

Report

Planning Site Committee

Part 1

Item No.

Subject Planning Application Schedule – Site Visit

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

Author 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 8th August 2018. The Planning Site Sub-Committee will visit the site, listed in the attached schedule, on 16th August 2018 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 visit 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.

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 Unightly 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.

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.

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: Planning and the Welsh Language (2017)
- 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)
Air Quality (adopted February 2018)

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

APPLICATION DETAILS

No: 18/0414 **Ward:** CAERLEON

Type: FULL

Expiry Date: 10-AUG-2018

Applicant: MICHAEL FARKAS

Site: LAND TO REAR OF, 16, CROSS STREET, CAERLEON, NEWPORT

Proposal: PART RETENTION AND PART COMPLETION OF 2NO. DETACHED THREE BEDROOM DWELLINGS (RESUBMISSION OF 17/1162)

Recommendation: GRANTED WITH CONDITIONS SUBJECT TO S.106

1. INTRODUCTION

- 1.1 This application seeks planning permission for the retention and completion of 2no. dwellings at 16 Cross Street, in the Caerleon Ward. This application is a resubmission of 17/1162 which was refused due to the impact on the amenity of the neighbouring properties. An appeal for that development has also been dismissed by the Planning Inspectorate, although some elements of the existing scheme were considered acceptable. These considerations will be addressed within the body of this report. The application site is wholly located within the urban boundary and lies within the Caerleon Conservation Area. The Council has a statutory duty to ensure development preserve or enhance the character or appearance of the Conservation Area, as designated within the Newport Local Development Plan 2011-2026 (adopted January 2015).
- 1.2 The site previously had and extant planning permission (14/0882) for the erection of 2no. houses. The development that has commenced on site is not in accordance with the approved plans and as such 17/1162 was submitted to retain the works undertaken so far and for their proposed completion. This application was refused however and the scheme being assessed within this application is a resubmission of the previous refusal.

2. RELEVANT SITE HISTORY

13/1271	DEMOLITION OF SECTION OF EXISTING BOUNDARY WALL AND ERECTION OF REPLACEMENT WALL AND GATES	GRANTED WITH CONDITIONS
14/0572	PARTIAL DISCHARGE OF CONDITION 01 (SAMPLE PANEL OF WALL) OF PLANNING PERMISSION 13/1271 FOR THE DEMOLITION OF SECTION OF EXISTING BOUNDARY WALL AND ERECTION OF REPLACEMENT WALL AND GATES	REFUSED
14/0882	TWO DETACHED DWELLINGS ON FORMER DIARY SITE	GRANTED WITH CONDITIONS
17/0340	NON MATERIAL AMENDMENT TO PLANNING PERMISSION 14/0882 FOR TWO DETACHED DWELLINGS COMPRISING SINGLE STOREY REAR EXTENSIONS TO EACH UNIT	APPROVED
17/0423	PARTIAL DISCHARGE OF CONDITIONS 02 (MATERIALS), 03 (JOINERY), 04 (FENCE DETAILS), 06 (SLAB LEVEL), 08 (FILL MATERIAL), 10 (ACCESS DETAILS), 11 (SURFACE WATER DRAINAGE) AND 13 (REPAIR OF STONEMWORK AND BRICK WALLS) OF PLANNING PERMISSION 14/0882 FOR TWO DETACHED DWELLINGS ON FORMER DAIRY SITE	PART GRANTED/PART REFUSED
17/0590	NON MATERIAL AMENDMENT TO PLANNING PERMISSION 14/0882 FOR TWO DETACHED DWELLINGS COMPRISING INCREASE IN ROOF PITCHES FROM 30 TO 40 DEGREES	REFUSED
17/0683	NON-MATERIAL AMENDMENT TO PLANNING APPLICATION 14/0882 FOR 2NO. DETACHED DWELLINGS COMPRISING OF CHANGE IN WINDOW MATERIAL FROM TIMBER TO GREY UPVC	REFUSED
17/0717	PARTIAL DISCHARGE OF CONDITIONS 02 (MATERIALS), 03 (JOINERY), 04 (BOUNDARY TREATMENT), 05 (PROGRAMME OR ARCHAEOLOGICAL WORK), 06 (SLAB LEVEL), 07 (CONTAMINATED LAND), 08 (IMPORTED MATERIAL), 09 (ROOT PROTECTION) , 10 (ACCESS), 11 (DRAINAGE), 12 (CEMP) AND 13 (STONEMWORK DETAILS) OF PLANNING PERMISSION 14/0882 FOR TWO DETACHED DWELLINGS ON FORMER DAIRY SITE	APPROVED
17/0780	VARIATION OF CONDITION 01 (APPROVED PLANS) OF PLANNING PERMISSION 14/0882 FOR THE ERECTION OF TWO DETACHED DWELLINGS TO ADD BRICK PLINTH AND CHANGE IN ROOF DESIGN	WITHDRAWN
17/1162	PART COMPLETION/PART RETENTION OF 2NO. DETACHED DWELLINGS	REFUSED

3. POLICY CONTEXT

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

- SP1 Sustainability: seeks to ensure the development takes into account sustainable development principles.
- SP9 Conservation of the Natural, Historic and Built Environment.
- SP10 House Building Requirement.
- SP13 Planning Obligations: Proposals of this scale will be required to provide or make contributions to infrastructure.
- CE7 Countryside Protection – Conservation Areas.
- GP1 General Development Principles – Climate Change: This policy seeks to ensure that the development is to withstand climate change over the lifetime of the development.
- GP2 General Development Principles – General Amenity: There is to be no significant adverse effect on the amenity of the existing or new community.
- GP3 General Development Principles – Services Infrastructure: This policy requires justification as to the suitability of the service infrastructure required by the proposal e.g. sewerage.
- GP4 General Development Principles – Highways and Accessibility: The proposal must not detrimentally affect the highway capacity. There must be adequate public access and any new roads must be compliant with the Councils design scheme.
- GP5 General Development Principles – Natural Environment.
- GP6 General Development Principles – Quality of Design: All new development must ensure that they are to achieve good quality design. This is ensuring that the proposal creates a safe, accessible and attractive environment taking into account the context, scale and materials of the design.
- GP7 General Development Principles – Environmental Protection and Public Health: This policy seeks to ensure that there is no unacceptable harm to health from a development.
- H2 Housing Standards: Housing developments will be required to be built to high standards of environmental and sustainable design.
- H3 Housing Mix and Density.
- H4 Affordable Housing.
- T4 Parking: This policy requires adequate level of parking to ensure there is no detrimental impact on the new site or existing community.

4. CONSULTATIONS

4.1 GLAMORGAN GWENT ARCHAEOLOGICAL TRUST: No objection.

4.2 NATURAL RESOURCES WALES: No objection.

5. INTERNAL COUNCIL ADVICE

5.1 THE HEAD OF STREETSCENE AND CITY SERVICES (DRAINAGE):

Initial Response

- Whilst the proposed soakaways are positioned under 5m of the proposed properties they have been designed with additional capacity as well as an elongated shape that conveys water away from the building. Furthermore, the agent advises that the soakaway is positioned substantially under any proposed foundation, thereby mitigating further risk;
- The proposed soakaway is positioned over 2m from the adjacent boundaries, therefore adhering to BRE 365;
- Whilst a depth of soakaway has been proposed (1.5m), no invert (AOD) level has been proposed. I therefore suggest that the applicant takes this into account to ensure that no potential detrimental impact is caused to adjacent properties, and that invert levels of the soakaway are positioned appropriately

Final Response

Upon review of the additional information, it is advised that the bottom (invert) of both soakaways is significantly less than the ground levels of the adjacent properties.

I therefore do not have any further objection or comment.

- 5.2 THE HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): It is unclear whether the applicant intends to alter the access arrangements as agreed as part of the previously approved application. I require confirmation of the proposed access arrangements for consideration.

The applicant has shown that 3 off street parking spaces will be provided for each property, however I would question the suitability of the layout for plot 2. Given the boundary associated with no.14 I would question whether a vehicle could access the parking space as shown. The applicant will need to demonstrate that this is achievable by submitting a swept path analysis.

- 5.3 THE HEAD OF STREETSCENE AND CITY SERVICES (WASTE MANAGER): No objection.
- 5.4 THE HEAD OF STREETSCENE AND CITY SERVICES (TREES): No objection.
- 5.5 THE HEAD OF LAW AND REGULATION (ENVIRONMENTAL HEALTH): No objection.
- 5.6 THE HEAD OF LAW AND REGULATION (PLANNING CONTRIBUTIONS):

1. Introduction

This Draft 'Head's of Terms' relates to planning application 18/0414 for the development of 2x 3 bed houses at the rear of 16 Cross Street, Caerleon, Newport.

In accordance with the Adopted Newport Local Development Plan – Policy H4 – Affordable Housing, there is a policy requirement for sites of fewer than 10 dwellings within the settlement boundary, or fewer than 3 dwellings within the defined village boundaries, to provide a commuted sum contribution to assist the Council in meeting its on-going requirement for affordable housing. The following planning obligation is required to mitigate the impact of the development and create a sustainable development.

2. Affordable Housing Contribution

Committed sum payments for affordable housing will be sought on sites of fewer than 10 dwellings within the Housing Target Area of Rural Newport, based upon a 40% target. The methodology for establishing the housing target areas and calculating the associated payments is set out within the adopted [Affordable Housing SPG \(August 2015\)](#).

Based upon a net increase of 2 x3 bed house, and subject to economic viability, a commuted contribution of £5118 (or £2559 per unit) would be requested for affordable housing provision.

Affordable Housing Sums will be index linked to the Retail Price Index. Payments will be staggered and directly related to occupancy rates.

6. REPRESENTATIONS

- 6.1 NEIGHBOURS: All properties sharing a common boundary with and opposite the application site have been consulted (16no. properties), a site notice was posted at the site

and a publicity notice was posted in the South Wales Argus. 3no. of properties have objected to the application.

15 Cross Street

The development will cause the following impacts;

- Overlooking;
- Loss of privacy;
- Overbearing impact;
- Loss of light.

15a Cross Street

- Despite the amendments the development will still be overbearing and infringe on our privacy;
- Despite the reduction in roof pitch and reduced height the building is still closer to our boundary than the approved permission;
- The amended plans still fail the 25 degree and 45 degree tests for natural light from our property.
- The roof pitches of the two properties are different which causes an issue as the properties are located within a Conservation Area. New buildings are supposed to be in keeping with existing buildings and their surroundings and two properties with different designs and roof types would flout this;
- The issues of insufficient amenity space has not been addressed and is below the guidelines;
- The proposed soakaway does not meet the necessary standards and would cause flood risk issues.

90 Mill Street

- The two properties still stand in extremely close proximity to our boundary which is totally inadequate;
- The size, mass and scale of the new property (Plot 1) will be very overbearing with a huge loss of light, overshadowing to our property and impact on privacy;
- The proposed non opening and obscure glazed windows would continue to look like windows and have the psychological effect of being overlooked and undermining our privacy and it would be impossible to stop future residents replacing them with clear glazed opening windows and enforcing this would cause distress to everyone including future residents;
- We spend a lot of time in our garden which will have a massive loss of privacy;
- The soakaways even with increased depth impose a significant flood risk due to the inadequate distance to the rear boundary;
- The design differences between the proposed two properties will result in there no longer being a symmetrical appearance which wouldn't be suitable in the Conservation Area.
- Have requested to speak at the committee meeting to represent the neighbours.

6.2 COUNCILLORS: Giles and Hughes have requested that the application is called to committee in order to assess the impact on the privacy and 'perceived overlooking' of the neighbouring properties. Councillor Hughes has also requested to speak at committee.

7.0 ASSESSMENT

7.1 The application seeks to retain and complete 2no. dwellings which were granted planning permission under 14/0882, however work has started on site which is not in accordance with the approved plans as both properties were constructed closer to the rear boundary than approved. The principal of the development on this site is acceptable however a

previous application (17/1162) for the retention and completion was refused, and this application is aiming to overcome the below reasons for this refusal;

“01 The development, notably first floor habitable room windows of the building and the increased mass closer to the rear boundary will result in a significant overlooking to the rear garden of 90 Mill Street and 15a Cross Street, causing harmful loss of privacy to their private garden space and having an unneighbourly effect to the detriment of their amenity, contrary to Policy GP2 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

02 The drainage information submitted is not considered sufficient and the proposal has an adverse impact upon interests of acknowledged importance, namely drainage and residential amenity and is contrary to Policy GP2 (General Amenity) of the Newport Local Development Plan 2011-2026 (adopted January 2015).”

7.2 As the site has permission for 2no. detached dwellings (14/0882) and an application has been refused for their retention and completion (17/1162), it is considered appropriate for the assessment of this application to specifically focus around the two reasons for refusal. A summary of the amendments to the refused scheme shown below;

Plot 1

- 2no. oriel style windows replacing existing 2no. transparent windows in the first floor rear elevation. An oriel window is a projecting window which incorporates two solid faces in order to prevent direct views to 90 Mill Street and 15a Cross Street.
- 2no. roof windows in rear elevation;
- The roof pitch has been decreased from 40° to 35° which reduces the ridge height to 7.3 metres, which is 0.55 metres above the approved height under 14/0882 but lower than refusal 17/1162 by 0.35m.

Plot 2

- The first floor has been set back and returned to the originally approved location under 14/0882 and the ground floor will remain in its currently built location;
- The roof pitch has been decreased from 40° to 30° which returns the ridge height to within 0.15m of that approved under 14/0882.

Site Drainage

- A new soakaway system has been designed with a greater capacity in order to overcome the concerns raised under the refused application 17/1162.

7.3 **Assessment of Plot 1 (Nearest to 90 Mill Street)**

7.4 The encroachment of this property towards the rear of the site and subsequently 90 Mill Street was previously considered by the Local Planning Authority to cause a harmful overlooking and loss of privacy to the rear garden of 90 Mill Street, under application 17/1162. However, within the recent appeal decision the Inspectorate has concluded that the overlooking to the rear garden of 90 Mill Street would not materially harm amenity. Paragraph 8 of Appeal APP/G6935/A/18/3199346;

“Notwithstanding the fact that the proposed dwelling for plot 1 is closer to the rear boundary with No. 90 than the previously permitted dwelling and is less than 10 metres away from the boundary as advised in the SPG, nonetheless it would not materially harm amenity over

and above that which currently exists or which has been permitted, in terms of views into No. 90. The vast majority of the garden to No. 90 would still be at a significant distance from the proposed dwelling and would be in excess of the 'back to back' separation distances advocated in the SPG; within a built up area some degree of overlooking is almost unavoidable."

7.5 The decision of the Planning Inspectorate is a material consideration when determining this application. The applicant has proposed 2no. oriel windows. Each oriel window would measure 1.0m wide by 1.2m in height. The oriel window serving the bathroom would have an opaque elevation to the left hand side in order to prevent views towards 15a Cross Street, this would be vertically clad in grey timber to create a feature which is more visually appealing than a blank elevation. The right hand window would be a grey casement window to match the windows proposed throughout the property and would be obscure glazed, with a top hinged opening window. The oriel window serving the dressing room would have the same appearance as the oriel window serving the bathroom, however the right hand window would have a clear window, as any views would be directed away from the rear garden and elevation of 90 Mill Street towards the north west. Bearing in mind the decision of the Inspector at appeal and the attempts of the applicant to improve the situation by submitting a design with the described oriel windows, it is considered that there would be no direct and harmful overlooking or perception of overlooking to the rear garden of 90 Mill Street. The pitch of the roof has been decreased from 40° as proposed under 17/1162 to 35° which reduces the proposed height from 7.65 metres to 7.3 metres. Whilst this would be greater than the previously approved height of 6.75 metres, it is considered to be acceptable and would not materially worsen the impact on the amenity of any neighbouring residential properties. Overall, giving weight to the appeal decision and considering the design amendments made, it is considered that Plot 1 complies with the aims of Policy GP2 (General Amenity) of the Newport Local Development Plan 2011-2026 (adopted January 2015) and the "New Dwellings" SPG (adopted August 2015).

7.6 **Assessment of Plot 2 (Nearest 15a Cross Street)**

7.7 The increase in ridge height and encroachment of this property towards the rear of the site and towards 15a Cross Street was previously considered to cause a harmful loss of privacy and overbearing impact. The Planning Inspector agreed with this assessment at appeal, dismissing the appeal on these grounds. In relation to the overlooking impact the Inspector stated;

"Based on my site observations, it was clear, notwithstanding the erection of any 2 metre boundary fence, that there would be a significant increase in overlooking into the relatively modest sized garden to the rear of 15a Cross Street over and above that which would have been likely under the permitted scheme... in the case of 15a Cross Street, a significant proportion of the modest garden would be subject to a greater degree of overlooking than that which was likely to be the case in the previously permitted scheme, resulting in a substantial loss of privacy; this runs contrary to policy GP2 of the LDP."

7.8 In relation to the overbearing impact the inspector stated;

"The Council's planning report states that the proposed dwelling on plot 2 would have an overbearing impact on 15a Cross Street by virtue of its increased height and closer proximity to the rear boundary. The appellant considers that as the Council have accepted there is no overbearing impact of proposed plot 1 on No. 90, then it follows there will be no such impact of plot 2 in terms of 15a Cross Street; I disagree... The proposed dwelling on

plot 2 would be much closer to the rear boundary and be significantly taller than that previously permitted. Notwithstanding the appellant's arguments to the contrary, this results in a more dominant and overbearing structure with any effect compounded by the significant change in levels; this runs contrary to policy GP2 of the LDP which seeks to safeguard amenity with particular regard to the overbearing nature of development."

- 7.9 The encroachment at ground floor is not considered to cause an issue and as such this is proposed as being retained as built so far, in situ. The scheme has been amended in order to overcome the overbearing and overlooking impact on 15a Cross Street by recessing the position of the first floor to that of the originally approved permission 14/0882. This maintains the 10m separation distance to the rear boundary at first floor which was considered acceptable in the original permission. The proposed ridge height has also been returned to the existing height approved. As such, it is considered that the potential for overlooking and overbearing impact is no different to that considered acceptable under the original permission and Plot 2 would not cause any impact to the amenity of 15a Cross Street over and above the approved scheme. In the previous application it was concluded that there would be no harmful impact on the sunlight received by this property, this remains the same.
- 7.10 15 Cross Street has objected on the grounds that the proposal at Plot 2 would cause a loss of light, loss of privacy and overbearing impact on this property. The scheme is the same height and scale as previously approved and whilst the footprint has moved towards the rear of the site, this is not considered to cause any material impact over and above the originally approved scheme. The Inspector concluded in his assessment that the previous scheme caused no harmful impact on this property and as such the relationship between Plot 2 and 15 Cross Street is considered acceptable.
- 7.11 Overall, it is considered that both Plot 1 and Plot 2 comply with the aims of Policy GP2(i) of the Newport Local Development Plan 2011-2026 (adopted January 2015).

Design

- 7.12 The objections received have noted the location of the site within the Caerleon Conservation Area and have claimed that the design changes between the 2no. proposed properties and their difference in heights would cause a harmful impact on the character and appearance of the conservation area. Throughout the immediate vicinity there are properties that have a range of roof forms, heights, appearance, materials and massing. Whilst the 2no. proposed properties may have been symmetrical previously, the height difference would be the only obvious difference between them when viewed from the public realm. It is not considered that this in itself would cause any detrimental impact on the Caerleon Conservation Area and would preserve the character or appearance, thus complying with the aims of policy CE7 (Conservation Areas) and GP6 (Quality of Design) of the Newport Local Development Plan 2011-2026 (adopted January 2015).
- 7.13 **Drainage**
- 7.14 Two of the responses received from neighbours object to the proposed soakaway systems proposed and raise concerns regarding flood risk and the impact this would have on 15a Cross Street and 90 Mill Street. A soakaway system has been proposed which includes an additional capacity and elongated shape that conveys water away from the building and is positioned substantially under any proposed foundation, thereby mitigating any further risk. The proposed soakaway is located over 2 metres from the adjacent boundaries, therefore

adhering with BRE 365. The Inspector concluded that the details submitted in the previous application were acceptable and caused no detrimental impact to either drainage within the area or the amenity of any occupants in nearby dwellings. This application has provided further information to justify the amended drainage scheme and the depth of the soakaway and invert levels are considered acceptable. The Head of Streetscene and City Services (Drainage Manager) has offered no objection to the proposal.

7.15 Highways

7.16 The Head of Streetscene and City Services (Highways) has questioned whether the access is proposed as per the approved 14/0882 scheme. Each plot proposes 3no. spaces and he has questioned the suitability of the parking layout for Plot 2, in particularly the third space proposed. The previously approved scheme was approved with 2no. spaces and even if the third space at Plot 2 was not suitable, the overall scheme would still have provided an extra space over the approved scheme and as such there is an improvement to the fall-back position. The access is proposed as per the approved application and details of this have been submitted within this application. The appropriate standard conditions regarding materials of the access can be attached to any permission. As such it is considered that the proposal accords with Policy GP4 of the Newport Local Development Plan 2011-2026 (adopted January 2015).

7.17 Other Matters

7.18 The objections state that the amenity space available for future occupiers of the 2no. properties is insufficient. The amenity plan provided demonstrates that the useable amenity space available to both properties meets the minimum standard (1sqm of amenity space per 1sqm of a unit's footprint) and it acceptable as per the "New Dwellings" SPG (Adopted August 2015).

7.19 Section 106 Planning Obligation matters

Summary

7.20 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. In this case, section 106 planning obligations are required to mitigate the impact of the development in accordance with the table below.

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?
<i>Regeneration, Investment and Housing</i>	<i>Affordable housing provision based on 40% target</i>	<i>Commuted contribution of £5,118.</i>	<i>Full Heads of Terms Agreed.</i>	<i>No</i>

7.21 The applicant has confirmed that they agree in full to the Heads of Terms.

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

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

9. CONCLUSION

9.1 The proposal by way of its location, scale and design, would not cause an adverse impact on highway safety, the Caerleon Conservation Area or the residential amenity of the neighbouring properties over and above the originally approved scheme and as such it is recommended that the application is granted with conditions subject to the S.106 Agreement.

10. RECOMMENDATION

GRANTED WITH CONDITIONS SUBJECT TO S.106

01 The development shall be implemented in accordance with the following plans and documents; Drawing Number: MF/DR/01 – Drawing Showing Outline of Granted Permission and Distance to Boundary; Drawing Number: MF/DR/02 – Site Plan; Drawing Number MF/DR/03 – Parking/Amenity Space; Drawing Number: DR/04/12 Rev B – Floor Layouts and Elevations (Plot 1 - Received 20/06/2018); Drawing Number DR/04/15 – Site and Drainage Layouts; Drawing Number DR/04/16 – Floor Layouts and Elevations (Plot 2); Drawing Number MF/SA/01 – Soakaway Calculations and Installation; Site Entrance Details; Materials List; Construction Environmental Management Plan
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 either of the approved dwelling houses a 2.0m high close boarded boundary fence along the north eastern boundary of the site shall be erected, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The fence shall then be retained thereafter in perpetuity.
Reason: In the interests of residential amenity.

03 Prior to the first beneficial use of either of the approved dwelling houses, the first floor window in the south east and north west facing side elevations of the dwelling houses hereby permitted shall be permanently glazed with obscure glass and shall be top hung casements and retained in that state thereafter.
Reason: In the interests of neighbour amenity.

General Conditions

04 The external materials and finishes of the properties shall be completed in accordance with the 'Materials List' hereby approved or in accordance with any other details firstly submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure the development is completed in a manner compatible with its surroundings.

05 The first 5 metres of the shared access shall be hard paved in 'Kandla Grey Indian Sandstone Cobbles' as proposed in the submitted 'Site Entrance' document or in any other material details of which have been submitted to and approved in writing by the Local Planning Authority. This shall be installed prior to the first occupation of either of the dwellings hereby approved and retained in that state thereafter.
Reason: In the interests of highway safety and to prevent debris being carried onto the highway.

06 The development shall be completed in accordance with the submitted 'Construction Environmental Management Plan' or any other Construction Environmental Management Plan firstly submitted to and approved in writing by the Local Planning Authority.
Reason: To protect the amenity of the nearby residents.

07 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking or re-enacting that Order), Schedule 2, Part 1, no development within Classes A, B, C, D, or E shall be carried out without the prior written permission of the Local Planning Authority.
Reason: To ensure that a satisfactory form of development takes place and to protect the amenities of occupiers of adjoining properties.

08 Notwithstanding the details provided, within 1 month of this approval 1:5 scale details of joinery shall be submitted to the Local Planning Authority for approval. This shall include

vertical / horizontal section(s) through proposed windows. The development shall be implemented in accordance with the approved details and retained thereafter.
Reason: In the interest of safeguarding the character and appearance of the Conservation Area.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Design and Access Statement; Drawing Number 101 Rev B – Foundation Drawing G.A. Plan and Typical Details; Archaeological Watching Brief WB/CA/17; Geo-Environmental Desk Study; Gradation Analysis Test Report; Supporting Statement RE Design Changes; Supporting Information on Soakaways

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies GP2, GP4, GP6, GP7, SP9, SP13 and H4 were relevant to the determination of this application.

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

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

11. REASON FOR THE SITE INSPECTION

To consider the potential overbearing impact on existing nearby properties.
