

# Report



## Planning Committee – Hybrid Meeting

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### Part 1

**Date:** 1<sup>st</sup> May 2024

**Subject** Planning Application Schedule

**Purpose** To take decisions on items presented on the attached schedule

**Author** Head of Regeneration and Economic Development

**Ward** As indicated on the schedule

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

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

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

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

**Action by** Planning Committee

**Timetable** Immediate

This report was prepared after consultation with:

- Local Residents
- Members

- Statutory Consultees

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

## **Background**

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

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

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

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

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

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

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

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

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

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

## **Financial Summary**

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

## Risks

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

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

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

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

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

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

\* Taking account of proposed mitigation measures

### **Links to Council Policies and Priorities**

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

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

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

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

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

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

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

### **Options Available and considered**

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

### **Preferred Option and Why**

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

### **Comments of Chief Financial Officer**

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

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

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

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

### **Comments of Monitoring Officer**

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

### **Comments of Head of People, Policy and Transformation**

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

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

## **Comments of Cabinet Member**

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

## **Local issues**

Ward Members were notified of planning applications in accordance with the Council's adopted policy on planning consultation. Any comments made regarding a specific planning application are recorded in the report in the attached schedule

## **Scrutiny Committees**

None

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

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

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

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

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

## **Wellbeing of Future Generations (Wales) Act 2015**

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

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

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

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

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

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

### **Consultation**

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

### **Background Papers**

#### **NATIONAL POLICY**

Planning Policy Wales (PPW) Edition 12 February 2024  
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 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.

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1.

**APPLICATION DETAILS**

**No:** 23/1109      **Ward:** Gaer

**Type:** Full (Major)

**Expiry Date:** 21 May 2024

**Applicant:** L Morris

**Site:** Land To South And West Of Cul De Sac At Marryat Walk Newport South Wales

**Proposal:** PROPOSED RESIDENTIAL DEVELOPMENT OF 20 APARTMENTS, LANDSCAPE PLANTING AND ASSOCIATED WORKS

**Recommendation:** GRANTED WITH CONDITIONS AND SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED AUTHORITY TO HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT TO USE DISCRETION TO REFUSE IF NOT SIGNED WITHIN 3 MONTHS OF A RESOLUTION

**1. INTRODUCTION**

1.1 The application seeks to construct an apartment block comprising of 20no. affordable homes with landscape planting and associated works on land located to the South and West of Marryat Walk. The site is located within the Gaer ward. The application is presented to Members of the Planning Committee for consideration as the proposal would represent as a major type of development as the proposed floor space to be constructed is greater than 1000sqm. Cllr Stephen Marshall also requested that this application be presented to planning committee.

**2. RELEVANT SITE HISTORY**

19/0780	OUTLINE PERMISSION FOR UP TO 9NO. DWELLINGS ALL MATTERS RESERVED	Granted with conditions and S106
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**3. POLICY CONTEXT**

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

- SP1 – Sustainability
- SP2 – Health
- SP4 –Water Resources
- SP9 – Conservation of the Natural, Historic and Built Environment
- SP10 – House Building Requirement
- SP13 – Planning Obligations
- SP18 – Urban Regeneration
- GP1 – Climate Change
- GP3 – Service Infrastructure
- GP2 – Amenity
- GP4 – Highways and Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection and Public Health
- H2 – Housing Standards
- H3 – Housing Mix and Density
- H4 – Affordable Housing
- H6 – Sub-division of Curtilages, Infill and Backland Development

- T4 – Parking
- W3 – Provision for Waste Management Facilities in Development

### 3.2 **Adopted Supplementary Planning Guidance**

- Sustainable Travel
- Planning Obligations
- Affordable Housing
- Wildlife and Development
- New Dwellings
- Waste Storage and Collection
- Parking Standards

## 4. **CONSULTATIONS**

4.1 **NATURAL RESOURCES WALES:** No objection.

4.2 **WELSH WATER:** The proposed cycle store will be situated in within the protection zone of the 150mm foul public sewer crossing the site, we advise that the location of this bin store should be re-visited so this falls outside of the protections zone measured 3 metres wither side of the centre line of this sewer pipe. We are therefore not currently in a position to support this application and request that a holding objection is placed on this application at this time until revised drawings have been submitted and Dwr Cymru Welsh Water are re-consulted for further comment.

### SEWAGE TREATMENT

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

### WATER SUPPLY

Capacity is currently available in the water supply system to accommodate the development. We reserve the right however to reassess our position as part of the formal application for the provision of new water mains under Section 41 and Section 51 of the Water Industry Act (1991) to ensure there is sufficient capacity available to serve the development without causing detriment to existing customers' supply as demands upon our water systems change continually.

Initial indications are that a connection can be made from the 180mm diameter MDPE watermain along Shakespeare Crescent. The cost of providing new on-site watermains can be calculated upon the receipt of detailed site layout plans which should be sent to the above address.

4.3 **CADW (HISTORIC BUILDINGS AND LANDSCAPES/PARKS AND GARDENS):** Whilst there may be a very slight visual change in the view from the designated historic assets this will not have any effect on the way that they are experienced, understood, and appreciated. Consequently, the proposed development will have no impact on the setting of the above designated historic assets.

4.5.1 **WILDLIFE IN NEWPORT:** No response received

4.5 **NEWPORT CIVIC SOCIETY:** No response received

4.6 **NEWPORT ACCESS GROUP:** No response received

4.7 **SENIOR FIRE PREVENTION OFFICER:** 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.

4.8 POLICE ARCHITECTURAL LIAISON OFFICER: No response received

4.9 REGIONAL AMBULANCE OFFICER: No response received

**5. INTERNAL COUNCIL ADVICE**

5.1 HEAD OF INFRASTRUCTURE (HIGHWAYS): No further issues for me, happy to remove any objections subject to the cycle and bin stores being approved plans and a condition to provide electric vehicle charging. The parking could result in visitors parking in the street, but I don't see any harm/issue with that.

5.2 HEAD OF INFRASTRUCTURE (HIGHWAYS ACTIVE TRAVEL CO-ORDINATOR): It appears that consideration for secured cycle parking has been considered in this proposal. I would have no objections to this site in principle.

5.3 HEAD OF INFRASTRUCTURE (DRAINAGE): No response received.

5.4 HEAD OF INFRASTRUCTURE (SAB): Due to the nature of the scheme, it is likely that a SAB application will be required.

5.5 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (TREE OFFICER): No objections.

5.6 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (LANDSCAPE OFFICER): A revised Site Plan rev G and Soft Landscape Proposals Plan rev C has been submitted and these address previous landscape issues raised in January 2024. A twelve month soft landscape outline of maintenance is provided on the Soft Landscape Proposals Plan. The usual five year plant replacement should be conditioned and will require the outline maintenance to continue through this period. It would be helpful if the applicant confirms maintenance heights for native hedges which bound the west and north of the site and are onto existing residential rear gardens.

5.7 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ECOLOGY OFFICER): given the constraints of the site I would say that the level of tree planting is appropriate, and that in time those trees will support the ecological connectivity through the site. My comments in relation to bats remain as below.

Section 3.6.2 states that '*No trees with potential roost features (PRF) were observed on site, with the trees on site appearing relatively immature, with narrow trunks and bark in good condition.*'. However according to the Tree Survey report from September 2023, the three Ash trees on site (T4 – T6) are 17-18 m tall and middle-aged. There is also a middle-aged Sycamore (T1), with internal decay, a feature which bats may use to roost. All of these trees are proposed for removal, but I see no evidence from the EAR that they have been examined in detail for their bat roost potential. I would not say that there is justification for a full bat survey of these trees, but there should at least be a check before they are felled, and this should be required as part of a biodiversity mitigation and enhancement scheme.

5.8 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (ENVIRONMENTAL HEALTH): I have no objections to the proposals subject to the following conditions:

**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

### **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.

### **Noise Insulation**

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

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

### **Glazing & Ventilation**

Prior to first occupation, glazing and ventilation specification shall be implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be retained thereafter in perpetuity.

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

### **Waste storage and Recycling**

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

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

### **Advisory – Air Source Heat Pumps:**

If Air Source Heat Pumps (ASHPs) are intended to be installed in the residential scheme for sustainable heating source; further acoustic impact information will be required, including an environmental noise assessment to consider the cumulative impact of multiple ASHPs. Further information is available from the Environmental Protection team.

### **Advisory - EV Charging points:**

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.

5.9

HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (SCIENTIFIC OFFICER): It is noted that parking for up to 18 cars is being proposed. I would not be able to support such development unless it could be guaranteed that the only cars allowed to use the car park were ultra-low emission vehicles or it was a car free development like others being proposed currently in view of both the Climate Change Emergency Newport City Council has declared and its commitment to its Air Quality Action Plan which seeks development measures that positively contribute to air quality and by this we interpret this to mean a net benefit to air quality where new development takes place.

I am able to support air quality positive design and development where this is demonstrated as part of the D&A e.g. the use of low carbon heating systems, low carbon building materials, provision of EV charging and air quality beneficial green infrastructure.

The applicant would be expected as per our SPG on Air Quality to undertake an air quality assessment (AQA) which would provide baseline information on whether an air quality neutral position can be reached through its methodology. We are seeking air quality

positive outcomes as part of the climate change emergency and air quality imperatives that Newport City Council faces; this needing to take the form of a mitigation strategy that includes all of those matters mentioned above and show how they demonstrably reduce emissions from the proposed development.

### **Contaminated Land**

The proposed development site has been formerly quarried and as such is now regarded as unknown filled ground which may have contamination associated with it.

The Geoenvironmental Investigation produced by Terra Firma confirms the presence of contamination and the need for covers systems in any residential gardens and landscaping. Ground gas monitoring is also required at the site the results of which will determine the degree of protection warranted to any residential development.

### **Conclusion**

It is not possible at present to support this application or comment further until evidence has been submitted in respect of air quality. This needs to relate to the development design and operational measures that will be adopted at this development to positively contribute to local air quality. An air quality assessment also needs to be undertaken and submitted to the LPA as part of this application, which demonstrates what the baseline impact of this development would be upon existing receptors.

A transport assessment (TA) should accompany this application so that all modes of transport can be considered and the TA outputs used in the AQA.

- 5.10 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (WASTE MANAGER): No response received
- 5.11 HEAD OF ENVIRONMENT AND PUBLIC PROTECTION (PUBLIC RIGHTS OF WAY OFFICER): No response received.
- 5.12 HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (CONSERVATION OFFICER): I have no objections to the above application. I would not consider there to be any impact on surrounding heritage assets.
- 5.13 HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT (PLANNING CONTRIBUTIONS MANAGER):  
Council policy stipulates that affordable housing is exempt from contributing towards leisure and education planning obligations. However, to safeguard any future Council infrastructure liabilities, there is a requirement to provide a S106 legal agreement in the event that any of the dwellings are sold or rented on the open market. Prior to commencement of the development, the Owner and/or Developer will notify the Council in writing of the number and type of dwellings which are to be 'open market' dwellings. As such, the following formulas would apply:
- Affordable Housing**  
Provide 30% affordable dwellings on-site. Alternatively, in exceptional circumstances, an off-site commuted sum could be agreed (in accord with the Affordable Housing SPG) for the provision of affordable housing for the City of Newport.  
Affordable Housing Sum will be index linked to the RPI and paid prior to occupation of 50% of the development.
- Education**  
The development falls within the catchment area of John Frost High School and Gaer Primary School. Whilst it is recognised that no education contribution is requested for affordable housing, it is necessary to ensure that dwellings sold or rented on the open market will adhere to the following formula:
- Number of secondary pupils generated by market dwellings in excess of available capacity at John Frost High School (prior to commencement) x £29,741 = Secondary Education Sum;
  - Number of primary pupils generated by market dwellings in excess of available capacity at Gaer Primary School (prior to commencement) x £19,034 = Primary Education Sum.

## Leisure

There is a deficit of equipped outdoor play space within the Gaer Ward. However, one bed apartments are exempt from contributing towards equipped play. As such, no formula applies.

## 6. REPRESENTATIONS

### 6.1 NEIGHBOURS:

All properties within 50m of the application site were consulted (57no. properties), a site notice displayed and a press notice published in South Wales Argus. 4no. representations were received, both in support and objecting to the development. The following comments were received in support of the development:

- Good to see plans for some much needed social housing in my local area, where I grew up & am a community volunteer. As long as the plan includes adequate parking I support these new homes.
- welcome the idea of some development to this area but I do have some serious concerns regarding these proposals.

The following comments were received objecting to the development:

- note from the plans that there are parts of the building which are three stories high. This would mean my property being overlooked. Looking at the information, it looks as though the windows on the upper floor of these parts would look into my rear bedroom windows. This is extremely concerning to me as it would invade my privacy not only in my garden but also into my bedrooms and those of my neighbours.
- I am also concerned about the blockage of natural sunlight during the shorter days of the year because of the proposed height of the building.
- I note that the bins would be situated all together near the rear of my property. There is an annexe in which my son lives at the end of my plot. There is already a rat problem in the area. I see them running around the garden next door. I will not feed birds because of this. Collective bins situated here would, I argue, attract more rats and other vermin as well as causing offensive odours (the Council only collect the bins every 3 weeks) and pose a potential health risk. If the proposed 20 apartments are built, this will mean a huge amount of rubbish. Such blocks are notorious for poor control of rubbish containment where rubbish is collected communally. So I am greatly concerned about vermin, smell, effluent run off, health implications as well as the noise all those people would make taking rubbish to, effectively, outside my sons home.
- There is a huge amount of Japanese Knotweed across the plot. It comes to my boundary. I presume the necessary procedures to be eradicate this completely would be required before any building work begins? Including the required inspections and proof of such.
- It states there would be room for 20 cars plus on-street parking. Again, this would also potentially cause an unreasonable amount of noise outside my sons home (the annexe) as the majority of the parking spaces are right outside with very little plan to mitigate noise. With the proposed 20 apartments it is quite possible there could be 40 or more cars associated with these units. (I read that according to the council it should be a minimum of 24) People already park on both side of Shakespeare Crescent and Marryat Walk. I consider the parking already dangerous along these stretches of road. Children and animals run out onto the road between parked cars. There is no more capacity for additional cars. 20 apartments are far too many for the size of plot and the relevant surroundings. Bin lorries would find the proposed access extremely difficult because of cars parked on both sides of Marryat Walk.
- I note on the plans an area labelled 'Landlord' in each apartment. Does this mean the apartments are to be rented out? From my past experience, people who rent flats do not, on the whole treat the area in the same manner as those who own the properties. There tends to be more antisocial behaviours such as rubbish, noise etc.
- In the past, there has been a lot of fires which have caused dreadful smells and black smoke. I have witnessed people dumping liquids there also. Has a thorough inspection of the whole plot been undertaken?
- Three storey buildings are not in keeping with the rest of the estate

- When we consulted with the Council about the annexe I was told the roof had to be flat in keeping with the existing estate. These plans show pitched roofs.
- Therefore I have grave concerns for our privacy, light, clean air, health, noise, accessibility, mental health and impact on my general standard of living and in particular the wellbeing of my autistic son.
- Concerns about building on top of the main sewerage and erecting new apartments would exacerbate any existing problems and issues, which have been present since the build of Marryat Walk and Wells Close in 1990. We still incur and experience issues and adding to this will cause further problems as the system cannot cope at present.
- Invasion of privacy with the apartments being erected/built near surrounding properties.
- Concerns around noise pollution and won't be able to use our property and enjoy it as we should do.
- Japanese knot weed has always been a major issue and impacts on all residents residing in Wells Close, Shakespeare Crescent and the land on Marryat Walk.
- The previous owner allowed a contractor to bury over 40 tonnes of toxic waste (asbestos dust) on the derelict land. When disturbed, will impact all residents and will be catastrophic.

6.2 COUNCILLORS: Councillors Marshall, Perkins and Bartrouni were consulted on this application. The following comments were received from Cllr Marshall:

I have concerns that in a previous potential development containing 9 properties saw the land in the area collapse ending on and near the Ebbw Vale line railway. Seeing the increased potential, I would ask to be reassured that the ground itself is reviewed and confirmed that it is stable and hold the weight of any build for a substantial/ reasonable amount of time.

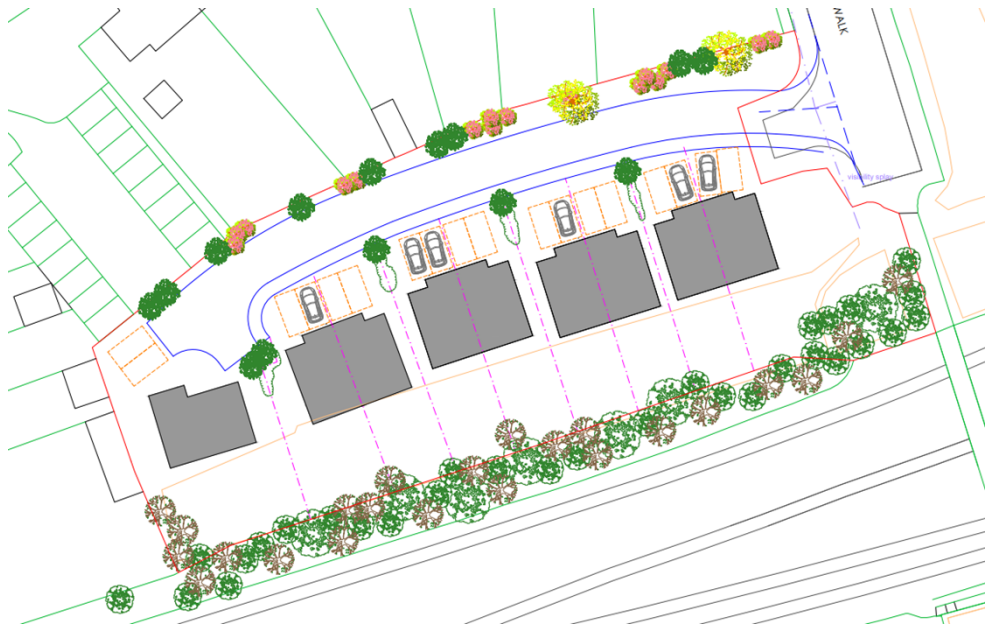
## 7. ASSESSMENT

### 7.1 *Background*

7.1.1 The parcel of land is located to the south of properties which front on to Shakespeare Crescent. To the east and west there are also residential properties, with the Cardiff to Ebbw Vale railway line running to the south of the site. The site consists of amenity grass, tall ruderal vegetation, dense scrub mainly on the steep railway embankment, poor semi-improved grassland, bare ground, and hardstanding. The site is accessed from Marryat Walk where there is an existing access which previously served three dwellings, although these have been demolished for some time.

7.1.2 The application site covers an area of approximately 0.3 hectares and has been subject to planning permission for 9 no. dwellings was granted permission in 2020 (19/0780). That scheme was arranged as 1 no. detached dwelling and 4 no. pairs of semi detached dwellings. The housing mix was to be 8 x 3 bedroom dwellings and 1 x 4 bedroom dwelling, with 2 no. parking spaces being provided for each dwelling. The below plans indicate what was previously approved:





7.1.4 In terms of the surrounding area, the residential area is predominantly characterised by flat roofed, two storey terraced houses. Whilst the approved dwellings had pitched roofs, it was considered that the scale and footprint of the buildings were commensurate with the properties in the surrounding area and would not be prominent in the surrounding area due to their position.

## 7.2 *Principle of Development*

7.2.1 The site is previously developed land within the defined settlement boundary. Its redevelopment, which would be considered as an urban regeneration proposal, is therefore considered to be acceptable in principle and would be consistent with policy SP1 and SP18 of the Newport Local Development Plan and its general brownfield strategy. The development would also contribute toward the provision of a range of housing stock within an existing built-up area, in accordance with policy SP10.

7.2.2 The density of the proposed development is 66 dwellings per hectare, which would meet the requirements of policy H3, which seeks 30 dwellings per hectare as a minimum.

7.2.3 Given the former residential use and recently approved permission, in principle, residential development is considered acceptable on this site. The use would not cause a general conflict with the surrounding residential uses in the area.

## 7.3 *Description of Development*

7.3.1 The proposal seeks to construct a mono pitched apartment block to create 20no. one-bedroom apartments. The block has a stepped height, ranging from two to three storeys. The pedestrian and vehicle access would be via Marryat Walk. 20no. parking spaces are proposed, including disabled parking bays and EV charging points. Cycle and bin storage facilities are proposed externally. To the west of the property is a parcel of land, intended to be used to provide an attenuation basin as part of the drainage proposals. This land would be subject to biodiversity planting and would be available as an informal amenity space. The below plans illustrate the proposed elevations and site plan.





## 7.4 Character and Appearance

- 7.4.1 The proposed apartment block features a stepped appearance, between two storey and three storey. At two storey level, the apartment block would measure 6.32m, at three storey level, the proposed development would have a height of 9.46m. The total footprint of the Apartment block is 1284sqm.
- 7.4.2 The surrounding area is comprised of two-storey residential dwellings. The prevailing character along Shakespeare Crescent is two storey, flat roof dwellings. To the west of the property, there are two storey pitched roofs dwellings. Policy GP6 sets out that new developments should have regard to existing architectural features but avoid inappropriate replication of forms of development. Whilst the properties in the locality are of two storey scale, it is considered that the stepped three storey development is acceptable in principle, subject to suitable design. Throughout the application, the initial design has been subject to negotiation. The final submitted design, as above, is considered compliant with the relevant policies.
- 7.4.3 The materials proposed for the external finishes are composed of red brick finish for the base and white render for the remainder of the apartment block, which provide contrast and break up the built form of the flats. These materials are used in other dwellings within the area. There is a grey horizontal board finish between windows to provide visual relief from the white render. All elevations have a vertical emphasis regarding window placement. Glazed balconies are proposed, allowing access from the living space.
- 7.4.4 It is noted that the three-storey element of the proposal would be highly visible from Shakespeare Crescent and Wells Close, however the roof form ensures that the proposal does not appear as overbearing or a contrived addition to the area. It is considered that the proposed development is of quality design and appearance, that has drawn reference to the

existing features of the area. The proposal integrates well within the surrounding street scape. The proposal is considered to accord with policy GP6.

## 7.5 Residential Amenity

7.5.1 The aims of policies GP2, H6 and the New Dwellings SPG are to:

- Ensure that occupiers of new dwellings have reasonable living conditions;
- Ensure that new dwellings do not deprive persons in existing dwellings of reasonable living conditions; and
- Protect the character and appearance of the natural and built environment.

7.5.2 All new build flats should achieve the minimum size standards as set out within the New Dwellings Supplementary Planning Guidance document. The size of the flats proposed against the required standards are provided in Table 1 below:

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

7.5.3

Table 1: Desired Minimum Standards for Gross Internal Floor Space (Square Metres)

The floor plans provided by the applicant indicate that each flat would be 50Sqm. This size would exceed the requirement for a flat with a communal access. It is considered that the internal space for the flats would be of an acceptable size, in accordance with policy GP2.

7.5.4 The new dwellings SPG also sets out the desired space standards for future occupants. The desired amount of amenity space for flats is set out in table 2 below:

Type of Home	No. of Beds	Type of Amenity Space	Desired Space
Flat	1	Balcony	1.5sqm (depth) x 1.5sqm (width)
Flat	2	Balcony	1.5sqm (depth) x 2sqm (width)
Flat	3	Balcony	1.5sqm (depth) x 3sqm (width)

Table 2: Desired Standards for Private Amenity Space

7.5.5 All 20no. units proposed meets the requirements for the addition of amenity space. The private amenity space proposes a balcony to each flat, measuring 1.1m in depth and 2.15m in width, exceeding the minimum area for the balcony space. Given the amount of private amenity space afforded to future occupants, with the addition of the outdoor communal area, it is considered that the private amenity space provided accords with the aims of Policy GP2.

7.5.6 The site is situated in a residential area with dwellings on most boundaries. To the south of the site is a railway track that runs west to east direction. The near side rail track is approximately 20m from the rear facades of the proposed plots and the amenity area, and the far-side rail track is approximately 35m from the façades of the plots and the amenity area. The M4 is approximately 1km to the west of the proposed site, running north to south, and the A48 is approximately 300m to the south. The World Health Organisation sets out that daytime noise levels should achieve 50 – 55dB L<sub>Aeq,16hrs</sub>. The Noise Assessment confirms that the daytime outdoor noise levels would be 53dB L<sub>Aeq,16hrs</sub>. Environmental Health Officer has no objection to the proposals and confirms that the measured noise levels would not have a significant impact on the noise levels experienced by future occupiers. The proposal accords with GP2 and GP7.

7.5.7 With regard to neighbouring amenity, the SPG states that to ensure that all residences have adequate privacy, sufficient separation distances must exist between existing and proposed

dwellings. Protected windows that face one another should be at least 21.00 metres apart. The proposed flats will face properties along Shakespeare Crescent and Wells Close. There will be a separation distance of approximately 50m. As such, it is considered that there would be adequate privacy, for both future occupiers of the proposed development and the existing residential properties along Shakespeare Crescent and Wells Close. Given the distance between the proposed development and the existing residential properties, it is not considered that the proposal will cause overshadowing to the nearby residential properties, in accordance with policy GP2.

7.5.8 There are trees along the southern boundary of the site. Whilst these trees are positioned at the bottom of the embankment, they are substantial in terms of their height. The trees are outside of the application site, so whilst the developer has the right to prune back these trees, it is not within the gift of the developer to fell these trees. These trees are located to the south of the apartment block and so will impact upon light levels and reduce sunlight to the rear facades and balconies of the proposed apartments. However, on balance, it is not considered that this would provide an unacceptable living environment for future occupiers, providing a woodland setting for the rear lounge / kitchen areas and rear balconies.

## 7.6 Highways and Parking

7.6.1 The application site is located within Parking Zone 3; the Parking SPG documents sets out an apartment development should provide 1 space per bedroom for residents and 1 space per five units for visitors. The proposed 20no. residential units would therefore demand the provision of 24 no. parking spaces to serve residents and visitors. The Parking SPG document states that where clear evidence of low car ownership has been provided, a more flexible approach to car parking standards may be taken. Furthermore, the Parking SPG sets out that sustainability points will be awarded for developments that meet the criteria for their proximity to local facilities by active travel and public transport modes.

7.6.2 The proposed development would provide 20 no. parking spaces within the development, including EV charging points and Disability spaces. Whilst there is a shortfall for the visitor parking, it has been demonstrated that there is ample car parking along Marryat Walk, adjacent to the application site, which would be suitable for visitor parking. The Highways Officer has agreed that this is acceptable. It is considered that the proposed development accords with policy GP4 and T4.

7.6.3 The Sustainable Travel SPG states that provision for cycle storage is important for the encouragement of active and sustainable travel. Table 3 below sets out the minimum cycle parking standards.

Development Type	Cycle Parking Provision	
	Long Stay Requirement (Secure and Ideally Covered)	Short Stay Requirement (obvious, easily accessed and close to destination)
<i>Residential</i>		
Dwelling House, Student Accommodation, Over 50s Accommodation and Houses in Multiple Occupation	1 Space per 2 Bedrooms	1 Space per 20 Bedrooms

Table 3: Minimum Cycle Parking Standards

requires 1 long stay space per 2no bedrooms and 1 short stay space per 20 bedrooms. As such, there is a requirement for 11 spaces. The proposal includes space for 12no. cycle spaces which exceeds the requirement. The proposal accords with SP1 and SP2.

## **7.7 Waste**

7.7.1 The proposal provides onsite storage of waste and recycling; that can be accessed by all residential units. The Councils Waste Officer has raised no objection to the proposed scheme, and the Councils Highways Officers accepts the refuse collection point arrangements are acceptable in highways terms. The proposal accords with Policy W3.

## **7.8 Ecology and Trees**

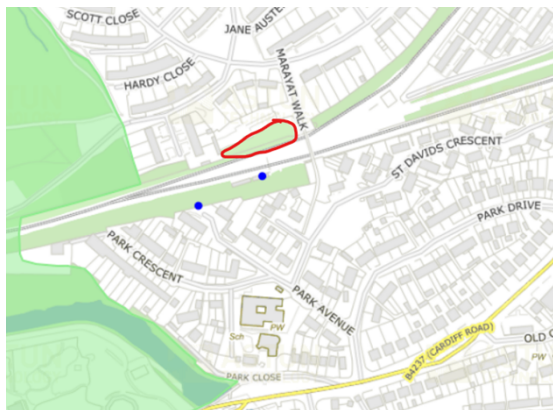
7.8.1 A Preliminary Ecological Appraisal of the site was undertaken. The survey concluded that the site has a negligible value and the habitat within the site is relatively widespread throughout the wider landscape. The survey also found that there is no suitable habitat for protected species. The report concludes that the proposed development presents an opportunity to enhance onsite biodiversity through the provision of bird and bat boxes/bricks and new native planting should be incorporated in the development.

7.8.2 The applicant states that there will be landscaping provisions to allow for net biodiversity gain. The proposal includes informal space to provide a drainage attenuation area to the west of the proposed building which would be accessible for residents albeit as informal space, which would also be 'rewilded'.

7.8.3 A Tree Survey has been submitted with the application, indicating that the highest quality trees are located outside of the development site, and are therefore unaffected by the proposals. Further trees are located along the northern boundary; most will be retained or replaced with new planting. The Tree Officer has no objections to the proposals. The proposal accords with policy GP5.

## **7.9 Heritage Impacts**

7.9.1 The application site is not located within a Conservation Area and does not contain Listed Buildings or Scheduled Ancient Monument. Adjacent to the site is a Listed Building, the Park Junction Signal Box. Tredegar Park, which is a Grade II Registered Historic Park and Garden, is located 90m to the west of the application site (site outlined in red, blue dots show location of listed railway features and green area to west shows Tredegar Park grounds).



Given that the area is already built up, it is not considered that the proposed development will have any further impact on the surrounding heritage assets, and the way that they are viewed, understood and appreciated. CADW nor the Conservation Officer has any objection to the proposed development. It is considered that the development is in accordance with policy SP9.

## **7.10 Impact on Health**

7.10.1 As above, the site is sustainably located being within the Newport settlement boundary. Furthermore, the proposed development is located within a 30m walk from a public right of way, which runs along Marryat Walk. The sites location is well connected with active travel measures, according with Planning Policy Wales, in order to create communities linked to active travel methods. The development also includes cycle storage, encouraging active travel. The proposal is considered to accord with policy SP2.

## **7.11 Drainage**

7.11.1 With regards to the capacity of the sewerage pumping station, Welsh Water has indicated that there is sufficient capacity to accommodate the proposed development.

7.11.2 Welsh Water has raised a holding objection to the application due to a proposed cycle store that was proposed to be sited within the protection zone of the 150mm foul public sewer that crosses the site. Amended plans have now been received which move the proposed cycle store further to the west to avoid the sewer easement. It is considered that this matter has therefore been resolved.

**7.12 Section 106 Planning Obligation Matters**

7.12.1 In accordance with Policy SP13 of the adopted Newport Local Development Plan 2011-2026 and the adopted Planning Obligations Supplementary Planning Guidance, development will be required to help deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale and the sustainability of the location.

7.12.2 Council policy stipulates that affordable housing is exempt from contributing towards leisure and education planning obligations. However, in order to safeguard any future Council infrastructure liabilities, there is a requirement to provide a S106 legal agreement in the event that any of the dwellings are sold or rented on the open market. Prior to commencement of the development, the Owner and/or Developer will notify the Council in writing of the number and type of dwellings which are to be ‘open market’ dwellings. As such, the following formulas would apply:

**Affordable Housing**

Provide 30% affordable dwellings on-site. Alternatively, in exceptional circumstances, an off-site commuted sum could be agreed (in accord with the Affordable Housing SPG) for the provision of affordable housing for the City of Newport.

Affordable Housing Sum will be index linked to the RPI and paid prior to occupation of 50% of the development.

**Education**

The development falls within the catchment area of John Frost High School and Gaer Primary School. Whilst it is recognised that no education contribution is requested for affordable housing, it is necessary to ensure that dwellings sold or rented on the open market will adhere to the following formula:

- Number of secondary pupils generated by market dwellings in excess of available capacity at John Frost High School (prior to commencement) x £29,741 = Secondary Education Sum;
- Number of primary pupils generated by market dwellings in excess of available capacity at Gaer Primary School (prior to commencement) x £19,034 = Primary Education Sum.

**Leisure**

There is a deficit of equipped outdoor play space within the Gaer Ward. However, one bed apartments are exempt from contributing towards equipped play. As such, no formula applies.

**Summary of planning obligations**

Service Area that requires planning obligation	Purpose of planning obligation	Planning obligation initially sought by Planning Authority	Summary Heads of Terms agreed by applicant(s)	Viability Issues?
City Services (Green Team)	Open space	None. One bed apartments are exempt from contributing towards equipped play	None.	No
Education department	Education improvements	No. of secondary pupils generated by market dwellings in excess of capacity x £29,741 No. of primary pupils generated by market dwellings in excess	No. of secondary pupils generated by market dwellings in excess of capacity x £29,741 No. of primary pupils generated by market dwellings in excess	



		of capacity x £19,034	of capacity x £19,034	
Head of Regeneration Investment and Housing	Affordable housing	The site lies within the Housing Target Area of Newport West, where there is a requirement for 30% of the development to be affordable dwellings	100% affordable housing proposed	No

#### Heads of Terms Agreed by Applicant

#### 7.13 **Air Quality**

7.13.1 The Senior Scientific Officer has requested an Air Quality Assessment to be undertaken. The site is not within an Air Quality Management Area. The nearest AQMA is located along the M4 near Bassaleg Road, some 1.2km from the application site. A CEMP that is secured by condition requires that construction route traffic information be included as part of the Construction Management Plan. Green Infrastructure, the provision of cycle parking and EV charging points can be secured via condition.

#### 7.14 **Topography**

7.14.1 The application site is relatively flat east to west, with a steep fall to the railway line along the Southern boundary. Due to the steep fall, there is little space for any amenity area to the rear of the proposed flats. In order to ensure that the site is stable and has an adequate level of protection, a Slope Stability Risk Assessment Report is required. This can be secured via condition.

### 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.

## 8.5 **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.

## 8.6 **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 would represent as a form of brownfield development to provide much needed affordable housing to serve the residents of Newport. The scheme includes private and communal amenity space, off street parking, sustainably located and of benefit to the overall character and appearance of the area.

## 10. **RECOMMENDATION**

**GRANTED WITH CONDITIONS AND SUBJECT TO A SECTION 106 LEGAL AGREEMENT WITH DELEGATED AUTHORITY TO HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT TO USE DISCRETION TO REFUSE IF NOT SIGNED WITHIN 3 MONTHS OF A RESOLUTION**

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

- 1554PA01 – Site Location Plan
- Topographical Survey P3700
- 1554PA02 Rev H – Site Plan
- 155403 Rev B – Floor Plans
- 1554PA04 Rev C – Elevations
- External Works General Arrangement 110 Rev P2
- Soft Landscape Proposals Rev C
- 1554PA05 Rev C – Site Sections
- 1554PA06A – Bins and Cycle Storage Details
- INT23031 106 P6 – Vehicle Swept Path Analysis
- Drainage arrangement Rev P7
- External works general arrangement 110 Rev P4
- Visibility splay layout 002 Rev P1
- INT23031 – 101 P2 – Refuse Vehicle Tracking Layout
- Covering Letter and Statement
- Biodiversity Enhancement Scheme
- Pre-application Consultation Document (Parts 1,2 and 3)
- Pre-application Consultation Report
- Design and Access Statement
- Preliminary Ecological Appraisal
- Geotechnical and Geoenvironmental Report

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

### **Pre-Commencement Conditions**

02 No development (including demolition) 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
- Demolition and Construction traffic routing to and from the site.

Reason: To protect the amenities of occupiers of other premises in the vicinity in accordance with Policy GP2 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

03 Before the commencement of development written approval of the Local Planning Authority is required to a scheme of hard and soft landscaping and tree planting for the site (indicating the number, species, heights on planting and positions of all trees and shrubs). The approved scheme shall be carried out in its entirety by a date not later than the end of the full planting season immediately following the completion of that development. Thereafter, the trees and shrubs shall be maintained for a period of 5 years from the date of planting in accordance with an agreed management schedule. Any trees or shrubs which die or are damaged shall be replaced and maintained until satisfactorily established. For the purposes of this condition, a full planting season shall mean the period from October to April.

Reason: To safeguard the rights of control of the Local Planning Authority in these respects and to ensure that the site is landscaped in a satisfactory manner in accordance with Policy GP5 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

04 Prior to commencement of development, details of proposed retaining works and boundary treatments shall be submitted to and agreed in writing by the Local Planning Authority. These works and boundary treatments shall be undertaken in accordance with the agreed details.

REASON: In the interests of visual amenity, public safety and ecology in accordance with Policy GP6 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

05 No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development.

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

06 No work shall be commenced on the construction of the approved scheme until details/samples of materials and finishes to be used on the external surfaces have been



submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out using the approved materials.

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

07 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 being 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.

08 In pursuance of condition 4, prior to commencement of construction of the building hereby approved, a Slope Stability Risk Assessment Report shall be submitted to and approved in writing by the Local Planning Authority which shall assess the stability of the slope within the southern part of the site and provide details of any mitigation measures required to ensure that structural stability of the development. Any mitigation measures recommended by the report findings shall be undertaken in full accordance with the agreed details as part of the development.

Reason: To ensure the safety and stability of land in accordance with policies GP2 and GP6.

### ***General Conditions***

09 All habitable rooms exposed to external railway traffic noise in excess of 55 dBA Leq 16 hour [free field] during the day [07.00 to 23.00 hours] or 45 dBA Leq 8 hour [free field] at night [23.00 to 07.00 hours] shall be subject to sound insulation measures to ensure that **all** such rooms achieve an internal noise level of 35 dBA Leq 16 hour during the day and 30 dBA Leq 8 hour at night. All habitable rooms subject to sound insulation measures shall be able to be effectively ventilated without opening windows. No dwelling shall be occupied until the approved sound insulation and ventilation measures have been installed to that property in accordance with the approved details. The approved measures shall be retained thereafter in perpetuity.

Reason: To ensure that the amenities of future occupiers are protected in accordance with Policy GP2 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

10 Prior to the first use of the development hereby approved, the ecological mitigation and enhancements measures as set out in the Preliminary Ecological Appraisal shall be incorporated into the development and retained for the duration of the use.

REASON: To ensure that the development result in a net gain in biodiversity in accordance with Policy GP5 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

11 Prior to the first beneficial occupation of the development hereby approved, the cycle and car parking shall be laid out in accordance with the plans hereby approved and retained for the duration of the use.

REASON: To provide adequate parking facilities in accordance with Policy T4 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

12 Prior to the first beneficial occupation of the development hereby approved, the refuse storage facility shall be provided in accordance with the plans hereby approved and retained for the duration of the use.

REASON: To ensure the site is served by adequate waste management in accordance with Policy W3 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

13 Prior to the commencement of development, a scheme for the removal / treatment of non-native invasive species shall be implemented in accordance with details which shall have been previously submitted to and agreed in writing by the Local Planning Authority.

REASON: In the interests of biodiversity in accordance with Policy GP5 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

14 Prior to the first beneficial occupation of the residential units hereby approved, the provision of electric vehicle charging points shall be implemented in accordance with the plans hereby approved and shall be retained for the duration of the use.

REASON: To provide a positive contribution toward sustainability in accordance with Policy SP1 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

15 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.

16 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.

#### *NOTE TO APPLICANT*

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP2, SP4, SP10, SP13, SP18, GP1, GP3, GP2, GP4, GP5, GP6, GP7, H2, H3, H4, EM3, T4, W3 were relevant to the determination of this application.

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

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

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

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

In accordance with Planning Policy Wales (Edition 12) and Technical Advice Note 12 (Design), the applicant is advised to take a sustainable approach in considering water supply in new development proposals, including utilising approaches that improve water efficiency and reduce water consumption. We would recommend that the applicant liaises with the relevant Local Authority Building Control department to discuss their water efficiency requirements.

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2.

**Enforcement Details**

**Ref No:** E23/0292      **Ward:** Llanwern

**Site address:** Phase 4H, Glan Llyn Development Site, Queensway, Llanwern, Newport

**Description of breach:** **Breach of Condition 28** (verification report demonstrating completion of the works set out in the approved remediation strategy for phase 4H) **of planning permission 06/0471 for redevelopment of site to create a mixed use urban extension.**

**Recommendation:** **To authorise enforcement action to include a Breach of Condition Notice or such other Enforcement Notice(s) that may be deemed appropriate and take prosecution proceedings if the recipients fail to comply in relation to Phase 4H**

**1.0 BREACH OF PLANNING CONTROL**

1.1 Works associated with the construction of residential properties on site is continuing without the discharge of condition 28 of planning permission 06/0471 (at phase 4H), a pre-commencement condition that requires the following *“Prior to the commencement of each phase of development as defined by Condition 03 (that is any development excluding that required as part of the remediation strategy), unless an alternative timescale for the component parts of that phase and/or for specific remediation works has firstly been agreed in writing by the Local Planning Authority, a verification report demonstrating completion of the works set out in the approved remediation strategy for that phase (or each part of the phase if an alternative timescale has been agreed by the Local Planning Authority for the component parts) and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan for that phase to demonstrate that the site remediation criteria have been met. It shall also include any plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority. Reason: To demonstrate that the remediation criteria relating to controlled waters have been met and (if necessary) to secure longer-term monitoring of groundwater quality. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site and in the interests of residential amenities and human health.”*

1.2 A Breach of Condition has already been served and taken effect on phase 4H. However, officers are of the view that the validity of the Notice could be questioned if prosecution takes place as the site area of phase 4H falls within the “major development” category and by issuing the Notice it may be argued that officers have exceeded their delegated authority. Therefore, it is considered prudent to seek authorisation for the avoidance of doubt, hence this report to Committee. If authorisation is given, a new Notice will be issued and, if necessary, prosecution proceedings progressed thereafter.

**2. RELEVANT SITE HISTORY**

06/0471	REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION COMPRISING: A RANGE OF NEW HOMES (APARTMENTS, HOUSES AND SOME SHELTERED ACCOMMODATION FOR THE	GRANTED WITH CONDITIONS
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	<p>ELDERLY – USE CLASSES C2&amp;C3); NEW OFFICES, WORKSHOPS, FACTORIES AND WAREHOUSES (USE CLASSES B1, B2&amp;B8); COMMUNITY FACILITIES INCLUDING NEW SCHOOLS AND COMMUNITY CENTRES (USE CLASSES D1&amp;D2); A LOCAL CENTRE INCORPORATING SHOPS, OFFICES AND COMMERCIAL LEISURE FACILITIES INCLUDING NEW BARS, CAFES AND LICENSED PREMISES (USE CLASSES A1, A2, A3&amp;D2); A NETWORK OF OPEN SPACES INCLUDING PARKLAND, FOOTPATHS, SPORTS PITCHES AND AREAS FOR INFORMAL RECREATION; NEW ROADS, ACCESSES AND PATHS; HEALTHCARE AND FITNESS FACILITIES (USE CLASSES D1&amp;D2); PROVISION FOR A NEW RAILWAY HALT/STATION; OTHER ANCILLARY USES AND ACTIVITIES; AND REQUIRING: SITE CLEARANCE, TREATMENT AND PREPARATION; THE INSTALLATION OF NEW SERVICES AND INFRASTRUCTURE; THE CREATION OF NEW WATER BODIES AND DRAINAGE CHANNELS; IMPROVEMENTS/WORKS TO THE HIGHWAYS NETWORK AND OTHER ANCILLARY WORKS AND ACTIVITIES</p>	
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22/0224	<p>APPLICATION FOR A RESIDENTIAL DEVELOPMENT (PHASE 4H) CONSISTING OF 212NO. DWELLINGS AND ASSOCIATED WORKS AND PARTIAL DISCHARGE OF CONDITIONS 06 (RECREATION AREAS), 07 (SOFT LANDSCAPING), 08 (MATERIALS), 09 (HARD LANDSCAPING), 10 (BOUNDARY TREATMENTS), 11 (OPEN SPACE MANAGEMENT STRATEGY), 12 (PARKING), 16 (ROADS, CYCLEWAYS AND FOOTWAYS), 19 (NOISE ASSESSMENT), 24 (FLOOD CONSEQUENCES ASSESSMENT), 33 (SURFACE WATER DRAINAGE), 34 (FOUL AND SURFACE WATER DRAINAGE), 39 (CARBON REDUCTION STRATEGY) AND 43 (FIRE FIGHTING ACCESS) PURSUANT TO OUTLINE PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION</p>	APPROVED WITH CONDITIONS
22/0481	<p>PARTIAL DISCHARGE OF CONDITION 28 (DECONTAMINATION VERIFICATION) (PHASE 4H) OF PLANNING PERMISSION 06/0471 FOR THE REDEVELOPMENT OF THE SITE TO CREATE A MIXED USE URBAN EXTENSION</p>	REFUSED

24/0167	PARTIAL DISCHARGE OF CONDITION 28 (DECONTAMINATION VERIFICATION) (PHASE 4H) OF PLANNING PERMISSION 06/0471 FOR THE REDEVELOPMENT OF THE SITE TO CREATE A MIXED USE URBAN EXTENSION	REFUSED
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**3. POLICY CONTEXT**

None.

**4. CONSULTATIONS**

None.

**5. INTERNAL COUNCIL ADVICE**

None.

**6. ASSESSMENT**

6.1 In late 2023 the Council became aware that development had commenced on the site without having discharged condition 28 of planning permission 06/0471.

6.2 Reference 22/0481 submitted by St Modwen Homes was refused on 18<sup>th</sup> January 2024 following protracted negotiation and exchange of information further to concerns and subsequent objection from Natural Resources Wales regarding remediation verification information. The submission was refused for the following reason:

*“The information submitted does not demonstrate that the risks posed to Controlled Waters receptors have been adequately managed and that the site remediation criteria have been met for this phase.”* At this time NRW confirmed that exceedences of target values (set out in the approved risk assessment) occurred in a significant number of contaminants including hydrocarbons such as TPH, benzene and toluene. There were detected concentrations of other compounds, “including (but not limited to) 1,2-dichloroethane, styrene, carbazole and 1,2,4- and 1,3,5-trimethylbenzene where reported concentrations were considerably greater than the predicted calculated ones”. All these examples are harmful to health and the environment.

6.3 Officers understand that the current developer, Bellway, has purchased the site of phase 4H and is now the responsible landowner. Bellway has been advised by officers to cease works on site pending the discharge of condition 28 or risk enforcement action. The developer has not ceased works and has undertaken piling and other extensive groundworks on the phase in breach of the condition. Following refusal of the discharge of condition submission works have continued on site at pace. A breach of condition notice has been served and following this a further request to discharge condition 28 was submitted to the Authority for consideration (our reference 24/0167). Although the Notice clearly requires cessation of works on site pending approval of details, the developer has continued and shows no sign of ceasing works with the most recent site inspections during w/c 15<sup>th</sup> April confirming this. The most recent request to discharge condition 28 has also now been refused.



- 6.4 Condition 28 is a fundamental pre commencement requirement of the outline planning permission for the entirety of the Glan Llyn redevelopment and forms part of a suite of planning conditions on the outline permission that safeguard controlled waters and human health having regard to the previous use of the site, ground conditions and need for remediation. Evidence is required that remediation of the site/phase has been effective having regard to the risk assessment and remediation strategy approved pursuant to condition 27 of the outline permission. This must confirm that remediation has, in simple terms, successfully achieved expected outcomes and this is in the interests of health and the environment. Whilst partial discharge of condition 28 has been approved on many earlier phases of this wider regeneration site, it is clear that in the case of phase 4H this important condition has not been discharged or approved and development should not have commenced on site. There is a clear breach of planning control. The Council's primary technical consultee on controlled waters matters (Natural Resources Wales) has raised concerns about information received to date on this phase and objected to the discharge of the condition.. Unless this primary technical consultee is satisfied, the Local Planning Authority will not progress the discharge of condition 28 on this phase or others going forward. The developer in this case, and its technical advisors have failed to demonstrate that the remediation criteria relating to controlled waters have been met for phase 4H. The developer has failed to demonstrate that there are no longer remaining unacceptable risks to controlled waters following remediation of the site and in the interests of residential amenity and human health. As the developer has not ceased works and continues to develop on site, enforcement action is necessary to stop works pending resolution of this matter. Continuation of development on site prejudices the ability to resolve this matter as opportunities for additional remediation which may be required, could be removed. Other Enforcement Notices have been considered and have not been ruled out going forward. However, officers consider that a Stop and Enforcement Notice(s) are not warranted at this point in time and furthermore are likely to be subject to appeal that would potentially delay any prosecution proceedings. Dialogue in relation to condition 28 on Phase 4H is ongoing and there is clearly a will and desire to resolve the current issues if possible and to enable condition 28 to be discharged. The failure of the developer to cease works on site pending resolution is disappointing. Therefore, officers consider at this point in time a Breach of Condition is the most suitable course of action. There is no right of appeal to such a Notice, the requirements are clear and in the event Bellway Homes fails to comply, prosecution can be taken against the developer. It is possible that, depending upon the actions of the developer in response to this Notice, other Notices may be considered necessary. This would most likely include, for example, Stop and Enforcement Notices and officers seek authorisation from Committee in the event these further steps/Notices are necessary.



6.5 Attempts to resolve this matter informally have so far been unsuccessful.

## **7.0 Other Considerations**

### **7.1 *Crime and Disorder Act 1998***

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

### **7.2 *Equality Act 2010***

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

The above duty has been given due consideration in the assessment of this enforcement matter. 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

### **7.3 *Wellbeing of Future Generations (Wales) Act 2015***

Section 3 of the Act 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 (section 5). This duty has been considered in the evaluation of this case. 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.

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

The above duty has been given due consideration in the determination of this application. It is considered that the development and this recommendation does not materially affect the use of the Welsh language in Newport.

## **8.0 CONCLUSION AND OPTIONS CONSIDERED/AVAILABLE**

8.1 The Council has powers under Section 187A of the Town and Country Planning Act 1990 to issue a Breach of Condition Notice requiring steps to be taken to remedy this breach of planning control. Failure to comply with the requirements of a Breach of Condition 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 £1,000 for a first offence and for any subsequent offence.

8.2 In this instance officers recommend a Breach of Condition Notice be issued requiring all development on site to cease until details in relation to condition 28 have been submitted and approved in writing by the Local Planning Authority. Additionally, authorisation be given to serve other Notices if necessary. This could include a Stop Notice (that must be ) followed by an Enforcement Notice along with associated prosecution if required. There is a right of appeal against an Enforcement Notice.



8.3 Alternatively, the Committee can choose to:

- take no action despite the breach of condition. Should enforcement action not be taken, after ten years of the breach persisting, the condition cannot be enforced; or
- Authorise a Breach of Condition Notice only at this time; or
- Issue a Stop Notice followed by an Enforcement Notice instead of a Breach of Condition Notice at this time.

## 9.0 RECOMMENDATION

Committee is requested to:

- Authorise the Head of Law and Standards to issue a Breach Condition Notice under Section 187A of the Town and Country Planning Act that requires all development works to cease on site until details pursuant to condition 28 of permission 06/0471 have been submitted to and approved in writing by the Local Planning Authority. Prosecution if required.
- Authorise the Head of Law and Standards to issue any other Enforcement Notices deemed necessary, dependent upon the action or inaction of the Notice recipients to the Breach of Condition Notice. Prosecute if required.

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**END**