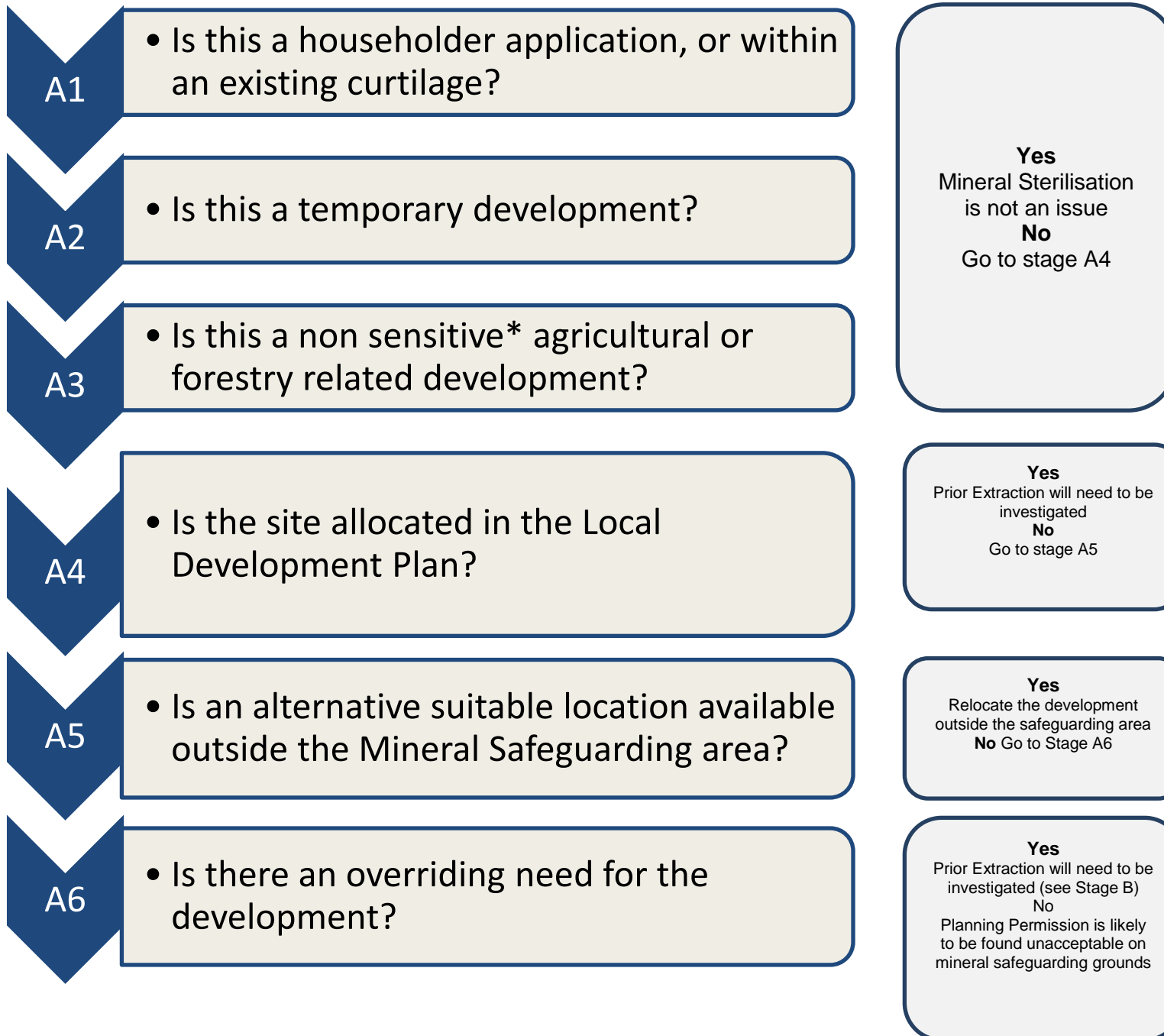
1.10 This guidance sets out the issues which need to be addressed when applications are submitted within, or affecting, a mineral safeguarding zones. The flow chart in chapter 2 sets out this process.

## **2. DETAILED CONSIDERATIONS**

- 2.1 A series of stages will need to be adhered to in order to establish whether a development can take place within a mineral safeguarding area. There is a presumption against development in mineral safeguarding areas to ensure the finite resource is safeguarded for the future. The policy seeks to ensure that where development is proposed within a mineral safeguarding area that sufficient consideration is given to safeguarding the mineral.
- 2.2 A staged process is charted below and this provides an indication of the process and questions which should aid the decision maker and applicant. A proportionate approach will be taken when considering the following questions, which will result in the level of information being required being dependent on the details of the proposed development. For example, one type of mineral may require further investigation than others e.g. a rare mineral or high quality resource. The location and scale of the proposal in regard to the safeguarding area is also an important consideration. For example, a small scale development located in the centre of a mineral safeguarding area may have a greater impact on the mineral resource due to extensive buffer zones. Where insufficient information has been provided, the Authority will seek the necessary information; if this is not provided the application is likely to be refused on the grounds of lack of proper justification.
- 2.3 The first stage to consider is that of mineral sterilisation. The process will allow the thorough investigation as to the impact of the proposed development on the mineral safeguarded resource. This process will either indicate that the proposal is such that mineral sterilisation is not an issue or indicate that prior extraction may be required. It is accepted that the process of prior-extraction will result in the loss of some minerals and therefore other factors such as need are also a clear consideration in this process. In the case of prior extraction a second stage has been outlined on page 9 indicating relevant considerations.

## STAGE A: MINERAL STERILISATION

A full explanation of each stage follows the flow chart



\* A definition of sensitive development is : <sup>1</sup> A definition of sensitive development is: *Sensitive development is any building occupied by people on a regular basis and includes housing areas, hostels, meeting places, schools and hospitals where an acceptable standard of amenity should be expected. Sensitive development could also include specialised high technology industrial development where operational needs require high standards of amenity.*

<b>A1</b>	Any mineral resource beneath such sites or within a residential curtilage is already likely to have been sterilised by permanent development and therefore mineral sterilisation is not an issue.
<b>A2</b>	Temporary development proposals will not permanently sterilise a mineral resource however it may be sensible to use planning conditions or obligations to ensure the removal of the temporary development at the end of the consent period and ensure restoration of the land to its former condition. If this is achieved then mineral sterilisation is not an issue. In order to analysis this impact it is appropriate to assess the ability of the regional landbank provision to meet needs over the lifetime of the development.
<b>A3</b>	<p>A significant amount of agricultural and forestry development is 'permitted development' under the provisions of Part 6 and Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. Agricultural and forestry related developments that require planning permission e.g. sheds and lagoons, which are not considered temporary may result in the sterilisation of economic mineral resources but they may be able to evidence an overriding need or it may result in an unviable scheme that on balance outweigh the impact on the resource.</p> <p>It is worth noting that agricultural or forestry dwellings would amount to sensitive development<sup>2</sup> which would not only sterilise the resource at the site itself but would also sterilise resource within a potential buffer zone around the dwelling. Cumulative and incremental sterilisation through eating into the buffer zone will need to be considered. Replacement buildings can be screened out.</p>
<b>A4</b>	Need has already been established for allocations within the Local Development Plan and the issues of safeguarding has already been considered. Prior extraction still needs to be considered, see Stage B for full details.
<b>A5</b>	As far as possible proposals should avoid development on mineral safeguarding areas. Applications will need to demonstrate why this is the only suitable location for the proposal, and must make a case for the development to be located within a mineral safeguarding area. This consideration may be linked to need but if an alternative solution outside of the mineral safeguarding area is available then the development should be relocated.
<b>A6</b>	<p>The developer will be required to establish the overriding need for new development within a mineral safeguarding area. This development will sterilise the resource beneath the site or in the case of new sensitive development the effect would be extending the buffer zone into the mineral safeguarding area. However, permission can be granted if overriding need is established, subject to the application meeting other planning considerations. Need can include the needs of the community, affordable housing and the functional need for an existing business or enterprise expansion.</p> <p>If there is no need established then permission is likely to be found unacceptable on mineral safeguarding grounds.</p> <p>Applications that are considered acceptable under this part of the policy must go on to consider whether prior extraction of the resource is possible, see Stage B for further details. If the applicant has satisfied that the mineral doesn't merit safeguarding then there is no need for prior extraction.</p>

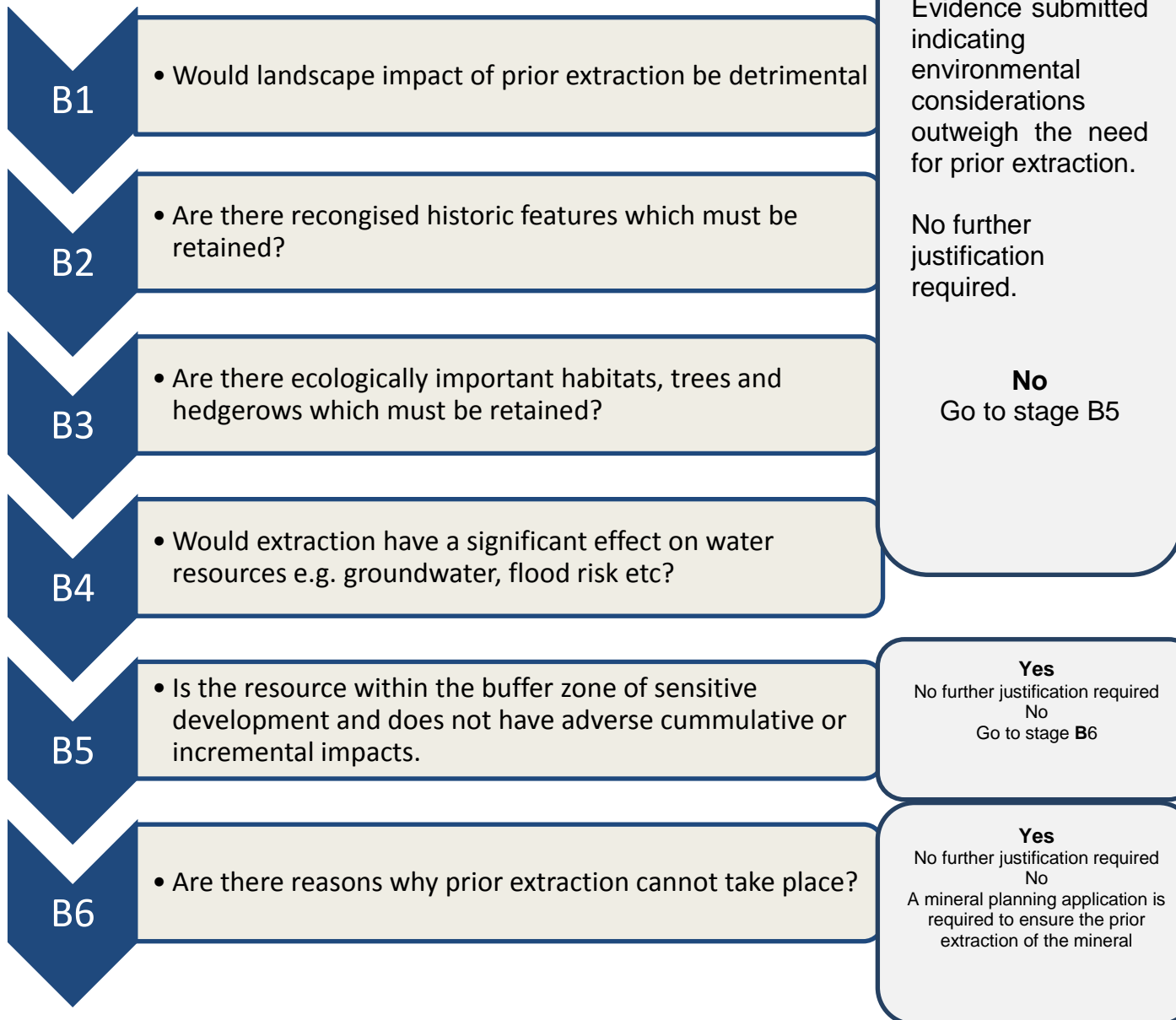
<sup>2</sup> A definition of sensitive development is set out in MTAN 1, available at [www.wales.gov.uk](http://www.wales.gov.uk)

- 2.4 If the recommendation from Stage A is to investigate prior extraction then the following flow chart and supporting questions will aid the investigation and analysis. They are not in a particular order but will aid analysis. Prior Extraction refers to the removal of economic mineral resources that are found at or close to the ground surface (shallow resources) from development sites, prior to the commencement of construction work. In line with National Planning Policy, prior extraction is a consideration due to the finite status of mineral resources to ensure sustainable management for the future.
- 2.5 Prior extraction may require additional expertise to be utilised in order for the works to be undertaken. It is therefore advisable to engage with the mineral industry and the Coal Authority. The work may also require further assessments such as EIA, further information on EIA can be found on the Councils website. There may be benefits to the applicant in undertaking these works e.g. revenue from the sale of minerals.
- 2.6 What is accepted with prior extraction is that some minerals will be lost because it is unlikely the deposit will be removed in its entirety. Therefore is the need for the mineral outweighs the need for the proposed development then it may still be appropriate to refuse permission on this basis.
- 2.7 There are practical reasons why prior extraction may not be feasible and this may be evidenced before the detailed consideration of the following criteria are required.



## STAGE B: PRIOR EXTRACTION

A full explanation of each stage follows the flow chart



<p><b>B1</b></p>	<p>The landscape character of the site and its landscape context will be a relevant consideration. The applicant must provide relevant information to the Authority in relation to the landscape impact of prior extraction, including the impact on the change to topography. On the basis of the information available to it, the Authority will consider whether landscape considerations outweigh the need for prior extraction. If the evidence does not outweigh the impact then go to stage B5.</p>
<p><b>B2</b></p>	<p>Historic assets and their settings will be a relevant consideration when considering prior extraction. Prior extraction can destroy these features and their settings even on a temporary basis so the applicant must provide relevant information in relation to the impact, evidencing no adverse impacts will ensue. The Authority will consider whether historic environment considerations outweigh the need for prior extraction. If the evidence does not outweigh the impact then go to stage B5.</p>
<p><b>B3</b></p>	<p>The ecological and biodiversity features of the site will also be an important consideration. Prior extraction can destroy these features so the application must provide relevant information as to the impact, evidencing no adverse impacts, avoidance or providing mitigation and/or compensation where appropriate in line with TAN5: Nature Conservation and Planning. The Authority will consider whether ecological considerations outweigh the need for prior extraction as well as the impact on the proposed non mineral development. If the evidence does not outweigh the impact then go to stage B5.</p>
<p><b>B4</b></p>	<p>There may be potential for prior extraction to have an adverse impact on water sources including the local water table or a protected groundwater aquifer. The application must provide relevant information to the Authority in relation to the impact, evidencing no adverse impact. This is a technical matter which the application is advised to contact NRW, Welsh Water and or the Drainage section of the Local Authority for advice. The Authority will consider whether water quality/quantity considerations outweigh the need for prior extraction. If the evidence does not outweigh the impact then go to stage B5.</p>
<p><b>B5</b></p>	<p>The safeguarding areas designated on the LDP proposals plan are split into Hard rock and Sand &amp; Gravel areas, each have differing buffer zones as detailed below.</p> <p><b>HARDROCK:</b>  Hard rock usually required blasting to extract it and national planning guidance states that blasting should not take place within a 200m buffer zone around existing sensitive development. The applicant will be required to demonstrate that the resources cannot be extracted because of existing sensitive uses and the mineral working will have a significant adverse impact on persons within that sensitive development. If this can be evidenced then no further justification is required. If it cannot be evidenced then go to Stage B6.</p> <p><b>SAND &amp; GRAVEL:</b>  The buffer zone for sand and gravel resource working is 100m from sensitive development, where no blasting is required. The application will be required to demonstrate that the resources cannot be extracted because of existing sensitive developments within the buffer zone and the resources is already sterilised. If this can be evidenced then no further justification is required. If it cannot be evidenced</p>

then go to Stage B6.

**B6**

Prior extraction may not be appropriate for any number of reasons. It could not be technically feasible, delay development beyond a reasonable timescale, the quality and quantity of the mineral is poor, or there is no market for the material taking into account the timescale of the development. If, having carried out that initial evaluation, the case officer cannot identify a reason why prior extraction should not take place in conjunction with development, a further aspect must then be considered. This is whether there is any market demand for the mineral resource immediately beneath the site at the time of application. In such cases, it is reasonable to ask the applicant to establish whether there is market demand for the material concerned and to inform the Council of the outcome of those investigations, it is reasonable to consider the impact of phases development which may be able to store materials prior to exporting off site. Responses from three credible sources will normally be expected to be provided by the applicant as evidence that the matter has been investigated.

As market demand for mineral resources changes over time, this is a matter that would need to be re-tested should a re-submission be made at a later date.

The developers will be required to demonstrate why it is not practical or desirable to extract the material. They will also be required to demonstrate why it would not be possible to modify the proposal to avoid sterilisation and there is no significant incremental sterilisation of resources in combination with other developments in the vicinity of the application site.

Where there are no justified reasons why prior extraction cannot take place a modification to the application or submission of a separate planning application is required to assess the working of the mineral. The Authority will determine a planning application for prior extraction of the mineral before built permanent development can take place.

2.8 If the process results in the need for prior extraction at the site the following factors should be taken into account:

- There is no requirement under prior extraction to consider removal of economic mineral resources that lie at a greater depth beneath a development site, through either underground working or deeper surface mining.
- Prior extraction of surface resources prevents the unnecessary sterilisation of potentially valuable mineral resources and can also reduce or remove land instability problems in areas that have been subject to previous mineral working. It may also help to resolve any land contamination issues associated with previous uses of the land. However, prior extraction will not always be appropriate.
- When considering possible prior extraction requirements under policy M1, it will be necessary to also consider the requirements of other relevant LDP policies. Evaluation of a development proposal in this context will be important both in reaching a view on whether the proposal is acceptable and on whether prior extraction is appropriate.

### **3. USEFUL CONTACTS**

#### **Planning Policy**

Lindsay Christian

Civic Centre, Newport, NP204UR

Email: Lindsay.Christian@newport.gov.uk

Tel: 01633 210067

#### **Development Management Contacts West Area:**

Stephen Williams

West Area Manager

Tel: 01633 210106

Email: stephenj.williams@newport.gov.uk

#### **East Area:**

Joanne Davidson

East Area Manager

Tel: 01633 210066

Email: joanne.davidson@newport.gov.uk



**DRAFT TREES, WOODLAND, HEDGEROWS AND DEVELOPMENT SITES  
SUPPLEMENTARY PLANNING  
GUIDANCE**

NOVEMBER 2016

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## **1. Introduction**

- 1.1 This Supplementary Planning Guidance (SPG) set out the Councils requirement for Trees, Woodland and Hedgerows affecting new development sites.
- 1.2 This guidance is designed to help create high quality and sustainable urban and rural landscapes where trees, woodlands and hedges are a key element. Trees, woodlands and hedgerows are important features of an overall design of a development site. They are important to people's quality of life as well as having wider ecological benefits. National planning policy is clear that design is the relationship between all elements of the natural and built environment; therefore the positive use of trees, woodlands and hedges within a development site can help create truly sustainable development.
- 1.3 This SPG will be a material consideration in the determination of all planning applications which can impact on or propose the inclusion of tree, woodlands or hedgerows.
- 1.4 Developers are encouraged to discuss their proposals with the Council's Tree Officers at the earliest opportunity; their contact details are set out below:

Tree/Arboriculture/Landscape Officers  
Telephone: 01633 656656  
Address: Civic Centre, Newport, NP204UR

## **2. National and Local Policy context**

### **Planning Policy Wales**

- 1.5 Planning Policy Wales (PPW) provides the national strategic guidance with regard to land use planning matters in Wales. Sustainable Development Principles are inherent to national planning policy which expects all those involved in the planning system to adhere to those SD Principles. Of particular relevance in this case is the need to ensure a long term perspective to safeguard the interest of future generations, to respect environmental limits so that the environment is not irreversibly damaged and to assist in tackling climate change. This can be achieved through good design of development which takes into account the relationship between the natural and built environment.
- 1.6 Trees, Woodlands and Hedgerows are recognised in national planning policy as being of great importance, both as wildlife habitats and in terms of their contribution to landscape character and beauty. PPW is clear that Local Planning Authorities should seek to protect tree(s) where they contribute to the character or amenity of a particular locality. Also it is important to note that ancient and semi-ancient woodlands are noted as irreplaceable habitats of high biodiversity value which should be protected from development that would result in significant damage.
- 1.7 It is clear that Local authorities have a duty to ensure that adequate provision is made for the planting or preservation of tree(s) by imposing conditions when granting planning permission and/or by making Tree Preservation Orders.

#### **Technical Advice Note 10 Tree Preservation Orders (1997)**

- 1.8 This advice note is specifically related to the making and use of Tree Preservation Orders (TPO). The principal effect of a TPO is to prohibit the cutting down, topping, lopping, wilful damage or wilful destruction of a tree or trees without the consent of the planning authority.

#### **Technical Advice Note 12 Design (2016)**

- 1.9 This advice note states the response to context should not be confined to architectural finishes. It is important to help integrate old and new development and reinforce hierarchy between spaces through the consideration of retaining existing landmarks, mature trees and hedgerows within housing areas as well as introducing new planting appropriate to the area. The guidance notes that opportunity should be taken when improving the public realm to protect and enhance biodiversity and assist pollution abatement through careful design, implementation and maintenance of planting. Planting, particularly large tree species can also be used to improve microclimate and reduce dust and the perception of noise through, shade, shelter and screening.

### **Local Development Plan**

- 1.10 The Local Development Plan (LDP) policies relating to trees, woodlands and hedgerows are set out below:



**Policy GP5: General Development Principle, Natural Environment,  
Criterion vii):**

**[DEVELOPMENT WILL BE PERMITTED WHERE] THE PROPOSAL INCLUDES APPROPRIATE TREE PLANTING OR RETENTION WHERE APPROPRIATE AND DOES NOT RESULT IN THE UNACCEPTABLE LOSS OF OR HARM TO TREES, WOOLDAND OR HEDGEROWS THAT HAVE WILDLIFE OR AMENITY VALUE.**

- 1.11 This policy recognises that trees can have a major influence on the planning and use of the site. However, through the use of Arboricultural surveys the Council can assess the potential effects of development and propose suitable mitigation where appropriate. Effective measures should be taken by developers to protect existing trees, woodlands and hedgerows. It is shown that if such matters are integrated sensitively and with due care it will enhance the quality of the development and amenity from the outset, safeguard biodiversity and natural resources and minimise loss of trees and woodlands.

## 2. Statement of Principles

2.1 There are many benefits from trees; including their ability to:

- Help to regulate air temperature, reduce noise pollution and filter/absorb air pollution;<sup>3</sup>
- Support a wide variety of animals and thereby, maintaining and enhancing biodiversity e.g. a mature oak tree can host up to 5000 different invertebrate species the basis of a healthy ecosystem for birds and mammals;<sup>4</sup>
- Help counteract the harmful causes of global warming;<sup>5</sup>
- Improve mental health and well-being; and <sup>6</sup>
- Have an economic benefit and the potential to increase house prices<sup>7</sup>



plants,  
host up  
forming  
and  
global  
and <sup>6</sup>

2.2 The Council has three general principles relating to trees, woodlands and hedgerows within the Local Authority boundary:

- I. **Manage:** To encourage tree owners and developers to look at their tree stock and ensure it is in a healthy and safe condition through. This will be achieved through site visits and proactive communication throughout the development process and one of the main aims is to avoid potential conflict between development and trees, woodland and hedges.
- II. **Plant:** To encourage appropriate replacement tree planting where there has been a requirement to fell trees on private land and development sites. This will include the provision of replacement tree(s) which will satisfactorily offset the impact of the loss, the quality of the existing tree and the choice of appropriate tree species.
- III. **Protect:** Newport is fortunate to have a total urban tree cover of 18.9%, which is above the Welsh national average of 16.8% (Tree Cover in Wales 2014, Natural Resources Wales). One objective of the Council is to increase the tree cover within Newport to 25% within the next 15 years.

<sup>3</sup> Tree Cover in Wales's 2014( Natural Resources Wales)

<sup>4</sup> The Case for Trees in Development and Urban Environment 2010 (Forestry Commission England)

<sup>5</sup> The Case for Trees in Development and Urban Environment 2010 (Forestry Commission England)

<sup>6</sup> Faculty of Public Health report Great Outdoors: How our National Health Service Uses Green Space To improve Wellbeing.

<sup>7</sup> Does Money grow on Trees 2005 (Cabe Space)

### **3. The three principles of design**

3.1 There are 3 key design principles which should be considered by all applicants where their development affects trees, woodlands and hedgerows.

#### **Design Principle 1: Retention**

Wherever possible, trees, woodland and hedgerows should be retained on site.

Sufficient space should be afforded, so that there is no potential conflicts to the development in the future e.g. storm damage from trees are designed out from the outset.

This is also important for ecological connectivity and meeting well-being goals

#### **Design Principle 2: Mitigation**

The design of a development should mitigate any potential negative impacts to trees, woodlands and hedgerows.

This can be achieved by engaging a Tree Consultant to carry out a full tree survey in accordance with BS5837:2012 'Trees in relation to design, demolition and construction-Recommendations'.

#### **Design Principle 3: Compensation**

As stated in the Councils adopted Green Lung Policy<sup>8</sup>; 'where trees are felled then replacement trees will be planted'.

Where it is not possible to plant replacement trees on site, funding will be provided by the developer for off-site planting.



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<sup>8</sup> 2017 Trees and Woodland policy on NCC owned and managed sites.

## **4. Planning Application Requirements**

- 4.1 Any Planning Application that may affect existing trees, woodlands & hedges will not be accepted unless a tree survey, which has been carried out in accordance with the relevant British Standard by a suitably qualified Tree Consultant, is submitted.
- 4.2 Developers are strongly recommended to obtain all the tree information from a qualified Tree Consultant prior to formulating any development layout. This is best practice as trees, woodlands and hedgerows should not be fitted in around a potential housing layout, retrospectively. Any housing layout should seek to avoid any potential conflict between the development and the trees. Instead, it should make the most of these assets in providing focal points, a pleasant amenity for residents and a potential boost to the value of nearby plots. It should be noted that the submission of good quality tree information has been shown to save both time and money to the applicant.
- 4.3 The level of information the Council requests will differ depending on the type of applicant and development the request will be proportionate to the proposals. The type of detailed assessments includes:
- topographical surveys,
  - tree surveys/categorisation,
  - tree constraints plans,
  - arboricultural implication assessments, and
  - management schedules.
- 4.4 The information supporting an application should provide information on the quality and quantity of trees present, and identify mitigation of the potential impacts of development, including the construction process on trees and hedgerows and their root systems, and should be carried out to the relevant British Standards. Where a proposed development would lead to the removal of trees and hedgerows, the developer must justify the removal and propose suitable mitigation measures. More information as to the requirements of the arboricultural implications assessment (AIS) is set out in chapter 6.
- 4.5 The key factors that will be assessed from the information submitted with a planning application will include;
- The health of the trees, their ultimate height and canopy spread and how much they can be expected to grow annually;
  - Potential storm damage from trees which are too close to developments;
  - Shading patterns of trees which can affect the light quality to gardens and buildings;
  - Potential changes in ground level as little as 100mm can affect tree roots; and
  - Potential changes in drainage patterns.

## **5. Trees and Development**

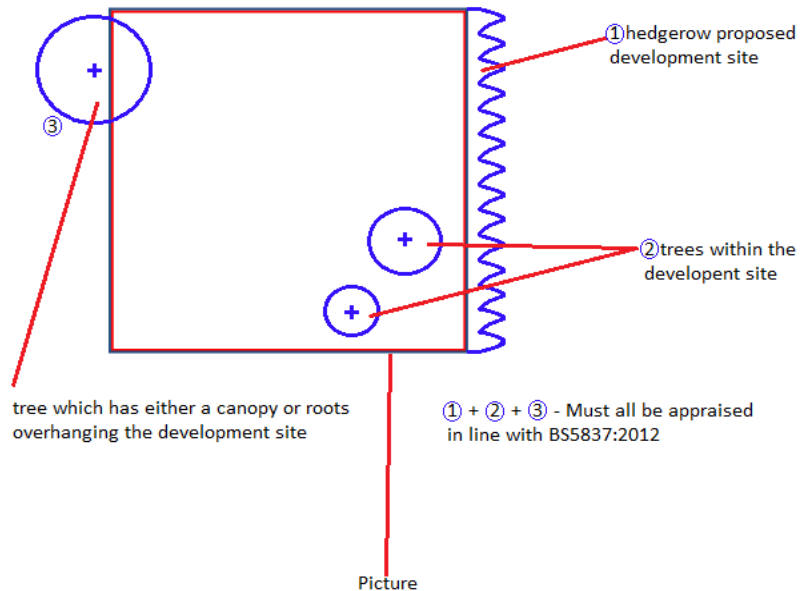
- 5.1 The Council will seek the retention of trees on development sites by:-
- Protecting suitable trees with a Tree Preservation Order (TPO)
  - Ensuring planning applications have tree information submitted in accordance with the relevant British Standard (currently BS5837:2012)
  - Ensuring that potential conflicts between development and trees are minimised.
- 5.2 The main tree issues that need to be considered by a developer include:
- the size, height, maturity and species;
  - the avoidance of root severance and ground compaction; and
  - the siting of buildings to minimise shading, leaf fall and potential storm damage.
- 5.3 The amount of detail required will vary depending on the type of development taking place; it is advisable to contact the Councils Tree Officer to discuss further. Contacts are set out in chapter 1 of this report.



A good example of a protected, i.e. TPO'd oak tree included within the overall layout of a business site.

## Arboriculture Implications Assessment

5.4 It is important to note that trees established outside the proposed development site which impact on the site either by canopy spread or root system will also need to be considered within an Arboriculture Implications Assessment (AIS) in line with BS 5837 (2012). This assessment includes the potential proximity of trees to structures and the constraints that the trees will pose on the site layout. The diagram below shows the position of the trees both inside and outside the red line of the development site that need to be assessed by the AIS.



5.5 A **Tree shading plan** may be required as part of the AIS. A tree shading plan shows the extent of the tree shadows cast by the tree canopy at various times of the day and in particular seasons. The shading layout informs the design and layout of the site which in turn mitigates potential conflict between the development and the trees, i.e. less money spent on tree maintenance as a consequence of shade cast by trees. Specific details of the month and time will be specified by the Tree officer.

5.6 The **root protection area (RPA)** identified by the AIS does not indicate the closest point to a tree where development can take place. There are other factors that must be taken into consideration. The photograph above shows a house built outside the RPA but the property is still too close to the tree which will result in a future conflict with the protected tree.

5.7 It is the **Tree Protection Plan** which shows the area around the trees to be protected from development and details how this is to be achieved by the positioning and type of protective fencing, there are some examples of good and poor practice below:



Orange webbing used as protective fencing is not acceptable



Here, fencing hasn't been secured and has been pushed over by the adjacent soil - this is not acceptable.





5.8 An **Arboricultural Method Statement** illustrates and details how all the on-site operations will take place without compromising the trees. The amount of detail required will vary depending on the type of development taking place; this can be discussed by contacting the Councils Tree Officer contact details are set out in Chapter 1.

### Structural tree planting

5.9 This is the use of newly planted large trees in groups or lines to define a space or spaces. It is the overall effect that the trees have, as opposed to their species, which is important. Structural planting therefore informs the perception of a site and how it is used whilst also helping to give an area its character. Trees planted in verges to form a boulevard are structural planting, as is planting used as a boundary, screen or to form a means of enclosure. Boulevard planting on main access and through routes on the site should be provided.

5.10 Wherever possible the main roads entering and traversing the site will have verges and tree planting i.e. to create an avenue or boulevard. This will comprise a grass verge adjacent to the roads which will be a minimum of 2m in width and will be planted with appropriate species at a minimum size of 14/16 extra heavy standard. Suggested tree species have been chosen for their goblet- shaped tree canopy to minimise highway and residential issues and include :-

- *Acer rubrum* "Armstrong"
- *Amelanchier arborea* "Robin Hill"
- *Corylus coryluna*
- *Ginkgo biloba* "Nanum" & "Saratoga" & "Princeton Sentry"
- *Malus trilobata*
- *Prunus* "Sunset Boulevard"
- *Pyrus* "Chanticleer"
- *Quercus fastigiata* "Koster"

- *Quercus pulustris* “Fastigiata”
- *Sorbus x thuringiaca* “Fastigiata”
- *Ulmus*”New Horizon”

This is far more effective and practical in aesthetic terms than planting individual trees in front and rear gardens.

5.11 The strong structural planting defines spaces and adds to the quality of the overall development in terms of its landscape and has been shown to add financial value to a site. Wherever possible structural planting will be favoured over tree planting in front and rear gardens.

### Trees on public open spaces

5.12 It is recognised that trees need space to grow and that they will need to be maintained. To provide landscape amenity, specimen trees should be sited on Public Open Space (POS) so that they can be enjoyed by all and are not a financial or practical burden to an individual.

5.13 This stance recognises that trees on development sites should be for the benefit of all. One of the key tenets of a TPO is that the tree/s should be highly visible to the public and this beneficial relationship should be shared by all trees within a development. This is particularly important where there are few trees on the development site. Trees also require a large area to grow to their full potential much larger than an average garden on a new development. As well as the benefit to residents trees sited in a public area provides character to the street scene of overall development.

5.14 Where there are trees proposed on public spaces adjacent to areas of play e.g. Local Equipped Areas for Play (LEAPS) or Local Areas for Play (LAPS) then Fastigate (i.e. upright growing) trees will be planted to minimise social and maintenance issues.

5.15 The number of trees and their siting will depend on the size of the play area within the public open space. The trees will form part of the overall structural planting of the development site and they will be positioned to ensure that the play areas remain visible and do not impact on the maintenance of the play areas.

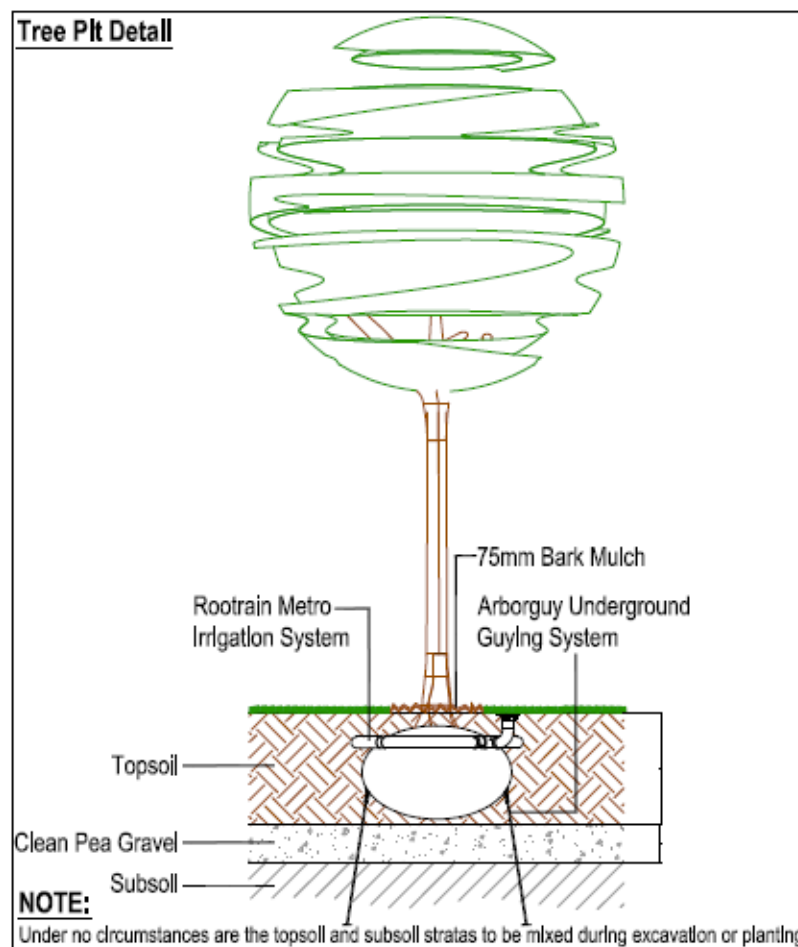
5.16 Suggested columnar trees include :-

○ <i>Acer campestre</i> “William Caldwell”	○ <i>Amelanchier</i> “Obelisk”
○ <i>Betula utilis</i> “Edinburgh”	○ <i>Fagus sylvatica</i> “Dawyck”, “Dawyck Gold” & “Dawyck Purple”
○ <i>Liquidambar</i> “Slender Silhouette”	○ <i>Picea abies</i> ”Cupressina”
○ <i>Populus tremuloides</i> “Erecta”	○ <i>Sorbus aucuparia</i> “Fastigiata”
○ <i>Taxus fastigiata</i>	○ <i>Ulmus columnella</i>
○ <i>Ulmus x hollandica</i> “Dampieri Aurea”	

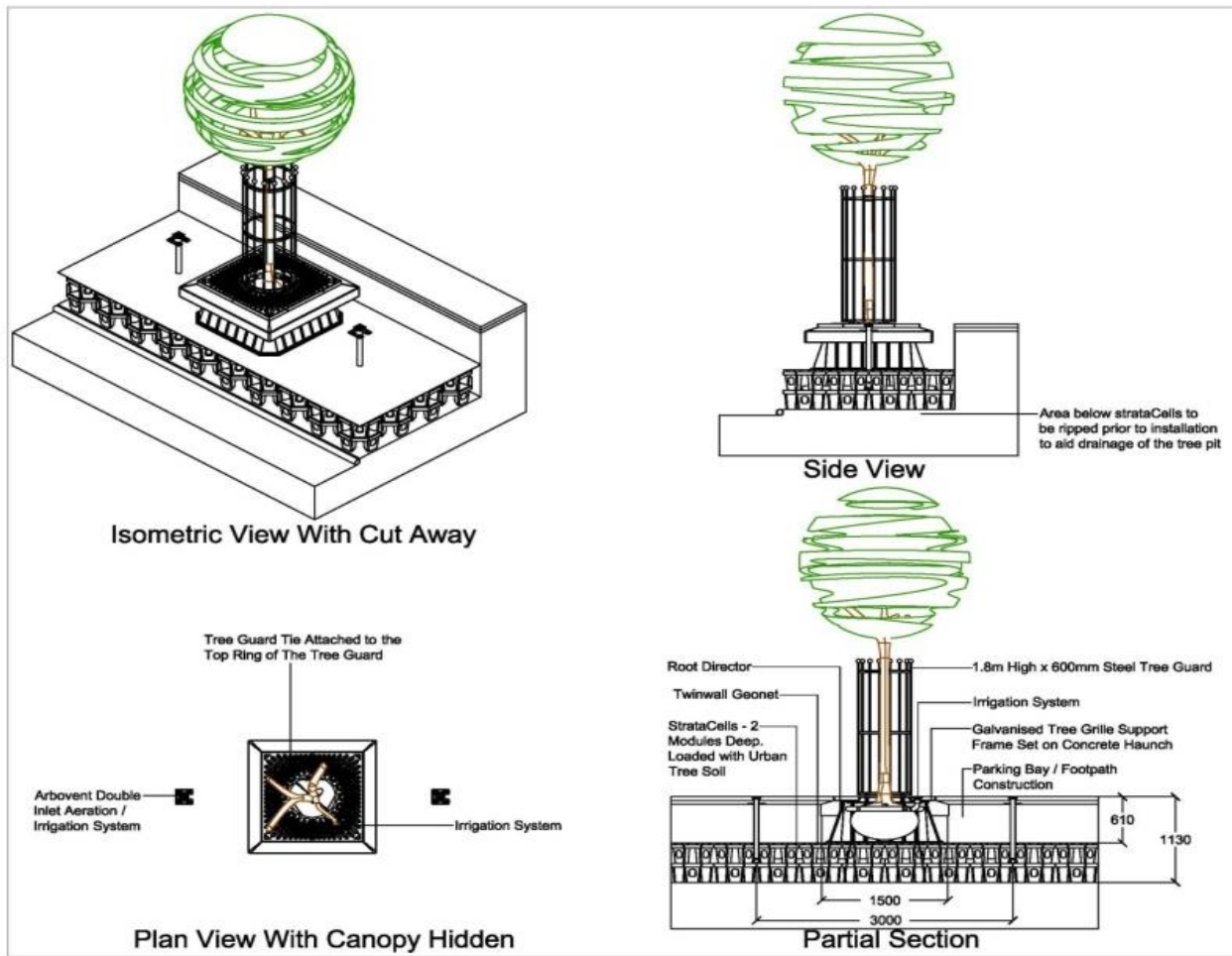


## Tree planting details

### 5.17 Planting in open ground and grass verges



### 5.18 Planting in hard surfaces, e.g. pavements and car parks, to encourage downward root growth and minimise surface damage by tree roots.



## 6. Woodland and Development

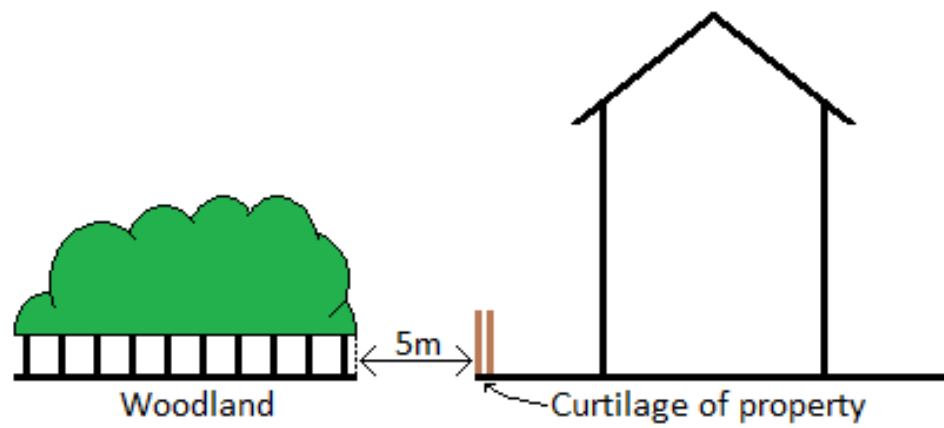
6.1 Woods are diverse and complex ecosystems that have taken time to develop & evolve. This means that they are valuable and fragile assets. They are protected by various areas of legislation and must be treated sensitively if they are to complement development layouts.

6.2 Protection of Woodland and Woodland edges:

- Woodlands are to be kept as an entity.
- Woodlands will not be subdivided and apportioned within residents gardens.
- There should be a woodland buffer i.e. a strip of land between the woodland and the curtilage of the development, which is clearly demarcated.
- There is to be a minimum distance of 5m between any part of the canopy and any part of the curtilage.
- Details of the maintenance of the buffer must be provided by the developer.

6.3 Careful consideration should be given to the layout design of the development and woodland areas. Where possible, properties should front onto woodland areas to provide natural surveillance, rather than create a buffer hidden behind garden fences with the risk of future

antisocial behaviour. Consideration may need to be given to issues such as street lighting especially if the woodland is home to protected species such as bats.



## 7. Hedgerows and Development

- 7.1 Where the long term retention of native hedgerows is considered to be threatened by removal, Newport City Council may undertake an assessment of the hedge to ascertain its importance within the area. The assessment is carried out by a suitably trained and experienced person usually with a background in ecology, landscape architecture or arboriculture.
- 7.2 The assessment of hedges is undertaken to set criteria and includes but is not limited to the following:
- Common land;
  - Protected land;
  - Land used for agriculture or forestry;
  - Land used for the keeping or breeding of horses, ponies or donkeys.
- 7.3 Failure to comply with a hedgerow retention notice or to notify NCC of intent to remove an important hedgerow may result in prosecution and if found liable may result in an unlimited fine.
- 7.4 For further information refer to appendix A of the DEFRA publication “**The Hedgerow Regulations: a guide to the law and good practice**”<sup>9</sup>
- 7.5 It should be noted that the Hedgerow Regulations do not relate to a hedge that forms part of the boundary of a residential property.
- 7.6 Key actions related to hedgerows:
- Hedgerows should not be removed without prior approval of the local authority.
  - Where appropriate, hedgerow retention notices will be issued.
  - Breaches of the hedgerow regulations will be enforced and legal action will be taken where it is expedient to do so.

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<sup>9</sup> Available to view at: [http://www.planningportal.gov.uk/uploads/pins/hedgerow\\_\\_guide\\_part\\_1.pdf](http://www.planningportal.gov.uk/uploads/pins/hedgerow__guide_part_1.pdf)

## 8. Tree Preservation Orders

8.1 Technical Advice Note 10: Tree Preservation Orders (1997), produced by the Welsh Government, sets out how Local Authorities are able to make and use Tree Preservation Orders (TPO) to prohibit such works as the cutting down, topping, lopping, wilful damage or wilful destruction of a tree or trees in the interest of amenity without the consent of the planning authority. There is a right of appeal against the consent process. It is important to note that the Office for the Deputy Prime Minister (ODMP) has published "Tree Preservation Orders: A guide to the law and good practice" which has been adopted by NCC as the standard way of administering TPO's within its area.

8.2 Trees and/or woodlands that are considered to be at high risk from landowners or developers who may fell or "top" a tree(s) which can lead to a devaluation of the landscape character within an area will be protected. All types and species of tree, including hedgerow trees can be covered, but not hedges, bushes or shrubs.

### **How do I find out if a tree is covered by an order?**

8.3 Contact Newport City Council to find out if your tree is covered by a Tree Preservation Order (TPO) contact for the Tree Officer is set out in chapter 1.

### **How does the Council decide if a TPO is required?**

8.4 There are three main circumstances under which orders are made:

- I. **Trees in Conservation Areas:** When the Council is notified of works to be carried out to trees within a Conservation Area a judgement can be made as to whether a TPO is needed.
- II. **Trees on development sites:** When a planning application is received, the Council can consider making such protection orders if it is felt necessary.
- III. **Trees under threat for other reasons:** Neighbours with concerns about particular trees may contact the Council who will consider their case.

### **Three classifications of TPO.**

8.5 There are also three classifications of TPO:

- I. **Individual trees** – Protection of single trees each with a unique references; the prefix 'T' followed by a number i.e. T40.
- II. **Groups of trees** – Protection of a number of trees within a demarcated area again with a unique reference, the prefix 'G' followed by a number i.e. G20. The group may contain a defined number of tree species and specifies what they are e.g. G1 may contain 12 oak, 5 ash and 3 cherry.
- III. **Woodlands-** Protection of all the trees of all sizes including young and sapling trees within a defined boundary e.g. W1 may be described as mixed deciduous woodland. This also has a unique reference, the prefix 'W' followed by a number i.e. W85

### **How is a TPO made?**

8.6 TPO's are made and confirmed by Officers, under delegated powers at Newport City Council. An order takes effect immediately and this is called a "*Provisional Tree Preservation Order*" which can then be subsequently "*Confirmed*".

8.7 Within a period of six months of the "Provisional" Order being made, the TPO must be confirmed or it will lapse. Comments must be made within 28 days of being notified of the provisional order. These comments will be taken into account when the Council considers whether to confirm the

order. If objections are received to the Provisional TPO, a report will be considered by the Planning Committee Members which will be submitted and discussed at full Planning Committee. If no objections are made the TPO will be signed off by the Head of Regeneration Investment and Housing.

### **What happens once a tree is protected?**

8.8 Once a tree has Provisional TPO status it is protected. Permission will be needed from the Local Authority to do work to the tree whether it has a confirmed TPO or provisional TPO. This includes any pruning (including root pruning) and felling. It is a criminal offence to do work to a protected healthy tree without this permission. Not knowing the tree is protected is not a defence. The Courts have imposed significant fines for offences involving unauthorised works to protected trees. Where trees have been felled without consent to create a development plot, the fine has been significantly increased to reflect the uplift in land value, resulting in the offender receiving a very substantial fine (and a criminal record).

### **Carrying out works to protected trees**

8.9 There are some works that can be carried out on a protected tree without permission as set out below. If you are not sure then contact the Council's Tree Officer for further information (contact details are set out in section 1 of this document).

- a. Where the tree is dead, or imminently dangerous. This includes the removal of dead wood or dangerous branches from an otherwise sound tree. You are strongly advised to seek expert written confirmation from a qualified tree surgeon and/or contact the Council's Tree Officer before proceeding. In the case of an imminently dangerous tree, the person employed to fell the tree should be able to provide this confirmation.
- b. Where works are in compliance with obligations imposed by an Act of Parliament.
- c. For works by statutory undertakers<sup>10</sup>; in most cases exemptions apply to works to abate a statutory obligation.
- d. Works to make safe damaged, diseased or dangerous trees or parts of trees are considered as exempt to the terms of the TPO and similar statutory obligations.
- e. For the pruning of fruit trees where the trees are cultivated for fruit production.
- f. For works to enable a development to take place in line with a full planning permission.

### **Dead or dangerous trees**

8.10 Except in an emergency, you must give Newport City Council at least five days written notice before you carry out works on a dead or dangerous protected tree. If you take down or do other works to a tree in an emergency, you must notify us in writing/email together with a photograph as soon as possible after the works become necessary. It is important to note that you could be prosecuted if it is deemed that you have carried out unauthorised works. You may also be asked to plant another tree that is of an appropriate size and species and in the same place as the tree felled. This should be done as soon as is reasonably possible e.g. in the first planting season following the removal of the tree. The new tree will have the same legal protection as the tree it replaced.

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<sup>10</sup> *Statutory undertakers, those charged with the installation, maintenance and repair of utilities, telecoms, airports, highways and other such infrastructure also enjoy a number of exemptions to carry out the tree works required to fulfil their duties. It is important to note, however, that they should still have regard for the legislation and only carry out the minimum works required whilst causing the least amount of disturbance as possible.*

### **Who is responsible for the health and safety and cost regarding protected trees?**

8.11 The land owner is responsible for the health, safety and any work required to protected trees and woodlands (not the Local Authority). This includes any costs incurred. Tree owners are strongly advised to have their tree stock inspected routinely (e.g. every 3 years) by a qualified Tree Consultant. Any recommendations contained within the report will form the basis of an application to carry out work to protected trees. By ensuring trees are proactively managed, tree owners have upheld their legal Duty of Care.

#### **How do I apply for works to a TPO?**

8.12 There is an application form which may be found on the Councils website [www.newport.gov.uk/planning](http://www.newport.gov.uk/planning). Alternatively email [planning@newport.gov.uk](mailto:planning@newport.gov.uk) or phone 01633 656656 to request a form.

8.13 You may wish to discuss the intended work with the Councils Tree Officer (contact details are in chapter 1 of this report)

## 9. Trees and Conservation Areas

9.1 Conservation Areas are areas of special architectural or historical interest. Landscape features, including trees may also contribute to the special character of a Conservation Area. There are 15 Conservation Areas within Newport:

1. The Shrubbery	6. Beechwood Park	11. Kensington Place
2. Caerleon	7. Lower Machen	12. Monmouthshire and Brecon Canals
3. Town Centre	8. Lower Dock Street	13. Redwick
4. St Woolos	9. Belle Vue Park	14. Stow Park
5. Waterloo	10. Clytha	15. Tredegar House and Grounds

9.2 Trees within Conservation Areas are essentially afforded the same level of protection as trees that have TPO's. The key difference is in how the proposed works are administered. When works are proposed to a tree within a Conservation Area, the Council must be notified of this intent at least 6 weeks prior to the works being undertaken.

### How do I find out if a tree is in a Conservation Area?

9.3 You can visit the councils website [www.newport.gov.uk](http://www.newport.gov.uk) and search on 'My Maps' or Contact the Conservation Officer of the Council to find out if your tree is located within a Conservation Area (telephone 01633 656656).

### Works to trees in Conservation Areas

9.4 If work is requested to trees within a Conservation Area , Newport City Council must be given at least six weeks "notice of the intention" to do these works in writing together with a plan showing where the tree/trees are located.

9.5 The Council has three options in response to the notification:

9.5.1.1 The Council can reply advising that they have no objections,

9.5.1.2 The Council can choose not to reply within the 6 week period at which time the person carrying out the work may take it that the Council has no objection; Or

9.5.1.3 The Council may serve a TPO on the tree preventing any works being undertaken without prior consent.

9.6 Work can go ahead when there is no objection to the proposed work; The tree or trees do not merit a Tree Preservation Order: or A decision has not been made within six weeks of the date of receiving the notice

9.7 It is an offence to cut down, uproot, top, lop, wilfully destroy or damage a tree in a Conservation Area.

9.8 Any works carried out to trees within the NCC area, including protected trees, must be carried out in accordance with British Standard 3998 of 2010 "tree works-recommendations" and industry best practice related to tree works either directly or indirectly by well qualified and insured tree surgeons.



## How to give notice of proposed tree works?

9.9 There is an application form which may be found on the Councils website [www.newport.gov.uk/planning](http://www.newport.gov.uk/planning). Alternatively email [planning@newport.gov.uk](mailto:planning@newport.gov.uk) or phone 01633 656656 to request a form

9.10 You may wish to discuss the intended work with the Councils Tree Officer (contact details are in chapter 1 of this report)

### Public register and publicity

9.11 The Council keep a public register of all notifications received for works to trees, see weekly lists within the planning section of the Councils website. The Council do not need to publicise a notification of tree works. However, if the proposal involves the felling of trees, we may place a notice on site or notify adjoining occupiers.

### What decisions are open to the Council?

9.12 The Council can either: Decide to make the tree or trees the subject of a Tree Preservation Order or decide not to make the tree or trees the subject of a Tree Preservation Order. The Council will inform the applicant of its decision and let them know when works can go ahead.

### Are there any works that can be done without giving 6 weeks' notice?

9.13 Except in an emergency, you must give us at least five days' notice before you carry out works on a **dead or dangerous protected tree**. If you take down or do other works to a tree in an emergency, you should notify the Council in writing as soon as possible after the works become necessary. You could be prosecuted if the Council considered that unauthorised works have been carried out. If a tree is removed because it is dead or dangerous, the Council may be asked for another tree to be planted which is of an appropriate size and species and in the same location as the tree felled. Replacements should usually be planted in the first planting season following the removal of the tree. The new tree will have the same legal protection as the tree it replaced.

9.14 Also for works to a tree of a **diameter not exceeding 75mm at 1.5 metres above ground level**, (or 100mm if cutting down trees to improve the growth of other trees, for example, thinning operations)

9.15 Where works are required to immediately **implement a full planning permission**

9.16 The penalties for carrying out works to trees within a Conservation Area are the same as TPOs. If found guilty of an offence the person who carried out the work, commissioned the work or who allowed the work to go ahead may be liable for a fine of up to £20,000 for the first offence and an unlimited amount after that.

## **10. Felling Licences for trees on private land**

10.1 Under the **Forestry Act 1967** a felling licence is required to fell more than 5 cubic metres of timber in any calendar quarter (e.g. Jan to Mar, Apr to Jun, Jul to Sep and Oct to Dec), and if more than two cubic metres is to be sold. Five cubic metres is roughly equivalent to one large oak tree or 50 thin chestnut coppice trees. Full details of how to apply may be obtained from Natural Resources Wales<sup>11</sup>. N.B. This does not affect trees in private gardens.

## **11. Trees & Woodland on Council land that is to be sold for Development**

11.1 As the landowner, the Council will take all reasonable steps to safeguard and retain trees on its land. The Council does not put TPOs on its own trees because as land-owner it is in control of what happens to them. However, decisions to prune or fell significant trees or groups of trees are assessed by professional officers and the same criteria apply as for TPO trees on private land.

11.2 However, once Council land is sold there is currently no protection for the tree stock that has been inspected and maintained by the Local Authority.

11.3 Therefore, prior to sale of Council land the Local authority will have the opportunity to TPO trees and woodland that are of merit.

11.4 This is to ensure that one of the key issues in the Local Development Plan is met (a greener and healthier City) and it will also contribute to Newport's goal of improving its tree cover .

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<sup>11</sup><http://naturalresourceswales.gov.uk/apply-and-buy/apply-for-a-tree-felling-licence/information-about-applying-for-a-tree-felling-licence/?lang=en>

**Newport City Council**

*Supplementary Planning Guidance*

# **HOUSES IN MULTIPLE OCCUPATION (HMOs)**



*Updated November 2016*



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## **1.0 INTRODUCTION**

### **1.1 What is supplementary planning guidance (SPG)?**

1.1.1 Published as an addition to the Newport Local Development Plan 2011 – 2026 (Adopted Plan, January 2015), supplementary planning guidance provides clear, in-depth advice on a range of planning and development issues. Before it can be adopted, it has to undergo a period of public consultation and then receive the Council's approval. Once adopted, it constitutes one material consideration in the determination of relevant planning applications.

### **1.2 What is the history of the Houses in Multiple Occupation SPG?**

1.2.1 This SPG was formally adopted on 06 August 2015 and updated in May 2016.

### **1.3 What is the purpose of this SPG?**

1.3.1 To explain how the council assesses applications for planning permission to create houses in multiple occupation.

### **1.4 Further advice**

1.4.1 Further advice may be sought from:

Development Management, Newport City Council, Civic Office, Godfrey Road, Newport NP20 4UR.

e-mail: [planning@newport.gov.uk](mailto:planning@newport.gov.uk)

Duty Planning Officer: 01633 656656

(Available Monday, Wednesdays and Fridays 8.30 – 17.00)

## **2.0 TERMINOLOGY**

### **2.1 Dwellinghouse**

2.1.1 The Town and Country Planning (Use Classes) Order 1987<sup>12</sup> defines a dwellinghouse as a residence that is used (whether or not as a sole or main residence):

- a) by a single person or by persons living together as a family; or
- b) by not more than six residents living together as a single household (including a household where care is provided for residents); or
- c) by no more than six residents living together as a single household who do not fall into definition of House in Multiple Occupation (see below).

### **2.2 House in Multiple Occupation (HMO)**

2.2.1 A house in multiple occupation (HMO) is not a dwelling house but covers shared houses or flats occupied by between three and six unrelated individuals who share basic amenities. The definition is the same as in section 254 of the Housing Act 2004.<sup>13</sup>

### **2.3 Large Houses in Multiple Occupation**

2.3.1 A house with more than six people sharing are unclassified by the Used Class Order and in planning terms are therefore considered to be 'sui generis'. A change of use application is therefore required where a material change of use is considered to have taken place. That would be where the total number of residents has increased to the point where it can be said the use has intensified so as to become a different character or the residents no longer constitute a single household.

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<sup>12</sup> [www.legislation.gov.uk/ukxi/1987/764/contents/made](http://www.legislation.gov.uk/ukxi/1987/764/contents/made)

<sup>13</sup> [www.legislation.gov.uk/ukpga/2004/34/section/254](http://www.legislation.gov.uk/ukpga/2004/34/section/254)

### **3.0 POLICY CONTEXT**

#### **3.1 National policy**

##### *3.1.1 Planning Policy Wales*

This document sets out the land-use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TANs). Procedural advice is given in circulars and policy clarification letters.

##### *3.1.2 Paragraph 3.1.7 states the following:*

“The planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. The Courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such consideration should be based on general principles, reflecting the wider public interest (for example a standard of “good neighbourliness”), rather than the concerns of the individual.”

##### *3.1.3 Technical Advice Note 15: Development and Flood Risk (2004)*

This document establishes a precautionary framework for assessing development proposals in flood-prone areas. In certain circumstances, developers may have to submit Flood Consequence Assessments in an attempt to justify their proposals. In especially vulnerable locations, however, even the principle of residential development is unlikely to be acceptable.

#### **3.2 Local policy**

##### *3.2.1 Newport Local Development Plan 2011 – 2026 (Adopted Plan, January 2015)*

Policy GP2 (General Amenity) states the following:

“Development will be permitted where, as applicable:

- 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 antisocial 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.”

### 3.2.2 Policy H2 (Housing Standards) states the following:

“Residential development should be built to high standards of environmental and sustainable design, taking into account the whole life of the dwelling.”

Excerpt of supporting text:

“Residential development of all types, whether new development, redevelopment, conversions, extensions or changes of use, should be carried out in as sustainable way as possible, to reduce the impact on the environment both of the construction and subsequent use of the dwelling.”

### 3.2.3 Policy H8 (Self-contained Accommodation and Houses in Multiple Occupation) states the following:

“Within the defined settlement boundaries, proposals to subdivide a property into self-contained, bedsits or a house in multiple occupation will only be permitted if:

- i. The scale and intensity of use does not harm the character of the building and locality and will not cause an unacceptable reduction in the amenity of neighbouring occupiers or result in on street parking problems;
- ii. The proposal does not create an over concentration of houses in multiple occupation in any one area of the city which would change the character of the neighbourhood or create an imbalance in the housing stock;
- iii. Adequate noise insulation is provided;
- iv. Adequate amenity for future occupiers.”

### 3.2.4 Policy SP3 (Flood Risk) states the following:



“Newport’s coastal and riverside location necessitates that development be directed away from areas where flood risk is identified as a constraint and ensure that the risk of flooding is not increased elsewhere. Development will only be permitted in flood risk areas in accordance with national guidance. Where appropriate a detailed technical assessment will be required to ensure that the development is designed to cope with the threat and consequences of flooding over its lifetime. Sustainable solutions to manage flood risk should be prioritised.”

## 4.0 **BACKGROUND**

4.1 The conversion of properties to HMOs can make a valuable contribution to Newport's housing stock. For instance, HMOs can provide accommodation for a wide range of groups, including young professionals, students, migrants and persons on low incomes. In clusters, however, they can detract from the character of an area, leading to such problems as:

- Increased population density and greater demand for infrastructure and on-street parking;
- Potential physical deterioration of properties caused by lack of investment by absentee landlords;
- Higher proportion of transient residents leading to less community cohesion and underuse of community facilities;
- Areas with high HMO concentrations becoming unpopular with local residents, altering the character of the area;
- Increased demand for other services such as hot-food takeaways, bars, et cetera;
- A decline in pupil numbers at local schools;
- A proliferation of vacant properties in summer months.

## **5.0 GENERAL PRINCIPLES AND CONSIDERATIONS**

### **5.1 Separate Houses in Multiple Occupation licensing and planning regimes**

#### *5.1.1 HMO Licensing under the Housing Act 2004*

5.1.2 HMOs have required licences since June 2006. Newport City Council operates two HMO licensing schemes: Mandatory and Additional. The former relates to properties that comprise three or more storeys and accommodate five or more persons. The latter relates to properties that contain more than two households. HMO licences granted under both schemes are valid for five years. The council formally approved the Additional Licensing Scheme in December 2009 and renewed it for five years in June 2014.

5.1.3 The council's Public Protection, Environmental Health Housing team considers whether a property is safe and suitable for human habitation. It may revoke a licence if a HMO and/or its tenants are not properly managed. The licensing and planning regimes differ in their use of the term "house in multiple occupation". For licensing purposes, an HMO may be a shared house, a hostel, a guest house or a property containing bedsits, bed-and-breakfast facilities or self-contained converted flats. It will often be the case, therefore, that a local planning authority is unable to control a licensed HMO.

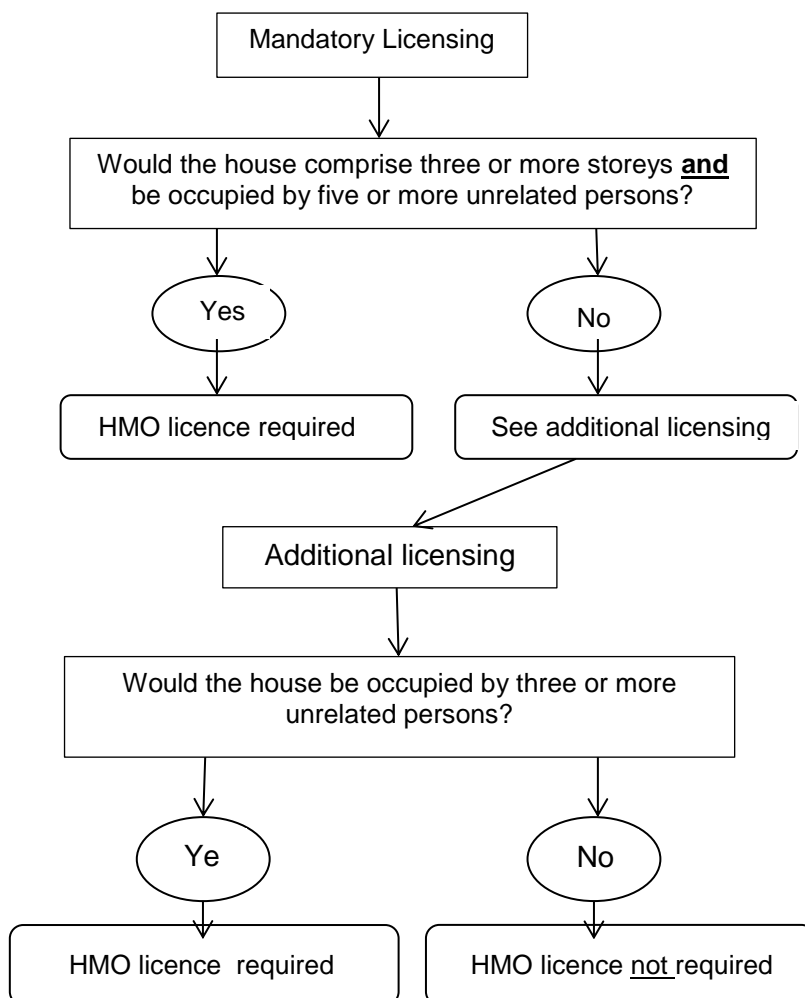
#### *5.1.4 Planning*

5.1.5 A local planning authority considers the land-use implications of HMOs. For instance, it may assess the likely effects on neighbours, the character of an area and the demand for on-street parking spaces. The Environmental Health licensing authority and the local planning authority have to exercise their powers independently of one another. It follows, therefore, that a proposal may receive an HMO licence, only to be denied planning permission, or vice versa.

5.1.6 A property constitutes a house in multiple occupation (HMO) when it is occupied as the main residence of three to six unrelated persons who, owing to physical, functional or legal arrangements, do not live together as a single household. Developers usually create HMO accommodation by converting existing buildings. Such proposals almost invariably require planning permission because they constitute a material change of use of the land and buildings.

The change of use from a house to bedsits, flats, a hotel, a bed and breakfast, a guest house or a hostel will always require planning permission.

5.1.7 The diagram below show the HMO licensing process (this example relates only to a house).



**Figure 1: Establishing the need for an HMO licence**

## 5.2 Assessing planning applications

5.2.1 This SPG applies only to HMOs that require planning permission. It will have no bearing on non-planning decisions, such as those relating to housing licences.

5.2.2 The Council will assess proposals for bedsits that have at least one shared amenity (e.g. a toilet, a bathroom or cooking facilities) in the light of this guidance.

### **5.3 Parking provision**

- 5.3.1 Parking provision must comply with the Newport City Council Parking Standards Supplementary Planning Guidance 2015. Schemes that meet those requirements only by sacrificing entire amenity spaces are unlikely to be acceptable. The council will resist the loss of traditional front gardens and boundary treatments, both of which are important features in a streetscape.
- 5.3.2 Parking spaces must be capable of independent use (tandem parking will not be acceptable), and parking areas must allow vehicles to manoeuvre in a safe manner. To this end, developers may need to provide turning areas that allow vehicles to enter and leave the site in a forward gear. Visibility requirements for driveways and openings will vary according to local traffic speeds.
- 5.3.3 The council will use planning conditions to secure the provision of secure cycle parking for residents of HMOs.

### **5.4 Amenity considerations**

- 5.4.1 Rooms should be arranged and designed in a manner that maximises the living standards of occupants. For instance, living rooms, kitchens and bedrooms should neither overlook adjoining properties nor face high boundary walls. Living rooms, moreover, should not be next to, directly above or directly below a bedroom in a neighbouring property.
- 5.4.2 Conversion schemes must reduce the transmission of sound (e.g. music and televisions) between floors, ceilings and adjoining rooms or properties by means of acoustic insulation. The council will use planning conditions to ensure that residents have reasonable living standards.
- 5.4.3 HMOs should provide outdoor amenity spaces in which residents can relax, dry their clothes and store refuse and recycling bins. Shared amenity spaces will be acceptable so long as they can accommodate every resident of the properties that they serve. In certain locations, such as the city centre or one of the district centres, the council may relax its requirements in respect of amenity spaces. Every HMO, however, must provide storage space for refuse and recycling bins.

5.4.4 A rear passageway will be acceptable as a primary access point only if it is wide, well lit and already used extensively for that purpose. In no circumstances may an HMO and a non-residential unit (e.g. a shop) share a single entrance.

5.4.5 The Council's Environmental Health (Housing Licensing) department provides guidance on room-size requirements for HMOs. In order to avoid complications, applicants ought to familiarise themselves with these standards before applying for planning permission.

## **5.5 Character of the area**

5.5.1 National planning policy (Planning Policy Wales) requires local planning authorities to promote safe and attractive mixed-tenure communities. For the time being, though, HMOs are not evenly distributed throughout Newport. Certain electoral wards contain comparatively high numbers of HMOs, and the same is true for particular areas within those wards. Clusters of HMOs can alter the composition of a community and detract from local visual amenity. Some HMOs, for instance, may have poorly maintained exteriors and front gardens. Others may have had their front gardens turned into parking areas. Many such properties, moreover, increase demand for on-street parking, making surrounding roads noisier and more cluttered.

5.5.2 The Council must confine its assessment of an HMO proposal to material planning considerations. It cannot consider the circumstances or likely behaviour of prospective residents.

5.5.3 This guidance introduces a threshold above which HMOs are considered to detract from the character of an area. The council will apply this threshold to planning applications in order to manage the distribution of HMOs throughout Newport.

5.5.4 A two-tier threshold limit has been identified for use. In general, the council will not support a planning application that would take the number of HMOs, considered as a proportion of the local housing stock, above a specified limit. In "defined areas" (see the HMO Threshold Map on p. 18), this limit is 15%; in other areas, 10%. Proposals that exceed these figures will be unsuccessful unless their implementation, judged in the light of all other material considerations, would serve the public interest. When considering a planning application, the council will bear in mind existing approvals in the surrounding area, even if the approved HMOs are not yet operational.

5.5.5 It is usually those who live in proximity to HMOs who feel their negative effects most keenly. For each proposal, therefore, the Council will use a radius to identify an area in which to apply the threshold limits identified. This area will include all residential properties the entire principal elevations (normally the front walls) of which lie within a 50-metre radius of the application site. In order to achieve consistency, the council will use its online mapping system to establish the radial area for a given property.

5.5.6 In certain areas of Newport, such as those with large residential plots or comparatively sparse development patterns, a fifty-metre radius may capture only a handful of properties. In such cases, the council will apply the relevant threshold to an area that contains at least 10 dwellings. Should a fifty-metre radius fail to capture the required number of properties, the council will select the nearest 10 dwellings from the same side of the street as the proposed HMO.

5.5.7 A worked example for measuring the area of impact can be found on pp. 17-18. In practice the number of existing HMOs within the fifty meter radius will be checked by the case officer using data provided by the Environmental Health Housing team to ensure the most up to date information is used.

## **5.6 Design**

5.6.1 Conversion proposals should not detract from the character and appearance of the building. Any conversion involving external alterations should respect the form, scale and materials of the original building and the visual character of the area. This includes the style and proportion of window and door openings.

## **5.7 Alterations to listed buildings**

5.7.1 Listed-building consent may be required for both internal and external alterations to a listed building. Bearing in mind that it is a criminal offence to carry out unauthorised works to a listed building, the council recommends that developers seek guidance from the Historic Buildings Conservation Officer before submitting an application.

5.7.2 The council, when considering whether to grant planning permission for development that affects a listed building, has a statutory duty to “have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest that the building possesses” (Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990). Planning Policy Wales (Edition 6, February 2014) states that there should be a “general presumption in favour of the preservation of listed buildings” (Welsh Government, 2014: p. 93).

## **5.8 Alterations to buildings within conservation areas**

5.8.1 Newport contains 15 conservation areas, the details of which may be found on the council’s website. Permitted-development rights are curtailed in all conservation areas, but some rights are removed entirely from areas in which Article 4(2) Directions have been issued.

5.8.2 Newport City Council, when determining any planning application for development in a conservation area, has a duty to pay special attention to the “desirability of preserving or enhancing the character and appearance of [a conservation] area” (Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990). In every submission, therefore, the applicant should indicate precisely how the proposed development would appear in the context of its surroundings.

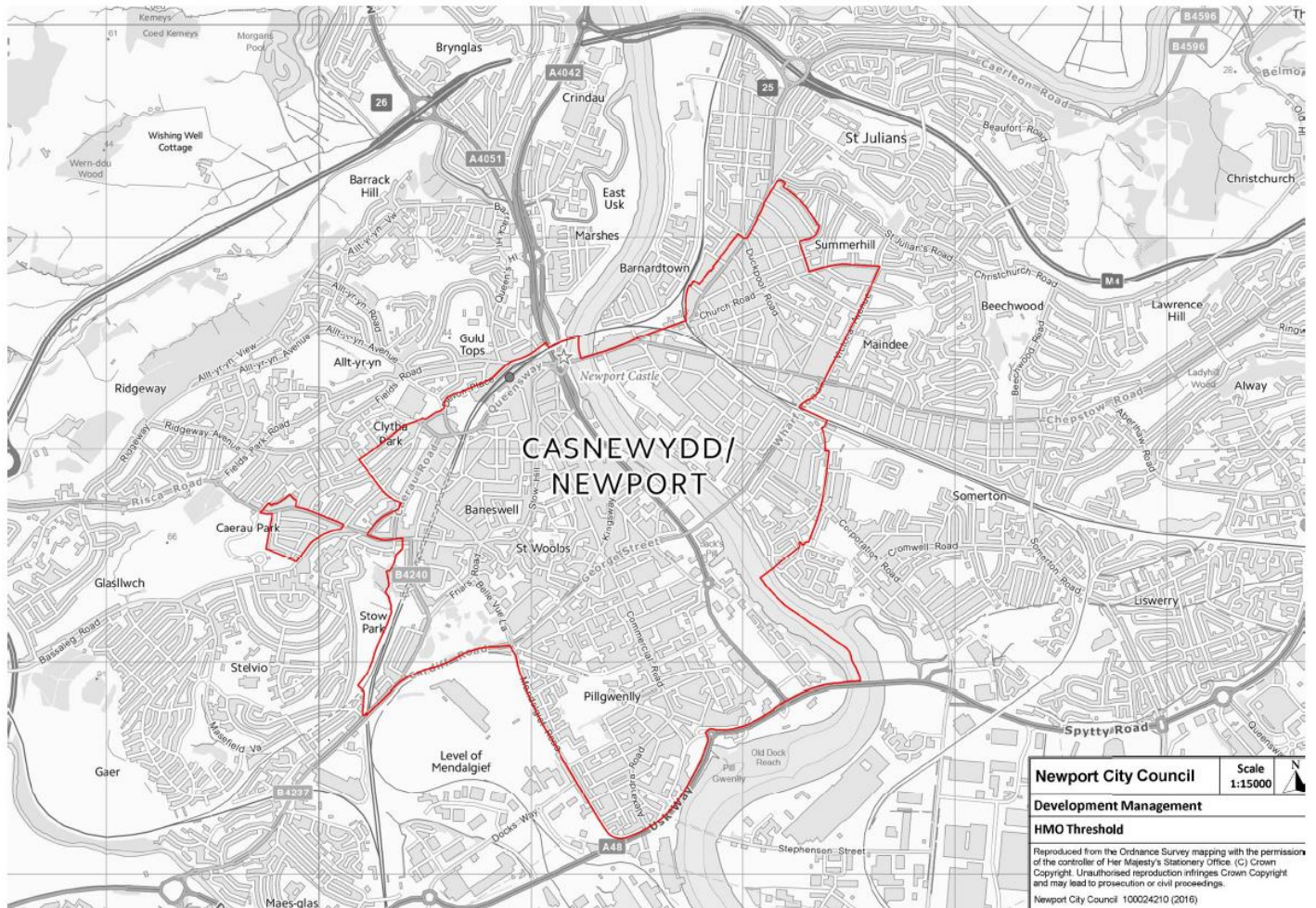
## **5.9 Design considerations**

5.9.1 Where it is proposed to convert a ground floor shop or business unit into a residential unit, the design and final appearance should closely respect the upper storeys in terms of window style, size, spacing and the overall finish to match in terms of materials and detailing (e.g. lintels or sills).



## 6.0 HMO THRESHOLD MAP

Figure 2: HMO threshold map



## 6.1 Worked Example (15% threshold)



Figure 3: Worked example (15% threshold)



6.1.1 Figure 3 shows a residential property, outlined in red, at which a notional applicant wishes to create a HMO. A 50-metre radius, taken from the address point of the application site, creates a circular area for assessment. This area captures entire front elevations at 26 residential properties. Situated within the 50-metre radius are three licensed HMOs (denoted by green dots). Collectively, these constitute 11.5% (3 of 26 properties) of the selected housing stock. Were the proposal to proceed, however, HMOs would constitute 15.4% (4 of 26 properties) of that stock, exceeding the permitted threshold. The council, therefore, would refuse this application unless its implementation, judged in the light of all other material considerations, would serve the public interest.

6.1.2 The council's ishare mapping system is available at: <http://my.newport.gov.uk/iShare> (enter the address and then turn 50-metre radius on via the 'find nearest' tab on the left of the page). You can then overlay the Housing HMO layer to gain a general understanding of the number of HMOs in the direct area to the application site. Please note that this information is dated 2015 and for an up to date position please contact the Environmental Health Housing Section of the Council.

Note:

- Each building constructed as, or converted into, flats will be counted as one property.

## 7.0 LIST OF FIGURES

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[Outdoor Play Space Provision SPG](#); (click link) – no changes proposed



Mineral Safeguarding  
SPG (Post consultatio

- Trees, Woodland, Hedgerows and Development Sites SPG;



Post Consultation  
Tree SPG Nov 2016.d

- Houses in Multiple Occupation SPG.



Houses in Multiple  
Occupation - SPG (Po

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