

# Agenda



## Planning Committee

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Date: Wednesday, 4 October 2023

Time: 10.00 am

Venue: Council Chambers - Civic Centre

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

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Item	Wards Affected
1. <a href="#">Apologies for Absence</a>	
2. <a href="#">Declarations of Interest</a>	
3. <a href="#">Minutes of the meeting held on 06.09.23</a> (Pages 3 - 4)	
4. <a href="#">Development Management: Planning Application Schedule</a> (Pages 5 - 56)	
5. <a href="#">Appeal Decisions</a> (Pages 57 - 62)	

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Date of Issue: Tuesday, 03 October 2023

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# Minutes



## Planning Committee

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Date: 06 September 2023

Time: 10.00 am

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

In Attendance: Andrew Ferguson (Planning and Development Manager), Joanne Davidson (East Area Development Manager), Joanne Evans (Senior Solicitor- Planning & Land), Alun Lowe (Planning Contributions Manager), Grant Hawkins (Senior Planning Officer)

Taylor Strange (Governance Support Officer), Anne Jenkins (Governance Team Leader)

Apologies: None

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### 1. **Declarations of Interest**

None

### 2. **Minutes of the meeting held on 06 September 2023**

The minutes of the meeting held on 06 September 2023 were submitted.

#### **Resolved**

That the minutes of the meeting held on 06 September 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 11.50pm

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# Report

## Planning Committee – Hybrid Meeting

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### Part 1

Date: **4<sup>th</sup> October 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.

- 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:** 23/0091      **Ward:** Pillgwenlly

**Type:** Full (Major)

**Expiry Date:** 6th September 2023

**Applicant:** T J Morris Limited

**Site:** Newport West Retail Park Docks Way Newport South Wales NP20 2NZ

**Proposal:** **DEMOLITION OF EXISTING RETAIL PARK (CLASS A1) AND ERECTION OF 1 NO. RETAIL UNIT (CLASS A1) WITH ASSOCIATED ACCESS AND SERVING ARRANGEMENTS AND CAR PARKING**

**Recommendation:** **GRANTED WITH CONDITIONS SUBJECT TO NOTIFICATION TO NATURAL RESOURCES WALES WITH DELEGATED AUTHORITY TO THE HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT TO ISSUE THE DECISION IF NO NEW MATTERS RAISED**

**1. INTRODUCTION**

- 1.1 This application is being reported to Planning Committee as it is major development.
- 1.2 This application seeks consent for comprehensive redevelopment of an existing retail site. The proposal will require demolition of existing retail units and the construction of one retail unit for occupation by a named retailer – Home Bargains, which is currently represented on site in a smaller outlet. The applicant has indicated confidence in the location and their trading experience at the site and therefore is seeking to invest in its regeneration and provide a larger flagship store. The proposed store will have a gross floorspace less than the combined gross retail floorspace to be demolished.
- 1.3 Newport West Retail Park is an existing out of centre collection of retail and commercial uses south of Newport City Centre. Originally constructed in 1998, the applicant advises that the units and format no longer meet the needs of the retail market. Lidl formally occupied the site as an anchor tenant but have since relocated to a purpose built store on Cardiff Road. This has further impacted the attractiveness of the existing development and units to the retail sector.
- 1.4 The applicants undertook a statutory pre application consultation prior to application submission and sought pre application advice from the Local Planning Authority. Officers consider that redevelopment of an existing retail site for new retail development in the urban area has merit. However, relevant considerations will include its compatibility with the centres first approach required by adopted planning policy along with other material factors such as flood risk, design and visual impact, accessibility and highway safety, landscape and ecology.

**2. RELEVANT SITE HISTORY**

94/0315	RETAIL DEVELOPMENT INCLUDING ASSOCIATED CAR PARKING SERVICING AND LANDSCAPING	Refused 1 <sup>st</sup> July 1994
94/0758	DETAILS OF RETAIL DEVELOPMENT TO COMPLY WITH APPEAL 1286	Approved with conditions 22 <sup>nd</sup> January 1997
06/1509	VARIATION OF CONDITION 05 (RESTRICTION TO NON FOOD RETAILING ONLY) RELATING TO	Granted with conditions 22 <sup>nd</sup> February 2007

	RESERVED MATTERS APPROVAL 96/0758/RM (FOR DETAILS OF RETAIL DEVELOPMENT TO COMPLY WITH PLANNING PERMISSION ON APPEAL 1286) TO PERMIT ANCILLARY NON-PERISHABLE FOOD RETAILING	
11/0441	VARIATION OF CONDITION 5 (USE RESTRICTION) RELATING TO RESERVED MATTERS 96/0758 FOR DETAILS OF RETAIL DEVELOPMENT TO COMPLY WITH APPEAL 1286	Approved with conditions 7 <sup>th</sup> July 2011
17/0335	VARIATION OF CONDITION 04 (STORE OPENING HOURS) OF PLANNING PERMISSION 11/0441/VC TO ALLOW THE STORE TO TRADE FOR AN ADDITIONAL HOUR; 0800 TO 2200 MONDAY - SATURDAY AND 1000 TO 1600 ON SUNDAYS	Approved with conditions 8 <sup>th</sup> June 2017

### 3. POLICY CONTEXT

#### 3.1 Future Wales: the national Plan 2040

Policy 6 confirms:

Significant new commercial, retail, education, health, leisure and public service facilities must be located within town and city centres. They should have good access by public transport to and from the whole town or city and, where appropriate, the wider region. A sequential approach must be used to inform the identification of the best location for these developments and they should be identified in Strategic and Local Development Plans.

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

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

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

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

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

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

further development for retail and commercial centre uses, there will be no need to identify additional sites.

#### Retail Impact Assessments

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

### 3.3 Technical Advice Notes

- TAN4 – Retail & Commercial Development
- TAN5 – Nature Conservation & Planning
- TAN15 – Flooding
- TAN23 – Economic Development

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

- SP1 – Sustainability
- SP3 – Flood Risk
- SP9 – Conservation of the natural, historic and built environment
- SP18 – Urban Regeneration
- SP19 – Assessment of Retail Need
- GP1 – Climate Change
- GP2 – General Amenity
- GP3 – Service Infrastructure
- GP4 – Highways & Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection & Public Health
- CE1 – Routeways, Corridors and Gateways
- CE3 – Environmental Spaces & Corridors
- CE6 - Archaeology
- T2 – Heavy Commercial Vehicle Movements
- T4 - Parking
- T5 – Walking and Cycling
- T7 – Public Rights of Way & New Development
- R11 – Development of existing Out of Centre Retail Sites
- W3 - Provision for Waste Management Facilities in Development

Relevant adopted Supplementary Planning Guidance is:

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

## 4. **CONSULTATIONS**

### 4.1 NATURAL RESOURCES WALES: object.

The planning application proposes a replacement retail unit which represents less vulnerable development in flood risk terms. The application site is within Zone B of the Development Advice Map (DAM) contained in Technical Advice Note 15: development and flood risk (2004) (TAN15). However, our Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and within Flood Zone 2 and 3 (Sea).

As confirmed in the letter from Welsh Government dated 15 December 2021, the FMfP represents better and more up-to date information on areas at flood risk than the DAM. Section 6 of TAN15 requires the Local Planning Authority to determine whether the development at this location is justified. Therefore, we refer you to the tests set out in section

6.2 of TAN15. If you consider the proposal meets the tests set out in criteria (i) to (iii), then the final test (iv) is for the applicant to demonstrate through the submission of an FCA that the potential consequences of flooding can be managed to an acceptable level.

We refer to our previous response dated 24th May 2023 (ref: CAS-216492-M1T7), within which we advised that the application fails A1.14 and A1.15 of TAN15 and that the assessment did not include a full allowance for climate change as required by national policy. We have reviewed the amended Flood Consequences Report prepared by Fairhurst (Issue 4) dated 26th July 2023. Our advice to you is that the amended FCA fails to demonstrate that the risks and consequences of flooding can be managed to an acceptable level for the reasons explained below.

The FCA confirms that the proposed development is for the demolition of the existing retail park (Class A1), and for the erection of 1no. retail unit (Class A1) with associated access and servicing arrangements, car parking and landscaping. The FCA states that the footprint of the building would have an overall reduction within the site from 3723m<sup>2</sup> to 3314m<sup>2</sup> and as such constitutes a reduction in offsite flood risk. The finished floor level for the development is proposed to be set at 7.82m AOD, which is slightly above the existing level. The FCA indicates that the available modelling data does not include an allowance for climate change, and as such additional climate change levels have been calculated in line with the guidance set out in the document CL-03-16 Flood Consequence Assessments: Climate change allowances. This guidance indicates that for a 75 year life span, up to 2098, 760.5mm of additional sea level rise should be taken into account.

The amended FCA provides an allowance for climate change on the 0.5% (1 in 200 year) event to 2098. However, we continue to note that the extreme 0.1% (1 in 1000 year) event still does not include an allowance for climate change. The following predicted flood depths are provided in the FCA:

- 0.5% (1 in 200 year) event with climate change allowance (CCA): 1.36m
- 0.1% (1 in 1000 year) present day event: 0.96m

Based on a proposed finished floor level of 7.82m AOD, the development is predicted to flood to 1.36m in the 0.5% (1 in 200 year) event with CCA and therefore fails A1.14 of TAN15. Whilst CCA has not been applied to the 0.1% event, based on the current predicted flood depths, this would exceed the tolerable limits set out in A1.15 of TAN15. No information regarding car parking arrangements have been provided, we are therefore unable to provide advice on this element. We note that the use of the site would be the same as existing and that the floor levels have been raised slightly from the existing providing some betterment to the existing situation. Whilst recognising the flood risk, the FCA recommends a Flood Management Plan for the development is produced with focus on safe access and egress from the site and preventing and discouraging access into the site when flooding is expected. The FCA states that due to the reduction in building footprint there would be no offsite flood impacts. However, the proposed site plan shows that the building would be located in a different location to the existing. Therefore, as per our previous advice, we would require further explanation in the FCA of whether this will change conveyance routes across the site as a result in the altered site layout. It may be the case, that given the source of flooding, conveyance routes may not be impacted significantly. However, this needs to be addressed within the FCA in order to demonstrate compliance with A1.12. The effects of the reduction of existing flood storage volume and/or flood conveyance with the effects elsewhere should be quantified (i.e. change in flood levels elsewhere, identify whether additional properties at risk, onset of flooding etc.).

We have reviewed the Flood Management Plan (Appendix F) which states that the plan should be implemented during potential flooding situations, after the early warning has been given and should provide sufficient notice to allow users time to evacuate the area. Whilst there are no available flood warning areas that cover the site, the building manager should sign up for the NRW Flood Warning for the Usk Estuary at Uskmouth and Old Town Docks, and the Usk Estuary Flood Alert, as these are directly adjacent to the site. 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 or approve 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.



In conclusion, we continue to have concerns with the application as the application fails A1.14 and A1.15 of TAN 15 and no information on climate change has been provided for the extreme 0.1% event. In addition, no assessment has been provided on the impact to flood risk elsewhere as required by A1.12. We note that due to the predicted flood levels, in order to make the site TAN 15 compliant the site would be needed to be raised to such an extent that it would cause an excessive gradient and may be impractical. Therefore, as the proposal fails to demonstrate that the consequences of flooding can be acceptably managed, and it is unlikely these requirements will be met, we object to this application. Please inform us, in accordance with paragraph 11.7 of TAN15, if you are minded to grant permission for the application contrary to our advice.

SENIOR FIRE PREVENTION OFFICER: no response received.

GWENT POLICE: no response received.

REGIONAL AMBULANCE OFFICER: no response received.

NATIONAL GRID: no response received.

WELSH WATER: no objection on basis that foul will connect to the public sewerage system and surface water will discharge to existing watercourses. Recommend a condition requiring a drainage scheme be submitted for approval.

## **5. INTERNAL COUNCIL ADVICE**

5.1 HEAD OF INFRASTRUCTURE (HIGHWAYS): I am satisfied following the discussions and additional evidence that the development would be acceptable in terms of parking. We are awaiting some additional information for the CEMP, however this could simply be conditioned.

HEAD OF INFRASTRUCTURE (DRAINAGE): no response received.

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGICAL): In general I support the methodology and conclusions of the Ecological assessment, but have a number of concerns.

- The capacity of the buildings on site to support bat roosts has not been examined in detail, and the impact assessment consists of '4.2.1. *There are no buildings or other structures within the site that could offer opportunities for roosting bats.*' and '5.3.6. *Site Usage. There are no buildings or trees within the site that could be used for roosting.*'. I agree that the materials and nature of construction of the buildings on site are not conducive to bat use, but the report should have set out a systematic evaluation of the roof structures, any gaps or holes noticed and the reasons why the roofing materials are not suitable.
- Reference is made to the nearby River Usk SSSI, but no mention is made that this site is also a SAC, part of the National Sites Network. However I accept that impacts upon the features of the SSSI and SAC are unlikely to be significant as a result of the proposed scheme.
- I find it hard to believe that no birds were noted during the walkover survey, even in November. However, the report accepts that some of the trees on site may be suitable for nesting birds at the appropriate time of year. The potential for gull species to be nesting on the flat roofs of these buildings should have been evaluated, as these species are also protected and demolition could not take place when an active nest is present.

Despite these concerns with the report I am satisfied that there is not likely to be any significant impact upon protected and priority species nor upon any designated sites as a result of the proposed development, subject to the mitigation measures set out in the Ecological Assessment. I welcome that Plan ECO3 Ecological Enhancement has been submitted, and implementation should be secured by planning condition.

Follow up response: The Ecology Solutions response provides additional detail which largely addresses my concerns, and I accept that additional tree planting and retention of trees has been introduced in the revised landscaping scheme. I remain concerned at the reduction in existing trees along the eastern boundary, as the benefits that these trees provide cannot be compensated for by new planting in the short term. However I would take advice from our Tree Protection Officer on an appropriate level of avoidance and compensatory planting.

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREES): objects. The partial removal of G6 and G9 plus all of G8 - good "B" class trees which provide an environmental /biodiversity screen is unacceptable – they should be retained in their entirety.

The proposed location of the car parking next to these areas is unacceptable and the car parking should be reconfigured to keep these environmental areas.

The incursion into the RPAs of T1, T2 and T3 – Birch "B" is unacceptable – birch trees as a species will not tolerate this.

The amount to tree removal T7, T8,T9,T10,T11,T12,T13,T14 etc - all good quality "B" class trees -is not acceptable without strong landscaping proposals to compensate for this tree loss.

All trees have an aesthetic value with the exception of "U" class trees.

What mitigation is proposed for the loss of these trees?

The tree information should be shown as an overlay on the proposed site plans and all trees should be cross referenced with the numbering in the submitted tree report .

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE): The site plan has been revised and enables the soft landscape proposals to respond to landscape officer comments, the proposals now include:

- a continuous tree planted verge to Docks Way which will help reduce the visual mass of the building
- tree planting at the car park entrance
- an evergreen ornamental hedge along Docks Way which will provide more softening of parking during winter months and be easier to maintain than a mixed native hedge although note there is now more room with the site plan revision to accommodate a simplified native hedge to the road frontage incorporating evergreen species if this is preferred
- a mixed native hedge is still proposed to the other boundaries where there is more room and the species mix will provide more biodiversity benefits
- verges will use species rich turf enabling mowing regimes to be more varied, this will better suit the site location and space available than previously proposed wildflower meadow
- 46no trees are proposed at 16-18cmg which will provide early impact A Landscape Management Plan has been provided which covers maintenance and management for the landscape types over a 5 year period.

I have no further comments other than to query where above ground SUD's elements will be provided (assuming a SAB application will be required) and to state these must not encroach on the tree protection areas.

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ENVIRONMENTAL HEALTH): A noise exposure assessment has been submitted to support the application for the re-development of the existing four units including a Home Bargains, at Newport West Retail Park, Docks Way, Newport NP20 2NZ

The assessment adheres to the Local Authority requirements, the principles provided by the *National Planning Policy Framework: 2021 (NPPF)* and internal noise criteria stated within BS 8233: 2014 '*Guidance on sound insulation and noise reduction for buildings*' and BS 4142:2014+A1:2019, '*Methods for rating and assessing industrial and commercial sound*'.

Noise level limits have been set for additional proposed building services plant which are predicted to result in a noise rating that is at least 10dB below the existing background noise

level during the worst-case night-time period at the closest sensitive receptor locations. Accordingly, the proposed plant is expected to have a low impact at the closest sensitive receptors.

The cumulative operational noise levels during the daytime LAeq and daytime resting LAm<sub>ax</sub> are predicted to be below the guideline BS 8233:2014 / WHO criteria at nearby properties assuming a windows-open and closed scenario. It is understood that no operations occur within the night-time period (23:00 – 07:00) and as such, only plant noise has been assessed for this period.

Overall, and when assessed on a worst-case basis noise from the site is predicted to have a low impact and noise levels fall within the Lowest Observed Adverse Effect Level (LOAEL).

Therefore, the proposed development is not expected to have an adverse impact on health or quality of life and therefore I do not have any objections to the application and suggest the following should you be minded to grant the application.

*In respect of any proposed air conditioning, mechanical ventilation or associated plant, the applicant shall ensure that the existing background noise level is not increased when measured one metre from the nearest noise sensitive elevation. In order to achieve this the plant must be designed / selected or the noise attenuated so that it is 10dB below the existing background level. This will maintain the existing noise climate and prevent 'ambient noise creep'*

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

*Prior to commencement of the development hereby approved, a demolition method statement and a construction management plan shall be submitted to and approved in writing by the Council. Details shall include control measures for dust, noise, vibration, lighting, delivery locations, restriction of hours of work and all associated activities audible beyond the site boundary to 07:00 – 19:00 Monday to Friday daily, 08:00 – 13:00 Saturdays No works to be undertaken on Sundays or bank holidays, advance notification to neighbours and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works. Approved details shall be implemented throughout the project period.*

**Reason:** To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise, vibration, dust, lighting or other emissions from the building site.

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (SCIENTIFIC OFFICER):

The proposed development brings with it opportunities to contribute to the improvement of air quality and the reduction of emissions in the locality.

The parking arrangements are noted and there does not appear to be any provision for electric vehicle charging. A scheme of EV charging for parking at this proposed development needs to be submitted should permission be granted. A condition is recommended below:

***ULEV Infrastructure condition***

*No development shall commence on site until a scheme of Ultra Low Energy Vehicle infrastructure has been submitted to the LPA. The scheme must be approved by the LPA prior to implementation and thereafter be permanently retained. ULEV Infrastructure shall be available to staff during the construction phase in so far as this is reasonably practicable.*

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

Space heating within the proposed retail should use the lowest emission systems possible if not zero emission which in turn would contribute to reducing emissions in the locality. An informative is suggested below which could form a condition or informative.

**Sustainable heating condition**

*No development shall take place until a sustainable heating strategy and associated system has been submitted to the LPA. The sustainable heating system shall be implemented prior to occupation of the development and retained thereafter.*

Green infrastructure green infrastructure planned as part of this proposal and there exists an opportunity through the use of air quality beneficial species to maximise the air quality benefits from plantings. A useful reference that relates to this is attached and the condition below is recommended:

**Green infrastructure condition**

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

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

Provision of a site wide anti idling scheme is encouraged as this will have a benefit upon customer amenity and local emission levels. The following condition is recommended:

**Anti Idling condition**

*Prior to commencement of the use hereby permitted an anti-idling scheme aimed at all vehicles using the site shall be submitted to the LPA for approval and thereafter be permanently retained.*

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

**Contaminated Land**

There do not appear to be any former contaminative uses at the subject site prior to its current use however a ground investigation is planned for the site further to the preliminary risk assessment submitted with this application. In view of the need for ground investigation contamination at this site could be screened for and the potential for unexpected contamination covered by condition as recommended below:

**Contamination condition**

*No development, (other than demolition) shall commence until:*

- a) *An appropriate Desk-Study of the site has been carried out, to include a conceptual model and a preliminary risk assessment, and the results of that study have been submitted to and approved in writing by the Local Planning Authority.*
- b) *If potential contamination is identified then an appropriate intrusive site investigation shall be undertaken and a Site Investigation Report to (BS10175/2011), containing the results of any intrusive investigation, shall be submitted and approved in writing by the Local Planning Authority.*
- c) *Unless otherwise agreed in writing by the Local Planning Authority as unnecessary, a Remediation Strategy, including Method statement and full Risk Assessment shall be submitted to and approved in writing by the Local Planning Authority.*

*No part of the development hereby permitted shall be occupied until:*

- d) *Following remediation a Completion/Verification Report, confirming the remediation has been carried out in accordance with the approved details, shall be submitted to, and approved in writing by, the Local Planning Authority.*
- e) *Any additional or unforeseen contamination encountered during the development shall be notified to the Local Planning Authority as soon as is practicable. Suitable revision of the remediation strategy shall be submitted to and approved in writing by the Local*

*Planning Authority and the revised strategy shall be fully implemented prior to further works continuing.*

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

#### **Contamination – Unforeseen - condition**

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

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

#### **Contamination – Imported Material - condition**

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

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

HEAD OF INFRASTRUCTURE (SAB): no response received.

## **6. REPRESENTATIONS**

### **6.1 NEIGHBOURS:**

All properties within 50m with the application site were consulted (53 properties), a site notice displayed, and a press notice published in South Wales Argus – one objection received as follows:

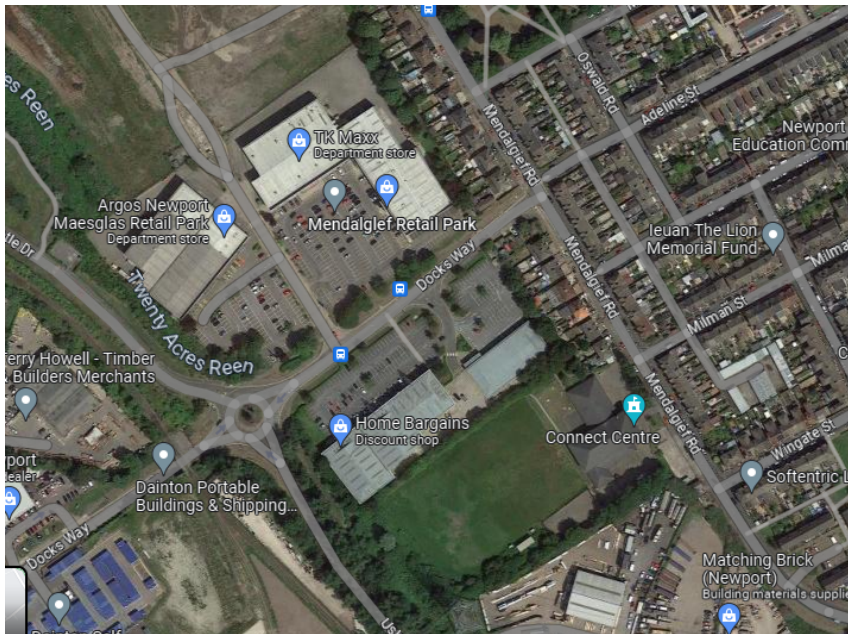
- the proposed development looks to be very high and will be overbearing so close to the road which currently has the retail units on both sides set back a good distance. Would it not be better for Home bargains to move across the road into the vacant next unit which could be extended now Argos is leaving the unit next door?

6.2 COUNCILLORS ADAN AND JENKINS: no comments received.

## **7. ASSESSMENT**

### **7.1 Background and Context**

The application site is just under 1.4ha and includes 4no. retail units with a combined floorspace of 3,514sqm. A total of 203 parking spaces are currently provided to serve these units. The site is bounded by Docks Way to the north, Usk Way to the west and Mendalgief Road to the east. Recreational space (identified as environmental space in the adopted LDP) associated with the YMCA/Connect Centre building is located south of the site with houses on Mendalgief Road sharing its boundary to the east. Mendalgief Retail Park (Argos, TK Maxx, Pets At Home) is located on the opposite side of Docks Way to the site with Maesglas Industrial Park a short distance west and industrial development at Usk Way a short distance to the south. Large scale new residential development exists close-by at Mon Bank and residential development is currently under construction on the former Whiteheads works site.



7.2 The history of the site confirms that retail development was first consented on site pursuant to a planning appeal in 1997. Consideration of the scope of the retail permission fall back is relevant in this case, notably in relation to any conditions that restrict goods sold from the site. Such conditions are common on out of centre retail development to mitigate impact upon defined centres in terms of their vitality and viability. One condition on the original permission related to a restriction of goods sold as follows:

*05 The use of units No.2, 3 and 4 shall be restricted to non food retailing only. Reason: To ensure adequate on site parking is available and to avoid the need for vehicles to park on the adjacent highways.*

No restrictions were applied to unit 1. In short, a wide scope of consented goods was permitted and encompasses all comparison or non food products both bulky and non bulky (e.g clothing and footwear, electricals, furniture, etc).

7.3 In 2007 a section 73 variation of condition was granted for unit D/unit 4 currently occupied by Home Bargains and effectively enabled some non perishable food sales as follows:

*(1) The premises known as Unit D shall be used for non-food retailing and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, or in any provision equivalent to that Class in force in Wales) save that non-perishable food items may be sold in Unit D provided that these are ancillary to the primary use of the premises for non food retailing and shall not exceed 30% of the gross floor area of Unit D. Reason: To protect the vitality and viability of the City Centre and edge of centre sites and to control the retail function of this out of centre site.*

7.4 In 2011, a section 73 variation of condition application was approved in relation to Unit C to allow limited floorspace for sale of non perishable food and drink items. The new condition states as follows:

*(3)The premises known as Unit C (Unit 3) shall be used for non-food retailing and for no other purpose (including any other purpose within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in force in Wales) save that non perishable food and drink items may be sold in Unit C (unit 3) provided that these are ancillary to the primary use of the premises for non-food retailing and shall not exceed 15% of the net floor area of Unit C (unit 3). Reason: To ensure adequate on site parking is available and to avoid the need for*

*vehicles to park on adjacent highways. To protect the vitality and viability of the city centre and edge of centre sites and to retain control over the retail function of this out of centre site.*

- 7.5 In 2017 a further section 73 variation of condition was approved that helpfully includes all relevant floorspace restrictions and opening hours as follows:

*Unit 1 of Newport West Retail Park, shall operate between the hours of 8.00 to 22.00 Monday to Saturday, and 10.00 and to 16.00 hours on Sunday.*

*Reason: In the interest of residential amenity.*

*The premises known as Unit C (Unit 3) shall be used for non-food retailing and for no other purpose (including any other purpose within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in force in Wales) save that non perishable food and drink items may be sold in Unit C (unit 3) provided that these are ancillary to the primary use of the premises for non-food retailing and shall not exceed 15% of the net floor area of Unit C (unit 3).*

*Reason: To ensure adequate on site parking is available and to avoid the need for vehicles to park on adjacent highways. To protect the vitality and viability of the city centre and edge of centre sites and to retain control over the retail function of this out of centre site.*

*The premises known as Unit D shall be used for non-food retailing and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes ) Order 1987 as amended , or in any provision equivalent to that Class in force in Wales) save that non-perishable food items may be sold in Unit D provided that these are ancillary to the primary use of the premises for non food retailing and shall not exceed 30%of the gross floor area of Unit D..*

*Reason: To protect the vitality and viability of the City Centre and edge of centre sites and to control the retail function of this out of centre site.*

*The use of unit 2 shall be restricted to non food retailing only.*

*Reason: To ensure adequate on site parking is available and to avoid the need for vehicles to park on adjacent highways.*

- 7.6 It is noted that the only hours of opening restriction applies to unit 1 which is closest to residential properties on Mendalgief Road. As mentioned above, no restriction of goods is applied to Unit 1 which was formerly occupied by Lidl. Whilst the original permission and the 2011 permission relating to unit 3 included hours of opening restriction, the most recent permission 17/0335 only restricts opening hours at unit 1.

- 7.7 The above site history sets the context for the proposal in terms of the current state of play on site and effective fall back position relevant to the consideration of the new scheme. The applicants have confirmed that the unit will predominantly sell non food goods but an allowance for up to 30% food and drink products (with up to 10% being perishable) is required.

7.8 Retail Planning Policy

Policy R11 ("Development of Existing Out-of-Centre Retail Sites) of the adopted Local Development Plan states:

*Outside the city centre and district centres, proposal for redevelopments of and extensions to out-of-centre retail outlets, and garden centres, involving increases in floorspace to previous consents and/or changes to the range of goods sold will only be permitted provided that:*

- i) need is identified;*
- ii) the proposed development would not, either in its own right, or cumulatively with other out of centre developments and outstanding planning permissions, have an adverse effect on defined retail centres as a consequence of the type or range of goods sold;*
- iii) the sequential test can be satisfied having regard to the availability, suitability and viability of city and district centre sites, or edge-of centre sites which could accommodate the proposed retail development.*

- iv) *the proposal would not increase the land area of the site;*
- v) *the surrounding highway and transportation network has capacity to serve the development, and that accessing and servicing arrangements can be accommodated in a satisfactory manner;*
- vi) *the proposal is fully accessible on foot, by bicycle and by public transport.*

7.9 Existing and proposed retail floorspace is confirmed as part of the application although some minor variations exist between the supporting planning statement and the existing and proposed drawings. Where there is difference, the drawings have taken precedence particularly as the proposed layout has been adjusted over the course of application consideration and further confirmation on this point has been provided by the applicant. It is also noted that all figures are given as gross or total floorspace of units (no sales/retail floorspace is given but a 75(sales)/25(storage) ratio can normally be expected particularly on larger stores where storage space and internal service space is often greater. The applicant also identifies the number of units differently between plans and statement. The planning statement more accurately reflects unit numbers based on site history.

Existing (square metres)

	Food	Non-food	Total
Unit 1 (former Lidl)	962	0	962
Unit 2	0	691	691
Unit 3	141 non perishable(15% of GIA)	802	943
Unit 4 (current Home Bargains)	280 non perishable (30% of GIA)	651	931
Sub total	1383 of which 421 is non perishable	2144	3527

Proposed (square metres)

	Food	Non-food	Total
Unit 1 (new Home Bargains)	902 (30% of GIA) of which up to 10% will be perishable	2106	3008 Excludes garden centre area

An attached external garden centre area is also proposed. This is not included within the gross floorspace figures but will function as retail space and is known to cover an external area of 788sqm\* (figure taken from Technical Note 02 by rappor). A condition restricting goods sold on site and the size of the garden centre area is reasonable. Such retail sales are generally not well suited to defined centres. We know in this case that the floorspace of the proposed building is less than the gross (GIA) floorspace of the demolished units. We also know that the operator wants unrestricted comparison goods space with 30% food and drink sales (up to 10% of which may be perishable) to replace 3 units of unrestricted comparison goods retail space (with 2 having allowances of 30% and 15% respectively of non perishable food sales space) and one unit with no goods restriction at all. In short, the usual requirements for new retail units on existing out of centre retail site set out in the criteria to policy R11 do not apply in this case. There is no requirement to identify need or undertake a sequential test as the proposal does not result in a net increase of retail floorspace and the goods sought do not result in changes to the range of goods currently consented on the site. The proposed garden centre does not change this position. The latter will be external display area accessible only from within the new building and will function entirely in connection with the larger retail store. It is not floorspace for the purpose of the policy as gross retail floorspace is widely accepted to include built areas and exclude open areas used for storage or display.

7.10 Policy R11 is linked to strategic policy SP19 of the adopted LDP that states:



Retail and associated uses best located in a city centre will be subject to an assessment of need if not within a defined centre, and application of the sequential test if not within the city centre. Development will be located according to the following hierarchy of retail centres:

1. Newport City Centre
2. District centres (as referenced under policy R6)
3. Local centres
4. Out of centre retail sites

As an out of centre site, this strategic policy requires an assessment of need and application of the sequential test but officers are satisfied that the general policy R11 further clarifies this requirement and in this case the redevelopment does not engage these retail tests.

#### 7.11 Design and Visual Amenity

A Design and Access statement has been provided. The building will comprise a portal frame with external skin of brick at low level with structural piers and micro ribbed cladding above. The building is of a fairly typical retail warehouse type design not unlike other older units nearby. Some initial concerns regarding design have given rise to an amended set of elevations that have, in particular, sought to address issues raised in relation to the large north western façade facing Docks Way. This façade is very prominent and of significant scale and is the side elevation of the shop. Consequently, it has no active frontage to Docks Way. The absence of openings in this elevation has the potential to lead to an unduly dominant elevation that offers little positive contribution to the streetscene. In addition to making adjustments to the design, the applicants have reduced building footprint to widen the intervening verge with the carriageway to facilitate more green space between building and pavement.

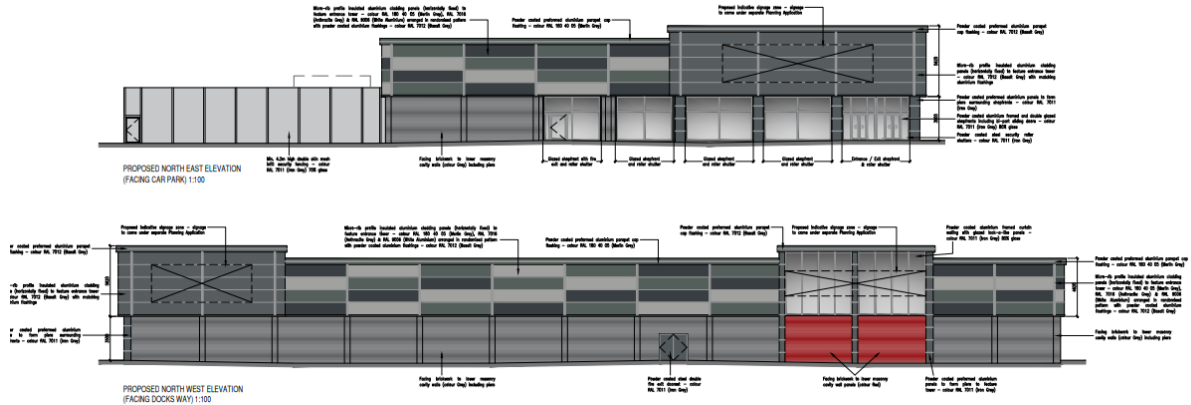
- 7.12 At present, the buildings are set back from Docks way with intervening parking, green verge and hedging. Therefore, whilst the existing buildings themselves are rather dated, their siting offers plenty of peripheral space where greenery has established. This contributes to an open and spacious vista along Docks Way as you turn in from Mendalgief Road, approach from Mon Bank or pass under the railway bridge to the west. The proposed building will change this, introducing a prominent building to the north western part of the site with its back to Usk Way and side to Docks Way. Existing landscaping to Usk way, located outside the site and either side of a drainage channel does serve to soften this view but the lack of active frontage to Docks Way is regrettable. The applicants have explained that the internal layout of the store and shelving space does not allow for glazing to be installed at ground level and instead a mix of brick and combination cladding in a variety of shades of the same colour (grey), along with detailing such as piers and variable height feature towers including curtain walling at upper level, will add interest to what could otherwise be a distinctly box-like building. The visual relief afforded by the mix of materials and the feature piers and parapet will add interest and help break up this largest elevation. However, the prominence of the building warrants agreement to material samples in this case and this should be conditioned. Furthermore the treatment and retention of landscaped area and verges also justifies conditions.



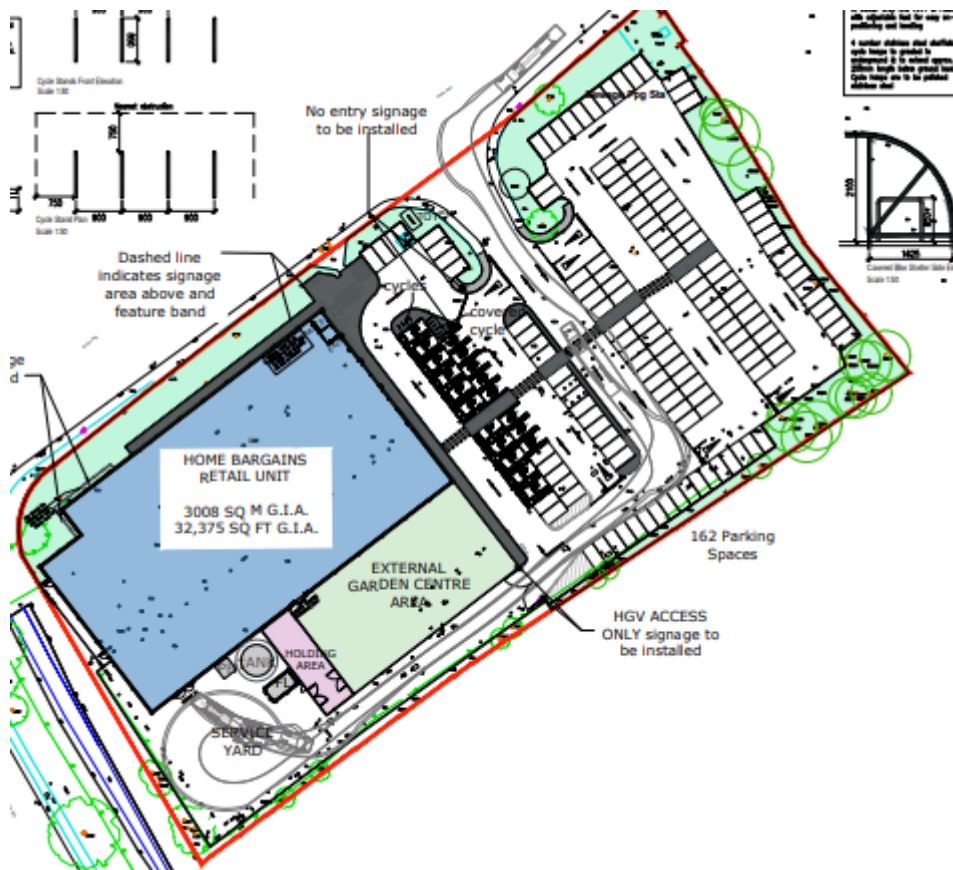
*View of site looking west – Google 2021*



View of site looking east – Google 2018



Proposed elevations (top, facing east and proposed car park; bottom, facing Docks Way)

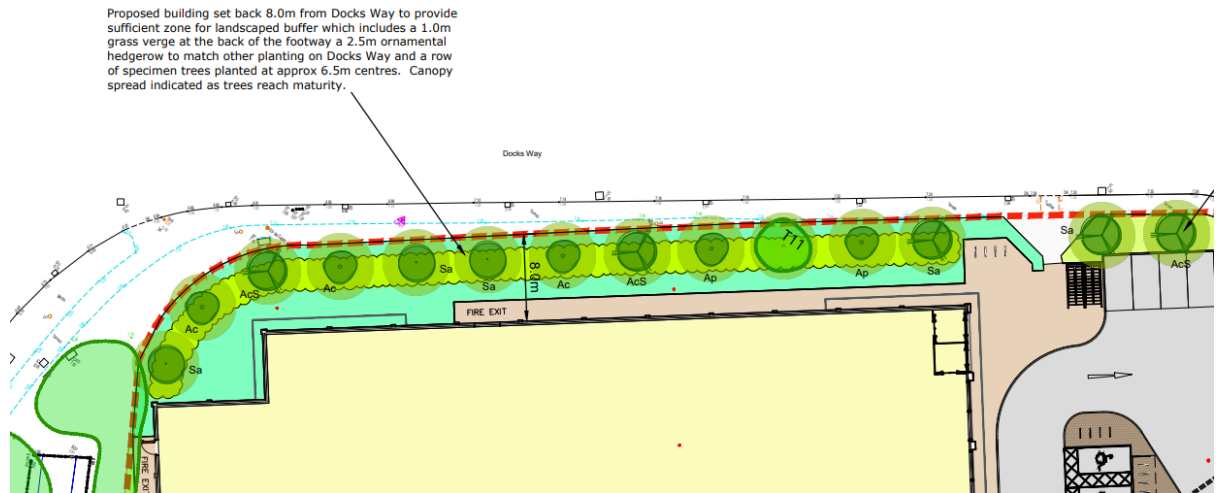


Proposed site layout

7.13 The building will be a maximum of 9.1m high at the tower corners (the existing buildings at units 2-4 are of comparable height at just over 9m) with 4.2m high mesh fencing surrounding the external garden centre area. The building will be set back 8m from the boundary with Docks Way (12m at the eastern recessed corner).

It will face the new car park serving the unit which will include 162 parking spaces with retained grassed verges to the periphery. The existing point of vehicular access is retained.

Alongside the building at Docks Way a 1m grass verge will be provided at back of footway with a 2.5m deep ornamental hedgerow planted to match other planting along Docks Way. A row of specimen trees will be planted every 6.5m within the hedge to afford an avenue-type effect alongside the side elevation of the building.



- 7.14 This will be continued on the other side of the access with existing trees proposed to be retained along the boundary with the back of properties at Mendalgief Road. Groups of existing trees along the rear boundary of the site next to the environmental space south of site, will be retained and supplemented by new tree and hedge planting that will have both visual amenity and ecological value. Servicing will take place at rear of building akin to the existing arrangement and will mean such servicing is screened from views along Docks Way. The garden centre will include a 2.4m high screen enclosure with other plant, equipment and waste storage facilities located within the service area. This area is well screened by established landscaping along the southern boundary of the site and there is little to no intervisibility from the service yard to the environmental space south of the site. That said, with the demolition of Unit 1, views between the site and environmental space will open up via the new parking area although screening comprising both retained and proposed landscaping will soften this boundary.



- 7.15 In visual terms the presence of a large expanse of parking is typical of the street scene and is already observed both on site and across the road but the existing presence of trees and hedges make a valuable positive contribution to the amenity of the street and its character and the continuation of this approach, into the proposed scheme, is welcomed. Having regard to the impact of development on the nearest residential properties at Mendalgief Road, the development essentially retains parking in this area of the site, extending this parking southward to replace the demolished unit 1, the side of which currently faces the

rear of Mendalgief Road properties. Existing means of enclosure along this boundary will be unaffected.



7.16 The building will replace existing retail units of dated design. Its form and massing is different to the buildings it replaces but is sympathetic to the mixed commercial/residential context where buildings of comparable form and design are readily evident. The building materials, finishes and colours are linked to the brand aesthetic of the named occupier and the changes made during course of consideration have mitigated initial design concerns. Officers understand that the shop of this type and scale relies on level and easy access to car borne traffic in the main. Any expectation of a predominance of walk in customers is unrealistic at the current time although the site is close to a large and growing population within walking distance and a bus stop exists very close to the site on Docks Way. Policy GP6 of the adopted LDP confirms that “good quality design will be sought in all forms of development. The aim is to create a safe, accessible, attractive and convenient environment.” Aside from criteria vi) of this policy which is considered further below (i.e. flood risk and resilience) officers consider this policy is met. It also satisfies the requirements of policy GP2.

7.17 Transport and Highways

The application is supported by a Transport Statement and supplemented by a Technical Note. The latter is primarily to address parking matters. The Council’s adopted Supplementary Planning Guidance on Parking is relevant.

7.18 The site, based on a mixed food (albeit non perishable) and non food offer alongside a garden centre gives rise to a requirement of 174 parking spaces based on floor space and standards. 162 spaces are proposed. Home Bargains operates akin to a discounter rather than a typical food or comparison goods store and consequently, having regard to the age

of the SPG and the nature of the operation, the applicant has identified 3 comparable units to analyse likely parking demand in practice and avoid over provision. Over provision of parking would impact the ability to provide landscaping and other visual softening of the development and would not be welcomed. This technical information on parking has been reviewed and discussed with the Council's highway officer who has confirmed that he is satisfied with the information in relation to parking provision proposed. No objection is offered in relation to access and servicing matters.

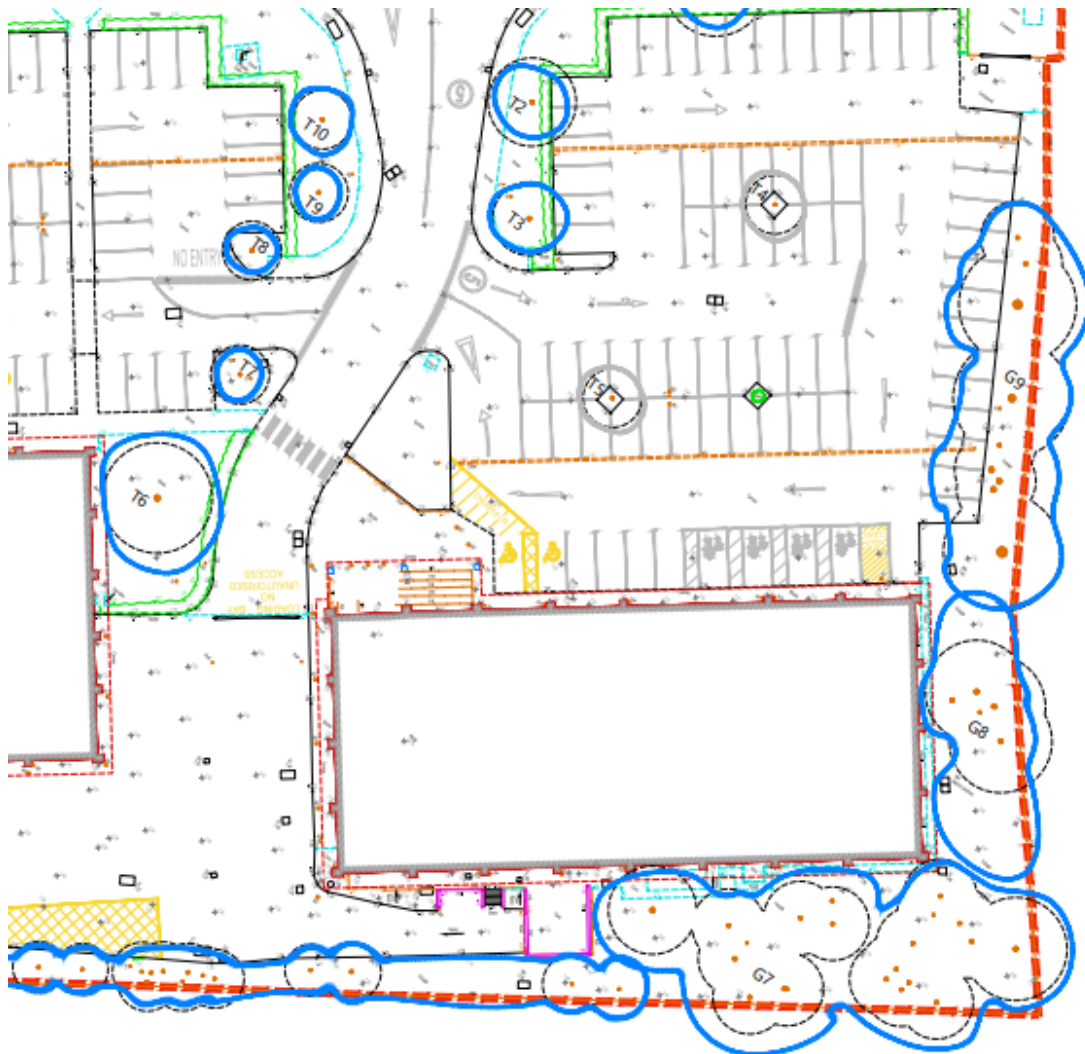
- 7.19 On the matter of impact on the existing highway network, the Council's highway officer has confirmed that the applicant "has assessed the trip generation associated with the proposed and existing uses of the site. It's indicated that the proposed redevelopment is anticipated to result in a reduction of 17 and 24 two-way vehicle trips in the weekday AM and PM peak periods, respectively, and an additional 16 two-way vehicle trips during the Saturday peak period. I would agree the proposed redevelopment of the site will not have a detrimental impact on the local highway network." Whilst a CEMP has been provided, the officer has asked that this be updated to include additional specified information but is satisfied this can be dealt with by condition.
- 7.20 Having regard to the above, the shortfall of parking is considered acceptable and no technical objection is raised in any event. The site is conveniently located to a large and expanding population group and whilst it can reasonably be expected that the bulk of shoppers will travel by car, there is no evidence based on the technical note supplied or evidence of Home Bargain's operation on site already, that car parking demand associated with its offer is so intense as to warrant concern. The car park will entirely serve its unit and will not be shared with others, albeit that some dual trips may occur with outlets across Docks Way that also benefit from significant off road parking opportunities. Conditions are recommended to ensure delivery of the parking in its entirety. It is considered that the proposal complies with policies GP4 and T4.
- 7.21 Landscape and Ecology  
During course of consideration the layout has altered to enable an enhanced planting programme particularly along Docks Way. The verge between building and boundary has doubled from 4m to 8m thereby allowing a meaningful landscape scheme that has the potential for real benefit. More careful consideration of planting around the access and site periphery has meant that the potential dominance of the building discussed in the design section above, is mitigated and the the impact upon the character of the street is softened.
- 7.22 The existing ornamental hedging is beneficial as is evergreen and use of this is preferred over native hedgerow along Docks Way to ensure year round screening of the car park. This ornamental planting interspersed with new trees and retained landscaping will ensure valuable contributions to the overall site aesthetic. In fact the Council's Landscape Officer has confirmed that the revised site plan enables the soft landscape proposals to respond to previous concerns raised and includes the following:
- a continuous tree planted verge to Docks Way which will help reduce the visual mass of the building
  - tree planting at the car park entrance
  - an evergreen ornamental hedge along Docks Way which will provide more softening of parking during winter months and be easier to maintain than a mixed native hedge although note there is now more room with the site plan revision to accommodate a simplified native hedge to the road frontage incorporating evergreen species if this is preferred
  - a mixed native hedge is still proposed to the other boundaries where there is more room and the species mix will provide more biodiversity benefits
  - verges will use species rich turf enabling mowing regimes to be more varied, this will better suit the site location and space available than previously proposed wildflower meadow
  - 46no trees are proposed at 16-18cmg which will provide early impact
  - A Landscape Management Plan has been provided which covers maintenance and management for the landscape types over a 5 year period.

Initial concerns have now therefore been addressed and the landscape proposals add value to the overall design quality of the proposal. Conditions are recommended to ensure that this is delivered as proposed. The Council's Tree Officer has retained concerns about the extent of existing tree removal. A Tree Survey Report has been submitted and includes assessment of 23 existing individual trees and 9 groups. In order to facilitate the development of the site it will be necessary to remove 10 individual trees (T4-T10 and T12-T14 inclusively). The trees to be removed are all within the existing car parks and will be removed to make way for the new development layout. T4 & T5 are category C Willow Oak trees of low quality. T6-T10 and T12-T14 are category B2 Silver Birch trees of moderate quality. Of the 9 groups of trees on site, 1 requires full removal:

G8 is a group of Sycamore, Ash, Hazel & Cherry trees, located to the north east of the site and categorised as B2, trees of moderate quality.

3 other groups require partial removal:

- G6 is a mixed group of shelter belt trees located to the south east of the site, categorised as B2 moderate quality. 75% of this group will require removal, including 19 individual trees. This borders open space to the south and is less visible in the street scene.
- G7 is a group of Ash, Sycamore and Hazel, located to the north east of the site, categorised as B2 moderate quality. 25% of this group will require removal. This borders open space to the south and is less visible in the street scene.
- G9 is a group of Ash and Sycamore, located to the east of the site, categorised as B2 moderate quality. 55% of this group will require removal. Existing parking significantly impacts this group already:



The proposed parking layout does not significantly alter the relationship and omits bays to add relief alongside the retained part of the group:



The group has 7% encroachment into the RPA from the proposed development and will therefore require a no-dig cellweb system to protect from damage from the construction works. This borders the boundary with the rear of Mendalgief Road properties. A total of 46 trees will require removal to facilitate the construction of the development. 5 groups of trees can be fully retained (G1-G5). These are all along the Usk Way boundary. In visual amenity terms, the landscape scheme and retention of existing features as per the proposal, is considered acceptable.

7.23 In relation to ecological considerations, the Council's Ecology Officer has raised no objections but retains some concerns regarding reduction of existing trees along the eastern boundary as new planting cannot immediately compensate for loss of established features. 12 trees and 5 full groups will be maintained. Of those to be removed, none have been categorised as Category A or as high quality specimens. An Ecological Assessment and Ecological Enhancement Plan have been provided. It is agreed that the project is unlikely to have a significant impact upon protected or priority species or any designated biodiversity sites but clearly removal of existing healthy trees is not ideal. However none are protected and all those to be removed are located in areas where their retention cannot be secured through minor re-design. The site does not have any statutory or non statutory nature conservation designations and has limited wildlife opportunities or value. The quality of the landscape scheme and new planting schedule is important primarily for the opportunities it gives for nesting and foraging birds. On balance, the landscape scheme proposed is acceptable and will mitigate the adverse effects of early existing landscape removal. A planning condition is also necessary to secure specific biodiversity mitigation and avoidance measures as detailed in the supporting ecological information.

7.24 The southern and eastern boundaries of the site support semi-mature tree specimens. The landscape scheme will provide new tree and native hedgerow planting along these boundaries and the retention of a vegetated corridor. Some existing features will be removed but during the course of consideration retained groups of existing landscaping have increased to ensure continued coverage whilst new species establish and mature. The proposed landscape scheme will compensate for lost existing features and the applicants argue that in the longer term the scheme will provide betterment. Ecosystem resilience is maintained. An Ecological Enhancement Plan has been provided and shows an acceptable approach in principle to biodiversity enhancement including new planting, bird and bat boxes but the details are not precise and will require a planning condition to

secure exact detail, notably in relation to locations and numbers. A linked condition to secure details of lighting prior to installation is also required.

7.25 Policies SP9 and GP5 of the LDP are met.

7.26 Flood risk

A Flood Consequences Assessment (FCA) has been provided as the site is located within a flood risk area. NRW has objected to the proposal.

The application site is within Zone B of the Development Advice Map (DAM) contained in Technical Advice Note 15: development and flood risk (2004) (TAN15). However, the Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and within Flood Zone 2 and 3 (Sea). As confirmed in the letter from Welsh Government dated 15 December 2021, the FMfP represents better and more up-to date information on areas at flood risk than the DAM.

7.27 The proposal is for less vulnerable development to replace comparable development. Finished floor level of the new building will be set at 7.82m AOD which is marginally above the existing units. The FCA confirms that in a 1 in 200 year flood event with climate change allowance over a 75 year lifetime of development the building will flood to 1.36m depth. Information regarding the car park linked to its level has not been provided. This fails A1.14 of TAN15. Modelling for the extreme 1 in 1000 year event has not accounted for climate change but indicates that the site will flood. NRW have confirmed that failure to account for climate change in the 1 in 1000 year scenario also fails the requirements of TAN15.

7.28 The use of the site will not change and some betterment is attributed to the slight increase in finished floor level compared to the existing units and the reduction in building footprint compared to existing. However, as the siting of the building will change, the conveyance of flood waters across and through the site may also change and information in this regard has not been included in the submitted assessment and therefore full analysis of the impact of the proposal on flooding elsewhere is not possible. In short, NRW objection is predicated on the supporting information not complying with A1.12 (no flooding elsewhere), A1.14 (flood free development) and A1.15 (extreme event) of TAN15 and the proposal's failure to demonstrate that the consequences of flooding can be acceptably managed. They also indicate that it is unlikely these requirements will be met. Certainly, the site will not be flood free and in practical terms this cannot be addressed and compliance with TAN15 cannot be achieved.

7.29 The proposal results in an approximate 16% reduction in building footprint compared to the existing retail park. The presence of built area displaces flood waters and in this case we know that the footprint will be lower than existing. NRW confirms that flood storage compensation is not required in this case. Alongside the implementation of sustainable urban drainage features, the applicants confirm a greenfield rate of run off will be achieved and this is betterment compared to existing and likely to reduce flood risk in the receiving watercourse at Twenty Acres Reen that links to the River Ebbw. The applicants have also included a Flood Management Plan in the Flood Consequences Assessment and the applicant is aware of the flood risks on site. The applicant confirms that subject to a flood warning the site would be closed. Whilst a Flood Management Plan is beneficial for the operator, it does not address flood risk concerns for planning assessment purposes.

7.30 The relevant tests are outlined at Paragraph 6.2 of the TAN and require that a proposal:

*i 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;*

In this case the Local Authority Strategy is the adopted Local Development Plan. The proposal has been found to be compliant to locally adopted retail policy and other policy elements set out in this report. In broad terms the proposal does accord with local policy and contributes to key employment objectives necessary to sustain an existing settlement or region. The proposal is justified in the chosen location and therefore meets the first and



most fundamental locational test as set out in TAN15. The site is currently used for commercial purposes (retail park). Although the use is still less vulnerable in flooding terms, it is argued that some betterment in flood risk terms accrues from the reduction in built footprint on site. The new store may be more flood resilient than the current units and a limited raise in finished floor level is proposed but this does not prevent modelled inundation of the new building during a 1 in 200 year flood event. In any event the proposal is seen as no worse in flood risk terms over the current use/development on site. The existing retail units are not dry during the 1 in 200 year flood event and neither is the new building and the development is not therefore TAN15 compliant in the same way the fall back/existing units are not TAN15 compliant. This must carry significant weight along with the merits of the scheme.

- 7.31 The aim of national and local policy is to direct development away from flood prone locations or only to allow them where the floodplain location can be justified and the inevitable flood event can be acceptably managed.
- 7.32 TAN 15 offers a battery of tests for developments in flood risk areas to be acceptable at Paragraphs A1.12, A1.15 & A1.15. These tests are:
- Flood defences are adequate: Over the development's 75 year lifetime and with added climate change factored in, the site will not be flood free in the 1 in 200 year event and fails this test.
  - Flood defences will be maintained: the defences are provided and maintained by Cyfoeth Naturiol Cymru / Natural Resources Wales and it is reasonable to expect their on-going maintenance. However it cannot be assumed that they will be raised to account for rising sea levels.
  - Occupiers are aware of flood risk: the applicant and intended site occupiers have confirmed they are aware of the potential flood risk. A Flood management Plan has been provided.
  - Access & Egress will not be flooded beyond tolerable levels: the submitted Flood Consequences Assessment is clear that under a flood scenario the site will flood and depths at the site egress will significantly exceed the acceptable depth of 0.6m. Accesses and egresses from the site will not be available at all times and flooding on site will represent a danger to all. This is no different to the existing situation.
  - Goods can be easily removed from the site: although tidal flooding is predictable it is extremely unlikely that any practical arrangement can be made to safeguard stock within the store from a flood event. This is no different to the existing situation.
  - Structures are designed to be flood proof: the building will be of standard construction and given the depth and speed of flooding it is unlikely the building can be particularly safeguarded against the consequences of flooding. In short water will enter the building and even though the building is unlikely to be washed away it cannot be effectively floodproofed.
  - Flooding will not be worsened elsewhere: the construction of the building will displace some flood waters but the existing buildings already do so and their demolition will open up areas of land to flood storage and conveyance of flood waters. Compensation has been confirmed by NRW as not necessary. Therefore whilst the proposed building is of smaller overall footprint and therefore could be argued to displace flood waters to a lesser degree, its layout differs to existing and it is reasonable to assume that the conveyance of flood waters will be altered as a consequence. NRW has raised concerns that the alteration of conveyance routes has not been fully modelled and detailed. In practice, this is not considered reason to refuse permission in this case.
  - Flood Interval: the site is not and will not be dry over its lifetime during the 1 in 200 year flood as required by national policy, see above.
  - Flood Consequence: the site will flood rapidly and beyond tolerable levels resulting in danger for all.
- 7.33 In flood terms the proposal is contrary to Policy SP3 (Flood Risk) and GP1 (Climate Change) of the adopted Local Development Plan (2011-2026) since national guidance on flooding (TAN 15) is not complied with. However, significant weight is given to the fall back position on site in this case. This is a reasonable approach as the buildings exist and are occupied. The failure to comply with TAN15 in this case is considered to be outweighed by other material considerations and subject to conditions controlling the implementation of proactive flood risk management set out in the submitted Flood Consequences Assessment, the development is considered acceptable.

### Other factors

- 7.34 The applicants state that the proposal is an investment in the local economy of more than £10 million. It will create additional full and part time jobs within the store and further job creation through construction, security and maintenance. The applicant has indicated an expectation that the store will employ 90 people compared to the 25 employees in their existing store. It will offer increased consumer choice and competition and continuation of a commercial operation in this area. It is for a named occupier and will provide modern retail facilities. These are merits of the scheme.
- 7.35 The Council's Environmental Health team has commented upon operational noise matters, ground conditions and air quality matters and other than recommended conditions raise no objection. The site has a well established mix of residential and retail/commercial uses and the site layout places the building furthest away from Mendalgief Road residences. Whilst activity at the retail unit may be audible to those residents, that is already the case and background noise levels in this area can reasonably be expected to be higher by reason of the mixture of uses in the locality. The proposal is considered acceptable in relation to noise matters and operational hours are not restricted.
- 7.36 Opportunities to improve the site's sustainability through the provision of EV charging and sustainable construction exist and a condition is recommended regarding the former. Construction factors are best controlled via building regulations but will have to meet current regulatory standards and the site as a whole will require the approval of the Sustainable Urban Drainage Approving Body (SAB) and incorporate elements not required of the current buildings/site. This is a separate process.
- 7.37 Other conditions recommended by the Scientific Officer are not considered reasonable in this case or are requirements incorporated into other conditions.

## **8. OTHER CONSIDERATIONS**

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

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

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

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

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

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

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 development is considered acceptable subject to the conditions cited below and it is recommended that it be granted. As Natural Resources Wales has objected to the scheme, Technical Advice Note 15 advises as follows:

*Where the planning authority is minded to go against the advice of [NRW], it should inform the Agency prior to granting consent allowing sufficient time for further representations to be made, to ensure consequences can be managed acceptably.*

NRW has been consulted 3 times on this application as the applicant has endeavoured to answer queries raised and provide further information. It is clear to officers that the site cannot meet the tests set out in TAN15 and it is unlikely NRW will withdraw its concerns. Officers are, based on the assessment above, satisfied that consideration of the proposal is balanced in favour of it. Should members agree, officers will confirm an intention to issue a favourable decision to NRW and provide it with an opportunity to raise further matters. Subject to no new matters being raised, officers seek delegated authority to issue the decision.

## 10. **RECOMMENDATION**

**GRANTED WITH CONDITIONS SUBJECT TO NOTIFICATION TO NATURAL RESOURCES WALES WITH DELEGATED AUTHORITY TO THE HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT TO ISSUE THE DECISION IF NO NEW MATTERS RAISED**

### **Conditions:**

01 The development shall be implemented in accordance with the following plans and documents:

- PROP01revF
- PROP03revE
- PROP02revD
- Technical Note 02 by rappor June 2023
- Flood Consequences Report Issue 4 by Fairhurst
- Flood Management Plan Issue 2 by Fairhurst
- Landscape Management Plan by Encon Associates 20<sup>th</sup> April 2023
- Tree Survey Report by Encon Associates revision A
- A5630 – 07-A
- Construction Environmental Management Plan (ref. 11010.CEMP.vf1) (amended April 2023)
- PLAN EC03 Ecological Enhancement Plan rev A
- LC01
- Design and Access Statement November 2022

- Ecological Assessment by Ecology Solutions November 2022
- Framework Travel Plan by rapport December 2022
- Noise Assessment by Tetrattech November 2022
- Planning Statement by Quod February 2023
- Preliminary Risk Assessment November 2022
- 151157- FRH- XX- XX- DR-C-2000 | P01
- Transport Statement by rapport December 2022

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

***Pre- commencement conditions***

02 CEMP – Highways and Amenity

Prior to the commencement of development including any demolition a Construction Environmental Management Plan (CEMP) and Demolition Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The documents shall include details of the following:

- The position of temporary haul roads and compounds containing site offices, workers welfare facilities and contractor parking and compounds containing plant or for the storage of equipment and materials;
- The location of temporary plant such as cement silos, cranes or any other structures over 2.5m high;
- The location and height of spoil tips, soil tips, or piles of imported aggregates / materials;
- wheelwashing facilities (siting and type);
- dust suppression measures;
- construction noise mitigation measures;
- details of temporary lighting during construction works and its hours of operation;
- details of enclosure of working areas;
- the drainage strategy to operate during construction setting out controls of contamination during construction, including controls to surface water run-off, water pumping, storage of fuels and hazardous materials, spill response plans and other pollution control measures;
- Other pollution prevention and contingency measures that are to be implemented.
- Details of the routing for construction traffic.

l. Advance notification of neighbours and other interested parties of proposed works and public display of contact details including accessible phone numbers for persons responsible for site works for the duration of the works.

Works shall be carried out fully in accordance with the approved CEMP and Demolition Method Statement

Reason: To protect the amenities of nearby residents and in the interests of highway safety. Policies GP2, GP5 & GP7.

Contamination

No development, (other than demolition) shall commence until:

- An appropriate Desk-Study of the site has been carried out, to include a conceptual model and a preliminary risk assessment, and the results of that study have been submitted to and approved in writing by the Local Planning Authority.
- If potential contamination is identified then an appropriate intrusive site investigation shall be undertaken and a Site Investigation Report to (BS10175/2011), containing the results of any intrusive investigation, shall be submitted and approved in writing by the Local Planning Authority.

c) Unless otherwise agreed in writing by the Local Planning Authority as unnecessary, a Remediation Strategy, including Method statement and full Risk Assessment shall be submitted to and approved in writing by the Local Planning Authority.

No part of the development hereby permitted shall be occupied until:

d) Following remediation a Completion/Verification Report, confirming the remediation has been carried out in accordance with the approved details, shall be submitted to, and approved in writing by, the Local Planning Authority.

e) Any additional or unforeseen contamination encountered during the development shall be notified to the Local Planning Authority as soon as is practicable. Suitable revision of the remediation strategy shall be submitted to and approved in writing by the Local Planning Authority and the revised strategy shall be fully implemented prior to further works continuing.

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

#### Drainage Scheme

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 and surface water. All surface water drainage from roads, parking areas and any other surfaced areas where motor vehicles park or transit shall be passed through a mechanism to remove hydrocarbons prior to being discharged to any surface waters. The design and capacity of the means to remove hydrocarbons shall be submitted to the Council as part of the drainage details. 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.

#### ***Pre – construction conditions***

##### ULEV Infrastructure condition

No construction shall commence on site until a scheme of Ultra Low Energy Vehicle infrastructure has been submitted to the LPA and shall include at least 10% of total parking spaces. The scheme must be approved by the LPA prior to implementation and thereafter be permanently retained. ULEV Infrastructure shall be available to staff during the construction phase in so far as this is reasonably practicable.

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

##### Levels and Cross Sections

No construction shall commence on the site until drawings have been provided showing the finished levels across the site including cross sections that shall clearly show the relationship with adjacent site levels. Any need for retaining walls, tanking of walls or any underbuild shall be clearly shown on the drawings including the extent and height of such structures. The completed store shall have a finished floor level of 7.82m above Ordnance Datum.

Reason: to mitigate the effects of a flood event and in the interests of visual amenity and general amenity.. Policies SP3 & GP1 and GP2.

##### External Materials

Notwithstanding the details provided, samples of external materials shall be submitted to the Local Planning Authority prior to the commencement of construction. The building shall be fully completed using the approved materials before its first beneficial use.

Reason: to encourage good design and to protect and enhance visual amenity. Policies GP2 & GP6.

### ***Pre –occupation conditions***

#### Parking - implementation

Parking (including bicycle parking), Access and Circulation Areas and final surfacing shall be provided as shown in approved site layout drawing POP01revF before the first beneficial use of the development hereby approved and shall be retained thereafter.

Reason: To ensure adequate parking and circulation is provided and retained and to support overall sustainability objectives. Policies SP1, GP4 & T4.

#### Planting – implementation & management

The scheme of landscaping shall be carried out in its entirety by a date not later than the end of the full planting season immediately following the first beneficial use of the store hereby permitted. Thereafter the landscaping shall be maintained in accordance with the approved landscape management plan by Encon Associates (20<sup>th</sup> April 2023).

Reason: To secure the satisfactory implementation and maintenance of the planting scheme in the interests of visual amenity. Policies GP2 and GP6.

#### Ecological Enhancement

Prior to the first use of the retail unit the scheme of ecological enhancement detailed in the approved Ecological Enhancement Plan EC03 shall be completed unless an alternative timescale for any part is agreed by a separate condition attached to this permission. The enhancement works shall be retained for the lifetime of development.

Reason: to achieve Welsh Government objectives to enhance bio-diversity as identified in Planning Policy Wales Edition 11. Policy GP5.

### ***General conditions***

#### Plant Noise

In respect of any proposed air conditioning, mechanical ventilation or associated plant, the applicant shall ensure that the existing background noise level is not increased when measured one metre from the nearest noise sensitive elevation. In order to achieve this the plant must be designed / selected or the noise attenuated so that it is 10dB below the existing background level. This will maintain the existing noise climate and prevent 'ambient noise creep'

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

#### External Plant

No external plant or lighting shall be installed anywhere on the site including on the exterior of the building unless details of the appearance of that plant/lighting and its siting have been submitted to and approved by the Council in writing. Following the Council's written agreement the plant shall be installed as agreed and retained for lifetime of development. No other plant shall be installed.

Reason: to protect visual amenity and general amenity and in the interests of biodiversity. Policies GP2, GP5 and GP6.

#### Floor Area Restriction

The total floor area of the building shall not exceed 3008 square metres and the external garden centre area shall be limited to the area set out on approved Drawing PROP01revF. No more than 30% of the floorspace of the building identified in Drawing PROP01revF (i.e. 902 square metres) shall be used for the display and sale of food and drink goods (of which no more than 10% shall be for perishable food and drink products). The remaining floorspace and external garden centre area shall only be used for the sale of non-food and

drink goods and for no other purpose (including any other purpose in Class A1 of the Schedule of the Town and County Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order). Reason: To ensure that the floor space of the unit is controlled in the interest of maintaining the vitality and viability of sequentially preferable retail centres. Policies SP19 and R10.

#### Control over sub-division

There shall be no subdivision of the retail unit hereby approved, nor shall the total floor area of the building exceed 3008 square metres. The external garden centre area shall be limited to the area set out on approved Drawing PROP01revF.

Reason: To ensure that the floor space of the unit is controlled in the interest of maintaining the vitality and viability of defined retail centres; and in the interests of highway safety, residential amenity, visual and landscape amenity. Policies GP2, GP4, GP5, GP6, SP19 and R10.

#### P.D. Removal – Extensions / Stores / Bicycle Parking

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment)(Wales) Order 2014 (or any Order revoking or re-enacting that Order), Part 42, Classes A, B and C, no extensions or alterations shall be erected or made; and there shall be no erection of a trolley store, refuse or cycle store, other than those shown on the approved plans or agreed as part of a conditional discharge.

Reason: To ensure that the floor space of the unit is controlled in the interest of maintaining the vitality and viability of defined retail centres; and in the interests of highway safety, residential amenity, visual and landscape amenity; and in accordance with Policies GP2, GP4, GP5, GP6, SP19 and R10.

#### Demolition of existing buildings

Prior to first beneficial use of the development hereby approved, all existing retail buildings shall be demolished in their entirety and their retail use shall cease.

Reason: In the interests of visual amenity, highway safety and the vitality and viability of retail centres. Policies GP6, T4, R11 and SP19.

#### CEMP – Biodiversity

The development shall be undertaken in accordance with the following document:

- Construction Environmental Management Plan (ref. 11010.CEMP.vf1) (amended April 2023)

Reason: In the interests of biodiversity and sustainability. Policies SP9 and GP5.

#### *NOTE TO APPLICANT*

01 This decision relates to plan Nos: 202, 203, 204, 205, 206, and Pre application Consultation Report by Quod January 2023

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). The following policies were relevant to the determination of this application:

- SP1 – Sustainability
- SP3 – Flood Risk
- SP9 – Conservation of the natural, historic and built environment
- SP18 – Urban Regeneration
- SP19 – Assessment of Retail Need
- GP1 – Climate Change
- GP2 – General Amenity
- GP3 – Service Infrastructure
- GP4 – Highways & Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design

- GP7 – Environmental Protection & Public Health
  - CE1 – Routeways, Corridors and Gateways
  - CE3 – Environmental Spaces & Corridors
  - CE6 - Archaeology
  - T2 – Heavy Commercial Vehicle Movements
  - T4 - Parking
  - T5 – Walking and Cycling
  - T7 – Public Rights of Way & New Development
  - R11 – Development of existing Out of Centre Retail Sites
- W3 - Provision for Waste Management Facilities in Development

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.

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

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## 1. LATE REPRESENTATIONS

### 1.1 Natural Resources Wales response to reconsultation:

**We object to the proposed development as submitted, for the reasons explained below.**

#### Flood Risk

The planning application proposes a replacement retail unit which represents less vulnerable development in flood risk terms. The application site is within Zone B of the Development Advice Map (DAM) contained in Technical Advice Note 15: development and flood risk (2004) (TAN15). However, our Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and within Flood Zone 2 and 3 (Sea).

As confirmed in the letter from Welsh Government dated 15 December 2021, the FMfP represents better and more up-to-date information on areas at flood risk than the DAM. Section 6 of TAN15 requires the Local Planning Authority to determine whether the development at this location is justified. Therefore, we refer you to the tests set out in section 6.2 of TAN15. If you consider the proposal meets the tests set out in criteria (i) to (iii), then the final test (iv) is for the applicant to demonstrate through the submission of an FCA that the potential consequences of flooding can be managed to an acceptable level.

We refer to our previous response dated 22nd August 2023 (ref: CAS-233879-D2D1), within which we advised that the application fails A1.14 and A1.15 of TAN15 and that the assessment did not include a full allowance for climate change as required by national policy. In addition, no assessment was provided on the impact to flood risk elsewhere as required by A1.12. We have reviewed the TAN15 Statement prepared by Fairhurst (undated) (ref: 151157). Our advice to you is that the amended FCA fails to demonstrate that the risks and consequences of flooding can be managed to an acceptable level for the reasons explained below.

We have reviewed the further information has been provided on the impact to flood risk elsewhere as required by A1.12. The additional information states that “since the initial assessment has been undertaken, the impact of flood risk elsewhere has been lessened due to an overall reduction in the overall building footprint on the site – by 591 square metres (or 16%) when compared to the current position. This represents an overall



betterment post-development when compared to the existing position.” We are satisfied with the comments made in this additional statement and that the impact on third parties has been adequately addressed. Given the tidal source of flooding and the flood outlines at this location, we are satisfied that the outline would not be altered by the site redesign. We therefore have no further comments to make in regard to the impact on flood risk elsewhere under A1.12. Notwithstanding the above, we note that no further information has been provided regarding the other concerns raised. Therefore, we continue to have concerns with the application as the application fails A1.14 and A1.15 of TAN 15 and no information on climate change has been provided for the extreme 0.1% event (as outlined in our previous response dated 22nd August 2023 (ref: CAS-233879-D2D1).

We note that the submitted statement refers to policy matters set out in TAN15 and provides more detail regarding a Flood Management Plan (FMP), including stating that the site should be unoccupied when a Flood Warning is issued for the area, thus effectively mitigating the risk to occupants during a flood event. Whilst we note this information, these matters are for you to consider with consultation with Emergency Planners. Please note, we do not normally comment on or approve 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

In conclusion, we continue to have concerns with the application as the application fails A1.14 and A1.15 of TAN 15 and no information on climate change has been provided for the extreme 0.1% event. **We note that due to the predicted flood levels, in order to make the site TAN 15 compliant the site would be needed to be raised to such an extent that it would cause an excessive gradient and may be impractical. Therefore, as the proposal fails to demonstrate that the consequences of flooding can be acceptably managed, and it is unlikely these requirements will be met, we object to this application. Please inform us, in accordance with paragraph 11.7 of TAN15, if you are minded to grant permission for the application contrary to our advice.**

## 2. OFFICER RESPONSE TO LATE REPRESENTATIONS

- 2.1 The officer report already acknowledges that the tests of TAN15 are not met and reports the objection of NRW. This response to the latest reconsultation does not withdraw the objection or change the assessment of officers that TAN15 tests are not met by this development. Notwithstanding, NRW does confirm that its previous objection in relation to A1.12 tests in the TAN are now withdrawn based on additional information supplied by the applicant and consequently this updates the officer assessment in paragraph 7.28 of the published committee report. The concern highlighted in yellow below falls away i.e.
- 7.28 *The use of the site will not change and some betterment is attributed to the slight increase in finished floor level compared to the existing units and the reduction in building footprint compared to existing. However, as the siting of the building will change, the conveyance of flood waters across and through the site may also change and information in this regard has not been included in the submitted assessment and therefore full analysis of the impact of the proposal on flooding elsewhere is not possible. In short, NRW objection is predicated on the supporting information not complying with A1.12 (no flooding elsewhere), A1.14 (flood free development) and A1.15 (extreme event) of TAN15 and the proposal's failure to demonstrate that the consequences of flooding can be acceptably managed. They also indicate that it is unlikely these requirements will be met. Certainly, the site will not be flood free and in practical terms this cannot be addressed and compliance with TAN15 cannot be achieved.*
- 2.2 Officer recommendation remains the same and this late representation does not alter the stated conclusions at 7.33 of the published report, i.e.
- 7.33 *In flood terms the proposal is contrary to Policy SP3 (Flood Risk) and GP1 (Climate Change) of the adopted Local Development Plan (2011-2026) since national guidance on flooding (TAN 15) is not complied with. However, significant weight is given to the fall back position on site in this case. This is a reasonable approach as the buildings exist and are occupied.*

*The failure to comply with TAN15 in this case is considered to be outweighed by other material considerations and subject to conditions controlling the implementation of proactive flood risk management set out in the submitted Flood Consequences Assessment, the development is considered acceptable.*

**3. OFFICER RECOMMENDATION**

- 3.1 GRANTED WITH CONDITIONS SUBJECT TO NOTIFICATION TO NATURAL RESOURCES WALES WITH DELEGATED AUTHORITY TO THE HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT TO ISSUE THE DECISION IF NO NEW MATTERS RAISED**

2.

## **APPLICATION DETAILS**

**No:** 23/0651      **Ward:** Victoria

**Type:** Full

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

**Applicant:** S Bell

**Site:** 51 Albert Avenue Newport NP19 8FT

**Proposal:** **CHANGE OF USE FROM A FOUR BEDROOM DWELLING (C3 USE) TO A SIX BEDROOM HOUSE IN MULTIPLE OCCUPATION (C4 USE)**

**Recommendation:** GRANTED WITH CONDITIONS

### **1. INTRODUCTION**

1.1 This application seeks permission for the change of use of 51 Albert Avenue from a 4 bedroom dwelling to a 6 bedroom house in multiple occupation. The property is an end of terrace dwelling located in the Victoria ward. A HMO is a house occupied by people who are usually unrelated and have private bedrooms but shared facilities such as kitchens, living areas and bathrooms. The proposed 6no. bedroom HMO falls into the C4 Use Class which allows between 3 and 6no. unrelated occupants to reside and share amenities.

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

2.1 None.

### **3. POLICY CONTEXT**

3.1 Policies SP1 (Sustainability), GP2 (General Amenity), GP4 (Highways and Accessibility), GP6 (Quality of Design), GP7 (Environmental Protection and Public Health), T4 (Parking), W3 (Provision for Waste Management Facilities in Development) and H8 (Self Contained Accommodation and Houses in Multiple Occupation) of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) are relevant to the determination of this application as are the Houses in Multiple Occupation (HMOs) Supplementary Planning Guidance (Updated January 2017) and the Parking Standards Supplementary Planning Guidance (Adopted August 2015).

### **4. CONSULTATIONS**

4.1 POLICE: No response.

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

5.1 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ENVIRONMENTAL HEALTH): I confirm I have no objections to the proposal.

5.2 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (HMO LICENSING OFFICER): I have no concerns regarding the proposal for the conversion of 51 Albert Avenue, Newport, NP19 8FT, for use as a House in Multiple Occupation (HMO).

5.3 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (WASTE): We would anticipate the property require standard kerbside waste (180l bin) and recycling provision assuming only council tax is paid.

5.4 HEAD OF INFRASTRUCTURE (HIGHWAYS): No objection subject to conditions. The change of use would result in an additional demand of 4 parking spaces (based on Newport's parking policies). No assessment of sustainability was undertaken, but this may have reduced the requirements. There are a number of facilities nearby reducing the need to own a car and Summerhill Avenue is a bus route. The submission included a parking survey. Whilst this did not contain all relevant raw data, it is accepted that the photos demonstrate that there are sufficient parking spaces available for future residents. The cycle parking is

not easily accessible (due to steps and corridors/doors etc.) or fully enclosed. Highways do not therefore consider it acceptable. We do however consider that improved provision could be offered. This matter can therefore be addressed via a condition. On that basis Highways raise no objections, subject to the following condition.

**Suggested Condition:**

No development shall take place until a scheme for the provision of cycle parking in accordance with the Council's current standards has been submitted to and approved in writing by the Council as Local Planning Authority. The scheme shall be implemented as approved before any part of the development is brought into use and shall be retained as such thereafter. Notwithstanding the provisions of the Town and Country Planning Act (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) no building works, which reduce this provision, shall take place except following the express grant of planning permission by the Council.

Reason: To ensure that adequate provision is made for parking cycles on the site; and to establish measures to encourage non-car modes of transport

## **6. REPRESENTATIONS**

6.1 NEIGHBOURS: Neighbours within a 50m radius were consulted and 32no. of responses were received, a summary of which is outlined below.

- Overcrowded parking
- Noise
- Anti-social behaviour
- Waste/ bins issues
- We have lived happily at 52 Albert Avenue (next door to 51) for nearly 14 years. Many factors are considered prior to buying a new home; Neighbours, catchment area for schools, availability for parking, local doctors surgery, policing and crime rate. We have wonderful neighbours, who have become friends, with a great community spirit, with genuine care for the welfare of each other. If 51 had been an HMO and not a family dwelling back in 2010, we would not have bought our property. The impact of 51 becoming an HMO will directly affect the value of our home in a negative manner. There is inadequate parking space in the street now, if planning is granted, there is the potential of another 6 vehicles to add stress to the already congested parking spaces. This exposes us to nuisance factor and risk; we will be afraid to leave the house. It will affect the mental well-being of my family, and cause stress to our neighbours. I work in the construction industry and spend most weeks away from home Monday to Friday. I urge you to keep 51 Albert Avenue as a family dwelling, we very strongly object to the planning application of it becoming an HMO.
- We need to keep these houses and single family dwellings. Children play in the street and we do not need any additional traffic or anti social behaviour that would result from more HMOs.
- I just spoke to the present owners who had arrived back from holiday and found a note on the lamp post outside their house informing them about plans to convert their family home into 6 HMO units. As far as they were concerned they had been told that there were plans of converting their home into 2 dwellings. They were rightly concerned over the parking situation, since they themselves have had a lot of trouble in the past - there is certainly not room for several cars outside the property. Vet staff are told not to use the vet's car park but leave it for their customers. Even so we find that many customers choose to use the streets around. Many homeowners have more than one car, and most/many of the houses in the area do not provide enough space for that.
- I wish to strongly object to the application. Parking in the area has been horrendous for years and is steadily getting worse. The parking survey that was completed is totally unrealistic, as it was completed in the early hours of the morning and is not a true reflection of the problem. Yes, many of the residents would have been at home but the major cause of the parking problem in Summerhill and Albert Avenue is caused by the vets, which is in operation for over 12 hours per day. There is a very large number of staff at the vets, who all park on these (and surrounding) streets and they generally work long shifts. It is also a teaching practice, and many staff come from out of the area and stay at the house on 50 Albert Avenue for 2 weeks at a time, without moving their cars during the whole time. There are also the customers of the vets, who can constantly be seen parking on the roads. There is a small car park, but customers have

always been reluctant to use it and just park on the street. Summerhill Baptist Church adds to the problem, with weddings, funerals and regular after-school club meetings causing severe parking problems. Also, the school on Fair Oak Ave causes major disruption with parents picking up children and staff parking in surrounding streets all day long. The old Escort van hire is also being re-opened as a business premises, so that will be more vehicles. There may be plenty of parking spaces in the middle of the night, but there are hardly any when people come home from work when all these places are open. It isn't realistic for people to have to park 200m away from their house. People can't carry shopping and heavy items that far (especially up a steep hill) and double-parking on Summerhill to off-load isn't possible, as it is a bus route. To add to the problem, we have already lost a space on both sides at the top of Albert Avenue due to double yellow lines being extended recently. The area is completely saturated with HMOs and temporary accommodation. There is already one on the lower part of Albert Ave but also Fair Oak Ave, Church Road, Bryderwen, Woodland Road and probably many more. There is most definitely anti-social behaviour associated with these properties and people can be seen openly dealing drugs on the street. It is well known that they cause disruption and often occupants bring in friends to stay that are not authorised to be there, which means even more people. I spoke to someone who had been temporarily housed in the HMO in Fair Oak Avenue due to a house fire and she said she was terrified living there due to the other residents. It is widely reported that councils are not doing enough to tackle anti-social behaviour and with an already stretched police force, response time will be slow if at all. Also, the rubbish left outside these properties for months is absolutely disgusting. Maindee is already one of the most deprived areas of Newport and this will undoubtedly bring it down further and devalue our properties. We do not need any more of this! How much more do the residents of this area have to put up with? This is an unscrupulous means of making extortionate amounts of money from a small space. I understand that the council has a housing problem, but I believe they should be more pro-active in promoting better rented accommodation. This is an unacceptable form of tenancy for this area, and would change the character of the community with a more ephemeral population. This area has many larger family houses and this could be the start of more applications for HMOs. The further the spread of these properties, the quicker the decline of the community. Maindee is already falling into a spiral of decline, and has been for years. This needs to be stopped and reversed, with better rented accommodation and family houses. I notice that a lot of objections arise from the lack of parking. Although the council have moved to allay these fears, I have to point out the time of the survey. It is not the lack of spaces overnight, but throughout the day. Residents don't come home from work at 12.30am and don't come home from doing their shopping at that time either. I can assure the council that we cannot park outside our own house until 9pm most days, as the staff from the vets are still working. Residents in Jackson Place and further down Albert Avenue are already parking at the top end of Albert Avenue, as well as on Summerhill Ave. Residents of Albert Ave are persistently having to put out wheelie bins to reserve their space. It has to be noted that the main protagonist of this is "the current owner of 51 Albert Ave". Another concern is the increase of rubbish in the street. How many recycling boxes will be needed? At the moment, the residents at the top end of Albert and Summerhill Ave don't clutter the pavement with these receptacles. The type of people in these HMOs will not bother about which bin the rubbish should be put in. Consequently, Wastesavers will not collect mixed boxes and before you know it, there will be rubbish everywhere, looking like the top end of Morden Road. From this, there is then the increase of vermin. Can the council ensure that the environmental dept. will be monitoring the application? The big worry for the residents is the almost certain anti-social behaviour, which will leave us feeling vulnerable. We will be afraid to leave our houses unoccupied and our cars - if we can park! There are already many HMOs in Maindee and this would further impact on the community. I know Maindee has a police station but some residents may believe even that is too far for an acceptable response. A very big concern comes from the report published on 16/08/23, stating that councils are not responding to complaints of anti-social behaviour. Even though the current legislation gives them the power to deal with any problems, the report states that people are going directly to the Ombudsman, because of inaction from the authorities. I'm sure nobody wants such behaviour in the first place, but this doesn't give anyone any confidence in something being done. Anti-social behaviour is already an issue in

Maindee, with countless mules riding their electric bikes to serve certain habits. The gutters around here are littered with empty gas bottles. I believe crime goes hand in hand with drugs and I fear an increase in crime as a result of undesirables watching my house from close by. The impact on the value of properties will be adversely affected. With property values already falling, this is the last thing the area needs. This HMO will be out of place. How will Maindee ever get out of its deprivation?

- There are a number of HMO in the area already along with council run shelters. We have had people sorting through our bins in front gardens and car crime is at an all time high. I have watched young men trying our car doors during the night on security playbacks next day.
- I am a resident of 20 Jackson Place which is next to the new proposed HMO on 51 Albert Avenue. I think this is not beneficial to our area because we have too many HMOs in our area and they are a massive concern. There is always security guards outside the houses, around the HMO houses people are drinking and smoking drugs on the street and the area around the HMOs are littered with rubbish, empty beer cans and various alcohol bottles. We have too many HMO's in this area. Antisocial behaviour is my main concern followed closely by parking issues.
- Been living in the area for over 10 years now, Parking has always been difficult, this Lack of police presence and the anti social aspect is worrying, I see more kids racing around on electric bikes than police, and how about the rubbish and litter all over the streets round here, bin collections every three weeks now. Also, I feel that it would devalue housing stock here making it impossible to move on to any new homes that are being built now. No one wants to move to an area with a HMO on every corner, HMO's are temporary rooms for people living in drastic and desperate circumstances, many with mental health issues. Would you want one in your street or in a street near you that you have to pass every time you walk your kids to school or go to the local shop. We are meant to be making our communities safer, cleaner and more accessible.
- Pressure on Critical Infrastructure- The increasing number of HMOs taken cumulatively leads to increased pressure on medical centres, schools and transport. I trust that the council is taking an holistic approach to this application.
- Drug dealing has spiralled out of control in this area in the last five years. Having watched enough drug deals going down outside HMOs, while I am sure not every HMO resident is a drug user, a significant minority are. I have contacted the Chief Constable about the drug dealing issue, but frankly nobody at Gwent Police gives a damn. See the recent HMICFRS report on Gwent Police's failures. Anti-social behaviour is another problem. Having lived next door to an HMO in Jackson Place it took years to resolve the anti-social activity. Most landlords and their agents are frankly useless (Good estate agents do not deal with HMOs), rarely replying to complaints about their tenants. You can spot HMOs usually by the rubbish piled up outside. Take a walk down Morden Road to confirm what I say. Again the laziness of landlords and agents is largely to blame. Nobody would want to live next to an HMO.

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

Councillor Hussain - my reasons for the objections are as follows:

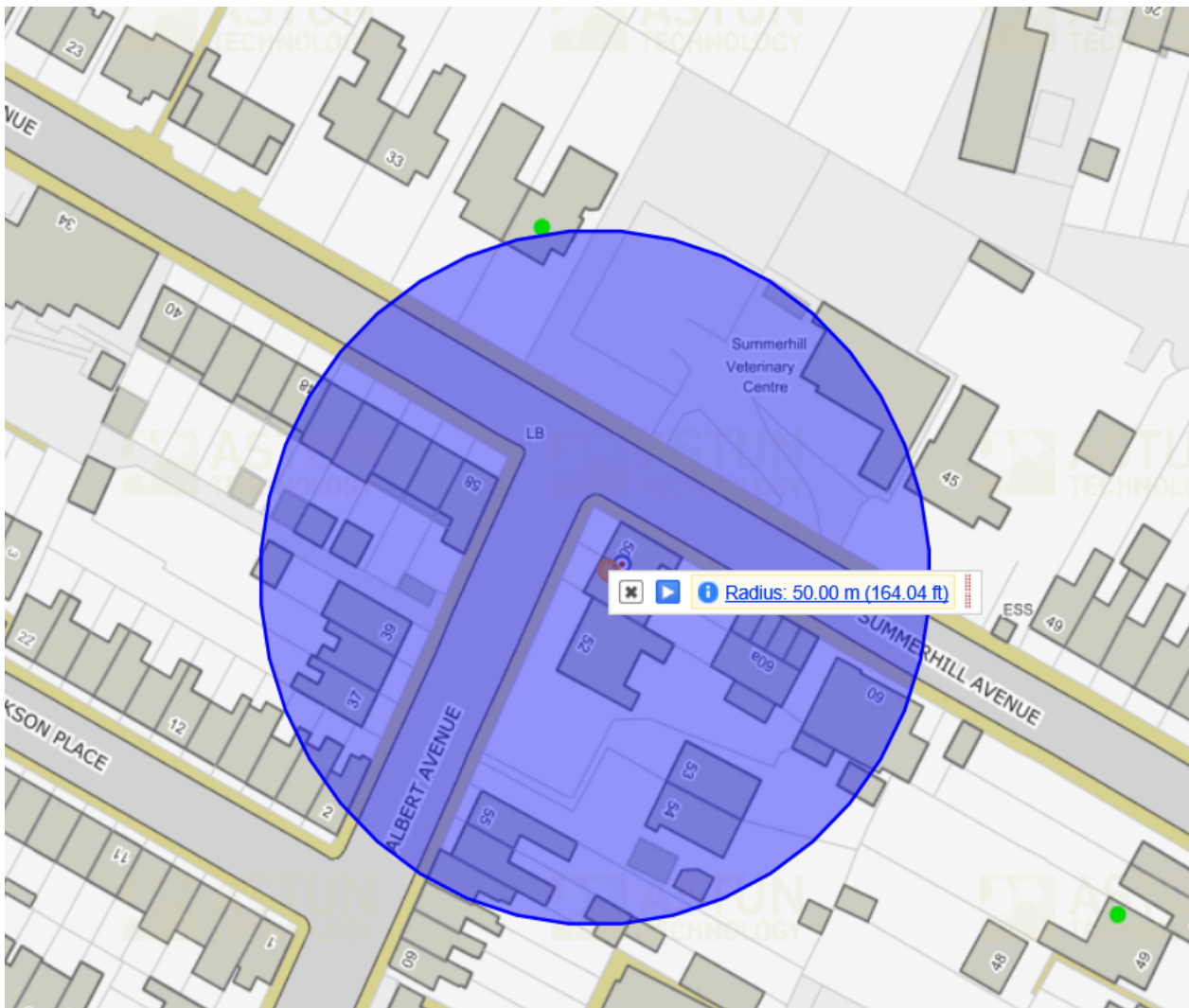
- Albert Avenue has existing parking issues at the moment, therefore if permission is granted for the HMO this will cause more strain on parking.
- Ongoing complaints of ASB and groups of people gathering and consuming alcohol and drug activity around the existing HMO's in the vicinity of the new HMO application
- The loss of a family home in an area which already has a high proportion of HMOs and Temporary Accommodation.

In addition to this I have received several objections from residents who live in the locality, Albert Avenue, Summerhill Avenue, Jackson Place to name a few. There are ongoing concerns with the existing HMO's with antisocial behaviour, drug taking and drug dealing which is being reported to the police constantly. There are also concerns about a security guarded house on Church Street. I have viewed the parking survey images; however I don't believe this to be a true reflection of the parking problem. The images from the survey are all

taken at night the problem is during the day when the vets are open the school with drop off and pick up.

## **7. ASSESSMENT**

- 5.1 This application seeks permission for the change of use of 51 Albert Avenue from a 4 bedroom dwelling to a 6 bedroom house in multiple occupation. The property is an end of terrace dwelling located in the Victoria ward. The site is not located in a flood risk zone. A HMO is a house occupied by people who are usually unrelated and have private bedrooms but shared facilities such as kitchens, living areas and bathrooms. The proposed 6no. bedroom HMO falls into the C4 Use Class which allows between 3 and 6no. unrelated occupants to reside and share amenities.
- 5.2 The site is located along Albert Avenue which is a residential street in a predominantly residential area. The subject property is laid out over four floors. The lower ground floor comprises a lounge, dining area, office and w/c. The ground floor comprises a lounge, kitchen and store, the first floor comprises 3no. bedrooms and a bathroom and the second floor comprises 1no. bedroom. As part of the proposals, the dining area and office on the lower ground floor would be converted to 1no. bedroom, the lounge on the ground floor would also be converted to a 1no. bedroom. No external changes are proposed. The proposed site plan also shows a bin store to the front of the property and a bicycle store in the rear garden.
- 5.3 Policies SP1 (Sustainability), GP2 (General Amenity), GP4 (Highways and Accessibility), GP6 (Quality of Design), GP7 (Environmental Protection and Public Health), T4 (Parking), W3 (Provision for Waste Management Facilities in Development) and H8 (Self Contained Accommodation and Houses in Multiple Occupation) of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) are relevant to the determination of this application as are the Houses in Multiple Occupation (HMOs) Supplementary Planning Guidance (Updated January 2017) and the Parking Standards Supplementary Planning Guidance (Adopted August 2015).
- 5.4 Councillor Hussain and a number of local residents have raised concerns regarding the proposed development leading to the prospect of increased anti-social behaviour in the area. In this regard, policy H8 (Self Contained Accommodation and Houses in Multiple Occupation) states; 'within the defined settlement boundaries, proposals to subdivide a property into self-contained accommodation, bedsits or a house in multiple occupation will only be permitted if: i) the scale and intensity of use does not harm the character of the building and locality and will not cause an unacceptable reduction in the amenity of neighbouring occupiers or result in on street parking problems; ii) the proposal does not create an over concentration of houses in multiple occupation in any one area of the city which would change the character of the neighbourhood or create an imbalance in the housing stock; iii) adequate noise insulation is provided; iv) adequate amenity for future occupiers.' The main considerations of this application are the potential impact of the change of use on parking provision, flooding and the potential impact on the character and amenity of the surrounding area and neighbouring properties, taking into account any HMOs within close proximity to the site.
- 5.5 The SPG states that 'clusters of HMOs can alter the composition of a community and detract from local visual amenity. The guidance introduces a threshold above which HMOs are considered to detract from the character of the area. In general, the Council will not support a planning application that would take the number of HMOs, considered as a proportion of the local housing stock, above a specified limit. In "defined areas" this limit is 15%, in other areas, 10%.' When taking a 50m radius from the address point of the application site, the full front elevations of 17no. properties are caught. There is currently 1no. HMO within these 17no properties, if the proposal were to be approved, HMOs would constitute 11.7% (2 of 17 properties) of the selected housing stock and the proposed development would comfortably fall within the 15% permitted threshold for this area. Therefore, it is not considered that the proposed change of use to a 4no bedroom House in Multiple Occupation would result in a demonstrable impact on the character of the area or the amenity of neighbouring occupiers over and above the existing use of the property and complies with policies GP2 and H8.



- 5.6 The property already currently benefits from 4no. bedrooms and three large reception rooms, it is therefore considered that given the size of the dwelling, its scale is appropriate for use as a 6 bedroom HMO. Notwithstanding this, the HMO SPG states that 'HMO's should provide outdoor amenity space in which residents can relax, dry their clothes and store refuse and recycling bins. Shared amenity spaces will be acceptable so long as they can accommodate every resident of the properties they serve.' The property benefits from outdoor amenity space to the rear that will be accessible for all occupants. The applicant has confirmed that the outdoor amenity space will also provide an area for cycle storage. Whilst it acknowledged that residents would have to bring bicycles through the property, this would be common place with any terraced property in Newport which doesn't benefit from rear access, and on balance is considered acceptable on this occasion. The cycle parking provision also provides lockable stands and therefore whilst the Highways Officer has objected to the application on this basis, the proposals are considered to be secure and therefore acceptable. Bin storage will also be provided to the front of the property as per the current arrangement. The HMO standards state that a bedroom should be at least 6.51m<sup>2</sup>, a kitchen for up to 6no persons should be at least 10m<sup>2</sup> and a living room for up to 6no persons should be at least 12m<sup>2</sup>. All the proposed rooms meet the required space standards. All bedrooms contain windows, providing adequate light and ventilation for future occupiers. The Council's HMO Licensing Officer has no objections to the conversion of this property to a HMO. The environmental health officer also has no objections. It is therefore considered that the proposal complies with the aims of Policy H8 and GP2 of the NLDP 2011-2026 (adopted January 2015) and the Supplementary Planning Guidance on Houses in Multiple Occupation (adopted August 2015, updated January 2017).
- 5.7 In addition to the above, it should be noted that the Inspector made the following comments in respect of appeal ref: CAS-02221-T4B3P5.



*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.*

*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.*

*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.*

*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.*

The above comments are considered relevant to this application and there are no grounds to refuse the application for reasons relating to impact on neighbouring amenity, noise, crime or anti-social behaviour.

- 5.8 Councillor Hussain and a number of local residents have expressed concerns regarding parking in the local area. In accordance with the Parking Standards SPG, as the property is located in parking zone 3, it would require a minimum of 1no parking space per bedroom and 1no. parking space per 5no bedrooms for visitors. This would total a parking requirement of 7no spaces. The existing property has 4no. bedrooms and therefore would require 3no. spaces resulting in a deficit of 4no. spaces. No off street parking has been provided. The applicant has submitted a parking survey as part of this application which confirms that there is space to accommodate the 4no. additional spaces on street. The survey showed an average parking stress of between 83-85%. Recent officer site visits also confirm that there were a number of spaces available at various times of the day. In addition, it is noted that the property is located in close proximity to both the Maindee District Centre and the city centre which provide access to facilities and service within walking/cycle distance. The highways officer has no objection to the proposals. The proposed development is therefore considered to accord with policies GP4 and T4.
- 5.9 Councillor Hussain and a number of local residents have also expressed concerns in relation to acoustic insulation and general noise and disturbance as well as an increase in crime. In this regard, the existing use of the property is a residential use, and the proposed use as a HMO would also be a residential use. At present a family, with a number of children sharing bedrooms could occupy the dwelling and therefore the proposed change of use to a HMO is not considered to result in increase in noise over and above the existing situation. The Council's environmental health officer has not offered any objections in this regard. Concerns regarding safety and anti-social behaviour have also been raised by a number of local residents and councillors. A number of responses confirm that anti-social behaviour and crime problems are pre-existing and relate to tenants in other units. It cannot be assumed that such issues will arise from all HMO or similar properties and the assessment of concentration as set out in the SPG is intended to avoid excessive numbers of HMOs in areas that may lead to unacceptable concentrations and associated impacts on social cohesion. In this identified radius the numbers of HMOs relative to traditional housing stock remains relatively low and consequently there can be no grounds to refuse on this basis. Finally, a number of local residents have also expressed concerns regarding a decrease in property value, this is not a material planning consideration and therefore has not been addressed in this report.

- 5.10 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 SP9 of the LDP supports this and states that proposals will be expected to maintain, protect and enhance ecological networks and features of importance for biodiversity. It is considered reasonable and necessary in this instance to secure a scheme of biodiversity enhancement measures to ensure that a net benefit is provided to biodiversity as part of this application. The applicant has proposed 1no. bird box and 1no. bat box located on the front and rear elevation of the dwelling which is considered acceptable in this case. A number of residents have also raised concerns regarding how any building work will affect bat roosts in the local area. In this regard, no external changes are proposed to the property and therefore the proposal is not considered to adversely affect bats.

## **8. OTHER CONSIDERATIONS**

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

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

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

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

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

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

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

- 8.4 The above duties have been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision. There would also be no negative effects which would impact on inequalities of outcome which arise as a result of socio-economic disadvantage.

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

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

### **8.7 *Newport's Well-Being Plan 2018-23***

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of

Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

## **9. CONCLUSION**

9.1 The proposed development is considered to accord with the relevant policies of the Adopted Newport Local Development Plan 2011-2026. It is therefore recommended that planning permission is granted.

## **10. RECOMMENDATION**

### **GRANTED WITH CONDITIONS**

01 The development shall be implemented in accordance with the following plans and documents: 4204.PL.02 Rev C Existing and Proposed Block Plans, 4204.PL.06 Rev A Proposed Elevations, 4204.PL.05 Rev A Proposed Plans and Email from Lloyd Jones (received 22/09/2023 re. bird and bat box details).

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

02 The property shall have a maximum of six bedrooms and a maximum of six occupants in total.

Reason: To protect the amenity of adjoining occupiers and in the interests of highway safety, in accordance with policies GP2 and GP4.

03 Prior to the first beneficial use of the property as a HMO the bird and bat boxes shown on drawing ref: 4204.PL.02 Rev C - Existing and Proposed Block Plans shall be installed. The bird and bat boxes shall be 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 Policies SP9 and GP5 of the Newport Local Development Plan 2011-2026.

### *NOTE TO APPLICANT*

01 This decision relates to plan Nos: Site Location Plan, 4204.PL.02 Rev C Existing and Proposed Block Plans, 4204.PL.04 Rev A Existing Elevations, 4204.PL.03 Rev B Existing Plans, 4204.PL.06 Rev A Proposed Elevations, 4204.PL.05 Rev A Proposed Plans, Parking Survey (received 27/07/2023), Planning Statement (received 27/07/2023) and Email from Lloyd Jones (received 22/09/2023 re. bird and bat box details).

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.

3.

## **ENFORCEMENT DETAILS**

**Ref No:** E22/0336                      **Ward:** Rogerstone

**Site address:**                      **6 Jessop Road, Rogerstone, Newport**

**Description of Breach:**            **Alleged change of use from a dwelling (C3) to C2**

**Recommendation:**                **No breach – close case.**

### **1. BREACH OF PLANNING CONTROL**

- 1.1 A complaint has been received that a residential property on Jessop Road is being used as a care home for 2 residents with disabilities.
- 1.2 The case has been called to Planning Committee by Councillor Reakes.
- 1.3 Planning permission is required for “development” as set out in S55 of The Town and Country Planning Act 1990 (as amended):  
  
*“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land...*
- 1.4 The definition goes on to state in Section 55(2)(f) that changes within the same use class do not amount to “development”.
- 1.5 The Authority has to consider whether the current use falls within Class C3 ‘Dwellinghouse’ of the Town and Country Planning (Use Classes) Order 1987.
- 1.6 If it does, the use would be lawful and planning permission would not be required. However, if it falls within Class C2 ‘Residential institution’, planning permission would be required should the change of use be of a material nature (i.e a material change of use).

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

None

### **3. POLICY CONTEXT**

None

### **4. CONSULTATIONS**

- 4.1 Legal- with regards case law.
- 4.2 Residents have raised concerns with regards to noise and disturbance emanating from the property, traffic impacts associated with vehicles being parked at the property and noise/disturbance during staff changeover. Other issues raised are non-planning related.

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

Social Services- The two young people were carefully selected to ensure that they were compatible with one another, in terms of forming a household. To this end, the placement has been considered successful.

### **6. ASSESSMENT**

- 6.1 The property in question is a four bedroomed detached property, whose setting is within a suburban context. Two young adults are resident here and have formed strong friendship bonds. To all intents and purposes the property remains as a house and there have been no physical modifications that could facilitate such a change of use. The two people see one another's family members and socialise with them, as one would expect of a household. For

example, attending a birthday party and when the parents of one visits the house both are present. Both of them receive support at the level of assisted living.

6.2 The question is whether the use here requires planning permission as a material change from the lawful use as a single dwellinghouse falling within Class C3(a), taking into consideration the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and the extent of any departures from C3(a), should they have occurred. For a change of use to have occurred the development would have to fall within a different use class and the change be substantive, i.e. be materially different.

6.3 'Residential institutions' are covered by use class C2, which is defined as:

*Provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwellinghouses)". Examples are given such as a hospital, nursing home, residential school, college or training centre.*

Whereas Class C3 covers "Use as a dwellinghouse (whether or not as a sole or main residence) by:

- (a) *a single person or by people to be regarded as forming a single household.*
- (b) *not more than six residents living together as a single household (**where care is provided for residents**).*
- (c) *not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).*

Residential properties will typically fall within (a) on the above list. However, it is a permitted change between these categories in any event and these changes do not constitute development. Therefore, a family home used as a dwelling, where it is occupied by no more than 6 people living *en famille* and where an element of care is introduced can constitute a permitted change to C3(b).

6.4 "Care" is defined in the Use Classes Order, as follows:

### **Interpretation**

**2.** *In this Order, unless the context otherwise requires:—*

*"care" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.*

It should be noted that the Use Class Order imposes no requirement that those facilitating the care should be in residence here. The level of care here falls within the category of assisted living. That is to say it provides support for the daily needs of the people in residence here. Those in residence are not children and not given medical care.

6.5 **Has a material change of use taken place?**

The premise consists of a 4 bedroom (one of which has a single bed present for overnight staff accommodation) detached property (other than the garage which adjoins the neighbouring garage), which includes a living room, dining room, downstairs toilet, kitchen, bathroom, garage and garden. There is nothing about the external appearance of the property that would distinguish it from any other property falling within a dwelling use in the area. In short, it has all the requisite facilities and features to provide for a person's day to day domestic existence, as per *Gravesham Borough Council v Secretary of State* 1982, and therefore would constitute a dwelling from a planning perspective. The premise may have a different use, nevertheless, dependent on how it is occupied by those in residence.

- 6.6 The only locks present internally are those present on bathroom/toilet doors, where one would normally expect a degree of privacy, and a room used by support staff. The room used by staff is only ever locked when occupied. As such, the locks facilitate privacy and do not preclude the fact that the residents are a single household, particularly when having regard to the communal living arrangements here. The boiler is in a locked cupboard to prevent tampering with the controls. Furthermore, the support given here would constitute non-residential support, despite staff sleeping over at the premise and is at the level of assisted living. As such, the tenants have access to all parts of the house except the one room, when it is in use by staff. The staff are not resident here but do stop overnight as indicated above. All of the facilities within the kitchen were open to use for those in residence. Currently, there are two members of staff overnight, but this is to be reduced to one shortly. The key question is, **'Do those in residence form a single household?'** The following case law is pertinent in the determination of this case.
- 6.7 **Capacity to form a single household.**  
*North Devon DC v First Secretary of State* (2003) concluded that children are generally unable, on their own, to form a 'single household', as they require adult care and supervision. The premise here is occupied by two young adults (i.e. over 18). Case law indicates that young people aged 16 or over may be capable of living as a single household. The two, furthermore, have formed friendship bonds, as detailed above. Mr Justice Collins, disagreed with the view in *R v Bromley London Borough Council ex parte Sinclair* [1991] 3 PLR60 that a single household can include the non-residential staff.
- 6.8 *The Crawley Borough Council, R (On the application of) v Helberg* [2004] EWHC 160 (Admin) case in which the North Devon Case was considered; found that, in effect, the North Devon Case does not set a principle, but that each case should be considered on its merits. It was observed that if carers are not resident, there remains the question whether those in residence (those in receipt of care) themselves constitute a single household. Therefore, such cases should have regard to the nature of the disability and degree of care required. This accords with the North Devon case, in that the conclusion references 'generally' and not 'always.' Furthermore, it was stated "...*there will be other cases, and in my judgement this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. That is so if the need is for full time care.*" It is worth noting that this case also related to people with learning difficulties and that they were found by the High Court to have formed a household. Additionally, this care was on a full time basis.
- 6.9 **Analysis of the case.**  
A change of use from class C3 to C2 will not generally be considered material if it does not change the daily use and character of the property. In such cases, this is a fact and degree assessment, with considerations including, amongst other things, increased pressure on parking caused by visits from carers, and whether additional security measures such as alarms are installed at the property. There is no manager's office here, but one would not be unexpected in a home where care was provided. Case law indicates that, in any event, one would not be sufficient, in itself, to facilitate a change of use to C2.
- 6.10 There are no parking restrictions on Jessop Road and usually there are only two carers present at any one time. Visits by friends and family also occur; this is, however, no different from what occurs at any other dwelling. Given that there are four bedrooms here, one could envisage a scenario where there would be at least four vehicles present under a C3(a) use, as opposed to two under the current C3(b) use, excluding staff changeover.
- 6.11 The number of resident young people here is relevant too; six people living together, in such circumstances, would likely have a higher impact than the average family home, whereas two as in this case does not. One would expect material changes to the fabric of the property to facilitate its use as a care home. In relation to the overall scale of the building, the support staff's bedroom is also modest in size. Additionally, the premise does not benefit from being alarmed in any way. The Use Classes Order provides examples as detailed above, these would generally be larger establishments than 6 Jessop Road, although not exclusively so. Additionally, in the *Crawley Borough Council, R (On the application of) v Helberg* [2004] case four people present with learning difficulties was still held by Mr Justice Richards as not constituting a material change.

- 6.12 Factors such as the house layout and facilities, which are what would be expected in a residential household; the fact that the residents often shop and socialise together; and live communally would lend support to the view that this property remains a dwelling. There is nothing inherent within the layout of the property that would suggest that the use falls outside Use Class C3(b). Those in residence have also clearly formed friendship bonds lending support to the fact that they have formed a household. The officer has also met both the residents and spoken with them.
- 6.13 Reports of noise have been made, but this is inherent within the terms of the Use Classes Order, in that those with disabilities may fall within Class C3(b). This behaviour may seem to be unusual to neighbours but should be seen within the context of C3(b) where it would not be. Furthermore, complaints have been received about the noise generated from the tenants playing football in the garden. Such noise would be incidental to the residential enjoyment of property and should the premise be occupied by a family with children one could envisage a similar sort of scenario arising. The incidents reported to the police have not been utilised to indicate that the residents are incapable of constituting a household, with regards Class C3(b), and that a material change of use has taken place from the lawful position of Class C3. Furthermore, Social Services have confirmed that in their view the tenants also form a household. Parking has also been flagged as an issue, but as highlighted above, this would be no different from that of the position were the premise a dwelling, i.e C3(a). The only time there would be four vehicles would be during shift change and, as pointed out above, a house could quite reasonably have visitors; also, as in this case, have a carer(s) visit the premises.
- 6.14 In writing this report due consideration has been given to the Human Rights Act. SCHEDULE 1, THE ARTICLES, PART I, THE CONVENTION RIGHTS AND FREEDOMS, ARTICLE 8 enshrines a '*Right to respect for private and family life*'. Whilst, Protocol 1, of the same schedule, Article 1 protects an individual's right to enjoy their property. There are situations in which public authorities can restrict the way a premise is used. However, this is only possible where the authority can show that its action is lawful and in the public interest. The communal living arrangements and the way in which household tasks are undertaken indicate that they are living as a single household, and care is provided on a shift basis, such that none of the care workers are in residence. In light of all of the above, it is considered that the property falls within C3(b) and, therefore, no further action should be taken as there has been no breach of planning control.

## **7. OTHER CONSIDERATIONS**

### **7.1 *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.

### **7.2 *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.

### **7.3 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.

- 7.4 The above duty has been given due consideration in the determination of this case. It is considered that the recommendation not to take enforcement action in this case will not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.
8. ***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.
9. ***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.
- 10. CONCLUSION**
- 10.1 It is considered that the use, as is operating, would fall within C3(b) and is therefore within the same use as the lawful position of the dwelling. There has therefore been no breach of planning control as changes within the same use class are excluded from the definition of development. As no unauthorised change of use has taken place here, there is nothing for the Authority to pursue from a planning perspective.
- 11. RECOMMENDATION**  
**NO BREACH – CLOSE CASE**
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**END**





# Report

## Appeal Decisions

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### Part 1

Date: 4<sup>th</sup> October 2023

Item No: Insert item number here

**Subject** **Appeal Decisions**

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

**Author** **Head of Regeneration and Economic Development**

**Wards** Malpas, St Julians, Victoria

**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: 4/10/2023

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**Planning Appeal**

Reference	23/0318
Address	3 Sylvan Close, Malpas Ward
Development	PROPOSED TWO STOREY SIDE AND REAR EXTENSION AND ASSOCIATED ALTERATIONS
Appellant	Mr and Mrs G Pearce
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal dismissed

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**Planning Appeal**

Reference	22/0236
Address	1 Speke Street, Victoria Ward
Development	REMOVAL OF EXISTING VENTILATION FLUE AND INSTALLATION OF REPLACEMENT VENTILATION FLUE
Appellant	Mr Ekinci
Officer Decision	Refused
Appeal Decision	Appeal dismissed

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**Planning Appeal**

Reference	22/0495
Address	1 Collier Street, St Julians Ward
Development	CHANGE OF USE FROM A THREE BEDROOM DWELLING (C3 USE) TO A FOUR BEDROOM HOUSE IN MULTIPLE OCCUPATION (C4 USE)
Appellant	Mr C Condon
Officer Decision	Refused
Committee Decision	N/A
Appeal Decision	Appeal allowed and Planning Permission Granted

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