

# Report

## Planning Site Sub-Committee

Part 1

Item No 5

**Subject** Planning Application Schedule – Site Visit

**Purpose** To make decisions on items presented on the attached Schedule.

**Author** Interim Head of Regeneration, Investment and Housing

**Ward** As indicated on the schedule

**Summary** Attached is a Planning Application Schedule, detailing an application requiring a site visit, as recommended by Planning Committee on 1 February 2017. The Planning Site Sub-Committee will visit the sites, listed in the attached schedule, on 9 February 2017 in order to gain a better understanding of the proposal/case so that a decision can be made.

**Proposal**

1. To visit the application site detailed in the attached Schedule.
2. To make decisions in respect of the Planning Application attached.

**Action by** Planning Committee

**Timetable** Immediate

The Officer recommendations detailed in this report are made following consultation with local residents, Members and statutory consultees as set out in the Council's approved policy on planning consultation and in accordance with legal requirements.

## Protocol

1. A Planning Protocol for Planning Sub-Committee site visits was approved by Council on 08 April 2008 and amended in February 2013.
2. A Sub-Committee of the Planning Committee will be constituted for the purposes of undertaking site visits on behalf of the Planning Committee. It will be known as the Planning Site Sub-Committee.
3. The Planning Site Sub-Committee shall comprise of six named Councillors of the Planning Committee. Rules of political balance as set down in the Local Government and Housing Act 1989 will apply.
4. A site visit by the full Planning Committee may be undertaken in lieu of the Planning Site Sub-Committee if the scale or sensitivity of the development merits such consideration. The decision to undertake a full Planning Committee visit lies with that Committee.

## Purpose of Site Inspections

5. Site inspections by the Planning Site Sub-Committee or full Planning Committee will be undertaken for the following purposes:
  - fact find;
  - investigate specific issues raised in any request for a site inspection;
  - investigate issues arising from the Planning Committee presentation or discussion;
  - enable the Planning Site Sub-Committee to make decisions.

## Requests for Site Inspections

6. Any member of the Council may request that a planning application site be visited by the Planning Site Sub-Committee prior to the determination of that application. Such requests must be made in writing [e-mail is sufficient] to the named case officer dealing with the application or the Development Services Manager. Any such request must include specific reasons for the visit.
7. Applications subject to a request for a visit will be reported to the Planning Committee. The report will include details of the request and the reasons given. Planning Committee will decide, following a full presentation of the application, whether or not a site visits is necessary to inform the decision making process.
8. Where no request for a site visit has been made members of the Planning Committee may decide during consideration of an application that a site inspection would be beneficial. The reasons for the visit should be agreed and recorded as part of the minute of the meeting.
9. Occasionally there will be circumstances when timescales for determination will not allow site visits to be programmed in the normal way e.g. those related to telecommunications development. In such **exceptional circumstances**, at the discretion of the Chairman and Vice-Chairman of the Planning Committee, a site visit may be undertaken prior to the presentation of the matter to the Planning Committee. **As Members of the Sub-Committee will not have received a formal presentation on the application a recommendation cannot be given.** They will be able to report their findings of fact to the Planning Committee. Members should make their written request, with reasons, in the normal way. All other aspects of the protocol will apply.

## **Attendance at Planning Site Sub-Committee Visits**

10. Attendance at Planning Site Sub-Committee visits is to be restricted as follows:

- Members of the Planning Site Sub-Committee;
- Relevant Officers;
- Ward Councillors;
- Single representative of the Community Council [if relevant];
- Applicant/Agent to allow access to the site;
- Neighbour/other Landowner [where access is required to make any assessment].

## **Representations at Planning Site Sub-Committee Visits**

11. A site visit is not an opportunity to lobby on an application. Accordingly, no representations may be made to the Planning Site Sub-Committee by any party. Members of the Sub-Committee may ask questions of those present to establish matters of fact and inform their consideration of the application.

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## **Background**

The reports contained in this schedule assess the proposed development or the unauthorised 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.

The purpose of the attached reports and associated Officer presentation to the Committee is to allow the Planning Site Sub 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. There is no third party right of appeal against a decision.

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

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 or Planning Site Sub 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, 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, taking enforcement action, carrying out Committee site visits 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.

In the case of Section 215 Unsightly Land Notices, an appeal is lodged with Planning Inspectorate at the Welsh Assembly Government and the Council will seek to recover all its costs in relation to all such appeals.

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

### **Risks:**

Four risks are identified in relating to the determination of planning applications by Planning Committee or Planning Site Sub 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.

An appeal can be lodged by any recipient of a formal Notice, with the exception of a Breach of Condition Notice. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

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

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

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

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

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
successful with costs awarded against the Council			decisions are made.	Committee  Development Services Manager
Compensation awarded in relation to a Stop Notice	M	L	Provide guidance to Planning Committee regarding relevant material planning considerations, conditions and reasons for refusal.	Development Services Manager and Senior Legal Officer

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a Fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.

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 links to other strategies and plans, the main ones being:

- Single Integrated Plan;
- Local Development Plan 2011-2026 (Adopted January 2015);

The Newport Single Integrated Plan (SIP) is the defining statement of strategic planning intent for the next 3 years. It identifies key priorities for improving the City. Its vision is: "*Working together to create a proud and prosperous City with opportunities for all*"

The Single Integrated Plan has six priority themes, which are:

- Skills and Work
- Economic Opportunity
- Health and Wellbeing
- Safe and Cohesive Communities
- City Centre
- Alcohol and Substance Misuse

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the Local Development Plan 2011-2026 (Adopted January

2015 unless material considerations indicate otherwise. Planning decisions are therefore based primarily on this core Council policy.

### **Options available**

- 1) To determine applications in accordance with the Officer recommendation (with amendments to or additional conditions or reasons for refusal if appropriate);
- 2) To determine that applications be granted or refused against the Officer recommendation (in which case the Site Inspection Sub-Committee's recommendation and reasoning should be clearly minuted);

With regards to enforcement cases:

- 1) To determine that enforcement action is taken (or no further action is taken) in accordance with the Officer recommendation (with amendments to or additional requirements or reasons for taking formal action if appropriate);
- 2) To determine that a different course of action be taken to that recommended by Officers (in which case the Site Inspection Sub-Committee's recommendation and reasoning should be clearly minuted).

### **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.

### **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

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

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other

conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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

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

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

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

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).

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.

### Planning (Wales) Act 2015 (Welsh Language)

Section 11 of the Act makes it mandatory for all Local Planning Authorities to consider the effect of their Local Development Plans on the Welsh language, by undertaking an appropriate assessment as part of the Sustainability Appraisal of the plan. It also requires Local Planning Authorities to keep evidence relating to the use of the Welsh language in the area up-to-date.

Section 31 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. The provision does not apportion any additional weight to the Welsh language in comparison to other material considerations. Whether or not the Welsh language is a material consideration in any planning application remains entirely at the discretion of the decision maker.

### 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. Objectives 1 (Sustainable Use of Land) and 9 (Health and Well-being) of the adopted Newport Local Development Plan (2011-2026) link to this requirement to ensure that development makes a positive contribution to local communities and to provide an environment that is safe and encourages healthy lifestyle choices and promotes well-being.

### **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 9 (November 2016)

Development Management Manual 2016

Minerals Planning Policy Wales (December 2000)

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

TAN 1: Joint Housing Land Availability Studies (2006)

TAN 2: Planning and Affordable Housing (2006)

TAN 3: Simplified Planning Zones (1996)

TAN 4: Retailing and Town Centres (1996)

TAN 5: Nature Conservation and Planning (2009)

TAN 6: Planning for Sustainable Rural Communities (2010)

TAN 7: Outdoor Advertisement Control (1996)

TAN 8: Renewable Energy (2005)

TAN 10: Tree Preservation Orders (1997)

TAN 11: Noise (1997)

TAN 12: Design (2014)

TAN 13: Tourism (1997)

TAN 14: Coastal Planning (1998)

TAN 15: Development and Flood Risk (2004)

TAN 16: Sport, Recreation and Open Space (2009)

TAN 18: Transport (2007)

TAN 19: Telecommunications (2002)

TAN 20: The Welsh Language: Unitary Development Plans and Planning Control (2013)

TAN 21: Waste (2014)

TAN 23: Economic Development (2014)

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 (SPGs):

Affordable Housing (adopted August 2015)

Archaeology & Archaeologically Sensitive Areas (adopted August 2015)

Flat Conversions (adopted August 2015)

House Extensions and Domestic Outbuildings (adopted August 2015)

Houses in Multiple Occupation (HMOs) (adopted August 2015) (updated January 2017)

New dwellings (adopted August 2015)

Parking Standards (adopted August 2015)

Planning Obligations (adopted August 2015)

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)

### **OTHER**

The Colliers International Retail Study (July 2010) is not adopted policy but is a material consideration in making planning decisions.

The Economic Development Strategy is a material planning consideration.

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 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

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## Planning Application Schedule

### APPLICATION DETAILS

**No:** 16/1218      **Ward:** LLISWERRY

**Type:** FULL (MAJOR)

**Expiry Date:** 10-FEB-2017

**Applicant:** STARBURST LTD

**Site:** VACANT FORMER SHOWROOM AND WORKSHOPS ADJACENT CARCRAFT, LANGLAND WAY, NEWPORT, NP19 4PT

**Proposal:** RETENTION OF BUILDING FOR B1/B2/B8 USE TO PROVIDE 4998 SQUARE METRES OF FLOOR SPACE AND ASSOCIATED INFRASTRUCTURE INCLUDING PARKING AND CIRCULATION AREAS

**Recommendation:** Granted with Conditions

#### 1. INTRODUCTION

- 1.1 This application seeks retrospective planning permission for a Class B1/2/8 unit totalling 4998m<sup>2</sup> in floor area.
- 1.2 Planning permission was granted in 2016 for the erection of 2no. buildings for B1/B2/B8 use to provide 5,498 square metres of floor space and associated infrastructure including parking and circulation areas. However, one of the buildings (sited to the south-west of the site) has been constructed approximately 1.5m nearer to the southern boundary and 13m nearer to Langland Way to the west. The building is also 2m wider and 1m higher (to the eaves) than the previously approved building. Internally the building has been subdivided into 12 smaller units.
- 1.3 The building is not yet occupied.

#### 2. RELEVANT SITE HISTORY

95/0163	CHANGE OF USE TO VEHICLE SALES AND ANCILLARY USES TO INCLUDE OFFICES CAR STORAGE AND REPAIR WORKSHOPS AND DEMOLITION OF OUTBUILDINGS	Granted with Conditions
92/0758	ERECTION OF PREFABRICATED MODULAR OFFICE COMPLEX	Granted with Conditions
16/0438	ERECTION OF 2NO. BUILDINGS FOR B1/B2/B8 USE TO PROVIDE 5,498 SQUARE METRES OF FLOOR SPACE AND ASSOCIATED INFRASTRUCTURE INCLUDING PARKING AND CIRCULATION AREAS	Granted with Conditions

#### 3. POLICY CONTEXT

- 3.1 **Newport Local Development Plan 2011 – 2026 (Adopted January 2015)**  
SP1 – Sustainability favours proposals which make a positive contribution to sustainable development.

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

SP17 – Employment allocates 172 hectares of employment land for the plan period.

SP18 – Urban Regeneration supports development which assists the regeneration of the urban area, particularly the city centre and the reuse of vacant, underused or derelict land.

GP1 – Climate Change states that development should be designed to withstand predicted climate change and reduce the risks and consequences of flooding, minimise energy requirements, reuse/recycle construction material and meet the relevant BREEAM or Code for Sustainable Homes Level.

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

GP3 – Service Infrastructure states that development will only be provided where necessary and appropriate service infrastructure either exists or can be provided. This includes power supplies, water, means of sewage disposal and telecommunications.

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

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

CE6 – Archaeology states that proposals in areas known to have archaeological interest or potentially have archaeological interest will be required to undertake an archaeological impact assessment.

T4 – Parking states that development will be expected to provide appropriate levels of parking.

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

Parking SPG – August 2015

Archaeology & Archaeologically Sensitive Areas SPG – August 2015

## 4. **CONSULTATIONS**

- 4.1 **GLAMORGAN GWENT ARCHAEOLOGICAL TRUST:** We note the submission of an Archaeological Impact Assessment accompanying the application. The development has commenced prior to the granting of any planning permission, with the piling being completed. The intrusive groundworks required for the piling has already occurred, and the levels raised to create a level building platform. As a result the only construction works of sufficient depth to possibly impact on any archaeological material is the piling itself. As such work has already taken place, any potentially adverse effect on the archaeological resource has already occurred. As a result, we have no further comment to make at this time.
- 4.2 **NATURAL RESOURCES WALES:** The application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). Our Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines of the River Usk, which is a designated main river. We recommend that you should only grant planning permission if a condition requiring a finished floor level of 8.15 metres AOD is imposed. This condition will address significant concerns that we have identified and we would not object provided you attach them to the planning permission.
- 4.3 **WALES AND WEST UTILITIES:** Provide details of apparatus in the area.

- 4.4 NETWORK RAIL: We note in the Flood Consequences Assessment that the applicant has indicated that *“The assumed designated evacuation route to be followed upon receipt of a relevant flood warning will be northwards and onto Spytty Road/Queensway through in an emergency pedestrian access onto the railway embankment may be an option”*. This will not be allowed by Network Rail and we would object to the above proposal should this be agreed by the LPA on the grounds of safety as this is an operational railway with trains running 24/7. Notwithstanding the above, I give below my comments and requirements for the safe operation of the railway and the protection of Network Rail's adjoining land:
- Should the applicant require access to Network Rail land then they must seek approval from Network Rail Asset Protection Team.
  - All surface water drainage should be directed away from Network Rail's land to the public mains system.
  - Where Network Rail has defined access points, these must be maintained to Network Rail's satisfaction.
  - Any lighting associated with the development (including vehicle lights) must not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains. The location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway.
  - Where new roads, turning spaces or parking areas are to be situated adjacent to the railway; which is at or below the level of the development, suitable crash barriers or high kerbs should be provided to prevent vehicles accidentally driving or rolling onto the railway or damaging the lineside fencing.
  - Applications that are likely to generate an increase in trips under railway bridges may be of concern to Network Rail where there is potential for an increase in 'Bridge strikes'. Vehicles hitting railway bridges cause significant disruption and delay to rail users. Consultation with Network Rail's Asset Protection Engineers is necessary to understand if there is a problem. Developers may be asked to pay for bridge protection barriers.

- 4.5 DWR CYMRU - WELSH WATER: Conditions relating to drainage are requested.

## 5. INTERNAL COUNCIL ADVICE

- 5.1 HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): No objections are offered subject to the submission of a travel plan and a Construction Management Plan.
- 5.2 HEAD OF STREETSCENE AND CITY SERVICES (DRAINAGE): I am satisfied that the surface water from the roofs shall be dealt with by Building Control processes. I also assume that no additional paved/hard areas are to be provided that would require drainage, i.e. parking, etc. Providing that is the case, I have no further objection/comment.
- 5.3 HEAD OF LAW AND REGULATION (ENVIRONMENTAL HEALTH): It is requested that a condition is imposed requiring a construction management plan.
- 5.4 HEAD OF LAW AND REGULATION (ENVIRONMENTAL HEALTH) (AIR QUALITY): The site is located adjacent to a main A road and there are no air quality management areas (AQMA) in the near vicinity. Therefore it is unlikely that air quality could be considered of material concern for this application given the current planning policy. I therefore have no reason to object.

## 6. REPRESENTATIONS

- 6.1 NEIGHBOURS: All properties within 50m were consulted (1 property), a site notice displayed, and a press notice published in South Wales Argus. 1no response received raising the following objections:
- This application and related applications have been submitted in a piecemeal fashion preventing the Council from assessing the overall impact of the development as a whole, not just in terms of road traffic safety, air pollution but also the wider impact on public health, the environment and the local amenity;

- The applicant has submitted multiple applications and this should be drawn to the attention of Planning Committee so that they can assess the overall impact of the various applications;
- We are deeply concerned at the manner in which this owner/developer has abused the planning law by constructing a large extension without planning permission. As a food processing business, we are naturally concerned that if the activities conducted at the Carcraft site are not subjected to stringent conditions it could potentially impact on our proposal BRC accreditation;
- The traffic levels on SDR are becoming unbearable with increased amounts of heavy pollution created by commercial vehicles. The development will only exacerbate such problems;
- We have serious concerns relating to air pollution, road traffic issues and the impact of the large scale development on local amenities and the environment;
- The developer has deliberately removed a large number of mature trees which according to the original plans submitted to the Council (and approved) were meant to be kept and instead he has built a very large ugly steel extension on the area which is supposed to be parking spaces, and in so doing has now blocked our right to light and obscured our building from the main road;
- Whilst we accept that any application must be judged entirely on its planning merits, we are utterly appalled at the way the owner/developer has conducted itself in relation to this matter, who has abused the planning laws to construct a building which is now apparently twice the size than had been originally permitted;
- The scale of development (taken as a whole) at the Carcraft site together with the volume of traffic (including fumes) generated at the site, will undeniably exacerbate air pollution for the local communities (and pose health risks) who live near the SDR, which is already heavily congested and dangerous;
- The increased volume of traffic on the SDR has resulted in many accidents and deaths, most recently in September 2016 when a woman died crossing the road;
- Request that Members visit the site to fully appreciate the impact of the development on the neighbouring unit.

## **7. ASSESSMENT**

7.1 The site is located within Leeway Industrial Estate and comprises 1.15 hectares and forms part of the former Carcraft unit. A separate planning application is currently under consideration by the Council relating to the change of use of the former Carcraft building. Vehicle access to the buildings would be from the existing access to the site off Languard Way. The site is surrounded by a mixture of established commercial and industrial uses to the east, south and west and to the north it is bordered by the Southern Distributor Road.

### **7.2 Design**

The building measures 26m in width, 185m in length and 9.7m in height with a shallow pitched roof. As noted above, the building is sub-divided to provide smaller units in order to provide flexibility for future occupiers. Parking is to be provided to the front and sides of the buildings. The design of the building is utilitarian and it is considered to be in keeping with the surrounding commercial/industrial uses. The building is clad in metallic silver micro-rib whilst the roof is clad in Kingspan Goosewing Grey, with skylights within the roofs.

7.3 Whilst the scale of the proposed buildings is considerable, it is not considered to be out of keeping in this predominantly industrial/commercial area. The overall massing of the building is considerably less than that of the existing Carcraft building. Whilst the re-siting of the building is not preferable to the approved layout, there is a policy presumption in favour of development and the Local Planning Authority must identify harm in refusing applications. The re-siting of the building and increase in size is considered to be acceptable within the context of the area which is predominantly industrial. Although the back of the building is visible from Languard Way when travelling towards the SDR, screening is provided by existing trees and the building does not appear unduly prominent

in the street scene. When viewed from the SDR, the building appears commensurate with the scale of neighbouring buildings.

- 7.4 In term of impact of the development on the neighbouring unit, the application unit is sited to the north of the neighbouring Eurofoods building and consequently the shadow cast by the development falls in the direction of former Carcraft building and the hardstanding area between the former Carcraft building and the application building and not towards the Eurofoods building. Consequently, the new building does not cause a significant degree of overshadowing. Furthermore, there are windows in the eastern and southern elevations of the neighbouring building (as well as the northern elevation facing the application property) and subsequently whilst some offices on the northern elevation of the neighbouring building may experience a degree of loss of light as a result of the development, there will be offices within the building which are unaffected by the development. In any event offices are a working environment where a lower level of amenity than dwellings can be reasonably expected.
- 7.5 The obstruction of the view of the neighbouring building from the SDR as a result of the siting of the application property nearer to Langland Way is not considered to be a planning matter.
- 7.6 The nearest residential properties are situated on the opposite side of the dual carriageway approximately 180m away. As such it is considered that there would be no impact on residential amenity as a result of the proposals.

7.7 ***Economic Benefits***

The building would provide 4998 square metres of B1/B2/B8 floor space. This would contribute to the Council's employment land supply. The proposals represent a sustainable use of brownfield land and are located within an existing industrial area with associated infrastructure. The proposals are considered to be an appropriate use at the site.

7.8 ***Highways***

The application is accompanied by a Transport Assessment. The Head of Streetscene and City Services (Highways) confirms the level and layout of the parking provision to be acceptable and it is not considered that the proposals would result in a detrimental impact to highway safety.

- 7.9 Conditions requiring the submission of a travel plan and a Construction Environmental Management Plan (CEMP) are requested. However, given that the building has already been constructed, it is not considered that the imposition of a CEMP condition would be of any benefit.

7.10 ***Flood Risk***

The application site lies entirely within Zone C1, as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). Our Flood Map information, which is updated on a quarterly basis, confirms the site to be within the 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood outlines of the River Usk, which is a designated main river.

- 7.11 Policy SP3 flood risk states: Newport's coastal and riverside location necessitates that development be directed away from areas where flood risk is identified as a constraint and ensure that the risk of flooding is not increased elsewhere. Development will only be permitted in flood risk areas in accordance with national guidance. Where appropriate a detailed technical assessment will be required to ensure that the development is designed

to cope with the threat and consequences of flooding over its lifetime. Sustainable solutions to manage flood risk should be prioritised.

#### 7.12 **Overview of Technical Advice Note 15: Development and Flood Risk**

TAN 15 sets out a precautionary framework and identifies that new development should be directed away from areas which are at high risk of flooding (defined as Zone C), and where development has to be considered in such areas, only those developments which can be justified on the basis of the tests outlined in the TAN are to be located in such areas. The Council is expected to consult Natural Resources Wales (NRW) when considering development in Zone C1. Where a planning authority is minded to go against the advice of NRW it should inform NRW prior to granting consent allowing sufficient time for representations to be made.

#### 7.13 **Summary of NRW consultation response**

NRW previously advised that subject to the proposed finished flood levels for the building being no lower than 8.15m AOD, the building would be A1.14 compliant and NRW would offer no objection to the proposals. The applicant confirms the building has been constructed with the finished floor level according with this.

7.14 The Local Planning Authority should be satisfied that the consequences of flooding can be acceptably managed. If the Authority is minded to approve the application, NRW advise that the developer is made aware of the potential flood risks on site and a condition relating to finished floor levels is secured to the permission ensuring suitable finished floor levels for the units.

7.15 It is the role of the Local Planning Authority to consider access/egress in a flood event. It was previously noted under application 16/0438 that the proposals have been shown to satisfy all but one of the tests in part A1.15 of TAN 15. Test 6 – “*Escape/evacuation routes are shown by the developer to be operational under all conditions*” cannot be complied with. However, it was noted that the source of potential flooding is from the tidal river Usk or Severn Estuary. The applicant advises that the tidal predictions including for surge conditions are undertaken on a 24hr/7days a week basis by the NRW. The current flood forecasting models underpinning NRW’s Flood Warning Service should be able to provide up to 12 hours advance notice of a significant tidal event. Whilst advance flood notice should not be relied upon in isolation, it is considered that due to the tidal nature of the flood risk in this instance, some weight should be attributed to this in conjunction with all other considerations.

7.16 The proposed use is ‘low vulnerability’ and TAN15 acknowledges the differences in terms of different types of development and associated vulnerability.

7.17 Furthermore, the proposals have significant merit and include the regeneration of this prominent brownfield site and it has welcomed economic benefits.

7.18 On balance, when considering the associated flood risk together with the fact that the proposed use is low vulnerability in its nature, along with the regeneration benefits of the proposals, the development is considered to be acceptable in terms of flood risk. The comments of Network Rail relating to the unacceptability of the adjacent railway embankment as an access/egress route are duly noted and this is not encouraged by the Council. Notwithstanding this, as noted above, it is concluded that given the low vulnerability of the nature of the use, the tidal nature of the flood risk, the reasonable prospect of advance flood warning and the significant merit of the development, it is acceptable in terms of flood risk and the use of the railway embankment does not form part of this conclusion.



### 7.19 **Archaeology**

The site is within an Archaeological Sensitive Area. The Glamorgan Gwent Archaeological Trust notes that the building has already been constructed. The intrusive groundworks required for the piling has already occurred, and the levels raised to create a level building platform. Furthermore, the drainage works are sufficiently shallow to be contained within the raised levels. As a result the only construction works of sufficient depth to possibly impact on any archaeological material is the piling itself. As such work has already taken place, any potentially adverse effect on the archaeological resource has already occurred. As a result, GGAT advise that they have no further comment.

### 7.20 **Drainage**

The development includes the installation of foul and surface water drainage. Dwr Cymru – Welsh Water have requested drainage conditions in order to preserve the public drainage systems. However, Dwr Cymru – Welsh Water have the power to protect their interests under legislation that is separate from planning and such conditions are not considered to be required. The Council's Drainage Manager confirms no objection on the basis that there are no additional paved/hard areas to be provided.

### 7.21 **Air Quality**

The Head of Public Protection (Environmental Health) has been consulted with regard to the proposals and advises that there are no air quality management areas (AQMA) in the near vicinity. Therefore it is unlikely that air quality could be considered of material concern for this application given the current planning policy. The Head of Public Protection (Environmental Health) offers no objections to the development.

### 7.22 **Other Matters**

It is unfortunate that planning permission for the building as amended was not sought prior to its construction. However, the applicant has duly submitted an application seeking retrospective planning permission.

7.23 The Council must consider each application on its own merit. Notwithstanding this, in either isolation or consideration of the cumulative impact of the development and other development in the vicinity (whether granted or currently being considered) it is not considered that there is any justification for refusing the application.

7.24 The neighbouring objector has referred to trees and vegetation having been removed from the site. There are no protected trees and therefore permission was not required to remove the trees or vegetation.

## 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.

8.4 The above duty has 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.

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

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

8.7 ***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 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 re-siting of the building does not result in a significant detrimental impact to the visual amenity of the area or the amenity of the neighbouring commercial operators. The development does not give rise to the need for any additional considerations above those generated by the previous application.

9.2 It is therefore recommended that the application is granted subject to the following conditions.

**10. RECOMMENDATION**

GRANTED WITH CONDITIONS

01 The development shall be implemented in accordance with the following plans and documents: 310181/6 Revision A, 610181/2.

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 –occupation conditions***

02 Prior to the first beneficial use of the buildings hereby approved, the vehicle parking spaces shall be demarcated as per the approved plans and shall remain available for parking in perpetuity.

Reason: To ensure the development is served by adequate parking provision in the interests of highway safety.

03 Prior to the first use of the buildings hereby approved a Travel Plan shall be submitted to and approved by the Local Planning Authority. The Travel Plan shall clearly explain how reliance on private motor vehicles is to be reduced and how the use of other forms of transport by occupiers of the site will be encouraged. The Travel Plan shall be implemented as approved.

Reason: To ensure the efficient function of the site, to avoid any adverse impacts on the local highways and to promote sustainable transport.

### **General conditions**

04 Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 and the Town & Country Planning Use Classes Order 1987, as amended (or any order revoking and re-enacting those Orders with or without modification) the premises the subject of this permission shall not be used other than for purposes falling within Class B1/B2/B8 of the Use Classes Order without the prior grant of planning permission from the Local Planning Authority.

Reason: To ensure that the use remains compatible with surrounding land uses in the area.

05 The finished floor levels for building hereby approved shall be set no lower than 8.15 metres above Ordnance Datum (AOD) (Newlyn).

Reason: To reduce the risk of flooding to the proposed development and future occupants.

06 No plant or machinery shall be installed on the southern or eastern elevations of the building hereby approved.

Reason: In the interests of visual amenity and to protect the working environment of neighbouring commercial buildings.

### **NOTE TO APPLICANT**

01 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP3, SP17, SP18, GP1, GP2, GP3, GP4, GP6, CE6 and T4 were relevant to the determination of the 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 is advised that the archaeological work must be undertaken to the appropriate Standard and Guidance set by Chartered Institute for Archaeologists (CIfA), ([www.archaeologists.net/codes/ifa](http://www.archaeologists.net/codes/ifa)) and it is recommended that it is carried out either by a CIfA Registered Organisation ([www.archaeologists.net/ro](http://www.archaeologists.net/ro)) or an accredited Member.

05 The applicant is advised on behalf on Network Rail that:

-Should access to Network Rail land be required approval from Network Rail Asset Protection Team must be sought.

-All surface water drainage should be directed away from Network Rail's land to the public mains system.

-Where Network Rail has defined access points, these must be maintained to Network Rail's satisfaction.

-Any lighting associated with the development (including vehicle lights) must not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains. The location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway.

-Where new roads, turning spaces or parking areas are to be situated adjacent to the railway; which is at or below the level of the development, suitable crash barriers or high kerbs should be provided to prevent vehicles accidentally driving or rolling onto the railway or damaging the lineside fencing.

-Applications that are likely to generate an increase in trips under railway bridges may be of concern to Network Rail where there is potential for an increase in 'Bridge strikes'. Vehicles hitting railway bridges cause significant disruption and delay to rail users. Consultation with Network Rail's Asset Protection Engineers is necessary to understand if there is a problem. Developers may be asked to pay for bridge protection barriers.

06 On behalf of Natural Resources Wales, the applicant is advised that the site is located within a flood risk area and consideration should be given to the creation of an emergency evacuation plan.

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## **11. REASON FOR THE SITE INSPECTION**

To assess the impact of the development on the adjacent buildings

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