

# Agenda



## Planning Committee

Date: Wednesday, 7 June 2023

Time: 10.00 am

Venue: Council Chambers - Civic Centre

To: Councillors M Spencer (Chair), M Linton (Deputy Chair), S. Cocks, J Jones, M Howells, R Mogford, T Harvey, B Perkins, J Reynolds, A. Screen and J Jordan

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

### **Part 1**

Item	Wards Affected
1. <u>Apologies for Absence</u>	
2. <u>Declarations of Interest</u>	
3. <u>Minutes of the meeting held on 5 April 2023</u> (Pages 3 - 6)	
4. <u>Development Management: Planning Application Schedule</u> (Pages 7 - 52)	
5. <u>Appeal Decisions</u> (Pages 53 - 76)	

Contact: Pamela Tasker, Governance Officer, [democratic.services@newport.gov.uk](mailto:democratic.services@newport.gov.uk) :

Tel: 01633 656656

E-mail: [democratic.services@newport.gov.uk](mailto:democratic.services@newport.gov.uk)

Date of Issue: Wednesday, 31 May 2023

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# Draft Minutes

## Planning Committee

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Date: 5 April 2023

Time: 10.00 am

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

In Attendance: Tracey Brooks (Head of Regeneration and Economic Development), Sian Davies (Assistant Solicitor), Gail Parkhouse (Principal Planning Officer), Alun Lowe (Planning Contributions Manager), Kevin Jackson (Traffic Transport and Development Engineer).

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

Apologies: Councillor Mark Howells

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### 1. Declarations of Interest

Councillor John Jones expressed a prejudicial interest in application 22/1224 and left the meeting.

### 2. Minutes of the meeting held on 1 March 2023

The minutes of the meeting held on 1 March 2023 were submitted.

#### **Resolved**

That the minutes of the meeting held on 1 March 2023 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 Planning and Development Manager be authorised to draft any amendments to/additional conditions or reasons for refusal in respect of the Planning Applications Schedule, attached.

The meeting terminated at 11:23am

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Draft Appendix A  
PLANNING COMMITTEE – 05 04 2023  
DECISION SCHEDULE

No	Site/Proposal	Ward	Additional Comments	Decision
<b>22/0576</b>	<p><b>Site: 9 Gold Tops</b></p> <p><b>Proposal: Construction of 10 no. residential apartments and associated works</b></p> <p><b>Recommendation:</b> Granted with Conditions</p>	<b>Allt Yr Yn</b>	Presented to Committee as a major planning application.	Granted with Conditions An electric vehicle charging condition was requested by the committee.
<b>22/1224</b> Page 5	<p><b>Site: Brynhedydd, Pentre-Poeth Road</b></p> <p><b>Proposal: Conversion and extension of existing barns to provide new ancillary accommodation and garages (re-submission following part refusal of 21/0934)</b></p> <p><b>Recommendation:</b> Refused</p>	<b>Graig</b>	<p>Presented to Committee at the request of Councillor Jones.</p> <p>Mr. Lloyd Gooding (Applicant) spoke in support of the application.</p> <p>Councillor John Jones declared a prejudicial interest in application 22/1224 and left the meeting.</p>	<p>The Planning Committee voted against the Officers recommendations and granted the application.</p> <p>The Planning Committee granted the Head of Service Delegated Powers to add conditions to the application.</p>

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# Report

## Planning Committee – Hybrid Meeting

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### Part 1

Date: 7<sup>th</sup> June 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.

<b>Risk</b>	<b>Impact of risk if it occurs* (H/M/L)</b>	<b>Probability of risk occurring (H/M/L)</b>	<b>What is the Council doing or what has it done to avoid the risk or reduce its effect?</b>	<b>Who is responsible for dealing with the risk?</b>
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 Strategic Planning, Regulation 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 31<sup>st</sup> 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.
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- 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 2017  
 Welsh National Marine Plan November 2019  
 Future Wales - The National Plan 2040 (February 2021)

### *PPW Technical Advice Notes (TAN):*

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 and are available to view on the Council’s website using the application reference number.

1.

## **APPLICATION DETAILS**

**No:** 22/0221 **Ward:** Beechwood

**Type:** Full Application

**Expiry Date:** 15<sup>th</sup> June 2023

**Applicant:** D Pisani

**Site:** Monnow Junior And Infant School Darent Close Bettws Newport South Wales

**Proposal:** PROPOSED INSTALLATION OF 1NO. FREESTANDING CANOPY AND 1NO. WALL MOUNTED CANOPY

**Recommendation:** GRANTED WITH CONDITIONS

### **1. INTRODUCTION**

- 1.1 This application seeks consent for the proposed installation of 1no. freestanding canopy and 1no. wall mounted canopy at Monnow Junior and Infant School, Darent Close, Bettws. The site is located in the Beechwood ward and this application is being reported to Committee as the site is Council owned land.

### **2. RELEVANT SITE HISTORY**

REFERENCE	DESCRIPTION	DECISION
08/0751	INSTALLATION OF NEW SECURITY FENCING AND GATES	GRANTED WITH CONDITIONS
09/0174	CONSTRUCTION OF RAISED PLAY AREAS WITH CANOPIES AND INSTALLATION OF NEW FIRE EXIT DOOR	GRANTED WITH CONDITIONS
13/0616	DEMOLITION OF PREFABRICATED BUILDING. REPLACEMENT WITH MODULAR BUILDING WITH ATTACHED CANOPY FOR USE AS A PRE-SCHOOL EDUCATION SERVICE (FLYING START) AND PROVISION OF 6NO. PARKING SPACES, TURNING AREA AND NEW PATHS	GRANTED WITH CONDITIONS
21/0825	INSTALLATION OF 2.4M HIGH SECURITY FENCING AND GATES TO SEPARATE THE CAR PARK FROM PUPIL PLAYGROUND	GRANTED WITH CONDITION

### **3. POLICY CONTEXT**

- 3.1 Policies GP2 (General Amenity), GP4 (Highways and Accessibility), GP5 (Natural Environment) and SP3 (Flood Risk) are relevant to the determination of this application.
- 3.2 Policy GP2 (General Amenity) states: development will be permitted where, as applicable:
- i) There will not be a significant adverse effect on local amenity, including in terms of noise, disturbance, privacy, overbearing, light, odours and air quality;
  - ii) The proposed use and form of development will not be detrimental to the visual amenities of nearby occupiers or the character or appearance of the surrounding area;
  - iii) The proposal seeks to design out the opportunity for crime and anti-social behaviour;
  - iv) The proposal promotes inclusive design both for the built development and access within and around the development;
  - v) Adequate amenity for future occupiers.

- 3.3 Policy GP5 (Natural Environment) states: development will be permitted where, as applicable:
- i) The proposals are designed and managed to protect and encourage biodiversity and ecological connectivity, including through the incorporation of new features on or off site to further the UK, Welsh and/or Newport biodiversity action plans;
  - ii) The proposals demonstrate how they avoid or mitigate and compensate negative impacts to biodiversity, ensuring that there are no significant adverse affects on areas of nature conservation interest including international, European, national, Welsh Section 42 and location protected habitats and species, and protecting features of importance for ecology;
  - iii) The proposal will not result in an unacceptable impact on water quality;
  - iv) The proposal should not result in the loss of reduction in quality of high quality agricultural land (Grade 1,2 and 3A);
  - v) There would be no unacceptable impact on landscape quality;
  - vi) The proposal includes an appropriate landscape scheme, which enhances the site and the wider context including green infrastructure and biodiversity networks;
  - vii) The proposal includes appropriate tree planting or retention where appropriate and does not result in the unacceptable loss of or harm to trees, woodland or hedgerows that have wildlife or amenity value.
- 3.4 Policy GP6 (Quality of Design) states: good quality design will be sought in all forms of development. The aim is to create a safe, accessible, attractive and convenient environment. In considering development proposals the following fundamental design principles should be addressed:
- i) Context of the site: all development should be sensitive to the unique qualities of the site and respond positively to the character of the area;
  - ii) Access, permeability and layout: all development should maintain a high level of pedestrian access, connectivity and laid out so as to minimise noise pollution;
  - iii) Preservation and enhancement: where possible development should reflect the character of the locality but avoid the inappropriate replication of neighbouring architectural styles. The designer is encouraged to display creativity and innovation in design;
  - iv) Scale and form of development: new development should appropriately reflect the scale of adjacent townscape. Care should be taken to avoid over-scaled development;
  - v) Materials and detailing: high quality, durable and preferably renewable materials should be used to complement the site context. Detailing should be incorporated as an integral part of the design at an early stage;
  - vi) Sustainability: new development should be inherently robust, energy and water efficient, flood resilient and adaptable, thereby facilitating the flexible re-use of the building. Where existing buildings are present, imaginative and sensitive solutions should be sought to achieve the re-use of the buildings.
- 3.5 Policy SP3 (Flood Risk) states: Newport's coastal and riverside location necessitates that development be directed away from areas where flood risk is identified as a constraint and ensure that the risk of flooding is not increased elsewhere. Development will only be permitted in flood risk areas in accordance with national guidance. Where appropriate a details technical assessment will be required to ensure that the development is designed to cope with the threat and consequences of flooding over its lifetime. Sustainable solutions to manage flood risk should be prioritised.

#### **4. CONSULTATIONS**

- 4.1 NATURAL RESOURCES WALES: We have no objection to the proposed development as submitted and provide the following advice. Flood Risk Our Flood Risk Map confirms the application site lies partially within Zone C2 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 2 (Rivers). We have reviewed the Flood Consequences Assessment, prepared by Aegaea, document reference AEG0167\_NP20\_Newport, dated September 2021, submitted in support of the above application. Given the scale and nature of the proposed development, we consider the proposals could be acceptable, subject to the developer being made aware of the potential



flood risks and advised to install flood-proofing measures as part of the development. In areas at risk of flooding, we recommend that consideration be given to the incorporation of flood resistance/resilience measures into the design and construction of the development.

## **5. INTERNAL COUNCIL ADVICE**

5.1 EDUCATION MANAGER: No response.

5.2 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREES): No objections.

5.3 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY): One of the proposed canopies is attached to the wall rather than free-standing. However, as the roof would not be impacted, I think the risk of significant impact upon roosting bats or nesting birds would be minimal. Therefore to take account of any residual risk of impact upon bats, attach a Bat Advisory to any consent granted.

## **6. REPRESENTATIONS**

6.1 NEIGHBOURS: Neighbours with a common boundary and opposite (8no. properties) were consulted and no responses were received.

## **7. ASSESSMENT**

7.1 This application seeks consent for the proposed installation of 1no. freestanding canopy and 1no. wall mounted canopy at Monnow Junior and Infant School, Darent Close, Bettws. The site is located in the Beechwood ward and this application is being reported to Committee as the site is Council owned land.

7.2 The free standing canopy would measure 12.25m in width, 5.5m in depth and 2.8m in height (at its tallest point) and the wall mounted canopy would measure 7.2 in width, 6m in depth and 2.8m in height (at its tallest point). They would be constructed with an aluminium frame and corrugated plastic sheeting.

7.3 Policies GP2 (General Amenity), GP5 (Natural Environment), GP6 (Quality of Design) and SP3 (Flood Risk) of the Newport Local Development Plan 2011-2026 (adopted January 2015) are relevant to the determination of this planning application.

7.4 With regard to visual amenity, the canopies would be partially visible from the rear gardens of the properties located along Cherwell Walk and Darent Close. Canopies of this nature are becoming an increasingly common feature in schools as they provide additional outdoor play/amenity space. Owing to the character and design of the existing school and the location, scale and design of the canopies it is not considered that the proposal would have a harmful impact on the appearance of the school or the wider streetscene. The closest neighbouring properties to the site are located to the north west of the school along Cherwell Walk at a distance of approximately 54m. Due to the separation distance from neighbouring properties, it is not considered that the proposal would result in a harmful impact on the amenity of neighbouring properties. Therefore, it is considered that the canopies are suitably designed and are in accordance with policies GP2 and GP6.

7.5 One of the proposed canopies would be located within close proximity to a mature oak tree however the applicant has submitted a Tree Report which confirms that given the lightweight nature of the proposed canopies, the limited excavation and current existing hard surface, the risk to existing trees is very limited. The RPA of tree 1 is marginally encroached by 8m<sup>2</sup> of the 673m<sup>2</sup> calculated, and is therefore insignificant in regards the health and longevity of the tree. In addition, the RPA has been offset by much more than this in the other three directions which is and will remain sports fields. There is sufficient space around that all plant, equipment and materials can be stored and used outside the RPA of the retained tree. On this basis the Tree Officer has no objections to the application and the proposal is considered to be in accordance with policy GP5.

7.6 The site lies partially within the previous Flood Zone C2. TAN15 seeks to direct new development away from zone 3, but acknowledges that some development within existing built up areas in zone 3 can be permitted where it can be justified. NRW have been consulted on the application and confirmed that they have no objection to the proposal and given the

scale nature of the proposed development they consider the proposals could be acceptable, subject to the developer being made aware of the potential flood risks. The applicant can view further advice and guidance via NRW's website. In this case the development is considered to be justified in accordance with TAN15, the existing use of the site is classified as high vulnerable development and as the proposals would not change the use of the land or intensify the use, it is considered that the proposal would not increase the risk of flooding or flood management considerations. Overall it is considered that the development is justified within zone C2 and is in accordance with TAN15 and policy SP3 so is acceptable in terms of flood risk.

## **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 By reason of their location, scale and design it is considered that the proposed canopies would not result in a harmful impact on visual or residential amenity and would not result in increased risk of flooding to occupiers of the property or the surrounding area.
- 9.2 The proposed development is considered to be acceptable and in accordance with policies SP3, GP2, GP5 and GP6 of the Newport Local Development Plan 2011-2026 (adopted January 2015). Planning permission is granted with conditions.

## **10. RECOMMENDATION**

### **GRANTED WITH CONDITIONS**

01 The development shall be implemented in accordance with the following plans and documents: Canopy - Coniston Wm (7.2 x 6)m- v1.0, Proposed Elevations (received 30/03/2022), Block Plan (received 30/03/2022), 15709 69865 Monnow Primary School AIA\_AMS 1\_0 and 15709\_69865 Monnow Primary School TS&PP 0\_1.

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

02 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.

03 No development shall commence until an Arboriculturalist 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;
- (b) Supervision and monitoring of the approved tree felling and pruning works;
- (c) Supervision of the alteration or temporary removal of any Barrier Fencing;
- (d) Oversee working within any Root Protection Area;
- (e) Reporting to the Local Planning Authority;
- (f) The Arboricultural Consultant 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.

04 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- submitted by Tree Maintenance Ltd 21 April 2023. 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.

Reason: To protect important landscape features within the site in accordance with policy GP5.

05 No development shall commence until the protective tree fencing has been installed in accordance with the approved Tree Protection Plan - submitted by Tree Maintenance Ltd 21 April 2023. 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.

### **NOTE TO APPLICANT**

01 This decision relates to plan Nos: Site Location Plan, Proposed Elevations (received 30/03/2022), Block Plan (received 30/03/2022), Existing Elevation Plan (received

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies GP2 (General Amenity) and GP6 (Quality of Design), were relevant to the determination of this application.

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

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2.

## **APPLICATION DETAILS**

**No:** 22/0350      **Ward:** Langstone

**Type:** Full

**Expiry Date:** 19<sup>th</sup> June 2023

**Applicant:** M Watts

**Site:** Land North Of Oaklands Gilvach Lane Llanvaches Newport South Wales

**Proposal:** **CHANGE OF USE OF LAND TO PERSONAL EQUESTRIAN USE AND SITING OF A TIMBER CLAD STORAGE CONTAINER WITH TIMBER FRAME SHELTER**

**Recommendation:** **GRANTED WITH CONDITIONS WITH DELEGATED POWERS TO DETERMINE FOLLOWING THE EXPIRATION OF THE PRESS NOTICE, SUBJECT TO NO OBJECTIONS BEING RECEIVED**

### **1. INTRODUCTION**

- 1.1 This application seeks planning permission for the change of use of part of an agricultural field to personal equestrian use and for the siting of a timber clad storage container with timber frame shelter at Land North of Oaklands, Gilvach Lane in the Langstone ward.
- 1.2 The site is located outside of the urban boundary as per the Newport Local Development Plan 2011-2026 (adopted January 2015) and as such is located within the Countryside as per Policy SP5. It is also located within the Wentwood Special Landscape Area (SLA) as per Policy SP8.
- 1.3 The application site measures approximately 1.60 ha in size and is broadly rectangular in shape. It is located behind hedgerow off Gilvach Lane and is of varying gradient, broadly flat in the north, rising to the south but falling gently to the south west. To the east of the site is dense woodland, with the nearest residential laying beyond at a distance of approximately just over 100 metres. Directly alongside the north western boundary of the application site runs Public Right of Way 396/36/1.
- 1.4 Under the Town and Country Planning Act 1990 (TCPA 1990), planning permission is required for any development (section 57[1], TCPA 1990). Development is defined as the “carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land” (section 55[1], TCPA 1990). As such, there is a basic requirement for planning permission to be obtained if there is a material change of use of any buildings or land. However, the term ‘material’ is not defined by the TCPA 1990 and there is a substantial amount of case law on what constitutes a material change in use and what does not.
- 1.5 Some examples of what would constitute a material change of use are set out below:
1. Use of land or buildings to keep horses for recreational use;
  2. Use of land or buildings to keep horses for commercial use;
  3. The erection of buildings to shelter horses or horsiculture equipment;
  4. The erection of buildings for the purpose of exercising horses.

- 1.6 The Court has held that the term in the statutory definition of agriculture referring to the breeding and keeping of livestock does not apply to the breeding and keeping of horses (except in connection with any farming use). Therefore, unless the horses are simply turned out to the land with a view to feeding them from the land, it is likely that planning permission will be required.

## **2. RELEVANT SITE HISTORY**

- 2.1 None.

## **3. POLICY CONTEXT**

### **3.1 Future Wales: The National Plan 2040**

A Wales where people live in vibrant rural places with access to homes, jobs and services. In rural areas, job opportunities and community services will be supported to help attract and retain people. A balance will be found between development and preserving the character of rural Wales, ensuring our small towns and villages have bright futures as attractive places to live and work. The rural economy will be thriving and communities will be well connected digitally and physically. There will be support for the agricultural sector and its supply chains to boost resilience through diversification.

*Policy 4 – Supporting Rural Communities The Welsh Government supports sustainable and vibrant rural communities. Strategic and Local Development Plans must identify their rural communities, assess their needs and set out policies that support them. Policies should consider how age balanced communities can be achieved, where depopulation should be reversed and consider the role of new affordable and market housing, employment opportunities, local services and greater mobility in tackling these challenges.*

*Policy 5 – Supporting the rural economy The Welsh Government supports sustainable, appropriate and proportionate economic growth in rural towns that is planned and managed through Strategic and Local Development Plans. Strategic and Local Development Plans must plan positively to meet the employment needs of rural areas including employment arising from the foundational economy; the agricultural and forestry sector, including proposals for diversification; start-ups and micro businesses. The Welsh Government also strongly supports development of innovative and emerging technology businesses and sectors to help rural areas unlock their full potential, broadening the economic base, and creating higher paid jobs*

Planning authorities should be confident in identifying which areas are rural, using their understanding of the issues and geography of an area to prepare appropriate definitions. A rural location within proximity of major urban areas experiences different issues compared with a more isolated rural location. It may not be appropriate for policies to be applied to both types of location equally

### **3.2 Planning Policy Wales Edition 11 (PPW11)**

3.39 For most rural areas the opportunities for reducing car use and increasing walking, cycling and use of public transport are more limited than in urban areas. In rural areas most new development should be located in settlements which have relatively good accessibility by non-car modes when compared to the rural area as a whole. Development in these areas should embrace the national sustainable placemaking outcomes and, where possible, offer good active travel connections to the centres of settlements to reduce the need to travel by car for local journeys.

5.6.13 Diversification activities come in many forms and include both agricultural and non-agricultural activities. Activities could include, for example, livestock and crop processing, non traditional livestock and crop farming, tourism projects, farm shops, and making and selling non agricultural products. Diversification can also include renewable energy proposals such as anaerobic digestion facilities or solar and wind installations, which will

help to increase the viability of rural enterprises by reducing their operating costs. These schemes should be supported where there is no detrimental impact on the environment and local amenity.

### 3.3 The Newport Local Development Plan 2011-2026 (adopted January 2015)

The following policies and adopted guidance are relevant to the determination of this application;

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

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

Policy **SP5 Countryside** limits development outside of the settlement boundary;

Policy **SP8 Special Landscape Area** restricts development that may impact on the characteristics of the six designated Special Landscape Areas.

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

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

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

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

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

Policy **T7 Public Rights of Way and New Development** states that any public footpath, bridleway or cycleway affected by new development will require retention or provision of a suitable alternative. Provision of additional routes and linkages with the existing network will be sought.

Policy **CF7 Horse Related Developments** states that horse related development will be permitted providing the scale and design is appropriate; the proposal does not result in an

excessive number of buildings; there will be no new dwelling; and the proposal does not require the provision of unsightly infrastructure.

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

#### **4. CONSULTATIONS**

4.1 WELSH WATER DWY CYMRU: No objection.

#### **5. INTERNAL COUNCIL ADVICE**

5.1 THE HEAD OF INFRASTRUCTURE (HIGHWAYS): The change of use is to a typical countryside activity that is not expected to unduly increase the number of trips. These trips are expected to be familiar with the driver or the occupants of a vehicle, as they will be carried out for personal equestrian reasons. Highways offer no objection.

5.2 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE): The shed could be surrounded with trees to screen off from road frontage, otherwise I have nothing more to add to this proposal and have no concerns to the landscape prospective and visual aspect.

5.3 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREES): Further to comments regarding hedgerows etc. – There do not appear to be any additional supporting pieces of information.

In the absence of this there are objections to the proposals.

5.4 THE HEAD OF CITY SERVICES (PUBLIC RIGHTS OF WAY): No response.

#### **6. REPRESENTATIONS**

6.1 NEIGHBOURS: All properties within 100m of the application site were consulted (No properties picked up) and a site notice displayed and a press notice published in the South Wales Argus. No responses have been received.

6.2 LLANVACHES COMMUNITY COUNCIL: Have confirmed that they have no comments to make on the application.

#### **7. ASSESSMENT**

7.1 The proposed use of the parcel of field is for equestrian use in a personal capacity. In order to facilitate the equestrian use, the applicant has confirmed that they will require sufficient and safe storage which is to be provided within the container which has already been sited at the northern boundary of the field, and is covered by a timber structure.

7.2 The parcel of field measures approximately 1.60ha in size and is enclosed by a post and rail fence. Within the parcel light weight fencing has been installed to create riding tracks/routes. The container itself measures 6.0 metres by 2.4 metres by 2.4 metres and the covered open timber structure measures 9.0 metres by 8.4 metres and has a pitched roof with height of 3.0 to its pitch.

7.3 When questioned regarding the nature of the personal equestrian use and the reason for requiring storage, the applicant has confirmed to the LPA in writing the following;

- There will be 2no. horses and 2no. ponies on site at any one time, that will be under the ownership of the applicant;
- Two of the horses are leisure horses and will be ridden, with the other two companions and will not be ridden;
- These horses will not generally be transported to and from the site, however in the event they require emergency medical treatment at the vets then they would be transported in a horsebox or trailer;
- A farrier will visit at 6 weekly intervals, vets once annually or in emergency situations, dentist once annually and physio 2-3 times annually;



- A list of equipment that will be stored inside the container has been provided however this will not be published in the interest of security and it has been confirmed that under the cover to the north west hay will be stored and the south east side will be used to tie horses for grooming and during visits of the farrier and vet.

#### 7.4 Impact on Countryside/Special Landscape Area/Quality of Design

- 7.4.1 First and foremost, development in the countryside must be justified if permission is forthcoming. Policy SP5 states that development will only be permitted where the use is appropriate in the countryside, respects the surrounding area and is appropriate in scale and design. There is support for horse related development within the countryside through Policy CF7 where again the scale and design are appropriate to the surrounding environment.
- 7.4.2 The use itself is not considered to result in any adverse impact on the countryside, albeit associated infrastructure could have the potential to cause harm, if not adequately controlled. The site is also located within the Wentwood Special Landscape Area (SLA), so there is added policy control through SP8. Policy SP8 confirms that development in an SLA will be required to contribute positively through high quality design, materials and management schemes that demonstrate a clear appreciation of the area's special features.
- 7.4.3 In order to facilitate the change of use to personal equestrian a container has been sited to store the necessary equipment and this has been clad in timber, with a pitched roof timber structure above, which also provides two covered areas as previously described. The structure itself is relatively small scale and of a modest footprint. It is screened from the highway at Gilvach Lane by hedgerow and the timber construction and timber cladding of the container is considered to be sympathetic to the general rural character of the area. The hedgerows that form the boundary along Gilvach Lane are consistent features of the rural landscape and their retention is supported and will act as a screen. The Council's Landscape Officer has not raised any concerns but has advised additional tree planting to screen the proposed container and structure from the highway frontage could be sought. However, this is not considered as necessary by officers.
- 7.4.4 The Council's Tree Officer has raised concerns in relation to the proximity of the container and covered structure with the boundary hedge. However, the container and structure have already been sited and there is considered to be a sufficient spacing between these and the hedgerow in order to allow maintenance and growth. The container itself is sited above ground and there are only two supporting timber posts that have been fixed below ground in close proximity to the hedge. Whilst the objection from the Tree Officer and request for protective measures is noted, the works have been undertaken and are not considered to have resulted in any adverse impact on the landscape feature.
- 7.4.5 Overall, it is considered that the siting of the structures are necessary and of a reasonable scale to support the change of use and having been assessed against the relevant policies are acceptable. However, given the sensitivity of the rural landscape, it is considered necessary and justified to control and prevent proliferation of any further associated infrastructure by planning condition, as well as limit the number of horses on site to that stated by the applicant in order to prevent any further pressure for infrastructure on site that may result in an adverse visual impact.

#### 7.5 General Amenity

- 7.5.1 The site is in an isolated location within the countryside and the nearest residential property is located over 100 metres away. Given the nature of the use in this location, the proposal is not considered to result in any adverse impact on general or residential amenity and is compliant with the aims of Policy GP2.

#### 7.6 Highways and Accessibility

- 7.6.1 The site is in an isolated rural location and is accessed via narrow country lanes. As such, any proposal must not result in any adverse impact on highway safety given the narrow and unlit nature of the access lanes and also in parts, their limited visibility. The Council's Highways Officer has confirmed that this use type is a typical countryside activity and given

the personal nature of the use is not expected to unduly increase the number of trips to the site. The Highways Officer considers the trips to be familiar with the driver or the occupants of a vehicle, as they will be carried out for personal equestrian reasons.

- 7.6.2 It would not be acceptable for a use such as this to intensify vehicle movements along what are considered to be substandard country lanes to an extent that there would be an adverse impact to highway safety. The lanes are very narrow and often with poor visibility and there are limited areas for vehicles to pass safely. The proposed use is for personal equestrian use, with only 4no. horses being kept at the site at any one time, as confirmed by the applicant, and visits to the site other than by the applicant stated as being very limited. Officers are therefore satisfied that the proposed use as described by the applicant will not give rise to an adverse impact on highway safety. However, officers consider it necessary and justified to recommend control of the use through the application of planning conditions. The proposed conditional regime refers to the limitation of the equestrian use to a personal capacity and also for the maximum number of horses to be kept at the site restricted to four, as per the information submitted by the applicant. This will limit the number of vehicle trips required to and from the site using the substandard access and lane, in the interest of highway safety as well as not creating additional demand or pressure for parking at the site that would have an adverse impact on the character and appearance of the countryside. As such, the proposal is compliant with the aims of Policy GP4.

## 7.7 Public Rights of Way

- 7.7.1 As earlier identified within this report, a Public Right of Way runs along the length of the north western boundary of the site. This boundary is enclosed by a low post and rail fence to secure the perimeter of the site. The Council's Public Rights of Way Officer has not issued a response to the application, however officers considered there to be no adverse impact on the amenity or function of the PROW as a result of the proposal. The PROW is accessed by a stile from Gilvach Lane and remains unimpacted as it runs the length of the site. As such, there is no further requirement for any redirection etc. and the proposal complies with Policy T7.

## 7.8 Ecology

- 7.8.1 Policy 9 of Future Wales states that in all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated. Policy GP5 of the Local Development Plan supports the same principles. The presence of horses and the structure on site will potentially encourage some wildlife, so enhancement may well occur as a natural consequence of the development and would certainly not be considered to result in any harm over and above the lawful agricultural use of the land.
- 7.8.2 The proposal has not included any ecological enhancement as part of the scheme however the timber clad container and canopy may offer potential for bird nesting, in addition to the retention of the adjacent hedgerow along the northern boundary. In order to comply with national and local policy objective it would be considered necessary to control ecological enhancement through a planning condition. Given the scale of the operational development proposed, it is considered adequate to install a bird box on the approved structure.

## 7.9 Agricultural Land

- 7.9.1 The existing site is agricultural land, and the proposed change of use would result in a loss of this. However, it is classified as Class 4 – Poor Quality Agricultural Land and the proposed use is of such nature that any impact would be reversible i.e., could revert to agricultural use without having suffered any adverse impact. As such, there is not considered to be any harm caused by the loss of agricultural land as a result of the proposal in this instance.

## 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 Overall, it is considered that subject to conditions the proposed development is acceptable and is compliant with the aims of the relevant policies, as listed within this report, of the Newport Local Development Plan 2011-2026 (adopted January 2015).

### 9.2 It is recommended that the application is granted with conditions.

## 10. **RECOMMENDATION**

**GRANTED WITH CONDITIONS WITH DELEGATED POWERS TO DETERMINE FOLLOWING THE EXPIRATION OF THE PRESS NOTICE, SUBJECT TO NO OBJECTIONS BEING RECEIVED**

01 The development shall be implemented in accordance with the following plans and documents: Drawing No. HTF 001 – Site Plan Sheet 1; Drawing No. HTF 002 – South East WElevation; Drawing No. HTF 002 – South West Elevation; Drawing No. HTF 002 – North East Elevation; Drawing No. HTF 002 – North West Elevation; Drawing No. HTF 002 – Floor 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

02 The equestrian use hereby approved shall be used for private purposes only with a maximum of 4no. horses kept at site at any one time and in accordance with the details set out within the email from Christine McElhinney dated 22<sup>nd</sup> April 2024 at 21:45, at all times. The site shall not be used for any commercial activity including events.

Reason: In the interests of highway safety and preserving the character and appearance of the countryside and the Wentwood Special Landscape Area in accordance with Policy SP5, SP8 and GP4 of the NLDP 2011-2021 (adopted January 2015).

03 Other than those hereby approved, no structures or caravans shall be sited on the land, or any means of enclosure or hard surfacing constructed.

Reason: To prevent a proliferation of structures and hard landscaping on site in order to protect the rural character and appearance of the countryside and the Wentwood Special Landscape Area in accordance with Policy SP5, SP8 and GP2 of the NLDP 2011-2021 (adopted January 2015).

04 Within one month of this decision date a bird box shall be installed on the approved container or covered structure and retained thereafter.

Reason: In the interests of ecological enhancement in accordance with Policy GP5 of the NLDP 2011-2021 (adopted January 2015) and Policy 9 of Future Wales: The National Plan 2040.

#### *NOTE TO APPLICANT*

01 This decision relates to plan Nos: Drawing No. HTF 002 – Isometric View; Email from Applicant dated 17/04/2022 at 19:47 confirming intended use; Email from Applicant 22/04/2023 at 21:25 Responding to Questions.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP5, SP8, GP2, GP4, GP5, GP6, GP7, CF7, T4 and 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.

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3.

### **APPLICATION DETAILS**

**No:** 22/1050      **Ward:** Victoria

**Type:** Full

**Expiry Date:** 8th June 2023

**Applicant:** C Jones

**Site:** 10 Clarence Place Newport South Wales NP19 0AE

**Proposal:** **CONVERSION OF THE UPPER FLOORS OF A DERELICT GRADE II LISTED BUILDING TO A HOUSE IN MULTIPLE OCCUPATION (HMO) (USE CLASS C4) INCLUDING NEW ROOFLIGHTS, REPLACEMENT OF EXISTING WINDOWS AND ROOFLIGHTS AND OTHER ASSOCIATED INTERNAL AND EXTERNAL WORKS**

**Recommendation:** REFUSED

### **1. INTRODUCTION**

- 1.1 This application seeks full planning permission for the conversion of the upper floors of 10 Clarence place to create a 5 bedroom house in multiple occupation. New rooflights, replacement of existing windows and rooflights and other associated internal and external works are required to facilitate the conversion. This application has been called to Committee by Councillor Horton as a result of a request from the applicant.

### **2. RELEVANT SITE HISTORY**

<b>REFERENCE</b>	<b>DESCRIPTION</b>	<b>DECISION</b>
90/0896	SINGLE STOREY REAR EXTENSION TO PROVIDE STORAGE	REFUSED
91/0933	EXTENSION AT FIRST FLOOR LEVEL (RESUBMISSION FOLLOWING REFUSAL OF 90/0896)	REFUSED
95/075	INSTALLATION OF NEW SHOPFRONT	GRANTED
95/1049	CHANGE OF USE OF FIRST FLOOR LOUNGE/BAR ACCOMMODATION TO DOMESTIC USE	GRANTED
97/0002	ERECTION OF INTERNALLY ILLUMINATED SIGNS	GRANTED WITH CONDITIONS
09/0362	RETENTION OF ALTERATIONS TO REAR ELEVATION AND FLAT ROOF AREA TO CREATE EXTERNAL SEATING AREA, ERECTION OF SHELTER SUNSHADES, SEATING AND FENCING, EXTERNAL LIGHTING, CCTV AND AIR CONDITIONING UNITS AND ALTERATIONS TO SHOPFRONT	WITHDRAWN
09/0383	RETENTION OF INTERNALLY ILLUMINATED FASCIA SIGN	WITHDRAWN
09/0361	RETENTION OF LISTED BUILDING CONSENT FOR ALTERATIONS TO REAR ELEVATION AND FLAT ROOF AREA TO CREATE EXTERNAL SEATING AREA, ERECTION OF SHELTER SUNSHADES, SEATING AND FENCING, EXTERNAL LIGHTING,	WITHDRAWN

	CCTV AND AIR CONDITIONING UNITS AND ALTERATIONS TO SHOPFRONT	
09/0692	RETENTION OF INTERNALLY ILLUMINATED FASCIA SIGN	GRANTED CONSENT
20/0539	LISTED BUILDING CONSENT FOR EXTERNAL WORKS TO REMOVE EXTRACTION FLUE ON REAR ELEVATION; PROVIDE NEW SHOP FRONT AND ACCESS DOOR TO UPSTAIRS ACCOMMODATION; NEW ROOF COVERING AND INSERTION OF ADDITIONAL ROOFLIGHTS ON THE FRONT AND REAR ELEVATION; INSTALLATION OF PRIVACY SCREEN TO FIRST FLOOR FLAT ROOFED BALCONY AND WORKS OF REFURBISHMENT TO BRICKWORK, MASONRY, RAINWATER GOODS, WINDOWS AND WINDOW FRAMES. ALSO INTERNAL WORKS TO REFURBISH THE GROUND FLOOR A3 UNIT AND WORKS TO CONVERT THE UPPER FLOORS TO A 6NO. BEDROOM HMO REQUIRING CHANGES TO INTERNAL LAYOUT	WITHDRAWN
20/0538	EXTERNAL WORKS TO BUILDING TO REMOVE THE EXTRACTION FLUE ON THE REAR ELEVATION; PROVIDE NEW SHOP FRONT AND ACCESS DOOR TO UPSTAIRS ACCOMMODATION; NEW ROOF COVERING AND INSERTION OF ADDITIONAL ROOFLIGHTS ON THE FRONT AND REAR ELEVATION AND INSTALLATION OF PRIVACY SCREEN TO FIRST FLOOR FLAT ROOFED BALCONY AND MATERIAL CHANGE OF USE OF THE UPPER FLOORS TO A 6NO. BEDROOM HMO	WITHDRAWN
21/0299	LISTED BUILDING APPLICATION FOR CHANGE OF USE OF FIRST, SECOND AND THIRD FLOOR TO SIX BED HMO AND ASSOCIATED ANCILLARY AREAS TOGETHER WITH PROPOSED NEW SHOPS FRONT AND REFURBISHMENT OF GROUND FLOOR A3 UNIT	REFUSED
21/0298	EXTERNAL WORKS TO BUILDING TO REMOVE THE EXTRACTION FLUE ON THE REAR ELEVATION; PROVIDE NEW SHOP FRONT AND ACCESS DOOR TO UPSTAIRS ACCOMMODATION; NEW ROOF COVERING AND INSERTION OF ADDITIONAL ROOFLIGHTS ON THE FRONT AND REAR ELEVATION AND INSTALLATION OF PRIVACY SCREEN TO FIRST FLOOR FLAT ROOFED BALCONY AND MATERIAL CHANGE OF USE OF THE UPPER FLOORS TO A 6NO. BEDROOM HMO	REFUSED
21/0816	CONVERSION OF THE UPPER FLOORS OF A DERELICT GRADE II LISTED BUILDING TO A HOUSE IN MULTIPLE OCCUPATION (HMO) (USE CLASS C4) INCLUDING NEW ROOFLIGHTS, REPLACEMENT OF EXISTING WINDOWS AND ROOFLIGHTS AND OTHER ASSOCIATED INTERNAL AND EXTERNAL WORKS	WITHDRAWN
21/0817	LISTED BUILDING CONSENT FOR THE CONVERSION OF THE UPPER FLOORS OF A DERELICT GRADE II LISTED BUILDING TO A HOUSE IN MULTIPLE OCCUPATION (HMO) (USE	WITHDRAWN

	CLASS C4) INCLUDING NEW ROOFLIGHTS, REPLACEMENT OF EXISTING WINDOWS AND ROOFLIGHTS AND OTHER ASSOCIATED INTERNAL AND EXTERNAL WORKS	
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### 3. POLICY CONTEXT

- 3.1 The following policies of the Newport Local Development Plan, 1996-2011 (Adopted January 2015) are relevant to the proposals:

*Policy SP3 Flood Risk ensures development is directed away from flood risk areas.*

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

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

*Policy GP4 'General Development principles – highways and accessibility' states that development proposals should make adequate provision for car parking and ensure that development would not be detrimental to highway or pedestrian safety.*

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

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

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

*Policy CE5 Locally Listed Buildings and Sites notes a Local List of buildings and sites of local significant will be produced and protected from demolition and inappropriate development.*

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

- 3.2 The Council's Supplementary Planning Guidance for Houses in Multiple Occupation (adopted August 2015, updated January 2017) is also relevant.

### 4. CONSULTATIONS

- 4.1 GWENT POLICE: No response.

- 4.2 CADW: Having carefully considered the information provided, we have no objection to the proposed development in regards to the scheduled monument listed in our assessment of

the application below.

## Assessment

### Scheduled Monuments

#### **MM009 Newport Castle**

This planning application is for the conversion of upper floors at 10 Clarence Place, Newport, NP19 0AE. The above designated historic asset is located within 500m of the application area. The application area is located some 220m east of scheduled monument MM009 Newport Castle which consists of the masonry remains of the eastern part of the medieval “caput” castle of Newport the centre of the Lordship of Newport. Originally the castle extended to the west covering a much larger area than the surviving parts; however, these areas have been destroyed by modern road construction and other developments. When constructed the castle would have controlled the bridge crossing the Usk with its’ ceremonial Watergate also serving as a waterborne entry into the Lordship. It would have had all round views with the most significant being to the east along the main South Wales coast road, to the southwest down and the northeast up the River Usk and southwards over the town to Newport to Stow Hill and St.Woolos Church. The elements of the proposed development that are or will be visible from the castle are retrospective works undertaken to the front elevation: re-pointing of brickwork, repair of stonework, replacement of original copings, and new work: a new ground floor shopfront and entrance, repair/replacement of first floor sash windows, repair of second floor casement windows and replacement of roof light with conservation style rooflights. As such these alterations may cause a very visual change in the view from the monument but this will not have any effect on the way that it is experienced, understood, and appreciated. Consequently, the proposed development will have no impact on the setting of scheduled monument MM009.

- 4.3 NATURAL RESOURCES WALES: We have no objection to the proposed development as submitted and provide the following advice.

#### **Flood Risk**

The planning application proposes highly vulnerable development (residential). Our Flood Risk Map confirms the site to be within Zone C1 of the Development Advice Map (DAM) as contained in Technical Advice Note (TAN): 15 Development and Flood Risk (2004). The Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and falls into Flood Zone 3 (Sea). As clarified from your Authority, we note the application proposes a change of use from vacant property to a house in multiple occupation (HMO). TAN15 considers this an increase in vulnerability from less vulnerable to highly vulnerable development. TAN15 describes highly vulnerable development (HVD) as development where the ability of occupants to decide on whether they wish to accept the risk to life and property associated with flooding or be able to manage the consequences of such a risk is limited. We advise the proposal will result in an HVD use being introduced to an area of flood risk. However, the submitted drawing entitled ‘Proposed Floorplans & Section’, prepared by Sustainable Studio Architects, drawing number SK005, revision E, undated, shows that the HMO is to be located at first floor and above, with the ground floor being used as an entrance including a bike and bin store. The HMO itself is elevated above the flood risk. On this basis, considering the limited development proposed on ground floor, we have no objection to the proposal. Your Authority must also be satisfied that the proposal is acceptable in flood risk terms, particularly with regard to access and egress and flood emergency procedures.

#### **Advice on Flooding Consequences**

We welcome the submitted Flood Consequences Assessment (FCA), prepared by Curtains, document reference 079397-CUR-XX-XX-RP-C-00001, revision P05, dated 31 October 2022. The assessment established that flooding would occur on the site, but would only impact the existing ground floor unit, given the elevated nature of the HMO on the upper floors. The following flood depths were noted:

- 1 in 200 year 2115 flood event: 2.44m (Node Point 4)
- 1 in 1000 year 2115 flood event: 2.72m (Node Point 4)



Although it does not alter our position, we wish to point out that the submitted FCA used a lifetime of development of 93 years, instead of 100 years for highly vulnerable development. As set out within TAN15, the vulnerability attributed to a mixed-use proposal will be defined by the most vulnerable use, which in this case would be the residential development proposed for the upper floors. The proposed plans confirm the first-floor finished floor level is set approximately 1.00m above the maximum flood level identified in the 1 in 200 year 2115 climate change event. Therefore, the risk to occupants of the proposed HMO is deemed low. Given the proposed HMO is set above the flood levels, we are satisfied with the use of the 2115 flood data and consider that the inclusion of the additional 7 years of sea level rise on the above flood depths would be minimum and would not alter the flood outcome to the proposed HMO.

### **Further Advice**

It is noted that the submitted FCA refers to safe egress/access during various storm events, as well as the requirement for a Flood Evacuation Plan. As it is for your Authority to determine whether the risks and consequences of flooding can be managed in accordance with TAN15, we recommend you 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 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.

### **European Protected Species**

We recommend you seek the advice of your in-house ecologist to determine if there is a reasonable likelihood of bats, a European Protected Species, being present within the application site. If so, in accordance with Technical Advice Note 5: Nature Conservation and Planning (paragraph 6.2.2) a bat survey may be required. The survey should be carried out in accordance with 'Bat Surveys; Good Practice Guidelines 3rd Edition' published by the Bat Conservation Trust 2016. Please consult us again if any survey undertaken finds that bats are present at the site and you require further advice from us.

- 4.4 DWR CYMRU WELSH WATER: We can confirm capacity exists within the public sewerage network in order to receive the domestic foul only flows from the proposed development site. Notwithstanding this, we would request that if you are minded to grant Planning Consent for the above development that the Conditions 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.

### **Conditions**

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.

- 4.5 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST: No response.

## **5. INTERNAL COUNCIL ADVICE**

- 5.1 HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (CONSERVATION): 10 Clarence Place is a grade II listed building built as an integral part of an early C20 development which John Newman describes as the most coherent stretch of commercial architecture in Newport (Newman J, Buildings of Wales series, Gwent/Monmouthshire, 2000, p 455). They form part of a terrace of similar buildings (Nos. 10-24 Clarence Place (evens)) which are attached at the western end to the former Newport Technical Institute. Opposite stands the War Memorial as well as the former Odeon cinema. The above buildings are also listed at grade II and the list description cites group value with all but the later cinema as one of the principal reasons for listing.

The applications seek consent for the refurbishment and conversion of a grade II listed building along Clarence Place. Previous advice was given for the proposals and it is clear that this advice has been taken into consideration by the applicant within this application. The principle of the proposals would result in the appropriate restoration of the building and its original fabric whilst returning it to a suitable use. There are a couple of elements that should be reconsidered or justified as they would not be deemed appropriate to the historic and architectural interest of the building. Other specifics can be secured via condition.

The additional rooflight on the front elevation would not be considered appropriate. Front facing rooflights are not traditional features for a historic building and cannot be supported due to their impact on architectural interest but also visibility from public spaces. Whilst there is an existing rooflight on the front pitch, this is positioned behind the segmental arch along the parapet. The second rooflight, to be located left of the existing when facing the building, would not be hidden and would also create an unsymmetrical elevation. I would recommend that additional rooflights are kept to the rear pitch as this is not considered to be of as high value architecturally. It would be best to now overcrowd this principal pitch. The additional rooflights to the rear are acceptable, as well as the replacement of the existing with conservation style.

I do question whether any ventilation is required or how this is being addressed, particularly for new bathrooms. Furthermore, how are existing service runs and rainwater goods being treated?

The proposed Marseille tiles to replace the existing concrete tiles would be acceptable in principle but a sample will need to be provided at a later stage. Similarly a sample of the new flat roof materials to the rear shall be requested.

The HIA notes that the applicant is happy to condition a window survey to confirm which windows are repairable and which need replacing. This is acceptable.

The type and finish of render on the rear elevation has not been specified and details of the rear door have not been provided. These can either be given now or secured as conditions.

The proposed contemporary shopfront would be a positive change from the existing and would be acceptable in principle.

Internally most of the previous concerns have been addressed, particularly the issues surrounding insulation and subdivision. The use of lime and wood fibreboard from Ty Mawr is considered appropriate to the building and its fabric and therefore is acceptable. The subdivision would be done appropriately and not overly conceal original room layouts and features.

All remaining proposals would be acceptable in principle including the outlined unauthorised works that were previously undertaken.

To conclude, the application would ensure the historic and architectural interest of the grade II listed building is restored with appropriate materials and a suitable, long-term use. There are a number of elements stated above that need further clarification at this stage, however the majority of the proposals are acceptable in principle. Once the concerns re the rooflights and ventilation/drainage have been addressed, submitted and deemed acceptable, I would support the application with the following conditions:

Prior to the commencement of works to the existing windows, a detailed window condition survey shall be provided to and agreed in writing by the Local Planning Authority. The works shall thereafter be undertaken in accordance with the approved outcomes.

Reason: In the interest of safeguarding the special character of the Listed Building in accordance with policy SP9 of the Newport Local Development Plan.

Prior to its installation, details of the new rear door shall be provided to and agreed in writing by the Local Planning Authority. The works shall thereafter be undertaken in accordance with the approved details.

Reason: In the interest of safeguarding the special character of the Listed Building in accordance with policy SP9 of the Newport Local Development Plan.

Prior to the relevant works, further details of the external render, including type and finish, shall be provided to and agreed in writing by the Local Planning Authority. The works shall thereafter be undertaken in accordance with the approved details.

Reason: In the interest of safeguarding the special character of the Listed Building in accordance with policy SP9 of the Newport Local Development Plan.

Prior to their installation, further details of the rooflights, including a cross section at a scale of at least 1:20, shall be provided to and agreed in writing by the Local Planning Authority. The works shall thereafter be undertaken in accordance with the approved details.

Reason: In the interest of safeguarding the special character of the Listed Building in accordance with policy SP9 of the Newport Local Development Plan.

Prior to the commencement of roof works, a sample of the Marseille clay tiles, fibreglass and EPDM materials shall be provided on site and agreed in writing by the Local Planning Authority. The works shall thereafter be undertaken in accordance with the approved outcomes.

Reason: In the interest of safeguarding the special character of the Listed Building in accordance with policy SP9 of the Newport Local Development Plan.

5.2 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ENVIRONMENTAL HEALTH):  
Having reviewed the Noise assessment (submitted 1st February 2021); the Noise & Neighbourhood team makes the following observations;

- Principal noise sources are identified as road traffic noise, 'people noise' in the street and the potential re-opening of the (currently un-used) ground floor sports bar.
- The team acknowledges the separation between the HMO and ground floor sports bar should meet BS8233:2014 and the Part E requirements.
- The team acknowledges that BS4142:2014 is not appropriate due to the current lack of evident fixed plant or equipment
- The team acknowledges that no identifiable plant noise sources were identified at the time of monitoring
- The team has identified the levels obtained from the survey data, with lockdown corrections applied as follows;
  - Position 1 (front)
    - LAeq, 16hr 71.8dB
    - LAeq, 8hr 67.8dB
    - LMax 85.5dB
  - Position 2 (rear)
    - LAeq, 16hr 45.0dB
    - LAeq, 8hr 42.3dB
    - LMax 61.9dB
- The team has identified the levels obtained from the survey data to determine façade requirements for the rooms are appropriate for façade mitigation measures, with an appropriate safety margin
- Appendix A, Calc 1 identifies the daytime noise criterion for the living room of LAeq, 16hr 35dB can be met with Rw 47dB glazing and 10,000mm<sup>2</sup> of ventilation rated at Dn,e,w 45dB
- Glazing and mechanical ventilation specifications for bedrooms and living spaces are outlined on pp11 and should be considered for external noise mitigation
- Internal noise sound insulation specification;
  - The required criterion for sound insulation between ground floor sports bar and first floor is DnT,w + Ctr 53dB
  - Recommended measures to achieve the above Part E + 10dB criteria are outlined on pp12 & pp13 & pp14 and should be considered for internal noise mitigation between ground and first floors
- Whilst the team recognises the observations made within the acoustic assessment that a Part E + 5dB criterion would be appropriate; given the level of uncertainty including the lockdown correction factors and structural state of the property- the team

would strongly recommend the higher threshold of Part E + 10dB criterion is adhered to.

- Additional guidance to assist with compliance of Part E is provided on pp15 & 16. The applicant is encouraged to consider this information.

I confirm I have no objections to the proposals; however the following condition should be attached to any permission granted;

#### **Sound insulation, external and internal noise mitigation measures**

The noise mitigation measures contained within Acoustic report [submitted 1.2.21] should be implemented prior to occupation. No dwelling shall be occupied until the approved sound insulation and ventilation measures have been installed to that property in accordance with the approved details. The approved measures shall be retained thereafter in perpetuity.

Reason: To ensure that the amenities of future occupiers are protected.

#### **Waste Storage and Recycling**

There is a lack of information regarding the waste storage and recycling facilities that will be provided to serve the future development. Therefore, either additional information is required or the following condition is recommended;

Prior to first beneficial use, a scheme for the provision of waste storage and recycling shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to first beneficial use and thereafter maintained for the duration of the use.

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

#### **Demolition & Construction Environmental Management Plan**

No development shall take place until a site specific Demolition and Construction Environmental Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to:

- Procedures for maintaining good public relations including complaint management, public consultation and liaison
- Arrangements for liaison with the Newport City Council Noise & Neighbourhood Team
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within permitted hours
- Mitigation measures as defined in BS 5228: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Procedures for emergency deviation of the agreed working hours.
- Measures for controlling the use of site lighting whether required for safe working or for security purposes.
- Measures to mitigate demolition dust and material causing a nuisance to local residents, for example sheeting of loads and wheel washing apparatus

Reason: To protect the amenities of occupiers of other premises in the vicinity

5.3 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (HMO LICENSING OFFICER): I have the following concerns regarding the proposal for the conversion of 10 Clarence Place, Newport, South Wales, NP19 0AE into a House in Multiple Occupation (HMO):

- The adequacy of fire safety between the ground floor commercial unit and the upper floor levels proposed for residential use. It will be necessary to ensure that there is adequate fire separation and fire safety measures interlinked between the commercial unit and proposed residential areas. The applicant is therefore advised to consult a competent person with specialist fire safety knowledge for advice.

- In relation to the proposed conversion of the third floor attic space for bedrooms and possible restricted useable space. I would draw to the attention of the applicant the room size requirements on pages 3 and 4 to Newport City Council's Houses in Multiple Occupation (HMO) Licensing Standards document. This includes the guidance to taking measurements which specifies that practical useable space does not include the floor area where the ceiling height is less than 1.5m.

5.4 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (WASTE): No response.

5.5 HEAD OF CITY SERVICES (HIGHWAYS): Highways cannot support the application as the applicant has failed to provide a suitable location for the requirement to store three cycles.

The site is located on Clarence Place, a classified road close to the centre of Newport. The site has no off-street parking and therefore no vehicular access. The site is located in Parking Zone 2 which typically will require that 1 parking space per bedsit and 1 visitor space per 5 units is provided to comply with Newport City Council SPG Parking Standards (August 2015), a total of 7 parking spaces. The existing site comprises a retail unit space to the ground floor with the upper floors having previously been used as residential accommodation, which is likely to have had the same parking demand as the proposed development. This was noted as acceptable in previous highway comments dated the 25th March 2021 and the 6th July 2020. It is recognised that the application site is located in a highly sustainable location, located approximately 0.3 miles east of Newport Railway Station and within close proximity to bus stops providing access to over twenty different bus routes. Houses of Multiple has extremely low car ownership and therefore the requirement for parking is often minimal. There are controlled parking zones in the immediate streets ensuring further, that there would be no negative impact on the parking stress in the locality.

#### Sustainable Transport

The site is required to provide cycle parking to comply with Newport City Council SPG Sustainable Travel (July 2020) which requires that 1 cycle space per 2 bedrooms is provided. Drawing no. SK004 (Rev E) shows 3no. cycle spaces for the A3 use elements within the yard area. Acceptance of the proposed placing of a cycle rack or similar on the first floor (location 03) would not be acceptable as to expect someone to carry a cycle up and down stairs and through the kitchen area relies on that person's physical ability to do so. The cycle could also be wet and/or dirty. Highways have a concern that there is no suitable space offered for a store for three cycles for the HMO residents to use.

5.6 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY): I have considered this application in relation to section 7.0, Figure 4 - 'Checklist for protected/priority Species Surveys' set out in the Wildlife and Development SPG, which sets out the criteria we use for deciding when a bat survey is needed. The nature and location of these buildings and the works proposed to them suggest that there is a reasonable likelihood of an impact upon roosting bats, therefore any application should be supported by a bat survey to determine if this is the case.

The relevant section of this SPG is shown below, but in summary this is an old building which is within 200m of water, in this case the River Usk which bats are very likely to use for foraging and commuting. In addition, if a roost were present in the roof of this building then the works proposed would inevitably cause disturbance to it.

In the first instance a preliminary survey of bat roost potential should be undertaken. This can take place at any time of year. The outcome of a preliminary roost assessment will include one of the following:-

an adverse impact upon bats is so unlikely that no further action in relation to bats is necessary, or the likelihood of an impact is low, such that precautionary mitigation measures can reduce this likelihood still further, or the likelihood of an impact upon bats is high, so further survey are needed in order to establish exactly what the impact would be, or the outcome is uncertain due to, for example, lack of access to certain areas of the building, so further survey are needed in order to establish exactly what the impact would be, or the impact is certain and can be defined precisely on the basis of the preliminary assessment,

such that no further surveys are needed, but a licence issued by NRW would be required to allow works to proceed legally. If a more detailed survey is required, this can only take place between May and September inclusive. Therefore I advise that the applicant undertakes a preliminary assessment at the earliest opportunity. However, as we are currently in the bats' active season, it may be more advantageous for the applicant to omit the preliminary assessment and proceed directly to a full survey.

In relation to nesting birds, the Applicant should be reminded via an advisory note that nesting birds 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. This includes species such as pigeons or gulls which may be nesting in or on the roof of this building.

## **6. REPRESENTATIONS**

6.1 NEIGHBOURS: Neighbours within a 50m radius were consulted and 1no. response was received as outlined below.

- This will be too disruptive to the local area, specifically to the rear of the property, which oversees the majority of the facing residential area of St. Vincent Road and of course, the fact that number 10 Clarence place is on the other side of my living room and rear facing office. If this were to go ahead, I move be forced to move, as the noise levels to myself would result in endless emotional distress. I am disabled and would not be able to live next door (literally) to what would be a building site. End of argument. If you allow this to go ahead, I will need as much notice as possible so I can move house to another town and let the new residents deal with the eternal emotional distress of living next to builders. This must not go ahead.

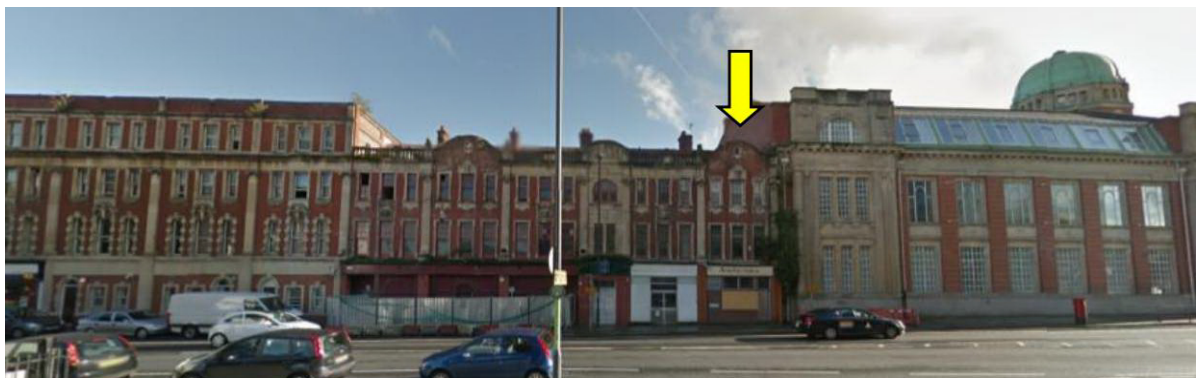
6.2 COUNCILLORS: Councillors Farzina Hussain and Gavin Norton were consulted on the proposal and the following responses were received.

Councillor Hussain - I would like to submit my response regarding the above planning application. I support this planning application, after going through the paperwork and plans submitted, I would like to see the plans being implemented in accordance to the historical characteristics of the Grade II listed building and given a new lease of life. The plans submitted are in keeping with the neighbouring Technical Institute.

## **7. ASSESSMENT**

5.1 This application seeks full planning permission for the conversion of the upper floors of 10 Clarence place to create a 5 bedroom house in multiple occupation. New rooflights, replacement of existing windows and rooflights and other associated internal and external works are required to facilitate the conversion.

5.2 The building is grade II listed and occupies a prominent position on Clarence Place. The entire building is currently vacant and derelict. It has been subject to anti-social behaviour, however whilst the building is now secure case officer visits confirm that the upper floors are unsafe and the building is vulnerable. The building is currently unusable due to its poor condition. The rear of the site shows evidence of persistent anti social issues with a considerable amount of rubbish and vermine present. The applicant has advised that vandalism and criminal activities have taken place within the building more recently. The most recent use of the ground floor was as a restaurant and it is stated in the Planning Statement accompanying the application that it is proposed to bring the ground floor back into beneficial use as a bar, which will be the subject of a separate application along with the HMO entrance. The building is mid-terrace adjoining the Old Art's College to the west with a large flat roofed extension to the rear. The building has been subject to a Listed Building Enforcement Notice requiring works to the façade to safeguard its features and the re-use and restoration of the building is welcomed in principle. Furthermore, the new owners have liaised with the Council through its pre application enquiry service in an effort to expedite the planning process. The images below are contained within the Heritage Statement and helps set the building context.



- 5.3 A number of previous applications for similar proposals have either been withdrawn or refused. The most recent application to be determined (21/0298) was refused for the following reasons:

01 The proposed works are not justified and are unacceptable. The proposals fail to preserve the special character of the listed building and no information has been provided to mitigate this objection. This is contrary to Policies SP9 and CE5 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

02 The development has a significant adverse effect on interests of acknowledged importance, namely safety and residential amenity, by reason of the site's location in an area at risk from flooding. 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).

03 The proposed development will have a significant adverse impact upon interests of acknowledged importance, namely affordable housing. No signed legal agreement has been provided for the commuted sum contribution to assist the Council in meeting its on-going requirement for affordable housing. This is contrary to Policy H4 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

- 5.4 The following policies of the Newport Local Development Plan, 1996-2011 (Adopted January 2015) are relevant to the proposals:

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

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

*Policy GP4 'General Development principles – highways and accessibility' states that development proposals should make adequate provision for car parking and ensure that development would not be detrimental to highway or pedestrian safety.*

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

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

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

*Policy CE5 Locally Listed Buildings and Sites notes a Local List of buildings and sites of local significance will be produced and protected from demolition and inappropriate development.*

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

- 5.5 The Council's Supplementary Planning Guidance for Houses in Multiple Occupation (adopted August 2015, updated January 2017) is also relevant.

### **Conservation and Heritage**

- 5.6 In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 and Historic Environment Wales Act 2016 which provide the legislative framework for the protection and sustainable management of the historic environment in Wales, and Planning Policy Wales edition 11 that provides the national planning policy framework for consideration of the historic environment (supplemented by Technical Advice Note 24), the primary material consideration is the statutory requirement to have special regard to the desirability of preserving the building, its setting or any features of special architectural or historic interest it possesses.
- 5.7 There is a general presumption in favour of the preservation or enhancement of a listed building and its setting. The application of planning and listed building controls should recognise the need for flexibility where new uses have to be considered in order to secure a building's survival or provide it with a sound economic future. Applicants must be able to



justify their proposals, show why the alteration or demolition of a listed building is desirable or necessary and consider the impact of any change upon its significance.

5.8 The site is grade II listed C20 commercial property. Its primary reason for listing is its integral part of an early C20 commercial development, attached to and for group value with the Technical Institute on one side and Nos 20-34 Clarence Place on the other. It forms part of an overarching listing of multiple properties in the terrace and no.12 that adjoins the site has its own additional listing. The building is thought to date to at least 1909 and has been vacant for at least 4 years. In this case, the proposal includes the re-use of a derelict listed building in a prominent location. To facilitate its re-use the proposal includes alterations to the building and heritage impact information has been provided as required. The building is in a poor state of repair and given this, its prominent position and that it is listed there is support for the proposals in principle. The building is spread over four floors and the proposed layout would comprise a shared living/dining and kitchen area at first floor with access to a shared outside amenity area over the ground floor flat roof extension. This roof terrace area also provides both bin storage and cycle parking. The second floor comprises three bedrooms, one of which includes a wet room shower, two-ensuites and a w/c. The third floor comprises a further two bedrooms each with an ensuite bathroom. A 1.8m high fence is proposed around the roof terrace area. To side and rear of the property is a private parking forecourt. The primary elevation is significant and has a strong presence in the streetscene particularly because of its group merit with its neighbouring properties. The proposal does not impact on the synergy between these properties but improves its standing within the row. This is a real opportunity to bring back much of the historic character to the front elevation and make a positive impact to this neglected site.

5.9 The council's Conservation Officer previously had a number of significant concerns regarding the previous proposals for this site, however in respect of the current proposal they advise as follows:

*Previous advice was given for the proposals and it is clear that this advice has been taken into consideration by the applicant within this application. The principle of the proposals would result in the appropriate restoration of the building and its original fabric whilst returning it to a suitable use. There are a couple of elements that should be reconsidered or justified as they would not be deemed appropriate to the historic and architectural interest of the building. Other specifics can be secured via condition.*

*The additional rooflight on the front elevation would not be considered appropriate. Front facing rooflights are not traditional features for a historic building and cannot be supported due to their impact on architectural interest but also visibility from public spaces. Whilst there is an existing rooflight on the front pitch, this is positioned behind the segmental arch along the parapet. The second rooflight, to be located left of the existing when facing the building, would not be hidden and would also create an unsymmetrical elevation. I would recommend that additional rooflights are kept to the rear pitch as this is not considered to be of as high value architecturally. It would be best to now overcrowd this principal pitch. The additional rooflights to the rear are acceptable, as well as the replacement of the existing with conservation style.*

*I do question whether any ventilation is required or how this is being addressed, particularly for new bathrooms. Furthermore, how are existing service runs and rainwater goods being treated?*

*The proposed Marseille tiles to replace the existing concrete tiles would be acceptable in principle but a sample will need to be provided at a later stage. Similarly a sample of the new flat roof materials to the rear shall be requested.*

*The HIA notes that the applicant is happy to condition a window survey to confirm which windows are repairable and which need replacing. This is acceptable.*

*The type and finish of render on the rear elevation has not been specified and details of the rear door have not been provided. These can either be given now or secured as conditions.*

*The proposed contemporary shopfront would be a positive change from the existing and would be acceptable in principle.*

*Internally most of the previous concerns have been addressed, particularly the issues surrounding insulation and subdivision. The use of lime and wood fibreboard from Ty Mawr is considered appropriate to the building and its fabric and therefore is acceptable. The subdivision would be done appropriately and not overly conceal original room layouts and features.*

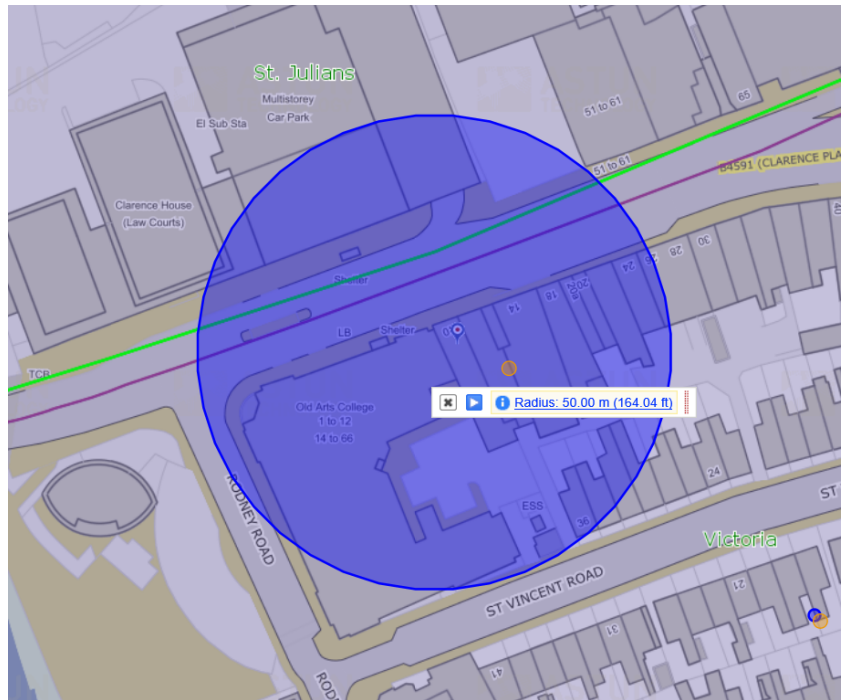
*All remaining proposals would be acceptable in principle including the outlined unauthorised works that were previously undertaken.*

*To conclude, the application would ensure the historic and architectural interest of the grade II listed building is restored with appropriate materials and a suitable, long-term use. There are a number of elements stated above that need further clarification at this stage, however the majority of the proposals are acceptable in principle. Once the concerns re the rooflights and ventilation/drainage have been addressed, submitted and deemed acceptable, I would support the application subject to a number of conditions.*

- 5.10 The applicant has provided images to demonstrate that the proposed rooflights would not be visible from the public realm and on this basis the Conservation Officer has confirmed she is happy for them to be retained. In addition, the applicant has also confirmed that all bedrooms have a window or a roof light proposed to provide natural ventilation. Internal bathrooms / WCs will have a local mechanical extract to vents on the outside and these will lead to the rear façade. Materials and window details can be dealt with via condition. The development does not propose any works that would impact upon the setting of the Scheduled Ancient Monument at Newport Castle which is located on the opposite side of Newport Bridge but visible from the site. The works will enhance the area's image and retain the building's valuable contribution to the group of historic buildings included in the listing. In light of the comments above, the proposal would preserve the character and appearance of this Grade II Listed Building and safeguard its future use, which is currently at risk and is therefore acceptable in accordance with policies SP9 and CE5.
- 5.11 At present the building has a dead frontage, boarded at ground floor and in a poor visual condition at upper floors. This gap in active frontage to this primary thoroughfare, coupled with the building's overall condition and appearance, detract from the appearance of the streetscene and give a poor impression to this key entrance into the city centre which has seen much redevelopment and public space enhancements in recent years. The proposal will bring significant enhancements in visual amenity terms and therefore improve the image of this part of the City. It will also bring a commercial use at ground floor that have the potential to attract expenditure to this part of the City and the City Centre by reason of its easy accessibility to both. In short, the proposal has significant urban regeneration and economic development merit and this must be afforded substantial weight in the decision making process. It complies with policies SP18 and CE1 of the Adopted Local Development Plan which favours proposals that assist the regeneration of the urban area, particularly where they contribute to the vitality, viability and quality of the environment of the City Centre; the provision of residential and business opportunities in the urban area; the reuse of vacant, derelict or underused land; and encourage the development of community uses where appropriate. Policy CE1 relates to enhancements along major routes. The proposal achieves most of these objectives and in terms of urban regeneration and associated benefits accords with national planning policy.

### **Concentration of HMOs**

- 5.12 The Newport City Council Supplementary Planning Guidance on Houses in Multiple Occupation (adopted August 2015, updated January 2017) seeks to avoid clusters of HMOs as they can alter the composition of a community and detract from local visual amenity. It also states that the council will not support a planning application that would take the number of HMOs above 15% within defined areas, measured within a 50 metre radius of the application property. A 50m radius captures 11 no properties, none of which are existing HMOs. The proposals would therefore not conflict with the Council's guidance.



- 5.13 Whilst not contrary to the Council's SPG the site is located in an area where there are a number of densely populated units likely not required to be licensed as operated as supported living facilities as part of the social housing provision. The SPG only requires us to consider Houses in Multiple Occupation for the purposes of concentration assessment and as supported living establishments are not HMOs for planning purposes they are not counted as part of the SPG concentration analysis. That being said, the character and context of the site is highly relevant and an over concentration of such units can lead to a breakdown of social cohesion and other material impacts prejudicial to good planning. It is necessary to identify any harm that would occur as a result of the proposals. We know from appeal decisions on other HMO proposals in Newport that Inspectors look for physical evidence of problems associated with HMOs, for example inadequate refuse storage arrangements, poorly maintained frontages, or quantified evidence of impacts on community cohesion. Clarence Place is located on a primary busy thoroughfare with a close association to the city centre. It is of mixed character, dominated by commercial units at ground floor with residential above by reason of the multi storey scale of buildings that are prevalent. Closer to the River Usk, we see residential flatted development of both new build and converted type. Further from the River we see some dense conversion schemes that are well established and offer mixed accommodation of the smaller and more affordable type or opportunities for supported living units. These are close to more traditional 2 storey terraced streets. Small scale affordable units are a valuable part of the housing market overall and its location with a number of buildings of historic interest poses challenges for maintenance. A number of units along Clarence Place have closed frontages following closure of commercial outlets and several have problems associated with long term dereliction. These factors prejudice the overall appearance of the street as well as long term enforcement and ASB issues arising from building vacancy and proximity to a densely populated urban area on the fringe of the city centre. Opportunities to bring these buildings back into use must carry substantial weight. Such uses are limited by building design and layout, listing status, location and overall feasibility. The Arts College conversion has shown that large scale residential in this location can offer potential for such development. The application site is much smaller but is clearly well located to offer small scale affordable accommodation in close proximity to the city and its transport connections. It will be located close to other comparable developments but the proposal itself is relatively small scale at 5 bedrooms and will enable the unit to be brought back into use with associated housing and economic potential benefits for the locality. In short, the proposal is SPG compliant, but officers are aware of other similar uses in the area that are not HMOs but operate in a similar manner. If these were included in the concentration assessment it is likely that the percentage would be above the SPG threshold. However, there are other factors to be considered as other appeals have confirmed and this assessment has therefore assessed this proposal having regard to these factors.

## ***Design and Amenity***

- 5.14 In this instance the property has the benefit of external amenity space, to enable residents to sit out and to dry clothes and so it would provide an acceptable level of amenity for its occupants. As noted above, the building is in a poor state of repair and this is also the case for some of the neighbouring buildings. However, this is not due to an over-concentration of HMOs in the area. It is not anticipated that waste storage and collection would cause any issues. On this basis, it is not considered that the proposals would result in an adverse impact to the amenity of neighbouring residents. The council's HMO Licensing Officer had concerns regarding the clearance height of the attic rooms being above 1.5m, however the sectional drawings provided as part of the application confirm that the proposals include a clearance in excess of this height. In addition, the HMO licensing standards outline that each bedroom should be at least 6.51sqm in size and a kitchen for up to 5 persons should be 7sqm and a living room at least 10sqm. All the rooms meet the relevant standards.

## ***Parking***

- 5.15 In relation to parking, the site is located on Clarence Place, a classified road close to the centre of Newport. The site has no off-street parking and therefore no vehicular access. The site is located in Parking Zone 2 which typically will require that 1 parking space per bedsit and 1 visitor space per 5 units is provided to comply with Newport City Council SPG Parking Standards (August 2015), a total of 7 parking spaces. The existing site comprises a retail unit space to the ground floor and first floor with the upper floors having previously been used in conjunction with this commercial use. Whilst staffing numbers are not available the commercial use of the building is likely to have had a parking demand in excess of 7 spaces. It is also recognised that the application site is located in a highly sustainable location, located approximately 0.3 miles east of Newport Railway Station and within close proximity to bus stops providing access to over twenty different bus routes. There are controlled parking zones in the immediate streets but these are under significant pressure from local residents and businesses already. That said, we know from past experience that Inspectors considering planning appeals regard the Council's adopted SPG on parking to over represent the requirements in relation to HMOs in particular as they consider car ownership in such residences in sustainable location will be lower than average. There is no evidence of this in reality but we know this is a very sustainable location indeed and with the added merits of bringing a vacant building back into use, any shortfall of parking guidelines is unlikely to be regarded as so prejudicial as to justify a refusal of planning permission. The highways officer has offered an objection to the scheme based on the location of the proposed cycle parking. This is located on the first floor outdoor terrace which must be accessed via the internal staircase within the property. The applicant has provided a bicycle location study to identify why there is no alternative location for the cycle store. This drawing outlines that the only ground floor outside space available has access through the ground floor A3 unit and therefore there is no alternative location. Whilst not ideal, on balance when considering the merits of the scheme and the high number of services and facilities available within walking distance the location of the cycle parking is considered adequate in this context only and based on the information supplied.

## ***Noise***

- 5.16 One local resident has raised concerns in respect of noise but this seems focussed on potential disturbance arising from building works required to property to remedy current dereliction and enable re-use. The application is accompanied by a noise assessment given the proximity to noise sources including commercial uses and the highway. In relation to the submitted assessment the council's Environmental Health Officer has advised that they have no objections to the proposals subject to a condition regarding the implementation of the mitigation measures outlined in the submitted report. On this basis the proposal is considered acceptable in terms of noise in accordance with policy GP2 have regard to the amenity of future residents. In relation to the neighbour's concerns regarding building work disturbance, this will large be internal works although some external elements are proposed and building work is essential if this property has any hope of re-use. Such works are temporary and generally short term and take place during the daytime. Any excessive or anti social disturbance arising from building work can be regulated by the Council's Environmental Health service.

## ***Archaeology***

- 5.17 No response has been received from Glamorgan Gwent Archaeological Trust however in respect of a previous application for a similar proposal on this site (21/0299) they advised that given the extent of the proposed alterations to the building, that a historic building recording is undertaken in order to preserve the building by record. This can be secured by condition. Similarly, CADW also have no objections to the proposal.

## ***Air Quality***

- 5.18 The site is located within an Air Quality Management Area Buffer Zone as set out in the Air Quality Supplementary Planning Guidance (SPG) adopted in February 2018. However, given that the proposals are not considered to result in a greater number of vehicle trips than the previous use it is not considered that the proposals would result in a worsening of air quality.

## ***Flood Risk***

- 5.19 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). NRW Flood Map, 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 of the River Usk, a designated main river. NRW offer no objection to the proposals. Notwithstanding this, it is the LPAs role to consider access/egress arrangements should a flood event occur. TAN15 advises that access routes should be shown to be operational under all conditions.
- 5.20 A key constraint to development is the site's location with flood zone C1. Technical Advice Note 15 is therefore relevant. Policy SP3 of the Adopted Local Development Plan states that development will only be permitted in flood risk areas in accordance with national guidance. A Flood Consequences Assessment has been provided for consideration but identifies a 93 year lifetime of development. This does not accord with national guidance which states that residential uses must assess a 100 year lifetime of development. Notwithstanding this, NRW have confirmed that they are satisfied with the use of the 2115 flood data and consider that the inclusion of the additional 7 years of sea level rise on the above flood depths would be minimum and would not alter the flood outcome to the proposed HMO.
- 5.21 Whilst the ground floor commercial unit is not of concern in this case, the HMO use is highly vulnerable in flood risk terms. The site is at risk of flooding and is therefore required to meet the justification test and acceptability criteria set out in TAN15. In this case the justification test is met in most respects as the proposal is required to sustain and regenerate and will support employment objectives. It is also previously developed land. However the justification test also requires for the potential consequences of flooding to have been considered and found to be acceptable having regard to TAN15. This aspect is considered further below.
- 5.22 TAN 15 Tests
- Section 6.2 of TAN 15 refers specifically to justifying the location of development and that such development should only be permitted within zone C1 if determined by the planning authority to be justified in that location and demonstrated that:
- i) Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or
  - ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners to sustain an existing settlement or region; and,
  - iii) It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and

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

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

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

Located within the settlement boundary, Officers consider that the development is necessary as part of a local authority strategy required to sustain an existing settlement.

It concurs with the aims of PPW and meets the definition of previously developed land.

#### Tests 2 to 12 – Consequences of Flooding

**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.

**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 flood defence works proposed as part of the development.

**The developer must ensure that future occupiers of the development are aware of the flooding risks and consequences.**

The developer will manage the property and has confirmed that they will ensure arrangements are in place to make future occupiers aware of the risks and consequences of flooding.

**Effective flood warnings are provided at the site**

NRW identify that whilst they seek to provide timely and robust warning they cannot guarantee their provision. No objection is offered by NRW on this basis though at the applicants have confirmed sign up to NRW's warning systems in any case.

**Escape/evacuation routes are shown by the developer to be operational under all conditions**

The FCA confirms that during the 0.5% plus CCA 2115 event the depth of flooding along the evacuation route to the front of the site would be 2.44m and with a velocity of 0.581m/s. During the 0.1 CCA event the depth of flooding is 2.72m. In this case if residents remain on site they could not reasonably escape but would have to remain on the upper floors of the building. This test is therefore failed.

**Flood emergency plans and procedures produced by the developer must be in place**

NRW advise that if, as the planning authority, you are satisfied that the proposed location is the only possible location in planning terms, only then should you consider whether the

above risks and consequences can be managed through measures such as emergency planning and evacuation.

The Initial Strategy employs logical procedures and management in the event of flood warnings but the effectiveness of these procedures, notably in the evacuation of people off site is largely reliant upon the effectiveness of NRW processes and civil contingency arrangements in the event of a flood. Such matters are outside the control of the Planning Authority.

**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**

**and 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 HMO units would be located on the upper floors away from floodwaters. The application site is situated within a terrace of properties and being a conversion there are limitations as to what can be designed to minimise structural damage, however given the age and build of the property it is considered less likely that structural damage will occur.

**No flooding elsewhere.**

NRW do not object to the development on this basis.

**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.**

NRW have not objected to the development on this basis.

**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 1000mm 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 0.45m/second in properties and the maximum rate of rise of floodwater would not exceed 0.3m/hour (refer to table at paragraph 7.7.41).**

NRW have not objected to the development on this basis.

- 5.23 When assessing whether the risks and consequences of flooding can be satisfactorily managed, the proposals do not satisfy all of the tests within TAN 15. However, due to the nature of the flood risk, which is tidal, there would likely be 2-3 days advance meteorological warning of such a catastrophic flood event occurring. TAN15 acknowledges that each site must be considered individually and a judgement taken in the context of the particular circumstances which could prevail at that site. Natural Resources Wales does not object to the development and the applicant is aware of the risk and will implement appropriate management to minimise the potential consequences of a flooding event. In addition, the proposed HMO units will be located on the upper floors of the building, above flood waters. As outlined above, the proposal would bring a derelict, vacant building back into a viable use which would provide residential accommodation on the upper floors with a commercial unit at ground floor that has the potential to attract expenditure to this part of the City and the City Centre by reason of its easy accessibility to both. The proposal has significant urban regeneration and economic development merit and this must be afforded substantial weight in the decision making process. Therefore, on balance, given the significant regeneration and conservation benefits, the proposed development is considered acceptable in terms of flood risk in accordance with policy SP3 and TAN 15.

## Ecology

5.24 In relation to ecology, the council's Ecology Officer has advised the following:

*I have considered this application in relation to section 7.0, Figure 4 - 'Checklist for protected/priority Species Surveys' set out in the Wildlife and Development SPG, which sets out the criteria we use for deciding when a bat survey is needed. The nature and location of these buildings and the works proposed to them suggest that there is a reasonable likelihood of an impact upon roosting bats, therefore any application should be supported by a bat survey to determine if this is the case.*

*The relevant section of this SPG is shown below, but in summary this is an old building which is within 200m of water, in this case the River Usk which bats are very likely to use for foraging and commuting. In addition, if a roost were present in the roof of this building then the works proposed would inevitably cause disturbance to it.*

*In the first instance a preliminary survey of bat roost potential should be undertaken. This can take place at any time of year. The outcome of a preliminary roost assessment will include one of the following:-*

- *an adverse impact upon bats is so unlikely that no further action in relation to bats is necessary, or*
- *the likelihood of an impact is low, such that precautionary mitigation measures can reduce this likelihood still further, or*
- *the likelihood of an impact upon bats is high, so further survey are needed in order to establish exactly what the impact would be, or*
- *the outcome is uncertain due to, for example, lack of access to certain areas of the building, so further survey are needed in order to establish exactly what the impact would be, or*
- *the impact is certain and can be defined precisely on the basis of the preliminary assessment, such that no further surveys are needed, but a licence issued by NRW would be required to allow works to proceed legally.*

*If a more detailed survey is required, this can only take place between May and September inclusive.*

As outlined by the Ecology Officer, the site comprises an old and derelict building located in close proximity to the River Usk and therefore bats are very likely to use this area for foraging and commuting. In addition, if a roost were to be present in the roof of this building then the proposed works would inevitably cause disturbance to it. The relevant surveys have been requested from the applicant however they have declined to provide the necessary information. The impact of the works upon any bat habitat and their general wellbeing cannot therefore be fully assessed or controlled. The impact upon protected species arising from the proposals has the potential to be significant. The potential presence of protected species and the extent they may be affected is a material consideration under TAN5 (2009) and must be addressed prior to determination.

It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either would not impact adversely on any European protected species on the site or that, in its opinion, all three tests for the eventual grant of a Regulation 44 licence are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the Habitats Directive and Regulation 3(4). It would also present the very real danger that the developer of the site would be unable to make practical use of the planning permission which had been granted, because no Regulation 44 licence would be forthcoming.

Therefore, in the absence of the requested information, the potential for harm cannot be fully assessed and this is a reason to refuse planning permission. With regard to biodiversity enhancements, without information in respect of the impact on bats, ecological enhancement cannot be determined and therefore this has also been included as a reason for refusal. The proposal is contrary to Policy 6P5 (Natural Environment) of the adopted Newport Local Development Plan (2011-2026) since there can be no confidence that bio-



diversity (bats) would be protected or that the proposals have demonstrated that adverse impacts on bat interests would be avoided, mitigated for or compensated

## 5.25 Section 106 Planning Obligation matters Summary

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

<b>Service Area that requires planning obligation</b>	<b>Purpose of planning obligation</b>	<b>Planning obligation initially sought by Planning Authority</b>	<b>Summary Heads of Terms agreed by applicant(s)</b>	<b>Viability Issues?</b>
Regeneration , Investment and Housing	Commuted contribution of £1125 for affordable housing provision based on a 20% target	n/a	Yes	No

## 5.22 Heads of Terms Agreed by Applicant

The applicant has agreed to the above heads of terms.

## 8. OTHER CONSIDERATIONS

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

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

### 8.2 ***Equality Act 2010***

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

### 8.3 Having due regard to advancing equality involves:

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

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 proposal will result in a significant adverse effect upon interests of acknowledged importance, namely protected species by reason of direct impact to habitat and no information has been provided to mitigate this objection. In addition, without this information it is not possible to quantify biodiversity enhancement. This is contrary to policy GP5 Newport Local Development Plan 2011 – 2026 (Adopted January 2015) and Planning Policy Wales TAN5: Nature Conservation and Planning.

**10. RECOMMENDATION**

**REFUSED**

01 The proposal will result in a significant adverse effect upon interests of acknowledged importance, namely protected species (bats) by reason of direct impact to habitat and no information has been provided to mitigate this objection. The proposal is contrary to policies SP9 and GP5 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) and Planning Policy Wales TAN5: Nature Conservation and Planning since there can be no confidence that bio-diversity (bats) would be protected and the proposals have not demonstrated that adverse impacts on bat interests would be avoided, mitigated, or compensated for or biodiversity enhancement will be secured.

**NOTE TO APPLICANT**

01 This decision relates to plan Nos:

SK001- Existing Plans and Section (received 02/11/2022)  
SK004 - Existing Elevations (received 02/11/2022)  
SK005 - Proposed Floor Plans and Section (received 02/11/2022)  
SK007 - Proposed Elevations (received 02/11/2022)  
SK010 - Sash Window Details (received 02/11/2022)  
SK012 - Clarence Place - Assumed Historic Building Plans (received 02/11/2022)  
SK013 - Clarence Place - Unauthorised Works (received 02/11/2022)  
SK014 - Bicycle Store Location Study (received 02/11/2022)  
SK015 - Proposed Services (received 02/11/2022)  
SK016 – Shopfront (received 02/11/2022)  
SK017 - Material Specification (received 02/11/2022)  
SK018 - Proposed Railing (received 02/11/2022)

Final Heritage Statement, Methodology Statement (unauthorised works), Planning Statement, Access Statement, Flood Consequences Assessment, Acoustic Report (all received 02/11/2022).

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1 (Sustainability), SP13 (Planning Obligations), SP18 (Urban Regeneration), GP1 (Climate Change), GP2 (General Amenity), GP4 (Highways and Accessibility), GP6 (Quality of Design), GP7 (Environmental Protection and Public Health), H4 (Affordable Housing), H8 (Self Contained Accommodation and Houses in Multiple Occupation), T4 (Parking), T5 (Walking and Cycling) and W3 (Provision for Waste Management Facilities in Development) were relevant to the determination of this application.

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

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**END**

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# Report

## Appeal Decisions

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### Part 1

Date: 7<sup>th</sup> June 2023

**Subject** Appeal Decisions

**Purpose** To record the outcome of recent planning appeals

**Author** Head of Regeneration and Economic Development

**Wards** St Julians, Always, Lliswerry, Allt-yr-Yn

**Summary** In consultation with the Chair or Deputy Chair of Planning Committee, the Head of Regeneration and Economic Development has delegated powers to determine planning applications previously determined by Planning Committee. The following planning appeal decisions are reported to help inform future decisions.

**Proposal** To accept the appeal decisions as a basis for informing future decisions.

**Action by** Planning and Development Manager

**Timetable** Not applicable

This report was prepared without consultation because it is a record of recent planning appeals to help inform future decisions.

## **Background**

The reports contained in this schedule provide information on recent appeal decisions.

The purpose of the attached reports is to inform future decision-making. This will help ensure that future decisions benefit the City and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

The applicant has a statutory right of appeal against the refusal of permission in most cases. There is no Third Party right of appeal against a decision.

Work is carried out by existing staff and there are no staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where an application is refused against Officer advice, during this interim arrangement, the Head of Regeneration and Economic Development, along with the Chair/Deputy Chair of Planning Committee will be required to assist in defending their decision at appeal.

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

## **Financial Summary**

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

## **Risks**

The key risk relating to appeal decisions relates to awards of costs against the Council.

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

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

Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry can be very significant. These are infrequent, so the impact is considered to be medium.

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

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

### Options Available

To accept the appeal decisions as a basis for informing future decisions.

### Preferred Option and Why

To accept the appeal decisions as a basis for informing future decisions.

### 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. The costs of defending decisions and any award of costs must be met by existing budgets.

#### **Comments of Monitoring Officer**

There are no legal implications other than those referred to in the report or detailed above.

#### **Staffing Implications: Comments of Head of People, Policy and Transformation**

Development Management work is undertaken by an in-house team and therefore there are no staffing implications arising from this report. Officer recommendations have been based on adopted planning policy which aligns with the Single Integrated Plan and the Council's Corporate Plan objectives.

#### **Local issues**

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

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

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

An Equality Impact Assessment for delivery of the Development Management service has been completed and can be viewed on the Council's website.

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

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

#### **Consultation**

Not applicable. This report is a record of decisions made by the Planning Inspectorate and/or Welsh Ministers.

#### **Background Papers**

Not applicable

Dated: 5/6/2023



Planning Appeal	
Reference	21/1222
Address	287 Caerleon Road, St Julians ward
Development	CHANGE OF USE FROM 2 FLATS TO A 9 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS USE)
Appellant	Mr Bell
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed

Planning Appeal	
Reference	22/0657
Address	287 Caerleon Road, St Julians ward
Development	CHANGE OF USE FROM 2NO. FLATS TO 4NO. APARTMENTS AND ASSOCIATED WORKS
Appellant	Mr Bell
Officer Decision	Granted with conditions and section 106 Legal Agreement
Committee Decision	Refused
Appeal Decision	Appeal dismissed and costs application refused
<p><b><u>The appeal has been dismissed on the sole ground that no Section 106 Legal Agreement has been provided and an application for costs has been refused. The Inspector did not agree with the first reason for refusal relating to highway safety and living conditions of neighbouring occupiers and future occupiers of the site. Please refer to attached report and decisions.</u></b></p>	

Planning Appeal	
Reference	E21/0115
Address	27 Somerton Road Alway
Development	The breach of planning control as alleged in the notice is, without planning permission, and within the last four years, the erection of walls, pillars, railings and gates higher than 1 metre adjacent to the highway and the creation of a vehicular access
Appellant	Mihaela-Silvia Rada
Officer Decision	Enforcement Notice served
Committee Decision	N/A
Appeal Decision	Appeal Dismissed

<b>Planning Appeal</b>	
Reference	22/0988
Address	Newport Retail Park, Unit U1 at tesco, Lliswerry
Development	3No. non-illuminated vinyl signs
Appellant	Mr Jon Hardy
Officer Decision	Refused in respect of Sign 01 only
Committee Decision	N/A
Appeal Decision	Appeal allowed

<b>Planning Appeal</b>	
Reference	E21/0024
Address	108 Melfort Road, NP20 3FS
Development	Creation of a raised patio
Appellant	Mr C L Kenny
Officer Decision	Enforcement Notice Issued
Committee Decision	N/A
Appeal Decision	Appeal allowed – Enforcement Notice Quashed and Planning Permission allowed

<b>Planning Appeal</b>	
Reference	22/1146
Address	Land to rear of 35 Clytha Park Road, NP20 4NZ
Development	Erection of 2 no. non-illuminated advertising hoardings.
Appellant	JFN1 Ltd
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed and express consented granted

<b>Planning Appeal</b>	
Reference	22/0274
Address	54A Ombersley Road, NP20 3EE
Development	Conversion of 2 flats to a single dwellinghouse with single storey rear extension including roof terrace and construction of new garage.
Appellant	Mr A Jones
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal Dismissed



**NEWPORT**  
CITY COUNCIL

CYNGOR DINAS  
**CASNEWYDD**

To inform Planning Committee of a planning appeal and costs decision which has been made by PEDW.

## **2. Report**

### Appeals Decided

*Appeal by Mr Simon Bell against the refusal of planning permission for the "change of use from 2 flats to 4 apartments and associated works" at 287 Caerleon Road, Newport (22/0657).*

### Background

The application was reported to the Planning Committee in September 2022 with a recommendation that planning permission be granted subject to conditions and a S106 agreement to secure a contribution towards affordable housing provision.

Planning Committee resolved to refuse the application in September 2022 (highway safety / residential amenity and lack of S106 for affordable housing). Members were concerned the proposal was akin to a HMO as part of the discussion.

## **3. DECISION: APPEAL DISMISSED**

The planning appeal was dismissed on the sole ground that no Section 106 Legal Agreement had been provided by the appellant. The appellant was offered the opportunity to provide one as part of the appeal process, and had they, the appeal would have been allowed.

### **Highway Safety**

There was no increase in demand between the existing lawful use and the proposed use. However, residents had raised significant concerns with regards to parking issues in the area. The Inspector considered that *"it may well be the case that the occupants of the appeal property, especially single persons, young professionals or those on lower incomes who would be attracted to live at the property, would choose not to own a motor vehicle."* He went on to state that *"limited persuasive evidence has been presented by the Council to substantiate its concerns about car parking or the dimensions of Orchard Lane and the Highways department raised no objection."*

He concluded the proposal would not exacerbate on road parking issues.

### **Living Conditions**

The flats proposed all complied with the minimum internal space standards set out in the SPG. A shared garden space was provided, and the nature of the apartments means less of a requirement for outdoor space. Concerns about refuse and cycle storage resulting in noise and disturbance already existed. The Inspector again concluded that *"no convincing evidence has been put before me to suggest that changing the layout of the property from two flats to four apartments would have a harmful effect on the living conditions of the occupiers of adjoining dwellings or have a detrimental impact on the character and appearance of the area."*

The Inspector concluded that no issues of residential amenity arose.

## **4. COSTS DECISION: REFUSED**

Notwithstanding the above, and the clear reference to a lack of evidence in both aspects of the reason instigated by Committee, the Inspector considered that the Council had provided evidence to support its reasons for refusal, which were based on reasonable planning grounds (and reference to the Development

Plan and other material considerations). He stated *“the Council has adequately demonstrated how it considers that the grant of planning permission would result in harm.”*

In conclusion, he stated *“I am broadly satisfied that the basis for the Council’s assessment and deliberations on the planning application were reasonable in the context of the Development Plan and not wholly based on the objections raised by local residents, and the influence this may have had on Councillors who refused the application against the recommendation of officers.”*

In my professional opinion, the Council was fortunate not have costs awarded against us based on the contradictory comments in the planning appeal decision itself stating insufficient evidence had been provided by the Authority.

**Recommendation:**

- i) That the contents of the report be noted.

**Report Author:** Andrew Ferguson, Planning and Development Manager



## Costs Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/05/2023

Costs application in relation to Appeal Ref: CAS-02247-Q6X9P5

Site address: 287 Caerleon Road, Newport NP19 7HB

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- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
  - The application is made by Mr Simon Bell for a full award of costs against Newport City Council.
  - The appeal was against the refusal of planning permission for the change of use from 2 flats to 4 apartments and associated works.
  - A site visit was made by the Inspector on 18 April 2023.
- 

### Decision

1. The application for an award of costs is refused.

#### **The submissions for Mr Simon Bell**

2. The costs application was submitted in writing and states that a full award of costs is justified since the Council in refusing permission has behaved unreasonably and that the unreasonable behaviour has led to the appellant incurring the unnecessary or wasted expense of an appeal.
3. The committee report and recommendation is clear and unambiguous and the Council had no reasonable planning grounds to refuse planning permission. Overall, the Council has failed to substantiate its case with any compelling evidence to justify refusing the application, which clearly complies with the development plan. The Council has ignored the professional advice of its senior officers and made vague, generalised and inaccurate assertions about the impact, unsupported by any objective analysis. The Council has clearly acted unreasonably in respect of the substance of the matter, which is supported by the examples described in paragraph 3.11 of the Annex.
4. The appellant has had to seek professional advice to lodge the appeal. The unreasonable behaviour by the Council has therefore led to the appellant incurring unnecessary costs.

#### **The response by Newport City Council.**

5. The Council states that in reaching their decision the Planning Committee took into account all relevant material planning considerations, including the professional advice from Planning Officers. A member of the Planning Committee also has local knowledge

of the surrounding area as a place of work and previous home. Members of the committee attached significant weight to local knowledge around on-street parking availability, the narrowness and use of the rear lane and the character of the area. They were also aware of the parking survey evidence provided in a previous decision at the appeal site, which is material to understanding the on street parking availability in the area.

## Reasons

6. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour.
7. The Annex advises that authorities are not bound to adopt the professional or technical advice given by their own officers, but they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they have relevant evidence to support their decision. The Council's planning committee report is very detailed and lists the concerns of local residents and provides an in-depth assessment of the issues raised by interested parties and those objecting to the development. The Council has also provided evidence to support its reasons for refusal, which were based on reasonable planning grounds. In particular, by reference to the Development Plan and other material considerations, the Council has adequately demonstrated how it considers that the grant of planning permission would result in harm.
8. In the planning balance I have concluded that, taking account of the relevant policies of the Development Plan, the submitted evidence and other material considerations, including my site observations, the proposed development would not give rise to any harm to highway safety or the living conditions of neighbouring residents or the future occupiers of the apartments. Nonetheless, although the Committee's decision was taken contrary to professional and technical advice, its reasons for doing so were based on reasonable planning grounds. Whilst I disagree with the Council's views in relation to the main issues, it was not unreasonable for Council Members to take a view contrary to the advice of officers.
9. I am broadly satisfied that the basis for the Council's assessment and deliberations on the planning application were reasonable in the context of the Development Plan and not wholly based on the objections raised by local residents, and the influence this may have had on Councillors who refused the application against the recommendation of officers. During the appeal process the Council has considered the effects of the proposal and that its reasons for refusal were based on reasonable planning grounds. Therefore, on balance, the Council's submission was not so lacking in detail or merit to amount to unreasonable behaviour.
10. As such, the matter is one of disagreement between the parties and I do not find that the appellant has incurred unnecessary or wasted expense in preparing a case for the appeal.

## **Conclusions**

11. Having regard to the reasons for refusal put forward by the Council in its decision notice and all other relevant considerations and the provisions of the Well Being and Future Generations Act, I conclude that the Council's decision to refuse permission did not amount to unreasonable behaviour. The application for an award of costs against the Council therefore does not succeed.

*R Duggan*

INSPECTOR

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## Appeal Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/05/2023

Appeal reference: CAS-02221-T4B3P5

Site address: 287 Caerleon Road, Newport NP19 7HB

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Simon Bell against the decision of Newport City Council.
  - The application Ref 21/1222, dated 26 November 2021, was refused by notice dated 24 March 2022.
  - The development proposed is described as *“change of use from 2 flats to a 9 bedroom house in multiple occupation (sui generis)”*.
  - A site visit was made on 18 April 2023.
- 

### Decision

1. The appeal is allowed, and planning permission is granted for a change of use from 2 flats to a 9 bedroom house in multiple occupation (sui generis) at 287 Caerleon Road, Newport NP19 7HB in accordance with the terms of the application Ref 21/1222, dated 26 November 2021, subject to the conditions set out in the attached schedule.

### Main Issues

2. I consider the main issues to be the impact of the development on highway safety and the character and appearance of the area.

### Reasons

#### Highway Safety

3. The appeal site comprises a three-storey end of terrace property fronting onto Caerleon Road, which is a very busy arterial route into the city centre from the M4. It benefits from a small front forecourt and a rear garden with parking provision accessed from Orchard Lane, which is a narrow and unclassified highway. The property is currently split into two self-contained flats laid over three floors.
4. The proposed development would comprise of a kitchen and living space with toilet at the lower ground floor level; 4no. en-suite bedrooms at ground floor and 4no. en-suite bedrooms and 1no. bedroom with separate toilet at the first floor level. The development would provide 3no. parking spaces to the rear (two of which would have electric vehicle

charging points) and a rear garden with bike store to the side and bin store to the front forecourt.

5. The Council states that according to its Parking Standards Supplementary Planning Guidance (SPG) the property's lawful use as two flats with a total of six bedrooms would generate a parking requirement of 7 spaces (1 parking space per bedroom and 1 visitor space), whereas a 9-bed HMO generates a parking requirement of 11 spaces. Therefore, there would be an additional demand of 4 parking spaces over and above the existing use.
6. The appellant has undertaken a parking survey carried out over two days in the early morning when it was assumed most residents would be at home. I am satisfied that it is based on a broadly sound methodology. Whilst the survey results show that six of the streets that were surveyed were at 100% parking stress, four other streets showed that parking spaces were available. The survey concludes that there is sufficient capacity within the local area to accommodate the 4No. additional vehicles required by the Council's parking standards.
7. The conclusions of the Parking Survey are also broadly in accordance with my own experience when visiting the area, a little after 10:00 hrs, which admittedly is at a time when parking demand might be expected to be lower. However, I would not consider the available parking spaces to be plentiful and it is not difficult to envisage that, at times, competition for spaces could be difficult for residents and visitors alike. Nevertheless, in my experience the area is similar to many long established high density housing areas where car ownership, not originally anticipated, has increased over time to render on-street parking a matter of some inconvenience owing to competition for the finite road space available. The peak demand for local parking on occasions will inevitably outstrip supply which means that people sometimes have to park away from their homes. Although the use of such spaces would require walking from the property to an available on street parking space such arrangements are not uncommon in urban areas with limited off-street parking.
8. The Council's SPG represents guidance only and should not be prescriptively applied. It is clear that the SPG has been prepared on the basis that the merits of the scheme and local circumstances should dictate the approach taken, and that is consistent with Planning Policy Wales (Edition 11, 2021) (PPW). PPW states that such standards should be applied flexibly and informed by the local context, including public transport accessibility, urban design principles and the objective of reducing reliance on the private car whilst supporting a modal shift to walking, cycling and public transport (paragraphs 4.1.49 onwards).
9. I saw that the house is a short walking distance from a range of shops and services within Caerleon Road District Centre, which include convenience stores, restaurants, cafés, takeaways and a public house. There are also bus stops nearby offering a frequent and regular service to the City Centre and its wider facilities, services and employment opportunities.
10. It is likely that future residents would rely on the fact that the property is within a very sustainable location with local facilities being highly accessible by walking and cycling and having a frequent local bus service. The scheme also proposes to include dedicated cycle storage as part of the scheme thus encouraging the use of cycling over car use. Moreover, given its sustainable location within easy reach of a range of services and facilities and on a good bus route to the City Centre, it is likely that the proposed HMO, which generally offer a more affordable type of accommodation, would be more attractive to tenants who do not own a private car. Therefore, it would be reasonable to expect that

car ownership within the proposed HMO would be lower than the 1 per bedroom set out in the parking standards.

11. Therefore, having had specific regard to the circumstances of this case, and in particular the sustainability credentials of the development and the modest availability of on street parking in the wider area, I conclude that the proposed development would not represent a material threat to highway safety. I therefore find that the development would be compliant with the general thrust of Policies GP2, GP4 and H8 of the Adopted Newport Local Development Plan, January 2015 (LDP). The limited conflict with Policy T4 and the associated Parking Standards is justified by the sustainability credentials of the site.
12. The appellant has referred me to a number of allowed appeal decisions in Newport relating to HMOs where parking provision and highway safety were issues. I have noted the clear similarities between those appeals and the appeal before me, including one at No. 100 Caerleon Road. As such, I have afforded these decisions significant weight in my determination of this appeal but recognising that all appeals must be considered on their individual merits which I have done in this case.

### *Character and Appearance*

13. Although this issue does not form a reason for refusal by the Council, objections have been raised by local residents regarding the impact of the development on the character and appearance of the locality as a result of an overconcentration of HMOs in the local area and the transient nature of the future residents.
14. Policy H8 of the LDP seeks to ensure, amongst other things, that the proposal does not harm the character of the building and locality and will not cause an unacceptable reduction in the amenity of neighbouring occupiers; and the proposal would not create an over concentration of HMOs in any one area of the city which would change the character of the neighbourhood or create an imbalance in the housing stock. Policy GP2 further reinforces these objectives, particularly those relating to general amenity.
15. The 'Houses in Multiple Occupation' SPG provides guidance on how HMOs will be controlled in the city. It states in paragraph 5.5.4 that "In general, the Council will not support a planning application that would take the number of HMOs, considered as a proportion of the local housing stock above a specified limit". The specified threshold is 15% within a 50 metre radius of the application site.
16. The Council's calculation for this proposal was that around 4.7% of existing residential properties within 50m of the site are HMOs. The proposal therefore complies with the Council's adopted policy and guidance aimed at avoiding an over concentration of HMOs within an area.
17. The proposal involves a residential use within a residential area and is therefore compatible. Whilst concerns have been raised in terms of increased littering, noise and disturbance in the area, no convincing evidence has been put before me to suggest that the intensification of the use of the property as a HMO would have a harmful effect on the living conditions of the occupiers of adjoining dwellings. Indeed, the figures put forward within the Officer's committee report clearly indicate that the thresholds set out within the Council's SPG would not be exceeded as a result of the appeal proposal. I conclude therefore that any additional activity and noise generated by the appeal proposal would not be significant within a busy context.
18. Concerns have also been raised regarding the overdevelopment of the property and the standard of the accommodation in terms of the space provided. I note that the Council

raises no objection in this regard and I find no reason to reach a different view, mindful that matters of safety and hygiene are adequately covered by other legislation.

19. Some local residents have raised concerns which appear to be based on unfounded assumptions regarding crime and the anti-social behaviour of future occupants of the development. However, there is no firm evidence, for example from Police records, that if there have been any such occurrences in the locality, they are attributable to occupants of the property or others in the street.
20. Notwithstanding this, the HMO use clearly serves to meet a particular housing need and the surrounding area offers a broad mix of uses. For these reasons, I do not consider that the HMO use would change the character of the neighbourhood. Therefore, I consider that the proposal would not have a detrimental impact on the character and appearance of the area and would, therefore, comply with Policies GP2 and H8 of the LDP.

### *Conditions*

21. I have considered the suggested conditions put forward by the Council having regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014). I have agreed to impose the conditions for the reasons set out within the schedule below but, if necessary, I have adjusted their wording in the interest of clarity and precision. In addition to the suggested conditions, I shall also impose a condition relating to a scheme of Ecological Enhancement Measures for the reason given.

### **Conclusions**

22. Having regard to the above and considered all other matters raised, I conclude that the appeal should be allowed.
23. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of making our cities, towns and villages even better places in which to live and work.

*R Duggan*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following approved plans: Drawing No. 3987.PL.02 – Existing and Proposed Block Plans; Drawing No. 3987.PL.03 – Existing Floor Plans; 3987.PL.04 Proposed Floor Plans.

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.

- 3) Prior to the first beneficial use of the property as a House in Multiple Occupation, the approved parking area containing 3no. spaces (2no. of which shall be installed with an Electric Vehicle Charging Point with minimum 7KW supply) shall be provided in full and made available for the use of parking. The parking spaces shall be retained and maintained in a useable condition and kept free of obstruction for the duration of the use.

Reason: In the interests of providing improved off-street parking provision, safeguarding residential amenity and promoting sustainable principles in accordance with Policy GP4, T4 and SP1 of the LDP 2011-2026 (adopted January 2015).

- 4) Prior to the first beneficial use of the property as a House in Multiple Occupation, the refuse stores shall be provided in accordance with the details shown on 'Drawing No. 3987.PL.02 – Existing and Proposed Block Plans' and thereafter retained and maintained for the duration of the use.
- 5) Reason: In the interests of residential amenity and provision of acceptable waste storage in accordance with Policy GP2 and W3 of the LDP 2011-2026 (adopted January 2015).
- 6) Prior to the first beneficial use of the property as a House in Multiple Occupation, the cycle store shall be provided in accordance with the details shown on 'Drawing No. 3987.PL.02 – Existing and Proposed Block Plans', and thereafter retained and maintained for the duration of the use and kept free of obstruction.

Reason: In the interests of residential amenity and sustainable travel in accordance with Policy SP1 and GP2 of the LDP 2011-2026 (adopted January 2015).

- 7) The use of the property as a House in Multiple Occupation shall have a maximum of nine bedrooms and nine persons.

Reason: In the interests of the character and appearance of the area and highway safety in accordance with Policy GP2 and GP4 of the LDP 2011-2026 (adopted January 2015).

- 8) Within three months of the date of this decision, a scheme of Ecological Enhancement Measures and an Implementation Timetable shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Enhancement Measures shall thereafter be undertaken in accordance with the approved scheme and Implementation Timetable and retained thereafter for the lifetime of the development.

Reason: In the interests of biodiversity and to provide a net benefit to biodiversity in accordance with Policy 9 of Future Wales and Policy GP5 of the LDP 2011-2026 (adopted January 2015).

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## Appeal Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/05/2023

Appeal reference: CAS-02247-Q6X9P5

Site address: 287 Caerleon Road, Newport NP19 7HB

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Simon Bell against the decision of Newport City Council.
  - The application Ref 22/0657, dated 5 July 2022, was refused by notice dated 7 September 2022.
  - The development proposed is described as *“change of use from 2 flats to 4 apartments and associated works”*.
  - A site visit was made on 18 April 2023.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Simon Bell against Newport City Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application was reported to the Planning Committee in September 2022 with a recommendation that planning permission be granted. The Committee resolved to refuse the application. The Local Planning Authority's committee report and statement contains the concerns of the local Members, reflecting the issues raised by local residents, which form the basis of the main issues identified below.

### Main Issues

4. I consider the main issues to be the impact of the development on:
  - highway safety;
  - the living conditions of the occupiers of neighbouring properties and the future occupiers of the property; and
  - whether the development would conflict with policy requirements relating to affordable housing provision.

## Reasons

5. The appeal site comprises a three-storey end of terrace property fronting onto Caerleon Road, which is a very busy arterial route into the city centre from the M4. It benefits from a small front forecourt and a rear garden with parking provision accessed from Orchard Lane, which is a narrow and unclassified highway. The property is currently split into two self-contained flats laid over three floors, with the first flat containing 3no. bedrooms over the lower ground and ground floor and the second flat at first floor also containing 3no. bedrooms.
6. It is proposed to reconfigure the layout of the property to contain 4no. apartments comprising a 1no. bedroom apartment with a bathroom, kitchen and dining room at lower ground floor accessed from the rear; a two-bedroom apartment with a bathroom and kitchen/dining room at the ground floor level accessed via the front door. At first floor level there would be 2No. open plan studios that would be accessed via a staircase from the ground floor front door. Externally, it is proposed to demolish the existing garage and extend the parking area accessed from Orchard Lane to provide improved off-street parking for a total of three vehicles as well providing a communal garden space with bike and refuse storage.

### *Highway Safety*

7. Based on the Council's adopted Parking Standards there would be no increase in parking demand between the existing lawful use of the property as 2no. three bedroom flats and the proposed use. However, the objections raised by neighbouring residents and the Local Councillors raise significant concerns with regard to parking issues in the local area, namely the lack of available on street car parking, and the resulting highway safety issues.
8. At the time of my arrival, a little after 10:00 hrs, I was able to locate an unrestricted parking space close-by and there were a small number of other spaces available on surrounding streets. However, I would not consider them to be plentiful and it is not difficult to envisage that, at times, competition for spaces could be difficult for residents and visitors alike. Nevertheless, in my experience the area is similar to many long established high density housing areas where car ownership, not originally anticipated, has increased over time to render on-street parking a matter of some inconvenience owing to competition for the finite road space available. The peak demand for local parking on occasions will inevitably outstrip supply which means that people have to park away from their homes on occasions. Although use of such spaces would require walking from the property to an available on street parking space such arrangements are not uncommon in urban areas with limited off-street parking.
9. In addition, it may well be the case that the occupants of the appeal property, especially single persons, young professionals or those on lower incomes who would be attracted to live at the property, would choose not to own a motor vehicle. It is likely that future residents would rely on the fact that the property is within a very sustainable location with local facilities being highly accessible by walking and cycling and having a frequent local bus service linking the site to wider transport nodes and employment opportunities further afield. Overall, I see no reason to believe that the appeal scheme would result in a material increase in parking demand from the existing use of the property and would lead to indiscriminate parking in the area. The scheme also proposes to include dedicated cycle storage as part of the scheme thus encouraging the use of cycling over car use.
10. Limited persuasive evidence has been presented by the Council at the appeal stage to substantiate its concerns regarding car parking or the alleged issues arising from the



dimensions of Orchard Lane. However, I note that the Council's Highways department raised no observations to the scheme.

11. Therefore, based on the evidence presented I am content that the level of off-street car parking within the scheme complies with the Council's own parking standards and that sufficient car parking capacity exists within the locality to accommodate any potential increased demand generated by the development. The Council's adopted Parking Standards indicates that there would be no increase in parking demand between the existing lawful use of the property as 2no. three bedroom flats and the proposed use. In addition, given that the property is in a very sustainable location close to shops, services, employment opportunities and public transport availability, I consider that future occupiers are less likely to rely on their own vehicles.
12. As such, the proposed development would not exacerbate on road parking to the extent that highway safety or the free flow of traffic would be materially harmed. Therefore, the proposal would accord with Policies GP4, H8 and T4 of the Adopted Newport City Council Local Development Plan (LDP).

### *Living Conditions*

13. Policy GP2 requires development not to have a significant adverse effect on local amenity, not be detrimental to visual amenities of nearby occupiers or the character or appearance of the surrounding area and to provide adequate amenity for future occupiers; and Policy H8 states that self-contained accommodation will only be permitted if the scale and intensity of the use does not harm the character of the building and locality and will not cause an unacceptable reduction in the amenity of neighbouring occupiers and adequate noise insulation is provided.
14. The Council's Flat Conversions Supplementary Planning Guidance, 2021 (SPG) seeks to ensure that flats provide reasonable living conditions and puts forward minimum internal floor space requirements for studio flats (32 sqm); one-bed flats (45 sqm) and 2-bed flats (58 sqm). The proposed internal floorspace of the proposed studios would be approximately 32.03 sqm and 39.97 sqm; the one-bed apartment would be 51.20 sqm, and the two-bed apartment would be approximately 70.00 sqm, which would exceed the floor space requirements of the SPG.
15. In terms of outdoor amenity space, the Flat Conversions SPG accepts that it is not always possible for this to be provided when converting an existing building. In this case, the proposed layout includes a shared garden space to the rear for the use of the future residents, but there would be a need to remove an existing canopy structure to the rear to increase the amount of light into the ground floor apartment. Moreover, the nature of apartments is such that they are unlikely to be occupied by families with children requiring outdoor amenity space, so the limited amount of amenity space proposed is not a reason to dismiss the appeal.
16. The Council's appeal statement also refers to the potential impact on the occupiers of the proposed lower ground floor apartment as a result of the access from Caerleon Road to the refuse and cycle stores which would be adjacent to the habitable windows. The Council considers that this would result in unacceptable noise and disturbance to the occupiers of the lower ground floor flat, which is further compounded by the intensified use of the building, resulting in four separate bin storage areas and storage for up to 10 bikes. Whilst I have taken these concerns into account, I consider that these issues already exist with the lawful use of the property and are issues that would generally be expected and accepted when living within a densely populated urban environment, where

some form of noise associated with the movement of other occupiers of the property in close proximity to habitable rooms would be a common occurrence.

17. A number of concerns have been raised by local residents regarding the intensification of the use of the property, the transient nature of the occupiers and the potential increased pressure on refuse storage and general noise and disturbance as a result of the development.
18. I saw that the appeal property is located within a residential area containing a mix of family dwellings and what appear to be flats. The area, therefore, while residential is not particularly quiet and is subject to a lot of traffic and pedestrian activity. Whilst the Council has raised an objection to the proposal in terms of increased noise, activity and disturbance in the area, no convincing evidence has been put before me to suggest that changing the layout of the property from two flats to four apartments would have a harmful effect on the living conditions of the occupiers of adjoining dwellings or have a detrimental impact on the character and appearance of the area. In addition, there would be a net reduction of one bedroom and therefore the number of occupiers when compared to the existing lawful use of the property.
19. I saw that Caerleon Road is also a heavily trafficked road. Therefore, the area is not particularly quiet and is subject to a lot of passing traffic and pedestrian activity. Any additional activity and noise generated by the appeal proposal would not be significant within a busy context.
20. With regard to waste and recycling storage, the scheme provides an area within close proximity to the collection on Caerleon Road and that this could be managed in the same way as the existing flats within the property. Nevertheless, I consider it necessary that this issue would need to be addressed via the imposition of a condition requiring further information to be submitted to and agree by the Council.
21. Having regard to the above, I consider that the proposal would provide a suitable level of internal space for future residents of the four apartments, and that the living conditions of the occupiers of neighbouring properties would not be harmed. The development would, therefore, comply with Policies GP2, H8 and W3 of the LDP.

#### *Affordable Housing*

22. PPW states that having good quality affordable homes is the foundation of living well which brings a wide range of benefits to health, learning and prosperity. It highlights the importance of ensuring that all communities have access to a range of well-located and designed energy efficient market and affordable homes to meet their needs, and that the planning system must enable provision of a range of well-designed, energy efficient, good quality market and affordable housing that will contribute to the creation of sustainable places.
23. Policy SP13 of the LDP requires development to help deliver more sustainable communities by making contributions to local and regional infrastructure, including affordable housing. The application property lies within the Housing Target Area of Newport East which has aspirations for the delivery of 20% affordable housing on new development; and the equivalent commuted sum generated by the proposed scheme is £940,00.
24. Following the submission of the appeal the appellant was given an opportunity to submit a planning obligation in pursuance of Section 106 of the Town and Country Planning Act 1990 which would ensure that the appellant would pay the Council the affordable housing

contribution in line with LDP policies and the SPG. However, the appellant has failed to submit a planning obligation.

25. The provision of the contribution would be a benefit to the community and would assist the Council in delivering affordable housing in the Council area. As the appellant has not provided a planning obligation to pay the financial contribution the proposed development conflicts with Policy SP13 of the LDP.

### **Conclusions**

26. Having regard to the above and considered all other matters raised, I conclude that the appeal should be dismissed.
27. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of making our cities, towns and villages even better places in which to live and work.

*R Duggan*

INSPECTOR

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