

Agenda



Planning Committee

Date: Wednesday, 1 February 2023

Time: 10.00 am

Venue: Council Chambers - Civic Centre

To: Councillors M Spencer (Chair), M Linton (Deputy Chair), T Watkins, J Jones, M Howells, R Mogford, T Harvey, D Jenkins, B Perkins, J Reynolds and J Jordan

Item	Wards Affected
1. <u>Apologies for Absence</u>	
2. <u>Declarations of Interest</u>	
3. <u>Minutes of the meeting held on 11 January 2023</u> (Pages 3 - 6)	
4. <u>Planning Committee Code of Practice</u> (Pages 7 - 26)	
5. <u>Green Lane, Peterstone - Enforcement Notice and Stop Notice</u> (Pages 27 - 38)	
6. <u>Development Management: Planning Application Schedule</u> (Pages 39 - 132)	

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Date of Issue: Thursday, 26th January 2023

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Draft Minutes

Planning Committee

Date: 11 January 2023

Time: 10.00 am

Present: Councillors M Spencer (Chair), M Linton (Deputy Chair), J. Jones, M. Howells, T Harvey, D. Jenkins, B Perkins, and J Jordan.

In Attendance: Tracey Brooks (Development and Regeneration Manager), Joanne Davidson (East Area Development Manager), Stephen Williams (West Area Development Manager), Joanne Evans (Senior Solicitor- Planning and Land), Grant Hawkins (Senior Planning Officer), Andrew Ferguson (Planning and Development Manager), Alun Lowe (Planning Contributions Manager), Joanne Llewellyn (Service Manager-Resources), Councillor James Clarke- Cabinet Member for Strategic Planning, Regulation and Housing, Councillor Phil Hourahine and Councillor Deb Harvey

Pamela Tasker (Governance Support Officer), Taylor Strange (Governance Support Officer)

Apologies: Councillor Trevor Watkins, Councillor Ray Mogford and Councillor John Reynolds

1. Declarations of Interest

Councillor Tim Harvey excused himself and left the chamber for application no 22/1047 due to predetermination issues.

2. Minutes of the meeting held on 7 December 2022

The minutes of the meeting held on 7 December 2022 were submitted.

Resolved

That the minutes of the meeting held on 7 December 2022 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. Appeals

Member's attention was drawn to the appeals report, for information.

The meeting terminated at 11:43am

Draft Appendix A
PLANNING COMMITTEE – 11 01 23
DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
22/1047	<p>Site: 59 Balmoral Road</p> <p>Proposal: CHANGE OF USE FROM A 4 BED DWELLING HOUSE (C3) TO A 3 BED RESIDENTIAL CHILDREN'S CARE HOME (C2)</p> <p>Recommendation: Granted with Conditions</p>	Alway	<p>Presented to Committee at request of Councillor Debbie Harvey.</p> <p>Councillor Tim Harvey declared an interest in this application and left the meeting.</p> <p>Ms. Jane Sibanda (Applicant) spoke in favour of the application.</p> <p>Councillor Deb Harvey (Ward Member) spoke in opposition of the application.</p>	Granted with conditions
22/0067	<p>Site: Land west of Tom Lewis Way, Alexandra Docks, Newport</p> <p>Proposal: Construction of additional stores unit and open fronted wash down area together with portacabin offices and other associated development.</p> <p>Recommendation: Granted with conditions</p>	Pillgwenlly	<p>Presented to Committee as a major planning application</p>	Delegated powers granted for the Head of Service to approve the application in the event that Natural Resources Wales confirms that they are satisfied with the outcomes of the appropriate assessment and subject to amending Condition 3 (Landscaping).

22/0955	<p>Site: 1 Collier Street</p> <p>Proposal: CHANGE OF USE FROM A THREE BEDROOM DWELLING (C3 USE) TO A FOUR BEDROOM HOUSE IN MULTIPLE OCCUPATION (C4 USE)</p> <p>Recommendation: Granted with conditions</p>	St Julian's	<p>Presented to Committee at request of Councillor Bright and Townsend</p> <p>Councillor Phil Hourahine (Ward Member) spoke in opposition of the application.</p>	<p>Refused:</p> <p>Reason:</p> <p>The proposal will have a significant adverse effect on interests of acknowledged importance, namely safety and residential amenity by reason of flooding and the presence of a ground floor bedroom with unsuitable first floor refuge. No information has been submitted that mitigates this objection, contrary to policy SP3 of the Local Development Plan for Newport 2011-2026 (Adopted January 2015) and Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004).</p>



Report

Planning Committee

Part 1

Date: 1 February 2023

Subject Planning Committee Code of Practice

Purpose Bringing updated Code of Practice to be ratified and adopted by Committee

Author Senior Solicitor

Ward All

Summary The Code of Practice for Planning Committee has been updated in accordance with current legal requirements and virtual meeting practices.

Proposal It is recommended that the updated Code be ratified by Planning Committee and adopted as part of the Council's Constitution

Action by Planning Committee

Timetable Immediate

This report was prepared after consultation with:

- Head of Law and Standards, Monitoring Officer
- Chief Financial Officer
- Head of People, Policy and Transformation
-

Signed

Background

The Planning Committee Code of Practice was last updated in 2016. Since then, matters have arisen which require changes to the Code. Significant changes are needed in relation to the following matters.

Firstly, the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017 changed the law to require the quorum at any committee meeting to consist of at least half of the members of that Committee. This meant that the quorum at Planning Committee changed from 3 members to 6 members. It also meant that a site sub-committee was no longer viable. Decisions must now be made by the whole Committee after a site visit and full procedure followed. Public speaking is allowed at those meetings and the meetings will be filmed.

In addition, the pandemic changed the way meetings are conducted at the Council, introducing the use of virtual meetings. The Code of Practice has been updated in accordance with the Council's "Arrangements for Multi-location meetings" policy.

The amendments to the Code will not have any impact on current practices as the changes are already in place. The Code will now be an accurate document which members can rely on for guidance and this can only be a benefit.

There will be no legal implications apart from those changes to the law that are already in place.

The Code should be adopted as soon as possible for the purposes of clarity of Committee procedure.

There are no staffing implications.

Financial Summary (Capital and Revenue)

- There are no financial implications associated with this report and decision.

Risks

It is important to identify and manage any project or scheme's exposure to risk and have in place controls to deal with those risks.

There is a risk in not updating the current Code of Practice so that it does not comply with current legislation.

Risk Title / Description	Risk Impact score of Risk if it occurs* (H/M/L)	Risk Probability of risk occurring (H/M/L)	Risk Mitigation Action(s) What is the Council doing or what has it done to avoid the risk or reduce its effect?	Risk Owner Officer(s) responsible for dealing with the risk?
Leaving Code of Practice in current outdated form would risk legal challenges to decisions	M	L	Planning committee is being run in accordance with the current law but the Code needs to be updated to reflect this and provide the correct written guidance for members	Senior Solicitor (Planning and Land)

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The changes include the Council's policy in respect of multi-location meetings.

Options Available and considered

- i. the Committee confirm that they wish to adopt the updated Code.
- ii the updated Code is not accepted and/or changes are put forward.

Preferred Option and Why

It is recommended that the updated Code of Practice is adopted so that Planning Committee has current and relevant guidance.

Comments of Chief Financial Officer

The report confirms there are no cost implications associated with adopting the updates Code of Practice, which simply brings them up to date in line with changed legislation and new ways of working.

Comments of Monitoring Officer

There are no specific legal issues arising from the Report. However, the Planning Code of Practice needs to be updated in line with the Council's constitutional corporate governance arrangements to reflect changes in legislation and decision-making procedures. The amendments to the Standing Orders Regulations changed the quorum requirements for Planning Committee and the composition of the Committee in relation to only one ward member being able to sit on the committee where there are multiple member wards. The Regulations also necessitated changes to the arrangements for site inspections and decision-making. Subsequent legislative changes introduced by the Local Government & Elections (Wales) Act 2021 have also required changes to Standing Orders to reflect new arrangements for hybrid multi location meetings. These statutory changes have already been reflected in the Council's Standing Orders and the terms of reference for Planning Committee, but the Planning Code of Practice now needs to be updated in line with these other constitutional changes. There is no substantive change to the way in which decisions are taken and the current scheme of delegation remains unchanged, but the Code of Practice has been updated to reflect current practice and legal requirements. In addition, the provisions in relation to ethical standards and the Members Code of Conduct have been revised and updated to reflect more recent guidance from the Ombudsman and to provide greater clarity regarding declarations of interest and predetermination. The Code is non-statutory and is intended to provide guidance to Councillors, Officers and members of the public regarding the planning process. However, it is recommended that, in the interests of openness and transparency, the Code should be published as part of the Council's written constitution. Therefore, Planning Committee are asked to agree the revised Code of Practice and make a recommendation to full Council that it should be formally adopted as part of the Council's Constitution.

Comments of Head of People Policy and Transformation

There are no staffing implications to this report. As stated below, an FEIA has not been completed for this report; however it should be noted that the proposed changes to facilitate virtual or hybrid meetings will increase the ability of residents to take part in the meetings who may not have been able to do so if they had continued to be exclusively face to face.

Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

The Council has a number of legislative responsibilities to assess the impact of any strategic decision, proposal or policy on people that may experience disadvantage or inequality.

An FEIA has not been completed as this proposal is to ratify an update to the Code of Practice, to bring it in line with current law and practice, and so it will have no practical effect.

Consultation**Background Papers**

Copy of updated Code of Practice attached.

Dated: 20th January 2023

PLANNING COMMITTEE CODE OF PRACTICE

“Everything you need to know about
Planning Committee”

(November 2022)

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1. Introduction

1.1 This Code of Practice is intended to guide the procedures by which Councillors and Officers of the Council deal with planning matters, and to set standards of probity and conduct which the residents of Newport City Council can expect.

1.2 As planning affects people's lives and private interests, it can often be very contentious. It is important that residents of Newport and applicants for planning permission understand the system, have confidence in its integrity and transparency and that Members and Officers involved in the planning process avoid impropriety or even the suspicion of impropriety. This approach is endorsed by the Committee on Standards in Public Life (the Nolan Committee), the Wales Audit Office and the Welsh Local Government Association.

1.3 Members must follow the Codes and Protocols in the Constitution of Newport City Council which cover such matters as declarations of interests, gifts and hospitality and the Protocol for Member/Officer relations. When dealing with planning matters they must also act in accordance with this Planning Code of Practice.

1.4 A breach of these codes whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or in a complaint of maladministration, being made to the Local Government Ombudsman. A breach of the Members' Code of Conduct can result in a complaint against a Member personally.

1.5 If Members or Officers are in doubt about the application of the Codes they should seek advice from the Council's Monitoring Officer.

2. General Roles, Responsibilities and Conduct

2.1 Members and Officers have different but complementary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.

Members of Planning Committee

2.2 There are 11 Members on the Planning Committee and they normally meet once a month.

2.3 Members of the Committee are usually appointed at the Council's Annual General Meeting, held in May each year. However, the allocation of seats on the Committee must reflect the political balance of the Council and, therefore, individual groups may change their membership at any time by giving notice to the Proper Officer. In the case of multiple member wards, only one ward Councillor can be appointed to Planning Committee.

2.4 Six Members of the Committee constitute a Quorum.

2.5 Councillors who are Members of the Planning Committee are responsible for the determination of planning applications for major regeneration and controversial applications. The Committee must assess proposals against national and local planning policy and carefully balance the benefits of proposed development with any impacts on the surroundings. Members are required to consider all planning proposals in the wider public interest. Decisions are restricted to planning considerations, and cannot seek to control non-planning issues or duplicate other legislative controls.

2.6 Other applications are delegated to the Head of Regeneration & Economic Development through the Planning and Development Manager. Details of applications received are available on the Council's website. Members can contact the Case Officer to express an interest in the proposal. In due course that Member will be notified of the Officer's recommended decision. If unhappy with the recommended decision the Member can request referral of the application to Planning Committee for determination.

2.7 However, such requests must be supported by clear planning reasons why the case requires consideration by the Committee. Members shall not put any pressure on Officers to make particular recommendations or decisions, nor to change recommendations or decisions in respect of any application. However, it is helpful if Members explain their concerns with the Officer in advance of the Committee meeting.

Planning Committee Members shall:-

2.8 For and in meetings:-

- Exercise personal responsibility in deciding whether to declare any personal interest as defined in the Council's Code of Conduct in relation to any planning application that is before the Planning Committee for determination, and withdraw, if so required by the Code. If in doubt, Members shall consult and seek guidance from the Monitoring Officer or Senior Solicitor (Planning and Land) in advance of the meeting.
- Act fairly and openly.
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. Whilst Planning Committee Members have a responsibility to their constituents, the decisions of that Committee must be based on material planning considerations.
- Have reasons and justification for their position and resolutions (this is a requirement of the Code of Conduct)

Members of the Planning Committee who are also members of Community Councils

2.9 Membership of a Community Council provides an opportunity to listen to local views and does not of itself give rise to conflict of interest for a Planning Committee Member provided he or she does not pre-determine the application and maintains an open mind until all the evidence and arguments have been presented to Planning Committee. Please refer to section 7.4 of this Protocol. Planning Committee Members are advised not to participate in any decisions taken by Community Councils regarding planning applications which could come before Planning Committee, as that could amount to a pre-determination and prevent the member from taking part in the debate and decision at Planning Committee.

2.10 A Member does not have to declare an interest at the Community Council that he/she is a Member of City Council's Planning Committee unless the matter under discussion is an application made by the City Council. They would then have to declare a personal interest but not a prejudicial interest and they can continue to speak and take part in the decision.

2.11 If the Planning Committee Member is a Community Councillor and their Community Council is making an application to the Council, they would have a personal and prejudicial interest and the Member should not take any part in discussion or voting on the application at Committee.

Non Planning Committee Members of the Council

2.12 Ward Members who do not sit on the Planning Committee will be allowed to speak at Planning Committee at the Chairperson's discretion. This opportunity shall not apply to delegated items unless they are referred to Planning Committee for determination in accordance with the operation of the scheme of delegation.

3. Planning Committee Meetings

3.1 Meetings of the Planning Committee will normally be held on the first Wednesday of each month. Dates for Committee meetings can be found on the Council's website or by contacting City Contact Centre on 01633 656656. The time of Committee meetings will be advertised on the Council's website.

All meetings will be conducted as multi-location meetings. Members will be able to join and participate in the meetings remotely in accordance with the Council's Multi-location Meetings Policy.

All meetings will be held in public. However the public will be excluded from meetings whenever it is likely in view of the nature of the item to be discussed or the nature of the proceedings, that confidential information would be disclosed.

Public speaking items will be taken first on the agenda. All other applications will be heard in the order in which they appear on the Agenda, other than in exceptional circumstances, and always at the discretion of the Chairperson. The procedure at the Planning Committee meetings is explained in paragraph 9 of this Code of Practice.

The deadline to register for public speaking is 9.00 a.m. on the Wednesday preceding the Planning Committee meeting on the following Wednesday.

Webcasting / Broadcasting of Meetings

3.2: The Council has agreed that meetings of the Planning Committee will be the subject of live web transmission ('webcasting'), or recorded for subsequent transmission in accordance with the requirements of the Local Government & Elections (Wales) Act 2021 and the Council's Arrangements for Multi-Location meetings. Fixed cameras are located within the Council Chamber for this purpose.

The Council will ensure that in doing so it is compliant with its obligations under the Data Protection Act 1998 and the Human Rights Act 1998.

The Notice on the agenda and the Chair at the meeting will make it clear that whilst generally the public seating areas are not filmed; by entering the meeting room and using the public seating area, members of the public are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. The process for prospective public speakers will be explained to them.

Who Can Speak

3.3 Public speakers will be permitted to participate in person at meetings if they have registered in advance (as detailed in 3.1 above). Speaking will be limited to:

- a. One member of the public objecting to the development,
- b. One member of the public supporting a development. Any person wishing to speak in support of an application must be an independent third party (eg a neighbour or local resident, but not a relative or friend of the applicant), and
- c. The applicant or their agent, regardless of whether or not an objector is speaking and regardless of the Officer recommendation.

3.4 When there is more than one person in opposition or support, the relative groups should work together to establish a spokesperson. In the event of no agreement being reached, the right to speak shall fall to the first person to register a request.

3.5 Representatives of Community Councils will be treated in the same way as all other persons wishing to speak at Planning Committee meetings and will be subject to this Code of Practice.

3.6 Ward Members representing the Ward in which the proposed development is located are allowed to speak at Planning Committee at the Chairperson's discretion. Ward Members should notify the Chair at least 24 hours before Planning Committee of their intention to speak by emailing democratic.services@newport.gov.uk.

3.7 Applications to be placed before the Planning Committee will be scheduled for the first available meeting. Applications will not be deferred to later Committee meetings on the grounds that an interested party or Elected Member is unavailable to attend the scheduled meeting. In the case of Wards represented by only one Member, that Member may nominate another Member to attend the scheduled meeting to speak on their behalf. The Chairperson shall be notified of the nominated Member in advance of the relevant Committee meeting.

Content of Public/Ward Councillor Speeches

3.8 Comments by Public/Ward Councillors should be limited to relevant planning issues.

These include:-

- Relevant national and local planning policies;
- Appearance and character of the development, layout and density;
- Traffic generation, highway safety and parking/servicing;
- Overshadowing, overlooking, noise disturbance, odours or other loss of amenity.

Public/Ward Councillors should avoid referring to matters outside the remit of the Planning Committee, such as:

- Boundary disputes, covenants and other property rights;
- Personal remarks [e.g. Applicant's motives or actions to date];
- Rights to views or devaluation of property.
- Competition between businesses/services
- Issues covered by other legislation e.g. Environmental Health

Late Representations

3.9 The deadline for the submission of comments on applications being presented to Committee is midday on the Monday immediately before the Planning Committee meeting (on the Wednesday). Late Representations should be emailed to planning@newport.gov.uk Comments received by the Case Officer before that deadline will be summarised and sent to Planning Committee Members and the relevant Ward Councillor(s) by 12 noon the day before the meeting. Comments or any other document or information received after that deadline would not be taken into consideration. This procedure ensures that Planning Committee Members have had sufficient time to read any additional papers.

Officers

3.10 The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Development Plan and other material planning considerations.

3.11 The Planning and Development Manager makes decisions on the majority of planning applications on behalf of the Head of Regeneration & Economic Development under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee. Officers will provide professional advice and will provide Members with a recommendation on whether or not planning permission should be granted, based on the Officer's assessment.

In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-

- Act fairly and openly and avoid any actions that would give rise to an impression of bias
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties
- Approach each planning application or issue with an open mind, avoiding preconceived ideas
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds having regard to the Development Plan and other material considerations
- Give professional, objective and consistent advice
- Carry out the decision of the Committee insofar as they relate to the completion of any legal agreement, or instigation or defence of proceedings etc

4. Administrative Arrangements

Planning Application Notification

4.1 All Members of the Council will be informed of the submission of all planning and related applications through the weekly list of applications published on the Council's website. This list will include basic details about the application and indicate whether it falls within the "delegated" (i.e. dealt with by the Planning and Development Manager on behalf of the Head of Regeneration & Economic Development) or "Committee" category for determination. Further detail on the application, including relevant plans and documents, can be viewed on the Council's website.

Meetings with Applicants and Objectors

4.2 The Local Planning Authority does not organise public meetings in respect of any application. The statutory planning process which includes a procedure for notifying occupiers of land neighbouring an application site provides ample opportunity for the public to make its views known about a proposal. Where required, the applicant may have undertaken a pre-application consultation prior to the submission of the application. Where appropriate it might be possible for Planning Officers to attend public meetings organised by Ward Members for information purposes and /or to provide procedural guidance, providing the applicant is also in attendance (for transparency and probity). In order to be taken into account in the final decision, all comments made by local residents and third parties must be made in writing (an email is sufficient).

Determination Process

4.3 If an application received is of interest to the Ward Member because it is, or becomes, a controversial or significant local issue, the Member should contact the Case Officer to express an interest in the application. That Ward Member will then be notified in due course of the proposed decision. Should that Ward Member wish for that application to be determined by Planning Committee (being unhappy with the Officer recommendation), he/she should notify the Planning and Development Manager and Case Officer within the 48 hour period prior to the application being determined, giving planning reasons for calling the application to Committee in writing (or by email).

5. Pre-Application Discussion and Enforcement Discussions

5.1 Local Planning Authorities are encouraged to enter into discussions and negotiations which can bring about improvements that can make an application acceptable, and thereby potentially speed up the process. Such pre-application discussions will normally take place at Officer level and Members shall wherever possible refer requests for such advice to Officers. If Members become involved in such discussions they should make it clear that their views are personal and provisional and they may wish to make a record of the discussion.

All Officers taking part in such discussions shall:-

- Identify the decision-making process applicable to the application or issue under discussion
- Make it clear that only personal professional and provisional views can be expressed that will not bind the Council (Officers or Members) to reach a particular decision when determining the application
- Express views in the context of the Development Plan and other material planning considerations
- Be consistent in interpreting planning policies and Government guidance
- Where appropriate advise applicants, neighbours and objectors on procedural matters.

6. Lobbying of Members of the Planning Committee

6.1 Lobbying is the process by which applicants, agents, neighbours, non Planning Committee Members and other interested parties may seek to persuade Councillors on the Planning Committee to come to a particular decision. It is legitimate for them to approach Members of the Planning Committee (in person or in writing) and such discussions may help Members to understand the issues and concerns. As stated in the Nolan Committee Third Report *"it is essential for the proper operation of the planning system that local concerns are adequately ventilated"*. Members should refer to the separate protocol on Gifts and Hospitality if they are offered any gifts or hospitality as part of the lobbying process.

6.2 In responding to approaches of this kind, Planning Committee Members may publicly express an opinion provided that they keep an open mind at Planning Committee meetings but must not have made up their mind prior to hearing all the evidence and arguments, which will be presented at the Planning Committee. They should explain their position in respect of probity if they express an opinion on a proposal before consideration at the Planning Committee. They should:-

- Explain the procedures by which representations can be made.
- Indicate that a decision will be taken only when all relevant planning considerations have been taken into account.
- Explain the kinds of planning issues that the Council can take into account.
- Report issues raised to the Officers or direct the public to the Officers so that their views can be considered. It is helpful if this takes place in advance of the Planning Committee meeting so that all relevant issues are fully considered before the agenda is published.

7. Planning Applications Submitted by Members, Community Councils and Officers

7.1 Any application

- made by any Elected Member of the Council, or
- made by any Officer either employed within the Regeneration, & Economic Development area or by an Officer who works in close association with the Development and Regeneration section (for example as a regular consultee), other than where that application is submitted solely in that Officer's professional capacity as a Council employee and where the Officer has no personal or prejudicial interest in the outcome of the application; or
- in respect of which an Elected Member of the Council has been consulted as a neighbour; or

- in respect of which the Head of Regeneration & Economic Development has responsibility for any aspect of the management of any land or buildings to which the application relates; or any other matter which the Head of Regeneration & Economic Development considers appropriate to be determined by Planning Committee shall be so determined.

7.2 The affected Member or Officer must declare the existence and nature of the interest or relationship in accordance with the appropriate Code of Conduct and withdraw from involvement in the decision. The affected Officer shall take no part in the processing of the application and any recommendations made to Planning Committee.

7.3 If the Planning Committee Member is a Community Councillor they can choose whether they take part in debates in respect of planning applications at the Community Council or at the Planning Committee, but must not participate in both. This does not prevent a Member listening to a debate at a Community Council meeting, so long as the Member does not take part in the debate or the decision and keeps an open mind in relation to the application. If a Planning Committee member takes part in any decision by the Community Council in relation to a planning application, then that could constitute a pre-determination of the application and prevent that Member from taking part in the decision at Planning Committee. Therefore, it is advisable not to participate in the Community Council decision.

7.4 Where a Community Council submits a planning application, the Community Council Members who are also Members of Planning Committee have a personal and prejudicial interest in the application. They should disclose their interest and not participate on that application should it come to Planning Committee for decision (neither should they make representations on a delegated decision).

8. Officers' Reports to the Planning Committee

All planning matters considered by the Planning Committee will be the subject of appropriate written reports by the Planning and Development Manager incorporating his/her recommendations. Such reports shall be comprehensive but succinct in setting out the key planning issues to be considered in terms of the provisions of the Development Plan and other material planning considerations, the substance of any representations received and any planning history.

All reports will be submitted on the adopted template and will include the mandatory comments of the Monitoring Officer, Head of Finance and any other relevant consultees.

9. Conduct and Procedure of Planning Committee Meetings

9.1 Broadcasting / Webcasting:

At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being, or may be, webcast.

The Chair of the meeting has the discretion to terminate or suspend filming, if in the opinion of the Chair continuing to do so would prejudice the proceedings of the meeting or if the Chair, on advice, considers that continued filming might infringe the rights of any individual. The Chair will also adjourn or terminate a "hybrid" multi-location meeting if the technology fails and the meetings ceases to be quorate because the members attending remotely cannot dial-in to the meeting.

9.2 Consideration of Planning Applications:-

Planning applications will be considered in the following structure:

a) First there will be a presentation about the application by a Planning Officer, normally using visual aids

b) Members will have been sent an addendum report outlining any late correspondence received since publication of the agenda but before the consultation deadline. This addendum must be considered by the Committee prior to making its decision on the application.

N.B. Late representations are included in an updated Planning Application Schedule and copies are available at the meeting.

c) Public speaking:

In any correspondence notifying applicants, supporters or objectors of the meeting date on which an application will be heard, advice in relation to Broadcasting / webcasting of meetings will be included.

Those who have made requests to speak in accordance with the relevant Protocol will be invited to speak in the following order:

- Objector (5 minutes)
- Supporter (5 minutes)
- Applicant or their agent (5 minutes)

d) The Planning Officer will respond as necessary.

e) The Chairperson will invite the Ward Councillor(s) to speak, if applicable;

f) The Chairperson will then open the debate by providing an opportunity for members of the Planning Committee to comment or ask questions of the Planning Officer or any other officer in attendance. The Planning Officer or others will be provided with the opportunity to respond.

g) When a Member of the Committee wishes to speak, he or she will indicate this to the Chairperson. No Member will speak unless called upon to do so by the Chairperson. When called upon to speak, the Member will address the meeting through the Chairperson. If two or more Members wish to speak the Chairperson will ask one to speak and the other(s) **will remain silent**. While a Member is speaking, other Members **will remain silent** until invited to speak by the Chairperson. Members participating remotely should remember to mute their microphones until called upon by the Chair to speak.

h) When the Chairperson considers all Members have had an opportunity to contribute he or she will ask for a motion to be moved and seconded. If the motion is to do something other than agree the Officer recommendation set out in the report before Committee, **planning reasons should be given at that time and before taking the vote**.

i) If the motion is not carried, further motions will be requested until a motion is carried

j) The application will be determined by a simple majority vote by show of hands. Members participating remotely will be able to cast their votes by using the raised hand facility or the voting application in the chat box, or may be called upon individually by the Chair to state how they wish to vote. All Members of the Committee, including the Chairperson, should cast a vote in favour or against the motion before the Committee. **As Planning Committee is appointed for the purpose of making decisions on planning applications, it is not appropriate for Members to abstain.**

k) If there are equal numbers of votes for and against, the Chairperson will have a second or casting vote. The Chairperson can only use a second or casting vote if he or she has participated in the original vote.

l) Following the vote, the matter is resolved. There must be no further discussion on the matter.

m) If the Committee makes a different decision to that recommended by the Planning Officer, it must articulate and record in the minute the relevant planning reasons:

- If an application is refused against Officer recommendation, the Committee must provide the planning reasons for refusing planning permission
- If an application is granted against Officer recommendation, the Committee must suggest any conditions that it thinks should be imposed and the reason for those conditions
- If the Committee requests a site visit prior to making a final decision, the reasons for that visit must be provided.

Officers will provide the Committee with advice regarding relevant policies and conditions where applicable.

Following the Planning Committee meeting, the Planning and Development Manager will produce a Decision Notice reflecting the Committee's decision on the application. This will be sent to the applicant/agent and published on the Council's website. The Planning and Development Manager has delegated powers to add, amend or delete conditions or reasons for refusal as is considered necessary to ensure decisions are robust.

N.B. If a Member joins a Planning Committee meeting after the presentation of an item has begun, then the Member should not take part in the debate or vote on that item.

10. Conduct

10.1 The Chairperson of Planning Committee is responsible for the conduct of the meeting in accordance with the Rules of Procedure (Council Standing Order 9) and for the effective delivery of business in a professional, courteous and transparent manner. The Members of the Committee and Officers shall respect the role and behave in a manner that is commensurate with the high standards of conduct and propriety that are expected in public office.

10.2 The Chairperson will seek to ensure that Members and Officers are treated in accordance with the Council's agreed Protocol on Member/Officer Relations (Part 5 Section 3 of the Constitution), with regard to:-

- The political neutrality of Officers
- The independence of Officers
- Mutual respect, courtesy, civility and professionalism with respect of differing views

Where disturbance of the meeting occurs by way of public interference, the Chairperson may suspend proceedings until matters are resolved or in extreme situations may close the meeting to the public.

Please be aware that the Code of Conduct applies to all Members at all meetings of the Council, whether or not they are broadcast. Laws relating to remarks made about individuals apply at all meetings of the Council, whether or not they are being broadcast

11. Procedure

11.1 The Chairperson will ensure that the meetings of the Planning Committee are conducted in accordance with the Council's Rules and Procedures and safeguard that appropriate debate is able to take place in a structured and professional manner. The Chairperson should seek to avoid repetition or irrelevant debate.

11.2 Members should endeavour to give not less than 24 hours notice (preferably in writing) to the Planning and Development Manager of all questions requiring a technical or detailed response so that an appropriate response can be prepared for the meeting of the Planning Committee.

11.3. Appropriate legal and administrative Officers will be responsible for advising the Chairperson and the Committee on matters of procedure and protocol.

11.4 Where Officers advise the Chairperson of material planning concerns or potential consequences of a particular course of action, or any potential liabilities or errors of fact, Officers shall be afforded reasonable opportunity to concisely explain those matters to Planning Committee before it reaches a decision.

12. Site Inspections

12.1 Site inspections will be carried out by the full Committee and a quorum of six will be required.

Purpose of Site Inspections

12.2 Site inspections by the Planning Committee will be undertaken for the following purposes:

- To fact find
- To investigate specific issues raised in any request for a site inspection
- To investigate issues arising from the Planning Committee presentation or discussion
To enable the Planning Committee to determine an application (grant or refuse),
authorise formal enforcement action to be taken, or determine that no further action
should be taken,

Requests for Site Inspections

12.3 Any Member of the Council may request that a planning application site be visited by the Planning Committee prior to the determination of that application. Such requests must be made in writing [e-mail is sufficient] to the named case officer dealing with the application or the Planning and Development Manager. Any such request must include specific planning reasons for the visit.

12.4 Applications subject to a request for a visit will be reported to the Planning Committee. The report will include details of the request and the reasons given. Planning Committee will decide, following a full presentation of the application, whether or not it considers that a site visit is necessary to inform the decision-making process.

12.5 Where no request for a site visit has been made, Members of the Planning Committee may decide, during consideration of an application, that a site inspection would be beneficial. The reasons for the visit should be agreed and recorded as part of the minute of the meeting.

12.6 Occasionally there will be circumstances when timescales for determination will not allow site visits to be programmed in the normal way e.g. those related to telecommunications development. In such **exceptional circumstances**, at the discretion of the Chairperson of the Planning Committee, a site visit may be undertaken prior to the presentation of the matter to the Planning Committee at the monthly meeting. Members should make their written request, with reasons, in the normal way. All other aspects of the protocol will apply.

Attendance at Planning Committee Site Meetings

12.7 Attendance at Planning Committee site meetings will be restricted as follows:

- Members of the Planning Committee
- Relevant Officers
- Ward Councillors
- Single representative of the Community Council [if relevant]
- Applicant/Agent to allow access to the site
- Neighbour/other Landowner (where access is required to make any assessment)

Representations at Planning Committee Site Visits

12.8 A site visit is not an opportunity to lobby on an application. Accordingly, no representations may be made to the Planning Committee during the visit. Members of the Committee may ask questions of those present to establish matters of fact and inform their consideration of the application.

Procedures

12.9 At the initial consideration of the application at Planning Committee, Officers will make a full presentation of the item, including a recommendation to Committee.

At the commencement of the site visit, the Chairperson of the Planning Committee will state the issues for consideration.

The site visit will not be deferred due to the unavailability of applicants/agents, Ward Councillors, Community Council representatives, neighbour or other landowners (unless access onto the site is essential).

Members are reminded that the rules of declarations of interest apply to site visits, and that if a Member has an interest that would require the Member to withdraw from a Planning Committee, the Member is not entitled to attend the site meeting. Members who were not at the site visit for an application will not be eligible to participate in or vote at the subsequent meeting.

12.10 Following the site visit, the Planning Committee will return to the Civic Centre to discuss their findings and determine the application. They may also join the meeting remotely, when the Council's Multi-location Meetings Policy will apply. This is a public meeting and will be broadcast. At this meeting, there will be a brief formal presentation by Officers focusing on the site visit issues. The Committee could limit their debate to the issues considered at the site visit. However, Members will be free to debate the full range of planning issues relating to the application if necessary.

12.11 The Public Speaking Protocol will operate as normal at this meeting. Ward Members will be allowed to address the Committee prior to it making its decision, at the Chairperson's discretion and providing they have notified the Chair 24 hours before the Planning Committee of their intention to speak by emailing democratic.services@newport.gov.uk.

13. Planning Committee Decisions Contrary to Officer Recommendation

13.1 From time to time the Committee will disagree with professional advice given by the Officers and may decide to determine an application contrary to that advice. When this occurs the Chairperson of Planning Committee will ensure that the following principles are followed:-

- Members shall clearly express the planning reasons for their decision and these will be recorded in the minutes.
- A Member proposing refusal of an application for which the Officer recommendation is approval shall state his/her reasons prior to the vote being taken.

14. Appeals against Council Decisions

14.1 Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances (such as where specialist evidence is required) it may be necessary to appoint Consultants to appear for the Council.

In giving evidence, Officers will present the best possible case on behalf of the Council while complying with the RTPI Code of Professional Conduct. This Code requires that Planning Officers

who are members of the Institute do not make statements purporting to be their own, but which are contrary to their *bona fide* professional opinion.

14.2 Members can have an important role to play in appeals and may, within set deadlines, make written representations to the Inspector and may also appear at informal hearings or as a witness at public local inquiries. In doing so they should state whether they are acting in their local Councillor capacity or, representing the Council's case.

14.3 Where Planning Officers are unable to defend decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute) the Planning Committee should be aware of this before the final vote is taken. In such cases, the Committee shall nominate at least two of its Members who voted contrary to the recommendation to appear at any appeal and defend the Committee's decisions, thereby presenting the Committee's reasons for its decision. The Members attending any appeal hearing should normally be the proposer and seconder of the proposal that was contrary to the Officers' recommendation. Those Members will then be required to attend any subsequent appeal hearing, and if necessary, to give evidence in support of the Council's decision.

14.4 Planning and Legal Officers will support Members attending or wishing to make representation at appeals and advise them on preparing and delivering evidence. Legal Officers will attend inquiries or assist in preparing representations when legal representation is required.

14.5 Planning decisions are decisions made by the Council. It is therefore not normally appropriate for an elected Member to support an appellant at Appeal. If Members have concerns about delegated applications, the appropriate course of action is to call the application to Planning Committee for decision.

15. Member Training

15.1 Members of Planning Committee should undertake training which, on occasions, should be offered to all Members of the Council.

15.2 Members will be offered and required to attend core (compulsory) training (normally within three months of appointment to the Committee). This training will cover planning procedures, code of conduct and other subjects determined from time to time by Officers in consultation with the Chairperson.

15.3 Attendance at training events will be recorded and published and will be monitored through Democratic Services Committee.

16. Review of Decisions

16.1 The Audit Commission's report "Building Quality" recommends that Councillors should visit a sample of implemented planning permissions to assess the quality of decisions. The purpose of such a review is not to change decisions, but to assess and improve the quality and consistency of decisions and thereby strengthen public confidence and assist in reviewing planning policy.

16.2 The Planning Committee will undertake an annual review of a sample of planning decisions made by the Committee. The review will include examples from a range of development types e.g. major residential proposals, listed building consents and enforcement cases, and, where it is considered appropriate and beneficial, include visits to sites.

16.3 The Planning Committee will consider the results of the review and decide whether it gives rise to the need for new policies, procedures and practices.

16.4 The outcome of appeals against the decisions of the Council will be reported regularly to Planning Committee. The outcome of enforcement cases and legal proceedings will also be reported regularly so that Planning Committee can review its own decision-making processes.

Background Information

The following documents are available on request:-

Planning Scheme of Delegation

Member Speaking

Public Speaking

Public Speaking at “Extra Planning Committee” Meetings

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Report

Planning Committee

Date: 1 February 2023

Subject **Green Lane, Peterstone - Enforcement Notice and Stop Notice**

Purpose To advise Members of Planning Committee of a decision taken in accordance with the Standing Orders, in consultation with the Chair of Planning Committee, minuted by Democratic Services, to issue an Enforcement Notice and accompanying Stop Notice on land at Green Lane, Peterstone without being reported for decision to the Planning Committee.

Author **Head of Regeneration and Economic Development**

Ward Marshfield

Reason for Urgency

Unauthorised works were progressing on the site resulting in the land being stripped of topsoil to form bunds adjacent to protected reens and there was evidence of residential occupation on the site. The situation on site was fast moving and as the site is located within Flood Zone 3 of the Flood Maps for Planning (where residential use would not be allowed as matter of principle given the highly vulnerable nature of the use), this presented a risk to life and property in the event of a significant storm. Allied to this, the bunds were formed of loose material and are located within a Site of Special Scientific Interest (SSSI) (UK level designation) and adverse weather and rain could result in the bunds polluting the adjacent waterway that make up the SSSI. These threats were immediate and could have been exacerbated if further works were undertaken or the residential use intensified. It was therefore considered necessary to cease works immediately due to the location of the site in a SSSI (Site of Special Scientific Interest) and Flood Zone 3.

Summary Action taken included authorisation to serve an Enforcement Notice with regards to the unauthorised works, which comes into effect 28 days post issue, and the applicant would have a right of appeal against this Notice. Therefore, it was also considered necessary to issue a Stop Notice at the same time to prohibit any further works with immediate effect.

This item is being reported to the Governance and Audit Committee on Thursday 26th January 2023 in line with the requirements of the Standing Orders. The report submitted to that Committee is contained below.

Proposal **Note the formal minute, decision and justification to issue an urgent Enforcement Notice and Stop Notice in accordance with Standing Orders.**

Action by **Head of Regeneration and Economic Development in conjunction with Chair of Planning Committee – minuted by Democratic Services.**

Timetable Immediate effect

This report was prepared after consultation with:

- Cllr Mark Spencer (Chair of Planning Committee)
- Joanne Evans (Senior Solicitor)
- Anne Jenkins (Governance Team Leader)
- Pamela Tasker (Governance Officer)
- Andrew Ferguson (Planning and Development Manager)
- Stephen Williams (West Area Development Manager)

Minute of Meeting - Friday 2 December 2022

Venue: Remote Meeting via Teams

The Chair of the Planning Committee met with officers above and discussed the application for an enforcement notice and accompanying stop notice for land at Green Lane, Peterstone, Wentlooge.

Reasons for Urgency:

Being used for residential accommodation.

Two key issues, site within flood zone 3 and danger to life in event of a storm and issue with the bunds further polluting the SSSI (Site of Special Scientific Importance). Allied to this, there are highway safety issues, and the site is within a green belt therefore expedient action to be taken immediately.

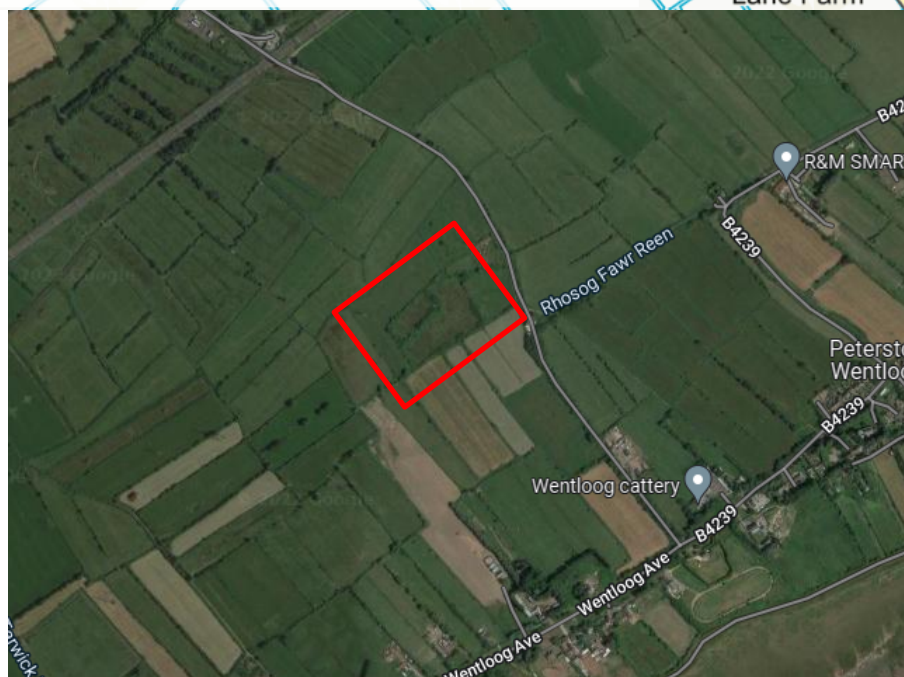
Due to the urgency of the stop notice and in consultation with the Chair of the Planning Committee, it was agreed to bring serving the enforcement notice forward, in advance of the Planning Committee on 7 December.

A Decision was therefore taken by the Chair of the Planning Committee to issue the enforcement notice and stop notice with immediate effect.

SITING OF A RESIDENTIAL TOURING CARAVAN, CREATION OF A RESIDENTIAL STRUCTURE, ERECTION OF WORKSHOP/STORAGE STRUCTURE, LAYING OF A HARDSTANDING AND BUND WITHOUT PLANNING PERMISSION – GREEN LANE, PETERSTONE, WENTLOOGE, CARDIFF, CF3 2TS

1.0 Breach of Planning Control

- 1.1 Siting of a residential touring caravan, creation of a residential structure, erection of workshop/storage structure, laying of a hardstanding and bund at Green Lane, Peterstone and the associated access.



2.0 Assessment

- 2.1 It has been brought to Officers' attention that a yard enclosed by a bund, which is in places approximately 2 metres high, is being created at the above location. Encompassing c. 2.17 ha. The site in question is located within the countryside and Green Belt as designated in the Newport Local Development Plan 2011-2026 (Adopted January 2015 (LDP)). It is also approximately 80 metres from the boundary with Cardiff, who were consulted on this matter and supportive of this proposed course of action. The site layout is depicted below at Figure 1.
- 2.2 As can be seen, the bund runs along the eastern boundary of the site and the virtually the entire length of the southern boundary, approximately 250 m in total. An area of c. 0.66 hectares has been stripped of the top c. 300mm of topsoil, which has been subsequently extended further, and this material then utilised to construct the bund. Hardcore is being tipped into this area to create a hardstanding, which will ultimately be extensive if the development of the site continues. Also present on site is a residential touring caravan, workshop/storage structure and a new structure that appears to be a dwelling under construction.
- 2.3 The Gravesham test (Gravesham BC v Secretary of State for the Environment and Another (1983)) has been applied and it is considered that the building does not currently offer all the facilities required for day-to day private domestic existence and is therefore not a dwellinghouse. However, a bed was present, a shower is being installed and a toilet was outside. Inside the structure was a log burner and TV, which would facilitate the residential occupancy. This building was connected to a photovoltaic array, with back up battery, and a generator.

Figure 1: Annotated site layout – looking West.



- 2.4 Camouflage netting has been employed on both the residential structure and residential caravan, as such, the normal 4/10 year immunity timeframe may not apply, as under the common law an individual cannot benefit from their wrongdoing. This was developed further in *Welwyn Hatfield Council v Secretary of State*, where the “public policy argument” overrode the four year rule. In this case, Lord Manse (Paragraph 54) stated that “...the four-year statutory periods must have been conceived as periods during which a planning

authority would normally be expected to discover an unlawful building operation or use and after which the general interest in proper planning control would yield and the status quo prevail ...”

2.4 Main Issues

The main issues in this case are considered to be:

1. Does the development, both the mixed use of the site and building with residential aspects, constitute an appropriate form of development in the Green Belt?
2. General development principles, design and sustainability;
3. Flood risk considerations;
4. The impact of the development on highway safety;
5. Impact on ecology;
6. Foul sewerage; and
7. Human rights

2.5 Green Belt Policy

Planning Policy Wales (Edition 11, February 2021, para 3.65) is clear that the most important attributes of Green Belts are their permanence and openness. To maintain the openness of such an area, development within a Green Belt must be strictly controlled with a general presumption against development, which is inappropriate in relation to the purposes of the designation. PPW lists the development which may be appropriate and includes:

- mineral extraction;
- renewable and low carbon energy generation;
- engineering operations; and
- local transport infrastructure.

As this development does not fall within the above list, it is unacceptable (para. 3.77). Furthermore, the development does not maintain the openness of the Green Belt and is in conflict with the designation. LDP Policy **SP6** reflects this position insofar as it deals specifically with maintaining the openness of the Green Belt and states that within this area, development which prejudices the open nature of the land will not be permitted. The proposal would prejudice the open nature of the land.

- 2.6 In terms of the effect of development on the character and appearance of an area, the following LDP policies are relevant:

SP5 aims to protect the countryside for its own sake and restrict new development to uses appropriate within the countryside, which must also respect the landscape character and biodiversity of an area.

CE4 seeks to protect, conserve and restore landscapes on the appropriate register. In this particular case, the Gwent Levels are included on the Cadw/ICOMOS 'Register of Landscapes of Outstanding Historic Interest in Wales'. The site also falls within a Special Landscape Area (Wentlooge Levels), in accordance with PPW (para. 6.3.12).

SP8 requires development to contribute positively to an area by virtue of its design and the materials utilised.

GP6 seeks good quality design in new development and requires proposals to be sensitive to the unique qualities of the site and respond positively to the character of the area.

In short, this development is incongruous in this location for the following reasons:

- due to its large scale;

- design, due to the presence of the bunds, caravan and various structures in this flat landscape;
- development does not serve an agricultural use or is a use that necessitates a rural location ; and
- has removed the characteristic field grips (drainage system of the area).

2.7 **General development principles, design and sustainability**

2.8 Policy **GP1** aims to ensure the sustainable development agenda by requiring that development can withstand predicted changes in local climate and reduce the risk of flooding on site. Given the developments location in Zone C1 / Zone 3 and the fact that it is single storey indicates strongly that this cannot be achieved. The residential caravan would also be very vulnerable development should a flood event occur and is classed as highly vulnerable development. Policy GP1 states development should be designed to minimise energy consumption and given that the dwelling is essentially a timber structure this is also unlikely to be achieved. Additionally, policy **H2** states that residential development should be built to high standards of environmental and sustainable design.

2.9 In terms of general amenity of the occupants, policy **GP2** aims to provide adequate amenity for occupiers, the nature of the development has meant that the amenity of occupants has been severely compromised. For example, the SW facing windows have camouflage netting over them and the toilet is essentially a hole in the ground.

3.0 Good quality design is sought by virtue of policy GP6 and its associated fundamental design principles. These include: sensitivity to the context of the site; preserve and enhance the character of the locality; and sustainability. As the structure with residential features is essentially a timber structure in a field it contrasts markedly with the surrounding countryside.

3.1 Policy **SP1**, which addresses sustainability in the LDP, requires that development be energy efficient, reduces car usage and minimises the risk of flooding, amongst other elements. As previously observed, the use of the site is unlikely to be efficient in terms of energy usage. The presence of the development in a rural location some distance from public transport links and in flood zone C1 is also counter to policy SP1.

3.2 **Flood Risk**

This location forms part of a low-lying coastal area and falls within flood risk zone (C1), as defined by Development Advice Maps, therefore compliance with Technical Advice Note 15 is required. In terms of TAN 15, the development's end use is unknown, but can only be justified if it can be demonstrated that it satisfies the test at part 6.2 of the TAN:

- Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
 - Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;
- and,
- It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and,
 - The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.

Given that the development fails to satisfy either of the first two parts of the test, in that it is not part of regeneration initiative or part of an employment objective, it is unacceptable. As such, one does not need to proceed to the second part of the test. Notwithstanding this, the land would not meet the definition of previously developed land either.

- 3.3 The consequences of flooding have not been considered and have not been found to be manageable. It should not be necessary to go onto a technical assessment. However, as there is a greater resolution on the Flood Map for Planning (FMP) than is on the Development Advice Map (DAM) it was determined that it would be appropriate to assess the development against this modelling. As previously noted, the development is in C1, where a 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood exists.
- 3.4 As can be seen in the excerpts of the FPM below (see Figures 2 and 3), the majority of the site falls within Zone 3 for either sea or river flooding under the FPM assessment, which are defined below:

Rivers – Flood Zone 3

Areas with more than 1% (1 in 100) chance of flooding from rivers in a given year, including the effects of climate change.

Figures 2 and 3: Excerpts from the FPM of the area.





Sea – Flood Zone 3

Areas with more than 0.5% (1 in 200) chance of flooding from the sea in a given year, including the effects of climate change.

Rivers – Flood Zone 2

Areas with 0.1% to 1% (1 in 1000 to 1 in 100) chance of flooding from rivers in a given year, including the effects of climate change.

Should a flood event occur, the FMP indicates that the unmade lane from the site would also be flooded, as would Green Lane in the location of the junction with the unmade road, which would therefore preclude safe egress from the site. The creation of the hardstanding, including associated bund, is therefore considered contrary to Policy **SP3** of the LDP. National Planning Policy is clear that highly vulnerable development (such as residential uses) should not be permitted in areas at risk of flooding.

3.5 Highway issues

In terms of the vehicular access on to Green Lane from the site, Green Lane is a single-track road with a reën either side of it. There are few passing places here and drivers are mainly reliant upon access points over the reëns, into the adjacent fields, as informal passing places. Green Lane is covered by the national speed limit, i.e., 60 mph. An adequate visibility-splay to the north is unachievable due to the layout of the road and the presence of a compound. The owner of the site in question has no control over the adjacent boundaries, as the site is effectively landlocked. This road is also unsuitable for the larger vehicles necessary to facilitate the construction.

Policy **GP4** of the LDP refers specifically to highways and accessibility and seeks to ensure that development would not be detrimental to highway or pedestrian safety.

3.6 Ecology

The site is located within the Gwent Levels- Rumney and Peterstone Site of Special Scientific Interest (SSSI), designated for the important habitat provided by the reën system for aquatic plants and invertebrates. The special interests of the SSSI are dependent on

the water quality, water quantity and continued management of the drainage system. Any activity which has an adverse effect on these will have an adverse impact on the wildlife for which the area was notified as a SSSI. Policy **GP5** requires that such development will not have an unacceptable impact on water quality.

- 3.7 As the bund enclosing the site is adjoining the reens and comprises of unconsolidated material, high rainfall events will wash material into the reen system therefore adversely affecting the water quality of the reen network. A soakaway toilet has also been constructed adjacent to one of the reens, which could contaminate the adjacent reen. Additionally, Policy **SP9** seeks the conservation, enhancement and management of recognised sites within the natural environment, which this development fails to do, as described above.
- 3.8 An NRW officer visited the site on 11/08/22 (in response to NRW incident ref. WIRS 2205698) and observed the following:

A large area of the field had had the turf/topsoil removed. Soil was piled in a long mound alongside the field ditch bordering the eastern edge of the field. The mound was immediately next to the ditch and soil had entered the water.

The entry of soil in to the ditch constitutes an offence under Regulation 12 (1) (b) and 38 (1) (a) of the Environmental Permitting (England and Wales) Regulations 2016: To cause or knowingly permit a water discharge activity without the benefit of a permit.

Aerial photographs of the site show that prior to the topsoil being stripped, the field was permanent pasture and had traditional 'grips'. This grassland habitat looked semi-unimproved and likely a remanent of traditional marshy/hay meadow and vital habitat that supports the SSSI Shril Carder Bee feature. The stripping of turf and top soil has lead to reduction in extent of this habitat. Reduction in habitats and species is likely to in turn reduce their resilience to climate change.

Field grips are a rapidly disappearing technique to aid drainage of a field. They are a historic feature of the landscape and key to the SSSI features, providing valuable variety of habitats within the same one field. These slight and fragile earthworks are vulnerable in other fields that are under-drained and ploughed. Once damaged or removed they are very difficult to restore.

3.9 Foul Sewerage

Policy **GP3** of the LDP refers to service infrastructure and identifies that in areas served by the public foul sewer development will not be permitted with connections to private facilities unless there are exceptional circumstances that prevent connection to the public sewer. Circular 008/2018 – “*Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small treatment plants*”, provides additional information on this.

- 4.0 Foul sewage is currently being disposed of to a hole in the ground. No information has been provided to demonstrate that a connection to the public foul sewer is not achievable. However, there is no evidence of a sewer run in this locale either.

4.1 Human Rights

The rights of the occupiers of the site under the Human Rights Act 1998 have been considered. Article 8 identifies that everyone has the right to respect for his private and family life, his home and his correspondence. It goes on to say that there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or

crime, for the protection of health or morals, or for the protections of the rights and freedoms of others.

- 4.2 In terms of Human Rights, it is not considered that the matters in relation to this enforcement case amount to exceptional matters that would overcome the significant concerns relating to the inappropriate development in the Green Belt, on a Site of Special Scientific Importance and within a C1 Flood Zone (Flood Zone 3 on FMfP). Therefore, it is considered proportionate that an Enforcement Notice and Stop Notice be issued given the significant harm that would arise and implications of continued use. Whilst issuing an enforcement notice will result in an interference with Article 8 of the European Convention on Human Rights for all affected residents, this must be weighed against the public interest. An Enforcement Notice and Stop Notice would effectively mitigate the risks identified to property, human health, biodiversity and the countryside.

5.0 Other Considerations

5.1 *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 breach of condition. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed enforcement action.

5.2 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.

- 5.3 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.
- 5.4 The above duty has been given due consideration in the determination of this application. It is considered that enforcement action in this case will not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

6.0 Options Considered/Available

- 6.1 The Council has powers under Section 172 of the Town and Country Planning Act 1990 to issue an Enforcement Notice requiring steps to be taken to remedy this breach of planning control. Failure to comply with the requirements of an Enforcement Notice is a criminal offence, against which prosecution proceedings may be taken at the Magistrates' Court. The maximum penalty for this offence is currently a fine of £20,000 or, upon conviction on indictment, an unlimited fine.
- 6.2 Due to the right to appeal against an Enforcement Notice, there is potential for a delay of a significant number of months before the Notice takes effect (with PEDW facing a current backlog). Until the determination of the appeal the tipping and residential use could continue without an offence being committed and without further enforcement action being taken. Due to the immediate and irreparable harm that could be caused by continued tipping and storage of waste during this period, along with potential risk to life, the Council may wish to exercise its powers under Section 183 of the Town & Country Planning Act 1990 to issue a

Stop Notice; whilst not precluding other bodies, such as NRW, taking action under other legislation. This Notice would prevent further works until the Enforcement Notice comes into effect. Non-compliance with a Stop Notice is a criminal offence with the same penalty as an Enforcement Notice.

- 6.3 Welsh Office Circular 24/97, Enforcing Planning control: Legislative Provisions And Procedural Requirement, states:

There is no right of appeal to the Secretary of State against the prohibition in a stop notice. The merits of the LPAs decision to serve a stop notice cannot be examined in the course of an appeal, under section 174, against the related enforcement notice. The validity of a stop notice, and the propriety of the LPA's decision to issue a notice, may be challenged by seeking leave of the High Court to apply for judicial review, in accordance with the Rules of the Supreme Court; but probably not by way of defence to a prosecution brought by the LPA under section 187 if the notice is valid on its face, by analogy with the judgement of the Court of Appeal (Criminal Division) in R v Wicks [1995] 93 LGR 377.

- 6.4 It should be noted that compensation is payable by the Local Planning Authority for any loss or damage the claimant has suffered as a result of the Stop Notice if those activities specified in the Notice do not represent a breach of planning control. In this instance, officers are satisfied that a breach of planning control has occurred, and that any claim for compensation would not be justified.
- 6.5 Alternatively, if it is considered that the tipping of hardcore and the creation of hardstandings do not have an unacceptable impact on the rural character, landscape importance, Green Belt, drainage ability of the reens system or nature conservation, impact on neighbours, highway safety or that the impact caused is not sufficiently bad as to warrant formal enforcement action, it can resolve to take no further action.

7.0 Costs/Benefits

Before issuing a Stop Notice, a cost/benefit analysis is required.

Costs:

- Increased risk of flooding and associated damage to property/ risk to life.
 - Damage to SSSI.
 - Risk of an accident due to the substandard access on to Green Lane.
 - The costs to the developer of the Authority serving the Notice are unknown.
- However, there is a risk of compensation sought against Newport City Council if the development does not represent a breach of planning control.

Benefits:

- Further tipping and associated works will cease.
- Environmental costs of further contamination, due to the further extension of the bunds, of the reens during an appeal period are reduced.
- Prosecution proceedings can be sought immediately if further work takes place.
- The harm to the appearance and condition of the land will not continue to worsen.

Overall, it is considered that the benefits of issuing a Stop Notice outweigh the costs.

8.0 Preferred Choice and Reasons

- 8.1 In this instance it is considered that the development causes significant harm to the Green Belt and the site is clearly visible from the Wales Coast Path directly to the south of the site. The development contravenes policies CE4, GP1, GP2, GP3, GP4, GP5, GP6, H2, SP1, SP3, SP5, SP6, SP8 and SP9 of the Newport Local Development Plan. In addition, there is potential for these operations to continue while an appeal is lodged against an Enforcement Notice, which would result in immediate and irreparable damage to the SSSI.

- 8.2 Should enforcement action not be taken, after ten years (once substantially complete), as it facilitates a change of use, the development will become immune from any further enforcement action and it will not be possible to mitigate any harm caused. Should a dwelling be constructed the immunity period for it is 4 years.
- 8.3 It is therefore recommended that enforcement action be taken in this case and that an Enforcement Notice **and** Stop Notice be issued under Sections 172 and 183 of the Town & Country Planning Act 1990 respectively requiring:

Stop Notice point A and Enforcement Notice A to G.

- A) Cease the residential use of the site, the removal of topsoil and tipping to create a hardstanding and the burning of waste.
- B) Remove all the imported hardcore, rubbish and waste from the site.
- C) The bund along the site's boundary shall be spread evenly over the site, so as to recreate the former ground level (subject to E) below).
- D) Remove all fencing, gates and conifers installed in association with the unauthorised development.
- E) The site's grip system shall be reinstated, as per the attached Lidar data. The grips shall be no more than a 'spades depth' down (0.3- 0.5m). Removed material will be evenly spread on adjacent areas.
- F) Remove all trackways and hardstanding that have been created within the site.
- G) All caravans, unauthorised structures, plant and non-agricultural items shall be removed from the site.

- 8.4 Should the development continue unabated that this report will act as authorisation to pursue an injunction in the county court, as per the Town and Country Planning Act 1990:

187B Injunctions restraining breaches of planning control.

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

if so required.

9.0 Recommendation

- 9.1 That the Head of Law and Standards be authorised to issue a Stop and Enforcement Notice under Section 183 and 172, respectively, of the Town and Country Planning Act 1990 (as amended) requiring the above.
- 9.2 As noted above, if the development continues following the issue of an enforcement Notice and a Stop Notice, to pursue an injunction under Section 187B of the Town and Country Planning Act 1990 (as amended).

Compliance Period:

- (1) Cessation of the residential use of the caravan, tipping of hardcore, burning of waste, stripping of topsoil and creation of hardstandings 24 hours (Stop Notice).
- (2) Points (B) to (G) one month.

Report



Planning Committee – Hybrid Meeting

Part 1

Date: 1st February 2023

Subject Planning Application Schedule

Purpose To take decisions on items presented on the attached schedule

Author Head of Regeneration and Economic Development

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

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.

The Socio-economic Duty, part of the Equality Act 2010, was also enacted in Wales on the 31st March 2021. This requires the Planning Committee, when making strategic decisions, to also pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage. Inequalities of outcome are felt most acutely in areas such as health, education, work, living standards, personal security and participation.

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)

Welsh Government Circular 016/2014 on planning conditions

LOCAL POLICY

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

Supplementary Planning Guidance (SPG):

Affordable Housing (adopted August 2015) (updated October 2021)

Archaeology & Archaeologically Sensitive Areas (adopted August 2015)

Flat Conversions (adopted August 2015) (updated October 2021)

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)

Shopfront Design (adopted October 2021)

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: 22/0438 **Ward:** Shaftesbury

Type: Full (Major)

Expiry Date: 16th August 2022

Applicant: R. Jones

Site: R. J. Mason Transport Ltd, Albany Street, Newport, South Wales NP20 5NJ

Proposal: ERECTION OF A CLASS A1 FOODSTORE WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING

Recommendation: Refused

1. INTRODUCTION

1.1 The application is for the construction of a mid-size supermarket on land at the R. J. Mason Transport yard in Crindau, effectively 'behind' the Sainsburys supermarket. The building would be 65m long, 35m wide and 5.4m high (maximum extents). The trading area would be 55m by 24m with associated warehousing, staff facilities and plant room. Externally a loading bay and waste storage are proposed alongside cycle parking and a covered trolley bay. Appearance wise the proposed operator is Aldi and the unit will have the typical look of those stores.

1.2 The overall site area is approximately 0.7Ha and would provide 113 car spaces and 5 motorcycle spaces. Of the car spaces:

- 8 would be parent & child spaces
- 6 would be disabled spaces
- 10 have electric charging points with the potential to provide an additional 16 EV charging spaces in the future

The building would back onto Albany Street with access to the site being from Albany Street south of the building. The site would provide minimal green space and planting opportunities.

2. RELEVANT SITE HISTORY

Ref. No.	Description	Decision & Date
92/0511	PROPOSED PROVISION OF NEW ACCESS	Granted 03 July 1992
07/1322	MIXED USE REGENERATION OF SITE INCLUDING RESIDENTIAL, STUDENT ACCOMMODATION, AND SHELTERED ACCOMMODATION FOR THE ELDERLY (CLASSES C2 AND C3); AN HOTEL (CLASS C1); COMMERCIAL BUILDINGS AND OFFICES (CLASS B1); A LOCAL CENTRE INCLUDING RETAIL, LEISURE AND HEALTHCARE FACILITIES (CLASSES A1, A2, A3, D1 AND D2); AND ASSOCIATED HIGHWAY AND FLOOD DEFENCE WORKS. (ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT)	Withdrawn 13 October 2011
14/0417	SCREENING OPINION FOR REDEVELOPMENT OF INDUSTRIAL LAND FOR RETAIL (APPROXIMATELY 3300 SQM OF A1 AND A3 USE)	EIA development 10 June 2014

14/0418	SCOPING OPINION FOR REDEVELOPMENT OF INDUSTRIAL LAND FOR RETAIL (APPROXIMATELY 330 SQM OF A1 AND A3 USES)	Scoped 10 June 2014
19/0111	DEMOLITION OF BUILDINGS AND ERECTION OF CLASS A1 FOODSTORE WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING	GC 25 February 2020
20/0551	VARIATION OF CONDITION 27 (DELIVERY ROUTE RESTRICTION) OF APPLICATION 19/0111 FOR DEMOLITION OF BUILDINGS AND ERECTION OF CLASS (A1) FOODSTORE WITH ASSOCIATED PARKING AND LANDSCAPING	GC 11 March 2021

3. POLICY CONTEXT

3.1 Wales National Marine Plan (January 2020)

- GEN_01: Sustainable Development
- GEN_02: Proportionate Risk Based Approach
- SOC_01: Access to the Marine Environment (analogous to Policy CE2 & CF4 of the NLDP);
- SOC_07: Seascapes (analogous to Policies CE2 & SP8 of the NLDP);
- SOC_08: Resilience to coastal change and flooding (analogous to Policies SP3 & GP1 of the NLDP);
- SOC_11: Resilience to climate change (analogous to Policy GP1 of the NLDP);
- ENV_01: Resilient marine ecosystems (analogous to Policy GP5 of the NLDP);
- ENV_02 – Impact on Marine Protected Areas (analogous to policy GP5)
- ENV_06: Air and water quality (analogous to Policy GP7 of the NLDP);
- ENV_07: Fish Species and Habitats (analogous to Policy GP5 of the NLDP);
- GOV_01: Cumulative effects (Appropriate Assessment & EIA Screening)
- GOV_02: Cross-border and plan compatibility (Officer report)
- T&R_01: Tourism and recreation (supporting) (analogous to Policies CF4, CF8, T5 & T6 of the NLDP).

3.2 Planning Policy Wales Edition 11 (PPW11)

4.3.1 Retail and commercial centres are hubs of social and economic activity and the focal point for a diverse range of services which support the needs of local communities. They are highly accessible to different modes of transport and are the most sustainable locations for new development.

4.3.13 It is important that communities have access to adequate levels of retail provision. Evidence should demonstrate whether retail provision is adequate or not, by assessing if there is further expenditure capacity in a catchment area (quantitative need) or if there is a lack of retail quality, range of goods or accessibility (qualitative need).

4.3.14 In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or when determining planning applications for such uses, planning authorities should first consider whether there is a need for additional retail provision. However, there is no requirement to demonstrate the need for developments within defined retail and commercial centre boundaries or sites allocated in a development plan for specific retail uses. This approach reinforces the role of centres, and other allocated sites, as the best location for most retail, leisure, and commercial activities. It is not the role of the planning system to restrict competition between retailers within centres.

4.3.15 Need may be quantitative, to address a quantifiable unmet demand for the provision concerned, or qualitative. Precedence should be given to establishing quantitative need before qualitative need is considered for both convenience and comparison floorspace, particularly as a basis for development plan allocations.

4.3.17 It will be for the planning authority to determine and justify the weight to be given to any qualitative assessment. Regeneration and additional employment benefits are not considered qualitative need factors in retail policy terms. However, they may be material considerations in making a decision on individual planning applications if the regeneration and job creating benefits can be evidenced. If there is no quantitative or qualitative need for further development for retail and commercial centre uses, there will be no need to identify additional sites.

Retail Impact Assessments

4.3.25 Retail developments outside designated retail and commercial centres, and which are not located on an allocated site, can impact on the viability and vibrancy of a centre. Impacts resulting from such development, whether individual or cumulative, may include changes in turnover and trading ability, consumer choice, traffic and travel patterns, footfall, as well as affect centre regeneration strategies and existing or proposed retail sites allocated in the development plan. The purpose of the retail impact assessment is to consider these issues and determine if these developments are likely to have detrimental consequences.

3.3 Technical Advice Notes

- TAN4 – Retail & Commercial Development
- TAN5 – Nature Conservation & Planning
- TAN16 - Sport, Recreation & Open Space
- TAN15 – Flooding
- TAN23 – Economic Development

3.4 Relevant Policies of the adopted Newport Local Development Plan 2011-2026:

- SP1 – Sustainability
- SP3 – Flood Risk
- SP8 – Special landscape Areas
- SP18 – Urban Regeneration
- SP19 – Assessment of Retail Need
- GP1 – Climate Change
- GP2 – General Amenity
- GP3 – Service Infrastructure
- GP4 – Highways & Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection & Public Health
- CE1 – Routeways, Corridors and Gateways
- CE2 – Waterfront Development
- CE3 – Environmental Spaces & Corridors
- CE6 - Archaeology
- CE9 – Coastal Zone
- EM3 – Alternative Uses of Employment Land
- T2 – Heavy Commercial Vehicle Movements
- T4 - Parking
- T5 – Walking and Cycling
- T7 – Public Rights of Way & New Development
- R10 - New Out of Centre Retail Sites
- CF4 - Riverfront Access
- W3 - Provision for Waste Management Facilities in Development

Relevant adopted Supplementary Planning Guidance is:

- Sustainable Travel
- Archaeology & Archaeologically Sensitive Areas
- Wildlife & Development
- Waste Storage & Collection
- Parking Standards

4. CONSULTATIONS

4.1 GWASANAETH TAN & ACHUB DE CYMRU / SOUTH WALES FIRE & RESCUE SERVICE

The climate emergency is likely to increase the risk of flooding as a result of sea-level rises, more frequent severe weather systems and more intense rainfall. Planning authorities should adopt a precautionary approach of positive avoidance of building developments in areas of flooding from the sea or from rivers. Surface water flooding will affect the choice of location and the layout and design of schemes and these factors should be considered at an early stage in formulating any development proposals.

Wildfires are a significant potential threat particularly in populated areas adjoining green spaces such as mountains or forestry. Therefore, it is critical that new developments are designed with this in mind. Where a new development is proposed in an area which is at risk of a wildfire, consideration should be given on how to mitigate the spread of wildfires. For example, sustainable land management could assist with prevention measures.

The site plan/s of the above proposal has been examined and the Fire and Rescue Authority would wish the following comments to be brought to the attention of the planning committee/applicant. It is important that these matters are dealt with early on in any proposed development.

The Fire Authority has no objection to the proposed development and refers the Local Planning Authority to any current standing advice by the Fire Authority about the consultation.

The developer should also consider the need for the provision of:

- a. adequate water supplies on the site for firefighting purposes; and
- b. access for emergency firefighting appliances.

4.2 CYFOETH NATURIOL CYMRU / NATURAL RESOURCES WALES (CNC/NRW)

Response of 26.10.2022

We maintain our objection to the proposed development as submitted, for the reasons explained below.

Flood Risk, Protected Sites and European Protected Species:

We note no new flood risk information has been submitted further to our response dated 20/07/2022 (our ref: CAS-191990-Y4H2). We therefore maintain our objection with regards to flood risk. We also note that no new information regarding Protected Sites and European Protected Species has been submitted further to our response dated 20/07/2022 (our ref: CAS-191990-Y4H2). We therefore maintain our advice as set out in this letter. Our advice regarding a Flood Risk Activity Permit as set out in our statutory pre-application response dated 03/12/2021 also remains.

Land Contamination and Controlled Waters:

Further to our response dated 20/07/2022 (our ref: CAS-191990-Y4H2), we have considered the additional information on your website, namely:

- *Groundtech report for ALDI Newport Crindau, Supplementary Environmental Appraisal GRO-20289-2812 FINAL dated 28 January 2022.*

Having regards to this report, we note it states '*contamination present in the confined Aquifer is considered to be representative of the surrounding area with the source being the gas works located to the west of the site.*' The former gas works site was to the west of the application site and is now the Sainsburys supermarket. We note that this has had planning consent and land contamination conditions attached to the consent.

We further note the lack of continuity between perched groundwater in the made ground and the deeper aquifer. However, no samples have been provided to understand what the wider

groundwater quality is in the area, although the assumption in the report is that it is of poor quality. These should be provided as part of the further monitoring proposed for the site, in order to be able to put the results in to context with evidenced samples.

The Report states that a remedial strategy will be supplied. Given the levels of naphthalene in BH02 (Deep) and BH04 (shallow and deep), we request the remedial strategy treat these as hotspots as the aquifer is a receptor.

Having regard to the above report, we amend our requested land contamination conditions as follows:

Condition 3: Prior to occupation of the development in a specific parcel of land known to be / suspected of contamination (refer to plan) the following components of a scheme to deal with the risks associated with contamination at the site, should be submitted to and approved in writing by the Local Planning Authority.

1. The results of the site investigation and the detailed risk assessment referred to in Groundtech report for ALDI Newport Crindau, Supplementary Environmental Appraisal GRO-20289-2812 FINAL dated 28 January 2022 and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

2. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in 1. are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Reason: To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development as controlled waters are of high environmental sensitivity; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 4: Prior to the occupation or operation of the development or phase of the development a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Reason: To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation, to prevent both future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 5: Prior to the of the occupation or operation of the development or phase of the development, a long term monitoring plan for water quality and land contamination shall be submitted and approved in writing by the Local Planning Authority. The long term monitoring plan should include:

- Details of the methods and triggers for action to be undertaken
- Timescales for the long term monitoring and curtailment mechanisms e.g. a scheme of monitoring for 3 years unless the monitoring reports indicate that subsequent monitoring is or is not required (for x years)
- Timescales for submission of monitoring reports to the LPA e.g. annually
- Details of any necessary contingency and remedial actions and timescales for actions
- Details confirming that the contingency and remedial actions have been carried out.

The monitoring plan shall be carried out in accordance with the approved details, within the agreed timescales.

Reason: A water quality and land contamination long term monitoring plan should be submitted prior to occupation or operation, to ensure necessary monitoring measures are approved to manage any potential adverse impacts as a result of development on water quality.

Condition 6: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be carried out as approved.

Reason: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks.

Further Advice to Applicant on Surface Waters: If the proposed operational phase management of surface water is changed, we advise no infiltration to ground is permitted until it has been demonstrated that there is no resultant unacceptable risk to controlled waters. This will prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of water pollution.

Condition 7: No development or phase of development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling foundation designs shall be implemented in accordance with the approved details.

Reason: Piling/foundation details should be submitted to ensure there is no unacceptable risk to groundwater during construction and methods/design are agreed prior to the commencement of development or phase of development.

Response of 21.07.2022

Based on the information submitted, we would object if a planning application was made in the same or substantially the same terms for the reasons explained below.

Flood Risk:

The application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to in TAN15. Our Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines. Our maps also show the application site previously flooded during the December 1981 flood event.

Section 6 of TAN15 requires the Local Planning Authority to determine whether the development at this location is justified. Therefore, we refer you to the tests set out in section 6.2 of TAN15. If the LPA considers the proposal meets the tests set out in criteria (i) to (iii), then the final test (iv) is for the applicant to demonstrate through the submission of an FCA that the potential consequences of flooding can be managed to an acceptable level.

We have reviewed the supporting FCA undertaken by Craddys dated October 2021 referenced 10222w0002b to develop this site into an ALDI food store and 113 parking spaces and associated landscaped areas.

The FCA fails to demonstrate that the risks and consequences of flooding can be managed to an acceptable level for the reasons explained below.

The FCA states that the proposed finished floor level of the store will be 7.92m AOD and external areas will remain the same, which is given from topographical information in the FCA as ranging from 7.17mAOD along the flood defence wall to the north east and rising up

to 8.10mAOD at the northwest corner. The development site is bounded by a NRW managed/maintained flood defence wall with a crest level of 9m AOD.

Flood data has been obtained from NRW to inform the FCA and further assessment has been undertaken using this data to determine the flood levels for the relevant flood events, as follows:

- 0.5% (1 in 200 year) plus climate change (2097): 9.36m AOD
- 0.1% (1 in 1000 year) plus climate change (2097): 9.72m AOD

During a 0.5% plus climate change flood event in the year 2097, the flood depth is predicted to be 2.36m across the car park, 1.32m at the store entrance and 1.12m at the car park entrance on Albany Street.

During a 0.1% plus climate change flood event in the year 2097, the flood depth is predicted to be across the car park, 2.72m, 1.68 at the store entrance and 1.48m at the car park entrance on Albany Street.

A flood model has also been produced to understand the mechanism of flooding to the site and surrounding area, including overtopping of the flood defence wall in the future (in the year 2097). Further discussion regarding the mechanisms of flooding at the site is explained in Section 8. During an overtopping scenario in a 0.5% event in the year 2097, the modelling shows flood flows generally build up through the car park, around the store footprint, until the entire site is inundated within approximately 10 minutes. When using the hazard matrix, the majority of the site and car park is classified as 'danger for all (including emergency services)', with the roundabout classified as 'danger for most (including the general public)'.

From the above flood levels and finished floor levels, the proposed development fails to comply with the requirements of TAN 15 (2004). The site has not been shown to be flood free in the 0.5% plus climate change flood event over the lifetime of development. We note the FCA explains raising site levels further is not practical.

The FCA also references the flood defences in the area. The defence's standard of protection, as built, does not protect the site against flood risk over the lifetime of development. The FCA correctly identifies that the flood defence scheme has been designed to be 'adaptive for further climate change, so it can be 'topped up' if required'. This is common in Flood and Coastal Erosion Risk Management (FCERM) schemes.

There is no guarantee, however, that the flood defence wall will be raised/topped up in the future, and therefore provide the protection required in year 2097. New development should be designed to be flood free in the 0.5% event over the lifetime of development (A1.14 criteria) and not rely on future flood defence works. The National FCERM Strategy and PPW are clear that public investment in flood risk management infrastructure is for the benefit of existing property and business and not to facilitate new development.

We acknowledge the site is defended against the present day 0.1% event. The FCA could provide further details on when (i.e. which year) the flood defence wall is predicted to overtop at this location. This may aid the planning authority's consideration of flood risk and consequences.

Finally, as the FCA recognises that the development site is predicted to experience flooding during various flood events, Section 11 outlines flood resilience measures which could be incorporated into the construction of the building. A flood evacuation plan will also be formalised to allow early evacuation of the site and occupiers are advised to sign up to the early warning system for the area. Should a planning application be submitted we would recommend the planning authority consider consulting other professional advisors on matters such as the evacuation procedures and any measures to address structural damage that may result from flooding. We do not normally comment on or approve the adequacy of flood emergency plans and procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings.

Given the above, the FCA fails to demonstrate that the consequences of flooding can be acceptably managed over the lifetime of the development, and as such we object to the proposed development on flood risk grounds.

Flood Risk Activity Permit:

Any works within 16m of this defence requires a Flood Risk Activity Permit.

Notwithstanding the above flood risk advice, we have concerns with the application as proposed because inadequate information has been provided with regard to protected sites (surface water). To overcome these concerns, you should provide further information in your planning application regarding protected sites (surface water). If this information is not provided, we may object to the planning application when formally consulted by the planning authority. Further details are provided below.

We also advise that based on the information submitted to date, should a planning application be submitted and the Local Planning Authority be minded to grant planning permission, we would advise that conditions regarding protected sites, European protected species, and land contamination be included on any planning permission granted AND the document identified below be included in the approved plans and documents condition on the decision notice.

- ‘Aldi, Albany St, Crindau External Lighting’ Drawing No. P186-756-C by BMT (Leicester) Ltd, 8-10-21

Condition 1: Construction Environmental Management Plan

Condition 2: European Protected Species

Conditions 3-7: Land Contamination and Controlled Waters

Protected Sites:

The site is immediately adjacent to the Crindau Pill Site of Importance for Nature Conservation (SINC) which links directly to the River Usk Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The Severn Estuary Special Protection Area (SPA) and Ramsar is located approximately 5.8km south downstream from the site and is directly linked to the site by the River Usk. The Local Authority should consider its responsibilities under Section 63 of the Conservation of Habitats and Species Regulations (2017) regarding the River Usk SAC and other relevant European sites.

With regard to potential impacts to SSSI River Usk (Lower Usk)/Afon Wysg (Wysg Isaf) the matters expected to be raised in relation to Section 63 of the Conservation of Habitats and Species Regulations (2017) are likely to also address impacts to features of the SSSI.

We note from the FCA that surface water drainage will incorporate Sustainable Drainage Systems (SuDS) and be submitted for approval under application to the SuDS Approval Body (SAB). This is separate to the planning process.

However, disposal of surface water is proposed to be via an existing outfall to the Crindau Pill which links directly to the River Usk Special Area of Conservation (SAC) & Site of Special Scientific Interest (SSSI) and we therefore have concerns, in the absence of further information, regarding water quality. Only clean, uncontaminated water would be allowed to discharge via the surface water system to Crindau Pill and further information must be provided prior to the determination of any planning application as to how this will be achieved. We would expect to see mitigation measures, such as the inclusion of an oil interceptor. We also advise this may require a water discharge permit.

Measures to prevent potential impacts to protected sites during the construction phase should be controlled by securing a Construction Environmental Management Plan (CEMP) through a planning condition:

Condition 1: No development or phase of development, including site clearance, shall commence until a site wide Construction Environmental Management Plan (CEMP) has been

submitted to and approved in writing by the Local Planning Authority. The CEMP should include:

- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containments areas, appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain.
- Biodiversity Management: details of tree and hedgerow protection; invasive species management; species and habitats protection, avoidance and mitigation measures.
- Control of Nuisances: details of restrictions to be applied during construction including timing, duration and frequency of works; details of measures to minimise noise and vibration from piling activities, for example acoustic barriers; details of dust control measures; measures to control light spill and the conservation of dark skies.
- Resource Management: details of fuel and chemical storage and containment; details of waste generation and its management; details of water consumption, wastewater and energy use
- Traffic Management: details of site deliveries, plant on site, wheel wash facilities
- Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details
- Landscape/ecological clerk of works to ensure construction compliance with approved plans and environmental regulations.

The CEMP shall be implemented as approved during the site preparation and construction phases of the development.

Reason: A CEMP should be submitted to ensure necessary management measures are agreed prior to commencement of development and implemented for the protection of the environment during construction.

For your information the CEMP should reference Pollution Prevention Guidance GPP 5: Works and maintenance in or near water and PPG 6: Working at construction and demolition sites and include a link to www.netregs.org.uk/environmental-topics/guidance-for-pollution-prevention-gpp-documents/guidance-for-pollution-prevention-gpps-full-list/ so that the guidance can be referred to on site if needed.

Further Advice to Applicant – Construction discharge:

There should be no discharge to the river during construction/demolition, unless NRW have been consulted and have given permission prior to the discharge taking place. Should there be a need for a potentially contaminated discharge (including silt/suspended solids) to the river, details of the methods of treatment would need to be submitted to ensure there is no deterioration of the receiving watercourse. A permit may be required.

We note from the Proposed Foul Water Drainage Strategy within the FCA that Foul water is to be discharged to existing Foul sewer and do not have concerns regarding this.

European Protected Species:

The proposed development site is adjacent to Crindau Pill, a tributary to the River Usk Special Area of Conservation (SAC), which is designated for numerous species including Otter, a European protected species.

Based on the information available, we would have no objection to the proposal at planning application stage providing the lighting plan 'Aldi, Albany St, Crindau External Lighting' Drawing No. P186-756-C by BMT (Leicester) Ltd, 8-10-21 is adhered to and listed in the approved plans and documents condition on any planning permission granted.

We would also request the following condition be attached to any planning permission.

Condition 2: We would require the timing of construction work to avoid the period one hour prior to and one hour post sunrise/sunset. In addition, any piling within 30 metres of the river

bank (mean high tide level) should be timed to avoid the shad migration period (March to June inclusive). Where piling cannot be avoided during the shad migration period (March to June inclusive) and is within 30 metres of the mean high tide level, non-percussive piling methods should be used and must only take place on a falling tide from 1 hour after high tide to 1 hour before low tide. We would recommend the LPA secure this by way of a planning condition on any planning permission they are minded to grant.

Reason: To protect otters and migrating shad.

Land Contamination and Controlled Waters:

We have reviewed the Ground Investigation report dated 24/1/19 by Earth Environmental and Geotechnical (Southern) Ltd, ref B0710/19. This document contains a review of a Desk Study. We recommend that the desk study (EEGSL 'Phase I Geo-Environmental Desk Study Report – ALDI Crindau, Newport', reference B0710/18, dated November 2018.) is provided in the planning application.

The review contains maps from 1884, 1954 and 1980. We would expect that historical maps that show time lapses of every ten years to understand changes and activities on site. Previous uses have been listed as two historic landfills, a chemical site, a depot, potentially a military site and most recently a transport depot. We note that offsite that there has been remediation of the former gas works site in the footprint of the Sainsbury's store. We further note that the proposed layout in the 2019 report in section 3.2 is different from the most recent iteration.

The current building on site/recently demolished building has not allowed for any sampling. Given there has been a lack of recent and relevant site data (at least two rounds of groundwater sampling), we conclude that the site has not been adequately characterised. We note that two rounds of groundwater have been supplied but the first round was collected at the time of drilling and cannot be used as reliable data, as per BS:10175 Code of Practice: Investigation of potentially contaminated sites.

Table 11 (preliminary conceptual site model) does not include the risks to controlled waters, though they are listed as potential receptors. The Crindau Pill and the River Usk are sensitive receptors for controlled waters as they are connected to the River Wye SSSI, SAC and SINC.

We disagree with the statement "*Remediation of the groundwater is unlikely to be a viable option due to there being a likely hydraulic connection between the site and the adjacent Crindau Pill/River Usk with contamination potentially flowing in groundwater from adjacent sites. Remediation of groundwater could be extensive and 'never-ending'*" until the site has been adequately characterised.

We recommend that:

1. Further works are undertaken to sample groundwater from existing locations, specifying which strata and groundwater body they are targeting.
2. More sampling locations are introduced to adequately cover the area where the building once stood, and include upstream samples of the Crindau Pill to determine whether the site is contributing to any contamination in the Crindau Pill.
3. Groundwater gradients for the perched and deeper groundwater need to be updated.

Once the site has been adequately characterised, we will then be in a position to provide comment on groundwater risk assessments and remediation if necessary. For your information, there is no background level for Hazardous Substances.

Therefore, based on the information available to us we would recommend to the LPA the following land contamination conditions listed below be attached to any planning permission granted to ensure the submission of adequate information.

Condition 3: No development shall commence until the following components of a scheme to deal with the risks associated with contamination at the site, has been submitted to and approved in writing by the Local Planning Authority.

1. A preliminary risk assessment which has identified:
 - all previous uses

- potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Reason: To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development as controlled waters are of high environmental sensitivity, being on the Crindau Pill and River Usk SAC, SSSI; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 4: Prior to the operation of the development a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Reason: To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation, to prevent both future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 5 Prior to the operation of the development, a long-term monitoring plan for land contamination shall be submitted and approved in writing by the Local Planning Authority. The long term monitoring plan should include:

- Details of the methods and triggers for action to be undertaken
- Timescales for the long term monitoring and curtailment mechanisms e.g. a scheme of monitoring for 3 years unless the monitoring reports indicate that subsequent monitoring is or is not required
- Timescales for submission of monitoring reports to the LPA e.g. annually
- Details of any necessary contingency and remedial actions and timescales for actions
- Details confirming that the contingency and remedial actions have been carried out.

The monitoring plan shall be carried out in accordance with the approved details, within the agreed timescales.

Reason: A land contamination long term monitoring plan should be submitted prior to occupation or operation, to ensure necessary monitoring measures are approved to manage any potential adverse impacts as a result of development on

Condition 6: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be carried out as approved.

Reason: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks.

Further Advice to Applicant on Surface Waters:

If the proposed operational phase management of surface water is changed, we advise no infiltration to ground is permitted until it has been demonstrated that there is no resultant unacceptable risk to controlled waters. This will prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of water pollution.

Condition 7 No development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling / foundation designs shall be implemented in accordance with the approved details.

Reason: Piling/foundation details> should be submitted to ensure there is no unacceptable risk to groundwater during construction and methods/design are agreed prior to the commencement of development or phase of development.

4.3 GLAMORGAN & GWENT ARCHAEOLOGICAL TRUST (GGAT):

Thank you for notifying us of this application, consequently we have consulted the detailed information contained on your website and in the Historic Environment Record.

The proposal has an archaeological restraint.

You will recall our response to the previous submission for development at this site (our letter of April 2019 to 19/0111) and to the scoping and screening consultation (our letter of May 2014), for both of which we recommended that an archaeological desk-based assessment should be submitted with any planning application. We note that no document has been submitted.

We have noted that the development area is adjoining Crindau Pill, a tidal creek tributary of the River Usk; the tidal pills along the Usk have been previously identified as potential harbour sites and there is the possibility that the areas alongside the pills could have been the focus for settlement in all periods. The Newport Ship, a 15th century oceangoing vessel, was found in one such pill. Alluvial deposits in these areas can also contain evidence of past use, and can be identified from organic remains. The course of the pill, as depicted on historic mapping shows the course has varied, and at one point crossed the site.

We stated that therefore, the issue of the impact of the proposed on the historic environment needed to be addressed, and our understanding of the historic environment and archaeological resource has not altered. This is a material consideration in the planning process. In order to provide appropriate information for an informed mitigation strategy to be recommended, we stated that any application would need to be accompanied by an archaeological desk-based assessment; this is following the information in Planning Policy Wales, Edition 11, February 2021 Chapter 6.

In order to ascertain the impact that the development will have on the archaeological resource, a suitably qualified archaeologist should prepare an archaeological desk-based assessment of the current knowledge of the archaeological resource in the application area in order for the impact of the proposed development to be determined and to allow informed mitigation measures to be proposed. The assessment should be prepared in accordance with the Chartered Institute for Archaeologists (CIfA) Standard and Guidance for Historic Environment Desk-Based Assessment (2014). It will require the specification, or project design, to be approved prior to the commencement of the work, by us as your archaeological advisors. It is our policy to recommend that it is undertaken by a CIfA Registered Organisation or accredited MCIfA Member of CIfA (<http://www.archaeologists.net/ro> and <http://www.archaeologists.net/codes/ifa>). The work will also need to provide information in accordance with Cadw's Conservation Principles for the Sustainable Management of the Historic Environment in Wales (2011).

The impact of the development on the archaeological resource will be a material consideration in the determination of the current planning application consequently this should be deferred until the assessment has been submitted to your Members.

The study should present information on the archaeological resource in the application area and assess the impact of the proposed development on it, and propose a mitigation strategy if necessary. It should also be noted that it may become apparent that further investigation, including archaeological evaluation may be required to be undertaken prior to the determination of the planning application, if significant archaeological features are identified during the compilation of the assessment.

4.4 DWR CYMRU / WELSH WATER

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

ASSET PROTECTION

The proposed development site is crossed by a 375mm non-operational combined sewer. Please see copy of indicative public sewer record attached. No operational development is to take place within 3 metres either side of the centreline of the sewer. We request that prior to commencing any operational development the location of this asset is determined. If operational development is likely to take place within 3 metres either side of this sewer please stop works and contact us. The applicant may be able to divert this asset under Section 185 of the Water Industry Act 1991.

SEWERAGE

We can confirm capacity exists within the public sewerage network in order to receive the domestic foul only flows from the proposed development site. We recommend that a drainage strategy for the site be appropriately conditioned, implemented in full and retained for the lifetime of the development.

As of 7th January 2019, this proposed development is subject to Schedule 3 of the Flood and Water Management Act 2010. The development therefore requires 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'. It is therefore recommended that the developer engage in consultation with Newport City Council, as the determining SuDS Approval Body (SAB), in relation to their proposals for SuDS features. Please note, Dwr Cymru Welsh Water is a statutory consultee to the SAB application process and will provide comments to any SuDS proposals by response to SAB consultation.

Notwithstanding this, we would request that if you are minded to grant Planning Consent for the above development that the **Condition** and **Advisory Notes** listed below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

Condition

No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul water. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

Advisory Notes

The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

SEWAGE TREATMENT

No problems are envisaged with the Wastewater Treatment Works for the treatment of domestic discharges from this site.

WATER SUPPLY

Dwr Cymru Welsh Water has no objection to the proposed development.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

- 4.5 WALES & WEST UTILITIES: Advise of equipment in the area and safe working practices.
- 4.6 NATIONAL GRID, ELECTRICITY DISTRIBUTION: Advise of equipment in the area and safe working practices.

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (NOISE)

The proposal is for the erection of a new Aldi foodstore with associated fixed plant equipment, customer car parking provision and a delivery-loading bay, at the site to the east of Albany Street.

Noise from fixed plant equipment, customer car parking activity and noise from delivery activity have been adequately assessed to show that the development will have a low impact on the local amenity and therefore have no objections to the application and suggest the following should you be mindful to grant the application.

No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, are submitted to and approved in writing by the local planning authority. The rating level of the sound emitted from the site shall not exceed 46 dBA between 0700 and 2300 hours, and 35 dBA at all other times. The sound levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessment shall be made according to BS 4142:2014+A1:2019.

5.2 HEAD OF CITY SERVICES (ACTIVE TRAVEL)

Widening of the entrance and the increased use associated with the food store would be of significant detriment to the existing cycle route which carries the NCN 88 and is a key commuter route between the city centre and Caerleon. I therefore object to this and suggest a cycle/pedestrian priority crossing is developed as part of this proposal to reduce the impact on the existing route.

Cycle storage

There is some inconsistency within the submitted Transport Assessment in regards to the exact number of cycle stands to be provided. This varies from 4/6 Sheffield type stands providing 8/12 spaces – confirmation on the exact amount of stands and spaces should be provided.

Staff cycle parking is detailed to be provided within the warehouse and industrial units although the location and number provided to staff has not been given – confirmation should be provided.

Travel plan

The transport assessment makes reference to a travel plan; a site specific travel plan setting out a package of measures, initiatives and targets aimed at reducing single-occupancy car use and promoting more sustainable travel choices should be produced prior to the site coming into use.

Offsite considerations

Given the increase in vehicular traffic along Albany Street resulting from this development consideration to the improvement of the shared use route adjacent to the site, addressing the narrowing caused by the uncontrolled crossing, should be given.

Onsite Considerations

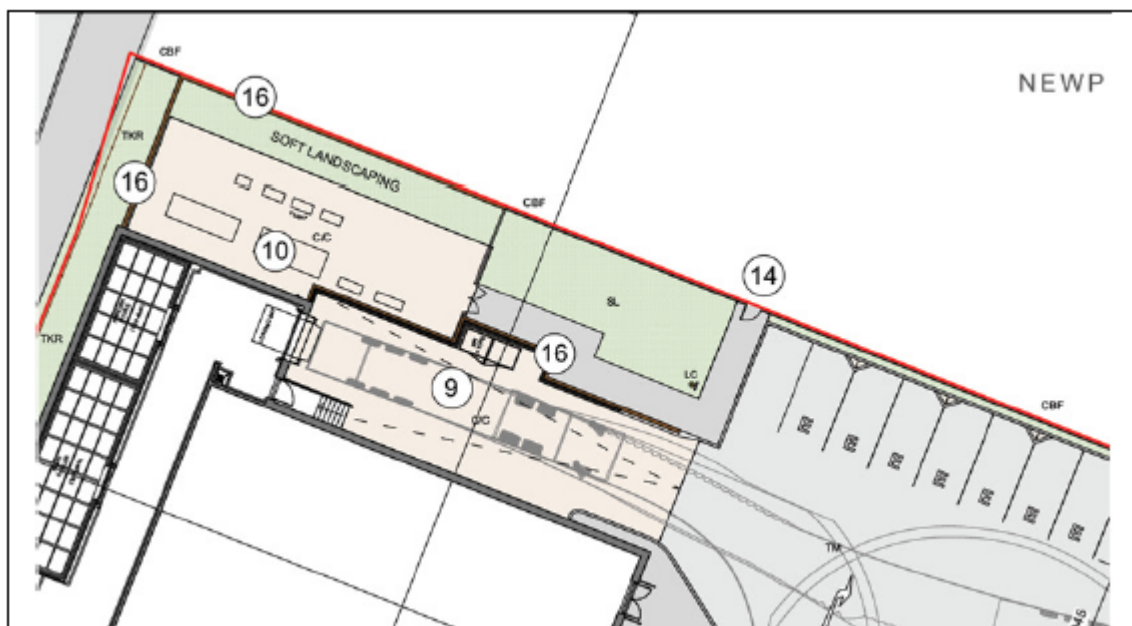
The future route INM-CAE-0002(a/b) is labelled as walking and cycling, so a 1.8m footway wouldn't suffice.

5.3 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (WASTE): We would anticipate a trade waste recycling agreement be required for this development.

5.4 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (LANDSCAPING):

This is a tight site. The layout proposal shows riverside access which is welcomed but the consequence is that the building is close to Albany Street with no potential for tree planting to soften and break-up the elevation, although an ornamental shrub mix/hedge is proposed. There are a number of queries and comments on the soft landscape scheme as follows:

1. Planting to the north boundary shows a native hedge in a bed width which may be under 1m width and which is backed by a proposed 1.8m high close boarded fence. Can Tyler Grange confirm this is workable – see image below.

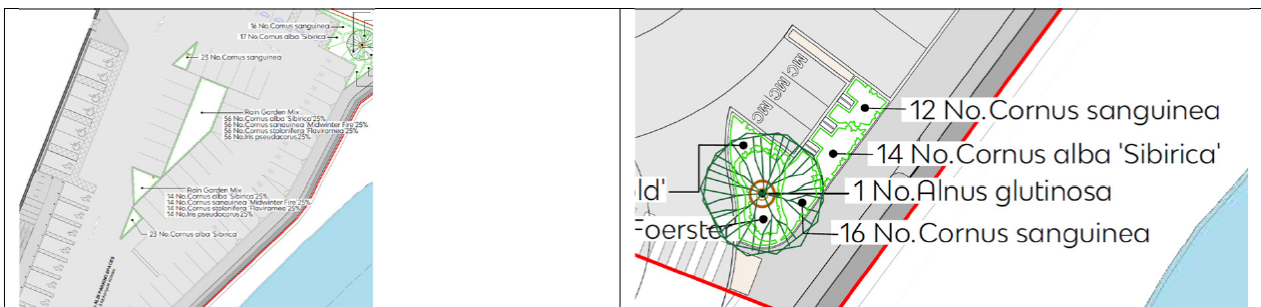


2. Meadow grass is proposed to the north-west, fronting the Plant area – see image above. Are there constraints to hedge planting, tree planting, if so please confirm, if not, can Tyler Grange review as grass will provide no visual enclosure or softening of views onto the Plant area.

3. The ornamental shrub mix to Albany Road contains 20% beech + 20% hornbeam in addition to native shrubs and ornamental shrubs, this is an unusual mix which will require regular maintenance, can Tyler Grange confirm this has been used before successfully. Also to note there are windows for the meeting room and staff room where hedging will need to be kept below 1m.

4. There is frequently no ground cover proposed. This may be acceptable for hedges, but for car park beds with only Cornus species proposed there will be a lot of bare ground in the winter.

Cornus sanguinea is shown in a triangular bed in the car park, this is a large shrub with open habit that will require regular cutting back in an awkward shaped bed and no ground cover. Can Tyler Grange review and add evergreen groundcover at key locations, for example within the car park beds and the bed to the south-east alongside the riverside path as shown below.



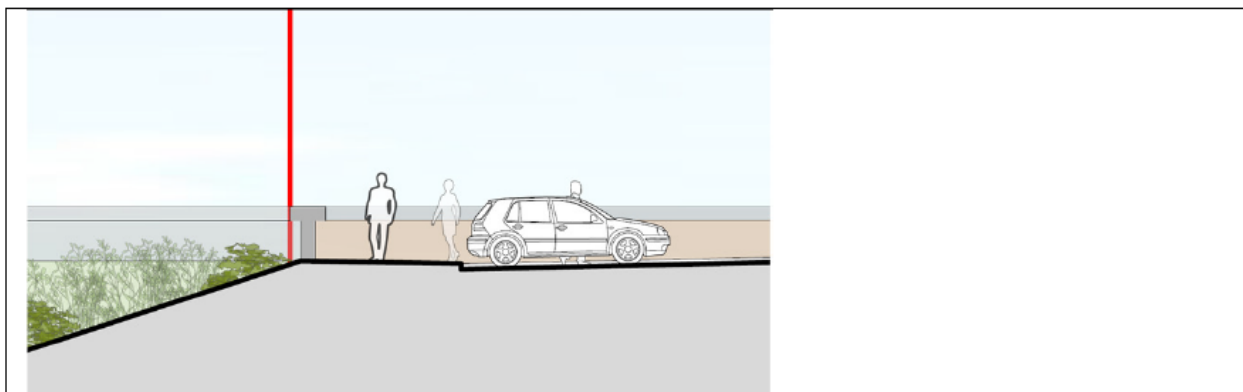
5. The tree pit detail is insufficient to meet BS 8545 (2014) – it is showing 900mm depth of topsoil and compost, and a barrier to pit sides and base which if required will provide insufficient rooting volume. Tree planting pit details should be reviewed in relation to the guidance in BS 8545 (2014) 'Trees: from nursery to independence in the landscape – Recommendations' para 10.2.7 'topsoil should not be used below the depth of the original topsoil layer'. Generally accepted practice is for 300mm topsoil over 600mm free draining subsoil to replicate normal ground conditions, with tree pit graded up to meet either grass or shrub topsoil base. Note that similar recommendations to BS8545 are provided by Trees & Design Action Group in 'Trees in Hard Landscapes A Guide for Delivery'. Tree barriers are normally placed against the kerb line etc not within the tree pit.

6. The applicant is to confirm the topsoil and subsoil specification will meet BS8601:2013 for subsoil and BS3882:2015 for topsoil, with soil supply professionally tested and recommendations implemented to ensure successful establishment of planting.

7. The site lies close to the River Usk Special Landscape Area and development should not detract from the character of the Special Landscape Area. No tree planting is shown within the car park planting beds and therefore views of the building from across the river will not be softened. Can tree planting opportunities within the car park be reviewed.

Riverside access path

8. It is not clear what the access links are to the north and south or the building/land use context going forward and this would help to better understand how the proposal will fit in. Consultation with the NCC Footpath and Access Officers is recommended, to agree surfacing, signage, dual-usage requirements for the riverside path. Note there is no room for a planted buffer or even knee rail to separate the car park from the riverside walk users as shown below.



The following is required and can be conditioned:

Provide a maintenance and management plan for five years to cover new planting until established, to include hedge width and height, pruning of dogwood.

5.5 HEAD OF CITY SERVICES (HIGHWAYS)

Highway Recommendation

- 5.5.1 Highways are satisfied that the development will not have a severe impact on the highway nor on its users, this is subject to some recommended planning conditions being considered (see the wordings in bold below).

Highway Comment

- 5.5.2 It is noted that a previous application for a supermarket has been approved on this site (19/0111).

Access

- 5.5.3 The proposed site access would include a revised bellmouth radii to allow access for HGV service vehicles, also dropped kerbs and tactile paving are included as part of the design layout. The carriageway width of the access road into the site would be 7.5m bounded by a 2m wide footway to both sides. There is also a secondary point of access located in the southwest corner of the site providing pedestrian access into the customer car park.
- 5.5.4 It is noted that there are also two other pedestrian accesses direct from Albany Street, these are assumed to be for staff use only. The details of all these accesses can be seen on drawing 8300 Rev P1.
- 5.5.5 The main access is proposed to serve other land that is located adjacent to the land set aside for this supermarket. Currently, the type or size of the business on this land is unknown. From a highway perspective the proposed supermarket access junction has been assessed for capacity and suitability for the supermarket only.

Parking

- 5.5.6 A total of 113 customer car parking spaces on site including:
- 6 Disabled parking bays
 - 8 P&C parking bays
 - 5 motorcycle parking bays
 - 4 external Sheffield cycle stands
 - 4 live EVCPs, 22 no. future EVCPs

	Requirement to meet Parking Standards	Provided
1 space per 20m ² of floor space (1864m ²)	93	113
6% disabled spaces	7	6
Motorcycle Parking: 5% of car provision	6	5
1 cycle space per 4 staff (long stay) (covered) Staff numbers = 27	7	Not satisfactorily identified
1 cycle space per 20 staff (short stay) (can be uncovered) Staff numbers = 27	2	8 (4 hoops)
Commercial vehicles spaces	3	1
Electric Charging Points (10%)	11	4 live (7 additional spaces also have electrical infrastructure in place)

- 5.5.7 From the above, it is seen that overall the parking figures are generally similar. The addition of 20 parking spaces (113 compared to the 93 required), could be seen as encouraging the use of motorised vehicles.
- 5.5.8 The deficiency in disabled spaces could be easily addressed by reducing the number of parent and child spaces so this is not a concern.
- 5.5.9 The commercial vehicle space numbers are at greater odds. It is understood the store operates a regime of controlling commercial vehicle access. This works in other stores and is an acceptable argument to accept only the one commercial space. The manoeuvring space within the yard is adequate for a HGV to enter and leave in a forward gear. Overall the delivery and servicing arrangements are seen as acceptable.
- 5.5.10 The covered cycle stands have not been identified on any plan. It is suggested that these cycle stands will be available, placed as and when within the warehouse. This is not acceptable, as it is seen as an 'add on' to the overall proposal, not an integral part to encourage the use of cycles as a form of sustainable transport.
However, it is suggested that this is a matter that can be dealt with by a planning condition.
- 5.5.11 Old supermarket car park layouts usually lack defined separation between moving cars and the pedestrians, more modern car park layouts identify the vehicle lanes as separate from the pedestrian walkways. This site offers no such separation.
- 5.5.12 This is particularly relevant for the parking bays located to the north of the parking area, that are furthest away from the entrance / exit point to the store. It is suggested that this parking layout is as a result of the site constraints.
- 5.5.13 Where possible, it is recommended, the separation of the vehicle lanes and pedestrian routes with the introduction of pedestrian walkways.
Transport Assessment
- 5.5.14 A traffic flow assessment has been carried out and the observed vehicle trip numbers scaled up to the future year of 2027. An operational assessment undertaken, using the same methods as for the previously consented application has demonstrated the local junctions (whilst currently encountering capacity issues), are unlikely to be made materially worse as a result of the proposed development.
- 5.5.15 The impact of development traffic on the local roads would be of the order of 1 vehicle per minute at local junctions, which would form an imperceptible increase to existing traffic levels and cannot be seen to have a severe effect on the local highway network.
- 5.5.16 In conclusion, the existing highways are expected to be able to reasonably accommodate the additional vehicular trips generated by the supermarket development.
Sustainable Transport

- 5.5.17 With the provision of the adjacent highways including footways, the site offers opportunities to travel to and from the site by foot or by bike. There is a more limited option to use local public transport as there are no obvious bus or train links nearby.
- 5.5.18 Due to its location, to assist in the promotion of the use of sustainable transport, it is recommended that a Travel Plan is introduced that will encourage staff to use alternative means to travel to and from the site.

It is recommended that the need for a Travel Plan forms part of a requirement within a planning condition.

Refuse Collection

- 5.5.19 Commercial refuse collection would be undertaken on site, with refuse vehicles able to access the development via the main access road. The refuse vehicle can utilise the onsite HGV turning head area to ensure no long reversing manoeuvres occur on site. This is considered acceptable.

Construction Management Plan (CMP)

- 5.5.20 **A Construction Management Plan will be required for highway purposes**, including the following:

- Haul routes in and out – avoiding schools and school timings
- Methods and locations of the loading and unloading of vehicles
- Parking area for staff and visitors
- Method of Controlling mud and dust on the highway
- Methods of protecting the passing public

5.6 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (CONTAMINATED LAND)

- 5.6.1 I have looked at the submissions in respect of the above application and would like to comment as follows:

Air Quality

- 5.6.2 The site is not situated within an air quality management area however the Malpas and Chepstow Road AQMAs are in continuity with the site and good practice measures to address vehicle emissions should be adopted at all development where needs or opportunities exist.
- 5.6.3 Where permission is granted construction traffic has the potential exert additional pressure on AQMAs with which the site in continuity therefore a routing plan for construction phase HGV traffic and operational phase HGVs

Measures could take the form of the following:

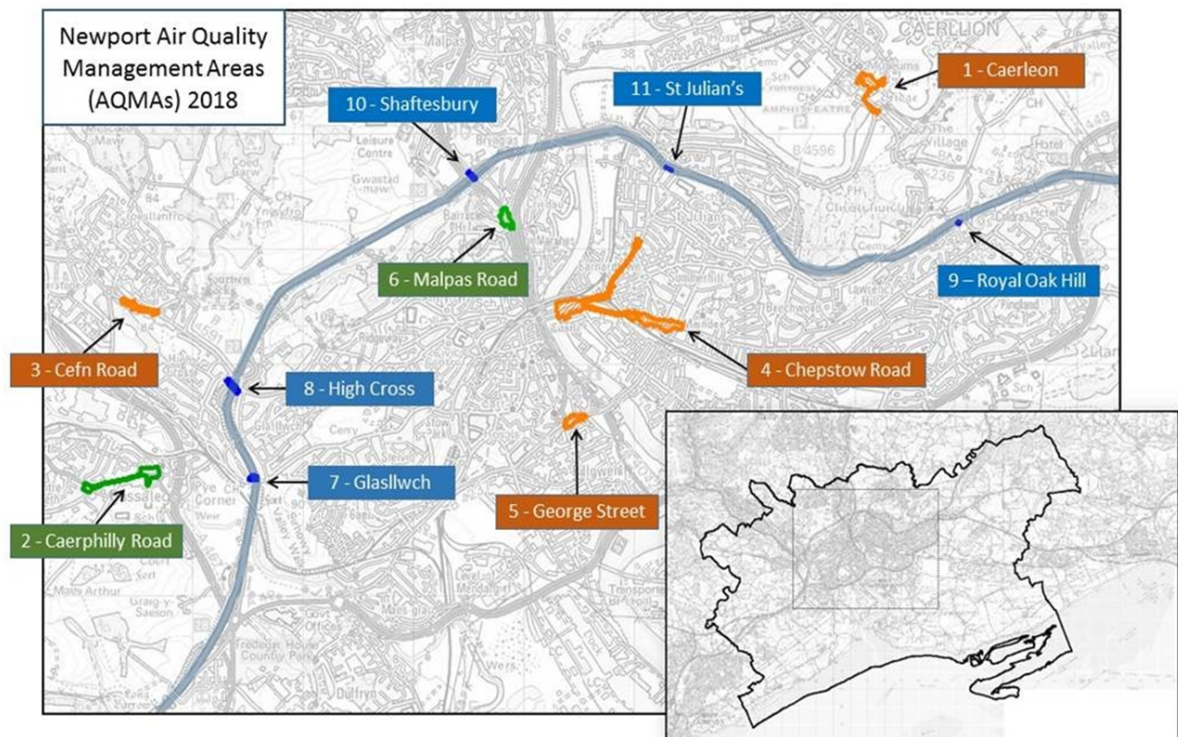
- ULEV infrastructure which normally entails EV charging for customer use (this being noted within the proposed drawings which is welcomed);
- Air quality beneficial plantings where green infrastructure is proposed which could include green roofing;
- Use of zero/low emission heating systems;
- Facilitating access to zero/low emission public transport via suitably located bus stops where not already present.
- Use of Photovoltaics (this being noted in proposed roof design which is welcomed).

- 5.6.3 The Transport Assessment (TA) recognises that there are limited options to use local bus transport and given this the provision a bus service access at the development where any permission is granted would be highly desirable.

- 5.6.4 There does not appear to be any assessment within the TA of construction vehicle movements and numbers which may be of significance to local air quality during the construction phase, this requires at the very least some annual average daily trip data for HGVs during the construction phase which has been screened against the need for a detailed air quality assessment in accordance with EPUK guidance on air quality and development.

This needs to be done prior to any permission being granted and the findings and any mitigation required being incorporated into the proposed scheme.

- 5.6.5 Anti idling schemes for operational vehicles are encouraged wherever possible and idling HGVs are particularly discouraged. A scheme at the proposed development would be welcome.
- 5.6.6 Landscaping is proposed at the development and as such this could take advantage of the opportunity to introduce air quality beneficial species. The attached reference is a good starting point in specifying this in development.
- 5.6.7 Given the above, the following conditions are recommended where any permission is granted:
- No development shall commence on site until a scheme of Ultra Low Energy Vehicle infrastructure has been submitted to the LPA in accordance with the submitted plans. The scheme must be approved by the LPA prior to implementation and thereafter be permanently retained. ULEV Infrastructure shall be available to staff during the construction phase in so far as this is reasonably practicable.
Reason: To prevent unacceptable harm because of air pollution (Policy GP7); There must not be a significant adverse effect upon local amenity in terms of air quality (Policy GP2)
 - A construction routing plan shall be provided to the LPA which demonstrates how the routing of traffic during the construction phase will avoid non-M4 air quality management areas as detailed on the map below:



The plan shall be submitted to the LPA for approval prior to commencement of construction and retained throughout the construction period. Where any departure from the plan is required the LPA must be consulted prior to any changes.

Reason: To prevent unacceptable harm because of air pollution (Policy GP7); There must not be a significant adverse effect upon local amenity in terms of air quality (Policy GP2)

- Prior to commencement of the use hereby permitted an anti-idling scheme aimed at all operational vehicles using the site shall be submitted to the LPA for approval and thereafter be permanently retained.
Reason: To prevent unacceptable harm because of air pollution (Policy GP7); There must not be a significant adverse effect upon local amenity in terms of air quality (Policy GP2)

- No development shall commence on site until a scheme of Green Infrastructure including but not limited to street scene and landscaped areas has been submitted which identifies plantings which use species which are known to be beneficial to air quality. The scheme must be approved by the LPA prior to implementation and thereafter be permanently retained.

Reason: To prevent unacceptable harm because of air pollution (Policy GP7); There must not be a significant adverse effect upon local amenity in terms of air quality (Policy GP2)

Contaminated Land

- 5.6.8 I have read the Ground Investigation undertaken by Earth Environmental & Geotechnical – Ground Investigation and the Supplementary Geo-Environmental Report undertaken by Groundtech Consulting. It is noted that the Ground Investigation report confirms the presence of contaminants in excess of commercial acceptance criteria which confirms remediation will be required. The Ground Investigation also highlights that for the nearby Sainsburys site *“Excessive levels of coal tar and DNAPL were encountered in groundwater and remediation of the groundwater was carried out by specialist contractors using soft flushing with surfactants.”* Which may be associated with historical gas works locally. Hence the potential to encounter similar conditions appears may exist here. It is also evident that gas protection of development will be required based upon levels of ground gas observed.
- 5.6.9 I also note NRW comments which are concerned about risks to controlled waters.
- 5.6.10 Natural Strata mentioned in the Groundtech report needs clarifying in terms of provenance as it's referred to in section 5.2 as Soft dark brown Clay with rare mudstone gravel and Dark brown Sand and Gravel; **confirmation that this is the expected tidal flats superficial deposits is sought.**¹
- 5.6.11 Ground gas monitoring by Groundtech has not yet been concluded therefore a ground gas protection scheme cannot be considered as part of this application until all monitoring and risk assessment is completed; after which a protective scheme of ground gas mitigation will need to be submitted prior the LPA before any planning permission can be considered further.²
- 5.6.12 Notwithstanding the above, where any permission is considered the following conditions are recommended:
1. No development, (other than demolition) shall commence until:
 - a) An appropriate Desk-Study of the site has been carried out, to include a conceptual model and a preliminary risk assessment, and the results of that study have been submitted to and approved in writing by the Local Planning Authority.
 - b) If potential contamination is identified then an appropriate intrusive site investigation shall be undertaken and a Site Investigation Report to (BS10175/2011), containing the results of any intrusive investigation, shall be submitted and approved in writing by the Local Planning Authority.
 - c) Unless otherwise agreed in writing by the Local Planning Authority as unnecessary, a Remediation Strategy, including Method statement and full Risk Assessment shall be submitted to and approved in writing by the Local Planning Authority.
 - d) No part of the development hereby permitted shall be occupied until:

¹ The applicant has confirmed that these strata are the Tidal Flat Deposits that typical underlie the coastal and estuarine environment in Newport.

² The applicant believes on the basis of work already completed that the ground gas regime will be CS3 (moderate risk) and that this can be addressed by practical measures built into the store – gas impermeable membranes installed in the floor for example.

- i. Following remediation a Completion/Verification Report, confirming the remediation has being carried out in accordance with the approved details, shall be submitted to, and approved in writing by, the Local Planning Authority.
- ii. Any additional or unforeseen contamination encountered during the development shall be notified to the Local Planning Authority as soon as is practicable. Suitable revision of the remediation strategy shall be submitted to and approved in writing by the Local Planning Authority and the revised strategy shall be fully implemented prior to further works continuing.

Reason: To ensure that any potential risks to human health or the wider environment which may arise as a result of potential land contamination are satisfactorily addressed.

2. Any unforeseen ground contamination encountered during development, to include demolition, shall be notified to the Local Planning Authority as soon as is practicable. Unless otherwise agreed in writing by the Local Planning Authority as unnecessary, an appropriate ground investigation and/or remediation strategy shall be submitted to and approved in writing by the Local Planning Authority, and the approved strategy shall be implemented in full prior to further works on site. Following remediation and prior to the occupation of any building, a Completion/Verification Report, confirming the remediation has being carried out in accordance with the approved details, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any potential risks to human health or the wider environment which may arise as a result of potential land contamination are satisfactorily addressed.

3. No building shall be constructed on the site until such a time as a completed ground gas risk assessment and mitigation specification has been submitted to and agreed in writing by the Council. Following the Council's written agreement the gas mitigation shall be installed as agreed at the time the building is constructed.
Reason: to protect the building and any occupiers from the infiltration of harmful ground gases in the interests of health and public safety. Policy GP7.

4. Prior to import to site, soil material or aggregate used as clean fill or capping material, shall be chemically tested to demonstrate that it meets the relevant screening requirements for the proposed end use. This information shall be submitted to and approved in writing by the Local Authority. No other fill material shall be imported onto the site.

Reason: To ensure that any potential risks to human health or the wider environment which may arise as a result of potential land contamination are satisfactorily addressed.

5.7 HEAD OF CITY SERVICES (ECOLOGY)

- 5.7.1 I have considered the Ecological Assessment dated 20th October 2021, and have the following comments.

- 5.7.2 I agree that the existing site within the red line boundary has negligible biodiversity value, and that any impacts upon nature conservation interests arising from this proposal are likely to fall upon adjacent protected sites. It is recognised in the Ecological Assessment that the adjacent Crindau Pill SINC, the River Usk SSSI and SAC, and the Severn Estuary European Marine Site further afield, are the main ecological receptors within the zone of influence of this project.

- 5.7.3 Despite the acknowledged presence of a SAC adjacent to the site, and a SAC/SPA/Ramsar site in hydrological continuity, the Ecological Assessment does mention the need for a Habitats Regulations Assessment (HRA) in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (As amended). This requirement is also referred to by NRW in their pre-app letter of 03/12/21. The Applicant should provide us with sufficient information to undertake this assessment, or else provide us with a draft HRA which we can adopt.

- 5.7.4 Correspondence from NRW includes advice on whether sufficient information has been provided in relation to protected sites. The NRW letter of 26/10/22 advises that no further information in this respect has been provided, so refers us back to their letter of 20/07/22. In that letter, NRW advise that as the Competent Authority we seek further information from the Applicant regarding protected sites (surface water), and that if this is not provided, then they would object to the application. They do not specify in that letter exactly what information they refer to, but attach their pre-app comments of 03/12/21. Looking at their pre-app letter, in relation to protected sites and surface water, NRW advise that further information must be provided prior to determination of any planning application as to how only clean, uncontaminated water would be allowed to discharge to Crindau Pill via the surface water system. Therefore, until NRW confirm they are satisfied with this information, we should assume they object to this application on this point. This being the case, we cannot complete a HRA until the information that NRW require has been provided to their satisfaction, and in any event we are obliged to consult NRW on any Appropriate Assessment, so have to assume they would object to it if it is incomplete.
- 5.7.5 In relation to other impacts upon protected sites, and to impacts upon European protected species, NRW advise that based on the information submitted to date, conditions regarding protected sites, European protected species, and land contamination should be attached to any planning permission granted and the External Lighting Drawing No. P186-756-C be included in the approved plans and documents condition on the decision notice. Without the inclusion of these conditions and document, they would object to this planning application. I support this advice and the conditions referred to (Cons. 1 – 7 in their pre-app advice of 03/12/21).
- 5.7.6 In relation to the River Usk SSSI, and to the Crindau Pill SINC, the measures required to avoid harm to the River Usk SAC and European protected species as above will also serve to protect the features of the SSSI and SINC, so no further mitigation measures are required.

Biodiversity Net Benefit.

- 5.7.7 A statutory duty as set out in section 6 of the Environment (Wales) Act 2016 has been introduced which requires public bodies such as Newport Council to seek to maintain and enhance biodiversity, and in doing so to promote the resilience of ecosystems, in the exercise of their functions. Furthermore, section 6.4.3 of Planning Policy Wales states that:- *'The planning system has a key role to play in helping to reverse the decline in biodiversity and increasing the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement.'*

In his letter to Heads of Planning of 23/10/19, the Chief Planner emphasised this point with the following:-

'Planning Policy Wales (PPW) 10 sets out that "planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means that development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity" (para 6.4.5 refers).'

- 5.7.8 Any application should demonstrate how this will be the case. This duty and this advice is not referred to in the Ecological Assessment, nor are any specific enhancements or biodiversity net benefit measures proposed. There is mention that *'The mitigation and enhancement strategy could be controlled by appropriately worded planning controls...'*, however we should consider whether this satisfies the requirements of the Chief Planner's letter referred to above, which also includes:- *'where biodiversity enhancement is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise it will be necessary to refuse permission.'* In my view, given that the site is devoid of any natural habitats and it would be unreasonable to ask for enhancements to the adjacent protected sites, we can use a planning condition to require that a biodiversity net benefit scheme is produced, if consent is granted.

6. REPRESENTATIONS

6.1 NEIGHBOURS:

All properties within 100m of the application site were consulted (37 properties), and a site notice was displayed, and a press notice published in South Wales Argus.

3no. responses were received, two in support and one objecting raising the following points;

- This is a better scheme than the one that has been approved.
- The scheme will create jobs.
- The site is too near the existing Sainsburys store.

6.2 COUNCILLOR JAMES: Active Travel and Public Transport

The site is situated on a cycle path but only has 8 cycle spaces. Planning committee might like to seek clarification on whether or not those spaces will be covered by CCTV of sufficient quality to see faces clearly. It isn't clear if any of these spaces will be accessible or for reserved for larger cycles (cargo, tricycles etc).

The new site is further away from public transport routes and is a more distant location on foot for most Shaftesbury residents. A bus does go to nearby Sainsbury's but it isn't clear from the application whether or not a bus will go to the new Aldi. The application appears to make no promises on this.

For many Newport residents, moving to this new site will make walking, cycling or taking the bus a less viable option than it is at the current site.

Renewables

The heat pump from the plant is an excellent use of resources but I am disappointed to see no form of renewable electricity generation on site.

I'm not clear on why solar PV wasn't considered but for a building of this size - it would have been good to see some leadership on this.

Soft landscaping

The ground investigation report appears to suggest that the safest option in relation to current ground contamination is to have no soft landscaping on the site at all (noting that there could be raised beds).

The application has several areas of soft landscaping, which I would ordinarily welcome, but I see no soil management plan. How will the applicants manage contamination in areas of soft landscaping?

Conclusion

The development is an exciting prospect and it's good to see potential use of previously developed land. However, there are issues the applicants could be going further on. Of particular concern to me is the lack of public transport provision.

If the issues around public transport were resolved and soft landscaping clarified in line with the LDP and to planning committee's satisfaction, I would be happy to support.

7. ASSESSMENT

7.1 The Site

- 7.1.1 The site comprises part of the current R. J. Mason transport yard covering an area of approximately 0.7Ha. The site is level and cleared with some piles of aggregate on site. The site appears to have a lawful use as a haulier's yard (sui generis) with some ancillary storage.

- 7.1.2 The site lies within the urban boundary within flood zone C1 (defended flood plain). Cyfoeth Naturiol Cymru have recently completed flood defence works on the site perimeter to provide a sheet piled floodwall along Crindau Pill. These works protect present day flood risk with added climate change considerations but are not intended to protect the lifetime of future developments such as this. The Pill forms part of the River Usk SSSI / SAC and has significant nature conservation interest. The site is in Parking Zone 5. Current access to the site is from Albany Street at the southern end of the application area. A temporary fence has been installed along the Albany Road frontage.
- 7.1.3 The applicant is Aldi Stores limited and this business already has a planning permission for a food store on this site, 19/0111 (see planning history). The applicant considers that this permission has been implemented and represents a fallback position which he could use in the event permission was not forthcoming under this application.
- 7.1.4 Permission 19/0111 will expire on the 25 February 2025. The applicant asserts that that permission has been implemented and that the approved scheme could be fully completed. It is certain that the building on the site has been demolished and that that was an operation approved under the planning permission granted. However the question of whether a planning permission has been implemented is more complex than whether an approved operation has been undertaken. Some consideration of compliance with conditions and the timing of that compliance is also needed. As such it cannot be certainly stated that the permission has been implemented and no application for a Certificate of Lawfulness regarding permission implementation has been submitted or determined. That said a cursory examination of Permission 19/0111 suggests that if not implemented due to failure to comply with conditions these matters could be addressed within the lifetime of the permission thereby allowing implementation of the permission before it expires in 2025.
- 7.1.5 That a fallback position exists is a 'low bar' test meaning that the existence of a fallback position can often be established quite easily. However the real test is the likelihood of that fallback being used. This is fact and degree point to which judgement must be applied. In this case the permitted building is tight to the CNC/NRW flood defence and it is understood that organisation has not issued the required Flood Risk Activity Permit for the proposed store because it is too close to the flood defence and would preclude maintenance and improvement of that defence. In plain terms the approved scheme is unlikely to be built. The applicant claims there has been no absolute prohibition from CNC/NRW and that the approved scheme is capable of implementation. Officers judge that to be unlikely since if that were the case then this submission and its associated cost and time delay would have been unnecessary and no sensible applicant would willingly engage in the cost, delay and risk of refusal associated with this revised submission.
- 7.1.6 As such Officers give the claimed fallback position little weight and have no information that would change this view. However as noted this is a planning judgement and Committee members may take a differing view on that point. However if the applicant is correct and the approved scheme can be implemented then this would certainly be a weighty material consideration for this submission since in effect most harms identified with this scheme would be offset by the permission that is in place but only if it can genuinely be used. In the minds of Officers the existing permission is very unlikely to be used and is therefore of little weight meaning the objections identified in this report cannot be offset. However it is open to Committee Members to disagree with this assessment and give far greater weight to the fallback position.

7.2 The Proposal

- 7.2.1 The site would be cleared and redeveloped to provide a new Aldi supermarket as described in Paragraph 1.1. The building would front Albany Street with parking and circulation areas to the rear adjacent to the river.

7.3 Key Issues

The key issues are:

- Retail need; quantitative and qualitative

- Sequential Test
- Retail Impact
- Flooding
- Bio-diversity / Habitat Regulations Assessment (HRA)
- Parking / Access / Circulation
- Design
- Riverfront Access
- Regeneration Benefit / Employment Land
- Overall Sustainability
- Archaeology
- Ground Contamination

Minor Issues are:

- Impact to residential amenity during the construction process and during operation.
- Fallback position

7.4 Retail Need

- 7.4.1 The site for the new store is located outside of any retail centre designated in the Newport Local Development Plan. In such locations it is necessary to show that there is sufficient need to justify the provision of a retail unit outside of a designated centre. Consideration should then be given to whether an appropriate site was available within a centre and the impact of the proposed store on any existing centre. Recent caselaw (*Waterstone Estates Limited v. The Welsh Ministers*) has established the primacy of the need test within Wales. Emphasis is given to proving quantitative need over qualitative need but both are material considerations.
- 7.4.2 To prove quantitative need the applicant must identify a store catchment, calculate the available retail expenditure within that catchment and compare that with the existing retail provision within that catchment and identify any surplus spending that cannot be met by the existing retail provision available within the defined catchment. The overall methodology is well established but can be subject to interpretation and certain levels of assumption. In this case the applicant has considered the uplift in the floor area of the new store over the existing Aldi store within the Malpas Road District Centre and has sought to justify the provision of this 'additional' floor area only rather than the entirety of the new space. This is on the basis the current store will "move" to the new site and be extended. Furthermore, the current retail floorspace in the Malpas Road District Centre will not be re-used for convenience goods and will more likely be used for comparison or non food retail. Consequently, only the enlarged floorspace of the new store over and above the current store is relevant to establishing quantitative need. This is a position agreed as part of the previous similar application and a methodology that, on balance, appears reasonable and robust.
- 7.4.3 The applicant has provided a retail assessment which has been audited by Nexus who completed the Council's Retail Study (November 2019). In their assessment the applicant concludes that no *quantitative need* for the new store exists. This is based on their assessment of floorspace uplift against available expenditure in the catchment. This means that in effect there is insufficient money available within the store's catchment area to support the new enlarged store and that the current provision of stores is sufficient to meet the needs of the population being served. Nexus in their audit of the submission agree with this conclusion.
- 7.4.4 National planning policy emphasises that for any new store outside a protected centre need must be demonstrated. However the need may be *qualitative* rather than quantitative. This means that if a new store was to offer a significant improvement in the overall shopping experience or address problems at other nearby retail sites then it would still be needed in planning policy terms, albeit that a lack of quantitative need could weigh against the proposal.
- 7.4.5 Nexus' who are advising the Council in regard to this submission arrive at the following broad conclusions in relation to this submission:
- Quantitative need has not been demonstrated and there is a significant oversupply of convenience retail floorspace in Newport,

- The Aldi Barrack Hill store is overtrading but not unusually so for a discount retailer;
- The qualitative need is not well made out in relation to the criteria set out in PPW11;
- The site is out of centre and not well served by public transport;
- Closure of the Barrack Hill store would result in the significant loss of expenditure within the Malpas Road District Centre and the loss of the only significant food store within the District Centre;
- The Newport Local Development Plan examination has confirmed the importance of Discovery Park to the District Centre and the 'anchor store' role of Aldi's within that centre;
- It is likely that the Barrack Hill store will be occupied by a comparison retailer with a reduced turnover compared to Aldi and lessening the centre's offer and fundamentally weakening its wider function;

In short Nexus conclude there is no quantitative demand for the new store, qualitative benefits are limited and that there would be an unacceptably adverse impact on the Malpas Road District Centre.

7.4.6 Planning Policy Wales, Edition 11 (PPW11) states at Paragraph 4.3.14 that:

In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or when determining planning applications for such uses, planning authorities should first consider whether there is a need for additional retail provision³. However, there is no requirement to demonstrate the need for developments within defined retail and commercial centre boundaries or sites allocated in a development plan for specific retail uses. This approach reinforces the role of centres, and other allocated sites, as the best location for most retail, leisure, and commercial activities. It is not the role of the planning system to restrict competition between retailers within centres.

Further pertinent advice is at Paragraph 4.3.15:

Need may be quantitative, to address a quantifiable unmet demand for the provision concerned, or qualitative. Precedence should be given to establishing quantitative need before qualitative need is considered for both convenience and comparison floorspace⁴, particularly as a basis for development plan allocations.

National Policy is very clear that need is the key consideration when assessing out of centre retail applications. As noted, in this case quantitative need has not been robustly shown and this Policy test is failed.

7.4.7 National Policy also allows justification for new out of centre retail on qualitative need. PPW11 advises at Paragraph 4.3.16 as follows:

Qualitative assessment should cover both positive and negative aspects and may become an important consideration where it:

- *supports the objectives and retail strategy of an adopted development plan or the policies in this guidance;*
- *is highly accessible by walking, cycling or public transport;*
- *contributes to a substantial reduction in car journeys;*
- *contributes to the co-location of facilities in existing retail and commercial centres;*
- *significantly contributes to the vibrancy, attractiveness and viability of such a centre;*
- *assists in the alleviation of over-trading of, or traffic congestion surrounding, existing local comparable stores;*
- *addresses locally defined deficiencies in provision in terms of quality and quantity, including that which would serve new residential developments; or where it;*
- *alleviates a lack of convenience goods provision in a disadvantaged area.*

7.4.8 In this case the proposed site is not allocated and the development would not support any local retail strategy or the centre first stance supported by PPW11. As a site it would be walkable from adjacent areas of Crindau but not wider areas due to the presence of

³ Officer's emphasis

⁴ Officer's emphasis

Heidenheim Drive and the River effectively limiting pedestrian routes to the site. A bus service operates from the city centre to the Sainsbury's store near the application site between 09:30 and 13:10 and customers can walk through to Albany Street from the drop off point, however this is a private service provided by Sainsburys although a degree of piggy backing might be anticipated. There is no service bus accessing Crindau and people would need to get off the bus on Malpas Road and walk through the limited overbridges / underpasses that cross the A4042 (Heidenheim Drive) and then walk some distance to the store along Albany Street. None of these are welcoming routes. The site is adjacent to Cycle Route 88 from the city centre to Caerleon by way of Crindau. As such cycle access is possible but the route is not in reality car free. Some northern elements near the site have a combined footpath / cycle way but elements to the south are on road, since footpaths are narrow and houses access directly onto the pavement. This section of Albany Road is relatively narrow, heavily parked and subject to HGV traffic. It is not a welcoming route for cyclists. The alternative via Ailesbury Street and the Sainsbury's site is also not car free and is somewhat contrived. Although lacking through traffic it is also heavily parked and not particularly welcoming. In effect the routes are typical of retro-fitted cycle routes being at best adequate and frequently interrupted requiring cycling on roads that are vehicle dominated and therefore not especially attractive to cycle traffic, particularly children or more timid riders. The situation is poor at present and will be made worse by the added traffic associated with the use itself. As such Officers conclude that the site would fail the Policy test since it is not highly accessible on foot or on the bus and bicycle access is not as good as it would appear on paper. This is to be expected given its out of centre location and the lack of practical and safe sustainability credentials weighs against the scheme.

- 7.4.9 The site will not substantially reduce car journeys being off a bus route and even combined trips between the proposed store and the adjacent Sainsbury's store are likely to involve vehicles moving from one car park to another. The applicant estimates 5% of all trips to the new store will be such trips. As such increased car movements can be anticipated. The applicant's Transport Technical Note (June 2021) anticipated 20% of trips to the store would be new trips within the local road network with 50% being diverted from the Barrack Hill store and the remaining 30% being existing passers-by. However it should be noted that the 50% diversion figure was predicated on the existing store continuing to trade as a convenience goods store. The applicant now considers that the existing store will not trade in such a way and will more likely become a comparison goods outlet. As such the diversion to the new store is likely to be higher than anticipated initially and it seems likely this additional diversion will be in addition to the 'new' traffic expected to visit the store. That is to say the new store is likely to generate even more new car trips than initially modelled.
- 7.4.10 The applicant has provided a Transport Assessment (TA) for the scheme which considers the impact of the scheme on the local highways and various key junctions including the Harlequin, the A4042 / Albany Link Road (the turn into Sainsburys on Heidenheim Drive) and the 'Sainsburys Roundabout' adjacent to the now demolished R. J. Mason's building.
- 7.4.11 The TA concludes that the new proposal will minimally add to existing queues at these junctions which develop at busy times but that the increases in wait times and queue lengths will be minor and acceptable against the general backdrop of traffic growth. There is no objection from the Head of City Services in terms of traffic generation and junction performance.
- 7.4.12 The proposed site is outside an existing retail centre so no co-locational benefits accrue and nor would this proposal add to the vitality and viability of an existing centre. In fact it will likely significantly prejudice an existing identified retail centre by removing the only main convenience retailer. Officers note that the inclusion of the current Aldi and Wickes/Discovery Park in the Malpas Road retail centre has previously been considered by an Inspector as part of previously LDP examination as follows:

"the Aldi store provides a foodstore anchor for the centre, and the site's unrestricted parking enables customers to undertake linked trips to other facilities. Although the site stands slightly apart, an easy pedestrian link exists."

- 7.4.13 The GVA study provided as part of a previous application for the Lidl store on Cardiff Road (former Argus site) suggests the 2018 turnover from within the identified catchment of the

existing Aldi store at Barrack Hill is £12.66million with a further £2.86million flowing in from non-catchment areas. The applicant's previous Retail Statement suggested that a benchmark turnover for the existing Aldi store is £6.34million. This suggested that the existing store is overtrading by approximately 245% i.e. selling a lot more goods than it might be expected to sell given the size of the store. Given the relatively short passage of time since this assessment there is no reason to think it will have significantly changed.

- 7.4.14 Trading from a larger store would enable Aldi to alleviate the overtrading and provide a wider range and choice of goods to customers from the increased floor space, potentially improving the overall shopping experience (aisle width, till wait time and so forth). However there is no indication that the current overtrading is causing any wider adverse environmental or amenity concerns. The current store trades in a modernish unit on a custom-built trading estate (Discovery Park) built in the 1990s / very early 2000s which is accessed from a major road junction and has a large area of parking. The retail park orientates towards the main road and has no real engagement with neighbouring residential properties. It has a thoroughly commercial character at odds with the older parts of the Malpas Road District Centre. There is no evidence that the current situation is causing any adverse impact to amenity, highway function, car parking or any other matter of significant interest. As such the key qualitative benefit would be enhanced range and choice of goods within the proposed store and a potentially enhanced shopping experience for customers.
- 7.4.15 There are no new residential developments within the vicinity of the site but there are allocations at the former Sainsburys site H1(32) and the former Queens Hill School site H1(62) which is currently being developed by Redrow relatively close to the proposed site and certainly within its catchment. However the Council's Retail Study of November 2019 notes that the existing large grocery stores including the Sainsbury store on Albany Street are under trading. The Retail Study does confirm that the Aldi at Barrack Hill is overtrading as noted above. The Retail Study concludes that Newport currently has an overprovision of convenience retail and this will continue to be the case up until 2029 even allowing for population growth and housing allocations within the city. As such no local deficiency including for new or proposed residential development can be identified and no additional convenience retail provision can be justified under this criterion. The applicant points to rapid growth in the 'discounter' retail section and points to shortfall of provision within this segment of the market resulting in over-trading at the existing Barrack Hill store. However this has already been addressed as part of the consideration of qualitative need.
- 7.4.16 The proposed store site is in Shaftesbury which is in the lowest quintile of deprived wards in Newport as is neighbouring Bettws. However other wards within the identified catchment are more affluent including wards which are in the least deprived quintile. There is no reason to think that the identified catchment is especially deprived and as noted, no shortfall in local retail provision can be identified in any case. Shaftesbury has ready access to the existing stores within the Malpas Road District Centre and the existing Sainsbury's store. There is no lack of convenience provision within a disadvantaged area that the proposal might address.
- 7.4.17 In terms of the qualitative need tests identified in PPW11 the proposal fails in all but the alleviation of undertrading at the existing Barrack Hill store but as noted the negative effects of this are limited to a curtailment of the range of good the store can stock and potentially some adverse impact in shopper experience in terms of circulation space within the store and queue times. As such the qualitative benefits of the scheme are slight. PPW11 confirms it is for the planning authority to determine and justify the weight to be given to any qualitative assessment (Paragraph 4.3.17) and in this case qualitative benefits are clearly limited when assessed against the battery of tests advised in PPW11.
- 7.4.18 *Caselaw (Waterstone Estates Limited v. The Welsh Ministers)* has established the primacy of the need test within Wales. Under that case of June 2018 the Appeal Court concluded at Paragraph 78 of its decision that:

The policy document (PPW9) has to be read broadly; and, in my view, for the construction of the first sentence of paragraph 10.2.9, the fact that need has to be considered "first" is more telling than the exegetical⁵ point Mr Lewis made in reply. Looked at broadly and in its proper

⁵ critical explanation or interpretation of a text

context, in my view paragraph 10.2.12 firmly indicates that, outside centres, need is a discrete requirement for planning applications; and, if it is not satisfied, then there is no requirement (or "need") to proceed to consider whether there is any sequentially preferable site.

- 7.4.19 Planning Policy Wales Edition 9 (PPW9) has now been superseded by PPW10 & PPW11 but planning officers have assessed the changes and have concluded that there has been no fundamental change in national policy on retail and that the findings of the court hold good. This means if need cannot be identified then there is no requirement to proceed to the other retail tests of sequentially preferable site or retail impact. No need either quantitative or qualitative (on-balance) has been identified in this instance and the proposal is contrary to national policy which is designed to protect existing centres.
- 7.4.20 Local policies SP19 & R10 which address retail applications requires that need be shown if a proposal is outside a designated retail centre. None has been shown in this case and so these Policy tests are failed in part, although both are criteria based policies with several criteria against which applications are to be assessed.
- 7.4.21 In terms of need the proposal contravenes both local and national policy since need has not been shown. However as noted qualitative need is a planning judgement and in the event the Committee concludes that there is qualitative need for the proposal then some consideration of the other retail tests is necessary. These are the sequential test and the retail impact test.

7.5 Sequential Test

- 7.5.1 Although caselaw has established that if need for a retail proposal is not shown there is no requirement to undertake the other retail tests the other tests will be considered for completeness.
- 7.5.2 National policy allows for the application of a sequential test in the event that need is identified. The purpose of this is to clarify whether locations within or next best, adjacent to existing centres can accommodate the proposed development. Failing that out of centre locations can be considered. The purpose of the policy is to support and enhance existing retail centres by making sure new development is either within an existing centre or immediately next to one. This is also reflected in local policy where SP19 requires the sequential test to be applied to all retail locations outside of the city centre and Policy R10 which requires locations to be acceptable in sequential terms.
- 7.5.3 In application of the test it is for the applicant to robustly show that no more appropriate site is available or suitable. Caselaw requires a degree of flexibility is shown in site assessment in order to prevent an applicant setting such a stringent requirement that only their chosen site could ever meet it. In this case the applicant has considered the Aldi store format and the likely parking generation and has concluded that no in-centre site within the identified catchment is suitable or available. The Nexus assessment of the 2019 application broadly agreed but identified the former Sainsburys site at Pugsley Street as a possible site for the proposed store. This site has been cleared for some time and has permission to be developed for a mixed use development consisting primarily of student accommodation and residential units. That development appears to have stalled and there appears to be highly limited commercial interest in bringing that scheme forward. When Sainsburys vacated that site they signed a Section 106 legal agreement that precluded them from trading from that site but officers assess that there is no impediment to another supermarket firm occupying the site instead of Sainsburys. The site is cleared and is being marketed and could potentially be used to provide the proposed scheme.
- 7.5.4 Although nearer the city centre and Malpas Road District Centre than the application site, the former Sainsbury's site does not integrate well with either, being separated from both by the A4042 (Heidenheim Drive). Again foot links to the city centre and District Centre from this site are constrained and uninviting consisting of narrow footways, some overbridges and little used underpasses. In short although nearer to the city centre and Malpas Road District Centre than the site of this application and at first look more accessible to more people by sustainable means of transport, Officers conclude that this site does not perform any better

sequentially than the application site. Technical Advice Note 4 – Retail & Commercial Development (TAN4) defines edge of centre as ideally immediately next to but not more than 300m from the edge of an existing centre. TAN4 also notes *factors such as the size of the retail and commercial centre, local topography and presence of physical barriers to access may influence any assessment. It may be appropriate to use a shorter acceptable distance between the centre and the development proposal if the centre is small (Paragraph 7.4)*. The clear implication of this advice is that distance per se is not the key issue but the practical accessibility of the proposed site in terms of sustainable travel i.e. walking from an existing centre to the proposed site. In this case the walking distances to the former Sainsbury's site are over 300m from the city centre via the Old Green underpasses and the overbridges over Heidenheim drive via the narrow and constrained footway beneath the railway bridge. The route is contrived, not at grade and much less than inviting especially at night. The walking route from the Malpas Road district centre is over 400m and also via underpasses through the Harlequin which are also distinctly uninviting, again especially at night. As such although nearer existing centres than the site of this application the former Sainsbury's site is not sequentially preferable since it does not meet the edge of centre criteria identified in Welsh national policy and is effectively no easier to access by sustainable transport forms than the application site.

7.5.5 Nexus, who advise the Council on retail matters agreed that no suitable site was available other than potentially the former Sainsbury's site under the previous application but this site was discounted for the reasons noted above and there have been no material changes in circumstances since then that would lead to a different conclusion.

7.5.6 In the light of this the sequential element of the retail tests is passed and that element of Policy SP19 (Assessment of Retail need) and R10 (new out of centre retail) is complied with.

7.6 Retail Impact

7.6.1 The final retail test is impact on existing centres. PPW11 advises that an impact assessment is needed when a proposal is expected to have an adverse impact on the viability and vibrancy of an existing centre. Elements to consider are:

- changes in turnover and trading ability within centres,
- consumer choice,
- traffic and travel patterns,
- footfall,
- impact on centre regeneration strategies or upon existing or proposed retail sites allocated in the development plan.

7.6.2 PPW11 advises that Retail Impact Assessment are mandatory on out of centre schemes above 2500m² but should be proportionate for smaller schemes where impacts on designated centres can be expected.

7.6.3 This is a smaller scheme being for 1315m² of additional floorspace and therefore below the threshold identified in national policy. The applicant suggests that the uplift in retail floorspace is only 665m² this being the difference between the existing Barrack Hill store and the proposed store. The applicant concludes that any impact on existing designated retail centres will be not be significant whilst acknowledging some diversion of trade from those centres to an out of centre location. However the applicant does not assess the impact on the Malpas Road District Centre to any extent but the applicant does note the following levels of trade diversion from shops in protected retail centres:

- Newport Retail Park District Centre (12%) and
- Newport City Centre (6%),
- Asda at Lower Dock Street, Pillgwenlly in Commercial Road District Centre (10%)
- and Spar in Caerleon Road District Centre (0.5%).

7.6.4 The Council's advisors (Nexus) consider that the impact on the Malpas Road District Centre will be significant:

Paragraph 3.56 - Most notably, the application proposal would directly lead to the closure of the existing Aldi store at Barrack Hill within the Malpas Road District Centre, which currently

accounts for a turnover of between £17.6m (Planning Potential's figure) and £19.0m (Nexus) that will be taken from the district centre.

Paragraph 3.57 - As previously referenced, the applicant's case is that the existing store would not be reoccupied by another convenience goods retailer, and as such the primary anchor and only main food retailer would be lost from the district centre. It is also worth visiting the findings of the Inspector's Report on the draft Newport Local Plan prior to adoption in 2014, which emphasised the relationship between the Aldi and Malpas Road District Centre and expressly required that the Aldi be included within the district centre boundary as an anchor to the centre.

Paragraph 3.58 - We remain of the view that the proposal would reduce the level of grocery provision in within Malpas Road District Centre as a consequence of the loss of the Barrack Hill Aldi store, as summarised as Paragraph 3.49 of our previous assessment for the 2020 permission:

"The loss of this store will clearly have a significant material impact on the range and provision of grocery retailers in Malpas Road District Centre. Furthermore, it will very likely result in a significant reduction in the turnover of the centre (even if the unit is subsequently reoccupied by a comparison goods retailer). In this regard, it is highly unlikely that any other retailer (particularly a comparison goods operator) would have a comparable turnover to the Aldi store. As such, even if the unit is reoccupied, we believe that the centre's offer and its wider function will likely be fundamentally weakened."

Paragraph 3.59 - We therefore find that the proposal does not comply with the PPW impact test as set out at Paragraph 4.3.25 and Newport Local Development Plan Policy R10.

- 7.6.5 Officers agree with the Nexus assessment that the predicted impact on the Malpas Road District Centre will be significantly adverse should this proposal go ahead.
- 7.6.6 In conclusion officers consider that there is no quantitative need for the proposal and nor would the proposal bring significant qualitative benefits for local consumers although the latter is a judgement that the Committee may disagree with. Officers accept that the chosen site could accommodate the scheme and no more preferable site within or near a designated retail centre is available. Officers consider that the proposal would have an unacceptably adverse impact on the Malpas Road District Centre. Overall the proposal does not comply with National and Local retail policy.
- 7.6.7 It is contrary to the advice of PPW11 and Policy SP19 of the adopted Newport Local Development Plan (NLDP) since need for the proposal either quantitative or qualitative has not been shown.
- 7.6.8 The impact of the proposal on the Malpas Road District Centre would be unacceptably adverse and the proposal is contrary to NLDP Policy R10 (new out of centre retail).

7.7 Flooding

- 7.7.1 The site lies within Flood Zone C1 (defended flood plain) of the River Usk. The site is immediately next to the flood walling recently installed in Crindau by CNC/NRW. Under national policy (Technical Advice Note 15 – Flooding) development must be justified in floodplain locations.
- 7.7.2 The relevant tests are outlined at Paragraph 6.2 of the TAN and require that a proposal:
- is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,*
- ii Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;*
- 7.7.3 In this case the Local Authority Strategy is the adopted Local Development Plan (there is no regeneration initiative for Crindau). The proposal has been found to be contrary to locally adopted retail policy and other policy elements as listed below. In broad terms the proposal

does not accord with local policy and nor does it contribute to key employment objectives necessary to sustain an existing settlement or region. The proposal cannot be justified in the chosen location and therefore fails the first and most fundamental locational test as set out in TAN15. The site is currently used for commercial purposes (lorry park). Although this use and the proposed use are both less vulnerable in flooding terms it is difficult to see the proposal as a betterment in flood risk terms since it is likely to attract more people to the site and stock within the shop is likely to be at least as valuable as what may be stored on the site currently. It is self-evident that the new store would be less flood resilient than the current area of hardstanding. Vehicles and the goods upon them could be moved away from the site in both cases. In any event no betterment in flood risk can be seen in terms of the proposal over the current use and arguably the proposed use would show greater vulnerability since it is likely to attract more people onto the site and so the risk to life and property would increase.

- 7.7.4 The applicant has provided a flood consequences assessment to support the application. This is a technical assessment of the consequences of flooding judged against criteria set out in national policy. The site is broadly level and the proposed store will have a finished floor level of 7.92m AOD. The existing flood wall will protect the site from floods up to 9.15m AOD. Given construction in 2023 the store would currently be flood free for both the 1 in 200 year tidal flood and the 1 in 1000 year extreme tidal flood due to the protection offered by the flood wall. Over the 75 year design life of the proposal the flood events will worsen and by 2097 both the 1 in 200 year and the 1 in 1000 year tidal flood would inundate the site since the floodwall would be overtopped. The site would not be flood free for the 1 in 200 year event over its design life (75 years) and the extreme event would see the site rapidly flood beyond acceptable criteria by a significant level resulting in 'danger for all' including emergency services.
- 7.7.5 The applicant notes the building will be of a resilient construction, tidal flooding is predictable and improvement to the flood defence can be relied upon to protect wider Crindau (hold the line). Surface water can be stored during tidelock conditions by using a geo-cellular membrane beneath the car park and there is no risk from flooding from rivers (as opposed to the tidal flood), groundwater or sewers. They also note the availability of CNC/NRWs flood warning system.
- 7.7.6 CNC/NRW object to the development of flooding grounds since it is not dry for its lifetime in the 1 in 200 year tidal flood and the consequences of the extreme event are unmanageable on the site. National and local flood policy are clearly compromised.
- 7.7.7 The aim of national and local policy is to direct development away from flood prone locations or only to allow them where the floodplain location can be justified and the inevitable flood event can be acceptably managed. Neither of these criteria is met by this submission. The applicant relies primarily upon the flood defence being maintained in the future and references the 'hold the line' policy advocated within the Severn Estuary Shoreline Management Plan. This plan is non-statutory and identifies hold the line as being:

Keeping the line of defence in approximately the same location as it is now. Existing defences are maintained, replaced or upgraded along their current alignment. This may or may not include upgrades to counter climate change and sea level rise.

- 7.7.8 In short the plan is non-binding and in any event does not commit to any upgrade in the defences to account for climate change. There can be no certainty that the defences will be up-graded over the 75 year lifetime of the development and therefore no certainty the site can be kept dry for the entire lifetime of the development.

TAN 15 offers a battery of tests for developments in flood risk areas to be acceptable at Paragraphs A1.12, A1.14 & A1.15. These tests are:

- Flood defences are adequate: flood defences have recently been upgraded in Crindau, and currently protect the site from floods up to 9.15 m Above Ordnance Datum (AOD). The Ordnance Datum is Mean Sea Level. This is currently adequate to keep the site flood free for both the 1 in 200 year flood and the extreme 1 in 1000 year flood. However over the 75 year lifetime of the proposal sea levels will rise and the site will flood under both of these

flood intervals by 2097. As such the site will not be flood free in the 1 in 200 year event and fails the flood interval test.

- Flood defences will be maintained: the defences at Crindau are provided and maintained by Cyfoeth Naturiol Cymru / Natural Resources Wales and it is reasonable to expect their on-going maintenance. However it cannot be assumed that they will be raised to account for rising sea levels.
- Occupiers are aware of flood risk: given the proximity of the tidal river, it is reasonable to assume site occupiers will be aware of the potential flood risk.
- Access & Egress will not be flooded beyond tolerable levels: the submitted Flood Consequences Assessment is clear that under an overtopping flood scenario in 2097 the site will rapidly flood (10 minutes) and depths at the site egress will be 2.36m which very significantly exceeds the acceptable depth of 0.6m. Accesses and egresses from the site will not be available at all times.
- Goods can be easily removed from the site: although tidal flooding is predictable it is extremely unlikely that any practical arrangement can be made to safeguard stock within the store from a flood event.
- Structures are designed to be flood proof: the building will be of standard construction and given the depth and speed of flooding it is unlikely the building can be particularly safeguarded against the consequences of flooding. In short water will enter the building and even though the building is unlikely to be washed away it cannot be effectively floodproofed.
- Flooding will not be worsened elsewhere: the construction of the building will displace some flood waters but given the large scale of the flood plain any additional flood impact elsewhere will be minimal.
- Flood Interval: the site will not be dry over its lifetime during the 1 in 200 year flood as required by national policy, see above.
- Flood Consequence: the site will flood rapidly and beyond tolerable levels resulting in danger for all.

7.7.9 In flood terms the proposal is contrary to Policy SP3 (Flood Risk) and GP1 (Climate Change) of the adopted Local Development Plan (2011-2026) since national guidance on flooding (TAN 15) is not complied with. The development is not justified in this location and the consequences of a flood event cannot be acceptably dealt with.

7.8 Bio-diversity / Habitat Regulations Assessment

7.8.1 The River Usk has been designated because the following species are special features to the River Usk:-

- Allis Shad;
- Twaite Shad;
- Bullhead;
- River Lamprey;
- Brook Lamprey;
- Sea Lamprey;
- Atlantic Salmon;
- Otter;
- Water Crowfoot.

7.8.2 The conservation objectives of the SAC are attached as an Appendix. The Usk is considered one of the best examples of a near natural river system in England and Wales. The range of plants and animals reflects a transition from nutrient poor to naturally rich. It was notified to protect a wide range of habitats and features. It also acts as an important wildlife corridor, an essential migration route and a key breeding area for nationally and internationally important species, including otter.

7.8.3 In previous consultation responses relating to the river CNC/NRW have identified the following as key areas of concern:

Otter Features:

7.8.4 Particular threats to the otter features of the River Usk posed by the development were identified as being:

- The design and location of the development
- Site clearance and Construction
- Site Operation, and
- The effectiveness of mitigation proposals

- 7.8.5 The proposed scheme is a commercial development of a supermarket. The supermarket will be located immediately adjacent to Albany Road with parking abutting the flood wall. An embankment lies on the far side of the wall before the ground falls away to the river channel.
- 7.8.6 It is considered that the design of the proposal would not have any unacceptable impact on the otter or other features of the River Usk and Cyfoeth Naturiol Cymru agrees with this assessment subject to the application of a condition to control lighting so that the river bank is left in relative darkness. The flood wall and the existing embankment act to close off the site from the river and are a clear line of separation between the site and the river. The applicant has provided a drawing to show lighting levels associated with the proposal and these show very slight increases in light levels over the current situation which have attracted no objection from CNC/NRW.
- 7.8.7 The site is currently in use as a lorry park and part of it was covered by a large building. It is known that the site has been raised and consolidated over the years given its location adjacent to the River Usk / Crindau Pill. It is not clear what former uses will have been operational on the site. Given that the site consists of made ground to some extent and the uncertainty about former uses the site should be assumed to be contaminated. Currently the site is covered in hard material and infiltration of rainwater is likely to be limited.
- 7.8.8 The risks posed to the river would arise from:
- the mobilisation of sediment which could wash into the river,
 - run-off of / or the percolation of contaminated waters (derived from the ground contamination on the site) into the river,
 - the facilitation of the movement of contaminated waters vertically through the soil profile.
- 7.8.9 Possible conditions could require the submission of a Construction Environmental Management Plan (CEMP) which will require details of the working methods to be employed on the site. Specific clauses could control run-off which should ensure that waters which are polluted by either contamination or sediment do not enter the river. Another requirement of the CEMP could control working in the sensitive river front area to limit or prevent direct disturbance to the sensitive riverbank environment particularly at night when otters are more likely to be active.
- 7.8.10 Further conditions could control the storage of fuels and hydrocarbons so that they are stored in such a manner that reduces the risk of contamination to ground and surface waters. Conditions could also control piling methodology reducing the risk of the mobilisation of contaminated waters through the soil profile.
- 7.8.11 The proposed scheme would see most of the site sealed preventing the infiltration of surface waters and breaking contact with potential contamination in the ground. The verification of the decontamination programme can be required under conditional controls. The chemical suitability of any imported fill materials can be controlled under a conditional regime attached to any permission granted. The efficacy of the decontamination programme can be secured under a suitable verification / contingency condition which can be applied to any permission granted.
- 7.8.12 Overall it is considered that conditional controls could acceptably control the risk posed by the proposal to the otter and other interests of the River Usk during the construction phase of the development.

Risks from site operation to the otter interest arise from:

- direct disturbance by people and dogs
- disturbance by lighting
- hydrocarbon contamination from motor vehicles

- 7.8.13 Conditions could place controls over external lighting which will ensure that the sensitive river bank environment remains unlit and that the chances of disturbance to otters is reduced. Conditions could require that surface water drainage from areas where hydro-carbons may be spilled from motor vehicles is cleansed of hydrocarbons through appropriate treatment of any run-off. This will reduce the risks of contaminated run-off reaching the river. The CNC/NRW floodwall acts as a barrier between the development site and the river and reduces the impact of activity within the site upon the sensitive riverbank environment.

Fish Features

- 7.8.14 Risk to fish features of the River Usk would arise primarily from:
- contaminated run-off from the site entering the river (sediment load and chemical content)
 - direct effects upon the river from construction and operation of the site; noise, vibration & lighting.
- 7.8.15 Particular Risks will accrue at the following stages:
- The design and location of the development
 - Site clearance and Construction
 - Site Operation, and
 - The effectiveness of mitigation proposals
- It is not considered that the design and location of the development will have an adverse effect upon fish features of the river.
- 7.8.16 Site clearance and operation has the potential to release contaminants or sediment but CEMP conditions in association with decontamination verification / contingency conditions would control these risks.
- 7.8.17 Specific conditions could protect the fish interest by preventing works that would interrupt the migration of shad. No works to provide drainage outfalls beyond those currently in place are proposed and therefore there would be no risk to the fish interest of the SAC by works within the riverbank.
- 7.8.18 Site operation could adversely affect water quality. Conditions could require run-off from areas where 'oil-drop' may be present to be cleansed of hydrocarbons. Other conditions could require general control over foul and surface water drainage.
- 7.8.19 Such conditions are considered adequate to prevent adverse impacts on the conservation interests of the river during the operational phase of the development in regard to fish.

Contamination

- 7.8.20 The site is known to have been contaminated by previous uses (Ground Investigation Report; January 2019). The applicant has provided a preliminary strategy to deal with the significant contamination on the site which is to in effect break the contamination pathway by sealing the site. It is advised that even planted areas should have a 'break' with the ground below with raised planters used. All excavated soils would need to be disposed of offsite at suitably licensed facilities. Piling techniques would need to be conditioned to be appropriate in contaminated ground.
- 7.8.21 Ground water is also grossly contaminated and no remediation is suggested as possible since it would require the removal of large amounts of fill, would not address offsite issues and it is not clear what impact is being had upon the adjacent river. In essence the proposal is to do nothing but to ensure any de-watering is not to adjacent ground or waters. Contaminated water would need to be tankered offsite for disposal. This could be achieved through a CEMP condition. Overall the site is highly contaminated remediation is necessary conditions requiring compliance with the mitigation strategy and appropriate decontamination verification and contingency will be necessary to prevent unacceptable risk to ecological interests in the River Usk SAC.

7.8.22 Risks to water quality would arise from:

- Run-off contaminated with sediment or chemicals leached from polluted ground entering the river,
- Mobilisation of contaminated waters vertically through the soil profile,
- Groundwater movement of contaminated waters through the soil to the river.

7.8.23 Particular Risks will accrue at the following stages:

- The design and location of the development
- Site clearance and Construction
- Site Operation, and
- The effectiveness of mitigation proposals

7.8.24 The design and location of the proposal is not considered to pose any inherent risk to water quality over and above that posed by the existing unmitigated site. The provision of hard surfaces and the adequate treatment of run-off from these surfaces will reduce infiltration and potential risks to ground waters. Proposed drainage is via an existing outfall to the Usk beyond the site which will not be effected by the development. Surface water will in effect not be allowed to infiltrate the ground and will be collected and discharged from the site to the river. Collected waters can be treated for hydrocarbon contamination and this could be secured under condition. At tide lock some surface water storage may be required but again this can be secured under an appropriate condition. Surface water from site operation is not considered a risk to the river and reduced infiltration may reduce the current leaching from the contaminated ground.

7.8.25 A CEMP condition would protect the river during the construction phase reducing risks to the conservation interests of the River Usk. During the operational phase conditions could deal with run-off requiring the removal of hydro-carbons as required and requiring a generalised control over foul and surface water run-off. Such conditions are considered adequate to prevent risk to the conservation interests of the river during the varying phases of the development.

Overall consideration

7.8.26 The concerns regarding the potential for impact on the River Usk SAC are impacts on the otter feature including via the design and location of development, site clearance and construction, disturbance during the operation phase and mitigation; impacts on fish features; contamination risks; impacts on water quality, hydrology and drainage.

7.8.27 Risks arise from the possible discharge of contaminated surface and groundwater water drainage with the potential resultant impacts on the fish and otter features of the SAC. There is the potential for significant effect on the migratory fish and otter features of the River Usk SAC. The specific concerns relate to how surface water would be disposed of during construction and operation; how potential contamination of groundwater on the site would be addressed; and what measures would be in place to prevent potentially contaminated run-off entering the River Usk during both construction as a result of disturbance of ground contamination and during the operational phases of the development. It would therefore necessary that should planning permission be granted conditions are imposed to provide suitable protection. The Ecology Officer has raised concerns over surface water disposal, reflecting the concerns of CNC/NRW in relation to this matter. However the effective sealing of the site to reduce groundwater impacts by leaching (a clear betterment over the existing situation) and the use of conditional controls to ensure site run-off in the operational phase is cleansed of hydrocarbons and sediment means that impacts on protected habitats from operational run-off should be minimal and acceptable.

7.8.28 The current and previous uses of the site raise the question of contamination. It is therefore necessary that conditions be imposed to ensure that a mitigation strategy is fully implemented and that the finished mitigation programme is verified as acceptably complete and subject to revision as required. This is to include the installation of gas membranes in the buildings. The Scientific Officer has queried the ground gas regime and the applicant has provided a level of comfort on this. There is no reason to think that the ground gas regime

on the site is unmanageable and appropriate mitigation could be provided under any conditional regime.

- 7.8.29 In terms of foul drainage, Conditions would require full details of provision so as to ensure there is sufficient capacity in the system thereby avoiding contamination of waters entering the River Usk SAC.
- 7.8.30 It is considered that with the imposition of suitable conditions to ensure that contamination of the River Usk SAC and SSSI is avoided and that remediation measures are implemented, there would be little likelihood of contaminated material entering the water system, and the proposal would not have a significant adverse effect on the River Usk SAC under these circumstances.
- 7.8.31 Other risks to the river front, particularly the otter feature are addressed via the proposed layout of the site and the proposed riverfront treatment including conditional controls over lighting which has been demonstrated as acceptable and has not attracted any criticism from CNC/NRW.
- 7.8.32 In terms of in combination effects of the development other developments have taken place along the Usk river frontage in the vicinity of the site. The main developments of recent years have been the extensive flood defence works completed in Crindau recently by CNC/NRW and the redevelopment of the sites across the river to provide the Glan Usk School and the new housing development to the south of that site. The flood defence works and the housing developments were subject to their own appropriate assessments and were concluded not to be harmful to the interests of the SAC. Both developments were subject to conditional regimes that protected the SAC interests. The school site is an older permission going back to 2000 but that was also subject to an extensive conditional regime to remediate the site and it has been confirmed that this has been undertaken. The school is set back from the river and its day to day operation would have no impact on the river's bio-diversity interest. These sites in-combination with this proposal would not have an adverse impact on the bio-diversity interests of the River Usk.
- 7.8.33 Redevelopment sites to the south of the application site, south of the Town Bridge (Newport Bridge) have been subject to appropriate assessment and the issues that have arisen on these sites reflect those on this site. Those sites were also subject to a suite of planning conditions to control risks to the bio-diversity interests of the River Usk. These sites are completed and given conditional compliance the in-combination effects of those sites with this site would be negligible.
- 7.8.34 With the inclusion of appropriate conditions it is considered that any adverse effects on the River Usk SAC associated with the development proposal could be satisfactorily avoided thereby protecting the conservation objectives of the River Usk SAC.

7.9 Parking / Access / Circulation

- 7.9.1 The proposal would provide 113 parking spaces, 6 are shown as disabled spaces and 8 would be for parents & children use. 5 motorcycle spaces are shown on plan. The site is in Parking Zone 5. 1 staff spaces are proposed offsite. The 'Parking' and Sustainable Travel SPGs requires the following:
- 3 commercial vehicles spaces;
 - 1 space per 20m² of floor space (93 spaces required)
 - 6% disabled spaces
 - 2 bicycle stands per 500m² of floor area
 - Motorcycle Parking: 5% of car provision

	SPG Requirement	Scheme provision	Surplus / Deficit
Commercial Vehicle Spaces	3	1	-2
Car Spaces	1 space per 20m ² of floor space (93 spaces)	113	+20

Disabled Spaces	Parking	6% of provision for customers and (7 spaces) & one per disabled staff member	6	-1
Bicycle Spaces (27 staff FTE)		1 space per 4 staff – long stay (7 spaces) 1 space per 20 staff – short stay (2 spaces)	4 Sheffield cycle stand to be provided to accommodate 8 bikes but staff may store bikes in the warehouse area.	-1
Motorcycle Spaces		5% of car provision (6 spaces)	5	-1

7.9.2 The deficiency in disabled spaces could be easily addressed by reducing the number of parent and child spaces so this is not a concern. Bicycle parking is slightly deficient but not harmfully so. Motorcycle parking is slightly deficient in number and is located away from the main entrance. That said surveillance of the spaces is reasonable and ground anchors or other security mechanisms could be secured under condition. Motorcycle parking is therefore acceptable. The submission advises that staff car spaces would be provided offsite but there would be no effective way to secure these spaces. However this does not matter since the onsite parking provided is more than adequate to meet the parking needs of staff and customers. Parking provision would be adequate. Policy 12 (Regional Connectivity) of Future Wales requires that minimally 10% of parking spaces should make provision for electrical vehicle charging in non-residential schemes. This scheme provided 10 equipped spaces and provision for a further 16 spaces in the future. There would be a deficit of one space in terms of electrical charging but this is not seen as harmful given the passive provision in the scheme for further spaces in the future. Policy GP4 (Parking) is complied with.

7.9.3 In terms of servicing only one truck space is shown serving a loading bay. Although deficient by the SPG standard this is a normal delivery arrangement for the Aldi format and it is known to work well in terms of deliveries and removal of packaging and other re-cyclable items. Manoeuvring space within the yard is adequate for the truck to enter and leave in a forward gear. Delivery and servicing arrangements are seen as acceptable.

7.9.4 In terms of access the submitted drawing shows an in/out all vehicle access direct from Albany Road. This has been tracked for an articulated lorry and has been shown to work. There is no reason to think access to the site is inadequate and the proposal accords with NLDP Policy GP4 in terms of parking levels and access for cars and delivery vehicles. The Active Travel Officer notes the potential for the new site entrance to adversely impact on the National Cycle Route that passes the site along Albany Road. However the combined footway / cycle route is on the other side of the road from the proposed store at the point of the store's junction with Albany Road and so would not be significantly affected by the proposal.

7.10 Special Landscape Area, Design & Riverfront Access

7.10.1 The site is adjacent to the River Usk Special Landscape Area. Policy SP8 of the adopted NLDP requires proposals to contribute positively to the area through high quality design, materials and management schemes that demonstrate a clear appreciation of the area's special features.

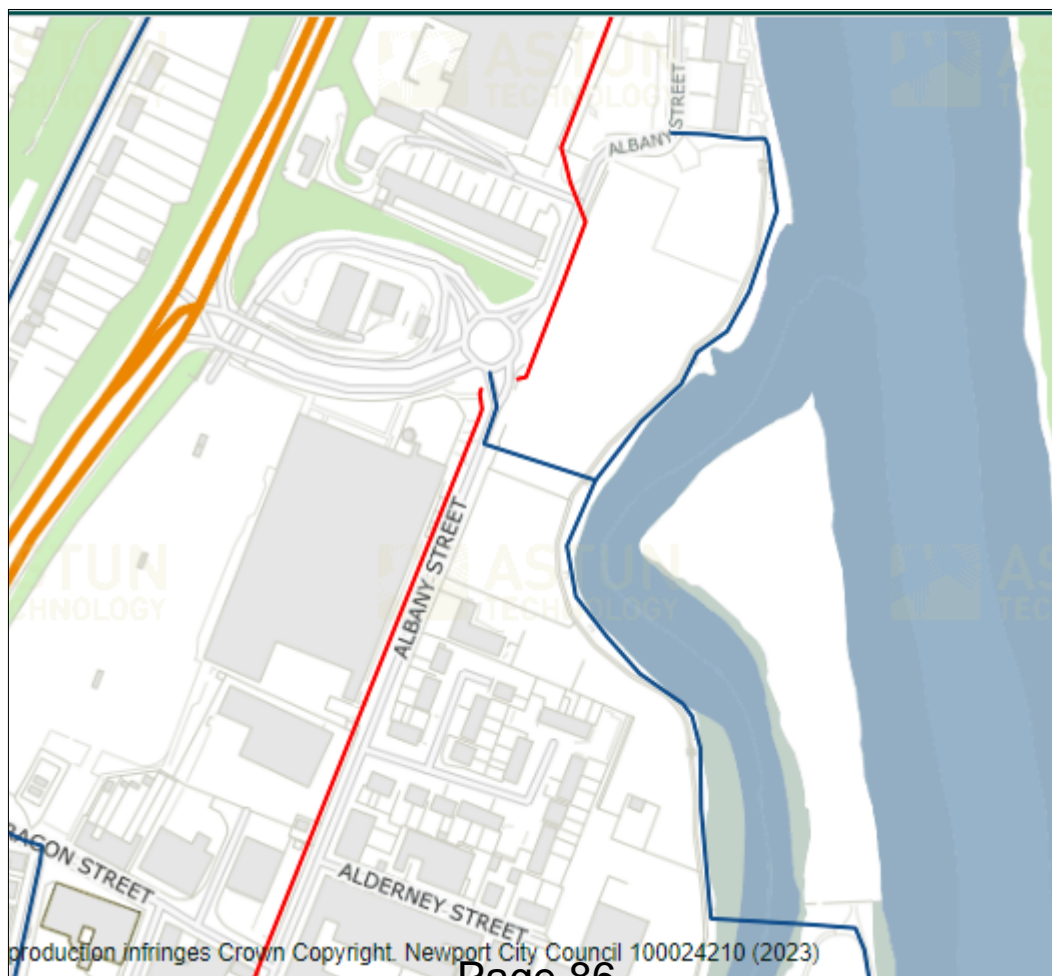
7.10.2 Policy CF4 (Riverfront Access) requires foot and cycle access to the riverfront where practicable. Policy CE2 says waterfront development should integrate with the waterway and not turn its back on it and take account of the interests of regeneration, leisure, navigation, water quality & flow and nature conservation.

7.10.3 The Active Travel Act (Wales) 2013 requires local authorities in Wales to identify new active travel routes and incorporate them into an 'integrated network map' which each LA having regard to *securing new active travel routes and related facilities and improvements in existing active travel routes and related facilities*, see Section 4(4)(b). The Integrated Network Map must be submitted to the Welsh Ministers for approval. Section 7(1)(a) of the Act requires

that LAs must in every year secure *new active travel routes and related facilities*. Section 6 of the Act requires that in developing Local Transport Plans (Transport Act 2000) each LA must have regard to their approved Integrated Network Map. The Council's Local Transport Plan was adopted in January 2015.

- 7.10.4 The Council's Integrated Network Map identifies route INM/CAE/0002 as a route running via Shaftesbury Park across Crindau Pill and then around this site with a further link to Albany Street and the existing National Cycle Route. The extract below shows the identified route with the proposed routes in blue and the existing routes in red.
- 7.10.5 The proposal includes footways along the 'blue' routes identified below with these being provided at 1.8 to 2.0m wide. Normally a combined foot and cycleway would be minimally 3.0m wide to allow safe passing and ideally wider than that to reduce the risk of conflict. Under normal assumption a bicycle occupies 1m of space and a walking person 0.7m. In short these paths are too narrow to accommodate both foot and bicycle traffic and so would not create a flexible and future proofed active travel route. That said the provision of the footway is a significant improvement over the previous scheme and offers scope to accommodate the proposed riverfront active travel route in the future. The Active Travel Officer has confirmed that the proposed Active Travel routes in this location are to be combined footways / cycleways and so the provision offered is too narrow to meet that requirement. The Landscape Officer also notes that the proposed routes about the parking areas and have no degree of separation or landscaping. However the provision of footways in this location which although on private land would allow some level of public access to the riverfront is a modest benefit of the proposal but it is clear they would amount to inadequate provision for the Active Travel routes proposed and will not automatically be high quality spaces to move through. In policy terms Policy CF4 (Riverfront Access) requires that *managed footpaths and cycle routes will be encouraged where practicable* and this objective has been achieved to some extent here and the proposal would not sterilise the potential for a better provision in the future.

Extract from the Newport Integrated Network Map



- 7.10.6 In terms of Policy CE2 the development now has a frontage facing the river which is an improvement over the previous scheme. That frontage would be a parking dominated space and would not be especially welcoming but would still be a clear betterment over the previously approved scheme and the existing situation (truck park).
- 7.10.7 In general design terms the building looks like an Aldi shop and would be an improvement in visual terms over the previous building, now demolished which was very utilitarian. The site currently offers very little in visual terms and the scheme will provide some betterment in terms of overall appearance. However it will remain a very prosaic space overall consisting of an Aldi style building and parking with extremely limited opportunity for landscaping. The Albany Road frontage would be of very limited interest effectively being the back of the store consisting of various panels in white and grey with close board fencing around the external plant and a narrow planting bed between the footway and the back of the building.
- 7.10.8 The Landscaping Officer has commented in detail on the application and makes various points on the details of the planting scheme in relation to plant species selected.
- 7.10.8 Overall the proposal is acceptable in design terms. There are clear weaknesses in the design approach with the Albany Road elevation being marginally acceptable in context and given the orientation of the store. The layout allows for the provision of Active Travel routes in the future but there are concerns over the width of the routes being provided and the potential for their use by bicycles. However the existing bicycle route on Albany Road provides some mitigation for that concern. Policies GP4 (visual amenity) and GP6 (design) of the NLDP are marginally complied with.

7.11 Regeneration Benefit / Employment Land

- 7.11.1 The site is currently in economic use providing lorry parking and ancillary storage. Policy EM3 protects existing employment sites being developed for alternative uses unless certain criteria are met. The headline policy wording makes reference to 'existing employment sites' but the explanatory text more specifically identifies uses in the 'B' use classes although this does not automatically exclude non 'B' uses from the protection the policy offers. Planning Policy advise that the thrust of that Policy is to protect land in the 'B' use classes from development unless certain criteria are met showing the land is no longer required for employment purposes. The drive of the Policy is to prevent employment land being lost to higher value uses such as residential to the long-term detriment of the city's economic potential.
- 7.11.2 In this case the site is not in an identifiable 'B' use being used as parking for HGVs which is a sui generis use.
- 7.11.3 At pre-application the Council advised that Policy EM3 was relevant to the determination of the proposed submission given that the site is traditional employment land.
- 7.11.4 Planning Policy Wales Edition 11 advises at Paragraph 5.4.2 that:
- Economic land uses include the traditional employment land uses (offices, research and development, industry and warehousing), as well as uses such as retail, tourism, and public services. The construction, energy, minerals, waste and telecommunications sectors are also essential to the economy and are sensitive to planning policy.*
- 7.11.5 National Policy supports the idea that retail uses are economic uses and that they could clearly support employment and the wider economy, however Technical Advice Note 23 reinforces the idea that traditional employment uses inclusive of B1, B2 and B8 land as well as other traditional employment land should be protected (Paragraph 4.6.8) and this includes from retail use and housing. TAN 23 is clear that existing employment sites (as distinct from sites in B uses classes only) should only be released to alternative uses such as retail or housing if one or more of the following apply:

- they have poor prospects of being re-used for their previous use;
- the particular market that the site is part of is oversupplied;

- *the existing employment use has unacceptable adverse impacts on amenity or the environment;*
- *the proposed redevelopment does not compromise unduly neighbouring employment sites that are to be retained;*
- *other priorities, such as housing need, override more narrowly focussed economic considerations; and/or*
- *land of equal or better quality is made available elsewhere, even if this is not within the local planning authority boundary.*

7.11.6 The land in question is clearly an existing employment site and the applicant has not shown that any of the above criteria are met and that the land can be safely lost from its current use.

7.11.7 Additionally although Policy EM3 relates to business, industrial and warehousing land and retail is not explicitly excluded from these categories it is clear that like TAN23 the thrust of the Policy is to protect what PPW11 calls traditional employment land. The applicant has not done this and concludes that the Policy does not apply since the land is likely to be in a sui generis use rather than a 'B' use. Officers agree with the point that the land is likely in sui generis use. However Officers disagree that this means Policy EM3 does not apply here. Sui Generis land is perfectly capable of being used as a traditional employment land and that would certainly be the case in this instance. Officer's maintain the view that Policy EM3 is relevant and that the applicant has not shown any criteria of this policy to be met. However even if Officers were incorrect in that judgement and Policy EM3 was disappplied in this case, national guidance remains clear that existing employment sites should be protected.

7.11.8 Overall Officers conclude that Policy EM3 and the guidance of TAN23 is not met with in this case. The applicant has not robustly shown that this traditional employment land is surplus to requirement and can be discarded without harm to the economic prospects of the city.

7.11.9 That said the scheme offers clear economic benefits to the city and wider economy in terms of the uplift in turnover of the new store over the old one and the increased employment offered in the new store over the old one (15 jobs). It should also be recognised that the old store is likely to be re-occupied and so the real gain in jobs may be more than 15 but this is difficult to quantify. The applicant has not quantified the additional wages likely to be paid and the probable impact of that in the local economy but clearly these things would be beneficial. However there is no robust evidence that the economic gains that can be demonstrated or surmised will outweigh the loss of the existing traditional employment site. In terms of TAN 23 although no alternative site can be identified (retail sequential test) the proposal is not justified through quantitative and qualitative need and would harm the vitality and viability of existing centres (Malpas Road) and therefore should not be allowed to proceed on the chosen site regardless of the lack of alternative sites for the proposal. The job creation to be provided is not considered sufficient to outweigh the identified harms and the proposal has no special merit in terms of Policy objectives. In fact the proposal would undermine the 'centre first' policies of the adopted local plan and PPW11 and would move development from a more sustainable location to a less sustainable one. The guidance on loss of traditional employment sites contained in TAN23 has not been met under this submission.

7.11.10 In conclusion national and local policy is not met in relation to the protection of 'traditional employment land and this failure has not been shown to be robustly outweighed by any of the economic benefits of the scheme.

7.12 Overall Sustainability

7.12.1 This point relates to the out of centre point raised in the 'retail' consideration earlier in this report. The site is out of centre and therefore less accessible by definition than Aldi's existing in centre location. The Crindau site is off the main bus route along Malpas Road and although a bus service does run to Sainsburys from the Central Bus Station, this is a free service for the customers of Sainsburys. This does not prevent linked or even exclusive trips to the Aldi's but the likelihood is reduced. Walk in from bus stops on Malpas Road is restricted by the intervening A4042 which is dualled and elevated. Foot access into Crindau is via Lyne Road and the associated underpasses Harlequin roundabout or via the underpass

between Malpas Road and Albany Street. Neither of these are inviting routes and foot passage to the store from outside of Crindau is considered unlikely. That said within Crindau roads have footways and are street lit so foot access from the close vicinity is possible but clearly limited in number.

- 7.12.2 Cycling is facilitated by an existing cycle route along Albany Street (Route 88 North) which is part of the National Cycle Network. However the southern part of the route is on-street along Lyne Road and Albany Street which are heavily parked, significantly trafficked and often used by HGVs which is to say not welcoming for children and less confident adult riders with the A4042 remaining a significant barrier for bicycles just as it is for foot traffic. As such cycle access although ostensibly good would in reality would not be attractive to many riders. It should also be considered that many people would not walk or cycle for the simple practicalities of carrying shopping home.
- 7.12.3 The submitted Transport Assessment suggests 21% of total trip generation at the store would be foot traffic, 1% by bicycle and 4% by public transport. Officers consider that the foot traffic would in reality be less than this given the practical difficulties of accessing the site on foot.
- 7.12.4 In terms of vehicle trip generation the applicant considers that 20% of the total vehicle trip generation would be new. In effect acknowledging that the proposal will increase car reliance contrary to local and national policy.
- 7.12.5 Overall the proposed location is less sustainable than an in-centre location where public transport networks are denser and there is greater potentiality for linked trips and a reduction in overall car use. Additionally existing centres tend to have better overall foot access and perform better in terms of general sustainability. This is in part why the Welsh Government advocates a centre first approach.
- 7.12.6 The proposal performs poorly in terms of overall sustainability and is contrary to adopted NLDP Policies SP1 (Sustainability) and GP4ii (Accessibility).

7.13 Archaeology

- 7.13.1 The Glamorgan & Gwent Archaeological Trust (GGAT) have raised concerns over the application and require a desk-based assessment of the site to be prepared prior to determination. The study would enable a mitigation strategy to be prepared for archaeology on the site and might go so far as to require Archaeological Evaluation prior to determination of the application depending on what was found in the desk-based assessment.
- 7.13.2 The areas of the city adjacent to the river and near tidal creeks (pills) can contain valuable archaeological resources often linked to the city's maritime history. In this case the applicant has not provided the desk-based assessment sought as part of the application process. However the site is significantly raised by fill material with the Geo-Technical Survey advising the fill consists of depths varying between 1m and 6m across the site. As such any archaeology is likely to be encountered at depth and this significantly reduces risks to the archaeological resource by any development proposal. However the risk does not disappear and there is a clear potential for valuable archaeological resources to be encountered on this site given the proximity to the river and the possibility of in-filled tidal creeks being present under the site, as was the case with the discovery of the Newport Ship.
- 7.13.3 The applicant has not been asked to complete this work but will be aware of GGAT's comments on the application. Officers consider it is not reasonable to ask for this work now given the recommendation that the application should be refused for other insurmountable reasons. If the application were to be refused and appealed then it would remain open for the applicant to address this issue at that point if they were minded to do so and this reason could fall away at that point. However as it stands a statutory consultee is objecting to the application on the basis of a lack of information and it is difficult to set this aside given the site's location and the previous history of archaeological finds along the river frontage in the City. The proposal is contrary to Policy CE6 (Archaeology) since no Archaeological Impact Assessment has been undertaken in an area of recognised archaeological interest.

7.14 Ground Contamination, Ground Gas & Air Quality

- 7.14.1 This matter has been touched upon earlier in the report in the Habitat Regulations Assessment at Paragraph 7.8.20. The site has been infilled and is known to be contaminated by previous uses on the site and by migration of pollution from the gasworks site to the immediate west which is now occupied by the 'big' Sainsburys.
- 7.14.2 The Scientific Officer does not object to the proposal on contamination and ground gas issues noting that they can be overcome by appropriate conditions which has typically been the case on contaminated sites adjacent to the river.
- 7.14.3 The Scientific Officer also raises points in relation to air quality. The site is not in an Air Quality Management Area nor one of the air quality buffers that has been identified for policy purposes, so the 'Air Quality' SPG does not engage here. The applicant has provided charging spaces for electric vehicles under the general sustainability agenda rather than any specific air quality improvement measure and this can be secured under condition. The Scientific Officer also suggests conditioning an anti-idling scheme for HGV deliveries and a specific planting scheme to improve air quality. However the site although generating HGV traffic will only have one loading bay and limited deliveries accordingly and generally once parked, vehicles will be switched off anyway so there seems no particular necessity for the condition. In terms of planting the site has a highly limited planting scheme, in part due to the need to seal off contaminated ground and as such the benefits of such a condition are too limited to justify its imposition.

7.15 Residential Amenity & the Construction Process

- 7.15.1 The scheme has scope for general disruption from noise, dust, vibration and late working during the demolition / construction process. Some level of disruption would occur during works but these can be limited through application of a condition requiring a Construction Environment Management Plan (CEMP). These concerns are not seen as a reason to withhold permission. The operation of the store is not seen as likely to produce any significant adverse impacts on local residential amenity and is acceptable in these terms.
- 7.15.2 The Environmental Health Section (Noise & Neighbourhood) have commented on the application and do not object to the proposal subject to the application of a condition relating to installed plant and its noise output in order to protect the amenity of nearby occupiers.

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.

A Socio-economic Duty is also set out in the Equality Act 2010 which includes a requirement, when making strategic decisions, to pay due regard to the need to reduce the

inequalities of outcome that result from socio-economic disadvantage.

8.4 The above duties have 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. There would also be no negative effects which would impact on inequalities of outcome which arise as a result of socio-economic disadvantage.

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.

8.8 ***Wales National Marine Plan (November 2019)***

The tidal River Usk is under the jurisdiction of the above plan which covers the coastal environment up to mean high water spring tides as well as the wider marine environment. The National Marine Plan is a relevant planning consideration and sits alongside other development plans and national policy including the NLDP. The following policies are considered relevant to this proposal:

- GEN_01: Sustainable Development (analogous to Policy SP1); not complied with;
- GEN_02: Proportionate Risk Based Approach;
- SOC_01: Access to the Marine Environment (analogous to Policy CE2 & CF4 of the NLDP); not complied with.
- SOC_07: Seascapes (analogous to Policies CE2 & SP8 of the NLDP); not complied with.
- SOC_08: Resilience to coastal change and flooding (analogous to Policies SP3 & GP1 of the NLDP); not complied with.
- SOC_11: Resilience to climate change (analogous to Policy GP1 of the NLDP); not complied with.
- ENV_01: Resilient marine ecosystems (analogous to Policy GP5 of the NLDP); complied with.
- ENV_02 – Impact on Marine Protected Areas (analogous to policy GP5)
- ENV_06: Air and water quality (analogous to Policy GP7 of the NLDP); complied with.
- ENV_07: Fish Species and Habitats (analogous to Policy GP5 of the NLDP); complied with.
- GOV_01: Cumulative effects (Appropriate Assessment & EIA Screening)
- GOV_02: Cross-border and plan compatibility (this section of the Officer report)
- T&R_01: Tourism and recreation (supporting) (analogous to Policies CF4, CF8, T5 & T6 of the NLDP); not complied with.

It is considered that the relevant Policies of the Marine Plan have been appropriately assessed under consideration of the analogous NLDP policies and further analysis would be repetitious. On balance it is concluded the Marine Plan is not complied with due to the scheme being in a less sustainable location and its lack of resilience to flooding.

9. PLANNING BALANCE & CONCLUSION

9.1 The principle benefit of the proposal is the provision of a larger Aldi store which would allow a larger range and choice of goods to be stocked and an improved customer experience

stemming from that. However these are considered to be gains of limited weight particularly given that no significant harms can be identified in terms of the overtrading of the existing store at Barrack Hill.

- 9.2 Since the proposed store is outside a designated retail centre it is necessary to demonstrate need for the development. The applicant concludes that no quantitative need exists for the proposed store and relies on demonstrating qualitative need instead. A consideration of the qualitative need for the store against the criteria set out in Planning Policy Wales does not lead to the conclusion that there are sufficient deficiencies in retail provision within the catchment or benefits of the scheme to justify a grant of planning permission. PPW11 is clear that this is a point of judgement and very much secondary to the establishment of a quantitative need. Caselaw in Wales is clear that additional retail tests relating to the sequential test and retail impact are not required in the event that need cannot be shown. That said Officers conclude that there is no sequentially preferable location (within a designated retail centre) for the proposal within the identified catchment but also conclude that should permission be granted there would be an unacceptably adverse impact on the vitality and viability of the Malpas Road District Centre. National and local retail policy is not complied with.
- 9.3 The site lies within a defended floodplain. The location within the floodplain has not been justified and nor has it been shown that the consequences of a flood event can be managed at the site. Cyfoeth Naturiol Cymru / Natural Resources Wales have objected to the proposal. The proposal is contrary to national and local flooding policy.
- 9.4 The site is not highly accessible by foot or public transport and does not support the aims of Active Travel and effectively inverts the sustainable transport hierarchy identified in PPW11. By effectively relocating the store from in centre to out of centre the proposal moves development from a more sustainable location to a less sustainable location.
- 9.5 The proposal would see the loss of a traditional employment site whilst failing to demonstrate this would have no adverse impact on the future economic prospects of the City contrary to national advice and local policy.
- 9.6 It has not been demonstrated that the archaeological resource will be suitably protected on the site.
- 9.7 Potentially adverse impacts on the River Usk Special Area of Conservation (SAC) can be avoided by the application of suitable conditions during the development and operation of the site.
- 9.8 The benefits of the scheme are clearly outweighed by the identified harms and on balance the proposal should be refused.

10. RECOMMENDATION

REFUSED

Retail Need

01 The applicant has not demonstrated quantitative need nor robustly demonstrated qualitative need for the proposed out of centre store. This is contrary to national policy and to Policies SP19 and R10 of the adopted Newport Local Development Plan 2011 – 2026.

Retail Impact

02 The relocation of the proposed store would result in the loss of an anchor store from the Malpas Road District Centre without replacement to the detriment of the vitality and viability of that centre and harming overall sustainability through the substantial loss of convenience retail from that centre contrary to Policy R10 of the adopted Newport Local Development Plan 2011-2026.

Flooding

03 The location of the proposal on a defended flood plain has not been justified and the consequences of a flood event are not manageable over the lifetime of the development

causing substantial risk to life and property. This is contrary to national flood policy and Policies SP3, GP1 and CE9 of the adopted Newport Local Development Plan 2011-2026.

Active Travel / Sustainability

04 The proposal is unsustainably located and does not support the 'Sustainable Transport Hierarchy for Planning' espoused in Planning Policy Wales Edition 11 since the site is not highly accessible by walking or public transport and is highly reliant on the use of the private motor car. The proposal is contrary to Policies SP1, GP4 and R10 of the adopted Newport Local Development Plan 2011-2026.

Loss of Traditional Employment Land

05 The applicant has not shown that this traditional employment site should be released for alternative use contrary to the advice of Technical Advice Note 23 and the requirements of Policy EM3 of the adopted Newport Local Development Plan 2011-2026.

Archaeological Resource

06 The applicant has not undertaken an Archaeological Impact Assessment for this riverside location and has not demonstrated that the site can be developed without unacceptable impact upon archaeological resources. This is contrary to Policy CE6 (Archaeology) of the adopted Newport Local Development Plan 2011-2026.

NOTE TO APPLICANT

01 This decision relates to the following plans & documents:

- Drawing 170899-8300-P1- Proposed Site Plan - Access Road
- Drawing 170899-9100-P1 - Site Location Plan
- Drawing 170899-9200-P1 - Existing Site Plan
- Drawing 170899-9300 P4 - Proposed Site Plan
- Drawing 170899-9400-P1 - Proposed Floor Plan
- Drawing 170899-9500 P2 - Proposed Roof Plan
- Drawing 170899-9600 P2 - Proposed Elevations
- Drawing 170899-9700-P2 - Site Sections
- Drawing 170899-9710 P2 - Site Sections
- Drawing 001.360.01B – Visualisation
- Drawing P186-756-C - External Lighting
- Drawing 11974 P01 A - Soft Landscape Proposals
- Supplementary Geo-Environmental Report (January 2022)
- Flood Consequences Assessment (06.10.2021)
- Planning & Retail Statement (04.05.2022)
- RESPONSE TO NRW FLOOD RISK COMMENTS (10.12.2021)
- Design & Access Statement (29.06.2022)
- Response to PAC Submission Comments (April 2022)
- Preapplication Consultation report (May 2022)
- Transport Assessment (October 2021)
- Environmental Noise Assessment of a Proposed Aldi Store (16.12.2021)
- Ecological Assessment (20.10.2021)
- Ground Investigation Report (January 2019)

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP8, SP18, SP19, GP1, GP2, GP3, GP4, GP5, GP6, GP7, CE2, CE6, CE9, EM3, T2, T4, T6, T7, R10, CF4 & W3 were relevant to the determination of this application.

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

04 The 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.

05 It is considered that the decision has been made in conformity with the Marine Policy Statement (2011) and in accordance with marine national planning policy contained within the Welsh National Marine Plan (2019) as demonstrated in the assessment of this proposal.

APPENDIX A – CONSERVATION OBJECTIVES OF THE RIVER USK SPECIAL AREA OF CONSERVATION (SAC)

4. CONSERVATION OBJECTIVES

Background to Conservation Objectives:

a. Outline of the legal context and purpose of conservation objectives.

Conservation objectives are required by the 1992 'Habitats' Directive (92/43/EEC). The aim of the Habitats Directives is the maintenance, or where appropriate the restoration of the 'favourable conservation status' of habitats and species features for which SACs and SPAs are designated (see Box 1).

In the broadest terms, 'favourable conservation status' means a feature is in satisfactory condition and all the things needed to keep it that way are in place for the foreseeable future. CCW considers that the concept of favourable conservation status provides a practical and legally robust basis for conservation objectives for Natura 2000 and Ramsar sites.

Achieving these objectives requires appropriate management and the control of factors that may cause deterioration of habitats or significant disturbance to species.

As well as the overall function of communication, Conservation objectives have a number of specific roles:

Conservation planning and management.

The conservation objectives guide management of sites, to maintain or restore the habitats and species in favourable condition.

Assessing plans and projects.

Article 6(3) of the 'Habitats' Directive requires appropriate assessment of proposed plans and projects against a site's conservation objectives. Subject to certain exceptions, plans or projects may not proceed unless it is established that they will not adversely affect the integrity of sites. This role for testing plans and projects also applies to the review of existing decisions and consents.

Monitoring and reporting.

The conservation objectives provide the basis for assessing the condition of a feature and the status of factors that affect it. CCW uses 'performance indicators' within the conservation objectives, as the basis for monitoring and reporting. Performance indicators are selected to provide useful information about the condition of a feature and the factors that affect it.

The conservation objectives in this document reflect CCW's current information and understanding of the site and its features and their importance in an international context. The conservation objectives are subject to review by CCW in light of new knowledge.

b. Format of the conservation objectives

There is one conservation objective for each feature listed in part 3. Each conservation objective is a composite statement representing a site-specific description of what is considered to be the favourable conservation status of the feature. These statements apply to a whole feature as it occurs within the whole plan area, although section 3.2 sets out their relevance to individual management units.

Each conservation objective consists of the following two elements:

1. Vision for the feature
2. Performance indicators

As a result of the general practice developed and agreed within the UK Conservation Agencies, conservation objectives include performance indicators, the selection of which should be informed by JNCC guidance on Common Standards Monitoring¹.

There is a critical need for clarity over the role of performance indicators within the conservation objectives. A conservation objective, because it includes the vision for the feature, has meaning and substance independently of the performance indicators, and is more than the sum of the performance indicators. The performance indicators are simply what make the conservation objectives measurable, and are thus part of, not a substitute for, the conservation objectives. Any feature attribute identified in the performance indicators should be represented in the vision for the feature, but not all elements of the vision for the feature will necessarily have corresponding performance indicators.

As well as describing the aspirations for the condition of the feature, the Vision section of each conservation objective contains a statement that the factors necessary to maintain those desired conditions are under control. Subject to technical, practical and resource constraints, factors which have an important influence on the condition of the feature are identified in the performance indicators.

The ecological status of the water course is a major determinant of FCS for all features. The required conservation objective for the water course is defined below.

4.1 Conservation Objective for the water course

The capacity of the habitats in the SAC to support each feature at near-natural population levels, as determined by predominantly unmodified ecological and hydromorphological processes and characteristics, should be maintained as far as possible, or restored where necessary.

The ecological status of the water environment should be sufficient to maintain a stable or increasing population of each feature. This will include elements of water quantity and quality, physical habitat and community composition and structure. It is anticipated that these limits will concur with the relevant standards used by the Review of Consents process given in Annexes 1-3.

Flow regime, water quality and physical habitat should be maintained in, or restored as far as possible to, a near-natural state, in order to support the coherence of ecosystem structure and function across the whole area of the SAC.

All known breeding, spawning and nursery sites of species features should be maintained as suitable habitat as far as possible, except where natural processes cause them to change.

Flows, water quality, substrate quality and quantity at fish spawning sites and nursery areas will not be depleted by abstraction, discharges, engineering or gravel extraction activities or other impacts to the extent that these sites are damaged or destroyed.

The river planform and profile should be predominantly unmodified. Physical modifications having an adverse effect on the integrity of the SAC, including, but not limited to, revetments on active alluvial river banks using stone, concrete or waste materials, unsustainable extraction of gravel, addition or release of excessive quantities of fine sediment, will be avoided.

River habitat SSSI features should be in favourable condition. In the case of the Usk Tributaries SSSI, the SAC habitat is not underpinned by a river habitat SSSI feature. In this case, the target is to maintain the characteristic physical features of the river channel, banks and riparian zone.

Artificial factors impacting on the capability of each species feature to occupy the full extent of its natural range should be modified where necessary to allow passage, e.g. weirs, bridge sills, acoustic barriers.

Natural factors such as waterfalls, which may limit the natural range of a species feature or dispersal between naturally isolated populations, should not be modified.

Flows during the normal migration periods of each migratory fish species feature will not be depleted by abstraction to the extent that passage upstream to spawning sites is hindered.

1 Web link: <http://www.jncc.gov.uk/page-2199>

Flow objectives for assessment points in the Usk Catchment Abstraction Management Strategy will be agreed between EA and CCW as necessary. It is anticipated that these limits will concur with the standards used by the Review of Consents process given in Annex 1 of this document.

Levels of nutrients, in particular phosphate, will be agreed between EA and CCW for each Water Framework Directive water body in the Usk SAC, and measures taken to maintain nutrients below these levels. It is anticipated that these limits will concur with the standards used by the Review of Consents process given in Annex 2 of this document.

Levels of water quality parameters that are known to affect the distribution and abundance of SAC features will be agreed between EA and CCW for each Water Framework Directive water body in the Usk SAC, and measures taken to maintain pollution below these levels. It is anticipated that these limits will concur with the standards used by the Review of Consents process given in Annex 3 of this document.

Potential sources of pollution not addressed in the Review of Consents, such as contaminated land, will be considered in assessing plans and projects.

Levels of suspended solids will be agreed between EA and CCW for each Water Framework Directive water body in the Usk SAC. Measures including, but not limited to, the control of suspended sediment generated by agriculture, forestry and engineering works, will be taken to maintain suspended solids below these levels.

4.2 Conservation Objective for Features 1-5:

- Sea lamprey *Petromyzon marinus* (EU Species Code: 1095);
- Brook lamprey *Lampetra planeri* (EU Species Code: 1096);
- River lamprey *Lampetra fluviatilis* (EU Species Code: 1099);
- Twaite shad *Alosa fallax* (EU Species Code: 1103);
- Allis shad *Alosa alosa* (EU Species Code: 1102);

- Atlantic salmon *Salmo salar* (EU Species Code: 1106);

- Bullhead *Cottus gobio* (EU Species Code: 1163)

<p>Vision for features 1-5</p> <p>The vision for this feature is for it to be in a favourable conservation status, where all of the following conditions are satisfied:</p>	
FCS component	Supporting information/current knowledge
<p>The conservation objective for the water course as defined in 4.1 above must be met.</p> <p>The population of the feature in the SAC is stable or increasing over the long term.</p>	<p>Refer to sections 5.1 to 5.5 for current assessments of feature populations.</p> <p>Entrainment in water abstractions directly impacts on population dynamics through reduced recruitment and survival rates.</p> <p>Fish stocking can adversely affect population dynamics through competition, predation, and alteration of population genetics and introduction of disease.</p>
<p>The natural range of the feature in the SAC is neither being reduced nor is likely to be reduced for the foreseeable future. The natural range is taken to mean those reaches where predominantly suitable habitat for each life stage exists over the long term. Suitable habitat is defined in terms of near-natural hydrological and geomorphological processes and forms e.g. suitable flows to allow upstream migration, depth of water and substrate type at spawning sites, and ecosystem structure and functions e.g. food supply (as described in sections 2.2 and 5).</p> <p>Suitable habitat need not be present throughout the SAC but where present must be secured for the foreseeable future. Natural factors such as waterfalls may limit the natural range of individual species. Existing artificial influences on natural range that cause an adverse effect on site integrity, such as physical barriers to migration, will be assessed in view of 4.2.4</p> <p>There is, and will probably continue to be, a sufficiently large habitat to maintain the feature's population in the SAC on a long-term basis.</p>	<p>Some reaches of the Usk SAC are more suitable for some features than others e.g. the Senni has important populations of brook/river lamprey and salmon but is not used by shad due to its small size and distance from the estuary. These differences influence the management priorities for individual reaches and are used to define the site units described in section 3.2. Further details of feature habitat suitability are given in section 5. In general, management for one feature is likely to be sympathetic for the other features present in the river, provided that the components of favourable conservation status for the water course given in Section 4.1 are secured.</p> <p>The characteristic channel morphology provides the diversity of water depths, current velocities and substrate types necessary to fulfil the habitat requirements of the features. The close proximity of different habitats facilitates movement of fish to new preferred habitats with age. The presence of hard bank revetments in a number of active alluvial reaches e.g. through Brecon and upstream of Abergavenny, adversely affects the processes that maintain suitable habitat for the SAC features.</p> <p>Hydrological processes in the Usk are currently affected by large abstractions, especially at Prioress Mill and Brecon Weir. However, there are many smaller abstractions not considered to cause a problem at present.</p>

	<p>Shad and salmon migration can be affected by acoustic barriers and by high sediment loads, which can originate from a number of sources including construction works.</p> <p>Allis and Twaite shad are affected by range contraction due to artificial barriers to migration in the Usk. It is likely that this loss of habitat affects their maintenance in the SAC on a long-term basis.</p>
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Performance indicators for features 1-5

The performance indicators are part of the conservation objective, not a substitute for it. Assessment of plans and projects must be based on the entire conservation objective, not just the performance indicators.

Sea lamprey *Petromyzon marinus* :

Performance indicators for feature condition

Attribute	Specified Limits	Comments	Relevant Unit[s]
(a) Distribution within catchment	Suitable habitat adjacent to or downstream of known spawning sites should contain <i>Petromyzon ammocoetes</i> .	This attribute provides evidence of successful spawning and distribution trends. Spawning sites known to have been used within the previous 10 years and historical sites considered still to have suitable habitat, are shown in Annex 4. Spawning locations may move within and between sites due to natural processes or new sites may be discovered overtime. Silt beds downstream of all sites identified in Annex 4 will be sampled for presence or absence of ammocoetes. Where apparently suitable habitat at any site is unoccupied feature condition will be considered unfavourable .	1-5
(b) Ammocoete density	Ammocoetes should be present in at least four sampling sites each not less than 5km apart.	This standard CSM attribute establishes a minimum occupied spawning range, within any sampling period, of 15km. In the Usk, spawning sites within units 2 to 5 will be assessed against this attribute.	2 - 5
	Overall catchment mean >0.1m ⁻² (Harvey & Cowx 2003) ¹	Although this attribute is not used in CSM for sea lamprey, baseline monitoring in the Usk gave an overall catchment mean of 2.27 ammocoetes m ⁻²	

		in suitable habitat ² , therefore 0.1 m ⁻² is a conservative threshold value for unfavourable condition.	
Brook lamprey <i>Lampetra planeri</i> and River lamprey <i>Lampetra fluviatilis</i> : <i>Performance indicators for feature condition</i>			
Attribute	Specified Limits	Comments	Relevant Unit[s]
(a) Age/size structure of ammocoete population	Samples < 50 ammocoetes ~ 2 size classes Samples > 50 ammocoetes ~ at least 3 size classes	This gives an indication of recruitment to the population over the several years receding the survey. Failure of one or more years recruitment may be due to either short or long term impacts or natural factors such as natural flow variability, therefore would trigger further investigation of the cause rather than leading automatically to an unfavourable condition assessment.	2-10
(b) Distribution of ammocoetes within catchment	Present at not less than 2/3 of sites surveyed within natural range	The combined natural range of these two species in terms of ammocoete distribution includes all units above the tidal limit i.e. all except unit 1. Presence at less than 2/3 of sample sites will lead to an unfavourable condition assessment.	2-10
	No reduction in distribution of ammocoetes	Reduction in distribution will be defined as absence of ammocoetes from all samples within a single unit or sub-unit/tributary, and will lead to an unfavourable condition assessment.	
(c) Ammocoete density	Optimal habitat: >10m ⁻² Overall catchment mean: >5m ⁻²	Optimal habitat comprises beds of stable fine sediment or sand >15cm deep, low water velocity and the presence of organic detritus, as well as, in the Usk, shallower sediment, often patchy and interspersed among coarser substrate.	2-10
Twaite shad <i>Alosa fallax</i> and Allis shad <i>Alosa alosa</i> : <i>Performance indicators for feature condition</i>			
Attribute	Specified Limits	Comments	Relevant Unit[s]
(a) Spawning distribution	No decline in spawning distribution	Spawning distribution is assessed by kick sampling for eggs and/or observations of spawning adults. A representative sample of sites	1-5

		within units 2 to 5 will be monitored at 3 yearly intervals. Absence from any site in 2 consecutive surveys will result in an unfavourable condition assessment.	
<i>Performance indicators for factors affecting the feature</i>			
(a) Flow	Targets are set in Relation to river/reach type(s)	Targets equate to those levels agreed and used in the Review of Consents (see Annex 1). Shad are particularly sensitive to flow. The ideal regime is one of relatively high flows in March-May, to stimulate migration and allow maximum penetration of adults upstream, followed by rather low flows in June-September, which ensures that the juveniles are not washed prematurely into saline waters and grow rapidly under warmer conditions. The release of freshets to encourage salmonid migration should therefore be discouraged on shad rivers during this period.	1-5
Atlantic salmon <i>Salmo salar</i> : <i>Performance indicators for feature condition</i>			
(a) Adult run size	Conservation Limit complied with at least four years in five (see 5.4)	CSM guidance states: Total run size at least matching an agreed reference level, including a seasonal pattern of migration characteristic of the river and maintenance of the multi-seawinter component. As there is no fish counter in the Usk, adult run size is calculated using rod catch data. Further details can be found in the EA Usk Salmon Action Plan.	All
(b) Juvenile densities	Expected densities for each sample site using HABSCORE	CSM guidance states: These should not differ significantly from those expected for the river type/reach under conditions of high physical and chemical quality. Assessed using electro fishing data.	6-10
<i>Performance indicators for factors affecting the feature:</i> Water quality			
(a) Biological quality	Biological GQA class A	This is the class required in the CSM guidance for Atlantic salmon, the most sensitive	6-10

(b) Chemical quality	RE1	It has been agreed through the Review of Consents process that RE1 will be used throughout the SAC [see Annex 3].	All
<i>Performance indicators for factors affecting the feature:</i> Hydromorphology			
(a) Flow	Targets are set in relation to river/reach type(s)	Targets equate to those levels agreed and used in the Review of Consents [see Annex 1].	All
Bullhead <i>Cottus gobio</i> : <i>Performance indicators for feature condition</i>			
a) Adult densities	No less than 0.2 m ⁻² in sampled reaches	CSM guidance states that densities should be no less than 0.2 m ⁻² in upland rivers (source altitude >100m) and 0.5 m ⁻² in lowland rivers (source altitude <100m). A significant reduction in densities may also lead to an unfavourable condition assessment.	2-10
(b) Distribution	Bullheads should be present in all suitable reaches. As a minimum, no decline in distribution from current	Suitable reaches will be mapped using fluvial audit information validated using the results of population monitoring. Absence of bullheads from any of these reaches, or from any previously occupied reach, revealed by ongoing monitoring will result in an unfavourable condition assessment.	2-10
(c) Reproduction/age structure	Young-of-year fish should occur at densities at least equal to adults	This gives an indication of successful recruitment and a healthy population structure. Failure of this attribute on its own would not lead to an unfavourable condition assessment.	2-10
4.3 Conservation Objective for Feature 6: - European otter <i>Lutra lutra</i> (EU Species Code: 1355)			
Vision for feature 6 The vision for this feature is for it to be in a favourable conservation status, where all of the following conditions are satisfied:			
FCS component		Supporting information/current knowledge	
The population of otters in the SAC is stable or increasing over the long term and reflects the natural carrying capacity of the habitat within the SAC, as determined by natural levels of prey abundance and associated territorial behaviour. The natural range of otters in the SAC is neither being reduced nor is		Refer to section 5.9 for current assessment of feature population. Survey information shows that otters are widely distributed in the Usk catchment. While the breeding population in the Usk is not currently considered to be limited by the availability of suitable breeding sites, there is some uncertainty over the number of	

<p>likely to be reduced for the foreseeable future. The natural range is taken to mean those reaches that are potentially suitable to form part of a breeding territory and/or provide routes between breeding territories. The whole area of the Usk SAC is considered to form potentially suitable breeding habitat for otters. The size of breeding territories may vary depending on prey abundance. The population size should not be limited by the availability of suitable undisturbed breeding sites. Where these are insufficient they should be created through habitat enhancement and where necessary the provision of artificial holts. No otter breeding site should be subject to a level of disturbance that could have an adverse effect on breeding success. Where necessary, potentially harmful levels of disturbance must be managed.</p> <p>The safe movement and dispersal of individuals around the SAC is facilitated by the provision, where necessary, of suitable riparian habitat, and underpasses, ledges, fencing etc. at road bridges and other artificial barriers.</p>	<p>breeding territories which the SAC is capable of supporting given near-natural levels of prey abundance.</p> <p>The decline in eel populations may be having an adverse effect on the population of otters in the Usk.</p> <p>Restrictions on the movement of otters around the SAC, and between adjoining sites are currently a particular concern in the reach through Newport as a result of a continued decrease in undisturbed suitable riparian habitat.</p>		
<p>Performance indicators for feature 6</p> <p>The performance indicators are part of the conservation objective, not a substitute for it. Assessment of plans and projects must be based on the entire conservation objective, not just the performance indicators.</p>			
Attribute	Specified Limits	Comments	Relevant Unit(s)
<i>Performance indicators for feature condition</i>			
(a) Distribution	Otter signs present at 90% of Otter Survey of Wales sites	Ref: CCW Environmental Monitoring Report No. 19 (2005) ³	All
(b) Breeding activity	2 reports of cub/family sightings at least 1 year in 6	Ref: CCW Environmental Monitoring Report No. 19 (2005) ³	All
(c) Actual and potential breeding sites	No decline in number and quality of mapped breeding sites in subcatchments (see Ref)	Ref: CCW Environmental Monitoring Report No. 19 (2005) ³ In the Usk catchment, 77 actual or potential breeding sites have been identified, distributed throughout the catchment on the main river and tributaries.	All

2.

APPLICATION DETAILS

No: 22/0756 **Ward:** Liswerry

Type: Full (Major)

Expiry Date: 24th May 2023

Applicant: C Davey

Site: The Ferns Club 57 Liswerry Road Newport NP19 4LG

Proposal: **DEMOLITION OF PUBLIC HOUSE AND CONSTRUCTION OF 12NO. AFFORDABLE APARTMENTS AND 8NO. AFFORDABLE HOUSES TOGETHER WITH ASSOCIATED CAR PARKING AND AMENITY AREAS**

Recommendation: **GRANTED WITH CONDITIONS SUBJECT TO SECTION 106 LEGAL AGREEMENT WITH DELEGATED POWERS TO REFUSE THE APPLICATION IN THE EVENT THAT THE AGREEMENT IS NOT SIGNED WITHIN 3 MONTHS OF THE DECISION**

1. INTRODUCTION

- 1.1 This application seeks planning permission for the demolition of an existing public house/social club and for the construction of 12no. affordable apartments and 8no. affordable houses together with associated car parking and amenity areas at The Ferns Club, 57 Liswerry Road in the Liswerry ward.
- 1.2 The final scheme presented is as a result of negotiations throughout the course of the application and pre application in relation to the layout of the site, landscaping and building design.
- 1.3 The application is brought to the planning committee for determination as it constitutes 'major development'.

2. RELEVANT SITE HISTORY

08/1162	DEMOLITION OF EXISTING CLUB AND ERECTION OF 13NO. RESIDENTIAL UNITS (OUTLINE)	REFUSED
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3. POLICY CONTEXT

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

- SP1 – Sustainability
- SP3 – Flood Risk
- SP10 – House Building Requirement
- SP12 – Community Facility
- SP13 – Planning Obligations
- SP18 - Urban Regeneration
- GP2 – General Amenity
- GP4 – Highways and Accessibility
- GP6 – Quality of Design
- H2 – Housing Standards
- H3 – Housing Mix and Density
- H4 – Affordable Housing
- H6 Sub-division of Curtilages, Infill and Backland Development
- T4 – Parking
- CF12 – Protection of Existing Community Facilities
- W3 – Provision for Waste Management Facilities in Development

3.2 Adopted Supplementary Planning Guidance

- Planning Obligations SPG – August 2015
- Affordable Housing SPG – August 2015
- Parking Standards SPG – August 2015
- Wildlife and Development SPG – August 2015
- New Dwellings SPG – August 2015
- Waste Storage and Collection SPG – January 2020
- Air Quality SPG – February 2018

4. CONSULTATIONS

- 4.1 NATURAL RESOURCES WALES: Based on the information provided, we would have no objection to the proposed development and provide the following advice.

Flood Risk

The planning application proposes highly vulnerable development (housing). Our Flood Risk Map confirms the application site is within Zone C1 of the Development Advice Map (DAM) as contained in TAN15 and the Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and falls into Flood Zone 3 (Sea).

Section 6 of TAN15 requires the Local Planning Authority to determine whether the development at this location is justified. Therefore, we refer them to the tests set out in section 6.2 of TAN15. If they consider the proposal meets the tests set out in criteria (i) to (iii), then the final test (iv) is for you the Applicant to demonstrate, through the submission of a Flood Consequences Assessment (FCA), that the potential consequences of flooding can be managed to an acceptable level.

We have reviewed the FCA, undertaken by JBA Consulting, document reference GNTJBAU-XX-XX-RP-Z-0001-S2-P02-The_Ferns_FCA, dated May 2022. The FCA shows that the risks and consequences of flooding are manageable to an acceptable level. Therefore, we would have no objection, on flood risk grounds, to the application as submitted.

Fluvial Flood Risk

The FCA confirms that the proposed development is not at risk during a 1% (1 in 100 year) plus 25% for climate change and 0.1% (1 in 1000 year) annual probability fluvial flood events.

Tidal Flood Risk

The FCA confirms that site levels range between 6.58-7.38m AOD. During a 0.5% (1 in 200 year) plus climate change annual probability tidal flood event, the proposed development is predicted to be flood free. During a 0.1% (1 in 1000 year) annual probability tidal flood event, the proposed development is predicted to flood to maximum depths ranging between 120-550mm, this is within the tolerable limits of A1.15 of TAN15 (<600mm).

Access/Egress

During a 0.5% (1 in 200 year) plus climate change annual probability tidal flood event, the proposed access flood depths along Lliswerry Road are shallow, with a maximum depth of 120mm. For Somerton Road during this event, the access road to the residential area is also shallow, with an average flood depth of 450mm.

During a 0.1% (1 in 1000 year) plus climate change annual probability tidal flood event, for the proposed access, the maximum flood depth along Lliswerry Road is 590mm. For Somerton Road during this event, the average flood depth is 1400mm, however dry land can be accessed on the eastern end of Lliswerry Road through shallow water at a depth of no more than 250mm.

The FCA proposes the management of flood risk by the adoption of a flood emergency plan and the incorporation of flood resilience measures into the design of the development.

Further Advice

It is for the Planning Authority to determine whether the risks and consequences of flooding can be managed in accordance with TAN15, we would recommend they consider consulting other professional advisors on matters such as emergency plans, procedures and measures to address structural damage that may result from flooding. Please note, we do not normally comment on or grant the adequacy of flood emergency response plans and procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings to occupants/users.

We recommend you consider the future insurability of this development now. Although we have no involvement in this matter, we would advise you to review the Association of British Insurers published paper, 'Climate Adaptation: Guidance on Insurance Issues for New Developments', to help you ensure any properties are as flood proof as possible and insurable.

European Protected Species

We note that the bat report submitted in support of the above application ('Bat Survey: The Ferns Club, 57 Lliswerry Road, Newport, NP19 4LG', prepared by Ecological Services Ltd., version 2, dated September 2021) has identified that bats are present at the application site.

We would advise the Planning Authority that we have no objection on European Protected Species grounds but request that an informative is attached to any planning permission granted as explained below.

Legislation & Policy

Bats and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Where bats are present and a development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. A licence may only be authorised if:

- i. The development works to be authorised are for the purpose of preserving public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.
- ii. There is no satisfactory alternative; and
- iii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Paragraph 6.3.7 of Technical Advice Note 5: Nature Conservation and Planning (TAN5) states that the Planning Authority should not grant planning permission without having satisfied itself that the proposed development either would not impact adversely on any bats on the site of that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

On the basis of the above report, we do not consider that the development is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Therefore, we do not object to the proposal but in line with the 'Dear CPO' letter issued by Welsh Government on 1st March 2018, we would request that the following informative is attached to any planning permission granted by the Planning Authority:

Warning: An European Protected Species (EPS) Licence is required for this development.

This planning permission does not provide consent to undertake works that require an EPS licence.

It is an offence to deliberately capture, kill or disturb EPS or to damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine.

To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or at <https://naturalresources.wales/permits-and-permissions/species-licensing/when-you-need-to-apply-for-a-protected-species-licence/?lang=en>. Development should not be commenced until you have been granted a licence by Natural Resources Wales pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations (2017) authorising the specified activity/development to go ahead.

Please note that any changes between planning consent and the licence application may affect the outcome of a licence application.

4.2 WELSH WATER DWR CYMRU: No objection and offers advisories and conditions.

4.3 GWENT POLICE: No response.

4.4 NEWPORT CIVIC SOCIETY: No response.

5. INTERNAL COUNCIL ADVICE

5.1 THE HEAD OF CITY SERVICES (HIGHWAYS):

Final Response to Amended Scheme

Highways are satisfied that the proposed development will not have an unacceptable impact on the highways.

Note: The recommended planning condition below and the still outstanding swept path analysis drawing of the refuse vehicle entering and leaving.

Recommended Planning Condition

The site plan 1543PL1-04 rev A sets out a garden shed structure within the gardens, these serve blocks A & B. Additionally a cycle store for 8 cycles is provided to serve the two apartment blocks C & D. It is recommended that a planning condition is put in place to ensure these structures remain for the life of the dwellings.

Highway Comment Access

Access to the site will be from both Fernside and Lliswerry Road. To improve pedestrian access, the development will include for the widening of the footway fronting the development on both of these roads, as seen on drawing 1543PL1-04 A.

Parking

The applicant has provided information on why the site only offers 23 parking spaces rather than the 35 spaces that are required to comply with the adopted Newport Parking Standards 2015.

An accepted method of reducing the number of required parking spaces is to carry out a Sustainability Test, this test is described in Appendix 5 of the above document. For this development, a sustainability test has been carried out and it is accepted that the site is in a sustainable location, thus a reduction in the parking space numbers to 27 is acceptable.

The number of off street parking spaces offered is 23, whilst the number required to allow the site to comply with the Parking Standards is 27. The assumption is that if the maximum parking demand presents itself, the 4 vehicles will park on the street.

The applicant was advised that Highways will require that they carry out an on street parking survey. This is to ensure that the nearby streets have the parking space capacity to accommodate the additional 4 car parking space demand.

An on-street parking survey has been carried out to the satisfaction of the Council, the demand for the 4 parking spaces can be readily met on the streets within 200 metres of the proposed site.

Swept Path Analysis - Refuse Vehicle

The applicant has failed to provide a swept path analysis drawing, setting out how the refuse vehicle will gain access to the refuse collection point located next to Block C.

Where large vehicles need to have regular access to the development, the vehicle should be tracked on a plan, to show the vehicle can enter and leave the site or its immediate proximity in a forward gear. Use the rigid HGV measurements of 9120 x 2250mm in the swept path analysis.

Sustainable Transport

A total of 8 secure cycle spaces are provided for the apartments. The cycle store is adjacent to Block D. The details of the covered secure cycle storage structure needs to be submitted to and approved by the Council.

Once approved it should be constructed and to remain in place as a cycle store for the life of the building.

Demolition / Construction Management Plan (CMP)

The Interim CMP requires the following additional information before highways can be satisfied with its content as a complete CMP document.

1. HGV routes to and from the site
2. Methods and locations of the loading and unloading of vehicles are identified but HGV swept path analysis needed to show how the larger HGVs will enter and leave the demolition/construction site.
3. How will the HGV trips be managed to avoid peak hours and school hours? The submission of an acceptable Construction Management Plan is currently outstanding.

Travel Plan

A residential Travel Plan is not required

Final Response to Additional Information Submitted

Further to the information provided within an email from the applicant or their representative, dated the 3rd January 2023, on the matters of

1. Swept Path Analysis - Refuse Vehicle
2. Demolition / Construction Management Plan (CMP)

Swept Path Analysis - Refuse Vehicle

The applicant has provided the swept path analysis drawing 001 P4. This is considered satisfactory.

Demolition / Construction Management Plan (CMP)

The applicant has provided the Site Management Plan 1543PL1-12 rev A and a CEMP document 1543:PL1:CEMP -DRAFT-Rev 2. The information contained within these documents can be considered to satisfy Highways on the matter of the additional information requested, as set out in the Highways response dated the 12th December 2022.

- 5.2 THE HEAD OF CITY SERVICES (DRAINAGE): No response.
- 5.3 THE HEAD OF HOUSING AND COMMUNITIES: I welcome this proposal which will provide much needed affordable housing. There are currently 1,812 households with active applications on Newport's housing waiting list seeking accommodation in this area, of which 158 have been assessed as being in Band A – the highest level of housing need. Of those 1,812 households 910 are seeking one bedroom accommodation, 459 are seeking two bedroom accommodation and 270 are seeking three bedroom accommodation. The proposed scheme meets a clearly identified need and the mix of properties proposed will assist the local authority in discharging its duty to households that are seeking rehousing.
- 5.4 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION: The site is within close proximity to sensitive receptors and the applicant has to ensure that the impact of the construction of the development is minimised.

The proposals seem satisfactory in environmental health terms and I do not offer any objections to the application and suggest the following should you be mindful to grant the application

Prior to the commencement of development, a Demolition/Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise (including prescribed site working hours for construction), vibration, dust and waste disposal resulting from the site development. The approved Construction Environmental Management Plan shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority. * The applicant should have regard to BRE guide 'Control of Dust from Construction and Demolition, February 2003

Reason: In the interests of highway safety and to ensure that the amenities of occupiers of other premises in the vicinity are protected.

Prior to first occupation, a scheme of sound insulation works to the floor/ceiling and any party wall structures between separate dwellings shall be implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be retained thereafter in perpetuity.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected.

- 5.5 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (WASTE): Individual properties would be serviced by standard kerbside waste and recycling collection.

For the apartments we anticipate the following

1 x 720L euro domestic bin for each block of 6 flats.

2 x 660l for cans/bottles and paper/card, 1 x 360 for glass and 1 x 240 food

Please can details of bin stores be provided so that we can comment on suitability and raise any other concerns

Supplementary planning guidance on waste and recycling to show storage and collection requirements can be downloaded at

<https://eur03.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.newport.gov.uk%2Fdocuments%2FPlanning-Documents%2FSupplementary-Planning-Guidance%2F2020%2FWaste-Storage-and-Collection-SPG-Adopted-Jan-2020.pdf&data=05%7C01%7CGrant.Hawkins%40newport.gov.uk%7Cfea5a81a505f4612eb1e08da8b17e5c7%7C2c4d0079c52c4bb3b3cad8eaf1b6b7d5%7C0%7C0%7C637975231989858343%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=igpbSrOBahUXlj9pXWuRh8gHxDhw%2B%2BVzAjyc9h2t0Uw%3D&reserved=0>

From April 1st 2020, developers / owners of all new residential units will be required to purchase bin provision for each unit serviced to meet the Council's specification. 120L,

180L, 240L and 360L wheeled bins must be purchased/obtained from Newport City Council. 660L and 1100L bins can be purchased elsewhere but it is strongly recommended to speak to NCC Waste Management Refuse Management beforehand to ensure the bins fit the Refuse Department collection vehicles safely. Failure to purchase correct bin(s) will result in collections being suspended with the Council reserving the right to refuse collection until suitable bin specifications are met.

5.6 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE):

Final Response

A revised landscape plan has been submitted, by dp landscape architecture 'Soft Landscape Proposals' 1164.01 rev B.

Additional comment on the North Boundary

Is there an Arboricultural Impact Assessment and Ecological Assessment as I cannot see these on the portal? Plans clearly show the intention to remove the following individual trees and a tree group.

G4 ash, willow group to 10m T1 willow to 18m T2 ash to 14m T3 ash to 5m T6 willow to 6m T7, T7, T9 ash to 12-14m

The losses are mainly category U trees and mainly ash which has signs of die-back and crack willow, both are inappropriate species to retain adjacent to residential use but these are also semi-mature trees providing a range of amenity and ecological functions in an urban area. In addition there may be other shrub species present but these would generally not be picked up on a tree survey. The area in the darker green shading below is 'dense vegetation', all vegetation on the boundary is proposed for removal except T5.

The losses need to be adequately mitigated for in the soft landscape scheme to provide a continuous replacement green corridor, however the current scheme rev B (above) although shows 5no extra heavy standard trees using mixed native species, shows no hedgerow cover or tree cover replacing Group 4 and a further revision is required.

Communal amenity space – still not addressed, an issue for the applicant rather than landscape architect to address

As previously commented, as there are no private gardens for the apartments, external amenity space for residents should be provided to meet standards for communal amenity space set out in NCC New Dwellings SPG 2015.

SUDs planting – still insufficient evergreen/overwinter cover for some areas

Proposed mixes have increased evergreen planting but mix 2 only has 30% winter cover and mix 4 has 0% winter cover and these require review. This include the use of large areas of Mix 4 which could provide overwintering habitat north boundary as it is tucked out of the way.

As the rain gardens are such a key part of the overall site planting, the usual 5 year plant replacement condition should include an allowance for annual monitoring of the planting by the landscape consultant with replacement of failures recommended on the basis of the actual water conditions rather than a like for like replacement which may not be the best approach in this instance.

5.7 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREES):

Final Response

Gill Mackley's comments are supported :-

"Seeding The specification for seeding within tree root protection areas is to be clarified as currently described as 'harrow to 100mm depth'. Refer to Tree Officer."

There should not be grass seeding or any other landscaping operations within the RPAS of trees – this is to comply with safeguarding the future of the trees and supports the adopted policies.

I.e. harrowing will kill /sever tree roots and compact the soil which is not acceptable.

5.8 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY): I have a number of concerns over the Bat Survey report v2.0 dated September 2021, submitted in support of this application.

- Section 9.8 of the report acknowledges that the survey took place late in the season, in late August and Early September. In my view, had a maternity roost of bats been present, surveys this late in the season may well have missed this, as such roosts can disperse in early August or even in late July. Therefore we may not have an accurate picture of the way bats use this building throughout the seasons.
- In accordance with guidance on bat surveys that we use, the categorisation of this building as having 'moderate' bat roost potential would normally lead to two flight surveys being undertaken, which was the case for this application. However, the same guidance also advises that if bats are discovered emerging from a building during these surveys, the survey schedule should be appropriately adjusted to increase the survey effort so that sufficient information can be collected. In this instance, the discovery of an emerging bat on the first survey would indicate 'high' bat roost potential, so three flight surveys should have taken place.
- I understand that some trees need to be removed as part of this development, but I see no evidence that any bat surveys of these trees has taken place.
- As a general principle, survey work which is more than 18 months old will be regarded with caution, as certain species may colonise or leave an area in the interim period. Guidance published by the Chartered Institute of Ecology and Environmental Management (CIEEM) on the Lifespan of Ecological Reports and Surveys from April 2019 advises that is particularly the case with mobile species such as bats, and bat surveys greater than 18 months old should be repeated. In this instance, surveys took place in August/September 2021, so become out of date in mid-March this year. Therefore if demolition were to take place after March 2023, the impact upon bats as set out in the Bat Survey report may no longer be accurate.

However, I note from their letter of 22/06/22 that NRW do not seem to share these concerns, and from their letter we can assume that they would be likely to grant an EPS licence based upon the survey information and mitigation proposed. Therefore in accordance with the Morge ruling we should not refuse to grant planning consent on the basis of impacts upon bats. If subsequently NRW decide that they require further or updated bat surveys to inform the determination of an EPS licence application, then that is between them and the Applicant.

If consent is granted, we should use a planning condition to secure all of the compensation and enhancement measures set out in Section 10 of the bat survey report.

Where any building is to be demolished or tree/bush is to be removed, the Applicant should be advised to avoid disturbance to nesting birds which are protected under the Wildlife and Countryside Act 1981: Part 1, 1(1)(b), whereby it is an offence to intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built.

The proposed layout seems to indicate a reduction in the quality of green infrastructure at this site. Green infrastructure is important not just for biodiversity, but also for climate change mitigation and adaptation and public amenity. This being the case I support the comments made in relation to this planning application by my colleagues who provide advice on tree protection and upon landscaping.

5.9 THE HEAD OF CITY SERVICES (ACTIVE TRAVEL): No response.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties within 50m of the application site were consulted (90 properties), a site notice displayed and a press notice published in South Wales Argus. 27no. responses have been received objecting to the application and 1no. in support. Key points are summarised below;

Objections

- The proposal is overdevelopment of the site;
- Adverse impact on neighbours residential amenity;
- Increase in parking issues within surrounding area;
- Existing issues of anti-social behaviour (scooters, bikes, groups of youths/men congregating) and criminal activity (drug dealing, criminal damage, breaking and entering and violence) in the area have been raised and there are fears that this will worsen if further social housing is located at the site;
- Increased vehicle movements resulting in highway safety issues over and above existing issues of speeding along Lliswerry Road;
- Increase in litter;
- Concerns with the proposed scale of the flats that would appear out of context;
- Highway safety concerns regarding increased use of the vehicular access onto Lliswerry Road;
- Loss of the public house.

Support

- Please make this Over 55s.

Other Comments

A high proportion of the representations received have stated that the proposal should be a development for Over 55's and not open social housing.

6.2 COUNCILLOR STERRY: Has responded to the application and advises that having spoken with local residents the proposal could only be fully supported if the one bedroom units are allocated to Over 55's only. This would not only benefit the area from attracting less anti-social behaviour, but would free up larger social housing that is not currently available due to over 55s moving into these one bedroom flats, which would allow their current residences to be freed up for families on the waiting list. It is claimed that the housing association would support a proposal for over 55's but this is being blocked by NCC. The local community has already lost an important social community centre with the loss of the ferns and if this is not agreed then we will be hit further in the long term with more anti-social behaviour in the area.

COUNCILLOR PETERSON: I have no objections to the building of residential properties on the site. However, I believe that these properties should service the needs of the over 55. I have had a numerous cases where people have lived in the area for over 40/50 years in social housing and they are blocking housing stock and for those looking to down size have to leave the area away from friends and family to get a placement for over 55's.

I would like the opportunity to make a representation for these properties to service over 55's at the committee meeting.

COUNCILLOR MORRIS: The only issues we have is the age of proposed occupants should preferably be 50 + to prevent possible antisocial behaviour issues. Also to prevent future conflict. Does each dwelling have at least 1 allocated parking space?

7. ASSESSMENT

7.1 The Site

7.1.1 The site, approximately 0.30ha in size, is an existing public house/social club with associated external space and car park that is vacant and has been permanently closed since mid 2020. The site is in poor condition and appears subject to vandalism. Reuse of the site is welcomed in principle and will bring regenerative benefits. The site is reasonably flat and is accessed from Lliswerry Road via Fernside. The site fronts onto Lliswerry Road to the south and is adjoined by Laburnham Bush Lane a private drive serving residential properties to the east. To the north are a number of trees and 67 Lliswerry Road and two large outbuildings. The rear of properties located along Thompson Avenue which are separated by a green are located further north again, and to the east is the residential development of Fernside, which is owned by Melin Homes Housing Association.

7.1.2 The site is within a predominantly residential area that has close links to many local amenities such as shops and a school and is located within what is considered to be a sustainable location. It is also closely linked to the Southern Distributor Road (SDR) and Chepstow Road.

7.2 The Proposed Scheme

7.2.1 It is proposed to demolish the existing public house on site in order to provide a 100% affordable residential scheme comprising of 5no. two bedroom dwellings, 3no. three bedroom dwellings and 12no. one bedroom flats contained within 2no. three storey blocks. The site will be managed by the Registered Social Landlord Melin Homes, who also manage the adjacent residential development known as Fernside.

7.2.2 A terrace of 5no. two bedroom dwellings (referred to as Block A) measuring 7.8 metres in height will form the southern boundary of the site, fronting Lliswerry Road. These properties will be set behind a low boundary wall and will have a landscaped frontage approximately 5.5 metres in depth, and will benefit from enclosed private gardens to the rear. Centrally within the site, 23no. car parking spaces are proposed to serve the development over two separate courts and will be separated by a landscaped strip with tree planting. These two courts will be accessed separately through the existing residential road serving Fernside, to the west. To the east of the parking court is a terrace of 3no. three bedroom dwellings (referred to as Block B) measuring 7.8 metres in height. These properties will also benefit from enclosed private rear gardens with small planted area to the front. North of the parking court are 2no. three storey buildings each containing 6no. one bedroom flats. Each building will be set behind a landscaped area with tree planting and will reach an overall height of 11.0 metres, width of 14.5 metres and depth of 10.0 metres. An area of landscaped space with cycle storage is provided to the front of Block D and at the rear of each block there is communal landscaped areas. Secure refuse storage is provided to the west of the Block C.

7.2.3 Further detailed description and assessment of the scheme will be provided later in this report.

7.3 Key Considerations

- Establishing the principle of development;
- The loss of a community facility;
- Flood Risk;
- Layout and Design;
- Residential amenity of Future Occupiers and Neighbouring Properties;
- Access, Parking and Matters of Highway Safety
- Landscaping, Ecology and Trees;
- Refuse;
- Air Quality;
- Planning Obligations.

7.4 Establishing the Principle of Development

7.4.1 The site lies within the urban boundary and utilises the reuse of previously developed land and as such, the principle of development is considered to be acceptable. The site is situated within a sustainable location, predominantly residential in character, with access to nearby local amenities and facilities and subject to addressing all other material considerations would integrate within the surrounding area accordingly.

7.4.2 It is considered that the proposal complies with the aims of Policy SP1 (Sustainability) and SP18 (Urban Regeneration) of the NLDP 2011-2026 (Adopted January 2015).

7.5 The Loss of a Community Facility

7.5.1 Policy CF12 states;

“Proposals that would result in the loss or change of use of buildings currently used for community facilities will only be permitted if:

- i) alternative provision can be made, of at least an equal benefit to the local population; or
- ii) it can be demonstrated that the existing provision is surplus to the needs of the community.”

7.5.2 The submitted information states that the existing public house has been struggling as a viable business for several years and was closed in early 2020, partly due to this and also the Coronavirus pandemic. Advice has been taken from a variety of Estate Agents/Surveyors who are active in the market and all have confirmed that there will be little prospect of finding an operator for a traditional public house in this location given the ongoing issues faced in this sector. This is outlined within Appendix A of the Design and Access Statement which is a letter received from a local RICS Surveyor.

7.5.3 The Design and Access Statement confirms that there are other pubs and restaurants located within the surrounding area that serve the locality, including the Lliswerry and Nash Constitutional Club, Nash Road, the Man of Steel, Pontfaen Road, Harvester and Gourmet 4 (restaurants) Newport Retail Park and the Man of Gwent, Chepstow Road. Given that the existing public house has been closed for over two years (albeit partly due to the pandemic) and the limited likelihood of finding a new operator it is considered that the existing facility is surplus to the needs of the community and whilst the loss of such services are regrettable, there is no demonstrable harm arising in this case as residents of the locality are well served by other facilities. There is alternate provision within the local area and it is considered, on balance, that the requirements of Policy CF12 have been met in this instance.

7.6 Flood Risk

Flood Risk

7.6.1 The application site lies entirely within Zone C1 as defined by the Development Advice Map (DAM) referred to in Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004).

7.6.2 Natural Resources Wales have reviewed the submitted Flood Consequences Assessment and have stated *“The FCA shows that the risks and consequences of flooding are manageable to an acceptable level. Therefore, we would have no objection, on flood risk grounds, to the application as submitted.”*

TAN 15 Assessment

7.6.3 TAN 15 sets out a precautionary framework and identifies that new development should be directed away from areas which are at high risk of flooding (defined as Zone C), and where development has to be considered in the area only those developments which can be

justified on the basis of the tests outlined in the TAN are to be located in such areas. It maintains that there should be minimal risk to life, disruption and damage to property. Development should only be permitted in Zone C1 if it can be demonstrated that:

i) Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or

ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners to sustain an existing settlement or region; and,

iii) It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and

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

7.6.4 Where development is justified the assessment can be used to establish whether suitable mitigation measures can be incorporated within the design to ensure that development is as safe as possible and there is minimal risk, damage and disruption.

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

Test 1 – Justification

7.6.6 Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement.

The site lies within the urban boundary as per the Newport Local Development Plan 2011-2026 (adopted January 2015). The proposal would result in the demolition of an existing building that is currently vacant. The new dwellings would form part of a regeneration scheme at the site that would provide 100% affordable and is welcomed in principle as an urban regeneration scheme.

7.6.7 It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 4.4)

PPW defines previously developed land as:

Previously developed land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage...of the development is included, as are defence buildings, and land used for mineral extraction and waste disposal...where provision for restoration has not been made through development management procedures.

The site currently contains an existing public house, car park and associated outdoor space and meets the definition of previously developed land.

7.6.8 Tests 2 to 12 – Consequences of Flooding

Criterion (iv) of paragraph 6.2 of TAN 15 refers specifically to the potential consequences of a flooding event for the particular type of development have been considered. These are referred to as tests 2 to 12 below.

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

NRW has not objected to the development on the basis of inadequate flood defences.

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

No new flood mitigation measures are proposed that would require maintenance.

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

A Flood Consequence Assessment has been submitted demonstrating that the developer is aware of the risks and consequences of flooding and that future occupiers will be given information regarding what to do in the event of a flood.

7.6.12 Test 5 - Effective flood warnings are provided at the site.

The FCA advises site occupiers to sign up for flood alerts and warnings to ensure enough lead time is given to evacuate the site should it be required. However whilst NRW seek to provide timely and robust warning it cannot guarantee their provision. No objection is offered by NRW on this basis.

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

During a 0.5% (1 in 200 year) plus climate change annual probability tidal flood event, the proposed access flood depths along Llswerry Road are shallow, with a maximum depth of 120mm. For Somerton Road during this event, the access road to the residential area is also shallow, with an average flood depth of 450mm.

During a 0.1% (1 in 1000 year) plus climate change annual probability tidal flood event, for the proposed access, the maximum flood depth along Llswerry Road is 590mm. For Somerton Road during this event, the average flood depth is 1400mm, however dry land can be accessed on the eastern end of Llswerry Road through shallow water at a depth of no more than 250mm.

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

The FCA recommends that emergency plans are put in place and advised that this should give consideration for effective flood warning, evacuation, and access/egress routes in the event of flooding for the lifetime of the development. This should include details of the access road to the site. The plan should be passed on to subsequent site owners should the site be sold.

NRW do not comment on Flood Emergency Plans and Procedures and the LPA do not have the inhouse capacity to assess this.

7.6.15 Test 8 - The development is designed by the developer to allow the occupier of the facility for rapid movement of goods/possessions to areas away from floodwaters.

In the worst flood event predicted flood levels at the site are within the tolerable limits, as considered later in the section of this report. The maximum height of flood waters would be up to 550mm so it is considered that the 8no. proposed dwellings would have first floor space for the storage of goods and possessions that would remain un-impacted in a flood event. Eight out of the twelve proposed flats would also be located first floor or above and would not be impacted by predicted flood levels. There would be 4no. flats proposed at ground floor that would be predicted to flood within the heights tolerated and considered acceptable in the worst case flood event. Goods and possessions could be stored within these flats above predicted levels. Furthermore, the accessibility of the site would allow for vehicles and other possessions to be removed within good time, if required.

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

The FCA recommends that the developer consider property flood resilience measures within the proposed building to further mitigate the potential impacts of flooding. This includes measures such as raised electrical sockets, tiled floors, and water resilient plaster, where appropriate. Installation of these measures will enable the development to recover from a flood event quickly and in a cost-effective manner.

7.6.17 Test 10 - No flooding elsewhere.

There will be no ground raising of the development site, therefore no increase in flood depths or extents as a result of the development. Furthermore, the extreme extent and volume of a tidal flood event would make any potential displacement of floodwater negligible.

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

The FCA confirms that the proposed development is not at risk during a 1% (1 in 100 year) plus 25% for climate change and 0.1% (1 in 1000 year) annual probability fluvial flood events.

The FCA confirms that site levels range between 6.58-7.38m AOD. During a 0.5% (1 in 200 year) plus climate change annual probability tidal flood event, the proposed development is predicted to be flood free.

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

During a 0.1% (1 in 1000 year) annual probability tidal flood event, the proposed development is predicted to flood to maximum depths ranging between 120-550mm. This is within the tolerable limits of A1.15 of TAN15 (<600mm). No data for velocity or rate of rise of floodwater has been provided.

7.6.20 Conclusion

NRW have raised no objection to the proposed development and the FCA has demonstrated compliance with the majority of the aforementioned tests. In relation to A1.15, whilst the site does not flood in excess of the tolerable limits information has not been provided in relation to for velocity or rate of rise of floodwaters. Whilst this does weigh against the proposal, given that this is an extreme event and the flood heights themselves are within the acceptable range it is not considered to be a significant issue.

Subsequently, the proposal provides significant benefits in providing a scheme for 20no. 100% affordable units on a previously developed site within an existing settlement that is currently vacant and in disrepair causing an adverse visual impact on the street scape. It is considered to comply with the aims of TAN15 and Policy SP3 of the NLDP 2011-2026 (adopted January 2015).

7.7 Layout and Design

7.7.1 PPW11 requires proposals to contribute to the concept of Placemaking, which is a holistic approach to the planning and design of development and spaces, focused on positive

outcomes. Placemaking draws upon an area's potential to create high quality development and public spaces that promotes people prosperity, health, happiness and well being. Good placemaking should consider the context, function and relationships between a development site and its wider surroundings.

- 7.7.2 The site is located within a predominantly residential setting and has been vacant since the middle of 2020. It is apparent that during this time there have been anti-social issues at the site with windows being smashed and the building vandalised. It is also apparent from visiting the site that fly tipping has occurred over time, along with broken glass and debris being apparent. It is therefore considered that it will be important that the scheme provides sufficient natural surveillance of communal areas and integrates into the street scape accordingly. The proposal is for 100% affordable housing and the proposed Registered Social Landlord Melin Homes have outlined a brief which sets out the aspirations and technical standard to be achieved through the design and layout of the scheme.
- 7.7.3 The scheme has been designed so that a terrace of 5no. dwellings will fill the void created by the demolition of the public house at the front of the site. The existing public house building is set significantly back into the current site, which is generally a departure from the existing building line along Lliswerry Road. The proposed terrace will be brought forward somewhat, however a 5.5 metre set back will be maintained at the front. This building line will project forward of those properties along Lliswerry Road to the west, but will broadly accord with the alignment of the neighbouring properties to the east. An outward facing terrace in this location along the southern perimeter of the site has been designed to provide active frontage along Lliswerry Road and first floor windows in the gable ends have been added on request to provide natural surveillance and add some detail to the side elevations of the block. This avoids the development from turning its back to the surrounding area and creates interaction between the existing and proposed development, which in turns helps to integrate the site into the existing settlement appropriately. The pedestrian footway along the site at Fernside is currently substandard and the opportunity has been taken to widen it to 2.0 metres to improve pedestrian connectivity and enhancing the active travel credentials of the site.
- 7.7.4 As a result of creating active site frontage this has lead to the creation of two central parking courts within the site. The Design and Access Statement advises that parking was initially set behind the two flat blocks, however on the advise of the Designing Out Crime Officer (DOCO) it was rearranged to be central within the site so that it is publically visible and surveillanced. The parking courts are proposed to be constructed of block paving, although final material has not been specified (but can be controlled via condition) and this will help to differentiate the parking court from the adjacent Fernside access road and parking area which is all tarmac. Additionally, tree planting and soft landscaping is proposed along the western boundary of the parking courts as well as centrally, to soften its visual impact. Where the rear of Block A backs onto these courts a 1.8m brick wall is proposed, wrapping around from the footway at Fernside and enclosing the rear gardens of these properties. As the side and rear boundaries will be publically visible a brick wall is a higher quality boundary treatment than fencing that is required to address placemaking principles. The terrace of 3no. dwellings referred to as Block B is set to the east of the parking court and provides natural surveillance of this communal area due to its active frontage. The front elevation of the terrace is set behind a landscaped frontage to include rain gardens and this provides defensible space between the elevation and the footway.
- 7.7.5 Moving to the northern end of the site, the two buildings containing flats are broadly located in line with the northern terrace of properties at the adjacent Fernside. These flats are accessed via footway from Fernside and the parking court and are set behind soft landscaped areas that will include tree planting and rain gardens. The buildings are set off the northern boundary of the site to provide communal areas for residents which will again benefit from rain gardens and tree planting. At this area of the site, the two building are of a greater scale and reach three stories, which has been a concern of some objections. However, these are set back within the site away from the public highway and this will reduce their visual impact from the public realm. The adjacent terrace at Fernside is slightly more vertically emphasised and reaches two and half stories. Whilst the proposed flatted buildings would be taller, they are considered to integrate appropriately with the adjacent properties given their location, scale and design

- 7.7.6 Turning to the proposed design and appearance of the buildings on site these have been designed with durability and maintenance in mind, but it is also important to ensure that as well as being practical they integrate appropriately with the surrounding character and appearance of the area. Block A is of a scale comparable to those along Lliswerry Road and is of an appearance similar to those existing at Fernside. There is a variety of building types and materials palette within the nearby area, but the predominant materials are red brick and cream/off white render. It is proposed that the terrace of properties at Block A and B will be finished in brick at ground floor and rendered above. Architectural detailing will include brick cills and soldier course windows and the front doors will either have an pitched or lean to canopy above, which combine to create interest in the elevation. Grey roof tiles are proposed and each block is to take advantage of their orientation by installing solar panels to the front roof plane.
- 7.7.7 Blocks C and D are the three storey buildings located to the rear of the site and are considered to represent an efficient use of the land. The principal elevation of each block includes detail such as juliet balconies, brick cills and soldier course headers at ground floor to add interest to the elevation. Small roof gables aligned over the horizontally emphasised fenestration creates interest. The flats have been separated into two separate blocks to reduce their scale and impact within the site and this along with fenestration details help to create a vertical emphasis to the buildings rather than one wider and larger block which would be more visually imposing. The adjacent terrace at Fernside has openings of a more vertical design, which helps the proposed buildings to visually align. One thing that is considered important to help punctuate and sufficiently break up the front façade is the use of deeper reveals to the proposed openings. In order to provide further relief to these facades it is necessary to include a condition that ensures window reveals are a minimum of 110mm in depth. This has been agreed as acceptable by the agent. In terms of materials these two blocks are comparable to the proposed terraces with a mix of facing brick and render proposed. There is a central recess that will be of a clad finish and again, this helps to break up the façade and provide some relief owing to the change in materials.
- 7.7.8 Following negotiation with the agent throughout the course of the application it is now considered that the proposed scale, layout and design of the scheme is acceptable within its surrounding context. It is considered that the scheme will integrate appropriately, whilst contributing to the overall placemaking objectives set out in national planning policy and providing a design that meets the brief and requirements of the future RSL.
- 7.7.9 Overall, it is considered that the amended scheme complies with the aims of Policy GP6 and H6 of the NDLP 2011-2026 (adopted January 2015).

7.8 Residential Amenity

- 7.8.1 As the proposed end user of the scheme is an RSL, the proposal has been designed to comply with Secure by Design, the Welsh Design Quality Requirements (DQRs) and Lifetime Homes. However, in order to ensure the proposal provides sufficient amenity for future occupiers, the scheme needs to be assessed against the Council's own NLDP Policy GP2 and Supplementary Planning Guidance for New Dwellings (January 2020).

The main function of the New Dwelling SPG is to:

- i) To ensure that occupants of new dwellings have reasonable living conditions;
- ii) To ensure that new dwellings do not deprive persons in existing dwellings of reasonable living conditions; and
- iii) To protect the character and appearance of the natural and built environments.

- 7.8.2 Firstly, it is generally considered that the site is well located within an existing residential area that has reasonable access to local amenities, such as shops and services, and outdoor space. All properties are DQR compliant as the scheme is to be 100% social housing.
- 7.8.3 In terms of the 8no. dwelling houses proposed it is considered that their size, layout and provision of openings to provide natural light space and ventilation are acceptable. There was an issue raised with the layout of Plot 5, which is the end property fronting Lliswerry

Road, as the separation distance between rear opening serving the living room and the side gable of Block B was not sufficient. However, with an amendment to the internal layout and provision of an additional full height opening in the gable end this has now been resolved and sufficient outlook and amenity is provided. Turning to outdoor amenity space the SPG states that dwellings should have 1sqm of outdoor space for 1sqm of the units footprint and also advises that rear gardens should extend 10 metres. Plots 1 to 5 that front onto Lliswerry Road benefit from grassed frontage enclosed by low boundary walls as well as private rear gardens and in combination these significantly exceed the desired levels. The rear gardens are marginally short against the 10 metre measurement, however Plots 1 to 4 overlook the parking court so do not cause any issue on overlooking and in fact contributes to natural surveillance of the public area. As mentioned, Plot 5 has been amended and now includes a garden area that wraps around the eastern gable so satisfactory outside space is provided. Plots 6, and 8 exceed garden requirements in terms of area but Plot 7 is marginally short. If you were to include the site frontage then the outdoor space would be compliant, however as this is a rain garden it is not technically useable space. It has been considered whether the terrace could be moved forward to provide additional rear space, however this would then reduce the defensible space to the front façade and result in a closer relationship with the parking court and footpath, which may not be desirable. It would also create a harder appearance to the front of the terrace by reducing soft landscaping. The deficit in rear garden space for one plot is not considered to be to such a degree that would be materially harmful to residential amenity and the garden does meet DQR standards. The gardens of Plot 6-8 are short of the desired 10 metre length, however this is designed to ensure the proposed garden and any neighbouring garden is not overlooked. These properties directly back onto a vehicular lane and the nearest garden is approximately 13 metres away, with intervening landscape features and boundary treatments in place that will screen and protect amenity for the neighbouring property. Therefore, on balance the amenity is considered to be acceptable.

- 7.8.4 Moving to the two blocks of flats, the layout has been designed so that each flat has the primary living area at the front, which is south facing. Each front open plan living and kitchen area is served by a full height opening with first and second floors having juliet balconies. This is considered to be good design in ensuring that primary living areas benefit from solar gain, perceived space, outlook and natural ventilation. It also means that the openings in the rear elevation which are closer to the site boundary only serve the lesser used bedroom and bathroom of each flat. The SPG space requirements for flatted development is shown in the table below. The requirement of each common access flat is for a gross internal floor space of 46sqm, where as each units exceeds this as they are 50sqm.

Beds/bedrooms	Flat type			
	<i>Studio</i>	<i>Converted</i>	<i>New</i>	
			<i>Common Access</i> ²	<i>Walk Up</i> ³
1	32	45	46	50
2	n/a	58	59	65
3	n/a	74	84	90
4	n/a	86	93	99

Figure 1: Desired standards for gross internal floor space (square metres)

- 7.8.5 In terms of external amenity space, the SPG does state that it is desired that a new one bedroom flat should have a 1.5m x 1.5m balcony. However, it is acknowledged that in some cases there may be constraints which prevent this. Discussions with the agent and the RSL have taken place regarding the provision of balconies and concerns have been raised that external balcony spaces may be misused for anti-social reasons or may be left with residential paraphernalia, which could cause a visual issue when viewed from the street scape. It is also noted that by providing raised outdoor amenity space there could be implications on neighbouring properties. These concerns are noted and are reasonable but private outdoor amenity space is generally provided unless there is justification for not

providing it. In this case the flats are in excess of the desired internal size which provides additional benefit to residents despite a lack of private outdoor space. Furthermore, green open accessible space is provided around the flatted blocks for resident use. This is situated both to the sunnier front elevation and the shady rear elevation. The applicant's experience of issues arising from private balconies on properties of this type does carry weight and on balance, it is considered that the proposed units will provide an adequate level of amenity for the future occupiers. The SPG sets out a desire for a new apartment blocks to provide communal amenity space, as set out in the table below;

No of occupants	Square metres per occupant
1-20	15.00
21-40	14.00
41-60	13.00
61-80	12.00
81-100	11.00
100+	10.00

Figure 12: Desired standards for communal amenity space

- 7.8.6 The communal amenity space is set out to the north of both blocks and to the south of Block D. The area of this space that officers consider 'useable' is in the region of 400sqm. If it is assumed that a maximum of two occupants would live in a one bedroom flat, then the maximum number of occupants accommodated within the two blocks is 24. This would provide approximately 17sqm of useable communal outdoor amenity space per person which is a small exceedance over the desired standards as set out in the SPG.
- 7.8.7 The Environmental Health Officer has not raised any issues in terms of impact of noise, however has requested a condition containing details of sound insulation between flats. Sound insulation between residential flats is however a matter that is controlled under Building Regulations. As such, the suggested condition is not necessary or relevant and is not included on the recommended conditional regime.
- 7.8.8 In terms of the impact on the neighbouring residential amenity as a result of the scheme the properties at Block A fronting onto Lliswery Road retain a distance in excess of 21 metres to those located opposite. This 21 metre separation distance is the standard separation requirement for face to face habitable rooms in order to prevent overlooking between properties. Block B will have first floor rear openings that have views in the direction of 73 Lliswerry Road, however there is a separation distance of approximately 13 metres to the side boundary wall of this neighbouring garden, with intervening vegetation, access lane and boundary wall in situ. As discussed previously within this section, there is judged to be no harmful impact on the amenity of this property. The two blocks of flats would be located to the north of the site and broadly align with Fernside. Through negotiation Block C has been moved east to create sufficient space to the side elevation of 1 Fernside. The relationship is now acceptable and there is considered to be no adverse impact on the amenity of this property in terms of light/over shadowing or privacy. To the east of Block D is Laburnam House, an 'L' shape property facing the eastern gable of the building at a distance approximately varying from 15.25 metres to 24.0 metres. The furthest most forward facade of the property aligns with the eaves of the proposed building at a distance of just over 15 metres. It is not clear if this elevation contains a protected window, however the 25 degree test has been undertaken in any case and does not intersect this part of the building due to the eaves being approximately 8.0 metres in height. Similarly, the main front elevation of this property that is aligned with the gable end does not fail the 25 degree splay due to its separation distance of approximately 24 metres. Given the distance between the proposed building and its lack of openings in the side elevation, the amenity of the neighbouring property is not considered to be adversely impacted. Finally, to the north east of the site is 67 Lliswerry Road. This is a semi-detached property accessed by a private access lane off Lliswerry Road and with parking forecourt to its front elevation. This dwelling does not align

with Block D, the nearest proposed building, which is located slightly to the south west at a distance of approximately 25 metres. It would be visible as you look out from the front elevation of no.67 at an oblique angle, however it would be set to the south west. In any case, the 25 degree splay has been undertaken but owing to the separation distance this is not intersected. There would be no directly facing windows due to the orientation of both no.67 and Block D. The scale and location of Block D is not considered to result in any overbearing impact or loss of light or privacy to this dwelling. Block C is located to the west of Block D and is angled so it faces north west, away from the dwelling at no.67. Given its location and separation distance there are considered to be no impacts on the dwelling at no.67. To the west of the dwelling at no.67 there is a large parcel of land that extends approximately 50 metres from the side elevation. The exact extent of residential curtilage associated with the property is unclear, but it is set behind a number of trees and vegetation and a large outbuilding that spans along the northern boundary of the application site – Outside of the control of the applicant. It is proposed to secure the rear boundary of the site with a 1.8 metre close boarded fence, which along with all other boundary treatments will be secured by condition. Some of the trees and vegetation along the boundary would require removal and replanting is proposed through the soft landscaping of the site (which will be discussed later in this report). The rear elevation of the Blocks C and D contain window openings serving bathrooms, bedrooms and the communal staircase. The main living accommodation of each flat is located to the front and served by larger windows. Views from the ground and first floor flats will be screened by the boundary treatment, vegetation and the large outbuilding located on the site boundary. It is considered that due to the separation distance, landscape features and large outbuilding to the northern boundary views from the third storey of Block D towards the rear garden of no.67 would not be significant enough to result in a demonstrably adverse impact on the amenity of this property through loss of privacy. The bathroom windows will be obscure glazed and control by condition and whilst there would possibly be some views available from bedroom openings at the second floor, these would be partially screened by the existing buildings and trees beyond the boundary. Owing to the orientation of the buildings that have been designed on an angle, any views that are available would be away from the main amenity area and towards the bottom end. Whilst it is acknowledged that the existing relationship between the site and the land beyond the northern boundary would change as a result of the proposed development, it is not considered that there would be a demonstrably adverse impact on residential amenity that would warrant refusal of planning permission. On balance, the relationship is therefore acceptable.

- 7.8.9 A number of local resident responses refer to the concerns regarding anti-social behaviour and fear of crime, many citing the existing issues within the locality at present. Many of the responses, including those from Local Councillors, refer to the nature of the scheme as affordable housing contributing to this existing problem with the potential to worsen it. It has been requested that the residential units accommodate Over 50s or 55s to combat this issue.
- 7.8.10 In line with Local Development Plan policy, only 20% affordable housing can be ensured via the legal agreement with a safeguard being built in that should any housing come onto the open market for either sale or rental then financial contributions would be required.
- 7.8.11 In relation to the issue of ASB and fear of crime, it is evident that there is an existing issue of vandalism, criminal damage and fly tipping currently taking place at the site due to its vacant and derelict condition. It is considered that the proposed sustainable reuse of the site will help to combat these current issues at the site. Turning to future issues once the site is up and running, whilst fear of crime and ASB is a material planning consideration, this will be housing managed by a registered social landlord. Occupancy will be based on the needs of those on the housing waiting list and their age or status may well be relevant to any separate review of the management company and housing regulatory body prior to allocation. However, the Planning Authority are not best placed to decide on this and such issues can rarely be legitimate planning concerns. The Planning Authority must concern itself with land use planning considerations only and unless it can demonstrate that the occupant characteristics materially impact such considerations, it should not seek to control it. Gwent Police have been consulted on this application and have not confirmed an objection to the proposal. In order for planning permission to be refused on crime and disorder grounds and for a decision to be robust, it would need to be demonstrated that the proposal would result in a material adverse impact and there is no evidence presented or found to confirm this.

7.8.12 Overall, it is considered that the proposal would not result in any adverse impact on the residential amenity of existing neighbours, future occupiers or contribute to a material adverse impact on matters of Anti-Social Behaviour or crime. It is therefore in compliance with the aims of Policy GP2, GP7 and H8 of the NLDP 2011-2026 (adopted January 2015).

7.9 Access, Parking and Matters of Highway Safety

7.9.1 The site fronts onto Liswerry Road and will be accessed by pedestrians and vehicles via Fernside, an existing residential access. This access has been tracked for refuse vehicles and has been confirmed as acceptable by the Highways Officer. The increased use of the access by vehicles at Fernside has been raised as a concern in a neighbour objection, however the Highways Officer has not objected to this. It is also proposed to widen the footway at the access point which is a merit of the scheme and would need to be controlled via planning conditions. Separate technical consent from City Services would also be needed for this.

7.9.2 The proposal is for the demolition of the existing public house and to provide 20no. 100% affordable housing units. The final proposed site layout provides 23no. vehicle parking spaces.

7.9.3 The site is located within Parking Zone 3 which requires that 1 space per bedroom plus 1 visitor space is provided per 5no. units to comply with Newport City Council SPG Parking Standards (August 2015). The development would therefore require 31no. residential parking spaces and 4 visitor spaces, a total of 35no. spaces, however 23no. spaces have been provided on the proposed site plan. Councillor Morris has requested that there is at least one parking space per dwelling and officers confirm that there is one off road parking space per dwelling, i.e. 23 spaces to serve 20 units

7.9.4 The application has included a Sustainability Assessment in accordance with that set out in Appendix 5 of the Parking Standards SPG, which will allow for a reduction of 1no. parking space per two-bedroom unit and this will mitigate the shortfall in residential parking as confirmed by the Council's Highways Officer. However, the 4no. visitor spaces generated would need to be accommodated off site and on street within the vicinity of the site. The applicant therefore commissioned a Transport Consultants to undertake a Parking Assessment in accordance with best practise that has been submitted for consideration. It has been demonstrated that there is capability to accommodate the 4no. visitor spaces on street within the surveyed area. This has been confirmed as acceptable by the Council's Highways Officer.

7.9.5 Cycle parking should be provided in accordance with Newport City Council SPG Sustainable Travel (July 2020) which requires 1no. secure and covered long term cycle parking space per 2no. bedrooms is provided, a total of 12no. spaces. The Proposed Site Plan shows the cycle store which accommodates 16no. cycles, which includes 12no. long stay and 4no. short stay cycle spaces, which will be acceptable. Each house has been provided with a shed for cycle parking and the 12no. flats provided secured/covered storage for 8no. cycles, which is acceptable.

7.9.6 Overall, it is considered that the proposal complies with the aims of Policy GP2 and T4 of the NLDP 2011-2026 (adopted January 2015) and the adopted Parking Standards and Sustainable Travel SPG. Parking is not a legitimate reason in this case to control the demographic of future occupants.

7.10 Landscape, Trees and Ecology

7.10.1 The Ecology Officer has raised some concerns regarding the survey information submitted in relation to bats. The survey information submitted has concluded that the existing building is a day roost for bats. However, Ecology has acknowledged that NRW have not objected, and they appear likely to grant a European Protected Species license. It is therefore considered that the impact of the EPS will be limited and controlled by NRW

through the license process. The Ecology Officer recommends that all mitigation and enhancement measures as set out in the survey is controlled via planning condition.

7.10.2 There are a number of trees and vegetation that will need to be removed to facilitate the development due to their poor condition, as identified in the supporting technical information. As part of the soft landscaping of the site tree replacement is proposed along boundaries and also within the site as part of the placemaking and softening the visual appearance of the site and also for sustainable drainage purposes. The applicant had hoped to agree landscape details up front, however Landscape Officer has raised comments in relation to the final revision of the scheme. These are not fundamental issues but detail, and predominantly relate to the choice of species in the SuDS planting, the layout of the rear communal amenity space and also requirement for further planting along the northern boundary given that vegetation is being removed. There is no reason to believe that these matters could not be addressed through the submission of a revised landscape plan controlled through a discharge of condition. The Council's Tree Officer initially raised question regarding detail of the submission and further technical information has been submitted to address this matter. Further comment has been given by the Tree Officer that seeding in the root protection area of the trees will not be acceptable and plans have now been revised. As details of a final soft landscaping scheme will be controlled by condition, the Tree Officer can be reconsulted as part of the condition. It is also recommended to attach the standard tree conditions to any such permission to ensure retained trees are protected during the construction process.

7.10.3 Derogations potentially required in the case of European Protected Species (in this case bats)

i. Regulation 52(3) the development works to be authorised are for the purpose of preserving public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

This site is an existing public house/social club within the urban area in accordance with the adopted Local Development Plan. The site is currently vacant and has been for approximately 2.5 years. In this time, the site has been subject to vandalism and criminal damage along with other forms of Anti-Social Behaviour, which is causing an adverse impact on the local area. This was self evident when undertaking a site visit.

The scheme would provide much needed 100% affordable housing provision and would form a sustainable re-use of this site. As such, there is considered to be significant social and economic benefits of the proposed scheme.

ii. There is no satisfactory alternative;

The submitted information states that the existing public house has been struggling as a viable business for several years and was closed in early 2020, partly due to this and also the Coronavirus pandemic. Advice has been taken from a variety of Estate Agents/Surveyors who are active in the market and all have confirmed that there will be little prospect of finding an operator for a traditional public house in this location given the ongoing issues faced in this sector. This is outlined within Appendix A of the Design and Access Statement which is a letter received from a local RICS Surveyor.

Given that the existing public house has been closed for over two years (albeit partly due to the pandemic) and the limited likelihood of finding a new operator it is considered that the existing facility is surplus to the needs of the community.

iii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

NRW has raised no objection in relation to European Protected Species nor has the Council's Ecologist subject to specified conditions being included. It is considered that this proposal together with the specified mitigation and enhancement measures would not be detrimental to the favourable conservation status of the European Protected Species on this site.

Doing nothing in this case would be a missed opportunity to re-use previously developed land and the benefits of doing so in this case, with mitigation, are considered to outweigh any harm

On consultation with NRW they have confirmed an EPS license is required for the demolition of the existing building, and have stated the following;

"On the basis of the above report, we do not consider that the development is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range."

Officers are therefore reasonably assured on this point that the proposal will not be detrimental to the maintenance of the bat population.

- 7.10.4 Overall, officers are satisfied with the information provided and subject to the conditions recommended consider the development accords with policies SP9 and GP5 of the NLEP 2011-2026 (adopted January 2015).

7.11 Refuse

- 7.11.1 A designated refuse store has been provided to the side of Block C and this would serve both blocks. This refuse store is located within the required collection distance for refuse operatives to access from the turning head. The Waste Manager has stated the number and type of receptacles required for the numbers of flats and the plan provided accords with these requirements. The store is enclosed by a 2.4 metre high brick screen that matches the adjacent apartment block and is accessed via timber gates. This does not appear to be a covered structure and would allow natural ventilation. Refuse storage for the dwellings at Plot 6 to 8 is shown on the proposed site plan and details need to be confirmed RE store/screening so that acceptable visual amenity is maintained. No refuse storage areas are shown at Plots 1 to 5, however these have rear gardens that back onto the parking court and within a suitable collection distance for refuse workers. Again, the required condition can control that sufficient storage space is provided for residents. The proposal complies with the aims of Policy W3 of the NLDP 2011-2026 (adopted January 2015) and the adopted SPG.

7.12 Air Quality

- 7.12.1 The proposals constitute major development, and any submission should be accompanied by an appropriate Air Quality Assessment (AQA) in accordance with the Council's Air Quality SPG. The application has not been submitted with an AQA and this has been addressed within the submitted DAS,
- 7.12.2 The purpose of the AQA is to show there will be no worsening of air quality within existing Air Quality Management Areas or anywhere else. The site is not within an AQMA or an AQMA Buffer Zone and it has been accepted within this assessment that the fallback position in terms of vehicle movements is likely comparable to the proposed use and there would not be a significant increase in vehicular movements at the site. The proposal has provided cycle storage in accordance with the Sustainable Travel SPG, which is a betterment than the existing situation on site. The Council's Air Quality Officer has requested a condition securing infrastructure for Ultra Lower Emission Vehicles. The site plan shows this and therefore it can be controlled by a directive condition. Details of construction routes have also been requested and a condition can be applied. Finally, a condition regarding a scheme of Green Infrastructure that identifies plantings which use species that are known to be beneficial to air quality has been requested. Soft landscaping

at the site is to be secured via condition and this scheme will enhance not only visual amenity but biodiversity at the site as well as contributing towards the SuDS strategy and this is a merit of the scheme. The site is not in an area of known poor air quality and given the existing use of the site is not anticipated to significantly contribute to issues of air quality. As such, it is not considered necessary or reasonable to request further planting details that specifically addresses air quality via condition, and this would be considered onerous and not circular compliant.

7.13 **Section 106 Planning Obligation matters**

Summary

- 7.13.1 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.
- 7.13.2 In this case the application is for 100% affordable housing. Contributions towards affordable housing, education and leisure would not be required where the scheme is delivering affordable housing.
- 7.13.3 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.

A Socio-economic Duty is also set out in the Equality Act 2010 which includes a requirement, when making strategic decisions, to pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage.

8.4 The above duties have 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. There would also be no negative effects which would impact on inequalities of outcome which arise as a result of socio-economic disadvantage.

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 have regeneration benefits and is to make a positive contribution to the affordable housing mix within the area in accordance with local and national policies. The proposed development will maintain highway safety, provide satisfactory levels of amenity for both neighbouring and future occupiers and will integrate accordingly with the surrounding streetscape.

9.2 As such, the proposal is considered to be acceptable and compliant with the relevant Newport Local Development Plan 2011-2026 (adopted January 2015).

9.3 It is recommended that the application is granted with conditions subject to the signing of the Section 106 legal agreement.

10. RECOMMENDATION

Plans and Documents

01 The development shall be implemented in accordance with the following plans and documents: Drawing No. 1543 PL1-04 Site Plan Rev G; Drawing No 1543 PL1-05 C Block A Plans; Drawing No. 1543PL1-06A - Block B Plans; Drawing No. 1543 PL1-07B Block C-D Plans; Drawing No 1543 PL1-05 C Block A Plans; Drawing No. 1543PL1-10A 5P3B - House Types; Drawing No. 1543PL1-14A - Apartment Elevations; 9719 - Acoustic Report - Rev A; Bat Survey by Ecological Services Ltd V2 (Dated September 2021); Flood Consequences Assessment V1 (May 2022); Tree Constraints Plan;
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

Construction Environment Management Plan (CEMP)

02 Prior to the commencement of any development on site (to include demolition and site preparation) a Demolition/Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP should include:

- the steps and procedures that will be implemented to minimise the creation and impact of noise vibration, dust and waste disposal resulting from the site development;
- Contractor compound including office, welfare facilities and materials storage;
- Parking area for staff and visitors
- Wheel wash facilities and road sweep;
- HGV routes to and from the site to avoid non M4 Air Quality Management Areas (AQMA's);

- Methods and locations of the loading and unloading of vehicles;
- HGV trips avoiding peak hours and school hours
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details;

The approved CEMP shall be implemented and adhered to at all times during demolition, site preparation and construction phases of development.

Reason: In the interests of protecting matters of residential amenity, highway safety and environmental matters in accordance with Policies GP2, GP4 and GP5 of the NLDP 2011-2026 (adopted January 2015).

Scheme of Hard and Soft Landscaping

03 Notwithstanding the information submitted, prior to commencement of development, other than demolition, written approval of the Local Planning Authority is required to a scheme of hard and soft landscaping and tree planting (including details of what will be retained) for the site (indicating the number, species, heights on planting and positions of all trees and shrubs as well as details of phased implementation of infrastructure planting). 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.

Reason: To safeguard the rights of control of the Local Planning Authority in these respects and to ensure that the site is landscaped in a satisfactory manner in accordance with Policy GP2 and GP5 of the NLDP 2011-2026 (adopted January 2015).

Tree Protection Plan

04 No development, to include demolition, shall commence until a Tree Protection Plan (in accordance with BS 5837:2012) has been submitted to and approved in writing by the Local Planning Authority. The Tree Protection Plan shall contain full details of the following:-

- (a) Trees and hedges to be retained/felled clearly identified and marked on a plan;
- (b) Trees and hedges requiring surgery;
- (c) The root protection areas to be identified on plan for retained trees and hedges;
- (d) The type and detail of the barrier fencing to be used to safeguard the root protection areas;
- (e) The precise location of the barrier fencing, to be shown on plan.

The development shall be carried out in accordance with the approved Tree Protection Plan.

.Reason: To protect important landscape features within the site, in accordance with policy GP5 of the Newport Local Development Plan.

Root Protection Barrier

05 No operations of any description (this includes all forms of development, tree felling, tree pruning, temporary construction access, soil moving and operations involving the use of motorised vehicles or construction machinery), shall commence on site in connection with the development until the Root Protection Barrier fencing has been installed in accordance with the approved Tree Protection Plan. No excavation for services, storage of materials or machinery, parking of vehicles, deposits or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within the Root Protection Area. The fencing shall be retained for the full duration of the development, and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

Reason: To protect important landscape features within the site, in accordance with policy GP5 of the Newport Local Development Plan.

Arboricultural Consultant Watching Brief

06 No operations of any description shall commence until an Arboriculturist has been appointed, as first agreed in writing by the Local Planning Authority, to oversee the project (to perform a Watching Brief) for the duration of the development and who shall be responsible for –

- (a) Supervision and monitoring of the approved Tree Protection Plan Method Statement (Treescene February 2022)
- (b) Once the barrier fencing is erected, the Arboricultural Consultant must inspect and "sign off" in writing and submit a copy of this to the Local Planning Authority stating that the protective fencing is in the correct location and is fit for purpose.
- (c) Supervision of the alteration or temporary removal of any Barrier Fencing.
- (d) Oversee working within any Root Protection Area e.g. no dig method of construction.
- (e) Reporting to the Local Planning Authority and providing a revised Arboricultural Method Statement if operations on site dictate.

The Arboricultural Consultant will meet on site with the Council's Tree Officer, site manager/supervisor/main contractor prior to the commencement of any development (including demolition) and will provide site progress reports to the Council's Tree Officer at intervals to be agreed by the Council's Tree Officer.

Reason: To protect important landscape features within the site, in accordance with policy GP5 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

Pre – construction conditions

External Materials

07 Prior to the commencement of the dwelling houses and apartment blocks hereby approved, full details of external finishes of the walls, roof, fenestration and any other external finish shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the details approved.

Reason: In the interests of visual amenity and good design in accordance with Policy GP2 and GP6 of the NLDP 2011-2026 (adopted January 2015).

Pre –occupation conditions

Footway Widening

08 Prior to the first occupation of any unit hereby approved, the proposed highways improvement works to widen the footway as shown on approved document "Drawing No. 1543 PL1-04 Site Plan Rev G" shall be completed in full and made available for public use.

Reason: To improve pedestrian access to the site and encourage active travel in accordance with Policy SP1 and GP4 of the NLDP 2011-2026 (adopted January 2015).

Biodiversity Mitigation and Enhancement Scheme

09 The biodiversity mitigation and enhancement shall be undertaken in accordance with Section 10 of approved document "Bat Survey by Ecological Services Ltd V2 (Dated September 2021)" and as shown on approved document "Drawing No. 1543 PL1-04 Site Plan Rev G". The approved bird/bat and nest boxes shall be installed prior to the first occupation of any residential unit hereby approved.

Reason: In the interest of protected species, in accordance with Policy GP5 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

Parking Provision

10 The car parking space(s) as shown on "Drawing No. 1543 PL1-04 Site Plan Rev G" shall be provided in accordance with the approved details prior to the first beneficial use of the dwellings to which it relates and shall be kept available for such use at all times thereafter. Reason: To providing adequate parking provision in the interests of highway safety, in accordance with Policy GP4 and T4 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

Electric Vehicle Charging Infrastructure

11 The infrastructure for the provision of electric vehicle charging points as shown on "Drawing No. 1543 PL1-04 Site Plan Rev G" shall be provided in accordance with the approved details prior to the first beneficial use of the dwellings to which it relates and shall be retained and available thereafter.

Reason: To future proof the development for electric vehicle charging points in accordance with Policy SP1 of the NLDP 2011-2026 (adopted January 2015).

New Boundary Treatment

12 Details (location, height and materials) of all new boundary treatments proposed as shown on approved document "Drawing No. 1543 PL1-04 Site Plan Rev G" shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The approved boundary treatments shall then be installed in full accordance with the approved details prior to the first beneficial occupation of the approved residential units and retained in that state thereafter.

Reason: To protect neighbouring amenity in accordance with Policy GP2 of the NLDP 2011-2026 (adopted January 2015).

Refuse and Cycle Store Details

13 Details of the design and appearance of the refuse and cycle storage provision as shown on approved document "Drawing No. 1543 PL1-04 Site Plan Rev G" shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and cycle storage provision shall then be made available for use prior to the first beneficial use of the residential unit to which it relates and shall be retained and available thereafter.

Reason: In the interests of visual amenity and good design in accordance with Policy GP2 and GP6 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

Scheme of Foul Drainage

14 No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul water. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment in accordance with Policy GP3 and GP5 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

General conditions

Window Reveals

15 The reveals of the windows of the buildings hereby approved shall be constructed to have a minimum depth of 110mm.

Reason: In the interests of good design and to provide further relief to the building facades hereby approved in accordance with Policy GP6 of the NLDP 2011-2026 (adopted January 2015).

Surface Water

16 No surface water from any increase in the roof area of the building /or impermeable surfaces within its curtilage shall be allowed to drain directly or indirectly to the public

sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment in accordance with Policy GP2 and GP5 of the NLDP 2011-2026 (adopted January 2015).

Tree Retention

17 Except where otherwise agreed in writing by the Local Planning Authority, no existing trees shall be felled, topped or lopped, and no existing hedges shall be removed.

Reason: To protect existing landscape features on the site in accordance with Policy GP5 of the NLDP 2011-2026 (adopted January 2015).

Plot 6 – Window Openings

18 No openings shall be installed in the side elevation of Plot 6 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect neighbouring residential amenity in accordance with Policy GP2 of the NLDP 2011-2026 (adopted January 2015).

PD Rights – Extensions and Outbuildings

19 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking or re-enacting that Order), Schedule 2, Part 1, Classes A and E, no buildings or enlargements/extensions shall be erected at plots 1-8 as shown on the approved site layout drawing hereby approved without the prior written permission of the Local Planning Authority.

Reason: Extensions to these units as significant potential to adversely impact upon valuable retained tree features and in the interest of visual amenity in accordance with Policy GP2 of the NLDP 2011-2026 (adopted January 2015).

PD Rights – Boundary Treatments

20 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking or reenacting that Order), Schedule 2, Part 2, Class A, no wall, fence, gate, hedge or other means of enclosure shall be erected or planted forward of the front wall of the dwelling(s) hereby permitted without the prior written permission of the Local Planning Authority.

Reason: In the interests of the visual amenities of the area in accordance with Policy GP2 of the NLDP 2011-2026 (adopted January 2015).

Noise Levels

21 The development shall be completed in accordance with the approved Noise Impact Assessment by Acoustic Consultants Ltd and the design and structure of the development shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35dB $L_{Aeq\ 16hrs}$ daytime and of more than 30dB $L_{Aeq\ 8hrs}$ in bedrooms at night.

Reason: To ensure an acceptable level of amenity for future occupiers in accordance with policy GP6 of the Adopted LDP.

Contaminated Land

22 Any unforeseen ground contamination encountered during development, to include demolition, shall be notified to the Local Planning Authority as soon as is practicable. Unless otherwise agreed in writing by the Local Planning Authority as unnecessary, an appropriate ground investigation and/or remediation strategy shall be submitted to and approved in writing by the Local Planning Authority, and the approved strategy shall be implemented in full prior to further works on site. Following remediation and prior to the occupation of any building, a Completion/Verification Report, confirming the remediation has been carried out in accordance with the approved details, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any potential risks to human health or the wider environment which may arise as a result of potential land contamination are satisfactorily addressed.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Site Location Plan; Pre Application Consultation Report; Design and Access Statement; Topographical Survey; Tree Survey; Tree Constraints Plan; Drawing No. 1543PL1-13 Existing Elevations; Site Context Analysis Plan; Site Constraints Plan; Parking Report/Survey

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1; SP3; SP10, SP12, SP13, SP18 GP2, GP3, GP4, GP5, GP6, GP7, H2, H3, H4, H6, CF12, T4, W3 were relevant to the determination of this application.

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

04 The 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.

05 Warning: An European Protected Species (EPS) Licence is required for this development.

This planning permission does not provide consent to undertake works that require an EPS licence. It is an offence to deliberately capture, kill or disturb EPS or to damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine.

To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or on the NRW website

Development should not be commenced until you have been granted a licence by Natural Resources Wales pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations (2017) authorising the specified activity/development to go ahead. Please note that any changes between planning consent and the licence application may affect the outcome of a licence application.

END

