

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 Development Services Manager

Ward As indicated on the schedule

Summary Attached is a Planning Application Schedule, detailing those applications requiring a site visit, as recommended by Planning Committee on 4 May 2016. The Planning Site Sub-Committee will visit the sites, listed in the attached schedule, on 12 May 2016 in order to gain a better understanding of the proposal/case so that a decision can be made.

Proposal

1. To visit the application/enforcement case sites detailed in the attached Schedule.
2. To make decisions in respect of the Planning Application Schedule 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 eg 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 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 8 (January 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 9: Enforcement of Planning Control (1997)
- 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)
- 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)

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

Planning Application Schedule

APPLICATION DETAILS

No: 15/0762 **Ward:** LLANWERN, LLISWERRY

Type: FULL

Expiry Date: 10-SEP-2015

Applicant: ST MODWEN DEVELOPMENTS LTD

Site: PHASE 1 GLAN LLYN DEVELOPMENT SITE, QUEENSWAY, LLANWERN, NEWPORT

Proposal: RETENTION OF PUMPING STATION AND MEANS OF ENCLOSURE ASSOCIATED ALTERATIONS TO THE LAYOUT OF THE LEAP AND LANDSCAPING (AMENDMENT TO PLANNING PERMISSION 11/0146 FOR PHASE 1 HOUSING)

Recommendation: GRANTED WITH CONDITIONS

1. INTRODUCTION

1.1 This application seeks full planning permission for the retention of a pumping station compound and means of enclosure with associated alterations to the layout of the LEAP and landscaping (amendment to planning permission 11/0146 for phase 1 housing) at Brinell Square, Phase 1 Glan Llyn Development Site in the Llanwern/Lliswerry Ward.

2. RELEVANT SITE HISTORY

| | | |
|---------|--|-------------------------|
| 11/0811 | PARTIAL DISCHARGE OF CONDITION 10 (BOUNDARY TREATMENT DETAILS) RELATING TO PHASE 1 OF PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION | APPROVED |
| 11/0146 | RESERVED MATTERS FOR PHASE 1 RESIDENTIAL DEVELOPMENT AND ASSOCIATED ROADS, PATHS, PARKING AREAS, OPEN SPACE AND OTHER ASSOCIATED WORKS AND ACTIVITIES RELATING TO PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION, INCLUDING DETAILS REQUIRED UNDER CONDITIONS 6 (DETAILS OF RECREATION AREAS), 7 (LANDSCAPING SCHEME), 12 (PARKING DETAILS), 15 (DETAILS OF EMERGENCY ACCESS), 19 (NOISE ASSESSMENT), 22 (STREETLIGHTING), 24 (LEVELS) AND 39 (CARBON REDUCTION STRATEGY AND SUSTAINABILITY STATEMENT) OF THE SAME PERMISSION | GRANTED WITH CONDITIONS |
| 10/0750 | PARTIAL DISCHARGE OF CONDITION 4 (SUB AREA MASTERPLAN) RELATING TO PHASE 1 AND PHASE 2 OF PLANNING PERMISSION 06/0471 FOR REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION | APPROVED |
| 06/0471 | REDEVELOPMENT OF SITE TO CREATE A MIXED USE URBAN EXTENSION COMPRISING: A RANGE OF NEW HOMES (APARTMENTS, HOUSES AND SOME | GRANTED WITH CONDITIONS |

| | | |
|--|--|--|
| | <p>SHELTERED ACCOMMODATION FOR THE ELDERLY - USE CLASSES C2&C3); NEW OFFICES, WORKSHOPS, FACTORIES AND WAREHOUSES (USE CLASSES B1, B2&B8); COMMUNITY FACILITIES INCLUDING NEW SCHOOLS AND COMMUNITY CENTRES (USE CLASSES D1&D2); A LOCAL CENTRE INCORPORATING SHOPS, OFFICES AND COMMERCIAL LEISURE FACILITIES INCLUDING NEW BARS, CAFES AND LICENSED PREMISES (USE CLASSES A1, A2, A3&D2); A NETWORK OF OPEN SPACES INCLUDING PARKLAND, FOOTPATHS, SPORTS PITCHES AND AREAS FOR INFORMAL RECREATION; NEW ROADS, ACCESSES AND PATHS; HEALTHCARE AND FITNESS FACILITIES (USE CLASSES D1&D2); PROVISION FOR A NEW RAILWAY HALT/STATION; OTHER ANCILLARY USES AND ACTIVITIES; AND REQUIRING: SITE CLEARANCE, TREATMENT AND PREPARATION; THE INSTALLATION OF NEW SERVICES AND INFRASTRUCTURE; THE CREATION OF NEW WATER BODIES AND DRAINAGE CHANNELS; IMPROVEMENTS/WORKS TO THE HIGHWAYS NETWORK AND OTHER ANCILLARY WORKS AND ACTIVITIES</p> | |
|--|--|--|

3. POLICY CONTEXT

3.1 Policy **SP1 Sustainability** - favours proposals which make a positive contribution to sustainable development.

Policy **SP2 Health** - promotes development which has a positive contribution to health and well-being by being in a sustainable location, close to walking/cycling routes and green infrastructure.

Policy **GP2 General Development Principles – 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.

Policy **GP3 General Development Principles – 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.

Policy **GP4 General Development Principles – 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.

Policy **GP6 General Development Principles – 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.

Policy **CF2 Outdoor Play Space Requirements** - states that when development results in the loss of open space or there is a requirement for additional open space, provision in accordance with the Fields in Trust Standard will be sought.

4. CONSULTATIONS

4.1 None

5. INTERNAL COUNCIL ADVICE

5.1 HEAD OF LAW AND REGULATION (POLLUTION): Initially offered no objection with regards to the pumping station as the pumps were noted to be at a considerable depth below ground level and were unlikely to be audible at the surface. Additional clarification with regards to the LEAP proposal was sought and no objections were made as the LEAP is designed for use by young children during daylight hours, would have natural surveillance and, assuming the facility would be used as intended, would not have the potential to result in unacceptable noise impacts on the surrounding residential dwellings. Further advice was given with regards to TAN11 requirements and it is stated that a children's play area located within a residential development would not cause any significant disturbance to surrounding residents and therefore there is no requirement for a noise assessment to be submitted by the applicant.

5.2 HEAD OF STREETSCENE AND CITY SERVICES (HIGHWAYS): Initially queried the heights of the proposed pumping station boundary enclosures and stated that the compound gates should be inward opening only. Following the submission of amended plans no further objection was raised.

6. REPRESENTATIONS

6.1 NEIGHBOURS: All properties sharing a common boundary with the application site were consulted (30 properties), a site notice was also displayed on 1st September 2015. 13 objections were received from neighbouring occupiers raising the following concerns:

- Several residents claim they were not told about the pumping station and LEAP before they purchased their properties and believe they were lied to by the developer.
- Residents not told about the LEAP believe that properties will be devalued should it be constructed and several residents suggest that compensation should be paid.
- Several residents have raised concerns that noise disturbance will be caused by children and teenagers using the LEAP. Several residents also raise concerns with regards to potential anti-social behaviour taking place (particularly at night when neighbouring residents are sleeping). The current open space area is quiet and should be left as it is (particularly for use by older residents). Several residents work throughout the night so would be disturbed by noise during the day.
- No noise assessment has been submitted by the developer so the potential impact of noise from the LEAP cannot be properly assessed.
- There is no need for the LEAP as there are several other play areas within a short walk of Brinell Square. A MUGA, open spaces areas and additional play equipment are also being provided in the Western Park away from existing houses so the estate will cater very well for young people.
- The proposed LEAP is too close to neighbouring properties and should be relocated (some residents suggest relocation back into the middle of the open space area in accordance with 11/0146).
- Parking problems will be caused as residents not local to the development will drive to use the LEAP and on street parking under resourced in the area. Parking should be provided for the play area.
- The developer and Council did not consider the proposed LEAP correctly under application 11/0146 (in line with industry guidelines and standards).

- One resident states that the proposed LEAP equipment will be for older children and they were told by the developer that it would be for toddlers; this raises the risk for noise disturbance and anti-social behaviour that nearby residents may have to deal with.
- Privacy will be compromised as the play equipment will allow children to look into neighbouring properties.
- The developer misled residents with regards to the pumping station (stating that it would be underground and of a smaller size). The increased size will be unacceptable. The replacement of the previous wall with railings will be unsightly. The tarmacked area is unsightly and will be made worse if a lorry is parked there.
- The pumping station should be relocated as its retention will devalue properties and ruin the aesthetics of the community.
- The area outside of the pumping station will be made unsafe due to the vehicular access.
- Concern is also raised that there is a lack of sufficient street lighting and that additional lighting should be installed to improve safety for walkers using the central footpath (without causing disturbances to existing residents).
- Several residents state that additional street lighting should not be installed.
- The developer did not contact residents with regards to the proposals.
- Several criticisms are made of the developer and the Council's involvement with the Phase 1 development in general as there are a lot of problems.

Following the submission of amended plans and a neighbour re-consultation a further 14 objections were received from neighbouring occupiers raising the following concerns:

- Not every resident has been consulted regarding the changes to the plans.
- The application should not be a delegated decision as it is taking away the right for local residents to decide and have opinions. The Council should not decide the application on behalf of the residents.
- Planning Committee should not take full responsibility for the decision making without any representation from residents. Committee should visit Brinell Square and talk to the residents. The Council should represent the population first and foremost. Committee should recommend substantial recompense to local residents if the pumping station is to remain.
- Several residents again state that they were lied to with regards to the locations of the LEAP and pumping station and they would not have bought their properties if they had known about them.
- Properties will be devalued if the LEAP and pumping station are constructed.
- Several residents again raise concerns regarding noise and use of the LEAP by teenagers at night leading to anti-social behaviour. Properties are not sound proofed and the enclosed residential area will make noise much worse (particularly for residents who work nights).
- Reference is made by one resident to comments (rejections) made by a Senior Environmental Health Officer in 2011 with regards to noise from the Queensway. These comments have been overlooked for the LEAP.
- The play equipment would be damaged by older children leading to an unsightly appearance.
- The play equipment will be too high, over too large an area and too close to neighbouring properties compared with the previous approval (11/0146).
- There is not suitable visitor parking for non-resident users of the LEAP.
- There is no need or legal requirement for the LEAP to be constructed within Brinell Square, particularly when there are substantially sized play facilities within Western Park in very close proximity. The play equipment within the Western Park is already being defaced and slowly being destroyed by teenagers and this would happen to the LEAP in close proximity to residents houses.
- The pumping station does not require additional parking as it is currently maintained by a tanker already able to reach it.

- Given the level of previous objections in relation to the pumping station the recent amendments only propose changes to the LEAP.
- Revised plans have failed to acknowledge residents objections regarding the LEAP and the new proposals will still cause noise and disturbance to residents. The lack of previous assessment of these issues under 11/0146 has not been addressed by the developer. There is no consistency between the current proposals and what was originally agreed under previous approvals.
- The developer wrote to residents in December 2015 stating that the LEAP plans would revert to the 11/0146 approval, this is clearly not the case.
- The pumping station should be underground as shown on the previous plans, it should not have any visible features above ground.
- One resident questions why the developer initially constructed a solid brick wall around the pumping station with no planning permission and no intention to rectify it. The developer incorrectly informed residents it was permitted development and was part of the plans for the square. Criticism is made of the way that the developer handled the situation with the original wall and the lack of wish to rectify the problems caused by the pumping station.
- The submitted Design and Access Statement is deliberately misleading and does not address any of the former objections to the development.
- The pumping station needs to be sorted out as the current situation is unsightly.
- Use of shrubs surrounding the pumping station is unlikely to be successful as the existing planting on the other side of the square have made little growth since 2014. Some of the existing planting has already died and it is proposed to remove an existing tree that will kill it (one resident states that trees cannot be killed).
- The proposed railings to be erected around the pumping station are not in keeping with the themes of materials used in the area. The developer also has no right to put a boundary there.
- Residents shouldn't have to pay for mistakes made by the developer as it is not their fault. The developer should rectify the problems they have caused at their cost and not cause further problems to residents. If the application is to be approved compensation should be paid to residents by the developer.
- One resident states that the developer had admitted that the pumping station location was an oversight and had been insensitively located, suggesting it should be moved elsewhere.
- Criticism of the nature of the relationship between the Council and the developer is made (suggesting that the developer is able to do whatever they want).
- Mistakes were made within the Council's consultation letters and some residents have only just found out about the proposals that the Council and developer are going to impose on local residents. This is a deliberate mistake to reduce responses to the amended plans. An additional letter explaining the situation should be sent to all occupiers of Brinell Square.
- The Council and developer are not taking residents' concerns seriously and legal advice towards future action is being taken.

After the submission of further amended plans three additional letters of objection were received. Generally these objections raised mostly the same issues that had already been addressed with regards to the previously submitted plans. However, some new concerns were raised:

- It was stated by one resident that the most recent amendments did not alter their previous objections even though the LEAP is now smaller in size.
- Maintenance to the pumping station took place which resulted in an infestation of Crane Fly Larvae (known as "leatherjackets"). This is further proof that the pumping station should not be located in this area.

6.2 COUNCILLOR MARTYN KELLAWAY: Offered objections to the initial consultation raising concerns that:

- The proposals will clearly have a negative impact on the residents of Brinell Square.
- The increased size of the pumping station will reduce the character of the square as it was intended in terms of the amenities and the residents' enjoyment of their homes.
- The original master plan gave no indication of such a structure being outside the front window of homes, it is wrong and is misleading to residents who have purchased properties in good faith and now have such an intrusion nearby.
- The increased size of the LEAP adds to the negative impact in terms of increased noise and the developer has omitted industry guidance and the Council's own guidance on Outdoor Play Space Provision and National Playing Fields Association Standards in support of the LEAP.
- No supporting assessment has been provided for the LEAP other than to provide a recreational area within the development.
- Without such consideration and consultation with residents the application should be refused.

Further comments were received following the submission of amended plans stating that:

- In light of the clear concerns the LEAP and pumping station raises it would be beneficial for the applicant to engage in consultation with the residents of Brinell Square to ensure they have constructive input.
- The proposed fencing is an eyesore not in keeping with the ambience and feel of the square and will encourage anti-social behaviour, notwithstanding that the pumping station was planned to be in a different place.
- The LEAP serves to add to the already sensitive issue of noise and there has been little improvement to the location. Noise generated from the area will be amplified around the square thus increasing the disturbance and preventing the enjoyment of people's homes in Brinell Square.
- Within a short walk lies a large park and consideration should be given to the need for a further play area, perhaps re-siting the LEAP to the larger park.
- The proposed mounds will only serve to become skateboard areas or a gathering point for antisocial behaviour.
- The application is opposed until proper consultation has taken place with residents.

6.3 LLANWERN COMMUNITY COUNCIL: Submitted two objections to the initial consultation stating that:

- The works to remove the red brick wall enclosure for the pumping station commenced before the determination of the current application. The works should not have commenced and the developer should not pre-determine the outcome. Why the works commenced is questioned.
- Original application granted brick wall/metal railings. There is no clarity as to whether the proposed railings would be in keeping with the existing black painted metal fences installed around Brinell Square.
- Questions whether the developer has assessed parking requirements for the LEAP in line with the Council's adopted parking guidance. The developer has not sought to fully comply with the adopted parking standards with regards to 3 and 4 bedroom properties thus reducing any visitors parking.
- It is stated on several occasions that the developer has chosen not to consult neighbours and local communities with regards to the proposals.
- Original application 11/0146 omitted to assess the LEAP location under Newport City Council Play Space Provision and National Playing Fields Association (NPFA) Standards. As such it does not comply. The developer is proposing changes to the LEAP and has not submitted any assessment in accordance with the aforementioned guidance.
- A noise assessment was originally undertaken to satisfy condition 19 attached to 11/0146, but only for plots bordering the Queensway. As the LEAP will be enclosed

within Brinell Square additional noise will be created over and above the original noise source. The developer, the Council and Environmental Health have not considered this issue and the detrimental effects of noise disturbance. The developer should submit a noise assessment in accordance with the relevant guidance.

- No means of lighting is currently available for the LEAP. Has the developer considered this?
- Questions the need for a contamination assessment in relation to this application.
- In summary the omission of fundamental industry/adopted standards in relation to the assessment of the LEAP should be addressed by the applicant. The proposed fence surrounding the pumping station should be subject to a separate planning application to allow the developer to consult with residents regarding the LEAP. The application should be refused.

A second objection was received stating:

- During 11/0146 the developer omitted industry and adopted guidelines on outdoor play provision and the current application also provides no supporting assessment other than to provide a recreational area within the development.
- The applicant did not provide a noise assessment with regards to the LEAP under application 11/0146. The LEAP will provide sporadic noise events and the Council and developer have a duty of care that such events do not cause significant or unreasonable disturbance. The applicant has not demonstrated that the LEAP will achieve the lowest possible noise levels in accordance with the relevant guidance. World Health Organisation noise guidance is quoted and it is stated that the design and location of the proposed LEAP should comply with this (and other) guidance. The proximity of the enclosed residential area surrounding the LEAP will exacerbate noise levels through reflection effects. Environmental Health managing noise complaints should not be relied upon as noise events are foreseeable.
- Previous Environmental Health comments from 11/0146 (with regards to noise levels from the Queensway not complying with relevant guidance) should mean that the same questions are asked in this case.
- The omission of street lighting may or may not deter use of the park at night and if poorly lit it may lead to incidents relating to health and safety for users and residents. The perception that the LEAP will not be used at night if poorly lit is unilateral.
- In summary noise assessment guidance should be applied to support the location and construction of the LEAP and the application should be refused.

Following the submission of amended plans additional objections were received stating that:

- The Design and Access Statement does not demonstrate conformity or notify of any departures to 06/0471, 10/0750 or 11/0146 and no impact assessment has been submitted with regards to the relocated LEAP.
- The applicant has omitted to address previous objections by the Ward Councillor.
- The proposed LEAP is not sufficiently far from dwellings and is not integrated with public open spaces to provide separation from dwellings.
- The absence of a noise assessment regarding the LEAP means that conformity with previous permissions and quoted noise guidance is not demonstrated.
- Sections of the Section 106 relating to recreational spaces are quoted and it is stated that the applicant has not demonstrated conformity with condition 19 of planning permission 06/0471.
- The Council's Parking Standards are quoted and it is stated that a number of 3 and 4 bedroom properties were only allocated 2 parking spaces including garages. No visitor spaces were provided for Brinell Square. LCC object to this reduced parking as it will directly impact on residential amenity.
- The applicant has not provided a noise assessment with regards to the LEAP. The LEAP will provide sporadic noise events and the Council and developer have a duty of

care that such events do not cause significant or unreasonable disturbance. The applicant has not demonstrated that the LEAP will achieve the lowest possible noise levels in accordance with the relevant guidance. World Health Organisation noise guidance is quoted and it is stated that the design and location of the proposed LEAP should comply with this (and other) guidance as the proximity of the enclosed residential area surrounding the LEAP will exacerbate noise levels through reflection effects. It is stated that should enforcement action have to be taken regarding noise mitigation measures this action would be on the occupier of the plots and not the developer.

- The applicant has not demonstrated that the three street lights in Brinell Square would provide adequate lighting for the LEAP. The perception that the LEAP will not be used at night if poorly lit is unilateral. Object on grounds of health and safety and loss of amenity.
- Following concerns raised by residents the developer removed the previously installed brick wall without planning permission.
- Original application 11/0146 provided for a brick wall/black painted railings with access and egress to pumping compound via black painted metal rail gates.
- There is no confirmation whether proposed railings would be in keeping with the surrounding area.
- In summary the applicant has re-addressed the LEAP location which would have had to be relocated under sub-area masterplan 10/0750 to demonstrate conformity. LCC has sought clarification from the Case Officer that no enforcement action would be taken on the developer should the LEAP require mitigation measures to comply with quoted noise guidelines. The case officer is still seeking clarification from Environmental Health regarding the need for a noise assessment.

7. ASSESSMENT

Site History

- 7.1 The application site is an area of public open space set within a square of terraced domestic properties known as Brinell Square. The site has been constructed as part of a major mixed-use redevelopment of a former steel works site. The steelworks site redevelopment was initially proposed in 2006 (ref: 06/0471) and granted planning permission in 2010. The original application approved a site master-plan and phasing structure for the development. A subsequent discharge of conditions application submitted in 2010 was approved in relation to the design codes and initial site layouts of the 'Western Sub-Area' in relation to the overall site master-plan. This outlined the various new housing areas, a commercial area (local centre) and community facilities (a primary school and large public open space area known as 'Western Park') that would be provided through phases 1 and 2. The sub-area master-plan also detailed provisions for smaller community play areas such as Local Areas of Play (LAPs), two Locally Equipped Areas of Play (LEAPs) and a larger Neighbourhood Equipped Area of Play (NEAP). Within Phase 1 the sub-area master-plan featured a centrally located LEAP, to be approximately 400 square metres in size, and also featured a pumping station. The sub-area master-plan did not propose any detailed layouts of the Phases as these were left to be dealt with as reserved matters applications or discharges of conditions attached to the original planning application (ref: 06/0471).
- 7.2 A reserved matters application for the detailed site layout of the Phase 1 housing area (along with various discharges of conditions attached to the original application) was approved in 2011 (ref: 11/0146). This application secured the locations of the LEAP and pumping station to be installed within the public open space at Brinell Square. The LEAP was to be centrally located within the square and was approved at approximately 390 square metres. The pumping station was proposed as an underground installation with an area of approximately 100 square metres. A landscaping scheme featuring hedgerow planting around the perimeter of the public open space with several trees to be planted

across the grassed areas and an earth mound within the north-western area was also approved under the 11/0146 permission.

- 7.3 A subsequent discharge of conditions application relating to Condition 10 of permission 06/0471 was approved for a mixed wall/metal railings enclosure around the pumping station perimeter to create an external compound (ref: 11/0811). In early 2015 it was reported to the Council that the site developer had constructed a solid wall around the pumping station area. It was confirmed following a site visit that the wall was not that approved under 11/0811 and had been constructed over a larger site area than that approved under reserved matters 11/0146. The underground pumping station has been installed and is currently in operation. Following informal enforcement action the solid wall was removed and the current application was submitted.

Need for Formal Play Provision

- 7.4 The inclusion of LAPs, LEAPs and NEAPs is part of the sustainability requirement across the entire regeneration site. Providing them within housing areas is generally held to be good practice and improves the local nearby amenities available to residents (who are likely to be the primary users). They are also designed to offer spaces for social interactions between residents which would hopefully encourage better community engagement. If they were not constructed within or adjacent to the housing areas reliance would be placed on residents to use motor vehicles to access facilities elsewhere which would be contrary to policy with regards to sustainable development. As such, the construction of the play areas, with the regeneration site as a whole, is secured via a Section 106 legal agreement. The Section 106 agreement requires 2 NEAPs, 10 LEAPs and 80 LAPs to be constructed across the entire regeneration site. As stated above the 'Western Sub-Area' master plan proposed the construction of two LEAPs within that area with the first being within the Phase 1 housing area (the subject of this application). Should the site developer not provide the LEAP within the Phase 1 development the Council could enforce the Section 106 agreement and require it. Given that LEAPs are not generally designed to cater for toddlers (which LAPs are) and they are not aimed at older age groups (young teenagers who are more likely to use the NEAPs) they are required to be located in accessible locations close to residential properties where good surveillance is afforded. This would minimise walking distances for younger children and parents and allow for safer play environments with less opportunities for anti-social behaviour. However, the 'Western Sub-Area' master plan did outline good practice design guidance for LEAPs in order to minimise any potential harm to the residential amenities of neighbouring occupiers.

Current Proposal

- 7.5 The current proposal is submitted as an amendment to reserved matters application 11/0146 in relation to the locations and scales of the LEAP and pumping station to be installed within Brinell Square. An initial proposal was submitted which proposed the larger pumping station compound area and the LEAP relocated to the north-eastern area of the public open space with no play equipment to be installed within the western area of the open space. At the request of Council Officers the LEAP location was revised and amended plans, showing the LEAP in a more central location comparable with the previous planning approval, were submitted.
- 7.6 The scheme under consideration proposes a LEAP located centrally, in broadly the location previously approved, but extended to the north-east of the square. The proposed LEAP would have an area of approximately 505 square metres. Distances to the closest neighbouring domestic properties would be approximately 17 metres to the western side of Brinell Square, 12 metres to the northern side and 16 metres to the eastern side. The distance from the LEAP to the domestic properties along the southern side of Brinell Square would be over 20 metres with the public highway forming part of the intervening land. Within the LEAP it is proposed to install several items of play equipment with age

ranges from 2 plus to 6 plus. The tallest item of play equipment (a climbing frame known as a Kompan Talus) would measure 4.8 metres in height to the highest point. The tallest area where children would be able to stand would be 2.4 metres from ground level (again a platform within the Kompan Talus). The Kompan Talus would be located centrally within the LEAP with equipment for smaller children located closer to the perimeter. Two benches and a picnic table would also be installed. The LEAP would be enclosed by a 1.2 metre high bow topped metal railing with two pedestrian access gates located at north and south points where the existing path is located. A maintenance gate would also be located within the northern railing section.

- 7.7 The pumping station compound would cover an area of 215 square metres and would incorporate a maintenance area, an above ground control box (currently in place) and an off-street parking area for maintenance vehicle parking. It is located within the south-eastern area of the square with a distance of 9.7 metres to the nearest domestic property at the western side of the square. The pumping station would be enclosed by 2.4 metre high vertical bar railings. The compound would be secured by 1.8 metre high vertical bar railing gates.
- 7.8 The application also proposes a planting schedule as an amendment to the previously approved landscaping scheme. Several new trees will be planted along the western perimeter hedgerow with additional trees planted within the LEAP area (mainly on and around the earth mound). Shrubs will also be planted within areas along the western LEAP perimeter and the southern LEAP area adjacent to the northern boundary of the pumping station. A laurel hedgerow will be planted around the eastern perimeter of the LEAP and the entire pumping station area (bar the gated access).

Visual Impact and Privacy

- 7.9 The proposed LEAP covers a marginally larger area than that previously approved. The original proposal (layout plan - M11.113(k).021 Rev. C) included the relocation of the LEAP entirely into the north-eastern area of the square. It was considered that the original scheme would have resulted in a significant impact on the visual amenities of the occupiers of the north-eastern and eastern areas of the square as the LEAP would have been very close to the front boundaries of the properties with little planting between them to act as a screen. The original site layout proposed was considered to be unacceptable and amended plans were submitted to attempt to address officers' concerns and the significant amount of objections received. The first set of amended plans (layout plan - M11.113(k).021 Rev. D) proposed to relocate the LEAP back into a more central position within the square, but still included a landscaped earth mound area within the LEAP fencing in the north-eastern area of the square. The earth mound was a feature granted permission originally under the landscaping proposals within reserved matters application 11/0146, but was not originally proposed to be included within the formal LEAP area. A further set of amended plans was submitted (layout plan - M11.113(k).021 Rev. E). The current scheme excludes the earth mound from the formal LEAP area resulting in a proposed LEAP that exceeds the previously approved area by 100 square metres. As such the formal play area is now not considered to have the potential to cause any significant additional impacts over and above those of the lawful fall-back position. In all probabilities the earth mound will be used as informal play space by children regardless of its inclusion within the LEAP fencing area, but its exclusion from the formal LEAP space does alleviate some concerns with regards to neighbouring amenities and proximity of the formal LEAP to neighbouring boundaries. The proposed planting on and around the earth mound would help to reduce some direct views to and from the LEAP to adjacent properties along the northern and eastern sides of Brinell Square so privacy would be generally preserved. Similarly, due to the largest item of play equipment (the Kompan Talus) being centrally located within the LEAP and at least partially screened by proposed planting it is not considered that the visual impact or potential overlooking that could be caused by this equipment would be significant. Indeed with regards to general privacy available to the occupiers of Brinell Square it is considered that

the proposed LEAP, due to the screen planting and central location away from properties, would offer an improvement over the existing open space situation. It should be noted that the area is public open space so front facing windows within the existing properties do not benefit from a high level of privacy from members of the public using the current open space area or the pathways adjacent to the properties along the perimeters of the square.

- 7.10 The proposed railings to surround the LEAP perimeter are a standard 1.2 metre high bow top design that is commonly used to enclose formal areas of play. In terms of the design they are considered acceptable as they would be a design commonly associated with this type of development. Similarly the pumping station railings have a more formal appearance, but again this is a common type of design given the nature of the pumping station compound. The 2.4 metres height of the pumping station railings is significant meaning that they would be clearly visible within the street scene at Brinell Square, but given the need for adequate security surrounding equipment of this type it is considered that the need for a secure compound outweighs the potential visual impact of the high railings and considered alongside the screen planting that would at least partially obscure the railings it is considered that the visual impact would be acceptable. The railings surrounding the LEAP are proposed to be installed with a blue galvanised finish; the pumping station railing finishes are not currently specified. Given the general prevalence of black railings within the domestic properties it is considered that the railings surrounding the LEAP and pumping station should be finished in black in order to ensure a better compatibility with the surroundings. This can be achieved through the imposition of a directive planning condition. The play equipment would also be clearly visible, but would be of a design and appearance that is common to small formal play areas so would have a generally neutral impact on the surrounding area and street scene. Overall the proposals are considered to be in accordance with policy GP6 of the NLDP and are acceptable subject to planning conditions.

Noise and Anti-Social Behaviour

- 7.11 The issue of noise from users of the park has been raised by several objectors, the Ward Councillor and Llanwern Community Council. It is acknowledged there is potential for children using the play equipment to generate noise, but this is also true of the existing open space area that currently offers an informal area of play space. The play equipment proposed is for age ranges from between 2 plus to 6 plus (broadly in accordance with the age ranges stated for LEAPs within the original masterplan). It is entirely appropriate and indeed preferred, for younger children's play areas to be situated in accessible and visible areas. This generally means in sight of primary residential frontages with good natural surveillance. The proposed LEAP is considered to achieve this without resulting in any detrimental impacts on neighbouring residential amenities.
- 7.12 The Head of Law and Regulation (Pollution) initially offered no objection with regards to potential noise generated by the development in relation to the pumping station. The pumps were noted to be at a considerable depth below ground level and were unlikely to be audible at the surface. Due to the high level of objections received with regards to potential noise disturbance as a result of the LEAP additional clarification was sought. No objections were made as the LEAP is designed for use by young children to be used during daylight hours. It would also have good natural surveillance and, assuming the facility would be used as intended, would not have the potential to result in unacceptable noise impacts on the surrounding residential dwellings. Further advice was given with regards to TAN11 requirements and it is stated that a children's play area located within a residential development would not cause any significant disturbance to surrounding residents and therefore there was no requirement for a noise assessment to be submitted by the applicant. As such it is considered that the proposed LEAP and pumping station amendments would not result in demonstrable and significant noise disturbances nor pose any adverse impacts on neighbouring residential amenities.

- 7.13 The potential issue of anti-social behaviour occurring within the LEAP has also been raised by a number of objectors. As the Head of Law and Regulation (Pollution) has stated, the LEAP has very good natural surveillance so in the event that any anti-social behaviour would occur (particularly at night) it is likely to be witnessed and reports to the relevant authorities can be made. It is also reasonable to expect that the level of natural surveillance would put-off any people intent on undertaking in anti-social behaviour within the LEAP. The park is also designed for use by small children and would not provide adequate play provision for groups of teenagers, which are better provided for within the Western Park located to the east of Brinell Square further away from domestic properties. The LEAP area is also not reasonably expected to be used during the night and limited street lighting to illuminate it is present. The LEAP could be used at night and this cannot be controlled through planning legislation, but it is unlikely given its intended purpose and any occurrences are likely to be infrequent. It is acknowledged that the LEAP is designed for a specific purpose and age group, but is not exclusively limited to these purposes. However, in all probabilities the potential for the LEAP to generate significant anti-social behaviour is considered to be low and should it occur it would have to be dealt with by the relevant authorities. Overall the proposals are considered to be in accordance with policy GP2 of the NLDP and are acceptable. In short, a LEAP has been previously approved in this location. This application proposes its enlargement. The proposed equipment is intended to be fit for purpose and there is no evidence to indicate otherwise therefore the LEAP and surrounding open space will encourage community engagement and beneficial social interaction and physical activity. These are significant benefits for the emotional and physical well-being of the community. As with many things, misuse and vandalism could occur but, the layout and design is intended to minimise the potential for this and it is considered acceptable.

Highway Safety

- 7.14 It is not considered that the alterations to the LEAP would result in any significant impacts on highway safety. Several objections have raised concerns that no additional visitor parking is proposed to serve the LEAP within Brinell Square. The facility is to be provided as a small local community facility which is very well connected to the wider housing development by public footpaths. It is reasonable to expect that most of the users will be local families, who would use the LEAP due to the convenience of being within walking distance of their properties. Whilst it is entirely possible (and outside of planning controls) that non-residents of Glan Llyn may choose to visit the LEAP it is unlikely due to the scale and relatively restricted parking available within Brinell Square that this would be a frequent occurrence resulting in on-street parking problems. The LEAP is intended to provide local facilities for the local people to enable and encourage them to use leisure time at facilities within walking distances of their homes. The parking provision required for the development was approved under the previous application (ref: 11/0146), this included assessment of the LEAP in this location. The increased scale of the LEAP does not require any additional visitor parking as it is a small local community play area expected to be accessed by the majority of users on foot (from the local housing area). As such, with regards to off-street parking it is not considered that the current proposal raises any new concerns over that of the fall-back position. The adopted *Parking Standards* SPG does not define small play areas as requiring specific off-street parking provision. Much larger leisure and community uses (leisure centres/fitness clubs) do have specified parking requirements, but small community play areas do not as they are generally considered to be sustainably located to serve the local area. The Head of Streetscene and City Services (Highways) has confirmed this view by offering no objections to the proposals.
- 7.15 Some initial comments requesting additional information with regards to the pumping station access gates (opening inwards) and railings were received by the Head of Streetscene and City Services (Highways). Following the submission of amended plans and additional information no further objections were made. The pumping station compound would create an off-street parking bay for maintenance vehicles to allow them to be able to undertake future maintenance to the pumping station without having to compete with on-street parking (that may have the potential to block access and is outside of the

control of the drainage provider). It is believed that the larger compound with parking area is a drainage adoption requirement requested by Dwr Cymru/Welsh Water. The new access would be clearly visible from the highway at Brinell Square and would be infrequently used. The highway at Brinell Square is also relatively quiet and traffic speeds are slow (as there is no through route). As such there is little concern that vehicles entering or egressing the pumping station compound would have any adverse or significant impact on highway safety. The access gates can be controlled by planning condition to be inward opening only to avoid instances where gates would be swung into the path of pedestrians. As such it is considered that, subject to planning conditions, the proposals are in accordance with policy GP4 and are acceptable with regards to highway safety.

Ward Councillor Objections

- 7.16 Objections were received from Ward Councillor Martyn Kellaway to both the originally submitted scheme and the revised plans. The assessment above has considered the material planning considerations with regards to the proposals. Councillor Kellaway's concerns with regards to increased noise and negative impacts due to the visual appearance of the proposals are considered to have been addressed within the assessment above.
- 7.17 The need for the LEAP in this location is questioned. The need for the LEAP is not required to be assessed through the current application as it has been previously assessed and secured by a legal agreement attached to the original planning application 06/0471. Early site layouts and phasing plans of the original application show a LEAP (and pumping station) centrally located within the Phase 1 housing development and the sub-area master plan provides further guidance on the locations and sizes of the various LAPs, LEAPs and NEAPs that would be provided through the various phases and sub-phases. The formal play provision is designed in a hierarchy relating to the potential age of users and distance to properties. This is to promote sustainable development that is accessible to the local residents that would wish to use the play areas. The LAPs are provided for toddlers and very small children. They are generally small areas with limited equipment and are located at strategic points to minimise walking distances to them from the various areas within Phase 1. The LEAP is proposed to provide formal play space for slightly older children (aged 2-8 with the ability to travel further to gain access to the equipment) and is centrally located in an area accessible by most residents on foot. The Western Park play area is a NEAP which provides formal play space and equipment for older children and young teens who require the least supervision and can travel easily to and from the NEAP on foot. The developer would have the option to propose a different LEAP location, but that is not what is proposed so is not under consideration and as the officer assessment of the material planning considerations has concluded no significant concerns with the LEAP alterations there is no reason for officers to request that an alternative location is sought. The LEAP (along with other formal and informal play areas) contributes to the overall sustainability of the mixed-use development as a whole. The development is required to be served by local facilities in order to reduce car dependency for those living within the housing areas. To move the LEAP away from an area that would be accessible to its intended users would reduce the overall sustainability of the development contrary to the design guidelines established through the original master-plan.
- 7.18 Concern is raised that the original master-plan was misleading as it gave no indication of a large structure surrounding the pumping station and residents bought properties in good faith that now have to live with such an intrusion nearby. The original master-plan did not provide information other than establishing the basic principles of design that would be employed within more detailed designs as the phases of development progressed. The LEAP and pumping station were shown in a central location within Phase 1 of the development so the principle of them as a feature of the Phase 1 development was established at an early stage and prior to occupation of properties.

- 7.19 The issue of the developer not providing a detailed assessment referencing industry guidance and the Council's own guidance on Outdoor Play Space Provision and National Playing Fields Association Standards in support of the LEAP is raised. With regards to play space provision, the development is sufficiently small scale and the developer is not required to demonstrate compliance with any additional guidance over and above the Council's adopted planning policies and SPGs. To request additional assessments would be excessive and unreasonable given the proposals.
- 7.20 Councillor Kellaway suggests that the developer should engage with public consultations with local residents in order to address the concerns raised within neighbour objections. He further states that the application should be opposed until these further consultations take place. Planning legislation does not require developers to directly engage with local residents and stakeholders over proposals of this minor scale. The Council has consulted with local residents in accordance with the planning department's adopted consultation policy and many responses, to both the originally submitted plans and amended plans, have been received and assessed as part of the application. Planning legislation does not allow Council's to request that additional direct consultations take place nor does it allow for applications to be refused if direct consultations have not occurred. Any considerations of the developer's contact with local residents prior to the submission of the application are immaterial and not relevant to the planning assessment the Council is required to undertake.

Community Council Objections

- 7.21 Many similar objections to those raised by Councillor Kellaway are also echoed within Llanwern Community Council's objections to the scheme. Detailed objections are submitted with regards to noise issues and the proposed LEAP. Specific noise guidance is quoted (World Health Organisation and British Standards guidance amongst others) and it is stated on several occasions that the developer did not demonstrate compliance with this guidance in previous applications and does not provide assessments to demonstrate compliance with the current application. This application must be considered on its own merits. Criticism of previous applications should be dealt with via the Council's formal complaints procedure if necessary.
- 7.22 To demonstrate whether a proposed development (or alteration to a development as in this case) would meet the relevant noise guidelines the Council can request the submission of a noise assessment. This additional information would only be requested where it is recognised that a development may be significantly noise producing or noise sensitive. In this case the technical advice received from the Head of Law and Regulation (Pollution) is that due to the scale and design of the LEAP no noise assessment is required to be submitted. The officer assessment above further elaborates on this advice, but in short, to request that the developer demonstrate compliance with the guidance quoted by LCC would be unreasonable for a development of this scale.
- 7.23 The issue of inadequate street lighting is raised and it is stated that the applicant has not demonstrated that the three street lights in Brinell Square would provide adequate lighting for the LEAP. It is also stated that the perception that the LEAP will not be used at night if poorly lit is unilateral. An objection is made on grounds of health and safety and loss of amenity. It is not clear from the objections what loss of amenity would occur, but the officer assessment above finds no reasons to consider that residential amenities would be significantly affected over and above the lawful fall-back position. The lack of street lighting is also not considered to be an issue as the design of the LEAP is clearly aimed at smaller children who would in most reasonable circumstances be using the LEAP during the day under the supervision of parents. To request that additional street lighting is provided is also in direct contradiction with LCC's objection with regards to potential anti-social behaviour and noise disturbance occurring at night. To provide the LEAP with lighting to allow its use after dark would increase potential anti-social behaviour and noise

disturbances as would remove the natural deterrents that darkness provides. Since the LEAP is considered to be a small community area of play space, not designed for sustained evening use, it is not considered that it is required to be adequately lit.

- 7.24 An issue is raised with regards to the original wall constructed around the pumping station area. It appears to be suggested that by removing the wall (without planning permission) the developer has pre-determined the current planning application. This allegation is immaterial.
- 7.25 Issues with regards to the conformity with the sub-area master-plan and legal agreements are raised. The sub-area master-plan states that LEAPs will be provided with 20 metre buffers to the nearest residential properties and that the two provided within the Western Sub-Area would be 400 square metres. The departures with the previous approvals and potential impacts on material planning considerations are assessed in more detail above. The sub-area master-plan was a document produced to provide design guidance on the general design principles for the overall scheme to adopt. The current application effectively gives the detail and the exact design of the proposed LEAP and pumping station. The Section 106 legal agreement secures the provision of the informal and formal play space in accordance with the amounts agreed to be provided within the development as a whole. Should the LEAP not be provided within Brinell Square (as previously approved) the Section 106 legal agreement could be enforced to ensure that it was provided. The developer has the option to vary the legal agreement and propose an alternative location to the LEAP, but they have not chosen to do so and wish to retain the location within Brinell Square subject to the proposed amendments.
- 7.26 It is quoted that inadequate parking provision was granted under reserved matters planning application 11/0146 and it is questioned whether the developer has assessed the parking requirements for the LEAP under the current guidance. No request for additional visitor parking for the LEAP has been made by the Head of Streetscene and City Services (Highways) so there is not considered to be any reason to request submission of a parking assessment/survey from the developer.
- 7.27 The need for a contamination assessment is questioned. Given the scale of the current proposals over and above previous approvals it is unreasonable and unnecessary to seek further contamination assessment.
- 7.28 It is stated on several occasions that the developer has chosen not to consult neighbours and local communities with regards to the proposals. As stated in further detail in the address of Councillor Kellaway's objections this is immaterial to the current assessment.
- 7.29 With regards to the amended plans the previous objections are generally repeated, but it is stated that the amendments do not address the former objections made by the ward councillor. The developer has no requirement to address former objections, but did submit plan amendments following concerns raised with regards to the originally submitted scheme and close proximity of the LEAP to properties along the northern-eastern and eastern side of the square. It is stated that the LEAP is still too close to residential properties and is not integrated within the public open space to provide separation from dwellings. As assessed above it is considered that the impacts posed by the LEAP are not significantly over and above those posed by the lawful fall-back position. The proposed planting would also help to reduce any visual impacts and overlooking that could be caused by the slightly larger LEAP towards the north-eastern area of the square. As such it is considered that the separation of the LEAP from residential properties is acceptable.
- 7.30 Finally it is stated that there is no demonstration of conformity of the railings surrounding the pumping station with other existing railings at domestic properties in the area. This is assessed in more detail above, but it is considered that subject to a planning condition

requiring them to be finished in black they are acceptable and would be compatible with the surroundings.

Neighbour Objections

- 7.31 A significant amount of neighbour objections were received in relation to both the initially submitted scheme and subsequently amended plans. An assessment of the material planning considerations has been undertaken above with no significant concerns identified with regards to visual impacts, privacy, noise and anti-social behaviour or highway safety and it has not been concluded that the proposals are contrary to any adopted planning policies or guidance.
- 7.32 Objections raised with regards to the developer lying to residents prior to their house purchase and not notifying potential purchasers of the LEAP or pumping station compound are not material planning considerations. Similar objections stating that properties will be devalued by the installation of the LEAP and pumping station compound are not material planning considerations.
- 7.33 Several objectors raised the question of the need for the LEAP in this location as the nearby Western Park has formal play provision (located away from domestic properties) and several smaller LAPs are located within walking distance of Brinell Square. This has been addressed in more detail within response to Councillor Kellaway's objections above.
- 7.34 Several objectors have stated that the pumping station and LEAP should be installed in accordance with the previous approvals without any amendments being permitted. The former decisions do provide the developer with a lawful fall-back position. Should members choose to refuse planning permission the developer would have the option to implement the previously approved scheme (albeit subject to the submission of additional details to satisfy the relevant planning conditions). The planning system allows for amendments to be proposed through the submission of new planning applications, which is the case with the current application.
- 7.35 One letter of objection stated that an infestation of crane fly larvae (known as 'leatherjackets') had occurred following maintenance of the pumping station. The objector stated that this was further proof that the pumping station should not be located in this area. Informal advice was taken from the Head of Law and Regulations (Pollution and Pest Control). It was stated that it is unlikely that there is any link between the pumping station and the presence of the 'leatherjackets', but rather the emergence of them is more due to the time of year (spring when they emerge to feed) and that a long wet and mild autumn had allowed them to establish below ground.

Summary

- 7.36 The proposed amendments to the LEAP and pumping station are considered acceptable and will not demonstrably and adversely affect neighbouring residential amenities or highway safety over and above the lawful fall-back position established through previous planning permissions. The LEAP will have a positive impact upon the layout of the estate and the ability of existing and future occupiers to benefit from play facilities and the associated emotional, social and physical merits of having the access to such provision. The provision of a secure compound surrounding the pumping station will not demonstrably and adversely affect neighbouring residential amenities or highway safety and will allow for improved access for maintenance to the benefit of the effective drainage of the development in the future. Objections raised by the Ward Councillor, Llanwern Community Council and local residents do not outweigh this favourable view. As such it is considered that the proposals are in accordance with the relevant planning policies and guidance and it is recommended that planning permission is granted subject to conditions.

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 retention of a pumping station compound and means of enclosure with associated alterations to the layout of the LEAP and landscaping (amendment to planning permission 11/0146 for phase 1 housing) by reasons of the scale, location and design are considered to maintain residential amenities for neighbouring occupiers, to maintain the character and appearance of the surrounding area and street scene and to preserve highway safety.

9.2 The proposals are therefore in accordance with policies SP1, SP2, GP2, GP3, GP4, GP6 and CF2.

9.3 Planning permission is recommended to be 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: 102 Rev. C – Pumping Station Location; M11.113(k).022 Rev. A – Persimmon LEAP Construction Details; M11.113(k) 021 Rev. E – Persimmon LEAP and Pumping Station Layout Plan; P13-266-215 – Compound Fencing Details; Kompan Talus details; Kompan Ocean & Jungle Theme with Net and Tower details; Kompan Cwing and Twist details.

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

General conditions

02 The bow top railings surrounding the LEAP and the vertical bar railings and gates surrounding the pumping station compound hereby approved shall be finished in black and shall be retained in that state thereafter.

Reason: To ensure development that is compatible with its surroundings.

03 The planting scheme hereby approved shall be undertaken fully in accordance with the plans hereby approved within the first full planting season following the construction of the LEAP and pumping station compound. The landscaped areas shall be maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants which fail within a period up to 5 years from the completion of the development.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

04 The means of enclosure, vehicular access and gates surrounding the pumping station and the play equipment, outdoor seating and means of enclosure within the LEAP area shall be fully installed in accordance with the approved details within six calendar months of the date of this decision and shall be retained in that state thereafter.

Reason: To secure the provision of the local community facility in the interests of sustainable development, residential amenities and highway safety.

05 The access gates serving the pumping station compound hereby approved shall be installed as inwards opening only and at no time shall they be permitted to open outwards.

Reason: To ensure a satisfactory form of development in the interests of highway safety.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Design and Access Statement; 102 Rev. C – Pumping Station Location; M11.113(k).022 Rev. A – Persimmon LEAP Construction Details; M11.113(k) 021 Rev. E – Persimmon LEAP and Pumping Station Layout Plan; P13-266-215 – Compound Fencing Details; Kompan Talus details; Kompan Ocean & Jungle Theme with Net and Tower details; Kompan Cwing and Twist details; Site Location Plan.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, SP2, GP2, GP3, GP4, GP6 and CF2 were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

11. REASON FOR THE SITE INSPECTION

To get an appreciation of the size of the site and the impact the development would have.
