

APPLICATION DETAILS

No: 23/1134 **Ward:** St Julians

Type: Discharge Conditions

Expiry Date: 14th February 2024

Applicant: *R. Mackin*

Site: *Land to south of Glan Usk Primary School, Herbert Road, Newport, South Wales*

Proposal: ***PARTIAL DISCHARGE OF CONDITION 16 (REMEDIAION VERIFICATION) OF 18/0293 DEVELOPMENT OF 195 NO. RESIDENTIAL UNITS, INTERNAL ROAD NETWORKS, PARKING, LANDSCAPING & ASSOCIATED WORKS IN RELATION TO PHASE 3 (PLOTS 47-55, 120-126, 138- 143, 161 – 195)***

Decision: Refused

1. CONSULTATIONS

1.1 CYFOETH NATURIOL CYMRU / NATURAL RESOURCES WALES (CNC/NRW):

We have no objection to the application as submitted and provide the following advice.

We understand this application is for the partial discharge of condition 16 of approval 18/0293 for phase 3 of the development. The Capping Validation Report: Herbert Road, Phase 3 Plots 47-55, 120-126, 138- 143, 161 – 195, by Terra Firma, dated 15th December 2023, concerns the sampling of imported soils for gardens, which primarily relates to human health risks. Therefore, we have no objection to the application as submitted and we advise you seek the advice of your Authority's advisors in relation to human health matters.

Condition 16 of approval 18/0293, refers to the Remediation Strategy submitted for approval 17/0082 (Job Number: 12032/RS, by Terra Firma, dated August 2015). Section 3.7 'Groundwater and River Usk' of the Remediation Strategy proposes additional groundwater monitoring/analysis will be submitted as part of the verification. This information has not been submitted as part of this partial discharge of condition application for phase 3. We remind the Applicant adequate information satisfying the proposals in Section 3.7 of the Remediation Strategy will need to be submitted for the full discharge of condition 16 of approval 18/0293.

2. INTERNAL COUNCIL ADVICE

2.1 HEAD OF ENVIRONMENT & PUBLIC PROTECTION (SCIENTIFIC OFFICER): I have looked at the submissions in respect of the above and am supportive of the results obtained for validation reporting.

3. REPRESENTATIONS

3.1 None.

4. RELEVANT SITE HISTORY

Ref. No.	Description	Decision & Date
13/1279	DEVELOPMENT OF 251 DWELLINGS AND ASSOCIATED WORKS INCLUDING BOUNDARY TREATMENTS, RETAINING WALLS, VEHICULAR ACCESS, PARKING, PATHWAYS AND LANDSCAPING AFFECTING PUBLIC RIGHT OF WAY 407/1.	GC 11 August 2015
17/0082	DISCHARGE OF CONDITION 03 (REMEDIATION STRATEGY), PARTIAL DISCHARGE OF CONDITION 10 (REMEDIATION VERIFICATION REPORT) AND PARTIAL DISCHARGE OF CONDITION 20 (IMPORTED MATERIAL) OF PLANNING PERMISSION 13/1279 FOR CONSTRUCTION OF 251NO. DWELLINGS ON LAND SOUTH OF GLAN USK PRIMARY SCHOOL	A 16 March 2017
18/0293	DEVELOPMENT OF 195NO. RESIDENTIAL UNITS, INTERNAL ROAD NETWORKS, PARKING, LANDSCAPING AND ASSOCIATED WORKS AFFECTING PUBLIC RIGHT OF WAY 407/1	GC 03 October 2018
20/0875	PARTIAL DISCHARGE OF CONDITION 12 (DETAILS OF GLAZING AND VENTILATION) AND 16 (REMEDIATION VERIFICATION) IN RELATION TO PLOTS 39-46 AND 56-75 OF PLANNING PERMISSION 18/0293 FOR THE DEVELOPMENT OF 195NO. RESIDENTIAL UNITS, INTERNAL ROAD NETWORKS, PARKING, LANDSCAPING AND ASSOCIATED WORKS AFFECTING PUBLIC RIGHT OF WAY 407/1	A 01 February 2021 (Parts of Phases 2B & 2C)

5. ASSESSMENT

- 5.1 The applicant is seeking to partially discharge Condition 16 of Planning Permission 18/0293 for the development of 195no. dwellings on land to the south of the Glan Usk primary school. That condition reads as follows:

Remediation Verification: Prior to occupation of any part of the approved development, a verification report demonstrating completion of the works set out in the remediation strategy submitted under discharge of condition approval 17/0082 (or any other strategy that may be subsequently agreed) and the effectiveness of the remediation for that part of the site shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

Reason: *In order to demonstrate that the remediation criteria relating to controlled waters and human health have been met. In order to (if necessary) secure longer-term monitoring of groundwater quality. This will ensure that there are no longer remaining unacceptable risks to controlled waters or human health following remediation of the site.*

- 5.2 The planning history for this site is somewhat complex with an initial (and partially implemented permission) having been granted in 2015 for 251no dwellings on this site. Given that the site was known to be contaminated from previous industrial uses a decontamination methodology condition was applied to that permission. This was subsequently discharged under approval 17/0082. That strategy required the following:
- Raise the site by up to 2.75m including 600mm of clean imported fill in garden and landscaped areas; a geotextile membrane will be installed between the last 600mm fill layer and that fill which is below it;
 - Gas protection in buildings: ground gas membranes, underfloor venting & joint sealing. Further gas monitoring is to be carried out and gas protection will amended if necessary;
 - Water supply pipes to be selected as appropriate for contaminated ground;
 - On-going assessment of ground water during the filling operation; assessments show there is no hydro-logical connectivity between site ground waters and the River Usk;
 - Surface waters generated on the site are considered to pose no risk to controlled waters;
 - Imported materials to be tested for chemical suitability for a residential end use on the site;
 - Contingencies are made for any unexpected contamination that may be encountered.
- 5.3 Condition 16 of the subsequent permission for 195 residential units (18/0275) required the implementation and verification of the completion of the agreed decontamination measures or the submission of an alternative decontamination programme and the implementation of that alternative scheme following agreement that it was suitable. No alternative scheme was ever agreed so the strategy agreed under submission 17/0082/DC is the decontamination effort that should have been implemented on this site.
- 5.4 As such the applicant would need to show the physical works of site raising, site capping and membrane installation had been completed as agreed and that monitoring had shown there was no unacceptable risk to controlled waters and that no unexpected contamination had been encountered or if it had then it had been dealt with effectively.
- 5.5 Conditional approval 20/0875 related to parts of Phases 2B and 2C on the site and appears primarily related to the imported and capping materials. However supporting documents submitted as part of this approval suggest that in 2016 Terra Firma then acting for the site owners were advising that ground water sampling showed no impact from the site raising works on the adjacent River Usk and advising that no further sampling be completed. They arrived at similar conclusions in relation to the re-en on the site since the channel had been reformed and lined and the waters were now mostly isolated from the soils on site leading to low risk of contamination of surface waters going forward.
- 5.6 Under this submission the applicant is seeking to discharge condition 16 in relation to parts (but not all) of Phase 3 of the development. The relevant Plots are identified in the description.
- 5.7 The submitted information relates to the following Plots outlined red with those dealt with under 20/0875 outlined in orange.



- Outlined Red – Plots covered by this submission
- Outlined Orange – Plots covered by 20/0875 (approved)
- Blue Arrow – Line of reën (Lotterys Reën)
- Shaded Pink – Phase 1
- Shaded Blue - Phase 2
- Shaded Green – Phase 3

- 5.8 In so far as human health is concerned the consultees are satisfied that the measures taken are appropriate to protect human health. In effect this involves the installation of clean cover to break off direct contact with contaminated soils, noting the site has been raised anyway for flood protection reasons so the risk to human health is mitigated. The chemical suitability of the capping material is also confirmed under this submission alongside the provision of no-dig membranes in the curtilage areas around the flatted blocks (138-143 & 161-166), see Paragraph 3.0 of Terra Firma letter dated 15.12.2023. It is not clear why no dig membranes were required under these plots but not under the others that form part of this discharge.
- 5.9 CNC/NRW note monitoring data for controlled waters has not been submitted and that the condition cannot be fully discharged. In this case the site has been raised and capped and the reën has been lined and closed off from the soils below it and enlarged to provide a balancing feature at times of tide lock on the reën outlet. It is not clear that the necessary ground water monitoring is in place to allow the condition to be discharged in reference to controlled waters anyway. Data submitted with 20/0875 (Terra Firma letter dated 30.08.2016) suggests that monitoring up to that point has not identified any harms to ground waters engendered by the ‘filling exercise’ being undertaken on the site to raise it for flood protection and that no further monitoring was proposed. However this was never agreed by the Council or on the evidence provided by CNC/NRW. As such the information provided does not demonstrate that an end to monitoring was agreed in 2020, or earlier than that and none of the submitted information with this application addresses controlled waters points. Consequently this element of the condition cannot be discharged and CNC/NRW are clear on this point.

- 5.10 This discharge is partial:
- It relates to the following Plots only - Plots 47-55, 120-126, 138- 143, 161 – 195.
 - It relates to soil capping depth on the identified plots.
 - It confirms installation of a no dig membrane at Plots 138-143 & 161-166 but not anywhere else on the site.
 - It does not discharge the condition in relation to controlled waters.
- 5.11 As it stands it cannot be shown that there is no ongoing risk to controlled waters from the site and no evidence has been submitted to address that concern. Given that the effort to address human health concern and the effort to address the risk to controlled water entirely overlap on this site then it is not appropriate to agree to such a partial discharge of this condition.

6. OTHER CONSIDERATIONS

6.1 *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.

6.2 *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.

6.3 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.

6.4 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.

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

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

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

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the

Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

7. CONCLUSION

- 7.1 The submitted information does not address the controlled waters element of the condition and it is not appropriate to split out the human health and controlled waters elements of the condition given the decontamination effort was the same for both elements of the condition; that is Human Health and Controlled Waters were to be addressed globally under a single decontamination process. No evidence has been provided to show the risk to controlled waters had been adequately addressed contrary to Policy GP7 (Environmental Protection) of the adopted Newport Local Development Plan 2011-2026.

8. DECISION

REFUSED

01 The submitted information does not address the controlled waters element of the condition and it is not appropriate to split out the human health and controlled waters elements of the condition given the decontamination effort was the same for both elements of the condition; that is Human Health and Controlled Waters were to be addressed globally under a single decontamination process. No evidence has been provided to show the risk to controlled waters had been adequately addressed contrary to Policy GP7 (Environmental Protection) of the adopted Newport Local Development Plan 2011-2026.

NOTE TO APPLICANT

01 This decision relates to the following plans and documents:

- Drawing LP-P1, 2&3-01 – Phase 1, 2 & 3, Location Plan
- CAPPING VALIDATION REPORT: HERBERT ROAD, PHASE 3 PLOTS 47-55, 120-126, 138- 143, 161 – 195 (Terra Firma letter dated 15.12.2023)

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policy GP7 was relevant to the determination of this application.

03 As consideration of this request did not raise significant additional environmental matters over and above those previously considered as part of the original application, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.

04 It is considered that the decision has been made in conformity with the Marine Policy Statement (2011) and in accordance with marine national planning policy contained within the Welsh National Marine Plan (2019) as demonstrated in the assessment of this proposal.