

# Report



## Governance and Audit Committee – Urgent Item Report

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Date: 14<sup>th</sup> December 2022

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

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

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

**Ward** Marshfield

### Reason for Urgency

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

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

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

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

**Timetable** Immediate effect

This report was prepared after consultation with:

- Cllr Mark Spencer (Chair of Planning Committee)
- Joanne Evans (Senior Solicitor)
- Anne Jenkins (Governance Team Leader)

- Pamela Tasker (Governance Officer)
- Andrew Ferguson (Planning and Development Manager)
- Stephen Williams (West Area Development Manager)

**Signed**

## **Background**

The report contained in this schedule assessed the breach of planning control against relevant planning policy and other material planning considerations, and took into consideration the views of statutory consultees where applicable.

Planning decisions are expected to benefit the City and its communities and there is a duty to pursue formal enforcement action against inappropriate or poor quality development in the wrong locations. This improves the appearance of the physical environment and the amenities of residents and businesses by tackling unsightly land and buildings that are detrimental to the amenities of the area.

Where formal enforcement action is taken, the recipient of the Notice has a statutory right of appeal in most cases. There is no third party right of appeal against a decision with the exception of High Hedge Remedial Notices. Appeals are normally lodged with Planning and Environment Decisions Wales. Non-compliance with a statutory Notice is a criminal offence against which prosecution proceedings may be sought. The maximum level of fine and/or sentence that can be imposed by the Courts depends upon the type of Notice issued.

Investigations and issuing of notices are carried out by existing staff and there are no additional staffing issues. It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions relating to planning enforcement appeals but these costs are met by existing budgets.

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

## **Financial Summary**

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

In the case of Stop Notices, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development have planning permission.

## **Risks**

Two risks are identified in relation to decisions to take formal enforcement action: decisions being overturned at appeal with costs awarded; and compensation being awarded if a Stop Notice is issued.

An appeal can be lodged by any recipient of a formal Notice, with the exception of a Breach of Condition Notice. 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.

If a Stop Notice is issued, compensation can be awarded against the Council if it is demonstrated that the breach of planning control alleged has not occurred as a matter of fact, the breach is immune from enforcement action due to the passage of time, or the activities/development has already been granted planning permission. Legal advice is sought before taking such action, and a cost-benefit analysis is undertaken to fully assess the proposed course of action.

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

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Decisions challenged at appeal and costs awarded against the Council.	M	L	<p>Ensure reasons for taking formal enforcement action can be defended at appeal.</p> <p>Ensure appeal timetables are adhered to.</p>	<p>Planning Committee</p> <p>Planning and Development Manager</p>
Compensation awarded in relation to a Stop Notice	L	L	<p>Ensure reasons for issuing a notice can be defended at appeal.</p> <p>Cost benefit analysis undertaken, and legal advice sought on proposed actions.</p>	<p>Planning and Development Manager and Senior Legal Officer</p> <p>Planning and Development Manager</p>

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

The Council's Corporate Plan 2022-2027 identifies four Well-being Objectives, with the overall aim to be an ambitious, fairer, greener Newport for everyone. To achieve this goal, we have four well-being objectives that will prioritise our focus over the next five years and will support our longer-term vision for Newport over the next 20 years:

- Economy, Education and Skills,
- Environment and Infrastructure
- Quality Social Care and Community Services
- An Inclusive, Fair and Sustainable Council

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 ensuring high quality 'place-making'.

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with Future Wales: The National Plan 2040 and the Newport Local Development Plan (Adopted January 2015) unless material considerations indicate otherwise. Planning decisions are therefore based primarily on national planning policy and this core Council policy.

### Options Considered

- 1) To take action urgently in accordance with the Officer recommendation using provisions in the Standing Orders; or
- 2) To delay urgent action and report the case to Planning Committee for determination.

### Preferred Option and Why

Option 1 was preferred given that the unauthorised works were continuing to progress on the site resulting in the land being stripped of topsoil to form bunds adjacent to protected reens and there was

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

### **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 or enforcement action.

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 Enforcement Schedule, the relevant planning policy context and all other material planning considerations. The Committee needs to consider whether the particular enforcement action being recommended is expedient and in the public interest and whether it is proportionate to the breach of planning control identified.

### **Comments of Head of People and Business Change**

Within each report the sustainable development principle (long term, prevention, integration collaboration and involvement) of the Well-being of Future Generations (Wales) Act has been fully considered. From an HR perspective there are no staffing issues to consider.

### **Comments of Cabinet Member**

The Cabinet Member for Strategic Planning, Regulation and Housing has been made aware of the report.

### **Local issues**

Ward Members have been notified of this decision due to the urgent nature of the report.

### **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.

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

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

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**

The report contained in this schedule assess the breach of planning control or relevant complaint against relevant planning policy and take into consideration the views of statutory consultees where applicable.

## **Background Papers**

### **NATIONAL POLICY**

Planning Policy Wales (PPW) Edition 11 (February 2021)  
Future Wales: The National Plan 2040  
Development Management Manual 2017  
Welsh National Marine Plan November 2019

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

TAN 5: Nature Conservation and Planning (2009)  
TAN 12: Design (2016)  
TAN 15: Development and Flood Risk (2004)

Welsh Government Circular 016/2014 on planning conditions

### **LOCAL POLICY**

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

#### Supplementary Planning Guidance (SPG):

Planning Obligations (adopted August 2015)  
Wildlife and Development (adopted August 2015)

## **Consultation**

Not applicable. This report is to inform the Governance and Audit Committee of the decision made by the Authority.

## **Background Papers**

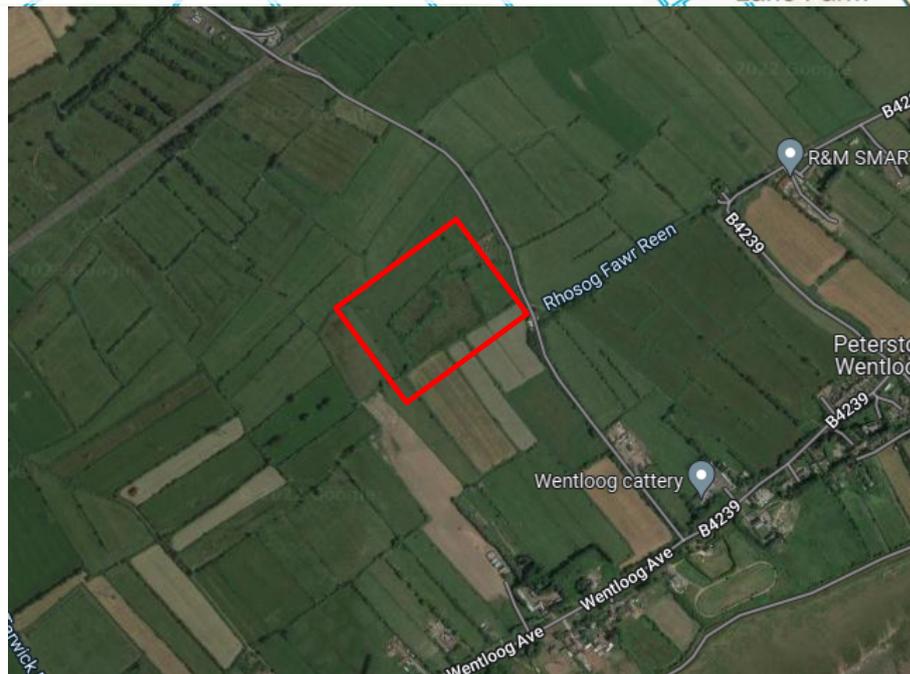
Not applicable

Dated: 19<sup>th</sup> December 2022

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

**1.0 Breach of Planning Control**

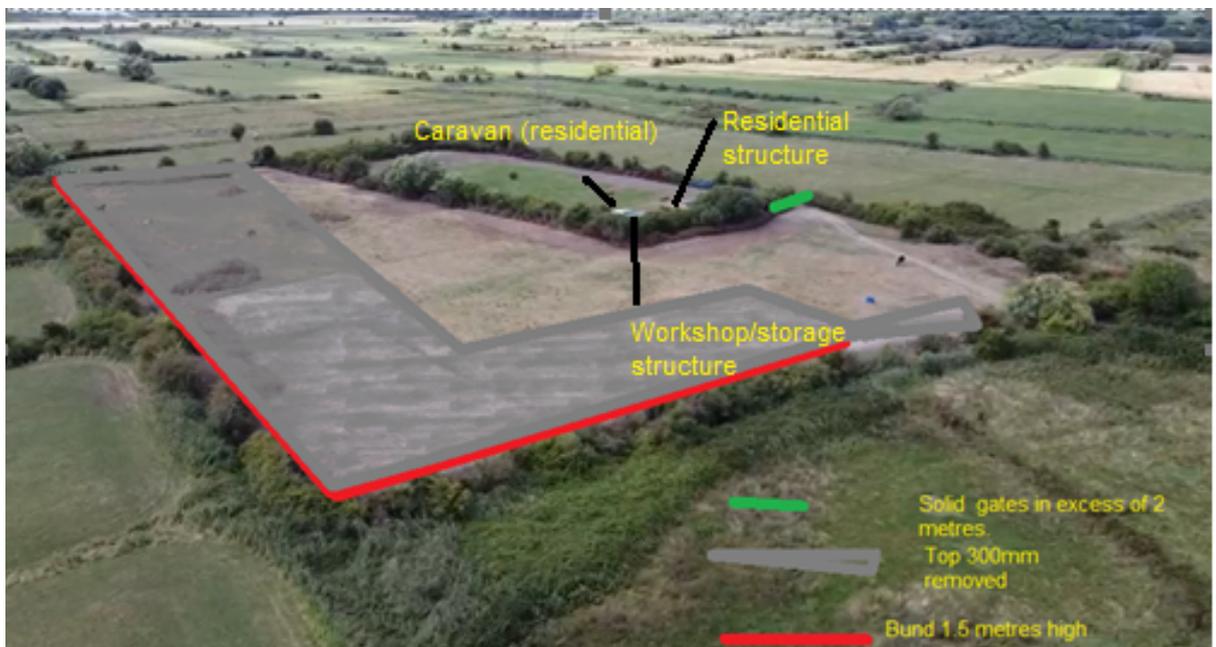
1.1 Siting of a residential touring caravan, creation of a residential structure, erection of workshop/storage structure, laying of a hardstanding and bund at Green Lane, Peterstone and the associated access.



## 2.0 Assessment

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

Figure 1: Annotated site layout – looking West.



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

*after which the general interest in proper planning control would yield and the status quo prevail ...”*

## 2.4 Main Issues

The main issues in this case are considered to be:

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

## 2.5 Green Belt Policy

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

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

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

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

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

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

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

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

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

- due to its large scale;

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

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

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

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

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

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

## 3.2 **Flood Risk**

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

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

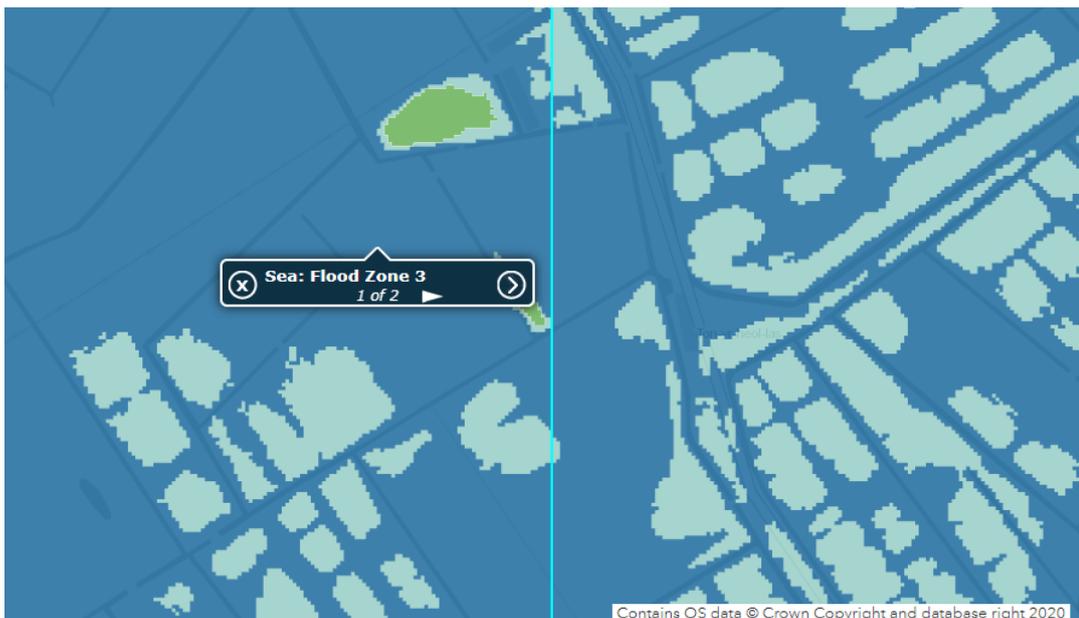
Given that the development fails to satisfy either of the first two parts of the test, in that it is not part of regeneration initiative or part of an employment objective, it is unacceptable. As such, one does not need to proceed to the second part of the test. Notwithstanding this, the land would not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

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

### Rivers – Flood Zone 3

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

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





### Sea – Flood Zone 3

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

### Rivers – Flood Zone 2

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

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

### 3.5 Highway issues

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

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

### 3.6 Ecology

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

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

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

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

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

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

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

### **3.9 Foul Sewerage**

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

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

### **4.1 Human Rights**

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

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

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

## **5.0 Other Considerations**

### **5.1 *Crime and Disorder Act 1998***

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

### **5.2 Equality Act 2010**

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

- 5.3 Having due regard to advancing equality involves:
- removing or minimising disadvantages suffered by people due to their protected characteristics;
  - taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
  - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 5.4 The above duty has been given due consideration in the determination of this application. It is considered that enforcement action in this case will not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

## **6.0 Options Considered/Available**

- 6.1 The Council has powers under Section 172 of the Town and Country Planning Act 1990 to issue an Enforcement Notice requiring steps to be taken to remedy this breach of planning control. Failure to comply with the requirements of an Enforcement Notice is a criminal offence, against which prosecution proceedings may be taken at the Magistrates' Court. The maximum penalty for this offence is currently a fine of £20,000 or, upon conviction on indictment, an unlimited fine.
- 6.2 Due to the right to appeal against an Enforcement Notice, there is potential for a delay of a significant number of months before the Notice takes effect (with PEDW facing a current backlog). Until the determination of the appeal the tipping could continue without an offence being committed and without further enforcement action being taken. Due to the immediate and irreparable harm that could be caused by continued tipping and storage of waste during this period, the Council may wish to exercise its powers under Section 183 of the Town & Country Planning Act 1990 to issue a Stop Notice; whilst not precluding other bodies, such

as NRW, taking action under other legislation. This Notice would prevent further works until the Enforcement Notice comes into effect. Non-compliance with a Stop Notice is a criminal offence with the same penalty as an Enforcement Notice.

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

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

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

## 7.0 Costs/Benefits

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

Costs:

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

Benefits:

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

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

## 8.0 Preferred Choice and Reasons

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

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

Stop Notice point A and Enforcement Notice A to .

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

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

*187B Injunctions restraining breaches of planning control.*

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

if so required.

## **9.0 Recommendation**

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

### **Compliance Period:**

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