

Agenda



Planning Committee

Date: Wednesday, 7 April 2021

Time: 10.00 am

Venue: Virtual Meeting

To: Councillors J Richards (Chair), J Guy (Deputy Chair), J Clarke, T Holyoake, G Berry, T Watkins, R White, W Routley, C Ferris, J Jordan and M Spencer

Item	Wards Affected
1. <u>Apologies for Absence</u>	
2. <u>Declarations of Interest</u>	
3. <u>Minutes of the meeting held on 3 March 2021</u> (Pages 3 - 6)	
4. <u>Development Management: Planning Application Schedule</u> (Pages 7 - 48)	

Contact: Neil Barnett, Governance Officer
Tel: 01633 656656
E-mail: democratic.services@newport.gov.uk
Date of Issue: Wednesday, 31 March 2021

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Minutes

Planning Committee

Date: 3 March 2021

Time: 10.00 am

Present: Councillors J Richards (Chair), J Guy (Deputy Chair), J Clarke, T Holyoake, G Berry, T Watkins, R White, W Routley, C Ferris and J Jordan

In Attendance: Tracey Brooks (Head of Regeneration, Investment and Housing), Matthew Sharp (Acting Development Services Manager), Joanne Evans (Senior Solicitor), Joanne Davidson (East Area Development Manager), Stephen Williams (West Area Development Manager), Morgan Howell (Principal Planning Officer), Lindsay Christian (Acting Planning Policy Manager), Steve Manning (Senior Scientific Officer), Alun Lowe (Planning Contributions Manager), Anna Griffiths (Senior Traffic Transport and Development Officer), Michelle Aspey (Housing Manager Strategy), Edward Davis (Pollution Control Officer) and Neil Barnett (Governance Officer)

1. **Declarations of Interest**

None.

2. **Minutes of the meeting held on 3 February 2021**

The minutes of the meeting held on 3 February 2021 were submitted.

Resolved

That the minutes of the meeting held on 3 February 2021 be taken as read and confirmed,

3. **Development Management: Planning Application Schedule**

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

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

4. **Publication of the Future Wales: The National Plan 2040 – Implications for applications determined by Planning Committee with a resolution to Grant, Subject to Section 106 Agreement**

The Committee voted unanimously that the publication of 'The Future Wales: The National Plan 2040' and associated updates to Planning Policy Wales does not affect the Planning Committee decisions previously made on the applications listed on pages 140 to 142 of the agenda.

The meeting terminated at 1.28 pm

Appendix A
 PLANNING COMMITTEE – 03 03 2021
 DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
20/1176	<p>Site: Land South Of Unit 3 The Courtyard, Imperial Park, Coedkernew, Newport</p> <p>Proposal: Erection of two storey data centre buildings comprising B8 use and ancillary B1c use, provision of emergency generators, roof mounted air handling units, security cabin and vehicle airlock, fencing and CCTV, lighting, hard and soft landscaping, car parking and sustainable drainage</p> <p>Recommendation: Granted with conditions</p>	Marshfield	<p>Presented to Committee as this is a major planning application</p> <p>Mr Benjamin Nutch (Agent) spoke in support of the application</p>	Granted with conditions
20/0953 Page 5	<p>Site: Ringland Health Centre, Ringland Circle</p> <p>Proposal: Outline planning application (with all matters reserved) for the demolition of Ringland Health Centre, and the construction of Newport East Health Centre, Replacement Multi Use Games Area (MUGA) and associated works</p> <p>Recommendation: Granted with conditions</p>	Ringland	Presented to Committee as a major application	Granted with conditions
20/0726	<p>Site: Fourteen Locks Canal Centre, Cwm Lane, Rogerstone</p> <p>Proposal: Access improvements to include linking the Fourteen Locks Canal Centre and Monmouthshire and Brecon canal tow path</p> <p>Recommendation: Granted with conditions</p>	Rogerstone	Presented to Committee as this relates to Council owned land.	Granted with conditions

20/1138	<p>Site: Land To The East And Adjacent To Telford Street Depot Telford Street Newport South Wales</p> <p>Proposal: Proposed construction of 54no. residential units, access, stopping up of highway, engineering operations, landscaping, drainage and associated works</p> <p>Recommendation: Granted with conditions and subject to section 106 legal agreement</p>	Lliswerry	Presented to Committee as a major application	Granted with conditions and subject to section 106 legal agreement
20/1208	<p>Site: 71 Parry Drive</p> <p>Proposal: Change of use of dwelling to 3no. bed House in Multiple Occupation (HMO)</p> <p>Recommendation: Granted with conditions</p>	Alway	Presented to the committee as a staff member of RIH is related to the applicant	Granted with conditions
20/1222	<p>Site: Shaftesbury Community Centre Evans Street</p> <p>Proposal: Erection of freestanding canopy structure</p> <p>Recommendation: Granted with conditions</p>	Shaftesbury	Presented to Committee as relates to Council owned land	Granted with conditions

Publication of the Future Wales: The National Plan 2040 – Implications for applications determined by Planning Committee with a resolution to Grant, Subject to Section 106 Agreement

The Committee voted unanimously that the publication of ‘The Future Wales: The National Plan 2040’ and associated updates to Planning Policy Wales does not affect the Planning Committee decisions previously made on the applications listed on pages 140 to 142 of the agenda.

Report

Planning Committee – Virtual Meeting

Part 1

Date: 7th April 2021

Subject **Planning Application Schedule**

Purpose To take decisions on items presented on the attached schedule

Author Acting Head of Regeneration, Investment and Housing

Ward As indicated on the schedule

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

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

The decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

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

Action by Planning Committee

Timetable Immediate

This report was prepared after consultation with:

- Local Residents
- Members
- Statutory Consultees

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

Background

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

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

The decisions made are expected to benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

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

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

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

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

The applicant has a statutory right of appeal against the refusal of permission in most cases, or against the imposition of planning conditions. There is no third party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where the Planning Committee refuses an application against Officer advice, Members will be required to assist in defending their decision at appeal.

Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, well-being of future generations, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

Financial Summary

The cost of determining planning applications and defending decisions at any subsequent appeal is met by existing budgets and partially offset by statutory planning application fees. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

Risks

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

An appeal can be lodged by the applicant if permission is refused or if conditions are imposed. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with the type of major development being presented to the Planning Committee, which often requires a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low.

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

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry and judicial review can be high.

Risk	Impact of risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect?	Who is responsible for dealing with the risk?
Decisions challenged at appeal and costs awarded against the Council.	M	L	Ensure reasons for refusal can be defended at appeal.	Planning Committee
			Ensure planning conditions imposed meet the tests set out in Circular 016/2014.	Planning Committee
			Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.	Development and Regeneration Manager and Senior Legal Officer
			Ensure appeal timetables are adhered to.	Development and Regeneration Manager
Appeal lodged against non-determination, with costs awarded against the Council	M	L	Avoid delaying the determination of applications unreasonably.	Planning Committee Development and Regeneration Manager
Judicial review successful with costs awarded against the Council	H	L	Ensure sound and rational decisions are made.	Planning Committee Development and Regeneration Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The Council's Corporate Plan 2017-2022 identifies four themes, including the aim to be a Thriving City. In order to achieve this, the Council is committed to improving:

- jobs and the economy
- education and skills
- fairness and equality
- community safety and cohesion
- the environment, transport, culture and social well-being

Through development management decisions, good quality development is encouraged and the wrong development in the wrong places is resisted. Planning decisions can therefore contribute directly and indirectly to these priority outcomes by helping to deliver sustainable communities and affordable housing; allowing adaptations to allow people to remain in their homes; improving energy efficiency standards; securing appropriate Planning Contributions to offset the demands of new development to enable the expansion and improvement of our schools and leisure facilities; enabling

economic recovery, tourism and job creation; tackling dangerous structures and unsightly land and buildings; bringing empty properties back into use; and ensuring high quality 'place-making'.

The Corporate Plan contains the Council's Well-being Statement and well-being objectives, which contribute to the achievement of the national well-being goals. The Corporate Plan also links to other strategies and plans, the main ones being:

- Improvement Plan 2016-2018;
- Local Development Plan 2011-2026 (Adopted January 2015);

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

Options Available and considered

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

Preferred Option and Why

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

Comments of Chief Financial Officer

In the normal course of events, there should be no specific financial implications arising from the determination of planning applications.

There is always a risk of a planning decision being challenged at appeal. This is especially the case where the Committee makes a decision contrary to the advice of Planning Officers or where in making its decision, the Committee takes into account matters which are not relevant planning considerations. These costs can be very considerable, especially where the planning application concerned is large or complex or the appeal process is likely to be protracted.

Members of the Planning Committee should be mindful that the costs of defending appeals and any award of costs against the Council following a successful appeal must be met by the taxpayers of Newport.

There is no provision in the Council's budget for such costs and as such, compensating savings in services would be required to offset any such costs that were incurred as a result of a successful appeal.

Comments of Monitoring Officer

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

Comments of Head of People and Business Change

Within each report the sustainable development principle (long term, prevention, integration collaboration and involvement) of the Well-being of Future Generations (Wales) Act has been fully considered.

From an HR perspective there are no staffing issues to consider.

Comments of Cabinet Member

The Cabinet Member for Regeneration and Housing has been made aware of the report.

Local issues

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

Scrutiny Committees

None

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Children and Families (Wales) Measure

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

Wellbeing of Future Generations (Wales) Act 2015

The Well-being and Future Generations (Wales) Act seeks to improve the social, economic environmental and cultural well-being of Wales. Public bodies should ensure that decisions take into account the impact they could have on people living in Wales, in the future. The 5 main considerations are:

- Long term: Decisions made by the Planning Committee balances the need to improve the appearance of areas as well as meeting the needs of residents in order to make places safe to live in and encourage investment and employment opportunities. Planning decisions aim to build sustainable and cohesive communities.
- Prevention: Sound planning decisions remove the opportunity for anti-social behaviour and encourages a greater sense of pride in the local area, thereby giving the City potential to grow and become more sustainable.
- Integration: Through consultation with residents and statutory consultees, there is an opportunity to contribute views and opinions on how communities grow and develop, thereby promoting greater community involvement and integration. Planning decisions aim to build integrated and cohesive communities.

- Collaboration: Consultation with statutory consultees encourages decisions to be made which align with other relevant well-being objectives.
- Involvement: Planning applications are subject to consultation and is regulated by legislation. Consultation is targeted at residents and businesses directly affected by a development, ward members and technical consultees. Engagement with the planning process is encouraged in order to ensure that the views of key stakeholders are taken into consideration.

Decisions made are in line with the Council's well-being objectives published in March 2017. Specifically, Objective 9 (Health and Well Being) of the adopted Newport Local Development Plan (2011-2026) links to this duty with its requirement to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

Crime and Disorder Act 1998

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

Consultation

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

Background Papers

NATIONAL POLICY

Planning Policy Wales (PPW) Edition 11 (February 2021)
Development Management Manual 2016
Welsh National Marine Plan November 2019
Future Wales - The National Plan 2040 (February 2021)

PPW Technical Advice Notes (TAN):

TAN 1: Joint Housing Land Availability Studies (2015)
TAN 2: Planning and Affordable Housing (2006)
TAN 3: Simplified Planning Zones (1996)
TAN 4: Retailing and Commercial Development (2016)
TAN 5: Nature Conservation and Planning (2009)
TAN 6: Planning for Sustainable Rural Communities (2010)
TAN 7: Outdoor Advertisement Control (1996)
TAN 10: Tree Preservation Orders (1997)
TAN 11: Noise (1997)
TAN 12: Design (2016)
TAN 13: Tourism (1997)
TAN 14: Coastal Planning (1998)
TAN 15: Development and Flood Risk (2004)
TAN 16: Sport, Recreation and Open Space (2009)
TAN 18: Transport (2007)
TAN 19: Telecommunications (2002)
TAN 20: Planning and The Welsh Language (2017)
TAN 21: Waste (2014)
TAN 23: Economic Development (2014)
TAN 24: The Historic Environment (2017)

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

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

LOCAL POLICY

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

Supplementary Planning Guidance (SPG):

Affordable Housing (adopted August 2015)
Archaeology & Archaeologically Sensitive Areas (adopted August 2015)
Flat Conversions (adopted August 2015) (updated January 2020)
House Extensions and Domestic Outbuildings (adopted August 2015) (updated January 2020)
Houses in Multiple Occupation (HMOs) (adopted August 2015) (updated January 2017)
New dwellings (adopted August 2015) (updated January 2020)
Parking Standards (adopted August 2015)
Planning Obligations (adopted August 2015) (updated January 2020)
Security Measures for Shop Fronts and Commercial Premises (adopted August 2015)
Wildlife and Development (adopted August 2015)
Mineral Safeguarding (adopted January 2017)
Outdoor Play Space (adopted January 2017)
Trees, Woodland, Hedgerows and Development Sites (adopted January 2017)
Air Quality (adopted February 2018)
Waste Storage and Collection (adopted January 2020)
Sustainable Travel (adopted July 2020)

OTHER

“Newport City Council Retail Study by Nexus Planning (September 2019) “ is not adopted policy but is a material consideration in making planning decisions.

‘The Economic Growth Strategy (and associated Economic Growth Strategy Recovery Addendum) is a material planning consideration’.

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 are relevant to the recommendations made.

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

1.

APPLICATION DETAILS

No: 19/0124 **Ward:** ALLT-YR-YN

Type: OUTLINE

Expiry Date: 28TH JULY 2021

Applicant: NEIL WOODING

Site: 94 AND 96, ALLT-YR-YN AVENUE, NEWPORT, NP20 5DE

Proposal: SUBDIVISION OF CURTILAGE AND ERECTION OF 2NO. DWELLINGS (OUTLINE)

Recommendation: GRANTED WITH CONDITIONS SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE PERMISSION SHOULD THE AGREEMENT NOT BE SIGNED WITHIN 4 MONTHS OF A RESOLUTION TO GRANT PERMISSION.

1. INTRODUCTION

- 1.1 This application seeks outline planning permission for the sub division of the rear gardens of 94 and 96 Allt Yr Yn Avenue and the construction of one detached dwelling in each garden. All matters are reserved except access, which are proposed off Allt Yr Yn View.
- 1.2 This development was originally submitted under two separate applications (references 19/0124 and 19/0123). In order to secure visibility splays it was considered appropriate that the development for two dwellings was assessed under this current application. All consultees and neighbours were re-consulted. Where neighbours raised comments in relation to the previous proposal and application reference 19/0123, they are reported under paragraph 6.1.
- 1.3 The application was called to committee by Councillor Ferris in October 2019. Since that time, there have been ongoing discussions regarding vehicular visibility from the proposed access.

2. RELEVANT SITE HISTORY

17/1008	SUBDIVISION OF CURTILAGE TO ALLOW FOR THE ERECTION OF FOUR BEDROOM DETACHED DWELLING (OUTLINE) ACCESSED FROM ALLT-YR-YN AVENUE AND CREATION OF FRONT PARKING AREA FOR EXISTING DWELLING	Refused
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3. POLICY CONTEXT

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

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

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

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

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

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

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

Policy **H6 Sub-division of Curtilages, Infill and Backland Development** permits such development only where it does not represent an over development of the land.

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

Policy **W3 Provision for Waste Management Facilities in Development** states that where appropriate, facilities for waste management will be sought on all new development.

4. CONSULTATIONS

4.1 WALES AND WEST UTILITIES: No response.

4.2 NEWPORT ACCESS GROUP: No response.

4.3 DWR CYMRU – WELSH WATER: No objection subject to a condition preventing surface water drainage and/or land drainage from connecting with the public sewerage system.

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF CITY SERVICES (DRAINAGE): No response.

5.2 HEAD OF CITY SERVICES (HIGHWAYS): *Following the submission of a speed survey and an amendment to the visibility splays:* No objection.

5.3 PLANNING CONTRIBUTIONS MANAGER: Sets out the contributions required in accordance with policies SP13 and H4; and the Affordable Housing and Planning Obligations SPG's.

5.4 HEAD OF LAW AND REGULATION (ENV. HEALTH): No objection subject to a condition restricting the hours of construction.

5.5 HEAD OF CITY SERVICES (WASTE AND RECYCLING): No issues with waste and recycling for the activity of division of curtilage. Waste and recycling service requirements for the new dwelling will need to be reviewed separately.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties sharing a common boundary with the application site and neighbours who made representations in relation to application 17/1008 were consulted (7 properties). Neighbours were also reconsulted following an amendment to the application. 6 representations were received, raising the following concerns:

- Allt Yr Yn View already has far too much traffic and does not have the capacity for further vehicles;
- A property of this size would result in more than 3 vehicles;
- There is no provision for visitor parking;
- Vehicles will not be able to enter and exit safely from the site;
- There is no sewerage or gas supply in the lane;
- The 43 metre vision splay indicated on the plan crosses the neighbours property (no. 98) at a point where there is a steep bank covered with trees and shrubs;

- The proposal includes removal of a 3.1 metre retaining wall at 96 which will leave the bank at 98 no longer supported. The actual vision up the road would therefore be a few metres not the 43 metres indicated;
- There is no space in the land for construction vehicles and materials, including the excavation of large quantities of earth;
- The plan suggests a proposed height of a property up to 7.50 metres. This would be overbearing at such an elevated location near other properties. A single storey building would be far more appropriate.
- The house would impact on the enjoyment of neighbouring gardens;
- Construction works would cause disturbance to neighbours;
- It would set a precedent for similar development along Allt Yr Yn View, with further disruption and danger to pedestrians.
- The land to the rear of no's 98 and 100 Allt Yr Yn Avenue are within the freehold of the two properties. Evidence of a leasehold from the Lord Trededar Estate is provided which shows the edge of the lane following a smooth line (it does not 'kink-in'). The plan appears in all subsequent conveyances, including the sale of freehold. There is no evidence that, at any time, this land has been taken into the ownership of the Council: no approach has been made and no consideration exchanged.
- Physical evidence on the ground is provided by the eclectic mix of small retaining walls at the bottom of the slope where, over the years, individual owners have replaced their boundary walls.
- There is reliance on connecting into already aged and fragile sewage and drainage systems in Allt-Yr-Yn Avenue. In these circumstances, can the Committee ensure there is no detriment to existing residents and the environment given the additional risk of leakage and smells occurring both during the works and afterwards.

6.2 COUNCILLOR FERRIS: I would like the application to be heard by the full planning committee as the road condition that the drive on the proposed development accesses is dangerous, not least due to the sheer drop on the far side of this single track lane. Also, the objections of neighbouring residents should be heard.

7. ASSESSMENT

7.1 94 and 96 Allt-Yr-Yn Avenue are large detached two storey dwellings. The properties from 106 Allt Yr Yn Avenue to no. 94 are arranged in a linear manner with large rear gardens which extend to Allt Yr Yn View at the rear. To the east of the application site, the rear gardens of properties which front Allt Yr Yn Avenue are shorter and do not extend as far as Allt Yr Yn View. Instead there is a row of properties which front Allt Yr Yn View. It is this arrangement which the proposal seeks to mirror.

7.2 The proposals

7.2.1 The proposed dwellings would be sited within the rear gardens of 94 and 96 Allt Yr Yn Avenue. As the application is for outline permission, the precise details regarding the appearance, layout, scale and landscaping are not being considered. However, the applicant is required to provide an indicative layout and scale parameters, which include an indication of the upper and lower limits for height, width and length of the building.

7.2.2 The application includes an indicative layout plan which shows the proposed dwellings in a similar position to the property at no. 57 Allt Yr Yn View. They would be set back from Allt Yr Yn View, with a triple garage provided to the front of the property. There is a change in levels from Allt Yr Yn View, with the gardens at a much higher level than the road. The development would therefore involve some excavation in order to construct the garages at road level and to provide sufficient space to allow vehicular pull-ins from the road. It would also involve the removal of a 3.1m height retaining wall to the rear of no. 96. The submitted plans indicate that the change in levels would be in the order of 3m from Allt Yr Yn View to the ground level of the proposed dwelling.

7.2.3 It is proposed to lower the ground level of the dwellings and the land immediately surrounding them so they would be at the same level as no.57 Allt Yr Yn View. The levels of the remaining part of the rear gardens would remain as existing and would step up 0.75m from the ground level of the dwelling.

- 7.2.4 The submitted plan indicates that the proposed dwelling to the rear of no. 96 would be up to 12m in width, up to 8.7 in depth and up to 7.5m in height. The proposed dwelling to the rear of no. 94 would be 13 to 13.5m in width, 9 to 9.5m in depth and up to 7.5m in height. It is also proposed to separate the rear gardens from the host dwellings with a timber fence.
- 7.3 Planning history**
- 7.3.1 Planning permission was refused in February 2018 for a dwelling in the rear garden of no. 94 Allt Yr Yn Avenue. The position and scale parameters of the dwelling were the same as currently proposed however, it was proposed to utilise the existing access of no. 94 in order to access the dwelling, i.e. from Allt Yr Yn Avenue. It was proposed to utilise an existing double tandem garage to the side of the host dwelling to serve the proposed dwelling.
- 7.3.2 The previous application was refused due to the unacceptable visual impact of providing additional parking to serve no. 94, which involved significant excavation of the attractive front garden. It was also considered that the proposed parking arrangement was too close to the host dwelling, resulting in unacceptable noise and disturbance to the occupiers of the host dwelling.
- 7.3.3 This application does not propose any access from Allt Yr Yn Avenue and instead access is proposed from Allt Yr Yn View.
- 7.4 Residential amenity**
- 7.4.1 The aims of policies GP2, H6 and the New Dwellings SPG are to:
- Ensure that occupiers of new dwellings have reasonable living conditions;
 - Ensure that new dwellings do not deprive persons in existing dwellings of reasonable living conditions; and
 - Protect the character and appearance of the natural and built environment.
- 7.4.2 New dwellings should provide adequate private outdoor amenity space for future occupiers. The majority of this space should be located to the rear of the dwelling. The SPG states that detached dwelling of 2 beds or more should provide 1 square metre for every square metre of the unit's footprint. Whilst the scale parameters of the proposed dwellings are indicative, the submitted layout plan demonstrates that this standard could be achieved. It is also considered that the host dwellings would be left with sufficient private amenity space following the subdivision of the curtilages.
- 7.4.3 To ensure all residents have sufficient privacy in their homes, suitable separation distances must exist between protected windows in existing and the proposed dwellings. Protected windows which face each other should be at least 21m apart. The indicative layout indicates that this standard could be achieved, with 21m between the proposed dwelling in the rear garden of no. 96 and the host dwelling; and up to 24m between the proposed dwelling in the rear garden of no. 94 and the host dwelling. There would be around 26m between the proposed dwelling in the garden of no. 96 and 22-23m between the proposed dwelling in the garden of no. 94 and the neighbouring properties. In both cases, angles towards neighbouring properties would be more oblique. The plans indicate that 1.8m high timber fences would be constructed along the shared boundaries with the host dwellings which is considered to provide adequate screening to all properties at ground floor level.
- 7.4.4 The eastern side elevations of the dwelling within the garden of no. 96 would be orientated towards the rear garden no's 94 and 98. Whilst this application includes a dwelling within the garden no. 94 it cannot be assumed that the development would be implemented in full. The same scenario is also applicable to the dwelling within the garden of no. 94. Any impacts on the neighbouring gardens therefore needs to be considered. The submitted plan indicates that there would be no first floor habitable room windows in the side elevations facing towards the neighbouring gardens. It is also considered that the proposed dwellings could be designed so that no first floor habitable room windows would have direct views over the neighbouring gardens from the rear elevation. The precise design and position of windows would be considered further with any future reserved matter submission.
- 7.4.5 Concern is raised by a neighbour that the height of the proposed dwellings would be overbearing on other properties. It is considered that the proposed dwellings would be a sufficient distance away from neighbouring properties to prevent any overbearing impact

upon them. In terms of the impact on neighbouring gardens, the dwellings would be set down lower (750mm) than the current garden levels and set off the boundaries of the neighbouring properties. This is considered to prevent significant overshadowing or an overbearing impact on the gardens.

7.4.6 Overall, it is considered that the application has demonstrated that dwellings in these indicative positions, with these indicative scale parameters would not result in a harmful impact on neighbouring amenity; and it would provide adequate amenity to future occupiers. The precise scale and appearance of the dwellings would be assessed further at reserved matters stage.

7.5 Highway safety

7.5.1 No 94 and 96 both have gardens which extend as far as Allt Yr Yn View. The road is narrow at this point and is only wide enough for one vehicle however; it is a one way road, travelling in a west to east direction. It is proposed to excavate a portion of the grass bank (and retaining wall, in the case of no. 96) to create hardstanding areas (finished with paviors). The hardstandings would extend 5.5m from the edge of the road to triple garages which would also be constructed at road level. This arrangement is not dissimilar to the neighbouring property (no.57), although the hardstandings and garages would extend further back from the road.

7.5.2 It is proposed to create one access point to the hardstanding/garage area and this would be located to the rear of no. 94. The boundary to the road would be finished with a 600mm high wall. As Allt Yr Yn View is a one-way road in a west to east direction adequate visibility in a westerly direction is required. Allt Yr Yn View has a 30mph speed limit and as such the required visibility splay is 2.4m x 43m, i.e. a vehicle set back 2.4 from the road should be able to view 43m along the road. It is not possible to achieve this requirement without narrowly crossing land which, appears to be in the ownership of no. 98 Allt Yr Yn Avenue. However, it has been shown that 2m x 35m can be achieved without crossing any third party land.

7.5.3 A reduction in visibility can only be justified through a speed survey. The applicant undertook a survey in June/July 2020 and the results show that the 85th percentile speeds are 25.9mph. Visibility requirements are expressed as an X and Y value. In simple terms, the X value is the position of the vehicle from the edge of the road when on the new access, typically this is 2.4m to account for bonnet length. The Y value is the distance in either direction of the access, along the adjoining road where clear sight of oncoming vehicles can be seen.

7.5.4 Manual for Streets 2 states that the Y distance should be based on the recommended SSD (stopping sight distance) values. Manual for Streets (1) provides a table of SSD values, based on the speed of the road. At a speed of 25mph, the SSD distance is 33m (including bonnet length). The Y distance can be achieved.

7.5.6 Manual for Streets 2 states that “a minimum X distance for 2m may be considered in some slow speed situations”. It does not define a slow speed situation but it does state that when “using this value (2m) the front of some vehicles will protrude slightly into the running carriageway of the major arm, and many drivers will tend to cautiously nose out into traffic. The ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty, should be considered”. Whilst Allt Yr Yn View is on an incline, it is relatively straight. The new access would be visible at least 80m away when travelling down Allt Yr Yn View. It is considered that given the ability of vehicles to see an overhang from a reasonable distance and the slow speeds recorded, which is largely due to a number of speed bumps along the road, it is reasonable to accept a reduced X distance to 2m. The Councils Highways Officer does not object to the reduced X distance. On this basis, it is considered that sufficient visibility can be achieved.

7.5.7 In order to prevent obstruction to sight within the visibility splays, it is proposed to construct a 600mm high stone boundary, which is the maximum height to maintain visibility. A condition is recommended to ensure no structures or vegetation exceed this height within the visibility splays. A separate highways agreement would also be required for the works within the highway and an informative is recommended to alert the applicant to this.

- 7.5.8 The Highways Officer previously required a pedestrian visibility splay of 2 x 2m in an easterly direction for the dwelling within the garden of no. 96. The applicant has provided this. Again, this splay must be kept free of obstruction exceeding a height of 0.6m above the ground level; and this can be secured through a condition. The Highways Officer also previously required details of the tie-in of the permeable paving with the highway and this can also be secured through a condition.
- 7.5.9 In terms of the dwelling within the garden of no. 94, the Highways Officer previously required the 1.2m high boundary fence on the eastern side of the site to not extend any further forward than the front boundary of the neighbouring property in order to provide adequate pedestrian visibility. This has been reduced to a 0.6m stone wall and it is considered to provide adequate pedestrian visibility for the neighbouring property.
- 7.5.10 The application indicates that the maximum of three parking spaces could be provided on site within the triple garages. It is considered that the application has demonstrated that adequate parking could be provided in accordance with the Parking Standards SPG. The precise design and layout of this parking would be considered further at reserved matters stage.

7.6 **Design**

- 7.6.1 Whilst design/appearance is a matter reserved for future consideration, the principle of dwellings in this location and their general impact on the street scene is a consideration. The proposed dwellings would be sited directly behind no. 94 and 96 Allt Yr Yn Avenue and would be scarcely visible from Allt Yr Yn Avenue. To the rear of the site, the proposed dwellings would follow the pattern of dwellings which front on to Allt Yr Yn View. It is therefore considered that the proposed dwellings would not be out of character with the pattern of development in the surrounding area.

7.7 **Other matters**

- 7.7.1 Several objections have been received from neighbouring residents as noted in paragraph 6.1. Concerns regarding highway safety and neighbouring amenity have been addressed in the preceding paragraphs.
- 7.7.2 Other concerns relate to the ownership of the land to the rear of 98 Allt Yr Yn Avenue. This was a concern raised when visibility splays previously included a small section of land to the rear of no. 98. As visibility splays no longer cross neighbouring land, this issue is considered to be resolved.
- 7.7.3 There is also concern that the demolition of the rear retaining wall to no. 96 Allt Yr Yn Avenue would leave the neighbouring land unsupported. This is a matter which would be dealt with under the Party Wall Act and as such is a civil matter; and not a material planning consideration.
- 7.7.4 Other concerns relate to the impact of construction activity and the impact on residential amenity and highway safety. There are concerns that there would be no space for construction vehicles during excavation works. It is noted that neither the Highways Officer nor Environmental Health Officer has requested that a Construction Environmental Management Plan is secured by condition. However, given the proximity to neighbouring properties and the narrowness of Allt Yr Yn View, such a condition would be necessary to agree suitable construction and excavation practices. It should also be noted that any vehicles which cause obstruction to the public highway could be subject to police enforcement. It is noted that the Environmental Health Officer has requested that the hours of construction should be controlled by a condition however, the Control of Pollution Act 1974 has more responsive powers to control any nuisance caused by construction activities. An informative is added to alert the applicant to recommended working hours.
- 7.7.5 Concerns are raised that there is no foul drainage or gas supply at the site. However, no objections have been raised by Dwr Cymru – Welsh Water in respect of drainage. Whilst Wales and West Utilities have not responded to their consultation they only normally advise of apparatus in the area and it is up to the applicant to contact the utility companies to secure appropriate utility connections.

7.8 **Section 106 Planning Obligation matters**

7.8.1 In accordance with Policy SP13 of the adopted Newport Local Development Plan 2011-2026 and the adopted Planning Obligations Supplementary Planning Guidance, development will be required to help deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale and the sustainability of the location. In this case, section 106 planning obligations are required to mitigate the impact of the development in accordance with the table below.

Service Area that requires planning obligation	Purpose of planning obligation	Planning obligation initially sought by Planning Authority	Summary Heads of Terms agreed by applicant(s)	Viability Issues?
Regeneration , Investment and Housing	To provide a commuted sum towards affordable housing	Depending on the number of bedrooms agreed at reserved matters stage a commuted sum is sought in accordance with formulae in adopted SPG.	Agreed as per the Heads of Terms	No

7.8.1 The applicant has agreed to the Heads of Terms.

8. OTHER CONSIDERATIONS

8.1 ***Crime and Disorder Act 1998***

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

8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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

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

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

8.7 ***Newport’s Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 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. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. CONCLUSION

9.1 The proposed development is considered to be acceptable and in accordance with policies SP1, SP13, GP2, GP4, GP6, H4, H6, T4 and W3 of the Newport Local Development Plan 2011-2026. It is considered that the proposed development would not result in a harmful impact on residential amenity nor the character of the surrounding area. It is also considered that the proposed development would not result in a harmful impact on highway safety and it would deliver sustainable development through financial contributions towards affordable housing. Planning permission is granted subject to conditions and the signing of a legal agreement.

10. RECOMMENDATION

GRANTED WITH CONDITIONS SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE PERMISSION SHOULD THE AGREEMENT NOT BE SIGNED WITHIN 3 MONTHS OF A RESOLUTION TO GRANT PERMISSION.

01 The development shall be implemented in accordance with the following plans and documents: P592a_L_001 rev A, P592a_L_002 rev A and P592a_L_003 rev H.

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

Pre-commencement conditions

02 Approval of the details of the layout, scale, appearance of the building(s) and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority.

Reason: To safeguard the rights of control of the Local Planning Authority in respect of the reserved matters and to comply with the provisions of Article 3(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

03 Prior to the commencement of development, to include demolition/excavation, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan (CEMP) shall identify the steps and procedures that will be implemented during development resulting from the site preparation, groundwork and construction phases of the development regarding:

- noise mitigation measures - to minimise the creation and impact of noise;
- dust suppression measures, having regard to BRE guide 'Control of Dust from Construction and Demolition, February 2003;
- waste disposal;
- details of enclosure of working areas;
- details of contractor parking areas and construction site accesses and;
- wheel wash facility;

Development works shall be implemented in accordance with the approved CEMP.

Reason: To protect the amenities of nearby residents and in the interests of highway safety, in accordance with policies GP2, GP4 and GP7.

04 No development, other than demolition, shall commence until a full structural check which includes load cases with worst cases for overturning/sliding and for ground bearing pressure have been submitted to and approved in writing by the Local Planning Authority. These checks should include details of any 'actual' applied loads from adjacent structures which interact with the wall and all required imposed loads. Full detail drawings should include the full specification of the walls, dimensions and indicate spans of any suspended floors

considered in the design. The temporary works calculations should also include for any actual loads which will be present during the time of their use. The works shall be implemented in accordance with the approved method statement.

Reason: In the interest of public safety. In accordance with policy GP6.

05 In pursuance of any reserved matters application, cross sectional details and slab level information shall be submitted to demonstrate:

- The visual impact of development on the surrounding area;
- the relationship of proposed dwellings with each other; and
- the relationship of proposed dwellings with existing dwellings situated along the periphery of the site.

Reason: In the interests of the visual amenities of the area and the amenities of existing and proposed residential occupiers having regard to the topography of the site, in accordance with policies GP2 and GP6.

06 Pursuant to the approval of any reserved matters application a scheme of ecological mitigation and enhancement shall be submitted to an approved in writing by the Local Planning Authority. The approved ecological mitigation and enhancement shall be implemented prior to the occupation of the development and retained thereafter.

Reason: In the interests sustainable development and ecology, in accordance with policies SP1 and GP5.

07 Prior to the commencement of development details of proposed boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be implemented prior to the occupation of the associated dwelling and maintained in perpetuity thereafter.

Reason: In the interests of residential and visual amenity, in accordance with policies GP2 and GP6.

Pre-construction conditions

08 Prior to the construction of the hardstandings adjacent to Allt Yr Yn View details of the tie-in with the road shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of highway safety, in accordance with policy GP4.

Pre –occupation conditions

09 No development shall commence on either dwelling until the associated visibility splays (vehicular and pedestrian) have been provided in accordance with the proposed site plan P592a_L_003 rev H. Upon occupation, these visibility splays shall be maintained at all times thereafter with no structures, planting or vegetation permitted above a height of 600mm above carriageway level within those visibility splays.

Reason: In the interests of highway and pedestrian safety, in accordance with policy GP4.

General conditions

10 The landscaping scheme referred to in reserved matters shall be carried out in its entirety by a date not later than the end of the full planting season immediately following the completion of the development. Thereafter, the trees and shrubs shall be adequately maintained for a period of 5 years from the date of planting and any which die or are damaged shall be replaced and maintained until satisfactorily established. For the purposes of this condition a full planting season shall mean the period from October to April.

Reason: To secure the satisfactory implementation of the proposal, in accordance with policies GP5.

11 The reserved matters referred to in Condition 2 shall include details of off-street parking. The parking shall be provided in accordance with the approved details prior to first occupation of any development and thereafter maintained as such.

Reason: In the interests of highway safety, in accordance with policies GP4 and T4.

12 Any garages or parking spaces associated with residential uses on the site shall be used for the parking of domestic vehicles only and for no other purposes including, in the case of the garages, additional living accommodation.

Reason: To ensure the retention of adequate parking in the interest of highway safety, in accordance with policies GP4 and T4.

NOTE TO APPLICANT

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP13, GP2, GP4, GP6, H4, H6, T4 and W3 were relevant to the determination of this application.

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

03 The applicant will be required to enter an agreement under Section 111 or 278 of the Highways Act, 1980 to facilitate the off-site highway works.

04 The development may require approval of Sustainable Drainage Systems (SuDS) features, in accordance with the 'Statutory standards for sustainable drainage systems – designing, constructing, operating and maintaining surface water drainage systems'. The applicant is advised to engage with the Authority's City Services (Drainage) department as the determining SuDS Approval Body (SAB).

05 To protect the amenities of existing residents, the following recommendation with regards to construction times should be attached to any permission to draw attention to the provisions of Section 60 of the Control of Pollution Act 1974 in relation to the control of noise from demolition and construction activities -

(i) no construction work involving piling shall be carried out on the site other than between the hours of 08.00 and 17.00 Mondays to Fridays and no construction work involving piling shall be carried out on Saturdays, Sundays or Bank Holidays, where it would create noise audible at the boundary of any residential property.

(ii) Any construction work which does not involve piling shall not be carried out other than between the hours of 08.00 and 18.00 Monday to Friday and between the hours of 08.00 and 13.00 on Saturdays, where it would create noise audible at the boundary of any residential property.

Prior approval will be required for any construction to take place outside permitted times and on Sundays and Bank Holidays, where it would create noise audible at the boundary of any residential property.

2.

APPLICATION DETAILS

No: 20/1119 **Ward:** Gaer

Type: Full Application

Expiry Date: 28th July 2021

Applicant: Mr Davey

Site: Land West Of 182 Cardiff Road Newport NP20 3AE

Proposal: CONSTRUCTION OF 5NO. TWO BEDROOM AFFORDABLE HOUSES WITH ASSOCIATED EXTERNAL WORKS AND PARKING

Recommendation: GRANTED WITH CONDITIONS SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE PERMISSION SHOULD THE AGREEMENT NOT BE SIGNED WITHIN 4 MONTHS OF A RESOLUTION TO GRANT PERMISSION.

1. INTRODUCTION

- 1.1 This application seeks full planning permission for the construction of 5 no. two bedroom affordable houses with associated external works and parking.
- 1.2 The site is a large side garden of no. 182 Cardiff Road. To the north of the site is the residential area known as Gaer Vale and to the south is the Ebbw Vale to Cardiff railway line.
- 1.3 Planning permission was granted in November 2020 for the construction of 3no. terraced dwellings on the same site.
- 1.4 The application is brought before planning committee at the request of Councillors Marshall and Whitcutt.

2. RELEVANT SITE HISTORY

05/1619	ERECTION OF DORMER BUNGALOW WITH GARAGE AND REPOSITIONING OF EXISTING GARAGE (OUTLINE)	Granted with conditions
19/0491	ERECTION OF 3NO. TERRACED DWELLINGS	Granted with conditions

3. POLICY CONTEXT

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

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

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

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

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

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

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

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

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

Policy **H6 Sub-division of Curtilages, Infill and Backland Development** permits such development only where it does not represent an over development of the land.

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

Policy **W3 Provision for Waste Management Facilities in Development** states that where appropriate, facilities for waste management will be sought on all new development.

4. CONSULTATIONS

4.1 DWR CYMRU – WELSH WATER: We can confirm capacity exists within the public sewerage network in order to receive the domestic foul only flows from the proposed development site. No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

4.1.1 The proposed development site is crossed by a public sewer with the approximate positions being marked on the Statutory Public Sewer Record. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times. No part of any building will be permitted within 3 metres either side of the centreline of the 150 mm public sewer.

4.1.2 The proposed development may be subject to Schedule 3 of the Flood and Water Management Act 2010. The development therefore may require approval of Sustainable Drainage Systems (SuDS) features, in accordance with national standards, and is strongly recommended that the developer engage in pre-application consultation with the Local Authority, as the relevant SuDS Approval Body (SAB).

4.2 NEWPORT ACCESS GROUP: No response.

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF CITY SERVICES (ECOLOGY): No ecology information has been submitted with the application, however due to the location which is a well maintained garden and lack of any permanent structures on site, no ecological surveys will be required to inform the decision in this situation.

5.1.1 However, the development must result in a net benefit for biodiversity by providing ecological enhancements that contribute to ecosystem resilience. For applications of this scale, I would expect these enhancements to include features such as tree planting, native hedging and/or pollinator friendly shrubs as well as providing habitat boxes on the new building. As there are no landscaping plans provided as part of the application, I think its necessary to request that this information is provided prior to determination to ensure that a suitable scheme is achievable within the approved layout. The ecological enhancements can be included as part of a landscape plan. The plan should also provide details of how they will be implemented and ongoing aftercare to ensure successful establishment.

- 5.2 HEAD OF CITY SERVICES (LANDSCAPE): Insufficient information has been submitted for the full planning application. A number of required details are required (list provided) if the applicant seeks the landscape components of the proposal to be conditioned.
- 5.3 HEAD OF CITY SERVICES (HIGHWAYS): Objection. The site is located on B4237 Cardiff Road, a classified road with a 30mph speed limit where it passes the site. Vehicular access to the site will be gained off Gaer Vale which is a residential road with a 30mph speed limit which will require that vehicular visibility splays of 2.4m x 43m will be required. However, the applicant has submitted a Traffic Survey which includes a speed survey demonstrating that the average 85th percentile speed is 25.6mph which reduces the visibility splays to 2.4m x 33m as required by Manual for Streets Table 7.1
- 5.3.1 The applicant has submitted drawing 1437-PA-103-A which shows visibility of 32.5m x 2m and 37.849m x 2m which will not be acceptable.
- 5.3.2 The applicant has shown that visibility splays in accordance with TAN 18 have been provided: Manual for Streets 7.1 should be used to assess visibility, however, the applicant should note that TAN 18 Annex B: B.5 also requires a minimum X-distance of 2.4 metres, as this represents a reasonable maximum distance between the front of the car and the driver's eye.
- 5.4 HEAD OF CITY SERVICES (TREES): Requires details of tree and hedge removal.
- 5.5 HEAD OF CITY SERVICES (WASTE): We anticipate the properties be serviced by standard kerbside waste and recycling collection. Looking at plans there is a hardstanding at the back of buildings for bins, please confirm if collections will be from Gaer Vale or Cardiff Road.
- 5.6 HEAD OF CITY SERVICES (DRAINAGE): No response.
- 5.7 HEAD OF CITY SERVICES (LEISURE): No response.
- 5.8 HEAD OF LAW AND REGULATION (ENV.HEALTH): The submitted assessment states that it takes into consideration the local authority requirements and considers the impact of road traffic from the Cardiff Road (B4237) and rail traffic noise to the southeast and south respectively of the site on the proposed development.
- 5.8.1 During the assessment, no train movements occurred in the 24hr period that the assessment was carried out. I am however concerned that the noise from trains have not been taken into account as night time noise from lengthy freight train may alter the ambient noise levels and may alter the proposed acoustic façade design.
- 5.8.2 It is my opinion that a revised acoustic assessment be taken at least over 4 days to include the weekend period that would be more representative of the baseline noise levels to ensure a more robust acoustic design.
- 5.8.3 At this stage, I cannot accept the assessment as being representative and would need to be revised and resubmitted to the local authority for consideration.
- 5.9 HOUSING STRATEGY MANAGER: I note the proposal is for affordable dwellings but I am not aware of any RSLs being involved with this scheme. If it is proposed to develop dwellings that meet the TAN 2 definition of affordable housing these will need to be transferred to an RSL partner for allocation through Newport's common housing register. The proposed dwellings do meet the minimum space standards as set out in the quality requirements for affordable housing recently consulted on by the Welsh Government but the applicants will also need to demonstrate that they have met other requirements for the development of affordable housing if their intention is to deliver TAN 2 compliant units.
- 5.9.1 *Following confirmation that the applicant is in partnership with Newport City Homes:* The units are fine in terms of space for DfI compliance so I assume NCH will work with them to make sure the other elements are too. As NCH are involved the mechanism is in place

for them to be let through the housing register which satisfies the affordable in perpetuity part of TAN 2.

5.10 PLANNING CONTRIBUTIONS MANAGER: Council policy stipulates that affordable housing is exempt from contributing towards leisure and education planning obligations. However, in order to safeguard any future Council infrastructure liabilities, there is a requirement to provide a S106 legal agreement in the event that any of the dwellings are sold or rented on the open market.

5.11 HEAD OF EDUCATION: No response.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties sharing a common boundary with the application site were consulted (3 properties). No responses.

6.2 COUNCILLORS MARSHALL AND WHITCUTT: We request that the application goes before the full Planning Committee having been raised with us by constituents. The grounds for the referral are that we have concerns that the development:

1. May constitute an overdevelopment of the site.
2. Impinge on the privacy of surrounding properties.
3. May not satisfy planning requirements for affordable housing.
4. In all the circumstances have an adverse effect on the amenity of the area and potentially surrounding properties.

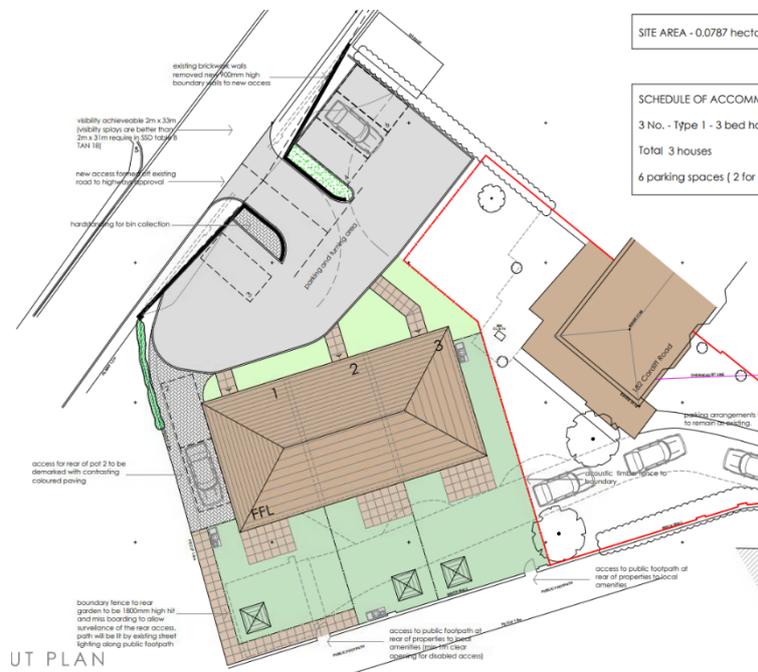
7. ASSESSMENT

7.1 The application site is level and is currently domestic lawn with hedgerow along the southern and western boundaries. There is also a brick wall behind the southern hedgerow which runs along a public footpath. There is a brick wall along the northern elevation, which fronts onto Gaer Vale. To the west of the site is an area of open space, to the south is a small building containing a post office and a densely vegetated railway embankment. To the east is the host dwelling, which is an end of terrace property which fronts onto Cardiff Road. To the north is the residential development known as Gaer Vale.

7.2 *Planning history*

7.2.1 Planning permission was granted in November 2020 (reference 19/0491) for 3 no. three bedroom terraced dwellings, to be located within the side garden of 182 Cardiff Road. They have an overall footprint of 18.5m by 9.4m, with a maximum height of 8.2m. The rear gardens of the dwellings back on to the public footpath, with an existing wall to be retained. A parking court would be provided at the front of the properties and would be accessed off Gaer Vale. The parking court provides two spaces per dwelling (6 spaces in total). A new access would be created off Gaer Vale. The dwellings were to be market housing and financial contributions towards affordable housing were secured through a Section 106 agreement.

7.2.2 A plan of the approved layout can be seen below:



7.2 The proposals

7.2.1 It is proposed to construct 5 no. two bedroom terraced dwellings. The dwellings would provide affordable accommodation, to be managed by a Registered Social Landlord. They would have an overall footprint of 23m by (each dwelling being approximately 4.6m wide) 10.5m, with a height of 8.3m to the ridge of a pitched roof. The dwellings would face towards Gaer Vale but would be set back from the road to accommodate a parking area. Each dwelling would have a small front garden, with an enclosed area for bin storage and a footpath to the front door from the parking court. A bin collection point would be provided next to the proposed access. The dwellings would have a rear garden which backs onto the public footpath, the existing brick wall would be retained. Each rear garden would have a shed for secure cycle storage. A timber fence is proposed to divide the application site from the remaining garden of the host dwelling. A new access to the parking court is proposed off Gaer Vale, the parking court would provide two parking spaces per dwelling.

7.2.2 A plan of the proposed layout is provided below:



7.3 Residential Amenity

7.3.1 The aims of policies GP2, H6 and the New Dwellings SPG are to:

- Ensure that occupiers of new dwellings have reasonable living conditions;
- Ensure that new dwellings do not deprive persons in existing dwellings of reasonable living conditions; and
- Protect the character and appearance of the natural and built environment.

7.3.2 New dwellings should provide adequate private outdoor amenity space for future occupiers. The majority of this space should be located to the rear of the dwelling. The SPG states that detached dwellings of 2 beds or more should provide 1 square metre for every square metre of the unit's footprint. Plot 1 meets this standard however, the remaining plots are short of the standard. It is recognised that these standards are desirable and on balance, it is considered that each garden, with a patio and shed offers future occupiers an acceptable standard of outdoor amenity. The host dwelling would lose a large proportion of its side garden however, it is considered that, even with this loss of the garden an adequate provision of outdoor amenity would remain.

7.3.3 To ensure all residents have sufficient privacy in their homes and to ensure new dwellings do not create an overbearing impact, suitable separation distances must exist between protected windows in existing and the proposed dwelling. The nearest neighbouring residential property is the host property, 182 Cardiff Road, which is located to the east of the proposed dwellings. The side elevations of the host and proposed dwellings face towards each other, but at oblique angles. The host dwelling has a single storey extension which wraps around the rear and side of the dwelling. This part of the dwelling would be 3.8m away from the side elevation of the proposed dwellings (at its nearest point). The side extension has a number of windows facing towards the application site, these windows are large units, which sit under the eaves. The New Dwellings SPG sets out tests to establish whether new development would cause an overbearing impact on neighbouring protected side windows. The SPG states that from the horizontal centre of a protected window, at a point two metres above ground level, a notional line is drawn at an angle of 25° to the horizontal line. The notional line would dissect the nearest proposed dwelling. However, the wrap around extension has windows in both the front and rear, and as such the room within does not solely rely on the affected side windows for adequate light. In this instance it is considered that the proposed development would not adversely affect the neighbouring property in terms of loss of light or overbearing impact.

7.3.4 No windows are proposed in the side elevation of the nearest dwelling, which faces towards the host dwelling. A condition is recommended to ensure no windows are created in this elevation in perpetuity.

7.3.5 The proposed dwellings would sit slightly forward of the rear elevation of the host dwelling. They would be positioned so that oblique views of the remaining rear garden of the host dwelling could be viewed from the first floor bedroom windows. Ground floor views would be screened by the proposed boundary fence and it is considered that the first floor relationship is not dissimilar to dwellings which sit side by side. Overall it is considered that neighbouring privacy would be adequately protected.

7.3.6 The remaining parts of the site do not have a close relationship with any neighbouring buildings and such there would not be a harmful impact on other neighbouring properties.

7.4 Noise

7.4.1 The application site is located in close proximity Cardiff Road. The Cardiff to Ebbw Vale railway line is also located around 32m from the application site. The service operates one train per hour in each direction. The application includes a noise assessment which was also submitted with the previous application (ref: 19/0491), it is dated April 2019. It considers the noise impact from the road and railway. The noise assessment considers that road traffic noise is the predominant source of noise. In order to mitigate the impact of noise within the rear gardens it is proposed to construct a 2m high acoustic fence along the boundary. This would close the pathway of noise which is propagating through the front entrance of 182 Cardiff Road. In order to mitigate the impact of noise within the rear habitable rooms the

assessment makes recommendations about the external wall construction, the roof construction and double glazed windows with trickle vents.

- 7.4.2 The Councils Environmental Health Officer was previously satisfied with the proposed mitigation and a condition was imposed to secure the details of the fence construction. An additional condition was imposed requiring the precise details of the mitigation measures for the dwellings. It is recommended that these conditions are imposed again.
- 7.4.3 The Councils Environmental Health Officer has stated that the submitted noise assessment observed no train movements within the 24 hour period the assessment was undertaken (train movements are in reference to the Ebbw Vales to Cardiff line, which is around 32m to the south of the site), with concern that noise from trains has not been taken into account at night time from lengthy freight trains. They consider that a revised assessment should be undertaken over 4 days to provide a more representative baseline noise level.
- 7.4.4 The Ebbw Vale to Cardiff line operates an hourly train service in each direction. Freight train movements are not known to operate with any regularity or frequency. This is the position previously accepted. As planning permission for residential development, which occupies a very similar footprint has already been granted, subject to noise mitigation conditions, it is considered unreasonable to now require further assessment.
- 7.4.5 The proposal includes the provision of a parking court which would be partly positioned behind the rear garden of the host dwelling and adjacent to the rear garden of the neighbouring property, 180 Cardiff Road. The parking court would be 9.5m away from the host dwelling at its closest point, this is considered to be a sufficient distance to prevent undue noise and disturbance to the occupiers of this property. The parking court would be located close to the rear garden of the host dwelling, behind an acoustic timber fence (as required by the noise assessment). It is considered that this arrangement is not dissimilar to the current one, whereby the existing rear garden backs onto Gaer Vale, where there is passing traffic. Again, it is considered that this arrangement would not give rise to undue noise and disturbance in the garden. The rear garden of the adjacent neighbouring property has a garage which would be partly adjacent to the parking court. It is considered that the garage would partly provide screening of the parking court and for the remaining part not screened by the garage there is an existing hedgerow along the boundary. A condition can secure the retention of this hedgerow. Overall, it is considered that there would be sufficient screening to protect the neighbouring occupiers from any noise and disturbance.

7.5 Highways

- 7.5.1 The application site is located within parking zone 3. In accordance with the Parking Standards SPG, two parking space are required for each dwelling. It is proposed to meet this requirement. The proposal does create a demand for 1 visitor parking space. It is considered that there is sufficient on-street parking availability on Gaer Vale to provide this. The Head of City Services (Highways) has no objection in this regard.
- 7.5.2 The proposal includes the creation of a new access onto Gaer Vale. The Councils Highways Officer has required that adequate visibility is demonstrated. As Gaer Vale has a 30mph speed limit the required visibility splay is 2.4m x 43m, i.e. a vehicle set back 2.4m from the road should be able to view 43m along the road in both directions. It is not possible to achieve such a visibility requirement. However, it has been shown that 2m x 37m can be achieved in the north east direction and 2m x 32.5m can be achieved in the south west direction.
- 7.5.3 A reduction in visibility can only be justified through a speed survey. As with the previous application the applicant has provided results of a speed survey undertaken in October/November 2019. The speed survey shows that the 85th percentile speeds are 25.3 mph in the northeast bound direction and 25.6mph southwest bound. Visibility requirements are expressed as an X and Y value. In simple terms the X value is the position of the vehicle from the edge of the road when on the new access, typically this is 2.4m to account for bonnet length. The Y value is the distance in either direction of the access, along the adjoining road where clear sight of oncoming vehicles can be seen.
- 7.5.4 Manual for Streets 2 states that the Y distances should be based on the recommended SSD (stopping sight distance) values. Manual for Streets (1) provides a table of SSD values,

based on the speed of the road. At a speed of 25mph the SSD distance is 33m (including bonnet length). The Y distance is achievable in the north east direction and is just 500mm short in the south west direction.

7.5.5 Manual for Streets 2 states that “a minimum X distance of 2m may be considered in some slow speed situations”. It does not define a slow speed situation but it does state that when “using this value (2m) the front of some vehicles will protrude slightly into the running carriageway of the major arm, and many drivers will tend to cautiously nose out into traffic. The ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty, should be considered”. Gaer Vale is a relatively straight and flat road. The new access would be visible around 77m away in the north east direction, whereby vehicles would be travelling towards the access on the near-side. In the south west direction vehicles would be travelling on the far-side of the road and whilst there is a curve in the road, there are open parking areas and low structures on the far-side which means that views of the access are possible from around 70m away. The proposed access would also be opposite a wide parking area, which is around 11m deep. There is evidence (google earth) that this parking area is rarely used. It is considered that given the ability of vehicles to see an overhang from a reasonable distance and the ability of vehicles to manoeuvre around the overhang, it is reasonable to accept a reduced X distance and it is considered that sufficient visibility can be achieved.

7.5.6 The above assessment was also made for the previous application and therefore this recommendation is consistent with the previously approved development.

7.5.6 It is considered necessary to impose a condition to ensure no obstructions above 600mm in height within the visibility splays and to require a Construction Environment Management Plan.

7.6 Design

7.6.1 The surrounding area is generally characterised by two storey dwellings, although there are some three storey blocks of flats off Gaer Vale. There are two architectural styles in the immediate area, inter-war housing facing onto Cardiff Road and 1970's estate housing off Gaer Vale. The proposed dwellings are of a scale which is in keeping with those facing onto Cardiff Road. It is considered that the scale and design of the dwellings would not be harmful to visual amenity.

7.7 Landscape and Ecology

7.7.1 The landscaping details have not been provided with this application. There are small pockets within the front of the development where landscape treatment would be necessary. It is considered appropriate and necessary to impose a condition requiring landscaping details of those areas. The Councils Landscape Officer acknowledges that landscaping detail can be secured by condition and requires the following information to be submitted:

- design and access statement
- details of levels
- tree survey
- landscape-drainage strategy

7.7.2 A design and access statement is only required where major development is proposed and as such it is considered to be an onerous requirement for this proposal. Details of levels are recommended via a condition. There is a Fir tree and Leylandii within the application site, their protection or retention is considered to be unnecessary and as such a tree survey is not recommended. Sustainable drainage requires approval under separate legislation and whilst there are benefits to providing a joined-up strategy at planning application stage for larger scale developments, for a modest scheme such as this, a strategy is considered to be disproportionate.

7.7.3 The Councils Ecology Officer is satisfied that no ecological survey is required given that the site is a maintained garden with no permanent structures. In accordance with Tan 5 (Nature Conservation and Planning) and the Wildlife and Development SPG developments must result in a net benefit for biodiversity by providing ecological enhancements. The Councils Ecology Officer advises that these enhancements could include features such as tree

planting, native hedging and/or pollinator friendly shrubs as well as providing habitat boxes on the new building. It is considered that there is scope within the site to provide such enhancements and a condition is recommended to secure the details through a landscape and ecological enhancement plan.

7.8 **Trees**

7.8.1 The Council's Tree Officer has requested details of trees and hedgerow within the site. There is a mix of Leylandii trees and a small Fir tree around the periphery of the site. It is considered that such trees are not worthy of retention. The Ecology Officer does not consider the site to have any notable ecological value. It is considered that further information regarding trees and hedgerow within the site is not necessary. It is noted that the Tree Officer had no objection to the previously approved scheme.

7.9 **Waste**

7.9.1 It is proposed to provide a hardstanding adjacent to the proposed access for the storage of bins prior to collection. The bin storage areas would be provided within the front gardens of the dwellings for the rest of the time. The Council's Waste Officer has no objection to the proposal and anticipates that the properties will be serviced by standard kerbside collection of waste and recycling.

7.10 **Drainage**

7.10.1 It is proposed to discharge foul drainage to the existing public sewer. Welsh Water has no objection to this.

7.10.2 It is proposed discharge surface water by sustainable drainage. Welsh Water comments that the public sewerage system only has capacity to receive foul flows and as such this proposal accords with this. Separate SUDs approval would be required prior to development commencing to ensure the most sustainable method of surface water disposal is proposed.

7.10.3 Welsh Water also comment that the application site is crossed by a public sewer and no development should take place 3m either side of the centre of the sewer. Separate consent would need to be obtained from Welsh Water for any works which take place within this zone. An informative is added to alert the application to this.

7.11 **Section 106 Planning Obligation matters**

7.11.1 In accordance with Policy SP13 of the adopted Newport Local Development Plan 2011-2026 and the adopted Planning Obligations Supplementary Planning Guidance, development will be required to help deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale and the sustainability of the location.

7.11.2 In this case the application is for affordable housing and a registered social landlord (RSL) has been identified. Contributions towards affordable housing, education and leisure would not be required where the scheme is delivering affordable housing.

7.11.3 In order to safeguard the Authority a section 106 planning obligation is required to secure the affordable housing, education and leisure contributions should any of the units be sold as private market housing. The section 106 sets out formulas for calculating the sums should this scenario arise. The applicant has agreed to these terms.

8. **OTHER CONSIDERATIONS**

8.1 ***Crime and Disorder Act 1998***

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

8.2 ***Equality Act 2010***

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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

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

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

8.6 ***Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 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. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. CONCLUSION

9.1 The proposed development is considered to be acceptable. It is considered to not result in a harmful impact on residential amenity, highway safety or visual amenity. It would deliver sustainable development and affordable housing. It is in accordance with policies SP1, SP13, GP2, GP4, GP5, GP6, GP7, H6, T4 and W3 of the Newport Local Development Plan 2011-2026. Planning permission is granted subject to the signing of a legal agreement.

10. RECOMMENDATION

GRANTED WITH CONDITIONS SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE PERMISSION SHOULD THE AGREEMENT NOT BE SIGNED WITHIN 4 MONTHS OF A RESOLUTION TO GRANT PERMISSION

01 The development shall be implemented in accordance with the following plans and documents: 1437 PA 100, 1437 PA 101 rev B, 1437 PA 103 rev A, 1437 PA 200 rev A, 1437 PA 201, 1437 PA 202 and Noise Assessment (T124/PR/BL Acoustic Consultants Ltd).

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

Pre- commencement conditions

02 No development, to include demolition and site preparation, shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of the following during development:

- a) wheel wash facilities;
- b) details of contractor parking areas;
- c) details of delivery routes and arrangements and;
- d) details of materials storage.

Development works shall be implemented in accordance with the approved CEMP.

Reason: In the interests of highway/pedestrian safety; and in accordance with policy GP4.

03 Prior to the commencement of development details of the external materials to be used on the buildings and any hard surfacing not already specified in the approved drawings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved materials.

Reason: to ensure the development achieves a high level of visual amenity in the interests of protecting the character and appearance of the area; in accordance with policy GP2 and GP6.

04 No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority to provide that all habitable rooms exposed to external commercial and industrial noise in excess of 55 dBA Leq 16 hour [free field] during the day [07.00 to 23.00 hours] or 45 dBA Leq 8 hour [free field] at night [23.00 to 07.00 hours] shall be subject to sound insulation measures to ensure that **all** such rooms achieve an internal noise level of 40 dBA Leq 16 hour during the day and 35 dBA Leq 8 hour at night. The submitted scheme shall ensure that habitable rooms subject to sound insulation measures shall be able to be effectively ventilated without opening windows and would not be subject to overheating. No dwelling shall be occupied until the approved sound insulation and ventilation measures have been installed to that property in accordance with the approved details. The approved measures shall be retained thereafter in perpetuity.

Reason: To ensure that the amenities of future occupiers are protected, in accordance with policies GP2 and GP7.

05 No development shall commence until a landscape and ecological enhancement scheme has been submitted to and approved in writing by the Local Planning Authority. In respect of landscaping it shall indicate the number, species, heights on planting and positions of all trees and shrubs. The approved scheme shall be carried out in its entirety by a date not later than the end of the full planting season immediately following the completion of that development. Thereafter, the trees and shrubs shall be maintained for a period of 5 years from the date of planting in accordance with an agreed management schedule. Any trees or shrubs which die or are damaged shall be replaced and maintained until satisfactorily established. For the purposes of this condition, a full planting season shall mean the period from October to April. The ecological enhancements not included in the landscaping scheme shall be carried out in accordance with the approved details prior to the occupation of the dwellings and retained thereafter.

Reason: In the interests of visual amenity and to provide ecological net benefit on the site, in accordance with policy GP5 and Planning Policy Wales Edition 11.

06 No development shall commence until details and plans showing the finished slab level of the building(s) hereby approved, together with cross sections through the site, have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: In the interests of the visual amenities of the area and the amenities of existing and proposed residential occupiers having regard to the topography of the site, in accordance with policies GP2 and GP6.

Pre –occupation conditions

07 Notwithstanding the approved plans and prior to the occupation of the development hereby approved, an acoustic fence shall be provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. The details shall include the position of the fence and its materials. The fence(s) shall be carried out in accordance with the approved details and retained as such thereafter in perpetuity.

Reason: In the interests of residential amenity, in accordance with policy GP2.

08 Prior to the occupation of the development hereby approved the parking areas shown on drawing 1437 PA 101 rev A shall be implemented and available for use thereafter. The parking areas shall be retained in accordance with the approved details.

Reason: To ensure adequate parking is provided on site in the interests of highways safety and in accordance with policies GP4 and T4.

09 Prior to the occupation of the development hereby approved the visibility splays as shown on drawing 1437 PA 103 rev A shall be provided. All these areas shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres.

Reason: In the interests of road safety and traffic movement, in accordance with policy GP4.

General conditions

10 No window or door openings (other than those shown on the approved plan) shall be formed in the north east elevation of the building hereby approved.

Reason: To protect the privacy and any perceived overlooking of adjoining resident, in accordance with policy GP2.

11 The hedgerow alongside the north east boundary of the parking court shall be retained in perpetuity.

Reason: In the interests of residential amenity, in accordance with policies GP2 and GP7.

NOTE TO APPLICANT

01 This decision also relates: Cardiff Road Parking Assessment and ATC speed survey.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP13, GP2, GP4, GP5, GP6, GP7, H6, T4 and W3 were relevant to the determination of this application.

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

04 The site may be crossed or the development is located close to a public sewer. The applicant is advised to seek the necessary consents from Dwr Cymru – Welsh Water.

3.

APPLICATION DETAILS

No: 20/1174 **Ward:** Rogerstone
Type: Full Application
Expiry Date: 12th April 2021
Applicant: *J Knight*
Site: *5 Pontymason Rise Rogerstone Newport South Wales NP10 9GJ*
Proposal: **RETENTION OF CHANGE OF USE OF LAND TO RESIDENTIAL GARDEN AND ERECTION OF MEANS OF ENCLOSURE AFFECTING PUBLIC RIGHT OF WAY 406/62**

Recommendation: **REFUSED**

1. INTRODUCTION

- 1.1 The application seeks consent to retain an extension of residential garden and a means of enclosure on the land located between the rear of 5 Pontymason Rise and the path along the Monmouthshire and Brecon Canal.
- 1.2 The canal path is a Public Right of Way (406/62), part of the site is located in the Monmouthshire and Brecon Canal Conservation Area and the canal is a Site of Importance of Nature Conservation (SINC). The site also forms part of the canal transport corridor and an environmental space and corridor.
- 1.3 The application is being considered by Planning Committee because part of the site is owned by Newport City Council. Newport Norse do not support the application and have asked the owner of 5 Pontymason Rise to vacate the site.
- 1.4 Five representations have been received in respect of the application. Two support the development, two object and one neither objects or supports but provided comment. The Officer's recommendation is refusal.

2. RELEVANT SITE HISTORY

04/0169	RESIDENTIAL DEVELOPMENT COMPRISING 27NO. DETACHED DWELLINGS (RESERVED MATTERS)	GRANTED WITH CONDITIONS
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3. POLICY CONTEXT

3.1 Newport Local Development Plan 2011-26 (Adopted January 2015)

Policy SP5 (Countryside) states that development in the countryside will only be permitted where the use is appropriate in the countryside, respects the landscape character and biodiversity of the immediate and surrounding area and is appropriate in scale and design. Housing development, rural diversification and rural enterprise uses, beyond settlement boundaries, will only be appropriate where they comply with National Planning Policy.

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

Policy GP2 (General Amenity) states that development will not be permitted where it has a significant adverse effect on local amenity in terms of noise, disturbance, overbearing, light,

odours and air quality. Development will not be permitted which is detrimental to the visual amenity. Proposals should seek to design out crime and anti-social behaviour, promote inclusion and provide adequate amenity for future occupiers.

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

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

Policy CE1 (Routeways, Corridors and Gateways) lists routes/corridors (M4, London to South Wales Railway, A449, A4042, A455, A4042, A48, A48(M), Monmouthshire and Brecon Canals) (plus other principal transport routes in the area) which are important main routes in the area. Any proposals that are located on or highly visible from these routes must seek to improve the general environment and help to create attractive gateways into the City.

Policy CE3 (Environmental Spaces and Corridors) states that sites that have existing importance for their visual qualities, as wildlife habitats or for recreational or amenity purposes, will be safeguarded as “environmental spaces and corridors”. The Policy sets out the criteria that development proposals in these spaces must comply with.

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

3.2 Supplementary Planning Guidance (SPG)

Wildlife and Development SPG (Adopted August 2015).

Trees, Woodland, Hedgerows and Development Sites SPG (Adopted January 2017).

3.3 Planning Policy Wales

3.3.1 National planning policy in the form of Planning Policy Wales (Edition 11, 2021) (PPW) is of relevance to the determination of this application.

3.3.2 The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.

3.4 Technical Advice Notes (TAN)

TAN 5 – Nature Conservation and Planning (September 2009)

TAN 6 – Planning for Sustainable Rural Communities (July 2010)

TAN 12 – Design (March 2016)

TAN 24 – The Historic Environment (May 2017)

3.5 Future Wales: The National Plan 2040

3.5.1 Future Plan Wales is our national development framework, setting the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key

national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. The Plan is the highest tier of development plan, focusing on issues and challenges at a national scale and leaving the LDP to identify local constraints and proposals. The two Plans should conform with one another and direct the plan-led planning system. Future Wales' 11 Outcomes are overarching ambitions based on the national planning principles and national sustainable placemaking outcomes set out in Planning Policy Wales.

4. CONSULTATIONS

- 4.1 MONMOUTHSHIRE, BRECON & ABERGAVENNY CANALS TRUST: *The Monmouthshire Brecon & Abergavenny Canals Trust wishes to object to the granting of the above retrospective application number 20/1174.*

The housing development when granted consent was approved showing a 10m strip which was to be kept free of development running alongside the canal. The intension was that this strip would be adopted by the Local Authority as public open space and incorporated into the canal corridor.

The purpose of the strip was three-fold. Firstly it would ensure that the canal corridor was not closed-in visually by fencing close to the towpath, secondly, it would allow some landscaping to help screen the new housing development, and thirdly, it allowed adequate room for maintenance to be undertaken. The canal at this point follows the contours on the hillside and can be prone to leakages. Prior to the transfer of the canal from British Waterways to Newport the area was considered a site where embankment slippage could accrue.

It was therefore felt particularity important to be able to access the southern side of the towpath embankment, as any leakages would directly affect the adjoining houses.

We are unclear as to when the adjacent property to the application site, highlighted on the application plan, extended their curtilage. I am sure you will be able to establish this via your extensive aerial photo library and planning records. If unauthorised we would urge enforcement action is taken.

On its own, this relatively short section might be viewed as having a small visual impact, however, if approved it will set a planning precedent for other property owners along this section of canal applying for the same thing, resulting in further closing in of the vista.

5. INTERNAL COUNCIL ADVICE

- 5.1 BIODIVERSITY AND ECOLOGY OFFICER: *No ecology information has been provided with the application. The application affects the boundary habitat to the Monmouthshire and Brecon Canal SINC which may be directly used by protected species, or may result in increased disturbance of wildlife using the canal or increase risk of pollution. The application is likely to result in the degradation of the Canal SINC, which seemingly minor in this one case may set a precedent for other applications to be approved resulting in severe disruption of the wildlife corridor. The application will result in a net loss to biodiversity and therefore is contrary to LDP policy GP5 and does not meet our obligations under PPW and the Environment (Wales) Act 2016. The ecology officer therefore objects to the principle of the proposal.*

Notwithstanding this objection, if you are minded to proceed with the application, insufficient information has been provided to inform a lawful planning decision. An Ecological Impact Assessment (EclA) is required to which must be informed by a Preliminary Ecological Appraisal (PEA) and include an assessment the impacts of the proposal on ecological features, clearly identifying any significant effects and impacts on designated sites or protected species. As well as retaining and protecting existing ecological features the scheme must also provide ecological enhancements to provide a net benefit for biodiversity.

- 5.2 CONSERVATION OFFICER: *Thanks for consulting me on this application, the site of which falls within the boundaries of the Monmouthshire and Brecon Canal Conservation Area. We do not have a Character Appraisal or Designation Statement for this Conservation Area. However, it seems obvious that the character is partially that of 18th and early 19th century*

industrial developments, but also of the canal banks that have reverted back to nature over the 2 centuries since the canal was dug. The proposals would heavily suburbanise the character of the conservation area and in doing so fail to preserve or enhance its character. As such, I must object to this application.

5.3 ACCESS DEVELOPMENT AND RIGHTS OF WAY OFFICER: *Objections to this on the following grounds;*

1. *There is on-going enforcement action relating to this case as the land enclosed is under Newport City Council ownership.*
2. *The area of land enclosed forms part of the canal feature, an important green infrastructure asset to the council and its loss will reduce the public's enjoyment of this route.*
3. *The installation of an urbanised boundary so close to the path creates the sense of enclosure, which again will reduce the public's enjoyment of this route.*
4. *The reduction in the available width along the boundary of the path will reduce the overall space for cyclists and other users to pass at this location.*
5. *The solid boundary will obstruct vehicles and machinery required to access this area for maintenance*

5.4 TREE AND WOODLANDS OFFICER: *There are objections to this application.*

1. *The canal bank is owned by NCC and there is ongoing enforcement action, please see below and attache .*
2. *The bank forms part of the Monmouthshire and Brecon Canal Conservation Area and is protected accordingly by planning legislation.*
3. *The trees and canal bank are for the benefit of all and not an individual – it goes against all Council ethos regarding the loss of all Public Open Space.*
4. *NCC would lose tree stock and the opportunity to add more trees etc – contrary to principles in LDP and Council tree policy.*

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties with a common boundary with the application site were consulted (three properties), three site notices were displayed and a press notice was published in South Wales Argus. Five responses were received.

6.2 Two local residents support the proposed development for the following reasons:

- Privacy for the residents of no.5 and no.1 Pontmason Rise, from pedestrians using the canal path.
- Reduce fly tipping.
- Reduce the likelihood of rodent infestation where litter would be used as a food source. This has been experienced.
- The upkeep of the area would be greatly improved if managed by the occupants of no.5.
- The land between the canal path and the boundary of the houses has never been cleared or maintained by the Council as evidenced by the current state of the land.

6.3 Two local residents have objected to the proposed development. The following points were raised:

- The land between the canal tow path and the rear fence of 5 Pontymason Rise should be reinstated.
- Disregard for the Conservation Area should not be condoned.
- Previously advised that the land between garden fences and the canal tow path is public open space and a distance of 5m must be maintained.
- If consent is granted, it would set a precedent and many more local residents may seek to move their fences, resulting in a significant loss of natural habitat and the ruin of the canal environment between the bridge into Newport Golf Club and the bridge at Pontymason Lane.
- The potential erection of close boarded fencing along hundreds of metres of the canal would encourage graffiti and ruin the area for people who use the tow path.

- The planning permission for Pontymason Court residential development may have required the planting of new trees between the rear garden fences and the tow path to retain a natural habitat.

6.4 One neighbouring property has stated that they do not formally object to the application, but have raised the following points:

- They do not envisage such a change behind their garden.
- The canal embankment is seen as a green, natural corridor of bushes and small trees rather than a 'waste land'.
- This amenity is not just for local residents. It is also for others who use the towpath (PROW) and plenty of wildlife.

6.5 ROGERSTONE COMMUNITY COUNCIL: No response.

7. ASSESSMENT

7.1 Site Description

7.1.1 Prior to the unauthorised development taking place, the land between the rear of 5 Pontymason Rise and the path along the Monmouthshire and Brecon Canal formed part of the open, vegetated green space along the canal and Public Right of Way (PROW). The land can no longer be seen or accessed due to a 1.8m tall wooden fence that has been erected around the perimeter of the site. The site of which falls within the boundaries of the Monmouthshire and Brecon Canal Conservation Area. The canal is a Site of Importance of Nature Conservation (SINC) and the site also forms part of the canal transport corridor and an environmental space and corridor.

7.1.2 Photos and maps have been provided in an effort to demonstrate that the land was part of Stoney Croft, the dwelling that was demolished before the construction of Pontymason Rise. Members should understand that the ownership of the land is not a material planning consideration and should not be given any weight in the determination of the scheme, whether the land formed part of the previous Stoney Croft or not. The use of the land prior to the unauthorised garden extension was part of the vegetated green space along the canal and PROW and the application will be assessed on this basis.

7.2 Description of Development

7.2.1 The application seeks consent to retain an extension of residential garden land and a means of enclosure on the land located between the rear of 5 Pontymason Rise and the path along the Monmouthshire and Brecon Canal (under Section 73A of the Town and Country Planning Act 1990). The garden has been extended by approximately 7.8m and a 1.8m tall wooden fence has been built approximately 30cm from the canal path. The fence has a green finish.

7.2.2 In order to extend the garden, some vegetation has been removed and four trees have been enclosed within the garden. The trees are protected because they are located in the conservation area.

7.3 Principle of Development

7.3.1 Most of the site is located beyond the border of the urban boundary identified in the Council's Adopted Local Development Plan 2011-2026. Although the land is on the border of the urban boundary, the development does go beyond the boundary and for planning purposes would be considered 'countryside'.

7.3.2 Policy SP5 (Countryside) states that development in the countryside (land lying beyond the defined settlement boundaries) will only be permitted where the use is appropriate in the countryside, respects the landscape character and biodiversity of the immediate and surrounding area and is appropriate in scale and design. Planning Policy Wales and TAN 6 (Planning for Sustainable Rural Communities) provide guidance on applications for residential uses within the countryside, including those for rural enterprise dwellings or affordable housing schemes, and the justification that would need to be provided.

7.3.3 The proposed scheme has not been supported by a special justification, such as that required for appropriate residential use or land being used for agricultural purposes. Furthermore, the development would not amount to the re-use or adaptation of an existing building to assist the rural economy. Accordingly, the development does not benefit from the provisions of Policy SP5, Planning Policy Wales or TAN 6.

7.4 Visual Impact

7.4.1 As set out in the description, the application site is located to the rear of the residential property (5 Pontymason Rise) and the public footpath along the canal. The footpath is bordered to the north by the canal, tree vegetation and a golf course beyond. To the south, the tow path is higher than the residential properties and separated from the rear boundaries by a visual buffer of naturally grown and largely native vegetation. The canal tow path has a semi rural appearance with the vegetation limiting views of the residential development to the south of the site.

7.4.2 The site is located in the Monmouthshire and Brecon Canal Conservation Area. The Conservation Officer, who objects to the application, highlights that there is not a Character Appraisal or Designation Statement for the Monmouthshire and Brecon Canal Conservation Area. However, he observes that the character is partially of 18th and 19th century industrial development and the canal banks have reverted back to nature over the two centuries since the canal was dug.

7.4.3 The applicant has submitted a response to the Conservation Officer's comments, disputing that the character of the site is partially of 18th and 19th century industrial development because an 1886 map shows that the land is private. The applicant also explains that the proposals would enhance the conservation area because the land had limited foliage compared to the rest of the land along the canal and was abused by users of the canal dumping litter and animal faeces. The 1886 map provided by the applicant does not demonstrate that the land does not have an industrial history or that it was private. Whilst the vegetation on this land may not have been as dense as the rest, it still contributes to the conservation area. Unfortunately, land such as this can be subject to the deposit of some waste. However, this does not override the character or appearance of the site.

7.4.4 The Monmouthshire Brecon & Abergavenny Canals Trust, who object to the application, have highlighted that the housing development was approved with the strip of land to the rear and its purpose was three-fold. It would ensure that the canal corridor was not closed-in visually by fencing close to the towpath, it would allow some landscaping to help screen the new housing development and it would allow adequate room for maintenance to be undertaken. The intention was that this strip would be adopted by the Local Authority as public open space and incorporated into the canal corridor.

7.4.5 The change of use and means of enclosure cannot be seen from the front of the residential property and would have no visual impact upon the street scene along Pontymason Rise. The fence blocks views into the extended garden and is prominent along the canal path. The green space between the houses and tow path remains largely unaltered other than the application site and the adjoining neighbour (1 Pontymason Rise). As the stretch of tow path is relatively unspoilt, the unauthorised garden extension and fence results in an unsightly and uncharacteristic development. The site has been landscaped as a domestic garden, which contrasts with the undeveloped landscape character described. Given the contrasting appearance of land used as residential garden and green space, the proposal would appear both physically and visually intrusive. The prominent close board fence would also suburbanise the land. The development is therefore a harmful extension of residential use into the countryside and rural landscape.

7.4.6 It is acknowledged that there is a hedge, chainlink fence and wooden fence frame along the boundary between the canal path and 1 Pontymason Rise. The applicant has submitted evidence that no.1 extended their curtilage without planning consent. However, this was reported over 10 years ago so the potential change of use would now be lawful (E98/0698 and E03/0633). The enforcement cases were referred to another department, presumably because the breach involved Council land. This encroachment is an anomaly that

demonstrates how a garden extension can have a negative impact and does not justify further harm.

- 7.4.7 The applicant has submitted photos of examples of different boundary treatments along the canal path in Newport. It is acknowledged that there are varying boundary treatments along the canal. However, this does not justify the harmful impact upon the application site and immediate surrounding area.
- 7.4.8 A recurring point in the objections received by consultees and members of the public is that the development would set a precedent and could enable similar developments to take place along the canal. This is demonstrated by the fact that the applicant refers to the extension of curtilage at 1 Pontymason Rise in an effort to justify the proposed development. Although all cases are considered on their own merits, the approval of this scheme may encourage more applications for garden extensions along the entire length of the tow path. If this scheme was approved, it may mean that the Council will find it more difficult to defend its policy position with future cases.
- 7.4.9 The preceding assessment demonstrates that the extension of garden land and close board fence would be an incongruous addition that would not preserve or enhance the character and appearance of the conservation area. This would be contrary to Policies SP5, SP9, GP6, CE1 and CE7.

7.5 **Trees**

- 7.5.1 Trees protected by the conservation area have been incorporated into the garden and vegetation was cleared to enable the development. The Tree Officer objects to the application and has explained that the proposals would result in a loss to the Council's tree stock and the opportunity to add more trees.
- 7.5.2 The applicant has submitted a response to the Tree Officer's comments, stating that only 4 trees would be affected and this would have a minimal impact upon the Council's tree stock. The applicant also states that the two large trees were originally part of the Stoney Croft estate and the two smaller trees were planted by Barratt Homes to block views from the towpath into their garden. Whilst the proposed development would only impact a small number of trees in the Council's tree stock, the trees are protected by the conservation area and contribute to the natural environment and appearance of the area.
- 7.5.3 The applicant has provided a photo, captured inside the garden, which shows that excavation works have taken place to level the land and indicates that the development may affect the trees. The Trees, Woodland, Hedgerows and Development Sites SPG states that a planning application that may affect existing trees, woodlands and 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. This information has not been submitted so the impact or harm upon the trees cannot be assessed.
- 7.5.4 The applicant has been made aware of this issue but the information has not been submitted. Due to the lack of information submitted on this matter, the Council has insufficient detail and cannot assess the impact of the development on the protected trees. Accordingly, it must be concluded that the proposal would be contrary to GP5 and the Trees, Woodland, Hedgerows and Development Sites SPG.

7.6 **Ecology**

- 7.6.1 The Ecology Officer explains that the change of use and means of enclosure affects the boundary habitat to the Monmouthshire and Brecon Canal SINC, which may be directly used by protected species. The proposals may also disturb wildlife using the canal or increase the risk of pollution. The Ecology Officer highlights that although harm upon the SINC may appear to be small, it may set a precedent for similar applications, which would severely disrupt the wildlife corridor.

- 7.6.2 The Ecology Officer also explains that insufficient information has been provided and an Ecological Impact Assessment is required. The applicant is aware of this issue but the information has not been submitted.
- 7.6.3 In response to the Ecology Officer's comments, the applicant has stated that the land would be incorporated into the garden to support the ecology and wildlife of the area, there would be no impact upon the canal banks or SINC because the fence is set away and there would be no impact upon wildlife because no trees or foliage have been impacted. The applicant explained that the development would improve the biodiversity and ecology of the area by stopping the abuse of the site from the deposit of waste which can lead to sanitation issues with rats. The applicant also explained that they are committed to providing ecological enhancements and supporting net biodiversity benefits, compared to the weeds and unmanaged growth that was there before.
- 7.6.4 Despite the applicant's position, there is no evidence that the trees or foliage have not been impacted by the proposed development. The removal of the original vegetation and development of the land is likely to have an impact on the ecology and biodiversity of the site. However, insufficient information has been submitted to assess the impact or demonstrate how any impact has been mitigated by the applicant. The Ecology Officer has no option but to object to the application because there is insufficient information to assess the harm of the proposals.
- 7.6.5 The proposal would be contrary to Policy GP5, Planning Policy Wales (Edition 11, February 2021) and the Environment (Wales) Act 2016 and the Wildlife and Development SPG.

7.7 **Public Right of Way**

- 7.7.1 The fence would be set off from the Public Right of Way by approximately 30cm. This would feel enclosed and overbearing for users of the path compared to the original open, vegetated land. The Monmouthshire Brecon & Abergavenny Canals Trust have explained that one of the reasons the residential properties were set away from the path is to avoid it being closed in by fences.
- 7.7.2 The Rights of Way Officer objects to the application and states that the land forms part of the canal feature, an important green infrastructure asset and its loss would reduce the public's enjoyment of the route. The enjoyment of the route would also be reduced by the sense of enclosure caused by the fence.
- 7.7.3 The applicant has submitted a response to the Public Right of Way Officer's comments, stating that the land is a tiny percentage of the overall canal feature and the development does not impede or reduce the public's access or enjoyment of the area. The applicant also stated that the land has been an eyesore, the land has been maintained by them rather than the Council and the fence is sympathetic and looks neater.
- 7.7.4 The change of use and fence prevent members of the public from accessing or enjoying the land. Whilst the land is a small part of the environmental space and corridor and it is located next to a small part of the PROW, the impact is still important. The change of use and means of enclosure would harm the general environment of the PROW and environmental space and corridor. It would also reduce the attractiveness of the gateway into the city. This impact upon the amenity of the site and path would be contrary to Policies GP2, CE1 and CE3.
- 7.8 The Monmouthshire Brecon & Abergavenny Canals Trust, who object to the application, have highlighted that the land allows adequate maintenance to be undertaken because this point of the canal can be prone to leakages and potential slippage. The enclosure of the land and change of use to residential curtilage would prevent the Council from accessing the land and carrying out and necessary maintenance. This could result in harm upon the canal and residential properties.

8. **OTHER CONSIDERATIONS**

8.1 ***Crime and Disorder Act 1998***

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those

functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

8.2 **Equality Act 2010**

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

8.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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

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

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

8.6 **Newport's Well-Being Plan 2018-23**

The Wellbeing of Future Generations (Wales) Act 2015 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. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. **CONCLUSION**

9.1 The change of use to residential garden and erection of the means of enclosure are considered to be an unacceptable residential use in the countryside, resulting in a harmful visual impact upon the landscape character of the Monmouthshire and Brecon Canal Conservation Area. In addition, insufficient information has been submitted to assess the impact upon the trees and biodiversity of the protected environmental space, wildlife corridor and protected Site of Importance of Nature Conservation (SINC). This would be contrary to Policies SP5, SP9, GP2, GP5, GP6, CE1, CE3 and CE7 of the Newport Local Development Plan 2011-26 (Adopted January 2015). The development would also be contrary to the Wildlife and Development SPG and the Trees, Woodland, Hedgerows and Development Sites SPG.

10. **RECOMMENDATION**

REFUSED

01 The change of use to residential garden and erection of the means of enclosure are considered to be an unacceptable residential use in the countryside and constitute a harmful intrusion of urban development, which would fail to preserve or enhance the character and appearance of the Monmouthshire and Brecon Canal Conservation Area. In addition, insufficient

information has been submitted to assess the impact upon the trees and biodiversity of the protected environmental space, wildlife corridor and protected Site of Importance of Nature Conservation (SINC). This would be contrary to Policies SP5, SP9, GP2, GP5, GP6, CE1, CE3 and CE7 of the Newport Local Development Plan 2011-26 (Adopted January 2015). The development would also be contrary to the Wildlife and Development SPG and the Trees, Woodland, Hedgerows and Development Sites SPG.

NOTE TO APPLICANT

01 This decision relates to the following plans and documents:

- Site Location Plan
- Proposed Fence Elevation
- Block Plans
- Change of Use Plan
- Fence Elevation Description
- Tree Care Plan
- 1886 Map of Pontymason, Rogerstone
- Applicant Response to Objections Raised by Council Officers – Biodiversity and Ecology Officer
- Applicant Response to Objections Raised by Council Officers – Historic Conservation Officer
- Applicant Response to Objections Raised by Council Officers – Monmouthshire and Brecon Canals Trust
- Applicant Response to Objections Raised by Council Officers - Trees and Conservation
- Applicant Response to Objections Raised by Council Officers - PROW
- Planning Application Additional Information February 2020
- Rationale for Planning Application 20/1174
- 1886 Map of Pontymason, Rogerstone
- Map of Stoney Croft 1938
- Map of Stoney Croft Prior to 2004 and Construction of Pontymason Rise
- Applicant photo of development (taken in garden)
- Photo of Rear Boundary December 2004
- Photo of 1 Pontymason Rise Fence July 2005
- Photo of 5 Pontymason Rise Rear Fence During Construction
- Photo of Rear of 5 Pontymason Rise Showing Old Fence
- Photo of Trees Subject to Planning Application October 2020
- Photo of Site Before Building of Pontymason Rise
- Photo of Change of Use and Fence

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP9, GP2, GP5, GP6, CE1, CE3 and CE7 were relevant to the determination of this application.

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

PUBLICATION OF THE FUTURE WALES: THE NATIONAL PLAN 2040 – IMPLICATIONS FOR APPLICATIONS DETERMINED BY PLANNING COMMITTEE WITH A RESOLUTION TO GRANT, SUBJECT TO SECTION 106 AGREEMENT

Recommendation: AGREE THAT THE PUBLICATION OF ‘THE FUTURE WALES: THE NATIONAL PLAN 2040’ AND ASSOCIATED UPDATES TO PLANNING POLICY WALES DO NOT AFFECT THE PLANNING COMMITTEE DECISIONS PREVIOUSLY MADE ON THE APPLICATIONS LISTED BELOW.

1. INTRODUCTION

1.1 On the 24 February 2021, ‘*Future Wales: The National Plan 2040*’, was published by Welsh Government. It now has legal status as a development plan and is relevant to development management decisions made on and after 24 February 2021. Planning Policy Wales (PPW) has also been updated to version 11 to reflect the publication of *Future Wales*.

Future Wales-The National Plan 2040, can be viewed at:

<https://gov.wales/future-wales-national-plan-2040>

Planning Policy Wales can be viewed at:

https://gov.wales/sites/default/files/publications/2021-02/planning-policy-wales-edition-11_0.pdf

1.2 *Future Wales* is our national development framework, setting the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. It is the highest tier of development plan, focussing on issues and challenges at a national scale, leaving the LDP to identify local policies, constraints and proposals. The two plans should conform to one another and direct the plan-led planning system. *Future Wales’* 11 Outcomes are overarching ambitions based on the national planning principles and national sustainable place-making outcomes set out in Planning Policy Wales.

1.3 It is important to note that the vast majority of planning applications determined by the Local Planning Authority are small-scale developments of local rather than regional or national significance. *Future Wales’* focus is on national and regional spatial issues and as such, whilst its policies will need to be considered, the Local Development Plan policies will provide the detailed development management framework in the vast majority of cases.

1.4 The following report reviews any implications from the publication of *Future Wales* to those applications that have previously been considered by Planning Committee and granted, subject to

the completion of a Section 106 legal agreement. There is one application to consider in total where the Section 106 legal agreement has not yet been completed. It is necessary to consider the potential implications of *Future Wales* before the S106 legal agreement is completed and decision formally issued.

2 RELEVANT APPLICATIONS PREVIOUSLY DETERMINED BY PLANNING COMMITTEE

i. **Application Ref:** 19/1231

Site: 27 Penylan Close

Proposal: CONSTRUCTION OF DETACHED DWELLING AND ASSOCIATED PARKING. RESUBMISSION OF APPLICATION 18/0980

Date of Committee Approval: 06/05/2020

Planning Policy Comments: The scale and type of development is such that it is considered that there are no new policy requirements or objectives that have not previously been considered under the requirements of the Local Development Plan and Planning Policy Wales. On this basis it is considered that the recommendation for approval subject to a S106 agreement remains.