

## Delegated Decision Report

|                        |                                                                                                                                                                                                                                |                                  |                          |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------|
| <b>Application No:</b> | <b>25/0728</b>                                                                                                                                                                                                                 | <b>Statutory Period Expires:</b> | <b>7th November 2025</b> |
| <b>Site:</b>           | <b><i>Land Adjacent To 48 Tudor Crescent Rogerstone Newport South Wales</i></b>                                                                                                                                                |                                  |                          |
| <b>Proposal:</b>       | <b><i>S73 APPLICATION TO VARY CONDITION 1 (APPROVED PLANS), CONDITION 2 (REAR PLATFORM) AND CONDITION 3 (BUILDING HEIGHT) OF 24/0989 FOR RETROSPECTIVE FULL APPLICATION FOR RETENTION OF 2 DWELLINGS AT TUDOR CRESCENT</i></b> |                                  |                          |
| <b>Applicant:</b>      | <b><i>N Griffiths</i></b>                                                                                                                                                                                                      |                                  |                          |
| <b>Type:</b>           | <b>Renewals and Variation of Conditions</b>                                                                                                                                                                                    | <b>Ward:</b>                     | <b>Rogerstone East</b>   |
| <b>Decision:</b>       | <b>GRANTED WITH CONDITIONS SUBJECT TO S106 WITH DELEGATED POWERS AND DISCRETION TO REFUSE IN THE EVENT THAT THE AGREEMENT IS NOT SIGNED WITHIN THREE MONTHS OF THE COUNCIL'S RESOLUTION TO GRANT PLANNING PERMISSION</b>       |                                  |                          |

### 1. BACKGROUND

- 1.1 A consent was granted in 2018 for the erection of 2no. dwellings on land adjacent to 48 Tudor Crescent and subsequent discharge of condition applications were submitted and part approved/part refused. The scheme commenced development and was largely completed when an application was submitted, 24/0315, to vary the approved plans to regularise the alterations to the rear patio, increased height, dormer alterations and other minor elevational changes.
- 1.2 During the course of application 24/0315 it came to light that the previous section drawings did not accurately represent the relationship between the proposed dwellings and the neighbouring dwellings. The consequence of this resulted in the 2no. dwellings having a much higher ridge height than what was previously consented in relation to the neighbouring property of 48 Tudor Crescent.
- 1.3 Given the significant discrepancies between the built-out scheme and the previous consent 17/1086, it was considered that the Section 73 process could not be used as the previous consent had not been lawfully implemented. Therefore, the site did not benefit from an extant consent.
- 1.4 Following this, an enforcement notice E24/0017 was served for the demolition of the dwellings. The enforcement notice was appealed and dismissed in which the Inspector provided a full assessment of the overall scheme and its impact upon the character of the area and the amenity of neighbouring properties.
- 1.5 A subsequent full planning application was submitted for retention of the 2no. dwellings with significant amendments to the lower the ridge height, dormer windows reduced in width and the rear patio to be reduced in depth and stepped off the common boundary with 48 Tudor Crescent in order to restore privacy to the existing residential occupants, along with other minor alterations to the external elevations. The scheme was approved subject to conditions.
- 1.6 The current application has been submitted to retain the dwellings as built. The justification put forward is based upon the Inspectors appeal decision and their views on the development as a whole.

### 2. SITE LOCATION AND CONTEXT

- 2.1 The site is located within a suburban area on a sloping site with levels inclining from south to north. The topography also declines to the west when travelling along Tudor Crescent which has resulted in a tiered relationship with the neighbouring properties on Tudor Crescent. The area has a mixed character of property types with the majority being two storey semi-detached dwellings. To the east side of the site lies a public right of way which

provides pedestrian access to St Annes Close. The application site comprises of an irregularly shaped parcel of land which previously formed the rear and side garden of 48 Tudor Crescent and lies on the corner of Tudor Crescent and Granville Close. A public right of way lies to the south eastern boundary and links through from Granville Close to St Annes Close.

- 2.2 The plot has been arranged with vehicle access onto Tudor Crescent with the front boundary being demarked by a low brick wall. The frontage is proposed to serve as the off-street parking for both dwellings and for the storage of waste and recycling. Steps then lead down to the dwellings slab level resulting in a retaining wall over 2m in height. An extended patio lies to the east side elevation. The dwellings are two storey and feature dormers to the rear roof slope. The elevations are formed of brick, render and slate tile. To the rear lies an extended platform measuring approximately 5m in depth. Staircases then lead down to the rear garden level.

### 3. DESCRIPTION OF DEVELOPMENT

- 3.1 The proposal seeks to vary the approved plans condition (COND01) and the roof height condition (COND03) to allow for the alterations to the external elevations and eaves height as indicated below:

- Addition of soldier courses above all window openings on front elevations
- Addition of soldier courses below all first floor window openings of front elevations
- Increased overhang of eaves from 150mm to 350mm to strengthen this feature
- Change the fascia to increase depth to 300mm to strengthen this feature
- Change the barge boards to accommodate amended eaves
- Include open porch over front entrance doors
- Removed external foul drainage pipes from front elevation
- Expansion joint cut into render at centre point
- Erection of 1.8m high fence west side of raised platform.

### 4. RELEVANT SITE HISTORY

| Application Number | Proposal Description                                                                                                                                                                                                                                                                        | Decision                           |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 24/0989            | RETROSPECTIVE FULL APPLICATION FOR RETENTION OF 2 DWELLINGS AT TUDOR CRESCENT                                                                                                                                                                                                               | Granted with conditions 01.09.2025 |
| E24/0017           | NON-COMPLIANCE WITH 17/1086                                                                                                                                                                                                                                                                 | Appeal Dismissed 05.06.2025        |
| 24/0315            | S73 APPLICATION TO VARY CONDITION 1 (APPROVED PLANS) OF 17/1086 ERECTION OF A PAIR OF SEMI DETACHED DWELLINGS WITH CREATION OF A NEW ACCESS, PROVISION OF PARKING FACILITIES AND ASSOCIATED SITE WORKS. AMENDMENTS INCLUDE CHANGES TO HARD LANDSCAPING, PARKING LAYOUT AND BOUNDARY DETAILS | Refused 09.08.2024                 |
| 22/0277            | PARTIAL DISCHARGE OF CONDITION 2 (DRAINAGE) AND 3 (SLAB LEVELS) RELATING TO PLANNING PERMISSION 17/1086 FOR ERECTION OF PAIR OF SEMI-DETACHED DWELLINGS                                                                                                                                     | Approved 30.06.2022                |

|         |                                                                                                                                                                                                                                                                                                                                                        |                                          |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
|         | WITH NEW ACCESS AND PARKING                                                                                                                                                                                                                                                                                                                            |                                          |
| 21/0158 | PARTIAL DISCHARGE OF CONDITIONS 2 (SURFACE WATER DRAINAGE DETAILS), 3 (FINISHED SLAB LEVELS), 4 (EXTERNAL MATERIALS), 5 (CAR PARKING AND ACCESS DETAILS) AND 6 (MEANS OF ENCLOSURE) OF PLANNING PERMISSION 17/1086 TO ERECT A PAIR OF SEMI DETACHED DWELLINGS WITH CREATION OF A NEW ACCESS, PROVISION OF PARKING FACILITIES AND ASSOCIATED SITE WORKS | Part Approved/Part Refused<br>14.10.2021 |
| 17/1086 | ERECTION OF A PAIR OF SEMI DETACHED DWELLINGS WITH CREATION OF A NEW ACCESS, PROVISION OF PARKING FACILITIES AND ASSOCIATED SITE WORKS. THE DWELLINGS ARE TWO STOREYS WITH ACCOMMODATION IN THE ROOF SPACE                                                                                                                                             | Granted with conditions<br>13.04.2018    |

## 5. PLANNING POLICY

### 5.1 THE NATIONAL DEVELOPMENT FRAMEWORK: FUTURE WALES - THE NATIONAL PLAN 2040

Future Wales sets out the Welsh Government's land use priorities and provides a national land use framework for SDPs and LDPs. Future Wales concentrates on development and land use issues of national significance, indicating areas of major opportunities and change, highlighting areas that need protecting and enhancing and helping to co-ordinate the delivery of Welsh Government policies to maximise positive outcomes.

### 5.2 PLANNING POLICY WALES (EDITION 12) 2024

### 5.3 NEWPORT LOCAL DEVELOPMENT PLAN (2011-2026)

- SP1 – Sustainability
- SP13 – Planning Obligations
- GP2 – General Amenity
- GP3 – Service Infrastructure
- GP4 – Highways and Accessibility
- GP5 – Natural Environment
- GP6 – Quality of Design
- GP7 – Environmental Protection and Public Health
- H2 – Housing Standards
- H6 – Sub-division of Curtilages, Infill and Backland Development
- T4 – Parking
- T7 – Public Rights of Way and New Development
- W3 – Provision for Waste Management Facilities in Development

### 5.4 SUPPLEMENTARY PLANNING GUIDANCE

- Planning Obligations

- Wildlife and Development
- New Dwellings
- Waste Storage and Collection
- Parking Standards
- Trees, Woodland, Hedgerows and Development Sites

## 6. CONSULTATION RESPONSES

- 6.1 Newport Access Group: No response.
- 6.2 Dwr Cymru/Welsh Water: No objection.
- 6.3 Wales & West Utilities: No response.
- 6.4 Drainage Manager: No response.
- 6.5 Planning Contributions Manager: Contributions required.
- 6.6 Environmental Health Officer: No objection.
- 6.7 Highways Officer: No objection.

## 7. PUBLIC REPRESENTATIONS

Neighbour notification letters were sent on the 12<sup>th</sup> September 2025.

- 7.1 NEIGHBOURS: 1no. support and 6no. objections (summarised):
- Houses enhance the area
  - Height of patio and houses significantly impact privacy
  - Support the enforcement notice served by Newport City Council as well as the conclusions by the Planning Inspector
  - Overall height imposing and inappropriate for the surrounding area
  - Object to planning permission being granted for increased roof height and addition of raised patio
  - The proposal fails to acknowledge or mitigate the adverse impact it would have on surrounding properties, including issues of privacy, visual intrusion, and inconsistency with the established character of the area.
  - Extremely imposing resulting in overlooking
  - Adverse impact on privacy and amenity of 48 Tudor Crescent from raised patio
- 7.2 COUNCILLOR DAVIES: *If you have a mind to refuse this application I would like it to be called to committee.*

*The reasons are below:*

*The PLANNING COMMITTEE CODE OF PRACTICE does not explain reasons why a application should be brought before committee, however it determines their right to speak in that meeting as;*

*2.13 Ward Members representing the Ward in which the proposed development is located are allowed to speak at Planning Committee at the Chairperson's discretion.*

*Which explains that they must call in the application to speak, and in that speech they are allowed to comment on;*

*3.3 Comments by Ward Councillors should be limited to relevant planning issues.*

*Relevant national and local planning policies;*

***Appearance and character of the development, layout and density;***

*Traffic generation,*

*highway safety and parking/servicing;*

***Overshadowing, overlooking,***

*noise disturbance,*

*odours or other loss of amenity.*

Siting the legislation in the following paragraph, at the recent appeal the planning inspector has contradicted the opinion of the NCC planning officers as they were given in the initial application and that the members should have the opportunity to consider all the facts as related by the agent and planning consultant,

**"The scheme raises important, complex issues requiring detailed discussion and deliberation by the elected representatives. This is required to give an impartial view on the consequences of the application at hand, in relation to direct planning matters, appearance and character of the development, layout and density; Overshadowing, overlooking, and the consequences of any decision on the wider community. That the decision will a direct effect on employment, and peoples livelihoods in your ward and the seriousness of the matter means it should be considered before the full planning committee"**

**I feel at the moment the amount of time this and previous applications have taken to be resolved it is in everyone's interest to find a resolution soon.**

7.3 ROGERSTONE COMMUNITY COUNCIL: No response.

## 8. **ASSESSMENT**

### 8.1 **Principle of Development:**

8.1.1 The principle of development has already been established through the sites location within a settlement boundary and the extant consent 24/0989.

### 8.2 **Impact on Character and Appearance**

8.2.1 The submitted planning statement sets out that the application seeks to amend the external elevations to include the following:

- Addition of soldier courses above all window openings on front elevations
- Addition of soldier courses below all first floor window openings of front elevations
- Increased overhang of eaves from 150mm to 350mm to strengthen this feature
- Change the fascia to increase depth to 300mm to strengthen this feature
- Change the barge boards to accommodate amended eaves
- Include open porch over front entrance doors
- Removed external foul drainage pipes from front elevation
- Expansion joint cut into render at centre point

8.2.2 It is noted that the submitted drawings seek to retain the existing height and alteration to the eaves arrangement in order reduce depth between first floor window header and underside of eaves.

8.2.3 The additional soldier courses would add some visual interest to the principal and rear elevations and would carry through some of the original design features present on the previous consent 17/1086. The removal of foul drainage pipes on the principal elevation, addition of porches and expansion joint are welcomed as this further adds visual interest to the benefit of the overall scheme.

8.2.4 It is noted that the roof plane is proposed to be extended by 350mm and the fascia board depth to be increased to 300mm; this would screen the separation distance between the first-floor window headers and the existing eaves height.

8.2.5 While this would mask the existing odd proportions of the front elevation, these changes would not reduce the overall height of the dwellings, which was found to be unacceptable when previously considered as it represented harm on the overall street scene and character of the area. It is noted that the Inspector considered the height of the scheme and found this to be 'not obtrusive or harmful in visual terms.' Significant weight has been given to the Inspectors assessment of the overall height, as such without the support of Planning & Environment Decisions Wales on this issue the Local Planning Authority shall conclude that the overall height does not represent a level harm commensurate to justify a further

reason for refusal and is therefore on balance acceptable in the context of the area and Inspectors assessment.

8.2.6 Within para.10 of the Inspectors assessment, they find that *'Whilst the dormers are of some scale, much of the rear roof slope is left exposed. Their gabled form is acceptably reflective of the geometry of the main roof and the materials used are complementary to the dwelling. They consequently do not appear overwhelming or obtrusive, including when viewed from the adjacent public footpath or from viewpoints further to the south.'*

8.2.7 The Inspectors assessment of the dormers as built finds that their presence does not represent a significant level of harm on the wider character and appearance of the area. Therefore, it is considered that the Local Planning Authority may be unreasonable should a refusal be pursued based on the existing dormer windows given that absence of harm identified by the Inspectors assessment.

8.2.8 Para.15 of the Inspectors assessment is clear in stating that *'some aspects of the development's siting, massing and design to be acceptable, and that a condition to secure a boundary screen would avoid any harm to neighbouring occupants' living conditions. Nonetheless, these matters and the benefits of the development do not outweigh the identified harm. Consequently, my conclusion is that the poor design of the dwellings' front elevations and front picket fence conflict with policies GP2 and GP6 of the Newport Local Development Plan (LDP) which seek to secure good quality design in development which is not detrimental to the character or appearance of the surrounding area.'*

8.2.9 Therefore, the Inspector clearly outlines that the overall height, siting, massing and design are acceptable and the introduction of a boundary screen would address the harm caused by the existing raised platform. Therefore, the amendments to the external elevations as proposed are considered to address the design issues raised by the Inspector and are found to be in accordance with Policy GP2 and GP6.

### 8.3 **Impact on Amenity**

8.3.1 In para.11 of the Inspectors assessment they found that *'The raised rear patio of Tudor View is elevated some way above the garden of No 48 but is appropriately offset from the shared property boundary. Although views would presently be possible from parts of the rear patio into the neighbouring garden and dwelling, any harmful overlooking would be avoided by the installation of a 1.8m fence at the western edge of the patio. Given the predominantly open outlook available to the rear from No 48, and the separation distance to neighbouring rear-facing windows, such a fence would not appear harmfully overbearing to occupants. A privacy screen could therefore be acceptably secured via a condition.'*

8.3.2 The Inspectors conclusion outlined that given the separation distance between the side elevation of the rear platform and the common boundary with 48 Tudor Crescent of approximately 0.95m, a 1.8m high closed boarded timber fence would sufficiently address the significant overlooking currently experienced by the extended rear platform. Furthermore, the Inspector concluded that the erection of 1.8m high closed boarded fence would not result in significant levels of overbearing toward the occupiers of 48 Tudor Crescent.

8.3.3 Significant weight is given to the Inspectors conclusions on the acceptability of a 1.8m fence to provide screening. It is considered that the Local Planning Authority may be unreasonable to refuse the scheme on this issue as a significant level of harm could not be identified by the Inspector which could not be addressed by way of condition. It is therefore considered that the attachment of a condition to secure the erection of the 1.8m fence is appropriate in this instance and would accord with Policy GP2.

### 8.4 **Other Matters**

8.4.1 Other material planning considerations are considered to remain as per the previously consented scheme 24/0989; as such any relevant conditions shall be included within the new consent.

## 8.5 **Section 106 Planning Obligation matters**

In 2010 the Community Infrastructure Levy Regulations (2010) came into effect. Reg 122 of these regulations sets out limitations on the use of planning obligations. It sets out three tests that planning obligations need to meet. It states that planning obligations may only constitute a reason for granting planning permission if the obligation is:

a) Necessary to make the development acceptable in planning terms; (the obligations of the Section 106 Agreement are necessary to ensure adequate education provision, secure affordable housing on site, provide sufficient open space and ensure its continued maintenance, monitor air quality, promote local employment benefits, secure appropriate long-term marketing of the retail/ commercial units and to improve accessibility for vehicles and pedestrians to/ from the development to ensure policy compliance.)

b) Directly related to the development; (the obligations of the Section 106 Agreement are directly related to the development.)

and

c) Fairly and reasonably related in scale and kind to the development (the obligations as set out in the Section 106 Agreement, both in terms of scale and kind of obligations being required, are fair and reasonable to ensure the aforementioned contributions for the development of this strategic site).

In accordance with Policy SP13 of the adopted Newport Local Development Plan 2011-2026 and the adopted Planning Obligations Supplementary Planning Guidance, development will be required to help deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale and the sustainability of the location. In this case, section 106 planning obligations are required to mitigate the impact of the development in accordance with the table below.

| <b>Service Area that requires planning obligation</b> | <b>Purpose of planning obligation</b>                         | <b>Planning obligation initially sought by Planning Authority</b> | <b>Summary Heads of Terms agreed by applicant(s)</b> | <b>Viability Issues?</b> |
|-------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------|--------------------------|
| Regeneration and Economic Development                 | To provide a contribution toward off site affordable housing. | A commuted sum of £4,128.                                         | Agreed                                               | No.                      |

#### HEADS OF TERMS AGREED BY APPLICANT

#### **Section 106 Planning Obligations – Draft ‘Head’s of Terms’** **(Without prejudice & subject to contract)**

### **1. Introduction**

Based upon a ‘retrospective’ planning application for 2 x 4 bed ‘market’ houses, as well as a S73 application to vary permission 24/0989, the following S106 planning obligations are required to mitigate the impact of the development.

### **2. Affordable Housing**

Commuted sum payments for affordable housing will normally be sought on developments of 1 to 2 dwellings anywhere within Newport. The site lies within the Housing Target Area of Newport West. Newport West requires the delivery of 30% affordable housing on new development. The equivalent commuted sum generated is £4,128

This sum will be paid upon signing of the legal agreement

### 3. Fees

#### Administration Fee

In accordance with the Planning Obligations SPG (2020), a £200 administration fee is charged for monitoring the S106 agreement. This is to be paid upon signing of the legal agreement.

#### Legal Fee

Planning Obligations can be contained in Unilateral Undertakings or s.106 Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors, whereas s.106 Agreements are usually drafted by the Council's in-house solicitors (but there is no general objection to developers arranging for their own solicitors to draft the s.106 Agreement with prior agreement). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing the s.106 Agreement and Unilateral Undertakings, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed. There is a minimum contribution to legal costs of £700, although more time-consuming and complex documents would require an increased contribution to legal costs.

*Please Note:*

*Planning Obligations can be contained in Unilateral Undertakings or Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors, whereas Agreements are usually drafted by the Council's in house solicitors (but there is no general objection to developers arranging for their own solicitors to draft the Agreement if preferred). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing any Deed of Obligation, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed.*

*You are required to agree to these Heads of Terms in writing. In so doing, you also agree to an extension of time for the determination of your proposal in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits)(Wales) Regulations 2015 and the Town and Country Planning (Development Management Procedure)(Wales) Order 2012. This will extend the statutory period for determination of your application by 16 weeks from the date the Local Planning Authority resolve to grant your planning permission (i.e. the Planning Committee date or the delegated Agenda date) subject to a legal agreement. This extension of time is required to enable completion of the section 106 Agreement (although the Local Planning Authority will endeavour to determine your application as soon as possible prior to this date).*

*Any negotiations must take place before Heads of Terms are agreed by you and if you seek to discuss or re-negotiate section 106 Heads of Terms having agreed them in writing and having received a resolution (but not a decision notice), your application must be withdrawn to enable re-negotiation to take place. Failure to sign a section 106 within 3 months of any resolution being made may lead to your application being refused. Alternatively, you may proceed to complete the section 106, receive a Notice of Decision and then make a new submission to the Authority that will enable altered terms to be negotiated. Please be advised that any such re-submission will likely attract a new planning application fee.*

*The Council understands that in some cases changing economic conditions now make sites economically unfeasible, potentially resulting in no development, no regeneration or no community benefits. In the event you agree Heads of Terms and a decision has been issued with a section 106 based upon these terms and the development is found to be unviable and cannot proceed, you may wish to seek effective re-negotiation with the Council of planning obligations to help unlock stalled development. The Council can, voluntarily, agree to discuss section 106 amendments but please be advised that the re-negotiation of section 106 agreements is subject to a fee in the same way as pre-application advice. Please refer to Annex 1 of the Council's pre application advisory guidance notes for more information on this.*

### 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 changes are considered to have addressed previous concerns regarding the dwellings overall appearance and harm on neighbouring privacy and amenity. Subject to accordance with the attached conditions, the proposal is considered to be acceptable.

11. **DECISION**

**GRANTED WITH CONDITIONS SUBJECT TO S106 WITH DELEGATED POWERS AND DISCRETION TO REFUSE IN THE EVENT THAT THE AGREEMENT IS NOT SIGNED WITHIN THREE MONTHS OF THE COUNCIL'S RESOLUTION TO GRANT PLANNING PERMISSION**

01 The development shall be implemented in accordance with the following plans and documents:

- Proposed Final Design; Elevations (Drawing ref: SD972 05 04a)
- Proposed Final Design; Street View (Drawing ref: SD972 05 05)

- Proposed Final Design; Layouts (Drawing ref: SD972 05 03)
- Proposed Final Design; Block Plan (Drawing ref: SD972 05 02a)
- Site Location (Drawing ref: SD972 05 02)
- Green Infrastructure Statement (Received: 05.09.2025)

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

02 The alterations to the external elevations and erection of 1.8m closed boarded screen on the rear platform as shown on the plans hereby approved shall be fully undertaken within 6 calendar months of the date of this permission. The 1.8m screen fence shall then be retained for the duration of the use.

REASON: In the interests of residential amenity in accordance with Policy GP2 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

03 Prior to the first occupation of the dwellings, the biodiversity enhancements as set out within the Green Infrastructure Statement, Section Proposed Biodiversity Enhancements (Received: 05.09.2025) and Proposed Final Design; Elevations SD972 05 04a shall be installed in accordance with those details and retained for the duration of the use.

REASON: To provide a biodiversity enhancement in accordance with Policy GP5 7 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015) and Planning Policy Wales (Ed.12).

04 Prior to the first occupation of the dwellings, the waste storage shall be fully undertaken in accordance with the plans hereby approved and shall be retained for the duration of the use.

REASON: To provide suitable waste storage provision in accordance with Policy W3 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015).

#### *NOTE TO APPLICANT*

01 The development plan for Newport is the Newport Local Development Plan 2011 - 2026 (Adopted January 2015). Policies SP1, SP13, GP2, GP3, GP4, GP5, GP6, GP7, H2, H6, T4, T7 and W3 were relevant to the determination of this application.

02 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.

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Penderfyniadau Cynllunio ac Amgylchedd Cymru  
Planning & Environment Decisions Wales

## Appeal Decision

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by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision Date: 05/06/2025

Appeal reference: CAS-03988-L8V6D7

Site address: Land east of 48 Tudor Crescent, Newport NP10 9BN

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- The appeal is made under section 174 of the Town and Country Planning Act 1990 ('the Act') as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Noal Griffiths against an enforcement notice issued by Newport City Council.
  - The enforcement notice, Ref E24/0017, was issued on 4 December 2024.
  - The breach of planning control as alleged in the notice is: Within the last four years and without planning permission, the construction of two dwellings and associated development.
  - The requirements of the notice are: Demolish the dwellings and all associated development and return the land to its former condition prior to the breach having occurred.
  - The period for compliance with the requirements is: Eight calendar months from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in sections 174(2)(a) and (f) of the Act.
  - A site visit was made on 20 May 2025.
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

### Procedural Matter

2. The main parties agree that there was an error on the originally approved plans pertaining to planning application ref: 17/1086, in that the height of the neighbouring semi-detached pair at Nos 48 and 46 relative to the appeal development was overstated by around 1.4 metres. Citing *Choiceplace Properties Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1070 (Admin)*, the Council contends that this error was fundamental and means that the permitted scheme cannot have been implemented. It seems to me that in the cited caselaw the inaccuracies in the plans meant that the planning permission was not capable of being implemented as the subject building could not possibly have been built to a height lower than its neighbours. The circumstances in this case are different as the discrepancy partly relates to topography. Nonetheless, whilst the appellant contends that the as-built development was correctly plotted, based on my site observations and the submitted evidence, including drawing ref: SD972 02 01, I am of the view that the finished ground floor level of the constructed building is in fact substantially higher than that which was indicated on the originally approved plans.

3. The cited caselaw is clear that the relationship between a proposed development and adjacent structures is not merely illustrative, but rather a matter to be accurately depicted on plans. Although I do not dispute that the discrepancy between the actual and depicted heights of Nos 48 and 46 is a genuine error, this inaccuracy, in addition to several other notable deviations in the appearance of the constructed dwellings, amounts to a material misrepresentation between what was permitted and what has been built. Critically, as the elevated finished ground floor level is not substantially useable in the development permitted, I concur with the Council that irrespective of the later discharge of conditions the permitted development has not been commenced. As the 5-year period expired in April 2023, I therefore find that the development is wholly unauthorised and that there is no extant planning permission. I have proceeded to determine the appeal on this basis.

#### **The appeal on ground (a) and the deemed planning application**

4. An appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation set out in the notice. Hence, planning permission is sought for two dwellings and associated development. My assessment is based on the development as constructed.
5. Having regard to the evidence, the main issues in this case are the effect of the development on the character and appearance of the area, and on the living conditions of neighbouring occupants, with regard to privacy and outlook.
6. The appeal site is situated within an area of spacious, suburban residential character and occupies a position of some prominence, being sited on a corner and at a pronounced bend in Tudor Crescent. The site accommodates two semi-detached, pitched roofed dwellings which have been named Tudor Rise and Tudor View, the latter lying adjacent to a semi-detached dwelling at 48 Tudor Crescent. The topography slopes steeply downwards towards the west and south.
7. I observed on my site visit that both the ground floor slab level and roof ridge of the constructed development reflect the underlying topography of the street in a similar manner to semi-detached pairs to the west. The positioning of the development also reflects the stepped alignment of neighbouring properties. Whilst sited closer to the boundary of No 48 than other semi-detached pairs, the gap between the dwellings is of sufficient size to accord with the spacious, suburban character of the locality. Seen from Tudor Crescent, the height and massing of the dwellings relative to the street is consequently not obtrusive nor harmful in visual terms.
8. The low front boundary walls and minimal landscaping means that the front parking area is a prominent feature of the development. I saw that there is another raised driveway within visual range, and the way in which the parking area obscures the appeal dwellings' ground floors is not dissimilar to neighbouring properties to the west which are also recessed below street level. Whilst I do not find the driveway's slope and elevation relative to the street to be visually injurious in themselves, the extent of the visible paved area jars markedly with the soft landscaping which characterises most other front gardens nearby. However, including an area of soft landscaping at the site's northeastern extent, as shown on some approved plans, would provide satisfactory visual relief in this regard.
9. Notwithstanding the above, the front elevation of the constructed semi-detached pair is of a markedly poor and lacklustre design. Although I have found the original permission to have expired, it is instructive to compare what has been built to the design of the previously permitted scheme, which although not identical to neighbouring dwellings was evidently informed by their positive characteristics. In the as-built development, the

placement of windows, absence of meaningful lintels or sills and lack of porches affords the principal elevation a simplistic and monotonous appearance. Alterations to the internal layout have also resulted in the need for unsightly and prominent foul pipes towards the centre of the elevation, with insensitively sited rainwater drainpipes also obscuring the horizontal brick features which might otherwise provide visual relief from the extensive render. As a result, to my eye it is difficult to discern that the building contains two semi-detached residential properties, or even that this is its principal elevation. This is compounded by the utilitarian and incoherent picket fence balustrade. Whilst the omission of first floor windows in the flank elevations is of little consequence, the poor design of the dwellings' front elevations substantially harms the area's character and appearance.

10. Although some of the same characteristics are also present at the dwellings' rear, the lesser prominence of this elevation ameliorates the visual effect experienced by receptors. Similar applies to the rear raised patios and fences which appear as typical, and not obtrusive, rear garden features of a suburban property. Whilst the dormers are of some scale, much of the rear roof slope is left exposed. Their gabled form is acceptably reflective of the geometry of the main roof and the materials used are complementary to the dwelling. They consequently do not appear overwhelming or obtrusive, including when viewed from the adjacent public footpath or from viewpoints further to the south.
11. I saw that the fences which have been erected in the rear garden of Tudor Rise, in addition to the garden's ample length, prevents any harmful overlooking into neighbouring properties from the patio. The raised rear patio of Tudor View is elevated some way above the garden of No 48 but is appropriately offset from the shared property boundary. Although views would presently be possible from parts of the rear patio into the neighbouring garden and dwelling, any harmful overlooking would be avoided by the installation of a 1.8m fence at the western edge of the patio. Given the predominantly open outlook available to the rear from No 48, and the separation distance to neighbouring rear-facing windows, such a fence would not appear harmfully overbearing to occupants. A privacy screen could therefore be acceptably secured via a condition.
12. In relation to ground (f) the appellant has suggested other remedies to ameliorate alleged effects of the scheme, including the construction of porch canopies, introduction of brick courses, a reduction of the gap between the first-floor windows and eaves, and repositioning of foul pipes. However, recourse to the relevant approved plans would not be appropriate or sufficiently clear, as I have found some of them to contain fundamental errors and, in any case, the related planning permission has expired. Moreover, based on the submitted evidence there is little certainty that the required amendments could be feasibly carried out, not least as some of them may entail internal reconfiguration.
13. I have considered whether a condition to require a scheme of landscaping could be used to screen the dwellings' front elevations. However, I do not consider that this would be appropriate as there would be little certainty that effective screening could be achieved in the long term. The highway safety implications of such a condition are also unclear.
14. I note the appellant's accounts of how the anomalies between the as-built development and the planning permission arose, but these are of little consequence to the planning merits of the case. I acknowledge that the appeal development could contribute two dwellings to the local housing supply, in addition to a financial contribution towards the provision of affordable housing. These are benefits to which I attribute moderate weight.
15. I have also found some aspects of the development's siting, massing and design to be acceptable, and that a condition to secure a boundary screen would avoid any harm to neighbouring occupants' living conditions. Nonetheless, these matters and the benefits of the development do not outweigh the identified harm. Consequently, my conclusion is

that the poor design of the dwellings' front elevations and front picket fence conflict with policies GP2 and GP6 of the Newport Local Development Plan (LDP) which seek to secure good quality design in development which is not detrimental to the character or appearance of the surrounding area. I therefore conclude that the appeal on ground (a) should not succeed.

### **The appeal on ground (f)**

16. The appeal on ground (f) is that the steps required by the enforcement notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or to remedy any injury to amenity which has been caused by any such breach. The notice requires the dwellings and associated development to be demolished, and the land returned to its former condition. It is therefore evident that the purpose of the notice is to remedy the breach of planning control.
17. As I have already set out, the appellant has suggested various ways of remedying the harmful effects alleged by the Council without having to demolish the dwellings in their entirety. However, I have found that none of these remedies could be secured in an appropriate and clear manner. There is also little evidence to confirm that alterations which would have implications for the dwellings' internal configurations are feasible.
18. I have found that none of the proposed lesser measures would satisfactorily remedy the injury to amenity. Moreover, no lesser measures have been suggested which would actually remedy the breach of planning control, which is the purpose of the notice. The appeal on ground (f) therefore fails.

### **Conclusion**

19. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) also fails.
20. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

*Paul Selby*

INSPECTOR