

Agenda



Planning Committee

Date: Wednesday, 6 December 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

Item	Wards Affected
1. <u>Apologies for Absence</u>	
2. <u>Declarations of Interest</u>	
3. <u>Minutes of the meeting held on</u> (Pages 3 - 6)	
4. <u>Development Management: Planning Application Schedule</u> (Pages 7 - 90)	

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Date of Issue: Friday, 01 December 2023

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Minutes



Planning Committee

Date: 1st November 2023

Time: 10.00 am

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

In Attendance: Andrew Ferguson (Planning and Development Manager), Joanne Davidson (East Area Development Manager), Joanne Evans (Senior Solicitor- Planning & Land), Tracey Brooks (Head of Regeneration and Economic Development, Emily Mayger (Governance Support Officer), Neil Barnett (Scrutiny Adviser)

Apologies: J. Jones, M. Linton, S Cocks

1. **Declarations of Interest**

Councillor Mark Howells – Ward Member contacted by constituents about application.

2. **Minutes of the meeting held on 04 October 2023**

The minutes of the meeting held on 04 October 2023 were submitted.

Resolved

That the minutes of the meeting held on 04 October 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 10:42am

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Decision Schedule

Planning Committee

No	Site/Proposal	Ward	Additional Comments	Decision
23/0749	10A Cromwell Road, Lliswerry	Lliswerry	Brought to the Committee by request of Councillor Morris	Granted with conditions

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Report

Planning Committee – Hybrid Meeting

Part 1

Date: 6th December 2023

Subject Planning Application Schedule

Purpose To take decisions on items presented on the attached schedule

Author Head of Regeneration and Economic Development

Ward As indicated on the schedule

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

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

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

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

Action by Planning Committee

Timetable Immediate

This report was prepared after consultation with:

- Local Residents
- Members
- Statutory Consultees

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

Background

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

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

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

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

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

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

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

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

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

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

Financial Summary

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

Risks

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

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

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

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

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

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

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

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

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

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

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

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

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

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

Options Available and considered

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

Preferred Option and Why

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

Comments of Chief Financial Officer

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

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

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

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

Comments of Monitoring Officer

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

Comments of Head of People, Policy and Transformation

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

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

Comments of Cabinet Member

The Cabinet Member for 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 31st March 2021. This requires the Planning Committee, when making strategic decisions, to also pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage. Inequalities of outcome are felt most acutely in areas such as health, education, work, living standards, personal security and participation.

Children and Families (Wales) Measure

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

Wellbeing of Future Generations (Wales) Act 2015

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

Long term: Decisions made by the Planning Committee balances the need to improve the appearance of areas as well as meeting the needs of residents in order to make places safe to live in and encourage investment and employment opportunities. Planning decisions aim to build sustainable and cohesive communities.

- Prevention: Sound planning decisions remove the opportunity for anti-social behaviour and encourages a greater sense of pride in the local area, thereby giving the City potential to grow and become more sustainable.
- Integration: Through consultation with residents and statutory consultees, there is an opportunity to contribute views and opinions on how communities grow and develop, thereby promoting greater community involvement and integration. Planning decisions aim to build integrated and cohesive communities.
- Collaboration: Consultation with statutory consultees encourages decisions to be made which align with other relevant well-being objectives.
- Involvement: Planning applications are subject to consultation and is regulated by legislation. Consultation is targeted at residents and businesses directly affected by a development, ward members and technical consultees. Engagement with the planning process is encouraged in order to ensure that the views of key stakeholders are taken into consideration.

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

Crime and Disorder Act 1998

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

Consultation

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

Background Papers

NATIONAL POLICY

Planning Policy Wales (PPW) Edition 11 (February 2021)
 Development Management Manual 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: 23/0379 **Ward:** Tredegar Park And Marshfield
Type: Full
Expiry Date: 2nd August 2023
Applicant: N & R Howells & Morgan
Site: White Gates Outfall Lane St Brides Wentlooge Newport NP10 8SS
Proposal: DEMOLITION AND REMOVAL OF EXISTING DWELLING AND CONSTRUCTION OF NEW DWELLING (RE-SUBMISSION FOLLOWING REFUSAL OF 22/1223)
Recommendation: GRANTED WITH CONDITIONS

1. INTRODUCTION

1.1 The application seeks the demolition and removal of an existing dwelling and construction of new replacement dwelling. The application is a resubmission of a previously refused scheme (22/1223). The application has been reported to Planning Committee at the request of Councillor Howells.

2. RELEVANT SITE HISTORY

Application Number	Proposal Description	Decision
22/1223	DEMOLITION AND REMOVAL OF EXISTING DWELLING AND ERECTION OF A NEW DETACHED DWELLING	Refused 27.04.2023
03/1280	SINGLE STOREY REAR EXTENSION	Granted with conditions 04.11.2003
99/0341	CHANGE OF USE FROM AGRICULTURAL LAND TO DOMESTIC GARDEN (RESUBMISSION)	Granted with conditions 31.10.2000
98/0978	CHANGE OF USE FROM AGRICULTURAL LAND TO GARDEN	Refused 05.11.1998
95/0239	PROPOSED NEW ROOF STRUCTURE PROVIDING ADDITIONAL RESIDENTIAL ACCOMMODATION AND ASSOCIATED BUILDING WORKS	Granted with conditions 26.05.1995

3. POLICY CONTEXT

3.1 Newport Local Development Plan 2011 – 2026 (Adopted January 2015)

- SP1 – Sustainability
- SP3 – Flood Risk
- SP4 –Water Resources
- SP5 – Countryside
- SP7 – Green Wedge
- SP8 – Special Landscape Area
- GP2 – Amentiy
- GP4 – Highways and Accessibilty
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection and Public Health

- CE4 – Historic Landscapes, Parks, Gardens and Battelfields
- CE6 – Archaeology
- CE7 – Conservation Areas
- H12 – Replacement Dwellings in the Countryside
- T4 – Parking
- W3 – Provision for Waste Management Facilities in Development

3.2 **Adopted Supplementary Planning Guidance**

- Archaeology and Archaeologically Sensitive Areas
- Wildlife and Development
- New Dwellings
- Parking Standards
- Waste Storage and Collection

4. **CONSULTATIONS**

4.1 Natural Resources Wales: has submitted the following comments:

Foul Drainage

Concerns expressed due to inadequate information in relation to foul drainage.

The application is within the Gwent Levels – St Brides Site of Special Scientific Interest (SSSI). The SSSI is notified for its range of aquatic plants and invertebrates associated with the interconnected reens and ditches of the drainage system. In summary, the special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. Any development which has an adverse impact on any of these factors will have an adverse impact on the wildlife for which the area was notified.

Due to the insufficient porosity of the Gwent Levels, in relation to a package treatment plant, details of the discharge of wastewater to surface water was requested. We now note from the additional information submitted that foul drainage will now be via Cesspit. We understand that there is an existing Cesspit is on site however, it's unclear if this will be utilised.

Within the “Approach to Groundwater Protection” guidance (issued by the Environment Agency in 2018 and adopted by Natural Resources Wales), Position Statement G6 states “Natural Resources Wales does not encourage the use of cesspools or cesspits, other than in exceptional circumstances. A cesspool or cesspit is a sealed unit that is used for the storage of untreated sewage. There must be no discharge to the environment. Poorly managed cesspools and cesspits present a considerable risk of causing pollution, which can be difficult to monitor and correct”. Given the highly sensitive nature of the site we have concerns regarding the use of a cesspool/cesspit. Your authority should be satisfied that in line with the Welsh Government Circular 008/2018 that all other options are explored, and feasibility assessments submitted showing why all options bar a cesspit are feasible.

All new developments proposing to use private drainage should follow the hierarchy within the circular. We advise that this may include percolation tests and land betterment works to potentially be able to discharge to ground or discharge to watercourse. We do not consider that sealed cesspits are a sustainable drainage solution. We therefore continue to advise as per our previous responses that discharging to watercourse is thoroughly investigated. However, if your authority is satisfied that the criteria of the Circular has been met, we strongly advise that it is essential that any cesspit is installed correctly. Incorrectly maintained cesspools can cause pollution by contamination of the ground, groundwater and, sometimes surface water. Any damage to the fabric of the cesspool, such as cracks or holes, is difficult to detect but needs to be rectified immediately in order to prevent pollution. The cesspit should meet the requirement of British Standard BS 6297. It should be fitted with a level warning device to indicate when the tank needs emptying. It is unclear whether the existing Cesspit is fit for use. As this is an existing system, we advise this is investigated.

Construction Environment Management Plan

A Construction Environmental Management Plan (CEMP) is required. We have reviewed the following revised CEMP submitted in support of the application: - Construction Environmental Management Plan (CEMP), Rev 2, White Gates, Outfall Lane, St Brides, Wentlooge, Newport, NP10 8SS, dated June 2023. We consider further detail within the CEMP is needed, before the document can be secured to any decision. Therefore, we advise a revised CEMP should include information on spill prevention/mitigation measures in the event of a pollution incident, e.g. spill kits, bunded storage tanks etc. The applicant should consult the [Guidance for Pollution Prevention \(GPP\) documents](#) and implement the recommendations into their planning and working arrangements. Key documents include GPP1, GPP4, GPP5, PPG6, GPP13, GPP21, GPP22 and GPP26. During construction, the developer should take precaution to prevent contamination of surface water drains and local groundwater. Oils and chemicals should be stored in bunded areas and spill kits should be readily available in case of accidental spillages.

European Protected Species – Bats

We have reviewed the Preliminary Roost Assessment submitted in support of the application. The assessment states that the building has negligible value to support roosting bats and that no further surveys are recommended. We therefore have no comments to make on the application as submitted with regards to Bats.

Severn Estuary (Wales) Special Protection Area (SPA)

From the information provided, we consider that the proposals may affect the Severn Estuary (Wales) SPA. The proposed development site is located approximately 630 metres from the SAC.

We have identified potential impact pathways to features of this site regarding noise pollution from the proposed demolition works.

The open countryside may not block the noise from demolition which may have potential to disturb overwintering and feeding birds in the Severn Estuary SPA. We are particularly mindful of the white fronted goose which is a qualifying feature of the SPA and has a medium sensitivity to disturbance with a recommended buffer zone of 200-600m (Disturbance Distances in selected Scottish Bird Species – NatureScot Guidance | NatureScot)

No assessment of likely significant effect under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 has been undertaken by your authority or it has not been forwarded to NRW for consideration. Should you conclude that the proposed development is likely to have a significant effect on the European site, we look forward to being re-consulted. In the absence of this assessment, NRW cannot offer assurances that the proposals would not result in an adverse effect upon the SAC.

Flood Risk

Our Flood Risk Map confirms the application site lies entirely within Zone C1 of the Development Advice Maps (DAM) as contained in TAN15. Our Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding within Flood Zone 3 – Sea.

We note that the proposal consists of the demolition of an existing property and erection of another property on a similar footprint and therefore there is no change in vulnerability. In addition, due to the applications tidal location it is unlikely that the property would increase flood risk elsewhere.

Given this and the scale and nature of the proposed development (and in the absence of a flood consequences assessment) we consider the proposals could be acceptable, subject to the developer being made aware of the potential flood risks and advised to install floodproofing measures as part of the development.

This application presents an opportunity to raise awareness of the flood risk to the current/future occupiers of the property, incorporate flood resistance/resilience measures and make provisions for flood warning and emergency access/egress. In areas at risk of flooding, we recommend that consideration be given to the incorporation these measures into the design and construction of the development. These could include flood barriers on

ground floor doors, windows and access points, implementation of suitable flood proofing measures to the internal fabric of the ground floor and locating electrical sockets/components at a higher level above possible flood levels.

As it is for your Authority to determine whether the risks and consequences of flooding can be managed in accordance with TAN15, your Authority may wish to consider access/egress arrangement should a flood event occur.

- 4.2 DWR CYMRU WELSH WATER: Since the proposal intends on utilising an alternative to mains drainage, we would advise that the applicant seek advice from Natural Resources Wales and the Building Regulations Authority as both are responsible to regulate alternative methods of drainage.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

- 4.3 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST:
You will recall our letter dated January 2023, to the application 22/1223, where we stated that the information in the Historic Environment Record (HER) curated by this Trust shows that the application area is situated within the Archaeologically Sensitive Area of The Gwent Levels (ASA05), defined for the concentration of evidence of activity dating to the Roman and Medieval periods primarily for reclamation of land and water management, with buried land surfaces. Several archaeological works in the surrounding area have shown evidence of human occupation from the pre-historic period onwards. The proposal is also within the Gwent Levels Historic Landscape Characterisation Area, (HLCA16), specifically that of Western St. Brides which is characterised as a simpler landscape, laid out within a framework of elements surviving from the Roman landscape. However, there are no noted buried archaeological features or findspots within the area of the proposed development. A review of historic First Edition Ordnance Survey (OS) mapping shows the area as fields.

The proposed development involves the demolition and removal of an existing dwelling and the construction of a new detached dwelling. The proposal is of small scale and in an area already heavily disturbed by the construction of the existing structure. Therefore, the risk of encountering archaeological material is considered low.

Our understanding of the archaeological resource has not changed, consequently, as the archaeological advisors to your Members, we continue to have no objections to the positive determination of this application. The record is not definitive, however, and features may be disturbed during the course of the work. In this event, please contact this division of the Trust.

5. INTERNAL COUNCIL ADVICE

- 5.1 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (ECOLOGY OFFICER): No response.
- 5.2 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (LANDSCAPE OFFICER):
In this new application, the main architectural change appears to be the roofline which has now more articulation.

The LVA has been updated only with a revised site plan to reflect the above.

The soft landscape plan by New Enclosure landscape consultants has been revised to Rev A in response to landscape officer comments made previously, revisions are helpfully highlighted on the plan and are:

1. Confirmation of the hedge height to be maintained to the north and south neighbouring boundaries alongside 1.8m timber fencing and to the highway to the west alongside a 900mm high brick wall.
2. New planting of orchard trees along the east boundary.
3. Proposed native tree planting has been rationalised and includes root barriers.

No further landscape comments.

- 5.3 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (ENVIRONMENTAL HEALTH):

Private/Non-Mains Foul Drainage:

The applicant has confirmed that a septic tank will be installed as part of the development. Therefore, we recommend the following condition is applied to any planning permission:

Prior to commencement of development, full details of the proposed septic tank shall be submitted for approval by the Local Planning Authority. Details shall include manufacturers information, location and capacity of the septic tank together with details and location of any secondary treatment, drainage field or outfall including details of percolation tests where appropriate. The approved scheme shall be implemented as approved prior to occupation of the development.

CEMP:

A Construction Environmental Management Plan (dated April 2023, Rev1) has been submitted. If the applicant agrees to the following being included as part of the Site CEMP. I make no further comment in relation to the CEMP:

Working hours

- If the applicant is planning to undertake any construction/ work on site this shall be carried between the hours of 08.00 and 18.00 Monday to Friday and between the hours of 08.00 and 13.00 on Saturdays.
- No working on a bank holiday
- Deliveries on and off the site must occur between 08:00 and 18:00 Monday to Friday and between 08:00 and 13:00 on a Saturday.

Air Quality

- No burning of any material is permitted within the site development.

Waste

- Waste generated from any activity at the site, is to be removed by a registered waste carrier and disposed of at a site licenced for its reception. Recommend that the applicant/ developer keep records of waste transfer notes for disposal of such waste.

5.4 HEAD OF INFRASTRUCTURE (SAB): No response.

5.5 HEAD OF INFRASTRUCTURE (HIGHWAYS): No objection.

The proposals would have no effect on the wider highway network and there is an existing access, with no discernible intensification of use.

However, it appears from the landscaping plan that the gate is to be relocated. If there are any changes to the access they must be compliant with current standards or an improvement from a highway safety perspective. If the gates are to be relocated, they must be set back 5m from the highway boundary and open inwards only. This should be secured by way of condition.

Any other changes to the access would require the applicant to meet current visibility standards. The road is technically subject to a 60mph speed limit, but highways would suggest that 20mph is a more realistic speed. Even if there are no changes proposed, Highways would suggest there is an opportunity to improve safety and recommend consideration of trimming / re-aligning the hedge row immediately adjacent to the gate to improve highway safety. This is as beneficial for the occupant as any other road user, but cannot be conditioned unless there are proposals to intensify use or change the access.

If the gate is to be repositioned highways would seek a suitably worded condition but there is no objection in principle.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties with a common boundary with the application site were consulted (31 properties).

The occupiers of Willowbrook has made the following comments:

Design

The acceptability of the increased volume of proposed house, beyond the 30% policy levels, was raised in the previous application. That application was refused on various grounds including the inappropriate building design, but the volume issue, at least under Section H12, remained unspecified. The new design appears to have addressed the design issues, but the volume increase remains. We assume that the Planning Department will consider and decide whether the amended design of the house warrants being allowed as an exception to the Guidance.

Although the proposal still includes first floor windows at the rear that will potentially overlook our garden and impact on our perceived privacy, the window sizes are much reduced and the general design is more in keeping with the neighbouring properties. We would have preferred to have seen less prominent windows e.g. Velux-type roof-lights, but we do welcome the change of character in the building design.

Construction Environmental Management Plan (CEMP)

The CEMP provided appears to be generic and not specific to the constraints and needs of the site. Specific concerns are:

2.1 Management of air-borne health hazards (dust, smoke, fumes etc)

The current CEMP focuses solely on dust management and omits consideration of other air-borne pollutants. One of us at Willowbrook suffers from chronic lung disease and is sensitive to air-borne pollutants, which could dangerously exacerbate the condition. Because of this, appropriately stringent measures need to be made explicit in the CEMP.

2.2 Control of Water Pollution

No surface-water drainage provision exists in Outfall Lane, other than the small reën on the west side of the lane. The CEMP prescribes gullies to deal with waste water from wheel washing etc, but with no mention of where the water would drain into from the gullies. Because there is a slight fall towards the lane, uncontrolled muddy and potentially polluted water will gravitate onto the lane and thence into the reën, both of which are deemed unacceptable by the CEMP itself. Project management should also take account of the high water table here, which will exacerbate the problem in the winter months, saturating the ground to surface level. To prevent polluting the watercourse and slippery road surface (ice/mud), the CEMP needs to specify exactly where dirty water will end up and how it will be disposed of.

2.3 Access:

The site is on a narrow country lane with access at one end only onto the B4239, and is the sole access for four other residences and a number of livestock fields. Whilst the generic CEMP states that all parking and loading/unloading will be *on-site*, the space available seems likely to be inadequate to accommodate this. The CEMP should specify just how this is going to be achieved.

We feel that the potential for significant health and safety risks during demolition and rebuilding operations makes it very important that the CEMP be modified in accordance with the above and become a formal condition of the planning permission, should it be authorized.

Landscaping of the Site

The application proposes 1m root barriers on the north and south boundaries of the site. We contend that, at least on our (north) boundary, this is unnecessary and potentially hazardous

in that their installation would necessarily sever the roots of the mature trees close to the boundary on our side, causing them to become unstable and likely blow down in strong winds. We ask that these root barriers be removed from the proposal.

The occupier of Greenfields has made the following comments:

We recognise that there are several aspects of the proposed build and final design and position of the build that will negatively impact our property far more than any other property in the lane or village. These factors include the orientation of our bungalow, the proximity of our bungalow to the site, and two windows that have a view of the proposed building/construction site.

- The overall size of the proposed dwelling (ref 5.7 officers report original submission), and the increase in size of the ground floor is above that recommended for rural properties. However, we have no objections to this footprint, as this brings the proposed property in line with the other 4-bedroom bungalows in the lane.
- However, the ground floor plans do not include any bedroom space, resulting in substantial first floor plans to include 8 rooms, this increases the overall size considerably far beyond any other property.
- The width of the proposed development @20meters substantially closes the open space that exists between the properties.
- We feel the dormer windows of the proposed property are not in keeping with the current character of other properties in the lane. If this precedent is established and other properties in the lane also added dormer windows this would change the overall character of the lane. We welcome the removal of the first-floor bathroom window and improvement in the extensive roof line.
- The applicant highlighted the upstairs living space at our property in their summary statement of the original application, stating that these windows overlook their back garden. To clarify this we would confirm that the only accommodation in the roof are two modest size bedrooms with Velux windows, the only two rear Velux windows are tiny, (56cm x 60cm), this construction predates our ownership. If the proposed building included Velux windows rather than dormer windows, we would have no objections to these.
- The inclusion of a turning and parking area immediately outside our dining room window feels unneighbourly, there is no current parking space in this area. The current parking space ends before this window. When considering the size of the plot, of approx. half an acre, including a large drive space which would accommodate approx. 12 vehicles with turning space this additional parking and turning space is not required. Appropriate landscaping in this area could be beneficial to both properties.
- The Alnus Glutinosa tree planned a few meters from our glass topped orangery on the boundary is far too large for this proximity to our house, this tree can grow to 26 meters in height, whilst we welcome the root barrier that has been included, the possible height of this tree is too large to be suitable in this proximity.
- Having researched the impact of this, trees over the height of 10 meters close to our property can lead to increase in our house insurance premiums.
- With the low level property height we would suggest that a lower level tree could easily be suggested for this space, and the tree could also be located further within the proposed plot rather than the boundary.
- We were shocked to see that the Rev A landscaping plan includes the installation of additional 1,8 meter closeboard fence on the boundary line immediately next to our property. This was easy to overlook as it is only a line with the descriptor contained in the key.
- The applicant is aware that this is not acceptable to us, they requested that they could install a high fence along the length of our property directly in front of our existing windows during early December 2022. This was prior to the original planning submission. However, we did not agree and they did not install a fence and

understood this would effectively block any daylight to our dining room and kitchen windows. The windows are established and have a right to light.

- We view this inclusion in the landscape plans as unneighbourly. There is an existing fence (this boundary is maintained by us) of appropriate height in good order.
- We note that the applicant states in their summary statement for the original application that the garden clearance work they completed prior to any planning submission was done to benefit the neighbours in preparation for the building work, however this is not representative of the situation, and the total removal of such a large proportion of established hedgerows and trees, has had a wholly negative effect on our property, security and privacy. There was no consultation regarding this and this continues to affect us.
- The construction environment management plan does not include a proposed site plan for the build with locations of parking and compounds. We understand and accept that there will be some unavoidable disruption to our lives.
- The plan states that the site manager will be responsible for addressing any concerns from the neighbours, to date the applicant has managed all aspects of the site, including all outbuilding demolition and extensive garden clearance, there has been no communication to us about this, unfortunately this work has had a negative effect on our homelife. There have been long hours to include anti-social hours of noise, with excessive smoke from the removal and burning of the large amount of garden waste preventing us using our garden or opening windows. We therefore have concerns about the site management of the build, we note that the build is estimated for 12 months.

6.2 WENTLOOGE COMMUNITY COUNCIL: No response.

6.3 Cllr Howells has requested that the application is presented to Planning Committee due to potential impact with regard to character and appearance.

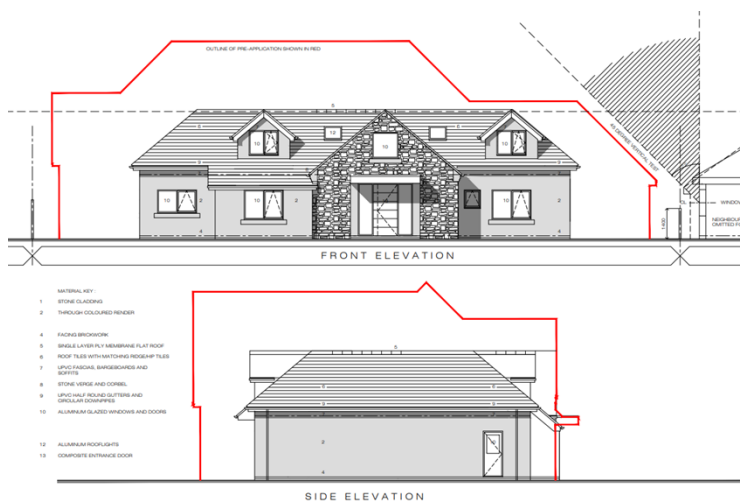
7. ASSESSMENT

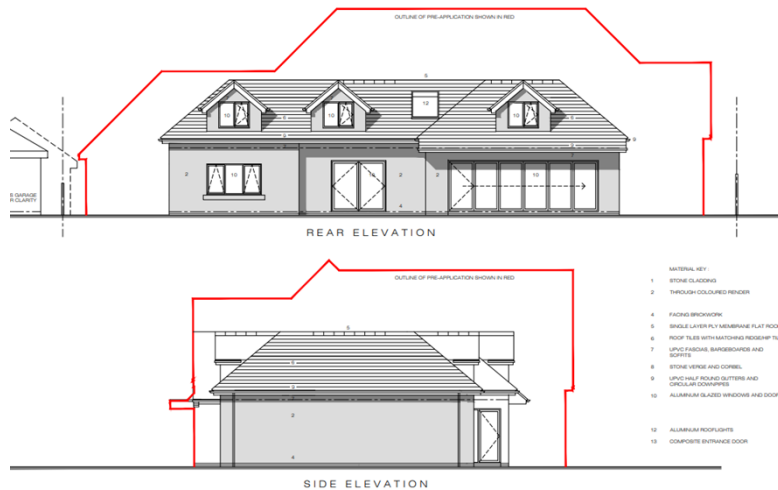
7.1 The site

The site is situated in open countryside in the Levels situated along a country lane to the south west of St Brides. The site is currently occupied by a modest bungalow situated within a row of four detached bungalows. The lane has a strong rural character and whilst the existing properties are all relatively modest low level buildings, they are of varying designs with little uniformity.

7.2 The proposed development

7.2.1 The proposal is to demolish the existing bungalow and construct a replacement dormer bungalow (see images below). The bungalow would have 4 bedrooms and a cinema. The red line on the plans demonstrates the scale of the building proposed at pre-application stage which has been significantly reduced. The horizontal dashed line indicates the ridge height of the adjacent property.



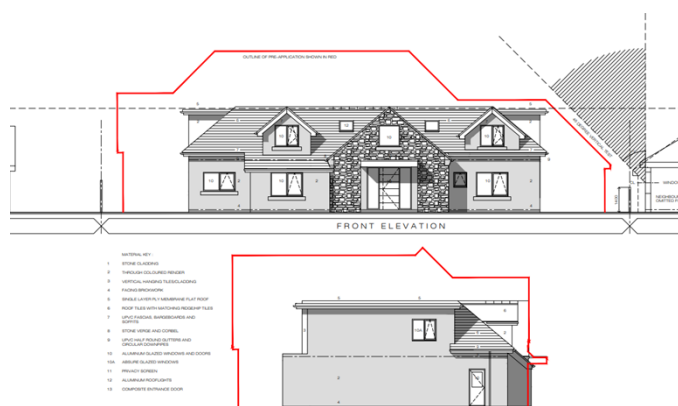


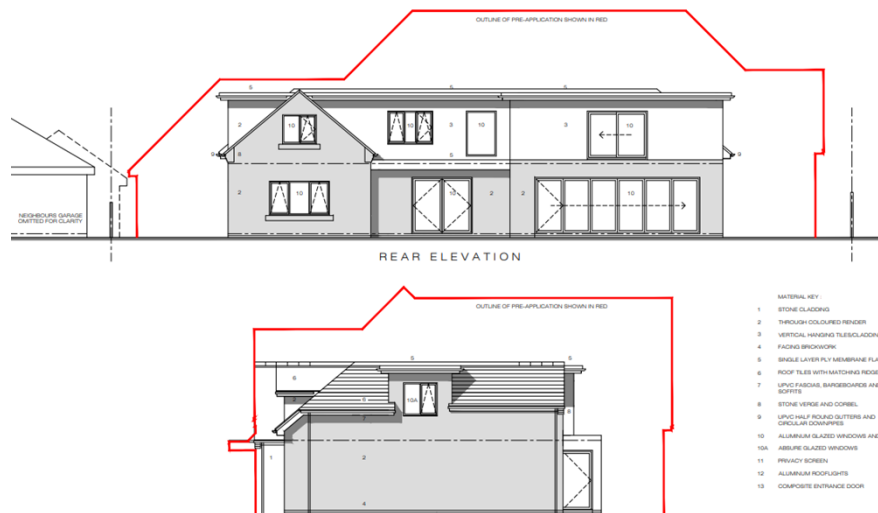
7.3 Planning history

7.3.1 A planning application (ref. 22/1223) seeking the demolition and removal of the existing dwelling and erection of a new detached dwelling at the site was refused 27 April 2023 for the following reasons:

1. The proposal has a significant adverse impact upon interests of acknowledged importance, namely human health and the natural environment and SSSI by reason of risks of pollution to the water environment arising from the proposed development and associated drainage. In particular, the submitted application fails to establish the method of disposal of foul effluent and the most sustainable form of disposal for the site. The proposal is therefore contrary to policies SP1, GP1, GP2, GP5, SP9, GP7 AND GP3 of the Newport Local Development Plan 2011-2026 (adopted January 2015).
2. The design of the proposed development would fail to relate sympathetically to the character and appearance of the surrounding area and neighbouring low-profile bungalows. The development seeks to maximise the internal space which in turn, creates a contrived and incongruous appearance, to the detriment of visual amenities and the rural character of the site. This is contrary to policies GP2, GP6, SP5 AND H12 of the Newport local development plan 2011 - 2026 (adopted January 2015).
3. The first-floor side elevation windows would harm residential amenity, by means of perceived overlooking into neighbouring rear gardens. This is contrary to policy GP2 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

7.3.2 Images of the previously refused scheme are shown below (disregard the red lines which indicate the scale of a scheme that was submitted at pre-application stage and was not progressed by the applicant):





7.4 Principle of Development and planning policies

7.4.1 The application site is located within the countryside, green wedge and a special landscape area, as designated by the maps contained within the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). The site is also within an archaeologically sensitive area, a flood risk zone, an undeveloped coastal zone, an Historic Landscape Area and a Site of Special Scientific Interest (SSSI). The following policies are considered to be most relevant:

7.4.2 Policy SP5 Countryside sets out that development in the countryside will only be permitted where the use is appropriate in the countryside, respects the landscape character and biodiversity of the immediate and surrounding area and is appropriate in scale and design

7.4.3 Policy SP7 – Green Wedge seeks to prevent coalescence between settlements and states that within these areas development which prejudices the open nature of the land will not be permitted. An increase in the size of a dwelling of more than 30% of the volume of the original size of the dwelling, or as existed in 1948, will not be approved.

7.4.4 Policy SP8 – Special Landscape Area requires proposals to contribute positively to the area through high quality design, materials and management schemes that demonstrate a clear appreciation of the area’s special features.

7.4.5 Policy GP5 – Natural environment permits development where proposals are designed to encourage biodiversity, manage impact on water quality and landscape quality.

7.4.6 Policy H12 – Replacement Dwellings in the Countryside
Beyond defined settlement boundaries, proposals to replace a dwelling with a new dwelling will be permitted provided that:

The volume of the new dwelling is not more than 30% larger than that of the original dwelling, or as existed in 1948, to be replaced.

7.4.8 The volume of the original property has been calculated to be approximately 495m³. It is noted that some outbuildings were once present on-site, but these have since been removed. No details of these outbuildings, including their built form and dimensions by means of elevation plans, as well as their previous use, have been submitted. Given this lack of detail, little weight can be put on how these contribute to the existing volume of the property. Therefore, the volume of these outbuildings have not been taken into account in calculating the volume increase.

7.4.9 The 30% increase allowed for by policies SP7 and H12 would amount in this case to an additional 148m³, which would allow for the proposed dwelling to have a volume of approximately 644m³. However, the actual volume of the proposed dwelling has been calculated to amount to approximately 738m³. This represents an increase over the original

dwelling of 59%. The proposal would therefore exceed the 30% allowance, and as such, would be contrary to the relevant criteria stated contained within policies SP7 and H12.

7.4.10 However, paragraph 2.29 of the Local Development Plan (which provides explanatory text in relation to Policy SP7 states:

*'Any application to increase the size of a dwelling by more than 30% is **likely** [my emphasis] to have a negative impact on the openness of the green wedge and will not be approved.*

Also, paragraph 5.26 of the Local Development Plan (which provides explanatory text in relation to Policy H12) states:

'While the 30% volume limit should be applied in principle, where it can be demonstrated that an increase above 30% will not have a detrimental impact upon the character and appearance of the surrounding area such development may be considered acceptable'.

7.4.11 Both policies SP7 and H12 therefore acknowledge that it is not sufficient to simply demonstrate harm to policy; it should be demonstrated that there is actual harm to warrant refusing a planning application. In this case, the existing dwelling is particularly modest. Whilst the scheme would increase the width and massing of development and so have some impact upon the openness of the Green Wedge, it is not considered that the width is substantially different to the neighbouring properties to the north of the site. The height of the proposed dwelling is not significantly greater than its neighbouring properties and the design of the proposed dwelling would be in keeping with the area. When balancing the benefits of updating what appears to be relatively substandard accommodation, it is considered that the proposal is acceptable and in broad compliance with the objectives of policies SP7 and H12.

7.4.10 **Condition attached to prevent subsequent extension or outbuildings**

7.4.11 A condition would be attached to any grant of permission.

7.4.12 **The existing dwelling has a lawful residential use**

7.4.13 It does and is currently in use as a dwelling.

7.4.14 **The new dwelling is sited to preclude the retention of the dwelling it is to replace, or there is a condition or planning obligation to ensure the demolition of the original dwelling on completion of the new dwelling**

7.4.15 The proposed dwelling would be on the same footprint as the existing dwelling and so there is no need for a planning obligation in this respect (the both could not co-exist).

7.4.16 **Any existing agricultural tie shall be attached to the new dwelling**

7.4.17 There is no such tie in this case.

7.5 **Scale, design and visual impact**

7.5.1 The demolition and replacement of the dwelling is acceptable in principle. The proposed development would go beyond the 30% increase guideline set out in policies SP7 Green Wedge and H12 Replacement dwellings. However, the resulting dwelling would have a height and scale that would be comparable to surrounding properties and so it is not considered that the scheme would be harmful by reason of its scale and impact on the area. The Landscape Officer is satisfied with the impact on the Special Landscape Area.

7.5.2 The proposed development would be sited 4.95m off the common boundary with the neighbouring property Greenfields and 4.9m off the common boundary with the neighbouring property Willowbrook. There is a suitable separation distance between the proposed dwelling and existing dwellings. The height of the proposed dwelling would only exceed the height of Greenfields by 0.08m.

7.5.3 The proposed design is typical of a mid 20th century bungalow featuring the stone clad feature gable to the front elevation, similar in nature to the property to the immediate north. The design is acceptable and would not be harmful to the wider character and appearance of the

area which is considered to be mixed in nature. The addition of dormer windows would not detract from the overall aesthetic in this rural locale.

7.6 **Ecology**

7.6.1 The application is within the Gwent Levels – St Brides Site of Special Scientific Interest (SSSI). The SSSI is notified for its range of aquatic plants and invertebrates associated with the interconnected reens and ditches of the drainage system. In summary, the special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. Any development which has an adverse impact on any of these factors will have an adverse impact on the wildlife for which the area was notified.

7.6.2 Natural Resources Wales has raised a number of issues relating to ecology:

- Foul drainage arrangements
- Construction environment management plan
- European protected species – bats
- Severn estuary (Wales) special protection area (SPA).

Foul drainage arrangements

7.6.3 The development is proposing the installation of a new cesspit to replace the cesspit currently used by the existing dwelling.

7.6.4 Natural Resources Wales does not encourage the use of cesspools or cesspits, other than in exceptional circumstances. A cesspool or cesspit is a sealed unit that is used for the storage of untreated sewage. Poorly managed cesspools and cesspits present a considerable risk of causing pollution, which can be difficult to monitor and correct. Given the highly sensitive nature of the site we have concerns regarding the use of a cesspool/cesspit.

7.6.5 The applicant has undertaken an assessment of the options relating to foul drainage provision, in line with the Welsh Government Circular 008/2018. This sets out a hierarchy, whereby it is most preferred that foul drainage is connected via the public sewer, failing that, a package treatment plant would be the next best option, failing that a septic tank would be the next in line and only if all those options are shown to not be viable, then a cesspit will be considered.

7.6.6 The applicant has discussed the possibility of connecting to the public sewer, but this is approximately 25 metres from the site. The cost would be substantial (in the tens of thousands) and would require access across 3rd party land which may cause substantial delays to the project. It is accepted that these factors mean that connecting to a public sewer is not a viable option.

7.6.7 The applicant sought the advice of a drainage company regarding the possibility of installing a package treatment plant. This system involves the treatment of the waste prior to the discharge of waste water to a soakaway. However, percolation tests have shown that a soakaway will not be possible due to the high water table in the Levels. The possibility of providing a raised mound to absorb the discharge was explored but this option was not supported by Natural Resources Wales. The option of discharging to a drainage ditch was also discounted due to inadequate flow rates and the inability of the system to achieve the very high water quality levels required by Natural Resources Wales.

7.6.8 Taking into account that a package treatment plant with primary, secondary and tertiary equipment could not meet the water purity levels set by NRW, the use of a septic tank would also not meet the water purity tests or percolation tests required. Therefore, a package treatment plant and septic tank are not suitable options for this site.

7.6.9 As mentioned previously, the site uses a cesspit currently. The proposed scheme seeks to remove the existing cesspit and install a 45,000 litre cesspit to meet the current Building Regulation standards. This is to be located in the rear garden adjacent the northern boundary. The Building Regulations Officer has confirmed that the installation of the cesspit is controlled via their legislation. Natural Resources Wales have confirmed that should a cesspit be proposed, they will not require further consultation based on the information submitted to

date. Therefore, the proposal is considered to not result in an adverse impact with regard to the adjacent Site of Special Scientific Interest.

Construction Environment Management Plan

- 7.6.10 Natural Resources Wales have requested that the submitted Construction Environmental Management Plan (CEMP) should be revised to include information on spill prevention/mitigation measures in the event of a pollution incident, e.g. spill kits, bunded storage tanks.

European Protected Species – Bats

- 7.6.11 Natural Resources Wales accepts the findings of the Preliminary Roost Assessment which states that the building has negligible value to support roosting bats and that no further surveys are recommended.

Severn Estuary (Wales) Special Protection Area (SPA)

- 7.6.12 Natural Resources Wales consider that the proposals may affect the Severn Estuary (Wales) SPA. The proposed development site is located approximately 630 metres from the SAC. In particular, Natural Resources Wales are concerned about the possible impact of noise pollution from the proposed demolition works which may have potential to disturb overwintering and feeding birds in the Severn Estuary SPA. They are particularly mindful of the white fronted goose which is a qualifying feature of the SPA and has a medium sensitivity to disturbance with a recommended buffer zone of 200-600m.
- 7.6.13 It is noted that the site is outside the recommended buffer zone for medium sensitivity. It is considered that it would be sensible to require the Demolition and Construction Management Plan to contain measures to mitigate for noise during the demolition phase. On this basis, it is considered unlikely that the proposed development would have a significant effect on the European site. Therefore, it is not considered necessary to undertake an assessment of likely significant effect under Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

7.7 Flood Risk and Drainage

- 7.7.1 According to the Development Advice Maps (DAM), the application site is located within Flood Zone C1. As set out within the Chief Planners letter dated the 15th December 2021, the Flood Map for Planning (FMfP) represents the most up to date data with regard to flood risk and is a material consideration in the determination of planning applications. According to the FMfP, the application site lies within a TAN15 defended zone and is in Flood Zone 3. TAN 15 states that the proposal needs to be both justified and the consequences of development found to be acceptable. Natural Resources Wales have stated that the proposal would not change the vulnerability of the site or impact the level of flooding experienced elsewhere. On the basis that what is proposed is a replacement dwelling, and flood resilience measures could be introduced, with no objection from NRW, it is considered that the proposal is acceptable in terms of flood risk.

- 7.7.2 Surface water drainage will be dealt with separately under the Sustainable Drainage regulations.

7.8 Amenity issues

- 7.8.1 As stated previously the proposed dwelling has a separation distance of approximately 4.9m to the common boundaries with the neighbouring residential properties. The height of the proposed bungalow would not significantly exceed the height of the neighbouring property known as Greenfields. Therefore, the proposed bungalow would not result in overbearing or the loss of daylight and sunlight entering neighbouring properties.
- 7.8.2 It was noted during a site visit that two side windows on the northern elevation of Greenfields directly overlooks the front garden of the application site and a fence had been erected on the common boundary which then reduces in height to further facilitate views across the applicants front garden.
- 7.8.3 The room the side windows serve at Greenfields is the dining area, kitchen and sitting area. This area is also served by large patio doors and a roof lantern. The side windows are therefore considered as secondary windows serving a habitable room. The submitted

landscape plan shows that a 1.8m high fence is proposed along the common boundary with hedging. There are currently no restrictions on the permitted development rights of the property, therefore, the applicant can carry out the erection of a 1.8m high metre boundary (or up to 2m) treatment utilising permitted development rights. Impact on the side windows of Greenfields would not be significant enough to warrant a refusal on those grounds.

7.9 Highways and Parking

7.9.1 The location of the access is to be retained as existing and the Highways Officer acknowledges that as the intensity of the use of the access is not being increased, there is not an opportunity to seek amendments to the visibility splays currently on site. An access gate is proposed on the driveway, however, a condition is attached to the recommendation to ensure that any gates are located 5m back from the edge of the highway in the interests of highway safety.

7.9.2 The proposal seeks to provide 4no. bedrooms in the roof space; therefore, the Parking SPG document require three off street parking spaces to serve the property. The proposed block plan shows that the site can provide the three spaces required to be policy complaint and the turning area to the front of the property provides space to enter and leave in a forward gear. The proposal accords with polices GP4 and T4.

7.10 Archaeology

7.10.1 The site is located within an archaeologically sensitive area. The development site is already heavily disturbed by the construction of the existing structure. The Glamorgan Gwent Archaeological Trust advise that there is no objection to the postive determination of the scheme. Therefore, the propsoal accords with Policy CE6.

7.11 Waste

7.11.1 The proposed block plan does not have a specific area annotated for the storage of waste and recycling. Taking into account the plot size, there is sufficient space to secure this within the curtilage of the site and therefore it is not considered reasonable to secure this via condition.

7.12 Planning obligations

7.12.1 As the scheme is for a replacement dwelling which results in no net increase in the number of dwellings, no planning contributions would be requested on this application.

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 aims of the relevant policies contained within the Newport Local Development Plan 2011 – 2026 (Adopted January 2015) and the application is hereby recommended for approval. The revised proposal has overcome the previous reasons for refusal and no concerns remain.

10. RECOMMENDATION

GRANTED WITH CONDITIONS

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

- Waste Management Hierarchy Report (Received: 27/10/2023)
- Foul Drainage Layout (Drawing ref: 16684_501 Rev 02)
- Landscape Visual Appraisal and Landscape Plan (Received: 11/05/2023)
- Preliminary Roost Assessment Rev 1.1 (Received: 10.05.2023)
- Landscape Plan (Drawing ref: 366_PN_01 Rev A)
- Existing Site Location and Survey (2209.1_PL1)
- Existing Floor Plan and Elevations (Drawing ref: 2209.1_PL2)
- Proposed Block Plan (Drawing ref: 2209.1_PL3B)
- Proposed Ground Floor Plan (Drawing ref: 2209.1_PL4C)
- Proposed First Floor Plan (Drawing ref: 2209.1_PL5B)
- Proposed Elevations (Drawing ref: 2209.1_PL6C)
- Proposed Elevations (Drawing ref: 2209.1_PL7C)
- Proposed Street Elevation (Drawing ref: 2209.1_PL8B)

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-demolition

02 Notwithstanding the submitted Construction Environment Management Plan (CEMP), prior to any development (including demolition works), a full Construction Management Plan, to include demolition, shall be submitted to and approved in writing by the Local

Planning Authority. The development shall thereafter be undertaken in accordance with the approved CEMP.

Reason: To protect the amenities of nearby residents and in the interests of ecology including European protected species and in the interest of safeguarding the features of the Severn Estuary European sites and SSSI and the River Usk SAC and SSSI in accordance with Policies GP5 and GP7 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

Pre-commencement

03 Prior to the commencement of development above damp proof course level, details of the materials to be used on the external surfaces of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the agreed details.

Reason: In the interests of character and appearance in accordance with Policy GP6 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

04 No development, other than demolition, shall commence until full details of the proposed boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be constructed in accordance with the approved details prior to the first occupation of the dwelling and then retained thereafter for the lifetime of the development.

Reason: To ensure the development is completed in a satisfactory manner and to preserve the character of the area

Pre-occupation

05 Prior to occupation of the dwelling hereby approved, the biodiversity mitigation measures as shown in Table 5 of Section 4.2 of the Preliminary Roost Assessment by Arbtech Issue 1.1, shall be installed and retained for the duration of the use.

Reason: To ensure the development results in a net gain in biodiversity in accordance with Policy GP5 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

06 Prior to occupation of the dwelling hereby approved, a cesspit shall be installed in accordance with full details which shall have first been submitted to and approved in writing by the Local Planning Authority. The cesspit shall thereafter be operated and maintained in accordance with the manufacturer's details.

Reason: To ensure the development is served by suitable means of foul drainage in accordance with Policy GP7 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

07 Prior to the first beneficial use of the dwelling hereby approved, car parking shall be provided in accordance with the approved plans and shall be kept available for the parking of motor vehicles at all times for the duration of the development.

Reason: To ensure that adequate off-street parking provision is made in the interests of highway safety.

General conditions

08 Notwithstanding the submitted drawings, any access gates shall be set back 5m from the edge of the highway. Prior to the installation of any gate, details shall be provided and approved in writing by the Local Planning Authority. Development shall thereafter be undertaken in accordance with the agreed details and retained for the duration of the use.

Reason: In the interest of highway safety in accordance with Policy GP4 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

09 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013 (or any Order revoking or re-enacting that Order), Schedule 2, Part 1, no development within Classes A, B, C, D, or E shall be carried out without the express permission of the Local Planning Authority.

Reason: To protect the amenities of occupiers of adjoining properties and to control future development given that this is a replacement dwelling subject to the requirements of Policy H12 and in the interests of the openness of the Green Wedge, in accordance with policies

SP7 and H12 of the Newport Local Development Plan 2011 – 2026 (Adopted January 2015).

NOTE TO APPLICANT

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP4, SP5, SP7, SP8, GP2, GP4, GP5, GP6, GP7, CE4, CE6, H12, T4 and W3 were relevant to the determination of this application.

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

03 This application presents an opportunity to raise awareness of the flood risk to the current/future occupiers of the property, incorporate flood resistance/resilience measures and make provisions for flood warning and emergency access/egress. In areas at risk of flooding, we recommend that consideration be given to the incorporation these measures into the design and construction of the development. These could include flood barriers on ground floor doors, windows and access points, implementation of suitable flood proofing measures to the internal fabric of the ground floor and locating electrical sockets/components at a higher level above possible flood levels.

2.

APPLICATION DETAILS

No: 23/0521 **Ward:** Shaftesbury
Type: Full
Expiry Date: 3rd November 2023
Applicant: S Constance
Site: Land North Of 51 Albany Street Albany Trading Estate Newport South Wales
Proposal: DEVELOPMENT OF 2 NO. LIGHT INDUSTRIAL UNITS/OFFICES, 2NO. A3 USE DRIVE THRU UNITS AND ASSOCIATED WORKS
Recommendation: Refused

1. INTRODUCTION

- 1.1 This application seeks planning permission for the development of 2 no light industrial units, 2no drive-thru/restaurant units and associated works at land to north of Albany Trading Estate in Crindau. The application has been called to Committee by Councillors Fouweather and Cockeram.
- 1.2 The site measures approximately 0.8ha and currently comprises the existing Thames Valley Construction office and associated yard used for the storage of construction materials. It is in the urban boundary and lies within a mixed use area including commercial, business, industrial and residential uses. The site is situated directly adjacent to Crindau Pill, the River Usk Special Area of Conservation (SAC), Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI) to the east and Sainsbury’s superstore to the west. It is in Flood Zone C1, is out of centre for retail planning policy purposes and is not identified for any purpose in the adopted Local Development Plan.
- 1.3 The Pill forms part of the River Usk SSSI / SAC and has significant nature conservation interest. The site is in Parking Zone 5. Current access is from Albany Street at the southern end of the application site. There are residential properties to the south known as the Turnstiles. Planning permission was recently granted for the construction of an A1 foodstore to the north of the site with the operator being Aldi. Construction of the store has commenced.

2. RELEVANT SITE HISTORY

07/1322	MIXED USE REGENERATION OF SITE INCLUDING RESIDENTIAL, STUDENT ACCOMMODATION, AND SHELTERED ACCOMMODATION FOR THE ELDERLY (CLASSES C2 AND C3); AN HOTEL (CLASS C1); COMMERCIAL BUILDINGS AND OFFICES (CLASS B1); A LOCAL CENTRE INCLUDING RETAIL, LEISURE AND HEALTHCARE FACILITIES (CLASSES A1, A2, A3, D1 AND D2); AND ASSOCIATED HIGHWAY AND FLOOD DEFENCE WORKS. (ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT)	Withdrawn
09/0385	CHANGE OF USE OF EXISTING INDUSTRIAL SITE TO INCLUDE OFFICE (USE CLASS B1) AND STORAGE (INTERNAL AND EXTERNAL) (USE CLASS B8) ALONGSIDE ESTABLISHED GENERAL INDUSTRIAL (USE CLASS B2)	Refused

3. POLICY CONTEXT

3.1 Wales National Marine Plan (January 2020)

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

3.2 Planning Policy Wales Edition 11 (PPW11)

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

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

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

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

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

Retail Impact Assessments

4.3.25 Retail developments outside designated retail and commercial centres, and which are not located on an allocated site, can impact on the viability and vibrancy of a centre. Impacts resulting from such development, whether individual or cumulative, may include changes in turnover and trading ability, consumer choice, traffic and travel patterns, footfall, as well as affect centre regeneration strategies and existing or proposed retail sites allocated in the

development plan. The purpose of the retail impact assessment is to consider these issues and determine if these developments are likely to have detrimental consequences.

3.3 Technical Advice Notes

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

3.4 Future Wales: The National Plan 2040

Policy 6 of Future Wales maintains the principles of the Town Centre First approach. The town centre first approach puts health and vibrancy of town and city centres as a starting point of locational decision making and places importance on the application of the sequential test in determining planning applications. This is to be applied to new developments and not extensions of existing facilities. There is some argument that the proposal does not form either a new development, as an A1 use is established. Nor does it form an extension, as the proposal does not seek a physical expansion of the operational floor space. Nonetheless, it is anticipated that the sequential approach is relevant in line with local policy.

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

- SP1 – Sustainability
- SP3 – Flood Risk
- SP8 – Special landscape Areas
- SP18 – Urban Regeneration
- SP19 – Assessment of Retail Need
- GP1 – Climate Change
- GP2 – General Amenity
- GP3 – Service Infrastructure
- GP4 – Highways & Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection & Public Health
- CE1 – Routeways, Corridors and Gateways
- CE2 – Waterfront Development
- CE3 – Environmental Spaces & Corridors
- CE6 - Archaeology
- CE9 – Coastal Zone
- EM3 – Alternative Uses of Employment Land
- T2 – Heavy Commercial Vehicle Movements
- T4 - Parking
- T5 – Walking and Cycling
- T7 – Public Rights of Way & New Development
- R8 – Small scale retail proposals
- CF4 - Riverfront Access
- W3 - Provision for Waste Management Facilities in Development

Relevant adopted Supplementary Planning Guidance is:

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

4.1 NATURAL RESOURCES WALES: We object to the proposed development as submitted, for the reasons explained below.

Flood Risk

The planning application proposes less vulnerable development. Our Flood Risk Map confirms the site to be entirely within Zone C1 of the Development Advice Map (DAM) contained in Technical Advice Note (TAN) 15: Development and Flood Risk (2004). The Flood Map for Planning identifies the application site to be at risk of flooding and falls entirely into Flood Zone 2 and 3 (Sea) and partially into Flood Zone 2 and 3 (Fluvial). Section 6 of TAN 15 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 TAN 15. 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 a Flood Consequences Assessment (FCA) that the potential consequences of flooding can be managed to an acceptable level.

We have reviewed the following additional document submitted in support of this application: Letter of response to NRW objection (Craddys letter) by Craddys, dated 16th August 2023, referenced 13091w0007a.

Our advice to you is that the application continues to fail to demonstrate that the risks and consequences of flooding can be managed to an acceptable level. All development should be designed to be flood free in accordance with A1.14 of TAN 15. We previously provided advice, objecting to the development proposal as submitted, in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies for the following reasons.

We previously noted that based on the FCA and the appropriate lifetime of the development (75 years), the site is not compliant with the requirement of A1.14 of TAN 15. In response to our letter dated 14/08/2023, the Craddys letter states, *'it is hoped that a pragmatic approach can be taken given that the site remains in accordance with TAN 15 for the next 55 years based on current climate change projections.'*

Whether this represents a reasonable period, in this instance, over which the impact of climate change on flooding predictions should be considered is a matter for the Planning Authority to determine. Our advice is in line with [Welsh Government guidance](#) which states that commercial units should be designed to a 75-year lifetime of development. In addition, we note GP1 – General Development Principle – Climate Change, section 3.6 (as outlined in Newport Local Development Plan 2011-2026) which states *'...The impact of climate change and sea level rise will require continued and improved flood risk management schemes. Developments must reflect a lifetime appropriate standard of design. In the case of residential development 100 years is required and for employment and industrial development 75 years.'*

We stated in our previous response that the proposed development is predicted to be flood free during the 0.5% (1 in 200 year) plus climate change allowance tidal flooding event for 55 years in order to highlight when the site becomes at risk of flooding over the lifetime for the development and to provide your authority with sufficient information to inform your decision making.

Therefore, on the basis of this guidance, we continue to consider the site fails to comply with A1.14 of TAN 15 as outlined in our letter dated 14/08/2023.

The Craddys letter also considers that the site is currently defended and that for there to be a tidal flood risk to the site assumes the current defences will not be *'improved or raised within the next 55 years'*. As stated in the FCA, it is recognised and *'expected that the current level of protection provided by flood defences would be maintained.'* The existing flood defences are in place to help mitigate the flood risk to existing developments, not to facilitate new developments. It is also noted in the FCA that the 'Hold the line' policy is an aspiration rather than a commitment. Therefore, the future upgrading or raising of existing flood defences cannot be guaranteed and this should be given appropriate weight in your determination of the planning application.

In addition, we note the Craddys letter states the *'flood risk from fluvial sources is very minor with tidal sources being the dominant risk. As such the risk from fluvial flooding is considered to be negligible. Nonetheless, we have reviewed the product 6 data provided by NRW however this contains no fluvial data with which to make a further assessment. In addition, the Crindau Flood Alleviation Scheme – Flood Consequence Assessment by JBA considers the Crindau area to not be at significant risk of fluvial flooding.'*

We stated in our letter dated 14/08/2023 that the site is shown to be partially within Flood Zone 2 and 3 (Fluvial). We note the reliance on information stated in reports from 2014. However, we do not consider the information submitted to be sufficient to give any technical comments in relation to fluvial flood risk. Our comments regarding fluvial flood risk in this instance are provided to highlight that we cannot provide a technical response on this source of flooding.

Therefore, we continue to consider the site fails to comply with the requirements of TAN 15. 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 continue to object to this proposal.

Please inform us, in accordance with paragraph 11.7 of TAN 15, if you are minded to grant permission for the application contrary to our advice. As it is for your Authority to determine whether the risks and consequences of flooding can be managed in accordance with TAN 15, we recommend you consider consulting other professional advisors on matters such as emergency plans, procedures and measures to address structural damage that may result from flooding. Please note, we do not normally comment on the adequacy of flood emergency response plans and procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings to occupants/users.

Flood Risk Activity Permit

We previously provided advice with regards to Flood Risk Activity Permits in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

Protected Sites, Protected Species and Groundwater Protection

Notwithstanding the above flood risk advice, we also advise that based on the information submitted to date, conditions regarding protected sites, European Protected Species and groundwater protection should be attached to any planning permission granted:

Condition 1: Construction Environmental Management Plan (CEMP)

Condition 2: Lighting Strategy

Condition 3: Unsuspected Contamination

Without the inclusion of these conditions, we would object to this planning application. Details of these are outlined in our previous response.

Protected Sites

We previously provided advice with regards to Protected Sites in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

European Protected Species (EPS)

We previously provided advice with regards to European Protected Species in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

Groundwater Protection

We previously provided advice with regards to Groundwater Protection in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

Further comments received November 2023:

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

Flood Risk

The planning application proposes less vulnerable development. Our Flood Risk Map confirms the site to be entirely within Zone C1 of the Development Advice Map (DAM) contained in Technical Advice Note (TAN) 15: Development and Flood Risk (2004). The Flood Map for Planning identifies the application site to be at risk of flooding and falls entirely into Flood Zone 2 and 3 (Sea) and partially into Flood Zone 2 and 3 (Fluvial).

Section 6 of TAN 15 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 TAN 15. 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 a Flood Consequences Assessment (FCA) that the potential consequences of flooding can be managed to an acceptable level.

Our advice to you is that the application continues to fail to demonstrate that the risks and consequences of flooding can be managed to an acceptable level. All development should be designed to be flood free in accordance with A1.14 of TAN 15. We previously provided advice, objecting to the development proposal as submitted, in our letters dated 15/09/2023 (our ref: CAS-235779-D4Q2) and 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies for the following reasons.

We have reviewed the letter from Matthew Phillips (from Architecture Design Limited) sent to Vicky Quinn, dated 24th August 2023, which states that:

'There is an objection from NRW stating that our levels are remaining the same or reducing, however this is not the case and our levels are being increased to 8.2m as required by the flood risk assessment, and therefore their reason for objection is unjustified'.

We note from the FCA that topographic data shows *'the site is predominantly flat with levels ranging between a minimum of 7.65mAOD and a maximum of 8.20mAOD although more commonly within the range of 7.70mAOD to 8.00mAOD. Along the site's eastern boundary lies the existing flood defence which is recorded as having a crest level of 9.15mAOD for the vast majority of its length'.*

Our previous advice to your Authority recognised that Finished Floor Levels (FFL) of the new buildings should be set at 8.20m AOD which is higher than the existing ground levels on the site. The FCA states that it will be impracticable to raise the site further due to the need to tie into the existing buildings on site and issues of access and topography.

Based on the above, the site fails A1.14 of TAN 15 for the following reasons. The FCA predicts that given the immediate proximity of the development to the flood defences, in a tidal overtopping scenario the site would be affected immediately during the 0.5% (1 in 200 year) plus CCA tidal flooding event in 2100 (75-year lifetime of development) and the entire site would be inundated within approximately 10 minutes.

The maximum depth of flooding at the site is predicted to be approximately 1.74m (1740mm) (effectively the difference between the lowest existing ground level and the 9.39m tidal level) in the car park. While it is not stated in the FCA, based on the difference between the proposed FFL (8.20m AOD) of the new buildings and the 9.39m tidal level, we can assume that the maximum depth of flooding at the new buildings would be 1.19m (1190mm). These figures are not compliant with A1.14 of TAN 15.

Our objection is not based on the fact that the "levels are remaining the same or reducing" rather the fact that even with the minimum raising (of building levels) that is being proposed, the site fails to comply with the requirements of A1.14 of TAN15. No further details for the 0.1% (1 in 1000 year) plus CCA tidal flood event have been provided to show how its overtopping figure (570mm) would flood the site over a tidal cycle.

As previously stated, given the proximity of the site to the source of flooding and the predicted flood levels, the site will unlikely comply with the requirements of TAN15. This is because the proposed FFL would need to be excessive to allow the site to be flood free during the 0.5% (1 in 200 year) plus CCA event. Therefore, we continue to consider the site fails to comply with the requirements of TAN15 as the proposal fails to demonstrate that the consequences of flooding can be acceptably managed, and it is unlikely these requirements will be met.

Please inform us, in accordance with paragraph 11.7 of TAN 15, if you are minded to grant permission for the application contrary to our advice. As it is for your Authority to determine whether the risks and consequences of flooding can be managed in accordance with TAN 15, we recommend you consider consulting other professional advisors on matters such as emergency plans, procedures and measures to address structural damage that may result from flooding. Please note, we do not normally comment on the adequacy of flood emergency response plans and procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement during a flood emergency would be limited to delivering flood warnings to occupants/users.

Flood Risk Activity Permit

We previously provided advice with regards to Flood Risk Activity Permits in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

Protected Sites, Protected Species and Groundwater Protection

Notwithstanding the above flood risk advice, we also advise that based on the information submitted to date, conditions regarding protected sites, European Protected Species and groundwater protection should be attached to any planning permission granted:

Condition 1: Construction Environmental Management Plan (CEMP)

Condition 2: Lighting Strategy

Condition 3: Unsuspected Contamination

Without the inclusion of these conditions, we would object to this planning application.

Details of these are outlined in our previous response.

Protected Sites

We previously provided advice with regards to Protected Sites in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

European Protected Species (EPS)

In our previous response dated 14/08/2023 (our ref: CAS-222648-H2X2), we noted from section 4.4 of the Design and Access Statement that there is insufficient space for buffer planting onto the riverside walkway that lies in-between the site and Crindau Pill, and advised that you consult your Authority's in-house ecologist regarding the need for additional measures, such as fencing, to screen the development from Crindau Pill and further reduce light spill on the habitats used by otters.

We have reviewed the new Soft Landscape Proposals drawing dated September 2023 and welcome the proposals for additional planting of trees and native hedges, which may help to reduce the impacts of the proposals on otters moving through Crindau Pill. However, we also note the comments of Gill Mackley CMLI of Mackley Davies Associates Ltd for Streetscene and City Services, dated October 2023, which express concern that the Proposed Block Plan 200.01/04 July 2023 by architecture design limited fails to provide sufficient space for buffer planting onto the riverside walkway (and therefore Crindau Pill). Gill Mackley's comments include a request for more information in order to ensure the landscape proposals are deliverable, including a hard landscape, street furniture, and boundary treatment plan; and a drawing illustrating sections through boundaries to show relationship between buildings, boundary treatment, and planting proposals.

We support the comments of the landscape consultant and advise that the feasibility of providing the soft landscape proposals is clarified, and again advise that you consult your Authority's in-house ecologist regarding the need for additional measures, such as fencing, to screen the development from Crindau Pill and further reduce light spill on the habitats used by otters.

We previously requested the attachment of a condition for a lighting plan to protect Crindau Pill from excessive light spill in our previous letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

Groundwater Protection

We previously provided advice with regards to Groundwater Protection in our letter dated 14/08/2023 (our ref: CAS-222648-H2X2). This advice still applies.

- 4.2 DWR CYMRU - WELSH WATER: We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

ASSET PROTECTION

The proposed development site is crossed by a 900mm public surface water sewer. No operational development is to take place within 4.5 metres either side of the centreline of the sewer. We request that prior to commencing any operational development the location of this asset is determined.

SEWERAGE

We can confirm capacity exists within the public sewerage network in order to receive the foul only flows from the proposed development site. Turning to surface water, as of 7th January 2019, this proposed development is subject to Schedule 3 of the Flood and Water Management Act 2010. The development therefore requires approval of Sustainable Drainage Systems (SuDS) features, in accordance with the 'Statutory standards for sustainable drainage systems – designing, constructing, operating and maintaining surface water drainage systems'. It is therefore recommended that the developer engage in consultation with Newport City Council, as the determining SuDS Approval Body (SAB), in relation to their proposals for SuDS features. Please note, Dwr Cymru Welsh Water is a statutory consultee to the SAB application process and will provide comments to any SuDS proposals by response to SAB consultation.

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

- 4.3 SOUTH WALES FIRE & RESCUE: The proposed site plan in relation to the above has been examined and The Authority wish the following comments to be brought to the attention of the committee/applicant. It is important that these matters are dealt with in the early stages of any proposed development.

Changes to our climate and weather patterns will have a significant impact on the well-being of both current and future generations. In line with the Well-being of Future Generations (Wales) Act 2015 and the Future Wales – the national plan 2040 framework document, the following areas should be considered early in the planning process:

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

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

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

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

- 4.4 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST: We noted this application when we reviewed your weekly planning list; consequently we have consulted the detailed information contained on your website and identified that the proposal has an archaeological restraint. The information in the Historic Environment Record (HER) curated by this Trust indicates that the proposal is located in an area of archaeological potential. It is located adjacent to Crindau Pill, a tidal creek tributary of the River Usk. The tidal pills along the Usk have been previously identified as potential harbour sites and there is the possibility that the areas alongside the pills could have been the focus for settlement in all periods. The Newport Ship, a 15th century ocean-going vessel, was found in one such pill. Alluvial deposits in these areas can also contain evidence of past use, and can contain important paleo-environmental and organic remains. The course of the pill, as depicted on historic mapping shows the course has varied, including within the current development area.

As such there is the potential for encountering archaeologically significant remains during the course of the proposed works. However, the supporting information submitted does not refer to any archaeological remains and therefore no consideration has been made concerning any physical impact on buried archaeological remains, or indeed any potential indirect, visual impact of the proposed development. As a result there is insufficient information presented to allow an informed decision to be made regarding the archaeological resource. In such circumstance. Planning Policy Wales 2021 (Edition 11) Section 6.1.26 notes that *“Where archaeological remains are known to exist or there is a potential for them to survive, an application should be accompanied by sufficient information, through desk-based assessment and/or field evaluation, to allow a full understanding of the impact of the proposal on the significance of the remains.”* More details on this guidance can be found in TAN 24 Sections 4.7-4.8.

In order to ascertain the impact that the development will have on the archaeological resource, a suitably qualified archaeologist should initially prepare an archaeological desk-based assessment of the current knowledge of the archaeological resource in the application area in order for the impact of the proposed development to be determined and to allow informed mitigation measures to be proposed. This is consistent with our response to a pre-application consultation from the applicant.

The assessment should be prepared in accordance with the Chartered Institute for Archaeologists (CIfA) *Standard and Guidance for Historic Environment Desk-Based Assessment* (2017) and to an agreed methodology set out in a Written Scheme of Investigation (WSI). It is our policy to recommend that it is undertaken by a CIfA Registered Organisation (RO) or accredited Member (MCIfA) of CIfA.

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

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF CITY SERVICES (HIGHWAYS): Highway Recommendation:
Further information and clarification requested.

Highway Recommendation:

Objection pending further information and amendment.

Highway Comments:

It is noted that the proposal is now 2 industrial units and 2 drive through units.

Pedestrian / cycle movement

Amendments to the southern access have been proposed following Highways' previous comments. The re-instated footway is accepted, but the proposed crossing arrangement is not. The applicant should note that the access crosses a shared use strategic cycle route. This is not catered for; pedestrians are diverted, there is insufficient landing space to the north; direct access to the B1 uses is prevented; and there is no provision at all for cyclists. Changes to parking with the repositioned internal path adjacent to KFC are noted and welcomed, but there is no clear pedestrian route to the employment uses. It is likely that visitors and staff would walk in the access road, which would not be appropriate or safe. We note that links to the Aldi are not indicated now, but there is potential for pedestrian/cycle movement between the two sites. This is acceptable, as crossings etc. would be outside the red line or control of this developer, however we would request further information regarding access rights from the Aldi site, to ensure best use is made of all opportunities. (Refer to servicing issues below).

A new central link is noted and considered to be an improvement for pedestrians, however this is not wide enough for cyclists to share (even pushing a cycle they still require more space than this provides). Furthermore, cycling is to be encouraged in line with local and national policies and requiring cyclists to dismount is prejudicial to cycle use and there is a significant distance to push cycles to reach the employment uses.

It should also be noted that cyclists will enter from the cycle path to the East and must be accommodated.

The footpath between the KFC unit and the associated delivery bay etc. is too narrow and barely accommodates a door being opened. A significant pedestrian flow is anticipated here and should be accommodated.

The rebuttal suggests that cycle parking has been provided in line with Newport's current policy, however we consider the proposals only meet the short stay requirements for the drive throughs and the proposed commercial units. The existing office, which is being reconfigured and within the site should also have cycle parking, but there is no detail.

Parking and Servicing

Swept paths have been received for the new layout however the applicant has still failed to demonstrate adequate servicing provision.

It is suggested (by the applicant) that the site could be restricted to 12m rigid vehicles by condition. Highways do not consider this appropriate as the site is not constrained, except by the design adopted. Furthermore, whilst the fast-food outlets could potentially restrict delivery vehicle types this would be difficult to enforce and from experience this type of condition is often ineffective. There are many reasons why these or other (potential future) operators may find it problematic to observe such a condition.

The operators of the smaller units would have no control over the fleet of their suppliers or customers, so the condition would be unfair for these units and therefore we do not consider it could be applied.

Swept paths have been provided for the drive throughs. These are not appropriate to demonstrate servicing at the service doors, but could represent many customers. A 12m HGV is needed not a panel van slightly larger than a large car. It should also be noted that if they stop anywhere near the buildings they would obstruct the route completely.

It is clear that the intention is to rely on HGVs parking in the loading bays to serve the food outlets. They will be here for some time as they will have to wheel the deliveries to the service doors of the food units. The dimensions of the bays are appropriate for 16.5m articulated vehicles, not the 12m ones suggested. Both bays obstruct forward visibility impacting on opposing vehicles and pedestrians using the crossing point, as well as junction visibilities for the various egress points. The KFC one also obstructs the delivery and disability spaces.

In addition, the path to the front of Starbucks is not wide enough to be used for unloading and there is no appropriate safe route to the store for either loading bay.

Both loading bays rely on vehicles being able to egress via the Aldi site. As such we would need confirmation that there is a right of way/access across the adjacent third-party site. If this cannot be demonstrated, then it would raise additional concerns with the servicing strategy.

The "highway response" submitted suggests that servicing for the B1 units has been changed from the original submission and includes a swept path for a rigid vehicle accessing the loading bay between the existing offices and the proposed B1 units. We would refer the applicant to our previous comments, as the delivery bays and service doors are unchanged, unsafe and of limited use for commercial vehicles. Furthermore all servicing results in pedestrian conflicts and safety concerns.

Highways do not consider the site has appropriate and safe servicing provision.

B1 Parking for those with disabilities is not adequate as the loading aisle is not protected it is just paint where HGVs are manoeuvring. This offers no protection.

Additional information has been provided that demonstrates adequate parking bay numbers for the proposed development and no change for the retained offices. Indeed, the provision exceeds the maximum requirements. We would therefore suggest that some larger spaces should be provided as van use is likely to be high for all these uses. This would improve the ease of use and bring the numbers closer to the maximums suggested by Newport's policies.

In summary, Highways have reviewed the responses and amended plans, but maintain objections on grounds of servicing, parking, inclusion and sustainable travel policies, particularly those relating to the safety of vulnerable highways / site

5.2 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY OFFICER):

Initial Comments:

I have considered the Preliminary Ecological Appraisal dated 24/11/22 submitted in support of this application, and I agree that there are unlikely to be any significant impacts upon protected species or habitats within the red line boundary of this proposal.

However this document does not consider the need for a Habitats Regulations Assessment (HRA), nor does it provide us with sufficient information to undertake a HRA. As set out in my advice on pre-app P/22/0244 from 10/01/23, we should be provided with sufficient information to allow us to undertake a HRA of the scheme upon the River Usk SAC, or else the Applicant could provide us with a 'Shadow' HRA which we could adopt as our own if we agree with it.

Any sustainable drainage system at this site will need to adhere to the six statutory standards for SuDS, one of which (Standard 5), is the Biodiversity Standard. This means that the SuDS will need to demonstrate that biodiversity has been maintained and enhanced as part of the drainage system. I would not say that sufficient soft landscaping details have been provided with this application to allow us to be sure that net benefits for biodiversity will be secured.

Final Comments:

Further to my comments of 28/09/23 I note that a Revised Site Plan 200.01/02.A Rev 05 and a Revised Soft Landscape Plan have been submitted. However, the advice provided by NRW in their responses of 14/08/23, 15/09/23 and 13/11/23 has remained the same in relation to impacts of the proposed development upon European Protected Species (EPS) and Protected Sites.

In relation to EPS, specifically the Otter, NRW have advised that we attach a planning condition to any consent granted which would allow us to ensure that lighting from the

proposed development would not cause disturbance to Otters (a mainly nocturnal species) on the nearby Crindau Pill. They have further advised that I be consulted as the NCC in-house Ecologist as to whether additional measures such as fencing would be required to screen the development from Crindau Pill, to reduce disturbance to otters.

In relation to Protected Sites, specifically the nearby River Usk Special Area of Conservation (SAC), NRW have advised that we conduct a Habitats Regulations Assessment (HRA) to consider the impacts of the proposed scheme upon that site as required by the Conservation of Habitats and Species Regulations 2017 (as amended). As part of that HRA, NRW advised that we consider impacts arising from pollution, disturbance (noise and vibration), lighting, and water quality, during both the construction and operational phases.

The conditions that NRW recommend we impose, should consent be granted, including those relating to a Construction Environmental Management Plan (CEMP), a Lighting Plan, and Unsuspected Contamination, should counteract most of the potential impacts that NRW have listed, specifically pollution, noise and vibration during construction, lighting and water quality. Therefore any HRA conducted by ourselves would rely upon implementation of these planning conditions to allow us to conclude there would be no adverse effect upon the integrity of the River Usk SAC.

However, one of the features that the River Usk SAC is designated for is the Otter, and as I have set out above in relation to Otters as a European Protected Species, there remains a concern that lighting and noise during operation of the proposed development could cause disturbance to this species.

It is for this reason that in my previous response I advised we do not have enough information to assess whether noise and light spillage arising from any new development would cause disturbance to Otters. Whilst the Lighting Scheme condition proposed by NRW would go some way to reducing disturbance to Otters at night, what we really need to be provided with are details of the boundary treatment of the site adjacent to the Crindau Pill. Specifically we should be provided with details of tall vegetation, fences, and cross sections to demonstrate that Otters on the Crindau Pill would be shielded from the additional noise and lighting that would arise from the proposed development.

The Site Plan and Soft Landscape Plan should show this information, so we can be confident that it is feasible to incorporate these features within the development, and that they would be effective in counteracting any significant adverse effect. However, at present, I note the concerns raised by our landscaping advisors Mackley Davies Associates Ltd. (MDA Ltd.), in that the landscaping details provided are not sufficient to be confident it would be feasible to implement them. MDA Ltd have expressed concern that there is not enough space for buffer planting adjacent to Crindau Pill, and also raised the issue of site cross sections, which would be useful to demonstrate whether this boundary treatment would be effective in blocking noise and lighting.

These concerns are shared and supported by NRW in their most recent 13th November response, and they invite NCC to further consider additional measures in the landscaping scheme to shield the Otter habitat from the proposed development.

If these details were provided, we could complete a Habitats Regulations Assessment in accordance with NRW's advice. Please note that in accordance with Regulation 63(1) of the Conservation etc. Regulations, the HRA must be completed before granting planning consent. As planning conditions have been proposed to counteract any likely significant impact, the HRA would need to proceed to the 'Appropriate Assessment' stage. This would require NCC to consult NRW in accordance with Regulation 63(3) and have regard to any representations made by them within a reasonable time.

5.3 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE OFFICER):
Proposed Block Plan 200.01/04.A rev 05 August 2023 by architecture design limited
This layout has the potential to be acceptable with a better soft to hard ratio than previous revisions,

however the following information is still required to provide certainty that the layout can deliver quality at the boundaries:

1. A hard landscape, street furniture, and boundary treatment plan.
2. Sections through boundaries, drawn up by the landscape architect to show relationship between buildings, boundary treatment, and planting proposals.
3. A topographic survey. Note that on such a tight site, if the block plan is based on OS data this can often be incorrect. The site appears level, but no information on levels is provided. The extent and location of vegetation at the boundary with residential is unclear.

Soft Landscape Proposals plan 1548-01 rev A by CAMBIUM Landscape architecture/Arboricultural consultancy

The proposals have the potential to be acceptable however there are some concerns over the detail as outlined below:

1. Albany Street frontage shows a native mixed hedge but no trees. The frontage needs tree height to both enhance the street scene and break up building elevations.
2. Planting bed width is not dimensioned but appears insufficient along the Starbucks north boundary and as planting is low shrubs this will provide little benefit and again no tree planting is proposed.
3. Native shrub mix is shown in an extensive bed to the south-east alongside the river wall and provides good new Green Infrastructure and softens views on to the proposed B1 units, however note that the plan states 'landscaping within 8m of the river wall may be removed at a future date if required by NRW'.
4. Overall the nursery stock size is small, for this type of retail use the landscape would need to be of a sufficient size/robustness to take the footfall and provide more of a visual impact from day one.
5. Existing vegetation is shown along the residential boundary but not evidenced by photos or described, it is not clear what lies within the red line boundary and what lies immediately outside.
6. A soft landscape maintenance and management plan rev A has now been submitted, written by Cambium this accompanies Soft Landscape Proposals plan 1548-01 rev A and adequately covers new planting and grass until established but **does not include existing site vegetation** to be retained which should be added as this is an important element of the landscape boundary screening.

- 5.4 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (NOISE): I confirm I have no objections to the proposals; however the following condition should be attached to any permission granted;

Drive thrus & associated works:

Plant and Equipment Noise

Noise emitted from plant and equipment located at the site shall be controlled such that the rating level, calculated in accordance with BS4142 2014, does not exceed a level of 5dB below the existing background level, with no tonal element to the plant.

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

Fume Extraction

Fumes from the food preparation areas shall be mechanically extracted and the extraction system shall be provided with de-greasing and de-odorising filters. Details of the extraction equipment (including scaled schematics, location plans, odour attenuation measures and future maintenance) shall be submitted to and approved in writing by the Local Planning Authority prior to its installation, and the equipment shall be installed in accordance with the approved details prior to the commencement of use for the cooking of food.

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

The extraction equipment shall be regularly maintained in order to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning authority.

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

Light Industrial units:

PRIOR TO B2 USE Noise Assessment

Prior to the commencement of any B2 use, a noise assessment in accordance with BS 4142: 2014 'Methods for rating and assessing industrial and commercial sound' shall be submitted to and approved in writing by the Local Planning Authority. The assessment will need to demonstrate that the rating level of the noise emitted from the any or all of the following:

- Industrial and Manufacturing process
- Fixed Plant and equipment
- Loading and unloading of goods

does not exceed the background level at any premises used for residential purposes and if appropriate, include measures to be taken to mitigate excess noise impact.

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

Site wide:

Artificial flood lighting

The applicant is required to submit a floodlighting scheme. The scheme is to include details on the light source (height, position/angle, columns etc), time of use, lighting levels and intensity footprint, glare and spillage, cut off times, sky glow, maintenance programme etc.

Waste Management Plan

Prior to first beneficial use a waste management plan, detailing the means of disposal of all waste generated by the businesses, shall be submitted to and approved in writing by the local planning authority. The approved plan shall be implemented prior to first beneficial use and shall be retained for the duration of the use.

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

Demolition & Construction Environmental Management Plan

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

Procedures for maintaining good public relations including complaint management, public consultation and liaison

Arrangements for liaison with the Newport City Council Noise & Neighbourhood Team

•Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within permitted hours

Mitigation measures as defined in BS 5228: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.

Procedures for emergency deviation of the agreed working hours.

Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Measures to mitigate demolition dust and material causing a nuisance to local residents, for example sheeting of loads and wheel washing apparatus

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

Advisory:

To encourage the uptake of zero emission vehicles in efforts to reduce air pollution it is recommended a number of the parking spaces are installed with electric vehicle charging points. Cabling could be installed in the remainder of the parking spaces to allow for additional charging points to be installed at a later stage.

- 5.5 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (POLLUTION): I have looked at the submissions in respect of the above proposed development which is noted to be drive thru food retail. Given the proximity of the Malpas Road AQMA air quality is a significant consideration and the applicant will need to provide information from a Transportation Assessment to air quality consultants that confirms what the expected changes in transportation movements will be in the locality as a result of this development. Air quality consultants will then need to confirm what vehicle movements associated with the site will mean for local air quality where they cannot be limited to zero emission vehicles given the need to protect the AQMA.

Notwithstanding the above Community & Public protection would expect the following to be part of any quality related narrative:

- Air quality beneficial plant species in landscaping.
- Imposition of anti-idling measures at retail premises including where vehicles are sat waiting for drive thru service.
- Use of zero/low emission heating systems in premises.
- Adherence to the principles of Air Quality Positive design.

Once I have received further information in respect of the above I can consider further support for this application and any appropriate conditions.

The geo environmental report submitted indicates significant land contamination is present and that affects both soils and groundwater. NRW will need to comment on Groundwater exceedances of contaminant criteria if they have not already done so. Conditioning relevant to land contamination and air quality can be discussed once matters relating to air quality have been addressed above should the application be supported.

- 5.6 HEAD OF CITY SERVICES (WASTE): We anticipate a requirement for trade waste and recycling.

- 5.7 HEAD OF CITY SERVICES (DRAINAGE MANAGER): We have received a SAB pre-application for this scheme which is currently being reviewed.

6. REPRESENTATIONS

- 6.1 NEIGHBOURS: 48No properties were consulted. 7no responses received objecting as follows:

-I am objecting to this application because Albany Street has long since had a history of high speed racers and traffic in the area causing a nuisance. The past three weeks have seen as many cars being involved in accidents. It has taken Sainsbury to lock their barriers to prevent boy racers. If this is approved, I feel it would impact the area on the amount of traffic and no human or animal would feel safe leaving their homes. If the council put barriers or speed bumps on the road along the stretch of road which passes the area, this would curtail the speeders.

-Traffic in the Crindau area is already horrendous for a residential area.

-We have enough traffic and the majority are speeding drivers bombing up and down Albany Street as it is. Trying to pull out of The Turnstiles safely, is a joke how one of us residents hasn't been crashed into or a child run over as yet is beyond me. We have had two stationary vehicles crashed into on Albany Street in the last few weeks alone. We also have so much

McDonalds rubbish thrown around Albany Street anyway. For the safety of my family and friends I completely object to these plans. If you want to help our residents turn Albany Street into a no through Road near us at The Turnstiles. If NCC approves these plans, there will be a death.

-Living in the above area I am objecting to the planning of another drive through takeaway which will result in noise nuisance. I believe having lived here for 30 years we do not need another takeaway. The problems and issues now with having McDonalds is the 24 hour noise especially during the night of noisy cars that meet here and then use it for a race track around the streets. Also rubbish is an issue. The noise at night can be horrendous some nights. This area is a residential place with enough traffic now.

-I object to this application due to the concern surrounding the increased traffic, it will bring to the area. Albany Street is already suffering with increased Traffic from the Dual Carriageway for Sainsbury's using Albany Street as a through road to McDonald's. This causing multiple road traffic collisions, speeding and other traffic-related issues. My overall rejection is based on health and safety concerns. I believe that the road leading from North of Albany street to South requires total review and enhanced traffic management systems in place at its current state. Never mind further retail units or eateries creating further traffic.

6.2 COUNCILLOR DAVID FOUWEATHER: This application should not be dealt with on the delegated schedule as I believe like the Aldi application it has many benefits for the community and will enhance the street scene and overall wellbeing of the area. Therefore if you are minded to refuse this application I will call it into the committee for a decision for the above reasons.

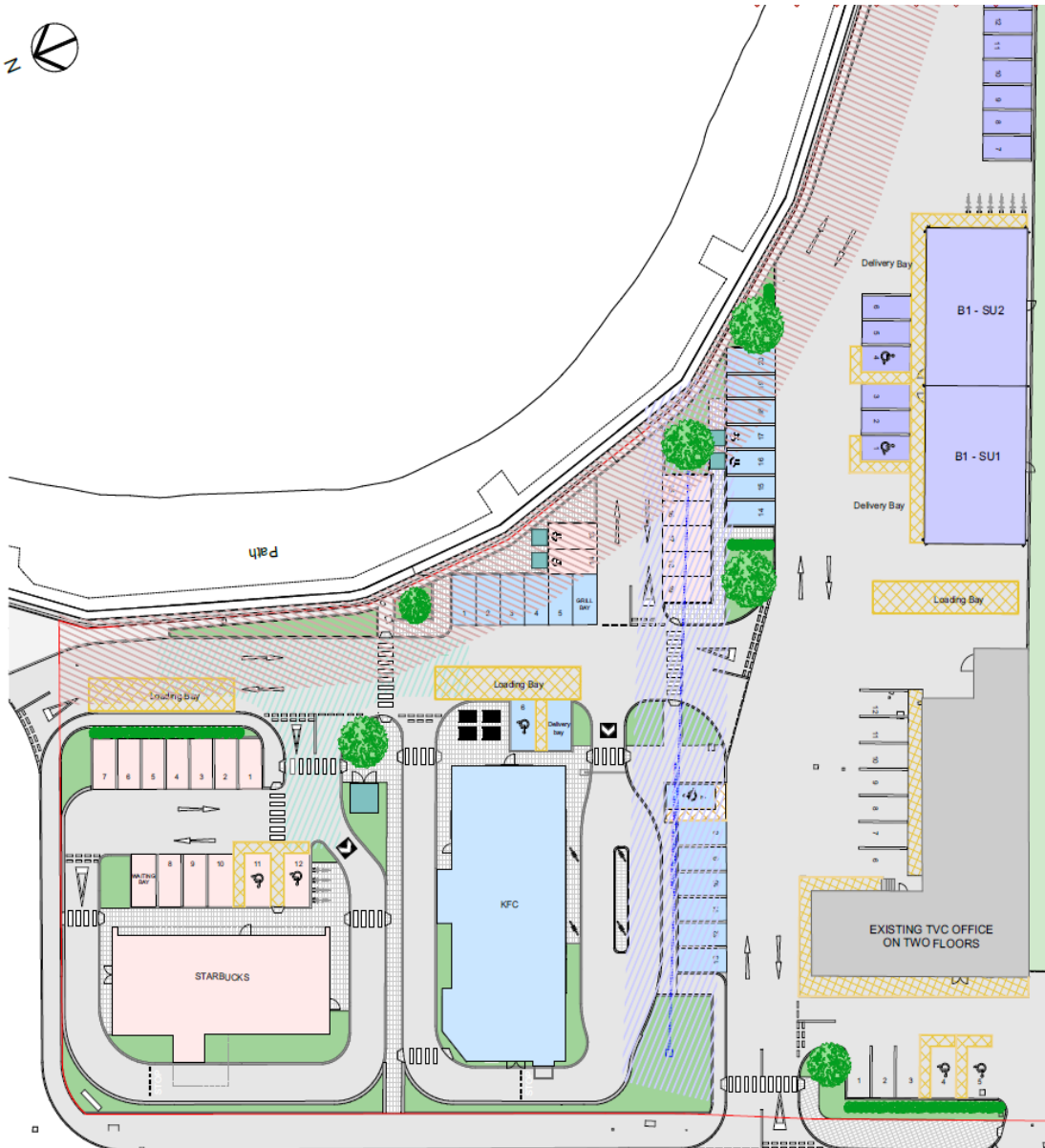
6.3 COUNCILLOR PAUL COCKERAM: Offers support for the application for the following reasons:

The possibility of additional employment for our residents in the City.

Natural Resources Wales spent £13 million of flood prevention along this stretch. Does this mean that all applications along the river will be refused because of the possibility of flooding. I do not accept the fact that it will have a detrimental effect on the City Centre.

7. **ASSESSMENT**

7.1 The proposals comprise a drive thru coffee shop and cafe to the north of the site, a drive thru fast food restaurant to the south of that, retention of existing offices on site and at the rear of the offices a building measuring 30m in length is proposed adjacent to the southern boundary with The Turnstiles for employment uses (B1). The building is sub-divided into two units of equal size. The site is currently in use for construction related commercial storage. The A3 units would front Albany Street effectively turning their backs on the river. Parking serving the A3 units is primarily at the rear of the buildings although some is proposed to the side of the KFC unit along the boundary with the employment side of the site. The proposals also include two new electricity sub-stations, one of which is located centrally within the site between the two commercial units and the other is situated opposite the new employment buildings. The site layout plan can be seen below with the drive thru lanes wrapping around the buildings:



7.2 The existing access from Albany Street will serve the retained offices (currently occupied by an engineering firm) and the new B1 units to the rear via a new internal access road. A new access is proposed to the north of the site to access the commercial A3 units that are proposed on land currently in use for external storage. This access is reliant upon third party land located north of the site. There would also be vehicular interconnectivity within the site between the commercial side of the site to the north and the industrial units to the south.

7.3 As noted above the site is in Flood Zone C1. Natural Resources Wales has recently completed flood defence works on the site perimeter to provide a sheet piled floodwall along Crindau Pill. These works protect present day flood risk with added climate change considerations but are not intended to protect the lifetime of future developments such as this.

7.4 The key considerations of this application are:

- Retail need; quantitative and qualitative
- Sequential Test
- Flooding
- Design
- Impact on residential amenity
- Bio-diversity
- Parking / Access / Circulation
- Design

- Landscaping
- Riverfront Access
- Regeneration Benefit / Employment and loss of industrial land
- Archaeology

7.5 **Retail Need**

The proposals include two A3 units located outside of any retail centre designated in the Newport Local Development Plan. In such locations it is necessary to show that there is sufficient need to justify the provision of a retail unit (or use best located in-centre) outside of a designated centre and in accordance with strategic LDP policy SP19. Consideration should then be given to whether an appropriate site was available within a centre. Recent caselaw (*Waterstone Estates Limited v. The Welsh Ministers*) has established the primacy of the need test within Wales. The proposals equate to less than 2500m² floor space so it is not usual for the applicant to examine retail impact on existing centres via a retail impact assessment but it is open for the Local Planning Authority to require it if considers such an assessment to be justified.

7.6 To prove need the applicant must identify a catchment, calculate the available retail expenditure within that catchment and compare that with the existing retail provision within that catchment to identify any shortfall that can serve the proposal. Any assessment of need must be commensurate with the proposal. In out of centre locations, if there is no expenditure capacity/need to serve new uses best located in a defined centre (as defined centres are more sustainable focal points of retail and community facilities per se) there is a simple policy presumption against the development. The overall methodology is well established but can be subject to interpretation and certain levels of assumption.

7.7 Planning Policy Wales, Edition 11 (PPW11) states at paragraph 4.3.14 that:

In deciding whether to identify sites for comparison, convenience or other forms of retail uses in development plans or when determining planning applications for such uses, planning authorities should first consider whether there is a need for additional retail 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.

7.8 It is stated within paragraph 4.3.15 that:

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.

7.9 National Policy is very clear that need is the key consideration when assessing out of centre retail applications or uses best located within a centre such as A3 food and drink operations. As noted, in this case quantitative need has not been robustly shown and this Policy test is failed.

7.10 National Policy also allows justification for new out of centre uses best located in centres on qualitative need. PPW11 advises at Paragraph 4.3.16 as follows:

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

- *supports the objectives and retail strategy of an adopted development plan or the policies in this guidance;*
- *is highly accessible by walking, cycling or public transport;*
- *contributes to a substantial reduction in car journeys;*
- *contributes to the co-location of facilities in existing retail and commercial centres;*
- *significantly contributes to the vibrancy, attractiveness and viability of such a centre;*

- *assists in the alleviation of over-trading of, or traffic congestion surrounding, existing local comparable stores;*
- *addresses locally defined deficiencies in provision in terms of quality and quantity, including that which would serve new residential developments; or where it;*
- *alleviates a lack of convenience goods provision in a disadvantaged area.*

7.11 In this case the proposed site is not allocated in the adopted LDP and the development would not support any local retail strategy or the centre first stance supported by PPW11. The site can be accessed on foot from adjacent areas of Crindau but not wider areas due to the presence of Heidenheim Drive and the River effectively limiting pedestrian routes to the site. A bus service operates from the city centre to the Sainsbury's store near the application site between 09:30 and 13:10 and customers can walk through to Albany Street from the drop off point, however this is a private service provided by Sainsburys. There is no bus service accessing Crindau and people would need to get off the bus on Malpas Road and walk through the limited overbridges / underpasses that cross the A4042 (Heidenheim Drive) and then walk some distance to the units along Albany Street.

7.12 The site is adjacent to Cycle Route 88 from the city centre to Caerleon by way of Crindau. As such cycle access is possible but the route is not in reality car free. Some northern elements near the site have a combined footpath / cycle way but elements to the south are on road since footpaths are narrow and houses access directly onto the pavement. This section of Albany Road is relatively narrow, heavily parked and subject to HGV traffic. It is not a welcoming route for cyclists or pedestrians. The alternative via Ailesbury Street and the Sainsbury's site is also not car free and is somewhat contrived. Although lacking through traffic it is also heavily parked and not particularly welcoming. In effect the routes are typical of retro-fitted cycle routes being at best adequate and frequently interrupted requiring cycling on roads that are vehicle dominated and therefore not especially attractive to cycle traffic particularly children or more timid riders. As such Officers conclude that the site would fail the Policy test since it is not highly accessible on foot or on the bus and bicycle access is not as good as it would appear on paper. This is to be expected given its out of centre location. The applicants effectively argue that the development of the A3 units is justified by "need" and this seems predicated on the 'catchment' for the both being passing motorists on the road network with limited walk up trade from the surrounding area. The catchment for the A3 units is effectively diffuse and will not be harmful to any in-centre location as drive thru operations should and can be considered as distinctly different to in centre outlets. However, it is clear that the drive thru elements of both units is limited indeed. Both offer large areas of sit down area and are restaurants/cafes etc. The drive thru element is limited.. Removing the drive thru label renders both proposals A3 sit in outlets that can be accommodated in any centre. Furthermore, these units are not located on a major strategic route such as the M4 and any claim that they will cater for passing motorists on the A4042 or M4 is weak as the site does not adjoin either. It would also require users of the M4 to leave the M4 and take a convoluted re-route via Malpas to re-join the motorway. In short, it is unlikely to prove attractive to such motorists in any case and the whole "drive thru" element that the applicant argues requires an out of centre location, is tenuous. The primacy of centres, their viability & vitality, must carry significant weight and in this case, the A3 uses are not appropriate in this location and there is no information that demonstrates otherwise.

7.13 The applicant's retail assessment is underpinned by the premise that as drive thru units they have different operational requirements that mean it is difficult to locate the units in the town centre as they are required to be positioned adjacent to major highway infrastructure and centres are subject to comparatively low numbers of passing vehicular trips, or in the case of city centres, are pedestrianised. The Council acknowledges that consideration must be given to this and a degree of flexibility must be applied by LPA's in determining applications for such uses as supported by Appeal Case - APP/00830/A/05/1182303 which discusses the suitability of drive thru facilities within City Centre locations. In his concluding comments, the Inspector confirmed:

"It is difficult to envisage how a developer could be flexible in respect of the format of a drive thru restaurant. Unlike a conventional restaurant, which could be easily accommodated on

any of the identified sites, a drive thru, by definition, requires vehicular access and circulation through and around the building.”

- 7.14 The supporting documentation refers to appeal decisions which establish drive thrus as having an individual format and operational needs that differ from the same types of use found in defined centres where there is no drive thru element or where a drive thru element would not be appropriate. Despite these appeal decisions, it is clear from the national policy position in Wales that the proposed land uses are more appropriately located with defined centres, particularly through Policy 6 of Future Wales. Paragraph 4.2 of TAN 4, clearly states that food and drink establishments should be directed towards higher order centres. It is also clear that the drive thru label is just that. The primary purpose of the proposal is to provide sit in floorspace for A3 food and drink consumption and there are many examples of drive thrus locally that attract a lot of “park up” traffic.
- 7.15 Whilst there is a drive thru element to the proposals and the supporting documentation accompanying the application refers to appeal decisions which establish drive thrus as having an individual format and operational needs that differ from the same types of use found in defined centres, the units are of large scale for such uses and incorporate significant sit in floorspace. They are, to all intents and purposes, A3 restaurants/café establishments that have been given a “drive thru” label/ element. For example, the plans show 25 tables (78 seats) for KFC and whilst specific table numbers are not annotated on the floor plan for Starbucks, the size of the area available for seating appears to be of a comparable scale to KFC. Existing “drive thru” units in Newport and elsewhere will often bear this out with high demand for parking spaces alongside unit with limited drive thru trade apparent. As such, whilst described as ‘drive thru’ in reality the units will primarily function as sit-in A3 units and should be assessed as such for the purpose of establishing retail need.
- 7.16 The applicant has referred to the recent granting of planning permission by the Council to the west of the city in Maesglas Retail Park which was for the development of 2no A3 units (1no drive thru and 1no standalone) and 1no A1/A3 drive thru unit. In the assessment of that application due consideration was given by officers to the drive thru business model which it was stated *“requires a prominent and visible roadside presence and that whilst the proposal did not accord with the town centre approach, the operational requirements mean it is difficult to locate the units in the town centre.”* However, also of particular relevance in that instance was the historical/fallback use of the site for retail and proximity to neighbouring retail parks and the subsequent co-location benefits. The provision of an A3 unit on an established site with retail consent is not the same as siting new A3 units out of centre on an industrial site. There is no historical retail use in this instance, the site being in employment use and the co-locational benefits are afforded only limited weight, particularly given its lack of sustainability.
- 7.17 The retail information accompanying the application contains no quantitative data and is solely based on qualitative arguments. The applicant’s qualitative assessment states that there is a distinct lack of KFC and Starbucks drive thru provision within the area and identifies the nearest ones are in the city centre approximately 1.66km away. The applicant states there are no KFC and Starbucks drive thru provision along the M4 or A4042 within the study area although the parameters of the study area are not defined. The nearest KFC and Starbucks drive thrus are situated 3.65km to the south along Docks Way and by reason of this the applicant concludes that these units serve a different trade with the city centre units serving pedestrians who are already within the City Centre. Whereas the proposed development will serve passing vehicular trade who are traveling along the M4 or A4042, shopping within the adjacent Sainsbury’s or employed within the surrounding industrial uses and as such the new units are not destinations in their own right, they will not attract trade from the city centre and will not impact upon its vibrancy or vitality. This argument is considered flawed and weak. To argue that a named occupier is poorly represented in the locality and not currently in a nearby centre so should be allowed to develop an out of centre site is an argument that could be repeated anywhere with very significant implications for the Council’s defined retail centres. The reference to passing trade from the M4 is discussed above and is also disputed.
- 7.18 In addition to the above justification offered by the applicant in support of the proposals the applicant states the qualitative need for the development is further established by way of the drive thru element being 100% pre let (in terms of units proposed) to national operators,

which they affirm demonstrates that the operators have identified that they are underrepresented in the area to the north of Newport City Centre along the M4 and A4042. The applicant states that the Shaftesbury ward is limited in terms of range of food and drink offer with no KFCs or Starbucks outlets located within the ward and the only comparative operator would be McDonald's which also features drive thru provision along Lyne Road and that consequently, local residents do not currently benefit from the full range and offer of coffee / café outlets and it is considered that there is currently a lack of consumer choice and a diverse food and beverage offer within the area. Sainsburys also has a café outlet, Vanilla Spice is an A3 unit with takeaway facility and there are several A3 operators in Malpas district centre. Whilst Starbucks and KFC may have nearest outlets in the city centre, to argue the catchment is poorly represented by food outlets is not a point well made out and again, if this area of Newport is poorly represented it would beg the question of what area of Newport is well represented by A3 outlets. Neither of these named operators have unique formats or product offerings. They are standard fast food and drinks takeaway or café/restaurant outlets that can operate within centres and do. Whilst some named occupiers may have an element of brand loyalty amongst customers that will travel further and longer to access their services, this in no way justifies the location. Any overriding need to be sited in this unsustainable, out of centre location is not made out well or at all.

- 7.19 The retail need information accompanying the application is significantly lacking and flawed and is not considered to justify the scheme and such justification could be replicated by any retailer (or use best located in centre) that does not already have a presence within the study area. There is a policy presumption against the development and this must carry very significant weight indeed.

The proposal is contrary to policies SP19 and R8 of the adopted Local Development Plan.

7.20 **Sequential Test**

Case law in Wales is clear that retail tests relating to sequential test and retail impact are not required in the event that need cannot be shown. Whilst need has not been demonstrated in this instance, for the purpose of completeness the sequential test supporting the application has been examined.

- 7.21 National policy allows for the application of a sequential test in the event that need is identified. The purpose of this is to clarify whether locations within or next best, adjacent to existing centres can accommodate the proposed development. Failing that out of centre locations can be considered. The purpose of the policy is to support and enhance existing retail centres by making sure new development is either within an existing centre or immediately next to one. This is also reflected in local policy where SP19 requires the sequential test to be applied to all retail locations outside of the city and is particularly important in areas where defined centres are known to be experiencing decline or pressures upon their vitality and viability. Newport city centre is top of the hierarchy of centres in the Council's administrative area and is the focus of all commercial services serving the entire population of the City. Pressures upon it and other defined centres, arising from reduced retail expenditure capacity in the catchment, leakage of expenditure to neighbouring centres outside Newport, increased vacancy rates in centre, loss of anchor stores and well known brands/chains and lack of new commercial start ups in centres along with evidence of decline/lack of vitality and general vibrancy and environmental decline have significant adverse impacts upon these centres and the city as a whole in both the short and long term. To repeat development of out of centre sites for uses best located in centres without very robust justification and satisfaction of retail planning policy objectives would be reckless.

- 7.22 In application of the test it is for the applicant to robustly show that no more appropriate site is available or suitable. Caselaw requires a degree of flexibility is shown in site assessment in order to prevent an applicant setting such a stringent requirement that only their chosen site could ever meet it.

- 7.23 The proposal is made up a number of units with a mix between Use Classes A3 and B1, as well as ancillary parking. Sites examined for the purpose of the sequential assessment have been identified on the basis of these uses being delivered on one site instead of being split across several sites. The approach has:

- Discounted sites within the City Centre as they are too small
- Discounted land to the east of the City Centre on the basis that planning permissions are live and the site is therefore not available.
- Discounted the Aldi unit within Malpas District Centre, which is likely to become available in the short term, as it is not currently available and is not sufficient to address floor space requirements.
- Discounted Maindee District Centre, Caerleon District Centre and nearby defined Local Centres on the basis of no suitable sites.

7.24 Of the sites identified, it is considered that land within the south of Malpas District Centre, which forms Discovery Park could have potential as a sequentially preferable site. However, the applicant discounts the site on the basis that it is not large enough to accommodate the proposals and would be reliant upon the construction of the new Aldi store so that the existing Aldi store can be vacated. It is stated within the supporting information that the financial revenue received from the drive thru units will bring forward the delivery of the employment units. In short these elements are severable and the proposed site layout would also support such a conclusion. The retail/food and drink elements can and may be delivered without the industrial elements. The sequential test is not considered to be a robust argument for why the units must be delivered on one site and in fact the evidence appears to confirm they do not need to be at all. Furthermore, development of the new Aldi store is underway and given the likely timescales for completion it is considered an entirely reasonable prospect for the existing Aldi store site to become available.

7.25 As such the conclusions of the Sequential Assessment are not accepted in policy terms as according with TAN 4 and PPW. Notwithstanding this, the need for the proposed A3 uses have not been established in accordance with local and national policy.

7.26 **Amenity**

As noted above there are residential properties neighbouring the site to the south at 'The Turnstiles'. In general terms the proposals do not result in concerns relating to the relationship of uses with these properties given the existing light industrial use of the site and the mixed character of the area. The commercial units will be sited to the north of the site and are therefore unlikely to give rise to overshadowing. They will however represent a substantial new building close to the rear boundary of residential gardens. Whilst B1 uses can reasonably co-exist alongside residential units, the building itself will represent a prominent new feature when viewed from the rear of 30-32 The Turnstiles. The 2no light industrial units are proposed along the site's southern boundary having a height of approximately 7m adjacent to residential properties in The Turnstiles. The neighbouring residential properties are sited with their rear elevations facing the southern boundary of the application site with their rear gardens backing onto the intervening boundaries having a depth of around 11m. No windows are proposed in the rear elevations of the industrial units and privacy is therefore not of concern. Officers are also conscious that the existing use of the site offers opportunities for external storage and associated activity and trafficking of vehicles and plant close to the shared boundary but as this is a light industrial site, such activity is unlikely to give rise to noise and disturbance concerns and the Council's Environmental Health Officers have raised no issues in this regard.. There are intervening trees near to the intervening boundary with the proposed building which provides a level of screening and on balance given the distances involved it is not considered that the buildings will result in an adverse impact to the amenity of neighbouring amenity.

7.27 The Council's Environmental Health officers have requested conditions relating to plant and noise equipment, fume extraction, external lighting and waste management in the interests of neighbouring amenity. A construction environmental management plan (CEMP) is also requested if planning permission is forthcoming. A condition requiring a noise assessment in the event that the units are to be used for B2 purposes is also requested. However, given the mixed character of the area containing residential dwellings it is considered that such acceptability would need to be established in principle prior to planning permission being granted for B2 use and a noise assessment cannot be conditioned. In any case B2 use is not being sought under this application.

7.28 **Highways Matters**

The applicant contends that as there is a bus stop situated approximately 540m away on Malpas Road which has numerous services stopping at it, the site is therefore sustainable. However, as noted above people using this bus service would need to walk through the limited overbridges / underpasses that cross the A4042 (Heidenheim Drive) and then walk some distance to the site along Albany Street. The result of this is that the likelihood of the site being accessed by public transport is limited.

- 7.29 In respect of Active Travel, whilst Albany Street comprises part of National Route 88 cycle access is possible but the route is not in reality car free. This section of Albany Road is relatively narrow, heavily parked and subject to HGV traffic. It is not a welcoming route for cyclists or indeed pedestrians. The alternative via Ailesbury Street and the Sainsbury's site is also not car free and is somewhat contrived. As such Officers conclude that the site is not highly accessible on foot or on the bus and bicycle access is not as good as it would appear on paper. The proposals are not consistent with the transport hierarchy established in PPW. Furthermore, the drive thru elements of the scheme will clearly be attractive to motorists and will effectively invert the sustainable transport hierarchy identified in PPW11. Officers are conscious that Albany Road will likely see more car born traffic arising from the Aldi development and objectors have already raised significant concerns for the use of Albany Street by vehicles and associated speeding etc. The opportunity for its use as a rat run is also noted. Whilst this part of Albany Road has mixed commercial and residential character, further south it is dominated by residential units fronting the highway. Significant loading of the route would likely cause adverse impacts.
- 7.30 The Council's Highways officer objects to the proposals and raises concerns with regard to servicing, parking, inclusion and sustainable travel policies, particularly those relating to the safety of vulnerable highways / site users. Namely, concerns are raised in relation to internal circulation and connectivity for pedestrians and cyclists and swept path analysis has failed to demonstrate adequate servicing provision. Further information regarding access rights from the Aldi site to the north is required.
- 7.31 Officers consider that the proposal, notably in relation to the A3 units, is overdeveloped and results in a highly complex arrangement of loading, access, general servicing and parking. Priority is clearly given to the motorist with pedestrian and cyclists given no priority. Loading areas are shown on internal roads, in some cases blocking parking spaces and inhibiting internal manoeuvres. Access by larger vehicles is entirely reliant upon egress or access via the northern point off the Aldi development site but there is not assurance that this will be provided and we know, as per previous considerations, that the applicants themselves are unconvinced on the timescales for delivery of this site (refer to sequential test assessment). If we are assured on the delivery of, retention of and general user rights of access over the Aldi accessway, the layout on this site is poor. Vehicles egressing from the one way system around the drive thru units, do so with impeded visibility arising from loading bays and all drivers will have multiple hazards to consider including pedestrian crossing points, reversing vehicles, loading in the highway, one way routes etc. The industrial part of the development in contrast completely disregards pedestrian and cyclist routes and provides none yet the application is based on this being a mixed use scheme with assumedly a clear expectation of users of the industrial element also being users of the A3 scheme.
- 7.32 It is considered that key junctions near to the site such as Heidenheim Drive and the Harlequin roundabout are operating at theoretical capacity at present and officers are concerned about any further loading of these junctions. Whilst the Transport Statement accompanying the application includes analysis of the likely trip generation, there is no assessment of the junctions. The anticipated increase in traffic as a result of the proposals is concluded to be insignificant and it is assumed that as this site is not located directly on, or overly visible from the primary highway network, the outlets will primarily trade off Sainsburys and Aldi traffic as well as some local traffic. This seems inconsistent with other arguments in relation to the drive thru attracting motorists using the M4 and A4042. If the A3 elements will rely primarily on traffic using the neighbouring supermarkets as "this site is not located directly on, or overly visible from the primary highway network" (extract from Transport Statement by Entran) then the relevance of the strategic highway network "need" for the proposals in this location, and officer reservations regarding the retail justification

provided, appear well founded. It is not appropriate to argue that the proposals will primarily attract dual trips to off set trip generation tables and then argue that a need arises as the brands are not represented along the M4 or the A4042 for retail planning policy purposes. One or both arguments are flawed and are clearly incompatible. However, whilst officers acknowledge that some of the visits to the A3 units will be in combination with adjacent supermarkets, it is considered that the units will inevitably draw customers who are not visiting the supermarkets and so will have a draw of their own. This seems unlikely to arise from passing trade on the M4 or indeed the A4042 as the scheme will not be readily visible from either, so it is more likely trips from the local area and further afield to specifically collect products by these brands. The applicant's retail analysis would appear to suggest that such an attraction is expected and relied upon as it points to the lack of the brand representation in the area being a factor in support of its location on this out of centre site. For these 2 brands to rely entirely on shoppers using Aldi and Sainsburys as its business base (with some trade assumedly from adjacent businesses and occupiers) would seem entirely unrealistic and not well made out in terms of the evidence provided. Whilst limited weight is given to this account of vehicle trip generation offered by the applicant (which suggests that 70% of the approximately 161 two-way trips in the AM peak hour and 172 two-way trips in the PM peak hour [for the A3 units alone] can be offset or discounted as will be vehicles already on the highway going to Sainsburys or Aldi), it must also be noted that it is only relevant to the A3 units and not the employment uses which in reality are likely to be the sole destination for the staff and visitors. In short, there are inconsistencies amongst the supporting documentation and the arguments used to favour the proposal are often conflicting.

7.33 Officers do not agree that the site is highly sustainable and the cumulative impact of this and other retail and similar activities best located in centres has the potential to significantly increase private vehicle traffic in this location alongside HGV and commercial/industrial traffic and in an area where cycle and pedestrian access is poor or reliant upon, in the case of cycle traffic, the existing street carriageway. In the absence of information to demonstrate otherwise officers have significant concern with regard to the proposals in particular from a highway safety perspective and consider them unacceptable in this regard. The B1 units and development of such units on this employment site will likely attract comparable types of traffic to the existing occupiers and users of the site and subject to suitable use controls, such units generally have a much lower expectation for car borne visitors as are not open to the public in the same way as A class uses. The Transport Statement appears to confirm this. The ongoing use of an industrial site for industrial purposes appears to have merit in principle and subject to suitable servicing, and access arrangements to serve the proposed B1 units and suitable conditional controls regarding their use, the traffic implications of this element of the proposal are likely to be compatible and potentially acceptable.

7.34 **Flooding**

The site lies within Flood Zone C1 (defended flood plain) of the River Usk. The site is immediately next to the flood walling recently installed in Crindau by CNC/NRW. Under national policy (Technical Advice Note 15 – Flooding) development must be justified in floodplain locations.

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

is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
ii Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;

7.36 In this case the Local Authority Strategy is the adopted Local Development Plan (there is no regeneration initiative for Crindau). The proposal has been found to be contrary to locally adopted retail policy and other policy elements as listed below. In broad terms the proposal does not accord with local policy and nor does it contribute to key employment objectives necessary to sustain an existing settlement or region. The proposal, cannot be justified in the chosen location and therefore fails the first and most fundamental locational test as set out in TAN15. The appeal site lies adjacent to a site where commercial development has been permitted in recent years (Aldi) and within the settlement boundary designated by the LDP.

Whilst TAN 15 identifies a 'local authority strategy' as the development plan for the area, other than lying within the main settlement boundary for Newport, the site is not subject to any other specific LDP designation or allocation. There is therefore little to indicate that this location is of key strategic importance to the LDP. Supporting information with the application notes that the proposal would address an existing alleged lack of drive-through restaurants in Crindau. Consequently, this argument would suggest that the development would result in an economic and employment uplift, including the provision of around 60 FTE jobs following completion. Whilst undoubtedly a positive benefit, the contribution to strategic objectives is modest. There is therefore little to indicate that the scheme, in this location, is necessary to assist or contribute to the overall LDP strategy or sustain the settlement of Newport.

- 7.37 Although the existing use and the proposed use are both less vulnerable in flooding terms it is difficult to see the proposal as a betterment in flood risk terms since we are told it will attract more people to the site. The proposal would generate additional activity and movement but the proposed A3 uses would not be located within a district or retail centre or a strategic development site where such outcomes may be specifically pursued by the LDP.
- 7.38 The applicant has provided a flood consequences assessment to support the application. The site is predominantly flat with levels ranging between a minimum of 7.65 - 8.20m AOD although more commonly within the range of 7.70m - 8.00m AOD. The existing NRW maintained flood defence to the east has a crest level of around 9.15m AOD. Site levels are stated to be staying the same or reducing. The FCA concludes that the finished floor levels (FFL) of the new buildings should be set at 8.20m AOD which is higher than the existing ground levels on the site. The FCA states that it will be impracticable to raise the site further due to the need to tie into the existing buildings on site and issues of access and topography.
- 7.39 NRW advise that the application fails to demonstrate that the risks and consequences of flooding can be managed to an acceptable level. All development should be designed to be flood free in accordance with A1.14 of TAN 15. Based on the FCA and the appropriate lifetime of the development (75 years), the site is not compliant with the requirement of A1.14 of TAN 15.
- 7.40 In response to NRW's advice the applicant states, *'it is hoped that a pragmatic approach can be taken given that the site remains in accordance with TAN 15 for the next 55 years based on current climate change projections.'* In response NRW advise that *"Whether this represents a reasonable period, in this instance, over which the impact of climate change on flooding predictions should be considered is a matter for the Planning Authority to determine. Our advice is in line with Welsh Government guidance which states that commercial units should be designed to a 75-year lifetime of development. In addition, we note GP1 – General Development Principle – Climate Change, section 3.6 (as outlined in Newport Local Development Plan 2011-2026) which states '...The impact of climate change and sea level rise will require continued and improved flood risk management schemes. Developments must reflect a lifetime appropriate standard of design. In the case of residential development 100 years is required and for employment and industrial development 75 years.'*
- 7.41 NRW advise that due to the immediate proximity of the development to the flood defences, in a tidal overtopping scenario the site would be affected immediately during the 0.5% (1 in 200 year) plus CCA tidal flooding event in 2100 (75 year lifetime of development) and the entire site would be inundated within approximately 10 minutes and the site fails to comply with A1.14 of TAN 15.
- 7.42 In response to the applicant's comments that *'the site is currently defended and that for there to be a tidal flood risk to the site assumes the current defences will not be 'improved or raised within the next 55 years'*, NRW refer the LPA to the FCA in which it is recognised and *'expected that the current level of protection provided by flood defences would be maintained.'* The existing flood defences are in place to help mitigate the flood risk to existing developments, not to facilitate new developments. It is also noted in the FCA that the 'Hold the line' policy is an aspiration rather than a commitment. Therefore, the future upgrading or raising of existing flood defences cannot be guaranteed and this should be given appropriate weight in your determination of the planning application.

- 7.43 In addition, NRW note that the applicant states the *'flood risk from fluvial sources is very minor with tidal sources being the dominant risk. As such the risk from fluvial flooding is considered to be negligible. Nonetheless, we have reviewed the product 6 data provided by NRW however this contains no fluvial data with which to make a further assessment. In addition, the Crindau Flood Alleviation Scheme – Flood Consequence Assessment by JBA considers the Crindau area to not be at significant risk of fluvial flooding.'* NRW advise that the site is shown to be partially within Flood Zone 2 and 3 (Fluvial). NRW note the reliance on information stated in reports from 2014. However, NRW do not consider the information submitted to be sufficient to give any technical comments in relation to fluvial flood risk. NRW comments regarding fluvial flood risk in this instance are provided to highlight that they cannot provide a technical response on this source of flooding. In this regard the FCA can be considered lacking. NRW confirm that they consider the site fails to comply with the requirements of TAN15. As the proposal fails to demonstrate that the consequences of flooding can be acceptably managed, and it is unlikely these requirements will be met, they object to this proposal.
- 7.44 In flood terms the proposal is contrary to Policy SP3 (Flood Risk) and GP1 (Climate Change) of the adopted Local Development Plan (2011-2026) since national guidance on flooding (TAN 15) is not complied with. The development is not justified in this location as includes uses best located in a centre and for which there is no justification and the consequences of a flood event cannot be acceptably dealt with
- 7.45 The applicant has referred to a recent decision issued by the Council relating to the adjacent site and the development of a large retail shop (application 22/0438). In that instance it could also not be demonstrated that the development was in accordance with local and national flooding policy. Officers duly acknowledge that decision which was made by Planning Committee . However, every application must be assessed on its merits. In that instance, in reaching their decision the Planning Committee Members gave significant weight to the fallback position (an extant planning permission for the same use at the site); the regeneration benefits of the scheme and the improved customer experience which would allow a larger range of goods to be stocked by an existing retailer represented close-by. There are no such benefits associated with this application. To the contrary, the proposals have been found to conflict with locally adopted retail policy and other policy elements and are otherwise without any merit which would weigh significantly in favour of the proposals and warrant the approval of the scheme despite being contrary to local and national flood risk planning policy and objection from NRW.

7.46 Ecology

The site is immediately adjacent to the Crindau Pill Site of Importance for Nature Conservation (SINC), and very close to the River Usk SAC and SSSI. The application is supported by a Preliminary Ecological Appraisal. The Council's Ecology officer has been consulted and agrees with the findings that there are unlikely to be any significant impacts upon protected species or habitats within the red line boundary of this proposal. However this document does not consider the need for a Habitats Regulations Assessment (HRA), nor does it provide the LPA with sufficient information to undertake a HRA. This information should be provided to allow the LPA to undertake a HRA of the scheme upon the River Usk SAC. Chief Planning Officer letter October 2023 further highlights and strengthens the approach to the protection of SSSI's. This is unfortunate as the agent was advised, at pre application stage, that this information would be expected and that a Habitats Regulation Assessment would likely need to consider impacts arising from, for example, contaminated surface water during operation and construction, vibration during construction piling, noise and lighting during construction and operation which may disturb otters, a feature of the SAC. The NCC Ecologist has provided a pragmatic final response on this submission and advised that subject to appropriate conditions some of these potential effects could likely be mitigated. However, otters are also a European protected species, so we would also need confirmation from NRW that they would be likely to grant a licence for works which may affect this species, taking into account any mitigation proposed. NRW has raised concerns in relation to light spill and landscape proposal fulfilment in its response. This corresponds with queries raised by the NCC Landscape Officer and NCC Ecology Officer and further clarity is required regarding landscape and boundary treatment works. In short, the updated landscape plan does not include the quality of information or the required confidence that a satisfactory approach can be achieved in this regard. At present, it is clear that the Council does not have

sufficient information to complete a HRA but it is required to do so prior to any grant of planning permission. This shortcoming must weigh heavily against the scheme and be a reason to refuse it.

- 7.47 A statutory duty as set out in section 6 of the Environment (Wales) Act 2016 has been introduced which requires public bodies such as Newport Council to seek to maintain and enhance biodiversity, and in doing so to promote the resilience of ecosystems, in the exercise of their functions. Furthermore, section 6.4.3 of Planning Policy Wales states that:- *'The planning system has a key role to play in helping to reverse the decline in biodiversity and increasing the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement.'* In his letter to Heads of Planning of 23/10/19, the Chief Planner emphasised this point with the following:-

'Planning Policy Wales (PPW) 11 sets out that "planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means that development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity" (para 6.4.5 refers).', and *'... where biodiversity enhancement is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise it will be necessary to refuse permission.'*

- 7.48 The Council's Ecologist also advises that any sustainable drainage system at this site will need to adhere to the six statutory standards for SuDS, one of which (Standard 5), is the Biodiversity Standard. This means that the SuDS will need to demonstrate that biodiversity has been maintained and enhanced as part of the drainage system. The Ecology officer considers that insufficient soft landscaping details have been provided with the application to allow the Council to be sure that net benefits for biodiversity will be secured, albeit these comments were made prior to the submission of the soft landscape proposals and given the unacceptability of the proposals for numerous other reasons officers have not delayed determination in order to seek the views of the Ecology officer following the submission of the information. The lack of information to enable a Habitats Regulation Assessment in this case in accordance with national policy and the Council's statutory obligations must weigh heavily against the proposals.

7.49 **Special Landscape Area & Design**

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

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

- 7.51 A soft landscaping plan has been submitted during the course of the application and the number of B1 units has been reduced to two. The Council's Landscape officer advises that the landscape proposals have potential to be acceptable although some matters still need to be addressed although not insurmountable. This is not necessarily surprising as less built development will enable enhancement of green infrastructure. On 11th October all Heads of Planning in Local Authorities received confirmation of changes relating to biodiversity in particular that will be included in the next edition of Planning Policy Wales but have become effective immediately and are therefore a material consideration in all decisions now made. It requires the inclusion of proportionate green infrastructure statements with planning applications, provides further clarity on securing net benefit for biodiversity and the inclusion of the associated step wise approach to biodiversity assessment via a green infrastructure statement. It strengthens the approach to the protection of SSSIs and promotes new planting as part of new developments. In this case, the proposal attracts concerns from the Council's landscape and ecology officers and does not include a Green Infrastructure statement and, as confirmed above, officers have no confidence that net biodiversity enhancement is achievable or securable via condition. These factors must weigh heavily against the scheme.

7.52 In general design terms the buildings are unremarkable but inoffensive and are typical of the style of commercial and light industrial buildings in the vicinity and are not objected to on design grounds. However, concerns regarding impact on residential amenity are noted above.

7.53 ***Regeneration Benefit / Employment Land***

The site is currently in economic use. Policy EM3 protects existing employment sites being developed for alternative uses unless certain criteria are met. The supporting text specifically identifies uses in the 'B' use classes. The aim of the Policy is to prevent employment land being lost to higher value uses such as residential to the long-term detriment of the city's economic potential. Whilst the proposals include the continued use of part of the site for employment use and the introduction of additional employment uses, the drive thru/A3 aspect of the proposals does not constitute an employment use in LDP terms (B1, B2 and B8) and officers are mindful that it is this element of the scheme that appears to have priority over the development of the industrial units in the applicant's mind.

7.54 Planning Policy Wales Edition 11 advises at Paragraph 5.4.2 that:

Economic land uses include the traditional employment land uses (offices, research and development, industry and warehousing), as well as uses such as retail, tourism, and public services. The construction, energy, minerals, waste and telecommunications sectors are also essential to the economy and are sensitive to planning policy.

7.55 National Policy supports the idea that retail/food and drink uses are economic uses and that they could clearly support employment and the wider economy, however Technical Advice Note 23 reinforces the idea that traditional employment uses inclusive of B1, B2 and B8 land as well as other traditional employment land should be protected (Paragraph 4.6.8) and this includes from retail use and housing. TAN 23 is clear that existing employment sites (as distinct from sites in B use classes only) should only be released to alternative uses such as retail or housing if one or more of the following apply:

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

7.56 The land in question is clearly an existing employment site and is in use and officers conclude that Policy EM3 and the guidance of TAN23 is not met with in this case. The applicant has not robustly shown that this traditional employment land is surplus to requirement and can be discarded without harm to the economic prospects of the city. To the contrary, the applicant has provided information from Knight Frank property sales and lettings that confirms there is a clear demand for business units and the potential units offered at this site would be well received by potential operators although the applicant acknowledges no marketing of the site has taken place for employment uses in B classes and this is assumedly as the site is already in use for such purposes in any case.

7.57 Whilst the Council has recently granted planning permission for the use of employment land to the north as a food retail store, in the consideration of those proposals Members identified the fallback position (there is none in this case), clear economic benefits to the city and wider economy in terms of the uplift in turnover of the new store over the old one and an increased employment offer. There will of course be employment opportunities resulting from this proposal. These have been approximated at 20 FT positions for each A3 unit although the

applicant has not provided a comparison with the existing use and no robust evidence that the economic gains outweigh the loss of the existing traditional employment site.

7.58 In terms of TAN 23 the proposal is not justified through quantitative and qualitative need (the A3 element) and therefore should not be allowed to proceed on the chosen site.

7.59 In conclusion national and local policy is not met in relation to the protection of 'traditional employment land' and this failure has not been shown to be robustly outweighed by any of the economic benefits of the scheme. Whilst the applicant may be able to show compliance with EM3, they have not done so and its criteria have clearly not been met.

7.60 **Ground Contamination & Air Quality**

The application is accompanied by a contamination report. NRW has reviewed the report and note from the soils and groundwater samples submitted that there are some elevations in the metals and hydrocarbons on the site and thus there is some contamination of the site's groundwater. NRW also note the limitations of any groundwater management of the site for minimal environmental gain and consider the amount of effort required to make any meaningful improvement to the contamination of the site's groundwater is disproportionate to the benefit, as the groundwater is likely to be in continuity with the River Usk. NRW request conditions relating to these matters if planning permission is forthcoming.

7.61 The Council's Scientific Officer also raises points in relation to air quality. The site is not in an Air Quality Management Area nor one of the air quality buffers that has been identified for policy purposes, so the 'Air Quality' SPG does not engage here. Charging spaces for electric vehicles can be secured under condition. The Scientific Officer also suggests conditioning an anti-idling scheme for HGV deliveries and a specific planting scheme to improve air quality. Such measures can be duly conditioned if planning permission were to be forthcoming.

7.62 **Archaeology**

The site is archaeologically sensitive. Glamorgan & Gwent Archaeological Trust (GGAT) have raised concerns over the application and require a desk-based assessment of the site to be prepared prior to determination. The study would enable a mitigation strategy to be prepared for archaeology on the site and might go so far as to require Archaeological Evaluation prior to determination of the application depending on what was found in the desk-based assessment.

7.63 The areas of the city adjacent to the river can contain valuable archaeological resources often linked to the city's maritime history. In this case the applicant has not provided the desk-based assessment sought as part of the application process.

7.64 The applicant has not been asked to complete this work given the recommendation that the application should be refused for other insurmountable reasons. However as it stands a statutory consultee is objecting to the application on the basis of a lack of information. The proposal is contrary to Policy CE6 (Archaeology) since no desk based Archaeological Assessment has been undertaken in an area of recognised archaeological interest.

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 Need has not been demonstrated for the units in an out of centre location in accordance with TAN 4 and PPW and whilst not applicable in this instance given the absence of retail need, the sequential test is not considered to be robust.

9.2 The site lies within a defended floodplain. The location within the floodplain has not been justified and nor has it been shown that the consequences of a flood event can be managed at the site. Natural Resources Wales have objected to the proposal. The proposal is contrary to national and local flooding policy.

9.3 The site is not highly accessible by foot or public transport and does not support the aims of Active Travel and effectively inverts the sustainable transport hierarchy identified in PPW11.

9.4 The proposal would see the loss of a traditional employment site whilst failing to demonstrate this would have no adverse impact on the future economic prospects of the City contrary to national advice and local policy.

9.5 Insufficient information has been provided to demonstrate that the proposals will not result in an adverse impact to the ecological interests of the River Usk SAC and SSSI..

- 9.6 It has not been demonstrated that the archaeological resource will be suitably protected on the site.
- 9.7 The economic benefits of the proposals must be considered within the centre's first context and the likely impact on sequentially preferable centres in the absence of information to demonstrate otherwise and alongside all other objections raised. Any benefits arising from employment generation in the A3 units in particular, are outweighed by serious concerns relating to other material and in principle matters.
- 9.8 It is recommended that the application is refused.

10. RECOMMENDATION

REFUSED

01 The applicant has not robustly demonstrated quantitative need for the proposed A3 units nor has sufficient qualitative need been shown to justify approval. This is contrary to national policy and to Policies SP19 and R8 of the adopted Newport Local Development Plan 2011 – 2026.

02 The location of the proposal on a defended flood plain has not been justified and the consequences of a flood event are not manageable over the lifetime of the development causing substantial risk to life and property. This is contrary to national flood policy and Policies SP3, GP1 and CE9 of the adopted Newport Local Development Plan 2011-2026.

03 The proposal is unsustainably located and does not support the 'Sustainable Transport Hierarchy for Planning' espoused in Planning Policy Wales Edition 11 since the site is not highly accessible by walking or public transport and is highly reliant, and indeed predicated, on the use of the private motor car. The site does not integrate well with and prejudices the use of existing Active Travel Routes and prejudices the delivery of identified new Active Travel Routes and is contrary to Policies SP1, GP4, CF4, T5, T6 and R8 of the adopted Newport Local Development Plan 2011-2026.

04 It has not been demonstrated that the proposals are acceptable with regard to impact on key junctions leading to the site, or with regard to pedestrian, cyclist and vehicular movements within the site. The proposals would therefore be detrimental to highway safety, conflict with the sustainable transport hierarchy identified in PPW11 and are contrary to Policy GP4 of the adopted Newport Local Development Plan 2011-2026.

05 It has not been demonstrated that the impact of the proposals is acceptable with regard to the River Usk SAC and SSSI and no green infrastructure statement or information regarding net biodiversity enhancement provisions on site have been provided. In the absence of information to inform a Habitats Regulations Assessment the proposals are unacceptable. This is contrary to Policy GP5 of the adopted Newport Local Development Plan 2011-2026 and Section 6 of the Environment (Wales) Act 2016 and Planning Policy Wales (PPW) 11.

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

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

NOTE TO APPLICANT

01 This decision relates to plan Nos: 001_10, 001_19, 001_20, Existing Site Plan 200.01/01, Proposed site plan 200.01/02, Existing Block Plan 200.01/03, Proposed block Plan 200.01/04, Proposed site elevations 200.01/05, Proposed commercial units 200.01/06, Proposed Starbucks Drive Thru Plan 200.01/07.1, Proposed Starbucks Drive Thru Elevations 200.01/07.2, Proposed KFC Drive Thru Plan 200.01/08.1, Proposed KFC Drivethru Elevations 200.01/08.2, Preliminary Ecological Assessment 24/11/2023, Flood Consequence Assessment May 2023, Transport Statement May 2023, Grounsure Report April 2023, Geo Environmental Site Investigation Report April 2023, Planning & Retails Statement May 2023, Sequential Assessment May 2023, Design & Access Statement June 2023, 1548-01 Revision A Soft Landscaping Proposals.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP8, SP18, SP19, GP1, GP2, GP3, GP4, GP5, GP6, GP7, CE1, CE2, CE3, CE6, CE9, EM3, T2, T4, T5, T7, R8, CF4 and W3 were relevant to the determination of this application.

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

3.

APPLICATION DETAILS

No: 23/0858 **Ward:** Tredegar Park And Marshfield

Type: Full (Major)

Expiry Date: 8th December 2023

Applicant: S Lockwood

Site: Celtic Technology Centre Celtic Way Celtic Lakes Newport NP10 8BE

Proposal: PROVISION OF AN UNDERGROUND ELECTRICITY TRANSMISSION CIRCUIT

Recommendation: GRANTED WITH CONDITIONS

1. INTRODUCTION

- 1.1 This application seeks planning permission for the provision of an underground electricity transmission circuit in relation to the Vantage Data Centres previously approved by Newport City Council in 2008.
- 1.2 The installation of buried electricity circuits are permitted development when undertaken by statutory undertakers. In this case planning permission is required as the Applicant is not a statutory undertaker.
- 1.3 The application is before planning committee for determination as the site is greater than 1.0ha and is therefore a 'major' planning application.

2. RELEVANT SITE HISTORY

2.1

07/1533	RE-USE OF THE EXISTING FAB BUILDING AS A DATACENTRE AND THE CONSTRUCTION OF BUILDINGS TO HOUSE STAND-BY GENERATORS, THE PROVISION OF A SECURITY FENCE AND A GATEHOUSE	GRANTED WITH CONDITIONS
12/0817	RETENTION OF 2NO. CAR PARKS (TOTAL 160 SPACES) IN ASSOCIATION WITH USE OF BUSINESS PARK	GRANTED WITH CONDITIONS
17/0640	CONSTRUCTION OF NEW JUNCTION, NEW CARRIAGEWAY, RESURFACING AND CAR PARK	GRANTED WITH CONDITIONS
18/0330	PARTIAL DISCHARGE OF CONDITIONS 05 (SURFACE WATER DRAINAGE) AND 08 (LIGHTING) OF PLANNING PERMISSION 17/0640 FOR CONSTRUCTION OF NEW JUNCTION, NEW CARRIAGEWAY, RESURFACING AND CAR PARK	APPROVED
21/0760	PARTIAL DISCHARGE OF CONDITIONS 2 (CONTAMINATION), 3 (SITE INVESTIGATION), AND 4 (REMEDIATION STRATEGY) OF PLANNING PERMISSION 17/0640 FOR THE CONSTRUCTION OF A NEW JUNCTION, NEW CARRIAGEWAY AND RESURFACING OF CAR PARK	APPROVED

3. POLICY CONTEXT

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

- Policy SP1 Sustainability
- Policy SP3 Flood Risk
- Policy SP4 Water Resources
- Policy SP9 Conservation of the Natural, Historic and Built Environment
- Policy SP18 Urban Regeneration
- Policy GP2 General Amenity
- Policy GP3 Service Infrastructure
- Policy GP4 Highways & Accessibility
- Policy GP5 Natural Environment
- Policy GP7 Environmental Protection and Public Health
- Policy CE6 Archaeology
- Policy CE8 Locally Designated Nature Conservation and Geological Sites

3.2 Welsh National Marine Plan 2019

National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this application. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals. The following chapters and sections are of particular relevance in the assessment of this planning application;

- Achieving a sustainable marine economy –
 - Contribute to a thriving Welsh economy by encouraging economically productive activities and profitable and sustainable businesses that create long term employment at all skill levels.
 - Provide space to support existing and future economic activity through managing multiple uses, encouraging the coexistence of compatible activities, the mitigation of conflicts between users and, where possible, by reducing the displacement of existing activities.
- Ensuring a strong, healthy and just society
 - Improve understanding and enable action supporting climate change adaptation and mitigation.
- Living within environmental limits
 - Support the achievement and maintenance of Good Environmental Status (GES) and Good Ecological Status (GeS).
 - Protect, conserve, restore and enhance marine biodiversity to halt and reverse its decline including supporting the development and functioning of a well-managed and ecologically coherent network of Marine Protected Areas (MPAs) and resilient populations of representative, rare and vulnerable species.
 - Maintain and enhance the resilience of marine ecosystems and the benefits they provide in order to meet the needs of present and future generations.

4. **CONSULTATIONS**

4.1 **NATURAL RESOURCES WALES:** We have concerns with the application as submitted. To overcome these concerns, the Construction Environment Management Plan should be updated with NRW's emergency contact details. Provided this information is included, we would not object to the application as submitted.

We also advise that based on the information submitted to date, the document identified below is included in the approved plans and documents condition on the decision notice:

- Level 1 Flood Consequences Assessment - Vantage Data Centers Limited' by Atkins, dated July 2023

Please note, without the inclusion of this document we would object to this planning application. Further details are provided below.

Protected Sites - Gwent Levels St Brides SSSI

We note the following documents submitted in support of the proposal:

- 'Underground Cables - Construction Environmental Management Plan' by Atkins, dated 21 September 2023 (CEMP)
- 'Level 1 Flood Consequences Assessment - Vantage Data Centers Limited' by Atkins, dated July 2023

The Gwent Levels St Brides SSSI is notified for its range of aquatic plants and invertebrates associated with the interconnected reens and ditches of the drainage system. In summary, the special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. Any development which has an adverse impact on any of these factors will have an adverse impact on the wildlife for which the area was notified.

We note that the proposed development is approximately 34m away from the nearest reen (Percoed Branch West Reen) and directly adjacent to a ditch in the Gwent Levels St Brides SSSI. Therefore, there is potential hydrological connectivity with the Gwent Levels St Brides SSSI.

We previously advised in our letter dated CAS-234444-J1N7 (attached), that in the absence of additional information being provided in a comprehensive CEMP, sufficient control of pollution prevention for the watercourses could be achieved by imposition of a CEMP condition attached to any planning permission.

We are generally satisfied on the details of pollution prevention in the CEMP. However, we note Section 2.3.2. (Reporting of Incidents) of the CEMP does not include NRW's emergency contact details for any pollution incidents impacting on the natural environment.

We advise that subject to the insertion of the NRW emergency contact details, the amended CEMP should be listed on the plans and documents condition of any planning permission. Details of NRW emergency contact details are provided below. We would not need to be reconsulted on a revised CEMP if the only alteration is the insertion of our emergency contact details

Further advice to Applicant

NRW Emergency Contact Details Natural Resources Wales emergency contact number 0300 065 3000. We refer you to our website for further information and guidance: Natural Resources Wales / Report an incident.

Flood Risk

Our Flood Risk Map confirms the site to be within Zone C1 of the Development Advice Map (DAM) contained in Technical Advice Note 15: Development and Flood (2004) (TAN15) and the Flood Map for Planning identifies the application site to be at risk of flooding and falls into Flood Zones 2 and 3 Rivers and Flood Zones 2 and 3 Sea.

We note the FCA (Level 1 Flood Consequences Assessment - Vantage Data Centers Limited' by Atkins, dated July 2023) does not include a technical assessment of flood risk in line with Technical Advice Note 15: Development and Flood Risk (2004) (TAN15). We also note the purpose of the FCA is to supplement the Construction Environment Management Plan on the storage of construction plant, materials and fuel. We note the FCA advises that construction plant, materials and fuel should not be stored in the flood areas as identified in DAM and FMfP. We agree with these recommendations.

We therefore advise the submitted FCA 'Level 1 Flood Consequences Assessment - Vantage Data Centers Limited prepared by Atkins, dated July 2023' should be listed on the plans and documents condition of any planning permission.

Severn Estuary European Marine Site

The application site lies approximately 2km from the Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA), Wetland of International Importance (Ramsar Site) and Site of Special Scientific Interest (SSSI).

The application site is hydrologically connected to the Severn Estuary by the ditch/reen network within the Gwent Levels SSSI.

We consider the above pathway(s) would not result in an adverse effect if the developer implements/adheres to the mitigation measures set out in a Construction Environment Management Plan as we advise above.

As the competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended), it is for your Authority to carry out the test of Likely Significant Effects for the proposed development. Should you conclude that the proposed development is likely to have a significant effect on a SAC/SPA/Ramsar site, either alone or in combination with other plans or projects, an appropriate assessment must be made of the implications of the project for that site in view of its conservation objectives. You must for the purposes of the assessment consult NRW and have regard to any representations we make within such reasonable time as you specify.

European Protected Species

We note the following documents submitted in support of the proposal:

- 'Ecological Impact Assessment - CWL11 Extension Buried Cables' by Atkins, dated August 2023 (EclA)
- 'Underground Cables - Construction Environmental Management Plan' by Atkins, dated 21 September 2023 (CEMP)

There are records of dormice in the vicinity of the proposal site.

Dormice are a European Protected Species, legally protected under The Conservation of Habitats and Species Regulations 2017 (as amended). Legal protection relates to the animals themselves and the places they use to rest and breed.

Where a European Protected Species is present and a development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. One of these requires that the development authorised will 'not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range'.

These requirements are translated into planning policy through Planning Policy Wales (PPW) February 2021, section 6.4.22 and 6.4.23, and Technical Advice Note (TAN) 5, Nature Conservation and Planning (September 2009). The planning authority should take them into account when considering development proposals where a European Protected Species is present.

We note the Section 6.4 of the EclA advises on vegetation clearance on an area of neutral grassland and non-native ornamental hedgerow located between Celtic Way and Vantage data centre car park. We also note that Table 5-1 'Summary of construction impacts, mitigation and residual effects' of the EclA advises that where dormouse population has been confirmed along Dyffryn Lane, the proposal site is confined to hard standing.

We note Section 3.1.1. of the CEMP advises the Ecological Clerk of Works will carry out pre-site clearance checks and dormouse no more than 24 hours prior to vegetation clearance.

We advise that the ornamental planting is the only habitat type with any potential to harbour hibernating dormice. We also advise that the risk of harm to dormice is negligible due to the nature of the ornamental planting, lack of connectivity of the planting to any suitable dormouse habitat, the small extent of the vegetation lost, and the vegetation clearance checks set out in the CEMP.

In summary, we advise that dormice are unlikely to be present within the habitats affected by the proposed development and habitat checks prior to any vegetation clearance is a safeguard.

Caldicot & Wentlooge Levels Internal Drainage District (IDD)

The proposed development site is partially within the Caldicot & Wentlooge Levels IDD. No run-off, including increased discharge via the proposed alterations to the attenuation pond is permitted to enter the IDD without Land Drainage Consent under the terms of the Land Drainage Act 1991 and the Flood and Water Management Act 2010. Further guidance is available on the NRW website: <https://naturalresources.wales/permits-and-permissions/land-drainage-consent/?lang=>

Other Matters

Our comments above only relate specifically to matters included on our checklist, Development Planning Advisory Service: Consultation Topics (September 2018), which is published on our website. We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our website for further details.

- 4.2 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST (GGAT): No response received at the time of writing the report.
- 4.3 CADW: No response received at the time of writing the report.
- 4.4 WILDLIFE IN NEWPORT GROUP (WING): No response received at the time of writing the report.
- 4.5 WELSH WATER DWR CYMRU: No objection, however confirm the development is crossed by a trunk/distribution watermain

5. INTERNAL COUNCIL ADVICE

5.1 THE HEAD OF INFRASTRUCTURE (HIGHWAYS):

Highway Recommendation:

No objection.

Highway Comments:

Where the cables are to be buried on private land raises no concerns for highways as the site will be managed by a site wide CEMP. Work on highways will require separate licence and traffic management measures. The applicant should contact Streetworks to arrange the necessary licences and approvals for road opening.

- 5.2 THE HEAD OF INFRASTRUCTURE (DRAINAGE): No response at the time of writing the report.
- 5.3 THE HEAD OF INFRASTRUCTURE (PUBLIC RIGHT OF WAY): No response.
- 5.4 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREES):

Final Response - No objection.

- 5.5 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE): I have no landscape comments.
The Planning Statement includes the following on landscape and visual amenity

4.3.2.3. Due to the nature of the proposed development, which will become a dormant feature entirely below ground, no landscape or visual amenity impacts are anticipated. Following construction, the application site will be reinstated to current conditions.

The proposed cable circuit is approximately 1.5km in length and will be installed within previously disturbed made ground in order to minimise environmental impacts. Nearby trees and hedges have been surveyed and a protection plan provided.

- 5.6 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY): I note that an Ecological Impact Assessment (EclA) has been carried out, and in principle I support the methodology and conclusions of that document. In term of mitigating the potential impacts of the proposed scheme, Table 5-1 sets out mitigation measures including Precautionary Methods of Working (PMW). Section 4.2 of the CEMP Rev 3 goes on to state that PMW will be produced for badgers, bats, nesting birds, common species of reptiles and hazel dormouse.

Normally we should be able to consider these PMW before granting consent, so that we can be sure that any likely significant adverse impacts identified in the EclA will be counteracted. However, some indication of these working methods has been set out in broad detail in the EclA and CEMP, so on this occasion we could use a pre-commencement planning condition to require that the CEMP Rev 3 is amended to include all precautionary methods of working in full.

- 5.7 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ENV. HEALTH): I confirm I have received the submitted CEMP. **We would object to the proposed construction hours of 0700-1900hrs** due to the relatively close proximity of residential dwellings, without additional noise mitigation measures being implemented.

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

Development/Construction Hours

To protect the amenity of existing residents, I would recommend that there is no arrival, departure, loading or unloading of vehicles, development and/or construction (including land raising and demolition if required) occurs outside the hours of 08.00 and 18.00 Monday to Friday and between the hours of 08.00 and 13.00 on Saturdays. There shall be no development on Sundays or Bank Holidays.

- 5.8 THE HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (CONTAMINATION): I have looked at the submission in respect of the above and note the Geo-environmental study in respect of CWL11 Extension Buried Cable.

The study reference 5222535 concludes that there appears to be a low to moderate risk to receptors from potential contamination in shallow soils and that as part of best practice where a ground investigation is not relied upon a watching brief for unexpected contamination be applied.

In view of the above the following conditions are considered to be relevant:

Contamination

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

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

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

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

5.9 THE HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (CONSERVATION OFFICER): No objection.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties within 50m of the application site were consulted (2no. properties), a site notice displayed, and a press notice published in South Wales Argus. No responses have been received.

6.2 COUNCILLORS SCREEN/HOWELLS/WATKINS: No responses received at the time of writing the report.

6.3 COEDKERNEW COMMUNITY COUNCIL: No response received at the time of writing the report.

7. ASSESSMENT

7.1 The Proposal

7.1.1 The buried electricity circuit route will be approximately 1.5km in length. The circuit will be installed within existing made ground along the entire route. It will be buried within the

carriageway of Dyffryn Lane and Celtic Way and will be installed within existing hardstanding within the curtilage of the CWL11 data centre.

7.1.2 The construction requires the excavation of a single trench, typically 1.5m deep and 1.7m wide. The circuit will comprise electricity cables in ducts and will be laid on crushed granite or limestone and surrounded by cement bound sand.

7.1.3 A heavy duty, high impact, stokboard made of recycled polyethylene will be laid above the cables to protect from accidental excavation in the future. The stokboard will be a distinctive colour and include warning messages to ensure visibility. A layer of marker tape will be installed between the stokboard layer and ground level to provide additional protection. The stokboard and marker tape will be installed above the cables. The ducts will be buried beneath the existing carriageway of Celtic Way, and beneath Dyffryn Lane with the route outlined in red in Figure 1 below;



Figure 1 – Application Site/Route

7.2 Scheme Background

7.2.1 The proposed development is required to provide an increase in the electricity supply to the applicant's CWL11 data centre. The CWL11 data centre occupies the former LG Electronics building. Planning permission (app. ref. 07/1533) for the use of the building as a hyperscale data centre was granted in 2008. The first phase of the development entered into operation in 2011. Subsequent phases of the development have entered into operation over the past decade, and the internal fit-out of the building and expansion of operations are ongoing.

7.2.2 As new data halls enter into operation there is an associated increase in demand for power. The existing electricity connections from the National Grid Imperial Park Substation will reach capacity. The proposed development is required to enable full operation of the data centre. Data centres are the enabling infrastructure at the heart of global digital transformation and rapid technological advancements fuelling the world economy. The global shift towards cloud computing has created and continues to generate significant demand for data centre facilities that store and protect public and private sector data. The UK economy is increasingly reliant on digital services. Hyperscale data centres require direct connections into the national grid via local sub-stations due to the significant quantities of power they require to operate and the business-critical importance of maintaining a constant and reliable supply of power.

7.3 Highway Safety

7.3.1 The Council's Highways Officer has reviewed the application and submitted information and has no objection in terms of highway safety. They have advised that where the cables are to be buried on private land this raises no concerns for highways, as the site will be managed by a site wide CEMP. Works with the highway will require a licence and traffic management measures and this will be secured through a separate agreement with the Council's Highways Department.

7.3.2 Overall, it is considered that the proposed development can be undertaken without adversely impacting highway safety and the proposal is compliant with Policy GP4 of the NLDP 2011-2026 (adopted January 2015).

7.4 Environmental/Ecological Impact

7.4.1 An Ecological Impact Assessment (EclA) and has been submitted in support of the application and this has been reviewed by the Council's Ecologist and Natural Resources Wales (NRW).

7.4.2 To the south of the site is the Gwent Levels - St Brides SSSI. The SSSI is notified for its range of aquatic plants and invertebrates associated with the reens and ditches of the drainage system. The special interests of the SSSI are dependent on the water quality, water quantity, the existence of the drainage system and its continued management. NRW note that the proposed development is approximately 34m away from the nearest reen (Percoed Branch West Reen) and directly adjacent to a ditch in the Gwent Levels St Brides SSSI. Therefore, there is potential hydrological connectivity with the Gwent Levels St Brides SSSI. The application site also lies approximately 2km from the Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA), Wetland of International Importance (Ramsar Site) and Site of Special Scientific Interest (SSSI).

7.4.3 A Construction Environment Management Plan (CEMP) has been submitted to control and prevent pollution of the watercourses and NRW are satisfied with this document and that providing it is followed will not result in any adverse effect the designations. However, NRW have requested their emergency contact details for any pollution incidents are included and the applicant has duly included this within a revised version of the document.

7.4.4 There are records of dormice in the vicinity of the proposal site. Dormice are a European Protected Species, legally protected under The Conservation of Habitats and Species Regulations 2017 (as amended). Legal protection relates to the animals themselves and the places they use to rest and breed. Having reviewed the EclA, NRW are satisfied that dormice are unlikely to be present within the habitats affected by the proposed development and habitat checks prior to any vegetation clearance is a safeguard of the EclA.

7.4.5 The Council's Ecologist supports the principle of the methodology and conclusions of the EclA. They have advised that in terms of mitigating the potential impacts of the proposed scheme, Table 5-1 sets out mitigation measures including Precautionary Methods of Working (PMW). Section 4.2 of the CEMP Rev 4 goes on to state that PMW will be produced for badgers, bats, nesting birds, common species of reptiles and hazel dormouse.

7.4.6 Normally the LPA should be able to consider these PMW before granting consent, so that it can be sure that any likely significant adverse impacts identified in the EclA will be counteracted. However, some indication of these working methods has been set out in broad detail in the EclA and CEMP, so on this occasion a pre-commencement planning condition could be used to require that the CEMP Rev 4 is amended to include all precautionary methods of working in full.

7.4.7 A Geo-environmental study has also been submitted and the Council's Environmental Health Contamination Officer has been consulted. The EHO has confirmed that the study concludes that there is a low to moderate risk to receptors from potential contamination in shallow soils. Initially a watching brief for unexpected contamination was requested by the EHO, however following discussions with the applicant regarding the method of installation of the cables within existing buried services below the carriageway it has been agreed that the watching brief is not necessary in this instance. As such, one recommended condition regarding unforeseen contamination is considered reasonable and necessary but the condition regarding imported material is suitably controlled via other legislation.

In-combination Effects

7.4.8 NRW have advised that as the competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended), it is for the Authority to carry out the test of Likely Significant Effects for the proposed development. Should the LPA conclude that the proposed development is likely to have a significant effect on a SAC/SPA/Ramsar site, either

alone or in combination with other plans or projects, an appropriate assessment must be made of the implications of the project for that site in view of its conservation objectives.

7.4.9 The LPA have considered extant projects that are in proximity to the River Usk and within 2km of the application site, and these have been assessed for their potential for in-combination effects. It has been concluded that the proposed development, along with those identified would have no in combined Likely Significant Effects and an Appropriate Assessment is not necessary. Appendix A, which is included at end of this report outlines the extant projects identified and considered.

7.4.10 Overall, all parties are satisfied that subject to the use of conditions the proposed development will not result in any adverse ecological or environmental impact and the proposed development is compliant with Policy SP4, SP9, GP5 and GP7 of the NLDP 2011-2026 (adopted January 2015).

7.5 Trees and Landscape

7.5.1 As requested by the Council's Tree Officer an Arboricultural Method Statement for the proposed development has been prepared and submitted for consideration. This Arboricultural Method Statement looks at the potential risk of injury to trees from construction activities and advises on techniques and physical barriers to protect them, and their immediate environment. As part of the AMS details and locations of tree protection fencing and barriers have been included where necessary along the proposed route to ensure there is no adverse impact on landscape features.

7.5.1 The Council's Tree Officer and Landscape Officer are both satisfied that the submitted information is acceptable and has offered no objection. It is considered that the proposed development can be undertaken without adversely impacting landscape features and the proposal is compliant with Policy GP5 of the NLDP 2011-2026 (adopted January 2015).

7.6 Residential Amenity

7.6.1 The scheme relates to works underground and post completion there is no concerns in relation to residential amenity. The Council's Environmental Health Officer did raise concerns with the hours of construction contained with the CEMP and the applicant has amended this in line with that requested and this is considered acceptable. The EHO has also requested a condition to control hours of construction however this is now contained within the CEMP, which will be an approved document within the plans condition and will need to be adhered to. In the event that there is a noise complaint then it would be Environmental Health who are best positioned to use their statutory powers to resolve such an issue.

7.6.2 Overall, it is considered that the proposed development can be undertaken without adversely impacting residential amenity and the proposal is compliant with Policy GP2 and GP7 of the NLDP 2011-2026 (adopted January 2015).

7.7 Archaeology and Conservation

7.7.1 The site is located within an Archaeologically Sensitive Area and at the time of writing GGAT have not responded to the consultation request. A Heritage Desk Based Assessment has been undertaken and in relation to Archaeology which advises that the majority of the route will follow the line of pre existing roads and sites of built infrastructure and will therefore be sited largely within already disturbed ground. The potential for impact is considered to be low and in absence of any comments from GGAT objecting to the proposal it is considered that there is unlikely to be any adverse impact. As such, the proposal is considered to comply with the aims of Policy CE5 of the NLDP 2011-2026 (adopted January 2015).

7.7.2 The Heritage Desk Based Assessment has also considered other matters such as the wider historic landscape and conservation areas and given the underground nature of the development there is considered to be no wider impact. The Council Historic Buildings Conservation Officer has offered no objection to the proposed development. As such, the proposal is considered to comply with the aims of Policy SP9 and CE7 of the NLDP 2011-2026 (adopted January 2015).

7.8 Flood Risk

- 7.8.1 NRW confirm the site to be within Zone C1 of the Development Advice Map (DAM) contained in Technical Advice Note 15: Development and Flood (2004) (TAN15) and the Flood Map for Planning identifies the application site to be at risk of flooding and falls into Flood Zones 2 and 3 Rivers and Flood Zones 2 and 3 Sea.
- 7.8.2 The proposed cables are considered to be less vulnerable development connecting to an existing substation, and whilst an FCA has been submitted, it does not undertake a technical review of flood risk and has been submitted in support of the CEMP. The FCA however confirms that storage of construction plant, material and fuel will not take place in flood areas identified in DAM and FMfP. This is supported by NRW. NRW advise that the FCA is controlled as an approved document. The proposal is considered to comply with the aims of Policy SP3 of the NLDP 2011-2026 (adopted January 2015).

8. **OTHER CONSIDERATIONS**

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

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

8.2 ***Equality Act 2010***

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

8.3 Having due regard to advancing equality involves:

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

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

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

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

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

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

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been

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

9. CONCLUSION

9.1 The proposal is considered to be compliant with the aims of the Newport Local Development Plan 2011-2026 (adopted January 2015) and is considered to be acceptable, subject to conditions.

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

10. RECOMMENDATION

GRANTED WITH CONDITIONS

Approved Plans & Documents

01 The development shall be implemented in accordance with the following plans and documents: Drawing No. 5222535-ATK-XX-XX-DR-L-401002 – Proposed Cables Layout Rev P01; Ecological Impact Assessment (August 2023); Flood Consequence Assessment (July 2023); Arboricultural Method Statement (25th October 2023); Arboricultural Impact Assessment (July 2023); Tree Protection Plan 1-5

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

Precautionary Methods of Working

02 Notwithstanding the CEMP submitted to date (Revision 04 – 16/11/2023), prior to the commencement of development (to include site preparation) an updated CEMP including full details of the Precautionary Methods of Working shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in full accordance with the approved CEMP at all times.

Reason: In the interests of protecting ecological interests, highway safety and amenity in accordance with Policy GP2, GP4 and GP5 of the NLDP 2011-2026 (adopted January 2015).

Tree Protection Plan

03 No development shall commence until the tree protection fencing (in accordance with BS 5837:2012) has been implemented in accordance with the approved tree protection plan. Nothing shall thereafter be stored or placed within any fenced area. The tree protection fencing shall remain in situ for the full construction period.

Reason: To protect important landscape features within the site in accordance with Policy GP5 of the NLDP 2011-2026 (adopted January 2015).

General conditions

Arboricultural Method Statement

04 The development shall be carried out in full compliance with the approved Arboricultural Method Statement as submitted by Steve Ambler and Sons Tree Specialists Ltd (25th October 2023), who will oversee the project (to perform a Watching Brief) for the duration of the development and who shall be responsible for –

- (a) Supervision and monitoring of the approved Tree Protection Plan;
- (b) Once the barrier fencing is erected, the approved Arboricultural Consultant must inspect and “sign off” in writing and submit a copy of this to the Local Planning Authority stating that the protective fencing is in the correct location and is fit for purpose .
- (c) Full implementation of the approved Arboricultural Method statement (AMS)
- (d) Supervision of the alteration or temporary removal of any Barrier Fencing; .

(e) Oversee working within any Root Protection Area e.g., any re profiling/grading of existing levels, construction of car parking bays, construction of walls, installation of “crates” and landscaping operations.

(f) reporting to the Local Planning Authority and providing a revised Arboricultural Method Statement if operations on site dictate;

(g) The Arboricultural Consultant will provide site progress reports to the Council's Tree Officer at monthly intervals following commencement of development.

Reason: To protect important landscape features within the site in accordance with Policy GP5 of the NLDP 2011-2026 (adopted January 2015).

Contamination – Unforeseen

05 Any unforeseen ground contamination encountered during development, shall be notified to the Local Planning Authority as soon as is practicable and works shall thereafter cease until the appropriate course of action is agreed with the Local Planning Authority. 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 in accordance with Policy GP2, GP5 and GP7.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Drawing No. 5222535 -ATK-XX-XX-DR-L401001. - Site Location Plan; Planning Statement; Heritage Desk Based Assessment; PAC Report; Geo-Environmental Desk Study Parts 1-4; Construction Environment Management Plan Rev 04.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies Policy SP1 Sustainability; Policy SP3 Flood Risk; Policy SP4 Water Resources; Policy SP9 Conservation of the Natural, Historic and Built Environment; Policy SP18 Urban Regeneration; Policy GP2 General Amenity; Policy GP3 Service Infrastructure; Policy GP4 Highways & Accessibility; Policy GP5 Natural Environment; Policy GP7 Environmental Protection and Public Health; Policy CE6 Archaeology; Policy CE8 Locally Designated Nature Conservation and Geological Sites were relevant to the determination of this application.

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

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

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

Appendix A – In Combination Effects

The Habitats Regulations require assessment of the in-combination effects. The following extant projects are in proximity to the River Usk and within 2km of the application site, and are assessed for their potential for in-combination effects:

- 21/0988 - CONSTRUCTION OF A THREE STOREY MANUFACTURING AND RESEARCH AND DEVELOPMENT FACILITY AND ADMINISTRATION OFFICE, EXTERNAL PLANT, STORAGE AND GAS STORAGE COMPOUND, CAR PARKING, SUSTAINABLE DRAINAGE, HARD AND SOFT LANDSCAPING, ATTENUATION BASIN AND ASSOCIATED WORKS.

This development is under construction and runs adjacent to the application site. An Ecological Impact Assessment was submitted and identified localised mitigation required. This planning application did not include a HRA assessment and so is not considered further.

- 23/0549 - S73 APPLICATION TO VARY CONDITIONS 1 (APPROVED PLANS), 7 (LANDSCAPING AND PLANTING SCHEME) AND 10 (NOISE ASSESSMENT) OF 20/0039 ERECTION OF 4NO. THREE-STOREY DATA CENTRE BUILDINGS COMPRISING B8 USE AND ANCILLARY B1 USE, PROVISION OF EMERGENCY GENERATORS, SECURITY LODGE, HARD AND SOFT LANDSCAPING, INTERNAL ACCESS ROADS, CAR PARKING AND SUSTAINABLE DRAINAGE. AMENDMENTS INCLUDE CHANGES TO BUILDING FOOTPRINTS AND DESIGN, LOCATION OF GENERATORS, CHANGES TO DRAINAGE STRATEGY AND LANDSCAPING AND OTHER LAYOUT CHANGES

This development is within 100 metres of the nearest part of the application site to the north east and has recently started site preparation. Ecological Impacts were considered and any impact controlled through planning conditions. This planning application did not include a HRA assessment and so is not considered further.

- 21/0976 - CONSTRUCTION OF UNDERGROUND ELECTRICITY TRANSMISSION CONNECTION AND ASSOCIATED WORKS

This development is comparable in nature and scale to the proposed application and the cables are supplied from the same substation. It is located east of the application site and provides power to another Data Centre. Works are understood to have been undertaken but has been included for completeness. This planning application did not include a HRA assessment and so is not considered further.

- 23/0878 - PROPOSED ELECTRICITY SUBSTATION COMPOUND (132/33/11KV), INCLUDING A SWITCH-ROOM BUILDING AND OUTDOOR ELECTRICAL EQUIPMENT, ENCLOSED BY A SECURITY FENCE, WITH ASSOCIATED INFRASTRUCTURE INCLUDING ACCESS, LANDSCAPING, DRAINAGE AND EARTHWORKS

This application is currently before the Local Planning Authority and is within close proximity of the application site. A HRA has been submitted and this has also considered the in combination effects with the aforementioned developments. That HRA concluded that the proposal will not adversely affect the integrity of the Severn Estuary European Marine Site or River Usk SAC, either alone or in-combination with other plans or projects.

It is therefore considered that there would be no in combination effects as a result of the proposed development being considered within this application.

Conclusion

The proposed development has been considered alongside other current planning applications or extant planning permissions within the proximity of the site and it is not considered that there would be any in combination effects of the River Usk (SAC) or the Severn Estuary Marine Site and an Appropriate Assessment is not necessary.

4.

APPLICATION DETAILS

No: 23/0872 **Ward:** Liswerry
Type: Full
Expiry Date: 8th December 2023
Applicant: *J Peterson*
Site: *43 Traston Road Newport NP19 4RQ*
Proposal: **REAR SINGLE STOREY EXTENSION**
Recommendation: **GRANTED WITH CONDITIONS**

1. INTRODUCTION

1.1 This application seeks permission for a single storey rear extension. This application is being reported to committee as an elected member of the Council is the applicant.

2. RELEVANT SITE HISTORY

None.

3. POLICY CONTEXT

3.1 Policies:
- GP2 (General Amenity)
- GP6 (Quality of Design)

4. CONSULTATIONS

4.1 GGAT - GLAMORGAN GWENT ARCHAEOLOGICAL TRUST – No response.

5. INTERNAL COUNCIL ADVICE

5.1 None.

6. REPRESENTATIONS

6.1 NEIGHBOURS:
All properties with a common boundary with the application site were consulted (4 properties). No responses received.

7. ASSESSMENT

7.1 The application site is a semi-detached property. It is set within a curtilage comprising of front space with driveway and enclosed rear garden. The property adjoins 45 Traston Road to the South-west and 41 Traston Road to the North-east.

7.3 Policies GP2 (General Amenity) and GP6 (Quality of Design) of the Newport Local Development Plan 2011-2026 are relevant to the determination of this application. The House Extensions and Domestic Outbuildings SPG is also relevant.

7.4 The extension will have an overall depth of 4.97m, width of 5.01m and a height of 2.68m. There is a single UPVC doubled glazed window on the side elevation facing to the north-east. A single UPVC door and two single UPVC windows are proposed to the rear elevation facing south-east.

7.5 The adopted House Extensions and Domestic Outbuildings SPG states that wherever possible extensions should be built on the rear or lesser important elevations of properties and the size and form should be appropriate to the main building and the space around it.

The proposed extension is considered to be of an acceptable scale, and, being located on the rear, is not visible in the wider streetscene.

- 7.6 In order to assess the impact of an extension on neighbouring amenity, the House Extensions and Domestic Outbuildings SPG sets out tests to help protect light in neighbouring habitable rooms. The tests include applying a 45-degree splay in a plan view and an elevation view. Both splays are taken from the centre point of the nearest protected window and if both fail it can indicate that a loss of amenity will arise in terms of unneighbourly effects. Despite the proposal extending 4.97m in length, due to location, layout and being single storey, the 45-degree tests pass, and the impact of the proposal is considered acceptable in terms of relationship to neighbouring properties. A 25-degree light test was also conducted, due to there being a window at 41 Traston Road that faces the extension. The window from the neighbouring property is approximately 4.1m from the extension. This test also passes.
- 7.7 The neighbouring property of 45 Traston Road adjoins 43 Traston but is separated by the dwelling and protected by the existing walls, and it is therefore considered that there will be no loss of amenity to this neighbour. No. 43 already has rear single storey extensions along the intervening boundary that currently extend further rearward than the applicant property. The neighbouring adjacent property of 41 Traston Road is approximately 2.86m from the proposed extension. The amenity of the neighbour is maintained by the existing boundary wall, separation distance and the modest height and scale of the extension. One window is proposed in the side elevation facing no. 41 but this serves a ground floor WC. It looks onto a shared pedestrian accessway between the properties and does not directly face any side facing window in the neighbouring property and should it be clear glazed, will not give rise to a demonstrable increase in mutual overlooking over and above the existing situation. In context and subject to conditions this proposal accords with policies GP6 and GP2.

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 Due to its scale, design and position, the proposed development would preserve visual and residential amenity as well as the character of the host dwelling. It is therefore in accordance with the aforementioned policies. Planning permission is therefore granted, subject to the following conditions.

10. RECOMMENDATION

GRANTED WITH CONDITIONS

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

- Site Location Plan (Drawing number: DDL/TSR/OS/01)
- Existing/Proposed Floor Plans (Drawing number: PD/TSR/FP/02)
- Existing/Proposed Floor Plans (Drawing number: PD/TSR/EL/03)

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 external surfaces of the extension hereby permitted shall only be of materials to match those of the existing building, unless otherwise agreed in writing by the local planning authority.

Reason: To ensure the development is completed in a manner compatible with its surroundings in accordance with policy GP6.

NOTE TO APPLICANT

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

02 The Council's Supplementary Planning Guidance – House Extensions and Domestic Outbuildings (January 2020) was adopted following consultation and is 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.

APPLICATION DETAILS

No: 23/0379 Ward: **Tredegar Park And Marshfield**

Type: Full

Expiry Date: 2 AUGUST 2023

Applicant: **N & R HOWELLS & MORGAN WHITE GATES OUTFALL LANE ST BRIDES WENTLOOGE NEWPORT**

Site: **White Gates Outfall Lane St Brides Wentlooge Newport NP10 8SS**

Proposal: **DEMOLITION AND REMOVAL OF EXISTING DWELLING AND CONSTRUCTION OF NEW DWELLING (RE-SUBMISSION FOLLOWING REFUSAL OF 22/1223)**

1. LATE REPRESENTATIONS

- 1.1 The occupiers of Greenfields (which is a neighbouring property to the development site) has submitted the following additional comments to the application.

We request that Planning Committee consider the application with reasonableness. This proposal requests to substantially exceed several established policies in the Newport Development Plan and Planning Policy Wales. These policies support reasonable development and protect the character of the green wedge and SSSI status of the Wentlooge levels. The Planning Committee is the custodian of these policies to protect this special environment. All members have a duty to be responsible and reasonable when reaching decisions.

Policy SP7 states that rural development should not exceed 30% increase in size. This planning application not only significantly exceeds this 30% increase on the ground floor accommodation alone, but the application also adds a large first floor with 5 bedrooms (1 of which will be used as a cinema room). Does the committee consider this is a reasonable tolerance? If there is such a large deviation from this policy what explanation would be provided for this.

Policy H12 allows for a modest increase in size but does not allow a much larger dwelling that would be on a different scale to the original. This policy protects the openness of the green wedge and the character and appearance of the surrounding area.

The plot of land for the proposed development is large at approx. half an acre, the plot is deep but only 28 meters wide. The proposed development is very wide at approx. 20 meters, the plans indicate the development will be only 4 meters (equivalent to approx. 2 parked cars) from our property. This distance whilst being quite common and acceptable within urban settings is not normal within the rural setting. The current property is only 13 meters wide; this development would therefore represent an increase in width of 65%. (NB. the proposed property has had its orientation rotated by 90 degrees on the submission. The view listed as Side Elevation on the existing building is actually the front facing aspect towards the lane) Is this increase in width reasonable and what exceptional circumstances exist to approve this size?

Policy GP6 concerns the quality of design. All developments should appropriately reflect the scale of adjacent townscape, the policy specifically states that care should be taken to avoid over-scaled development.

Whilst it is reasonable that the application uses the highest point on neighbouring properties to establish an acceptable height. It is worth noting that the roof ridge at this height on our property represents approx. 2% of the overall roof. The style of roof contained in this application does not exist in the local area and is rare even within the whole UK. This development is in a quiet single-track lane within a row of 4 bungalows, the design in this application is not in keeping with the character of the lane. Notably the proposal includes an unusual mansard style roof (Ref Diagram 1) with a large flat roof area in the centre, the flat roof area is approx 120 square meters (1184 – 1291 square

foot). The large flat roof is in line with the high point, this makes the proposed build bulky in comparison to other properties. Without recourse to this highly unusual and out of character roof it would be impossible to design a property of this scale on this plot. Is it reasonable to approve this unusual and bulky roof style?

Policy GP2 includes protection of privacy and any detrimental effect on nearby occupiers. The report on the previous application accepts that the four properties in the north of Outfall Lane have always enjoyed a higher level of privacy, therefore we would ask the committee to consider if it is reasonable to approve plans that totally remove this privacy to the whole of our back and side garden. The garden will be clearly visible from any of the multiple dormer windows on the rear of this property. Other properties on Outfall Lane are not rectangular blocks but are sympathetically designed to maintain this high level of privacy that exists to the rear land both for line of sight and sound transfer.

Is it reasonable that our bungalow which has only ever had one neighbouring property and has never been overlooked (all other boundaries are onto open countryside), should have no privacy in the garden.

The application now includes a cesspit. As this is not permitted on new builds on the Wentlooge Levels, a supporting document states that all other options had been ruled out. However there appears to have been no investigation into a discharge to the largest reën in close proximity to the plot, this lies approx. 30 meters to the south of the plot and maintains a good water flow year-round. (this reën runs adjacent to Greenfields). Would the committee consider it is reasonable to expect the applicants to have investigated this as an approved drainage option?

The protected windows on our property, Greenfields, are currently blocked by a 1.94 meter close board length of fence constructed by the applicants approx. half a meter within their land. The landscaping plans submitted include a fence of this height on the boundary, whilst we are aware that the right to light is not within the objections considered by the planning committee, it was felt reasonable to highlight this as an example of actions which have not been neighbourly.

This application does not only breach a single policy, but multiple policies, namely SP7, H12, GP2 and GP6. These policies and Planning Policy Wales seem very clear on what can be approved. This application greatly exceeds the stated limits. For developments in the Green Wedge the Welsh Government policy states 'a presumption against inappropriate development will apply'. Therefore, we maintain that this development does not meet the standards of either the Welsh or Newport policy and fails to establish that this is a very exceptional case as required within the policy. We would therefore suggest that this application cannot be reasonably approved by this committee.

Concerns have been raised that the proposed dwelling appears to be larger than the volumes expressed in the officer report.

Appendix 1

NEWPORT LOCAL DEVELOPMENT PLAN 2011 – 2026 ADOPTED PLAN January 2015

Extracts for reference

SP7 Green Wedges

GREEN WEDGES HAVE BEEN IDENTIFIED IN ORDER TO PREVENT COALESCENCE BETWEEN THE FOLLOWING SETTLEMENTS:

- i) NEWPORT AND CARDIFF;
- ii) ROGERSTONE AND RISCA;
- iii) BETTWS, MALPAS AND CWMBRAN;
- iv) CAERLEON AND CWMBRAN.

WITHIN THESE AREAS DEVELOPMENT WHICH PREJUDICES THE OPEN NATURE OF THE LAND WILL NOT BE PERMITTED. AN INCREASE IN SIZE OF A DWELLING OF MORE THAN 30% OF THE VOLUME OF THE ORIGINAL SIZE OF THE DWELLING, OR AS EXISTED IN 1948, WILL NOT BE APPROVED

2.27 Green Wedges have been designated on a common basis with the other local planning authorities in South Wales. The prime purpose of Green Wedges is to prevent coalescence between urban areas. The designation is not made necessarily on the basis of the physical quality of the landscape, but rather to maintain their openness. The areas designated tend to have significant importance for their openness and for their role in maintaining the distinct identity of separate communities.

2.28 Planning Policy Wales (Paragraph 4.8.14 – 4.8.18) sets out what is considered inappropriate development within green wedge allocations, and should be referred to for guidance.

2.29 Any application to increase the size of a dwelling by more than 30% is likely to have a negative impact on the openness of the green wedge and will not be approved.

Relevant Objectives and Background Paper Objectives:

6. Conservation of the Natural Environment

H12 Replacement Dwellings in the Countryside

BEYOND DEFINED SETTLEMENT BOUNDARIES, PROPOSALS TO REPLACE A DWELLING WITH A NEW DWELLING WILL BE PERMITTED PROVIDED THAT:

- i) THE VOLUME OF THE NEW DWELLING IS NOT MORE THAN 30% LARGER THAN THAT OF THE ORIGINAL DWELLING, OR AS EXISTED IN 1948, TO BE REPLACED;
- ii) THERE IS A CONDITION ATTACHED TO THE PLANNING PERMISSION TO PREVENT SUBSEQUENT EXTENSION OR OUTBUILDINGS;
- iii) THE EXISTING DWELLING HAS A LAWFUL RESIDENTIAL USE;
- iv) THE NEW DWELLING IS SITED TO PRECLUDE THE RETENTION OF THE DWELLING IT IS TO REPLACE, OR THERE IS A CONDITION OR PLANNING OBLIGATION TO ENSURE THE DEMOLITION OF THE ORIGINAL DWELLING ON COMPLETION OF THE NEW DWELLING;
- v) ANY EXISTING AGRICULTURAL TIE SHALL BE ATTACHED TO THE NEW DWELLING.

5.26 This Policy is designed to allow the updating of residential accommodation, particularly where this is now seen to be substandard, but only in the context of allowing a modest increase in its size, not to allow a much larger dwelling that would be on a different scale to the original. If such a proposal is made, it will be treated as if it were a new dwelling in the countryside. In either case, the requirements of any other relevant Policies of the Plan will of course also need to be met. While the 30% volume limit should be applied in principle, where it can be demonstrated that an increase above 30% will not have a detrimental impact upon the character and appearance of the surrounding area such development may be considered acceptable.

GP2 General Development Principles – General Amenity

DEVELOPMENT WILL BE PERMITTED WHERE, AS APPLICABLE:

- i) THERE WILL NOT BE A SIGNIFICANT ADVERSE EFFECT ON LOCAL AMENITY, INCLUDING IN TERMS OF NOISE, DISTURBANCE, PRIVACY, OVERBEARING, LIGHT, ODOURS AND AIR QUALITY;
- ii) THE PROPOSED USE AND FORM OF DEVELOPMENT WILL NOT BE DETRIMENTAL TO THE VISUAL AMENITIES OF NEARBY OCCUPIERS OR THE CHARACTER OR APPEARANCE OF THE SURROUNDING AREA;
- iii) THE PROPOSAL SEEKS TO DESIGN OUT THE OPPORTUNITY FOR CRIME AND ANTI-SOCIAL BEHAVIOUR;
- iv) THE PROPOSAL PROMOTES INCLUSIVE DESIGN BOTH FOR THE BUILT DEVELOPMENT AND ACCESS WITHIN AND AROUND THE DEVELOPMENT;
- v) ADEQUATE AMENITY FOR FUTURE OCCUPIER

GP6 General Development Principles – Quality of Design

GOOD QUALITY DESIGN WILL BE SOUGHT IN ALL FORMS OF DEVELOPMENT. THE AIM IS TO CREATE A SAFE, ACCESSIBLE, ATTRACTIVE AND CONVENIENT ENVIRONMENT. IN CONSIDERING DEVELOPMENT PROPOSALS THE FOLLOWING FUNDAMENTAL DESIGN PRINCIPLES SHOULD BE ADDRESSED:

- i) CONTEXT OF THE SITE: ALL DEVELOPMENT SHOULD BE SENSITIVE TO THE UNIQUE QUALITIES OF THE SITE AND RESPOND POSITIVELY TO THE CHARACTER OF THE AREA;
- ii) ACCESS, PERMEABILITY AND LAYOUT: ALL DEVELOPMENT SHOULD MAINTAIN A HIGH LEVEL OF PEDESTRIAN ACCESS, CONNECTIVITY AND LAID OUT SO AS TO MINIMISE NOISE POLLUTION;
- iii) PRESERVATION AND ENHANCEMENT: WHERE POSSIBLE DEVELOPMENT SHOULD REFLECT THE CHARACTER OF THE LOCALITY BUT AVOID THE INAPPROPRIATE REPLICATION OF NEIGHBOURING ARCHITECTURAL STYLES. THE DESIGNER IS ENCOURAGED TO DISPLAY CREATIVITY AND INNOVATION IN DESIGN;
- iv) SCALE AND FORM OF DEVELOPMENT: NEW DEVELOPMENT SHOULD APPROPRIATELY REFLECT THE SCALE OF ADJACENT TOWNSCAPE. CARE SHOULD BE TAKEN TO AVOID OVER-SCALED DEVELOPMENT;
- v) MATERIALS AND DETAILING: HIGH QUALITY, DURABLE AND PREFERABLY RENEWABLE MATERIALS SHOULD BE USED TO COMPLEMENT THE SITE CONTEXT. DETAILING SHOULD BE INCORPORATED AS AN INTEGRAL PART OF THE DESIGN AT AN EARLY STAGE;
- vi) SUSTAINABILITY: NEW DEVELOPMENT SHOULD BE INHERENTLY ROBUST, ENERGY AND WATER EFFICIENT, FLOOD RESILIENT AND ADAPTABLE, THEREBY FACILITATING THE FLEXIBLE REUSE OF THE BUILDING. WHERE EXISTING BUILDINGS ARE PRESENT, IMAGINATIVE AND SENSITIVE SOLUTIONS SHOULD BE SOUGHT TO ACHIEVE THE RE-USE OF THE BUILDINGS.

Planning Policy Wales

Edition 11 | February 2021 Extracts for reference

Managing Settlement Form – Green Belts and Green Wedges

3.71

To maintain openness, development within a Green Belt and green wedge must be strictly controlled. When including Green Belt and green wedge policies in their plans, planning authorities must demonstrate why normal planning and development management policies would not provide the necessary protection.

3.73

When considering applications for planning permission in Green Belts or green wedges, a presumption against inappropriate development will apply. Substantial weight should be

attached to any harmful impact which a development would have on the purposes of Green Belt or green wedge designation. Policies should be devised to outline the circumstances when development would be permitted in these areas where the openness of the Green Belt or green wedge will still be maintained.

3.74

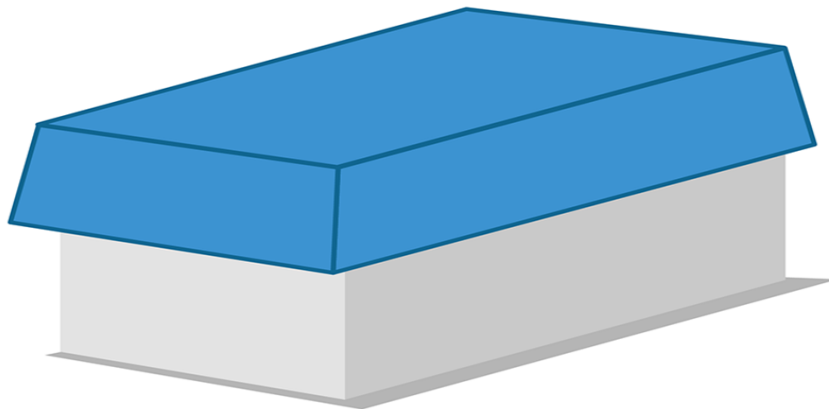
Inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge. Green Belt and green wedge policies in development plans should ensure that any applications for inappropriate development would not be in accord with the plan. These very exceptional cases would therefore be treated as departures from the plan.

3.75

The construction of new buildings in a Green Belt or green wedge is inappropriate development unless it is for the following purposes:

- justified rural enterprise needs;
- essential facilities for outdoor sport and outdoor recreation, cemeteries, and other uses of land which maintain the openness of the Green Belt or green wedge and which do not conflict with the purpose of including land within it;
- limited extension, alteration or replacement of existing dwellings; or
- small scale diversification within farm complexes where this is run as part of the farm business

Diagram 1



Mansard Roof

Note 1

In preparing this statement we have referred to Newport council guidance from the website:-

Examples of considerations include:

- Siting, design and external appearance of the proposed development (e.g. height or bulk in relation to neighbouring properties)
- Loss of sunlight or daylight
- Loss of privacy
- Likelihood of undue noise or fumes
- Adequacy of proposed parking and access arrangements
- Effect of additional traffic
- Effect on trees

- Landscaping and proposals for boundary treatment (walls or fences)

Objections which cannot normally be taken into account include:

- Effect on property values
- Effect on structural stability (this may be covered by the Building Regulations)
- Noise, disturbance or inconvenience resulting from construction works (this is covered by the Control of Pollution Act)
- Boundary disputes (including Party Wall agreement issues)
- Restrictive covenants (including rights to light)
- Opposition to business competition
- Applicant's personal circumstances (unless these can be shown to be relevant in planning terms e.g. provision of disabled facilities)

2. OFFICER RESPONSE TO LATE REPRESENTATIONS

2.1 The neighbour's comments can be summarised as follows:

- Scale and massing of development
- Design
- Privacy
- Impact of fence of protected windows
- Cesspit

2.2 Scale and massing of development

The scale and massing of development and the context of policies SP7 and H12 of the Newport Local Development Plan in particular has been addressed in paragraphs 7.4.8 to 7.4.11.

2.3 Design

The neighbour has expressed concern about the design and in particular the Mansard style roof. Design has been addressed in paragraph 7.5.3 of the officer report. The Mansard style would be different to the roofs of neighbouring properties which have a mix of pitched and hipped roofs. However, whilst the existing properties share the characteristic of having a low profile, they each have different designs; there is no standard design in the row. It is not therefore considered that Mansard style roof would be unduly out of character. The proposed dwelling would have a front projecting pitched gable extension which reflects the design of Willowbrook. Whilst the Mansard roof would extend with greater depth due to its design, again, this is not considered to be unduly harmful to the visual amenities of the area and the designated Green Wedge.

2.4 Privacy

The current property is a bungalow with no dormer windows in the roof space. The proposed development would also extend in width closer to the neighbouring boundary. It is therefore acknowledged that the neighbouring property currently enjoys a very high standard of privacy and that the proposed development will reduce that level of privacy to its increased proximity to the boundary and the introduction of dormer windows.

However, the dormers would face down the garden and not towards the neighbouring boundary resulting in a level of privacy that is considered to be reasonable and in keeping with many properties in Newport, whether that be in urban or rural locations where there are rows of residential properties.

2.5 Impact of fence of protected windows

The fence along the side boundary would not exceed 2 metres in height which is considered reasonable (in fact, such a fence can be erected under permitted development rights.).

2.6 **Cesspit**

The foul drainage assessment undertaken by the applicant refers to the ditch that runs along Outfall Lane, which was the one suggested by Natural Resources Wales. According to the assessment, the ditch suggested by the neighbour which runs to the south of Greenfields, was not assessed as an option. On the basis of the information available, it is therefore not possible to confirm whether this ditch would provide a suitable option to enable a package treatment plant to be installed as opposed to a cesspit. Notwithstanding this, it is considered that the applicant has reasonably considered the options before them and Officers are of the view that a new system would be betterment when compared to the existing situation.

2.7 **Concern regarding the accuracy of the calculations of volume of the proposed dwelling**

The volumes are 'internal' calculations rather than external, which may explain why the neighbour feels that the volumes calculated by the architect appear low. However, the architect has confirmed that the volume of the existing dwelling was also internally measured, so the percentage increase is on a like for like basis.

Ultimately, we have identified and acknowledged that the proposed dwelling would breach the 30% increase espoused in policy but the main issue, as highlighted in the report, is the assessment of actual impact or harm of that. Officers do not consider that the proposed dwelling would unduly impact upon the openness of the Green Wedge and would be reasonably in keeping with the area and neighbouring properties.

3. **OFFICER RECOMMENDATION**

3.1 The recommendation remains to grant subject to conditions.

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