

Code No. and Date Received	Name and Address of Applicant	Description and Location of Proposed Development
16/0668/OUT 29.07.2016	SRJ And JG Partnership Mr R Gambarini C/o RPS Planning & Development Mr D Williams Park House Greyfriars Road Cardiff CF10 3AF	Erect residential development Land To North Of Car Park Aiwa Technology Park North Celyn Newbridge NP11 5AN

**APPLICATION TYPE:** Outline Application

### SITE AND DEVELOPMENT

Location: The application site is an area of land to the north of an existing car park within the "Technology Park" industrial estate east of Newbridge adjacent to the A467.

Site description: The site comprises approximately 1.36 hectare of former colliery land that has become lightly wooded in more recent years. There is an informal track running through it from the A467 to North road via a footbridge over the River Ebbw. The land is not currently in use.

Development: This is an application made in outline with all matters reserved except access.

An indicative layout has been submitted that shows 45 dwellings at the site. The access point is via an approved phase of residential development that connects directly onto the shared access road from the industrial estate which leads out onto the A467 via a traffic light controlled junction.

### Dimensions:

The upper and lower limits for height, width and length of each building are as follows:

Maximum 9m width, 12m length, 3 storey height.  
Minimum 6m width, 9m length, 2 storey height.

Materials: To be agreed at reserved matters stage.

Ancillary development, e.g. parking: To be agreed at reserved matters stage.

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## PLANNING HISTORY 2005 TO PRESENT

14/0604/OUT - Erect residential development - Refused 06.08.2015 - Allowed On Appeal 15.04.2016.

## POLICY

### LOCAL DEVELOPMENT PLAN

#### Site Allocation:

The application site is identified for secondary employment - EM2.14 North Celynen Newbridge. It is also within a Site of Importance for Nature Conservation (SINC).

#### Policies:

SP5 (Settlement Boundaries), SP6 (Place Making), CW1 (Sustainable Transport, Accessibility and Social Inclusion), CW2 (Amenity), CW3 (Design Considerations - Highways), CW4 (Natural Heritage Protection), CW10 (Leisure and Open Space Provision), CW11 (Affordable Housing), CW13 (Use Classes Restrictions Business and Industry) and EM2 (Employment Sites Protection), NH3.12 (Sites of Importance for Nature Conservation).

### NATIONAL POLICY

Planning Policy Wales (2014) encourages development in locations that increase accessibility by modes other than private car, within existing urban areas, and at higher densities (para. 4.7.4). It also states a preference for the use of brownfield land (para. 4.9.1).

TAN 1 Joint Housing Land Availability.

TAN 11 Noise.

TAN 15 Flooding.

### ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? Yes.

Was an EIA required? No.

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### COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? Yes, and the comments of The Coal Authority are discussed later in the report.

### CONSULTATION

The Coal Authority - The Authority recommends that the LPA impose a Planning Condition requiring site investigation works prior to the commencement of development.

Countryside And Landscape Services - The Landscape Architect raises no objection subject to conditions. The Ecologist raises no objection subject to conditions and a Section 106 Agreement to manage off-site mitigation measures for the loss of SINC land.

CCBC Housing Enabling Officer - No objection subject to the provision of 10% affordable housing.

Senior Engineer (Land Drainage) - It is explained that there may be historic culverting within the site that should be taken into account at reserved matters. It is suggested that detailed surface water drainage should be agreed prior to determination of the outline application, a condition is recommended. Drainage advice is provided for the applicant.

Head Of Public Services - Advice is provided regarding waste collection.

Outdoor Leisure Development Officer - No objection subject to well-designed public open space provision.

Transportation Engineering Manager - No objection is raised, subject to conditions.

Police Architectural Liaison Officer - No objection is raised. Advice regarding the reserved matters is provided.

Wales & West Utilities - No objection is raised and advice is provided regarding the presence of gas services.

Network Rail - No objection. Advice is provided regarding security and the development of adjacent land.

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### ADVERTISEMENT

Extent of advertisement: The application has been advertised on site, in the press and 22 neighbouring properties have been consulted.

Response: No response has been received.

Summary of observations: Not applicable.

### SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area?

It is not expected that the proposed development will have a significant impact upon crime and disorder.

### EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? No.

### COMMUNITY INFRASTRUCTURE LEVY

Is this development Community Infrastructure Levy liable? This is an outline application CIL will become liable at reserved matters.

### ANALYSIS

#### Policies:

SP5 (Settlement Boundaries): The application site is within the settlement boundary and therefore in accordance with policy.

SP6 (Place Making): This policy requires that proposals should contribute to creating sustainable places. The site is within the settlement boundary, which would make more efficient use of the land within that boundary and reduce pressure for development outside the settlement. Combined with the already approved phase it would offer a larger quantum of development which may provide at reserved matters for features such as more useable combined public open space.

CW1 (Sustainable Transport, Accessibility and Social Inclusion): The Phase 1 part of this site has been considered by an appeal inspector who held that its connections to the town were adequate.

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CW2 (Amenity): The appeal Inspector also considered amenity with regard to the part of the site that is closer to the employment site to the south. This phase is further away from that employment site and therefore is a less significant issue than has been allowed at appeal.

CW3 (Design Considerations highways): No objection has been raised by the Transportation Engineering Manager subject to conditions.

CW4 (Natural Heritage Protection): The proposal has been considered by the Council's Ecologist and no objections are raised subject to conditions.

CW10 (Leisure and Open Space Provision): This policy requires the provision of useable public open space. The Appeal Inspector has imposed this requirement with regard to the land to the south and the same condition may be re-imposed.

CW11 (Affordable Housing): The site lies within an area that is subject to an affordable housing target of 10%, this provision may be required by a Section 106 Agreement.

CW13 (Use Classes Restrictions Business and Industry): This policy explains the use class restrictions to be applied within the hierarchy of employment uses. Given that the proposed change of use is to non-employment use the key consideration is whether or not policy EM2 is applicable, this is considered below.

EM2 (Employment Sites Protection): The site is allocated in the approved development plan for employment use. The Appeal Inspector in regard to the land to the south concluded that "The loss of an allocated secondary employment site and conflict with the relevant LDP Policies in this regard count against the proposal. I conclude that the proposal complies with national and development plan policies apart from this one issue. In this case the evidence shows that there is a considerable over-supply of employment land with an intention to release the site in the LDP review. There is also a shortage of housing land of 1.9 years rather than the required 5 years. The proposal would add to the supply of housing land. I have found there to be little or no substance to the other reasons for refusal on the basis of the evidence presented to the inquiry. The Council has accepted that there is no evidence to substantiate any of the reasons for refusal. I consider that the benefits of the scheme in terms of increasing the supply of housing outweigh the loss of this employment land." It is to be noted that the Inspector's conclusion related to an area of land that had previously been in employment use, it had functioned as a car park, albeit the use had ceased and at the time of the appeal it was not in use. That site had been on the market for a significant period of time without drawing significant interest. The application site has not been in employment use and is vacant, whilst it has not been marketed there is no reason to assume it would draw any more interest than the site to the south. Therefore the Inspector's conclusion still holds true.

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NH3.12 (Sites of Importance for Nature Conservation). The site includes part of a SINC that runs along the river corridor. Currently on the site are young broad leaved trees that have started to grow in the last 10 to 15 years. The application is accompanied by an Ecological Statement that has been considered by the Council's Ecologist. Compensatory enhancements on nearby land have been offered in the Statement to mitigate for the loss of the trees. The Ecologist is satisfied that these measures are adequate and they may be secured by a Section 106 Agreement.

Planning Policy Wales (2014) encourages development in locations that increase accessibility by modes other than private car, within existing urban areas, and at higher densities (para. 4.7.4). It also states a preference for the use of brownfield land (para. 4.9.1). With regard to the national policy and the TAN the Inspector who approved the development of the land immediately to the south (Phase 1) concluded: "Planning Policy Wales and TAN 1 state that LPAs must ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing. The latest housing land availability figures for Caerphilly County Borough are contained within the 2015 JHLAS, published July 2015. The parties at the inquiry agreed that Caerphilly has 1.9 years residential land supply based on the residual method. This demonstrates that the LDP is not delivering the required housing supply, despite its evidence base referred to by the objector. This evidence base has become out of date. Whatever the reasons for the lack of deliverable sites this does not alter the fact that the housing land supply is less than the 5 years required. In situations where housing land supply is less than five years TAN 1 confirms that this should be treated as a material consideration in determining planning applications for housing and that the need to increase supply should be given considerable weight when dealing with planning applications, provided the development would otherwise comply with national planning policies." This view still holds true and it is to be noted that the housing land supply has now dropped to 1.5 years.

TAN 11 Noise. Noise was also an issue considered by the appeal inspector at phase 1. The issue of noise at phase one was principally concerned with disturbance from the employment site to the south. This application site is much further away from that noise source.

TAN 15 Flooding: The site contains an area of Zone B which is a precautionary category designed to raise the awareness of flooding, accordingly this advice should be passed on to the applicant.

Comments from Consultees:

The Coal Authority recommends a Planning Condition requiring site investigation works prior to the commencement of development. The same condition was required at phase 1.

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The Landscape Architect and Ecologist raise no objection subject to conditions and a section 106 agreement to manage off-site mitigation measures for the loss of SINC land.

CCBC Housing Enabling Officer raises no objection subject to the provision of 10% affordable housing, this may be secured through a Section 106 Agreement.

Senior Engineer (Land Drainage) has explained that there may be historic culverting within the site that should be taken into account at reserved matters. It is suggested that detailed surface water drainage should be agreed prior to determination of the outline application. A condition is recommended should planning permission be granted.

Head of Public Services has raised no objection and provided regarding waste collection.

Outdoor Leisure Development Officer has raised no objection subject to well-designed public open space provision.

Transportation Engineering Manager has raised no objection subject to conditions.

Police Architectural Liaison Officer, Wales & West Utilities and Network Rail have raised no objection and provided advice

Comments from public: None.

Other material considerations: In the previous phase the applicant offered to use best endeavours to undertake to tidy and clean the underpass to the North Road in order to address concerns that had been raised regarding its condition. This phase will share the same footpath link. The Appeal Inspector has stated with regard to the previous concern that: "The appellant argued that as an obligation that runs with the land, it has substantive legal effect and can be enforced. The appellant referred to a case where a similar obligation had been used that was considered by the courts. It was held that an obligation to use best endeavours should normally be held to be an enforceable obligation unless the object intended to be procured by the endeavours is too vague or elusive to be itself a matter of legal obligation or the parties have provided no criteria on the basis of which it is possible to assess whether best endeavours have been, or can be used. The object in this case is clear i.e. to improve and maintain the underpass. The UU also clearly sets out what constitutes best endeavours. The above legal test is therefore met." Therefore in this application it is considered that again the improvement of the route through the underpass should be required through the 106 Agreement.

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RECOMMENDATION: (A) This application be deferred to enable the completion of a Section 106 Agreement (including unilateral undertaking) that will require the provision of 10% affordable housing, the management of the off-site ecological compensation measures and that the applicant shall use best endeavours to improve and maintain the underpass to North Road.

(B) Upon completion of the Section 106 Agreement planning permission should be granted subject to the following conditions:

RECOMMENDATION that Permission be GRANTED

This permission is subject to the following condition(s)

- 01) Approval of the details of the access, appearance, landscaping, layout and scale of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before development is commenced and shall be carried out as approved.  
REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
- 02) Plans and particulars of the reserved matters referred to in Condition 01) above, relating to the access, appearance, landscaping, layout and scale of the development, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.  
REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
- 03) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.
- 04) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.  
REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

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- 05) Details of land drainage shall be submitted to and agreed in writing with the Local Planning Authority before the development hereby approved commences and those details shall include any existing land drainage that passes through the site. The development shall be carried out in accordance with the agreed details before the relevant part of the development is brought into use.  
REASON: To ensure that the development is appropriately drained.
- 06) Details of an area of open space with formal children's play equipment within the site shall be submitted as part of the reserved matters. The approved area of open space with formal children's play equipment shall be provided in accordance with the approved details before 50% of the approved dwellings are occupied and shall thereafter be permanently retained.  
REASON: To ensure the provision of adequate open space to serve the needs of the proposed occupants.
- 07) Details of off-highway collection areas for refuse, recycling, food and garden waste shall be submitted as part of the reserved matters. The approved collection areas shall be completed before the residential units to which they relate are occupied and shall thereafter be permanently retained for the storage and collection of refuse, material for recycling and food or garden waste only.  
REASON: To provide for the collection of waste and recyclable materials.
- 08) Prior to the occupation of 50% of the dwellings hereby approved, the proposed 3m wide footway/cycleway, the line of which is indicated on the Indicative Site Layout plan marked with an orange dashed line (the "Pedestrian Link), shall be completed in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.  
REASON: To provide pedestrian access to North Road.

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- 09) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.  
REASON: In the interest of the health of the proposed occupants.
- 10) A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 10 years, and the provision of reports on the same shall be submitted to and approved by the Local Planning Authority, prior to the occupation of any approved building. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out shall be submitted to the Local Planning Authority at the end of every subsequent 12 month period and approved in writing to demonstrate the effectiveness of the monitoring and maintenance carried out. In the event that the remediation objectives are not achieved within the monitoring period, a revised remediation scheme and verification plan shall be submitted to and approved in writing by the local planning authority within two months following the end of the monitoring period. Any further works necessary shall be undertaken within an agreed timescale until the remediation objectives are achieved and reports confirming the same have been submitted to and approved in writing by the Local Planning Authority.  
REASON: In the interest of the health of the proposed occupants.
- 11) Details of a buffer zone of a minimum 7 metres in width along the eastern boundary of the site with the River Ebbw shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission. The development shall be completed in accordance with the agreed details and thereafter the approved buffer zone shall be permanently maintained free of any development.  
REASON: To ensure adequate access to the river bank.

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- 12) The development hereby approved shall not take place until a site investigation has been carried out in accordance with a methodology first submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be submitted to the Local Planning Authority before any development begins. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development shall be submitted to and approved in writing by the Local Planning Authority. Remedial measures shall be carried out prior to the first beneficial use of the development in accordance with the approved details and retained thereafter in perpetuity.  
REASON: The site has a history of previous mining activity.
- 13) The reserved matters submissions shall include details of noise attenuation measures to protect the residents of the proposed dwellings from noise associated with the nearby roads and industrial premises. These measures shall include but not be limited to 2.1m high acoustic barriers along the site boundaries in specified locations and mechanical ventilation as necessary. The approved noise attenuation measures shall be incorporated in full into the proposed development and permanently retained thereafter.  
REASON: In the interest of the amenity of the proposed occupants.
- 14) Prior to the occupation of the dwellings hereby approved, a footpath link to the pedestrian footpath adjacent to the A467 (along the frontage of "Phase One"), shall be completed in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority.  
REASON: To provide pedestrian access to the adopted highway.
- 15) A detailed programme for the provision the highway both vehicular and pedestrian, details of construction, completion with regard to the phase one and future maintenance shall be submitted to and approved in writing by the Local Planning Authority before any works of construction are commenced on site. The development shall be carried out in accordance with the agreed programme and construction details, the highway shall be maintained thereafter as agreed.  
REASON: To ensure adequate access to the dwellings hereby approved.
- 16) Prior to the commencement of the development hereby approved, a landscape and ecological management plan for land within the application boundary shall be prepared and submitted to the Local Planning Authority for its agreement. The agreed plan shall be complied with.  
REASON: To ensure adequate protection to habitats and protected species.

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- 17) Prior to the commencement of development a light mitigation strategy, including measures to ensure that street lighting and security lighting reduces light spillage into foraging habitats for bats, shall be submitted to the Local Planning Authority for approval. The lighting shall be installed and maintained thereafter in accordance with the approved strategy.  
REASON: To ensure measures are taken to safeguard the habitat of bats, in the interests of biodiversity.
- 18) Prior to the commencement of development, a badger survey shall be undertaken of the development site and where possible of suitable habitat in the surrounding area within 30 metres of the site boundary, to ascertain the presence of badgers, badger setts, pathways and foraging habitat. The survey methodology shall be submitted for the prior approval of the Local Planning Authority. The results of the survey along with any necessary mitigation measures shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of the development. The approved measures shall be carried out in accordance with the agreed details.  
REASON: In the interests of biodiversity and to safeguard a protected species (Protection of Badgers Act 1992).
- 19) No development or site or vegetation clearance shall take place until a detailed methodology for capture and translocation of reptiles on site including details of any proposed remedial measures has been submitted to and agreed in writing with the Local Planning Authority. The approved measures shall be carried out in accordance with the agreed details.  
REASON: To ensure that reptiles are protected.
- 20) Site clearance operations that involve the destruction and removal of vegetation, including felling clearing or removal of trees and shrubs or hedgerows shall not be undertaken during the months of March to August inclusive, unless otherwise agreed in writing by the Local Planning Authority to ensure that breeding birds are not adversely affected.  
REASON: To ensure that breeding birds are protected. All British birds, their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000.

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- 21) Prior to the commencement of development a Construction Environmental Method Statement shall be prepared that sets out measures to protect retained features, including inter alia tree protection for retained trees, otter and badger working protocols, and shall be submitted and agreed in writing with the Local Planning Authority. The approved measures shall be carried out in accordance with the agreed details.  
REASON: to ensure that retained habitats and protected species are protected.
- 22) Prior to the commencement of any works on site, details of the provision of nesting sites for bird species (House sparrow, House martin, Starling, Swallow or Swift) and provision of roosts and a means of access for bats in the new properties at the application site, shall be submitted to the Local Planning Authority for approval. The approved details shall be implemented before the occupation of the new properties.  
REASON: To provide additional nesting opportunities for birds as a biodiversity enhancement, in accordance with Part 1 Section 6 of the Environment (Wales) Act 2016, and policy contained in Welsh Government's Planning Policy Wales (2016) and Tan 5 Nature Conservation and Planning (2009).

Advisory Note(s)

Please find attached the comments of Wales and West Utilities, Senior Engineer (Land Drainage), Network Rail, The Coal Authority, Head of Public Services and Police Architectural Liaison Officer that are brought to the applicant's attention.

The site contains an area of Zone B flood risk category as defined in Welsh Government TAN15 Development and Flood Risk, which advises a precautionary approach to indicate where site levels should be checked against extreme flood level. If the flood levels are greater than the flood levels used to define adjacent extreme flood outline there is no need to consider flood risk further.

The following policies of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010 are relevant to the conditions attached to this consent: CW2, CW3 and CW4.

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