

Delegated Decision Report

Application No:	25/0652	Statutory Period Expires:	7th October 2025
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Site:	<i>Land North of Eastern Dry Dock Birdport Ltd - Cargo Depot Corporation Road Newport South Wales</i>		
Proposal:	<i>LAWFUL DEVELOPMENT CERTIFICATE FOR PROPOSED BIOMETHANE COMPRESSED NATURAL GAS (BIO-CNG) FILLING STATION AND ASSOCIATED WORKS</i>		
Applicant:	<i>D. Walsh</i>		
Type:	Lawful Development Proposed	Ward:	Llanwern
Decision:	Granted		

1. BACKGROUND

- 1.1 The applicant is seeking the issue of a Lawful Development (Proposed) Certificate for a fuel filling station on land between Birdport and the railway embankment on Stephenson Street. The applicant says the fuel will be used by vehicles operating in Birdport which remains an active dock. It appears that Birdport has recently been renamed to 'Port Harcon'. However the site is in active use as a port and dry dock and has been so used for many years.

2. SITE LOCATION AND CONTEXT

- 2.1 The site is on the east bank of the Usk south of where Stephenson Street passes underneath the railway embankment and is of typical port / industrial character containing a dock (partially covered), crane facilities, rail transfer facility and various storage buildings, areas of outdoor storage and ancillary office space.

3. DESCRIPTION OF DEVELOPMENT

- 3.1 The applicant seeks confirmation that the future provision of a fuel filling station (Bio Compressed Natural Gas) is permitted development.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision & Date
18/1088	PARTIAL DEMOLITION OF EXISTING RAIL FREIGHT DEPOT AND CONSTRUCTION OF REPLACEMENT EXTENSION AND REPOSITIONING OF ACCESS RAMP	GC 31 July 2019

5. PLANNING POLICY

None relevant.

6. CONSULTATION RESPONSES

6.1 NCC Law & Standards:

The Applicants need to satisfy that the development is taking place on operational land, that being land which is used for the purpose of carrying out their undertakings and land in which an interest is held for that purpose, by statutory undertakers or their lessees for the purpose of 'harbour undertakings' for the purpose of shipping or the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking. The construction would also need to take place wholly within the limits of the harbour.

Having read the documents, if correct, the information supports that the development satisfies the above, however, you may want to consider asking for evidence in support, such as the agreement between the Applicant and the Commissioners, as the agreement should evidence that the Applicant undertakes the functions, as listed in the agent's email of the 2nd of October, on behalf of the statutory undertaker.

7. PUBLIC REPRESENTATIONS

N/A.

8. ASSESSMENT

8.1 Section 192 of the Town & Country Planning Act 1990 (as amended) states:

192 Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether:

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

8.2 The applicant relies upon permitted development rights namely Schedule 2 Part 17; Development by Statutory Undertakers of the 1995 Order¹. Under Class B of that part the following rights accrue:

Class B Dock, pier, harbour, water transport, canal or inland navigation undertakings
Permitted development

B. Development on operational land by statutory undertakers or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

(a) for the purposes of shipping, or

(b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.

Development not permitted

¹ The Town and Country Planning (General Permitted Development) Order 1995, as amended

B.1 Development is not permitted by Class B if it consists of or includes—

(a) the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic,

(b) the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—

(i) an educational building, or

(ii) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation.

8.3 In this assessment the key questions are:

- Is the land operational land for a 'dock' undertaking.
- Is the developer a statutory undertaker.
- Is the development for a dock related activity.
- Is the development precluded under part B1.

Operational Land

8.4 Review of aerial photographs shows the land in question to have been used for external storage and there seems no reason to think that this was not in association with the dock use, being containers and more latterly coal. The TCPA 1990² defines operational land at Section 263(1) as:

Subject to the following provisions of this section and to section 264, in this Act "operational land" means, in relation to statutory undertakers:

(a) land which is used for the purpose of carrying on their undertaking; and

(b) land in which an interest is held for that purpose.

8.5 In terms of test (a) the land is in use for the carrying out of dock related work and the application form confirms the applicant is the owner. Permission 18/1088 also showed the land subject to this application to be contained within the same ownership as the dock. As such on the balance of probabilities the application site is operational land for a dock undertaking at the current time.

Statutory Undertaker

8.6 Section 262 of the TCPA 1990 defines Statutory Undertaker as

(1) Subject to the following provisions of this section, in this Act "statutory undertakers" means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator

8.7 In this case the applicant is Port Harcon Limited who are confirmed as the site owner. The applicant explains that they have delegated authority from the Newport Harbour Commissioners to undertake various operations at Port Harcon / Bird Port and that the Commissioners as a statutorily enacted body meet the definition of statutory undertaker. There can be no doubt that the harbour commissioners have statutory authority over harbour and navigation related matters in the Usk river and associated parts of the Severn and that Bird Port falls within their remit. Equally it is clear from the submission that authority for certain harbour related functions is delegated from the Commissioners to the port operator. The applicant has explained that the

² Town and Country Planning Act 1990, as amended

delegation goes beyond the collection of harbour fees and includes a wider remit. On the balance of probabilities the port operator (Port Harcon) can call upon the wider permitted development rights of the statutory undertaker since they have demonstrated that the necessary authority has been delegated to them by the Commissioners to a satisfactory extent within the context of this submission. The applicant advised on the 02.10.2025 that their delegated authority includes:

“It is not just the collection of port fees that has been delegated to the port operators. The port operator performs a wide range of operational and managerial functions essential to the running of the port, including:

- *Regulating and managing the movement of vessels within the dock.*
- *Berthing all ships loading or unloading at Port Harcon with the operator’s own crew.*
- *Designating specific areas for loading and unloading and issuing directions on berthing, cargo handling and the disposal of goods and cargo.*
- *Making and enforcing relevant byelaws regarding dock operations, fees, safety and navigation.*
- *Ensuring compliance with statutory obligations, including those related to safety, the environment and conservancy.*
- *Overseeing the safe and efficient development, operation and maintenance of its port infrastructure required for ongoing operations.³*

By exercising these powers, the operator assumes the role and responsibilities typically associated with a statutory undertaker. This operational control and oversight support the proposition that the operator requires, and should benefit from, permitted development rights, allowing the facility to adapt and undertake essential development in support of its statutory functions and public responsibilities.

- 8.8 In the light of this delegation of authority from the Commissioners to the port operator it seems reasonable to see the port operator as a ‘lessee’ of the statutory undertaker in this instance which would mean that the PD rights accrue to the port operator from the Commissioners under the relevant part of the Order.

Dock related activity

- 8.9 The development is infrastructure to allow the refuelling of vehicles with compressed bio-gas which is a renewable fuel and therefore offsets fossil fuel production and potentially replaces the burning of diesel with a cleaner burning and renewable fuel source.
- 8.10 It is clear that suitably equipped vehicles that are involved in the loading or transporting of goods from the dock could use the fuel station that is to be constructed. Given the permitted rights are wide and the proposal falls within those rights then the proposal would support dock related activity. The applicant confirms that the facility would not be open to non-dock related vehicles.

Preclusion

- 8.11 The GPDO precludes petrol filling station development but only if that development is being provided under transport legislation which is not the case here. In any event the proposal is not for a petrol filling station which is the specific phrase used in the

³ Report writer’s emphasis

preclusion in the order. As such the proposed fuel station not being for petrol or proposed under the transport acts is not precluded development.

9. OTHER CONSIDERATIONS

9.1 *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.

9.2 *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.

9.3 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.

9.4 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.

9.5 *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.

9.6 *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.

10. CONCLUSION

- 10.1 The proposed development is permitted development under Schedule 2 Part 17B of the General Permitted Development Order 1995 (as amended) for the following reasons:
- the land proposed for the development is operational dock land;
 - the operators of Part Harcon / Bird Port are statutory undertakers having delegated powers granted by the Newport Harbour Commissioners in relation to port activities on their site;
 - the development supports the loading, discharging and transport of goods at a dock, pier or harbour;
 - the development proposed is not precluded by Schedule 2 Part 17 B.1 of the order

11. DECISION

GRANTED

Reason: The proposed development is permitted development under Schedule 2 Part 17B of the General Permitted Development Order 1995 (as amended) for the following reasons:

- the land proposed for the development is operational dock land;
 - the operators of Part Harcon / Bird Port are statutory undertakers having delegated powers granted by the Newport Harbour Commissioners in relation to port activities on their site;
 - the development supports the loading, discharging and transport of goods at a dock, pier or harbour;
 - the development proposed is not precluded by Schedule 2 Part 17 B.1 of the order.
- This decision relates to the land outlined red in Drawing 5258 01 01 – Site Location Plan.

This decision relates to the following development description: *Lawful Development Certificate for proposed biomethane compressed natural gas (bio-CNG) filling station and associated works.*

NOTE TO APPLICANT

01 This decision relates to the following documents:

- Planning Statement (August 2025)
- Drawing 5258 01 01 – Site Location Plan
- Drawing 5258 01 02 – Statutory Plan
- Drawing 5258 01 03 Proposed Site Layout
- Application Form
- Email from agent: 02.10.2025 09:46

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). No policies were relevant to the determination of this application.

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

04 The Marine Policy Statement (2011) and the Welsh National Marine Plan (2019) were not relevant to the determination of this application.