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Head of Regeneration and Regulatory Services
Newport City Council
Civic Centre
Newport
NP20 4UR

Dear Sir or Madam

Objection to Planning Application Number 13/1279

**Development of 248 dwellings and associated works at land south of Glan Usk
Primary School, Herbert Road, Newport.**

**This application relates to outline planning application 00/0768 for
the overall Glebelands Development that has been granted permission 'in principle'
comprising a school and residential housing.**

Notes:

- (1) Planning Application Number 13/1279 is one of several implementing applications pursuant to the grant of outline planning permission 00/0768.
- (2) The school element has already been constructed.

Chepstow Friends of the Earth objects to Planning Application Number 13/1279 as submitted to Newport City Council ('Newport council').

Chepstow Friends of the Earth is a licenced local group of Friends of the Earth England, Wales & Northern Ireland.

This objection concerns the rights of citizens in relation to human health, protection of the environment, and the implementation of UK law as set out in Town and Country Planning Act 1990 and the Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999 (as amended).

This school and housing development ('the Glebelands Development') is taking place on the Glebelands hazardous chemical waste landfill, which is adjacent to several sensitive locations, including the River Usk SSSI (Site of Special Scientific Interest) and SAC (Special Area of Conservation).

In relation to the works carried out to date (that is, those works associated with the school element) Newport council failed to ensure that the development was screened for Environmental Impact Assessment -- even though it had a legal obligation to do so under EU and UK law. Because this project is subject to multi-stage development consent, Newport council has had several opportunities to consider whether the project should be controlled by the EIA process (known as 'EIA screening'), but failed to do so on each occasion.

When the latest planning application for 248 dwellings was submitted to Newport council in December 2013 (Application 13/1279), Newport council had another opportunity to regularise matters by ensuring that EIA was required for the Glebelands Development - that is, the entire Glebelands Development. Although, on this occasion, Newport council did agree to screen the application for EIA, Newport council de-scoped most of the project such that the developer was only required to undertake EIA for the latest housing element - in isolation to all the other potentially impacting elements of the project. As things stand, the cumulative impacts of all the Glebelands Development elements, and other related projects and plans, will not be considered prior to determining the application.

Both volumes of the Environmental Statement (ES) that accompany application 13/1279 appear to indicate that Newport council is advocating 'salami slicing' of the project. That is, it appears that the unlawful practice of salami slicing is being used to split this highly impacting project into smaller parts to reduce the scoping of the current environmental impact assessment exercise.

Section 15 of the ES Non-Technical Summary (Volume 1) [\[56\]](#) that accompanies the application states:

" The scoping response received from the Local Planning Authority has not advised that any cumulative impact assessment will be necessary. As such, no assessment is included as part of this Environmental Impact Assessment."

And Para 2.11 of the ES Written Statement (Volume 2) [\[57\]](#) under 'Cumulative Impacts' states:

" . . . We note that no request for an assessment of cumulative impacts was made by Newport City Council's screening and scoping opinion (Appendix 1.2 refers); therefore, this is not considered in detail as part of each technical assessment contained in this written statement."

Newport council appears to have exercised more power than was reasonable, and acted against the public interest. It would appear that Newport council has distorted the aims of the EIA Directives and UK law to reduce the scope of the long overdue Environmental Impact Assessment.

Newport council must ensure that all environmental impacts of the Glebelands Development, including cumulative impacts, are properly assessed, and development options fully considered prior to granting planning permission. The Environmental Statement that accompanies the application is not sufficiently broad in purpose or in scope.

It would be unlawful to grant planning permission for the proposed 248 dwellings prior to considering all the potential environmental impacts of the entire project, and other relevant projects and plans.

1. INTRODUCTION

1.1 Environmental Impact Assessment (EIA)

The EIA Directive (EIA Directive 85/337/EEC, as amended in 1997, 2003 and 2009, and consolidated in EIA Directive 2011/92/EU) has been implemented in Wales through the Town and Country Planning Act 1990 and the Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999 (as amended). Newport council is required to ensure that large development projects are subject to an EIA screening exercise. EIA screening is the first step in the environmental impact assessment process for establishing the impacts of large projects and for determining the best practical environmental option.

Newport council failed to undertake an EIA screening exercise for the Glebelands Development prior to the principal decision (outline planning permission) and prior to all subsequent implementing decisions made during the course of this multi-stage consent development. Such implementing decisions included development consent for the school element of this partly completed development. The latest planning application requires a further implementing decision for the proposed 248 dwellings and associated works.

The failure of Newport council to require a screening exercise prior to commencement of the development deprived local residents, pupils, parents, and other interested parties of their right to a systematic environmental assessment process. Newport council had a legal obligation to issue a screening decision prior to development consent, but failed to do so. The EIA process fell at the first hurdle.

Due to the size, nature, and location of the Glebelands Development, Chepstow Friends of the Earth wishes it to be known that had an EIA screening exercise been undertaken, taking proper account of applicable EIA criteria, Newport council would have determined that this environmentally complex development should be subject to environmental impact assessment.

Compelling evidence in support of this position can be found in Newport council's recent EIA screening opinion for the proposed residential element of the Glebelands Development. The screening opinion concluded that the proposed development of 248 dwellings is EIA development. Because the residential element of the Glebelands Development constitutes EIA development, it is now abundantly clear that the entire Glebelands Development must also constitute EIA development.

Note that Newport council has also issued an EIA scoping opinion in support of the 'positive' screening opinion. However, because the associated scoping opinion does not specifically require the environmental impacts of the already completed elements of the Glebelands Development to be assessed, Newport council is failing in its duty to properly consider the overall impacts of the Glebelands Development, and other relevant projects.

Newport council appears to have exercised more power than was reasonable, and acted against the public interest. Newport council has distorted the aims of the EIA Directives and UK law to reduce the scope of the long overdue Environmental Impact Assessment.

Newport council must ensure that all environmental impacts of the Glebelands Development, including cumulative impacts, are properly assessed, and development options fully considered prior to granting planning permission. The Environmental Statement that accompanies the application is not sufficiently broad in purpose or in scope. It would be unlawful to grant planning permission for the proposed 248 dwellings prior to considering all the potential environmental impacts of the entire project and other relevant projects.

1.2 Background

The Glebelands Development involves building a school and housing on the southern part of a closed hazardous waste landfill at the Glebelands (the 'Stadium Site'). The project also includes further residential development on less contaminated land to the south of the Stadium Site (the 'Compton Webb Site').

Both the Stadium Site and the Compton Webb Site are adjacent to the River Usk which flows into the Severn Estuary. The River Usk (SSSI, SAC) and the Severn Estuary (SSSI, SAC, SPA, Ramsar) have been granted the highest level of legal protection currently possible under the EU Habitats Directive.

The severely contaminated Stadium Site is also adjacent to allotment gardens used by the local community for growing fruit and vegetables. Both the Stadium Site and the Compton Webb Site are located near to a densely populated residential area. Between the Stadium Site and the Compton Webb Site there exists a contamination pathway from the contaminated ground to an unlined ditch ('Lotery's Reen'), which flows directly into the River Usk.

The school element of the planning permission was completed in January 2010. As of January 2014, the remaining housing elements of the planning permission have not commenced.

Due to the risk of harm to human health, to the River Usk SAC, and to the wider environment, local residents relied upon Newport council to ensure that the development complied fully with EIA Directive 85/337/EEC, as amended in 1997 (97/11/EC), in 2003 (2003/35/EC) and in 2009 (2009/31/EC). It is acknowledged that the amended directives were consolidated as EIA Directive 2011/92/EU which came into force in 2012.

Prior to granting planning permission 00/0768 for the Glebelands Development, and since granting that permission, Newport council has had several opportunities to ensure that the Glebelands Development was subject to the EIA risk management process, but failed to take advantage of any such opportunity.

1.3 Planning and development control context

The principal planning application for the Glebelands Development was registered as Application Number 00/0768 (application type 'Deemed Consent') on 7 July 2000 [1]. The Planning Application Schedule describing the proposed development, as submitted to the planning committee, is dated 25 October 2000 [2]. On 31 October 2000, Newport council (then Newport County Borough Council) granted itself outline planning permission for a replacement primary school, all weather pitch, soft and hard play areas and residential development at the Glebelands, St Julians, Newport, Wales [3].

Because the likely environmental effects were not known at the time of granting planning permission, and because Newport council failed to insist upon the provision of such environmental information before granting planning permission, Newport council attached planning conditions to the permission requiring, at some future date, investigative work to be carried out to ascertain the likely environmental effects of the proposed development. Hence the Glebelands Development had become a multi-stage consent development, such that the principal decision (the granting of outline planning permission 'in principle') would be followed by implementing decisions.

By not insisting upon the provision of environmental information before granting outline planning permission, Newport council had deprived local residents, pupils, parents, and other interested parties of their right to a systematic environmental assessment process. Instead, Newport council issued its own statements describing the likely environmental impacts of the Glebelands Development. These statements took the form of promotional leaflets and reports that were very likely to mislead members of the public and members of Newport council's planning committee.

Note that, as the local authority, Newport council was, at the time of granting planning permission, simultaneously:

- (a) the owner of the severely contaminated site;
- (b) the Applicant for planning permission; and,
- (c) the local planning authority.

Following a poorly controlled development cycle, and despite objections, Newport council granted development consent illegally on 19th January 2010 – two weeks after the newly constructed school had been put into use.

The remaining residential parts of the Glebelands Development are yet to be completed.

Although Newport council issued an EIA screening opinion on 26 November 2012 (under application number 12/1011) in relation to the proposed 248 dwellings, the associated EIA scoping opinion (under application number 12/1012) does not specifically require the impacts of the entire Glebelands Development to be considered. Chepstow Friends of the Earth is concerned that the unlawful practice of 'salami slicing' is being employed by Newport council to split this highly impacting project into smaller parts to reduce the scope of the long overdue Environmental Impact Assessment.

1.4 Errors of judgement

Prior to granting outline planning permission, Newport council:

- (a) failed to properly consider EIA criteria;
- (b) treated EIA as a discretionary risk assessment process;
- (c) failed to consult with key statutory bodies concerning the need for EIA;
- (d) ignored written recommendations about the need for EIA screening from its own Planning Services department;
- (e) appointed a transport consultancy 'Gwent Consultancy' that was part owned by Newport council to carry out a rudimentary site investigation – the results of which were later relied upon by Newport council when granting planning permission;
- (f) controlled the scope and thoroughness of site investigations by restricting the budget (setting a 'financial ceiling') for the site investigation and risk assessment activities;
- (g) failed to follow up elevated levels of radiation detected on the development site during initial site investigations;
- (h) failed to ensure that an end-use risk assessment was carried out prior to granting planning permission; and,
- (i) released information about the development via newsletters and planning documentation in a way that was very likely to mislead members of the public and members of the local authority planning committee, thereby leaving key decision makers poorly informed about the risks of the proposed development.

At the time of granting outline planning permission, Newport council:

- (a) relied upon inadequate site investigation reports that failed to consider the end-use of the development site or consider the likely environmental effects of the proposed development; and,
- (b) presented misleading information to members of the local authority planning committee that was overly biased in favour of proceeding with the development.

Subsequent to granting outline planning permission, Newport council:

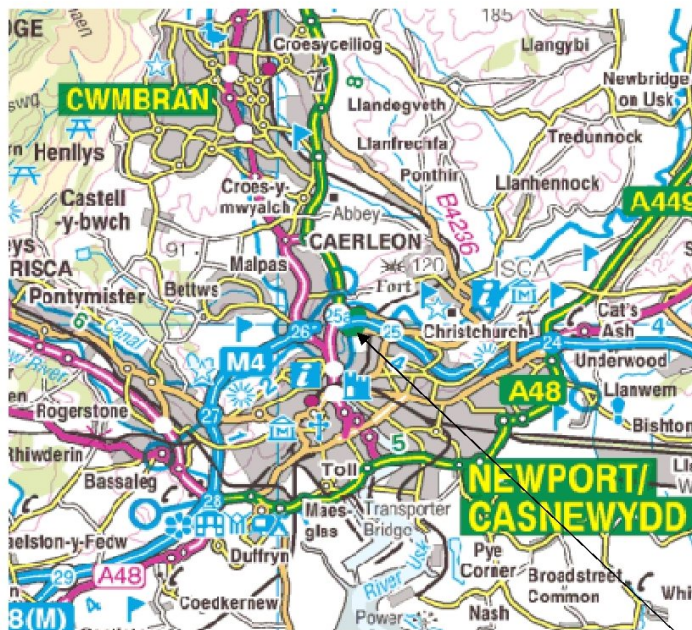
- (a) undertook an unlawful planning permission amendment in 2002;
- (b) failed to give due consideration to a request for EIA from a local resident in 2003;
- (c) permitted works to commence on site unlawfully in 2006;
- (d) permitted an unlawful planning permission amendment in 2008;
- (e) failed to give sincere consideration to a request to revoke planning permission submitted in July 2009 by the Glebelands Alliance;
- (f) permitted the new school to be occupied unlawfully from 5th January 2010; and,
- (g) permitted the unlawful discharge of planning condition 07, thereby granting development consent, on 19th January 2010.

Some of the above matters are detailed further within the following sections. Referenced documents may be downloaded from the internet using the references and links, as indicated by the use of square brackets, having the form [[<number>](#)].

2. SITE CHARACTERISTICS

According to Section 5.1 of the *'Durham Road Schools PFI Project, Newport Contamination Investigation Interpretative Report'* dated June 2000 [\[4\]](#), the Glebelands Development site occupies approximately 7 hectares.

The Glebelands Development site is low lying and located between a railway line and the eastern bank of the River Usk. The site is approximately 200 m south of the M4 motorway and 1 km north of Newport centre, as shown in the following site location plan.



Site Location



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WYG Environment 5 th Floor, Longcross Court, 47 Newport Road, Cardiff Tel: 02920 829200 Fax: 02920 455321	Project Glan Usk School, Newport	Drawing Title Site Location Plan	
Environmental Consultancy Ground Engineering Services	Client VINCI	Checked by RMD	Drawing No. FIGURE 1

Site Location Plan

Source: WYG

Remediation Validation Report, Appendix 'Figures', November 2009 [5]

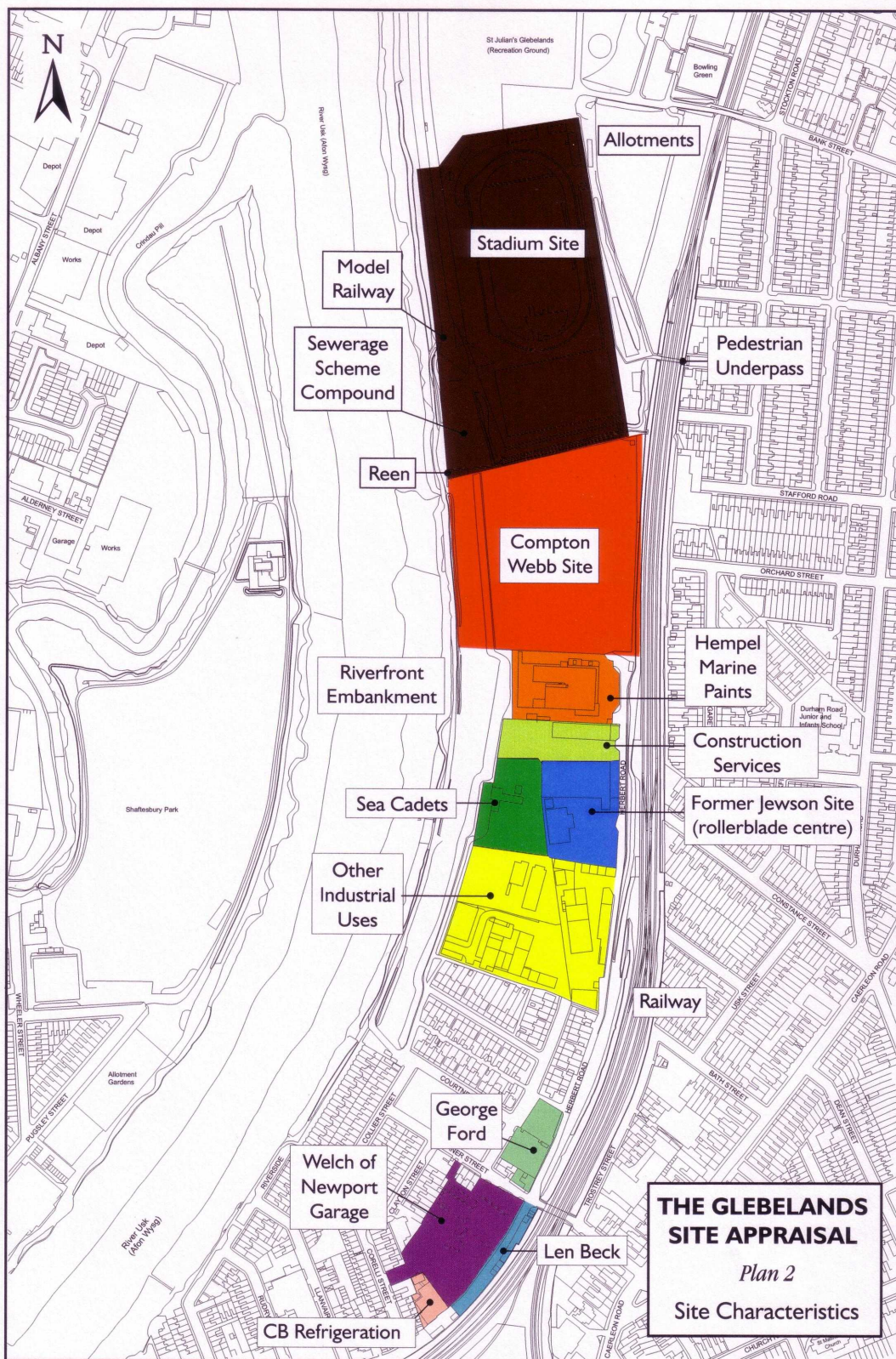
The development site comprises:

- (a) part of the closed Glebelands hazardous waste landfill site ('the Stadium Site') located to the north of a drainage ditch ('Lotery's Reen');
- (b) Lotery's Reen, a fragile drainage ditch that crosses the contaminated ground and empties into the River Usk SAC; and,
- (c) the Compton Webb Site, previously an industrial area, located to the south of Lotery's Reen.

Both the Stadium Site and the Compton Webb Site are bordered by the River Usk to the west having a frontage of approximately 800 m [8], and a densely populated residential area to the east. In addition, productive fruit and vegetable allotment gardens ('allotments') are located immediately to the east of the severely contaminated Stadium Site.

Importantly, a contamination pathway exists between the severely contaminated landfill site and Lotery's Reen that empties into the River Usk (SSSI, SAC) which, in turn, flows into the Severn Estuary (SSSI, SAC, SPA, Ramsar).

These features are illustrated in a June 2000 site plan reproduced below.



Site Characteristics

Source: Newport council

'Draft Planning Brief for The Glebelands/Herbert Road', June 2000 [6]

The school development on severely contaminated land involved a limited amount of site remediation work (involving excavation of the landfill material). As a result, several factors made this a particularly complex project due to the proximity of the development site to:

- (a) the densely populated residential area of St Julians, Newport;
- (b) the River Usk SAC, which flows into the Severn Estuary SPA and Ramsar site;
- (c) the drainage ditch or 'reen' ('Lotery's Reen') that crosses the development site and which empties into the River Usk; and,
- (d) productive fruit and vegetable allotment gardens.

Lotery's Reen is a fragile and vulnerable characteristic of the development site that, due to its depth and composition, is very likely to release contaminants from the 'made ground' into the River Usk upon minor disturbance, such as when clearing vegetation from the reen.

Much of the Glebelands site to the north of Lotery's Reen, including the Stadium Site, was operated as an uncontrolled landfill between the 1930s and 1960s such that the waste materials contributed to raising this low lying part of Newport by some three to four metres. The site received domestic, trade, and industrial wastes including unrecorded amounts of hazardous chemical wastes such as polychlorinated biphenyls, asbestos, mercury, and arsenic [7].

The majority of the made ground to the north of Lotery's Reen was filled prior to 1946, with the remaining land immediately to the north of the reen being filled between 1955 and 1966.

The land to the south of Lotery's Reen (the Compton Webb Site) has been disused for some time and comprises a generally level area of wild grasses. From the 1950s this land was the site of the Compton Webb clothing factory that was demolished in the 1990s.

The River Usk is adjacent to the development site and is recognised for its ecological value by SAC and SSSI designations, highlighting the national and international importance of this unique river system. The designations extend from the mouth of the River Usk into its headwaters beyond the village of Sennybridge, Powys approximately 55 km north west of the Glebelands site.

The River Usk includes estuary with mudflats and salt marsh, lagoons, bog and marsh, varied grassland and woodland habitats along its course. Its flora and fauna is diverse and includes salmon, trout, otters, twaite shad, allis shad, lamprey, perch, sea trout, chub, dace and roach as well as kingfishers, herons and other wildfowl and bird life. Dippers can be seen upriver along with red kite. The Usk has long been a noted salmon and trout fishing river.

The Severn Estuary SSSI, Special Protection Area (SPA), SAC & Ramsar site is located about 5 km south of the site. The intertidal zone of mudflats, sand banks, rocky platforms and saltmarsh is one of the largest and most important in Britain. The estuarine fauna includes internationally important populations of waterfowl; invertebrate populations of considerable interest; and large populations of migratory fish, including the nationally rare and endangered allis shad.

It is because of these designations, and the history of the Glebelands site, and the proximity of the Glebelands Development to Lotery's Reen and the River Usk that, if a proper EIA screening exercise had been carried out by Newport council, an Environmental Impact Assessment would have been deemed necessary under the EIA Directive, as implemented through Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999.

The north bank of Lotery's Reen is within a few metres of the severely contaminated part of the Stadium Site that has already been disturbed (during remediation works). The south bank of Lotery's Reen is within that part of the site still awaiting remediation and development.



Aerial view of Lotery's Reen

This picture shows Lotery's Reen relative to the excavated made ground of the 'Stadium Site' immediately to the north of the reen.

Source: Google Maps, UK

The failure to line Lotery's Reen as per the Remediation Strategy means that the reen is now an important potential receptor of contamination and, probably, the primary receptor.

Lotery's Reen is a fragile feature of the development site because it is a deep drainage ditch that crosses the severely contaminated made ground. It is fragile to the extent that it is an unlined ditch having sides formed from poorly compacted soils and imported waste materials ('made ground').

Lotery's Reen is vulnerable to pollution because of its fragility and its proximity to the severely contaminated ground, especially to the north of the reen. The vulnerability of the reen is exacerbated by the growth of vegetation within the reen – especially when attempts are made to maintain the flow-rate of water along the reen by clearing such vegetation.

This can be illustrated by a leachate breakout incident that occurred in June 2008. Fortunately, on this occasion, the resulting oily pollution 'sheen' was noticed in the reen by remediation contractors about the time that land remediation commenced.

Section 8.3.1 of the Remediation Validation Report [\[5\]](#) states:

"During the remediation works, the reen was cleared of vegetation by workers from NCC [Newport City Council] as part of a regular maintenance of the reen channel. Historically the Council have reacted to flooding issues at the Bowl Club building to the north of the site by undertaking maintenance of the reen. The Council carry out regular clearance work along the channel to ensure water flow to the Usk. Following their clearance work, a small area of suspected oily leachate breakout was observed along the reen, south of the PCB remediation area (Plates 1-3) and indicated on Figure 4."



Plate Title Lotery's Reen showing where sheen on water was first identified	Plate No 1
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WYG Environment 5 th Floor, Longcross Court, 47 Newport Road, Cardiff Tel: 02920 829200 Fax: 02920 455321 Environmental Consultancy Ground Engineering Services	Project Glan Usk School, Newport Client 	Plate Title Lotery's Reen along eastern boundary of the site Checked by CBP Plate No. 2
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Plates 1 & 2
 Source: WYG



Plate Title Sheen on water on the bank of Lotery's Reen	Plate No. 3
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WYG Environment 5 th Floor, Longcross Court, 47 Newport Road, Cardiff Tel: 02920 829200 Fax: 02920 455321 Environmental Consultancy Ground Engineering Services	Project Glan Usk School, Newport Client 	Plate Title Excavation of TP656 Checked by CBP Plate No. 4
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Plates 3 & 4
 Source: WYG

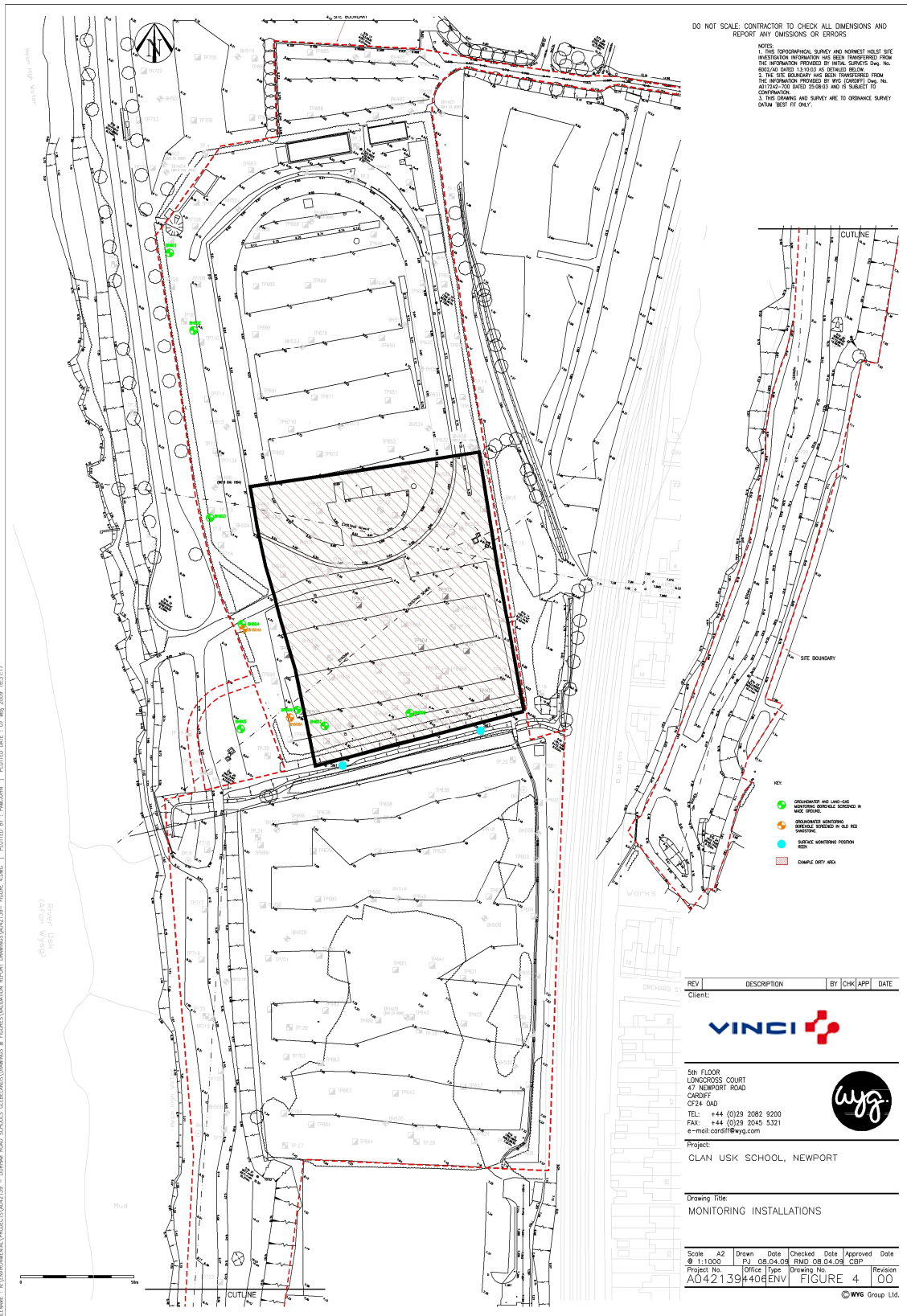


Figure 4

Source: WYG

Remediation Validation Report, Appendix 'Figures', November 2009 [5]

Appendix K to the Remediation Validation Report [5] includes an email dated 2 July 2008 from the Principal Environmental Scientist, Norwest Holst Limited which states:

"Please see the attached baseline water monitoring data and samples collected from the Reen (SM1, SM2 and SM3). The good news is there are no PCB's in any of the water samples. The bad news is there is elevated PAH and benzo(a)pyrene in the Reen water samples. The EA and WYG will have some comments to make on the elevated PAH's."

It is the fragile and vulnerable nature of Lotery's Reen, and its potential to contaminate both the River Usk SAC and the Severn Estuary SPA that emphasises the importance of the key assumption and requirement presented in Section 7.2 of the agreed Remediation Strategy [7], which states:

"As outlined below, the remediation strategy assumes that the ree is to be redirected through a fully concrete-lined channel. It is the lining of this channel that is important as the concrete effectively severs any contaminant pathway between contamination in the made ground and the controlled waters within the ree."

Importantly, the paragraph continues:

"Should the development plans change such that the ree is not lined, the remediation strategy, and the risk assessment upon which it is based, will require adjustment in accordance with the scheme changes."

When significant and illegal changes to the development plans were made in 2008 such that the ree was not redirected through a fully concrete-lined channel, Newport council failed to ensure that the Remediation Strategy was updated to take account of these changes.

3. MISSED OPPORTUNITIES FOR EIA

The following sections describe some of the missed opportunities to undertake an EIA screening exercise for the entire Glebelands Development.

3.1 Prior to granting outline planning permission

As the owner, and the developer, and the competent authority, Newport council could have carried out, or insisted upon, an EIA screening exercise at any time prior to granting outline planning permission (the principal decision) in October 2000.

In August 2000, an internal Newport council memorandum dated 11 August 2000 [8] from the Head of Newport Council's Planning Services to the Council's Development Control department stated:

"Having regard to Welsh Office Circular 11/99 [43] para 41 applies in respect of the potential of the development to disturb and release hazardous material left over from past industrial processes. We therefore request that a formal determination is made as to whether or not an EIA is required, and this decision recorded in the requisite manner".

However, Newport council has been unable to show that the request from its Planning Services department was acted upon.

Although Newport council claims to have carried out an EIA screening exercise for the Glebelands Development, a six month investigation by the UK's Information Commissioner's Office (ICO), concluded in its decision letter dated 26 February 2010 [9]:

"Although it seems a reasonable expectation that there would be some written information which might comprise a 'screening opinion' either in the form of one specific document or a series of documents, it appears that no formal screening opinion was carried out in respect of this application."

Although Newport council claims to have consulted the Countryside Council for Wales and the Environment Agency regarding the need for EIA, Newport council has been unable to provide any evidence to support any of these claims. On the other hand, in a letter dated 13 March 2009 [10] to local resident Mr John Martin, the Acting Area Manager of Environment Agency Wales wrote:

"According to our records, we were not formally consulted on our opinion as to whether an EIA was required and we have not been consulted on the scoping of an EIA."

And in a letter dated 18 June 2010 [11], the Countryside Council for Wales (CCW) stated that it has:

"no record of Newport City Council (NCC) consulting CCW as to whether an Environmental Impact Assessment (EIA) should be carried out for the Glebelands development".

3.2 Unlawful amendment to planning permission in 2002

The original Notice of Decision, issued on 31 October 2000 [3] stated:

"The development must begin not later than the expiration of three years from the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990."

As the development commenced after the date by which the condition required development to begin, the development should have been treated as not authorised by the permission. Accordingly, the matter of planning permission expiry has been queried with Newport council for some time – most recently during an exchange of letters in connection with an objection to the discharge of Condition 07 to the original planning consent.

Eventually, in a letter dated 15 February 2010 [22], Newport City Council admitted that the Notice of Decision had been “re-issued” in 2002 to extend the time limits of the original Standard Condition. An extract from the letter follows:

“In June 2002 an agent acting for potential residential developers on the site queried the standard condition that had been applied to the Notice issued in 2000 on the basis that it was incorrect. The Local Planning Authority considered the enquiry and advised that section 92 of the Town and Country Planning Act 1990 includes a deemed condition for outline planning permissions in the form of the condition cited by me above. This had not been replicated on the Notice. Instead, an alternative condition had been included in error that appeared to shorten the period for commencement of development. It was confirmed at the time that this was unintentionally included on the decision notice as no considerations relating to the proposals would have led to the normal time period being amended. The agent was advised to this effect and was advised that the Authority considered that it could substitute alternative periods of time into the deemed condition without prejudicing its decision.

“A decision was taken by the then Development Control Manager to re-issue the Notice of Decision for 00/0768 on the basis that the Local Planning Authority had made an administrative error in the Notice. To avoid any dispute over the decision falling back on the deemed condition at section 92 and as there was no resolution as part of the consideration and determination of the application to shorten the periods identified at section 92, the Notice of Decision should accurately reflect the requirements imposed by the Act. It was considered that the Council’s decision was not prejudiced by the changes, which simply corrected an error.

“The Notice of Decision that you have in your possession is the superseded Notice. The Notice was corrected in 2002 to comply with Section 92 of the Act and was re-issued. I enclose a copy of the correct Decision Notice for your information”

The Notice of Decision that had been amended and re-issued in 2002 [23] was, as in the original decision notice [3], also dated 31 October 2000 and made no mention of the changes made to the Standard Condition. The amendment to planning permission had been made 'behind closed doors', and this illegal action then camouflaged by making the re-issued Notice of Decision appear like an original Notice of Decision.

The original decision notice issued on 31 October 2000 had been correctly made out, checked, and issued by Newport council, to Newport council. Council officers did not have the power to amend the conditions of the original planning permission or to 're-issue' the Notice of Decision in 2002. In effect, Newport council had created and deposited a false Notice of Decision in its planning file.

Given the speed at which Newport council desired the Glebelands Development to proceed, the intent of the original Notice of Decision was neither ambiguous nor unreasonable. On the other hand, the changes made in 2002 were significant and material. The actions taken by Newport council officers to amend the planning permission and 're-issue' the Notice in 2002 were neither reasonable nor in the public interest – there being more appropriate and more transparent methods for correcting genuine administrative 'errors', such as requiring a new planning application to be submitted.

The advantage to Newport council was clear. By not requiring a new planning application to extend the expiry date, Newport council circumvented the need for an EIA screening exercise, as a new planning application for this development would necessarily require the proposed development to be screened for EIA.

According to a paper by North Lincolnshire Council [24], in the case of **Henry Boot Homes Ltd v Bassetlaw District Council**, it was held that the planning authority was wrong in approving anything as a minor amendment, save the 'smallest of small amendments'. In the case of **Powergen UK plc v Leicester City Council**, one of the law lords observed that 'compliance with a planning permission is not a matter for private agreement between developers and local planning authorities'.

3.3 Unlawful commencement of works in 2006

Condition 06 to planning permission 00/0768 for the Glebelands Development [21] stated:
"Prior to the commencement of development on the site (including any demolition or land raising works) the following shall be conducted:

(a) a site investigation consisting of at least 3 months duration of monitoring to ascertain the presence of gas having regard to the end use of the site. This shall include an analysis of the source of any gas and a report on the investigation shall be submitted for the consideration and approval of the local planning authority. This assessment must include the results of the survey and recommendations regarding any structural precautions to be incorporated into the buildings;

(b) a quantitative risk assessment of the ground conditions on the site having regard to the end use of the site. Such a risk assessment must use both the results of the site investigation entitled "Durham Road Schools PFI Project: Contamination Investigation Interpretative Report" (June 2000) and previous investigations in the area, together with any additional ground investigation as required to carry out a comprehensive risk assessment.

A remediation strategy in relation to both (a) and (b) above shall be formulated and approved in writing by the local planning authority and the agreed scheme shall be carried out prior to the commencement of any works on site.

Reason: To ensure that the site is comprehensively investigated, the presence of contamination clearly identified and its impacts appropriately mitigated in the interest of residential amenities and to safeguard the interests of future users of the site."

It is worth highlighting some key elements of Condition 06:

(a) The wording of this condition acknowledges that the characteristics of the site had not been properly investigated prior to granting outline planning permission, especially in relation to the proposed end use of the site.

(b) More importantly, this condition requires the remediation strategy (the 'agreed scheme') to be *"carried out prior to the commencement of any works on site"*. Hence Condition 06 is a true condition precedent which goes to the heart of the planning permission.

(c) Although the wording of the 'Reason' for Condition 06 appears not to recognise the importance of site investigations and the remediation strategy to protecting controlled waters, the intent of Condition 06 was amplified in the Planning Application Schedule dated 5 April 2006 for planning application 06/0170 (partial discharge of Condition 06) [25] which states: *"This condition specifically relates to the impact of ground contamination upon human health, requiring investigation and remediation to mitigate any potential effects. It should be noted ground contamination also potentially effects controlled waters and whilst this was not the reason for this particular condition, it is acknowledged that the site investigation and remediation strategy needs to be compatible with this matter."*

According to a letter dated 15 April 2010 from Newport council's Head of Law and Standards [26] the development commenced in or about May 2006. Because this was about two years before commencement of the agreed remediation scheme, it was not possible for the agreed remediation scheme to have been carried out prior to the commencement of the development in May 2006.

It follows that the development which commenced at the site was in breach of Condition 06 and therefore unlawful, following the Whitley Principle (*F G Whitley & Sons –v- Secretary of State for Wales 1992*).

In general, operations carried out in breach of a condition cannot be relied on as a material operation capable of commencing the development within the meaning of Section 56 (2) of the Town and Country Planning Act 1990.

Condition 06 of planning consent 00/0768 is a true condition precedent which goes to the heart of the planning permission in so far as it required a remediation strategy to be formulated and approved in writing by the local planning authority and the agreed scheme to be carried out prior to the commencement of any works on site.

As of January 2014, the agreed remediation scheme has still not been completed fully. In particular, Lotery's Reen has still not been lined, and so a contamination pathway still exists between the contaminated ground and Lotery's Reen, which flows directly into the River Usk SSSI and SAC.

As the work was not carried out in complete accordance with the approved plans and associated planning conditions, the school element of the Glebelands Development should be regarded as unauthorised, as it does not have the benefit of the original planning permission.

Newport council's letter dated 15 April 2010 from the Head of Law and Standards [26] also states:

"the wording in Condition 6 could be open to misinterpretation insofar as it required that "... the agreed scheme shall be carried out prior to the commencement of any works on site." "

However, the wording of Condition 06 is not ambiguous. Furthermore, even if the meaning of Condition 06 needed to be relaxed or varied, no planning application to vary the wording of Condition 06 has yet been found.

Although Newport council could, for example, have (a) required a new planning application to be submitted to set a new time limit by which the works must commence; or (b) required a new planning application to be submitted to vary Condition 06, Newport council failed to do either.

The advantage to Newport council was clear. By not requiring a new planning application, Newport council could circumvent the need for an EIA screening exercise. A new planning application for this development would necessarily require the proposed development to be screened for EIA – which Newport council was desperate to avoid.

In any event, given the complex nature of the development site, it was unreasonable to commence works on the site prior to the remediation strategy being completed fully.

As of January 2014, Lotery's Reen remains unlined. Newport council failed in its duty to ensure that the agreed remediation scheme as defined in the approved Remediation Strategy was fully implemented prior to commencement of works on site in or about May 2006.

3.4 Alleged unlawful commencement of works in 2008

It is important to keep in mind that planning permission for this development was granted for the Glebelands Development as a whole. Accordingly, the Remediation Strategy (and the risk assessments upon which that strategy was based) was prepared and approved for the development site in its entirety. Neither the original planning permission, nor the submitted plans, nor the risk assessments, nor the remediation strategy allowed for a two phase development.

Letters exchanged in 2008 between Newport council's Development Control Manager and the developer formed an agreement that allowed the original single phase development to become a two-phase development. Importantly, it was not so much a local authority 'decision' that allowed the development to proceed in two phases, but an arrangement between an officer of Newport council and the developer.

One such letter allowing the planning permission amendment was sent by Newport council's Development Control Manager to the developer on 18 November 2008 [27]. The letter stated:

"Had it been known at the time outline planning permission was granted that development would need to be phased in this way, the planning conditions would have been worded accordingly at that time. I therefore have no objection to the proposed phasing of the development, as this does not affect the spirit or purpose of the planning conditions, which will be complied with as per the approved details, albeit now in a phased manner."

Newport council's letter of 18 November 2008 [27] continued:

"It is my understanding that the phasing of the site would define the school site as being the land to the north of the reen."

and,

"It is my understanding that the remediation of land to the south of the reen (the housing site) is to be completed by the future developer in accordance with the previously approved details . . ."

Newport council's handling of this matter had effectively put Lotery's Reen into 'no man's land' – it being neither part of the school site (Phase 1), nor part of the housing site (Phase 2). This lack of precision reinforces the view that Newport council failed to understand the importance of Lotery's Reen. Lotery's Reen was treated by Newport council as though it were a benign feature on a map — rather than, as it remains today, a fragile and vulnerable site characteristic that allows contaminants to flow from the contaminated land into the River Usk SAC.

Doubts about the suitability of using Lotery's Reen as a demarcation boundary are compounded by uncertainty concerning the intended location of Lotery's Reen. Specifically, Section 2.4 of the Remediation Strategy [7] states:

"It is planned to alter the location of Lotery's Reen as part of the development, as it currently lies beneath the area of proposed housing. The proposed new location is still to be confirmed".

If Newport council really was sincere in its desire to protect controlled waters, it is not clear why the development plans to re-locate and to culvert Lotery's Reen were not enforced by Newport council. Ideally such re-location and culverting of the reeN would have occurred right at the start of the land remediation activities, which commenced in the summer of 2008.

In any event, Condition 06 to planning permission 00/0768 had the effect of requiring Lotery's Reen to be lined prior to the commencement of any works on site.

Newport council was wrong to amend planning permission without, as a minimum, the prior production and approval of the necessary documentation and detailed maps clearly showing the location of Lotery's Reen in relation to Phase 1 and Phase 2.

The Development Control Manager was wrong to rely on his assumed '*understanding*' of the phasing of the site. Instead, the Development Control Manager should have requested detailed drawings of what the developer was now proposing, and sought the necessary amendments to all the relevant plans and documentation as part of a new planning application, including updated risk assessments and an updated Remediation Strategy.

Newport council appears to have exercised more power than was reasonable, and acted against the public interest. Newport council had allowed the developer to commence development works without first severing the contamination pathway that exists between the contaminated land and Lotery's Reen, which flows directly into the River Usk SSSI and SAC.

Because the planning permission amendment had been permitted via an exchange of letters between the developer and the local planning authority, rather than through a planning application, members of the public were deprived of the opportunity to comment on the significant material changes that had been permitted to the approved plans.

Permission to adopt the two-phase approach failed to consider that the Remediation Strategy applied to the development as a whole. Indeed, it was not possible for the original approved plan, including the remediation strategy and risk assessment, to be applied to the school site independently of the residential housing site without leaving the River Usk SSSI and SAC vulnerable to pollution.

In effect, material changes had been made to the substance of the original planning permission to significantly alter the development's character. Those who should have been consulted on the changes to the development were deprived of the opportunity of such consultation.

The cases already considered in Section 3.2 (above) make it clear that officers of local authorities are not empowered to make material changes to a planning permission.

Although the planning permission amendment was allowed in 2008, it is deeply worrying that no documents describing Phase 1 and Phase 2 appear to have been produced prior to allowing the amendment.

Factors that should have been considered by Newport council prior to agreeing this material change to planning permission include:

- (a) the likelihood of objections to the amendment because of previous objections to the development;
- (b) the prospect of Lotery's Reen remaining unlined for an unspecified period of time;
- (c) the proposed changes would alter aspects of the scheme which had been judged critical to the original decision to grant planning permission – that is, to protect controlled waters, including the River Usk SSSI and SAC;

- (d) whether all interested parties would agree with the Development Control Manager that phasing of the development would “*not affect the spirit or purpose of the planning conditions*”;
- (e) a change to the development plan would require the need for EIA to be re-assessed (through an EIA screening exercise) due to the size, nature, and location of the development; and,
- (f) the applicant should have been required to:
 - (i) submit a new application to set out the details of the change;
 - (ii) identify the supporting documents that needed to be updated; and,
 - (iii) consider the likely environmental effects of the proposed change.

When planning permission is granted, it is subject to the work being carried out in accordance with the approved plans. It is understood from the High Court decision of **Sage v Secretary of State** that any change from the approved plan requires a new planning application to be submitted so that the change can be properly considered.

Furthermore, if the work is carried out other than in complete accordance with the approved plans, the whole development will be unauthorised, as it will not have the benefit of the original planning permission.

Once again, it is worth mentioning the paper by North Lincolnshire Council [24]. In the case of **Henry Boot Homes Ltd v Bassetlaw District Council**, it was held that the planning authority was wrong in approving anything as a minor amendment, save the ‘smallest of small amendments’. In the case of **Powergen UK plc v Leicester City Council**, one of the law lords observed that ‘compliance with a planning permission is not a matter for private agreement between developers and local planning authorities’.

The advantage to Newport council was clear. By not requiring a new planning application in respect of the two-phase approach Newport council was, once again, able to circumvent the need to for an EIA screening exercise.

3.5 July 2009 revocation request

On 26 July 2009, the Glebelands Alliance submitted a request to revoke planning permission for the Glebelands Development to Newport council's Head of Planning, Regeneration & Strategic Housing on 26 July 2009. The covering letter [28] was supported by a comprehensive 'comments and observations' document [29].

Because much of the evidence presented within the request to revoke planning permission concerned the actions and decisions of officers of the local authority, the author of the revocation request letter specifically stated:

"I would be grateful if you could refer this revocation request to the Planning Committee for consideration."

Newport council did not respond to the request to revoke planning permission until 11 November 2009 [30] by which time the school part of the development was well advanced.

In Newport council's 11 November 2009 letter, the Head of Law and Standards wrote:
"Because the development has been substantially completed in accordance with the original planning consent, the Council does not have the power to revoke the consent in accordance with its powers under Section 97 of the Town and Country Planning Act 1990. Therefore, I regret that the matter cannot be remitted back to the Planning Committee for further consideration of the matters set out in your document 'Development at the Glebelands, Newport – Comments and Observations Concerning Planning Application 00/0768' dated 26th July 2009."

The revocation request never was referred to Newport council's Planning Committee.

Chepstow Friends of the Earth disagrees with the council's view that
"the Council does not have the power to revoke the consent in accordance with its powers under Section 97 of the Town and Country Planning Act 1990".

Section 97 (3) of Town and Country Planning Act 1990 states:

"The power conferred by this section may be exercised—

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;*
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place."*

In July 2009, Newport council still had the power to revoke planning permission (just as it does today) because:

- (a) the agreed remediation scheme had not been completed;
- (b) the planning permission also related to a housing development which had not commenced;
- (c) Lotery's Reen had not been re-located or culverted in a concrete channel, as per the approved development plans.

Since all the operations authorised by the permission had not been carried out, the power to revoke planning permission was, and remains, available to Newport council.

Newport council was wrong when, in July 2009, it failed to remit the request to revoke planning permission back to the council's Planning Committee for consideration.

The advantage to Newport council was clear. By not allowing the revocation request to be considered properly, Newport council had circumvented the need for a new planning application and EIA screening exercise in respect of the remaining works. Hence Newport council was, once again, able to side-step their obligations under EIA legislation.

3.6 Reserved matters planning applications

It is not clear why Newport council failed to identify that EIA was required for the Glebelands Development when assessing the following associated applications to discharge planning conditions:

- (a) the planning applications to discharge conditions of 03/1531
- (b) 07/0668
- (c) 07/0798
- (d) 07/0820
- (e) 07/0939
- (f) 09/1150
- (g) 09/0591

As recently as January 2010, Newport council discharged Condition 07 to outline planning permission for the Glebelands Development under planning application 09/0591 without screening the application for EIA.

In a letter dated 10 March 2011 about the discharge of Condition 07, the Principal Planning Officer for Newport council wrote:

"The discharge of condition request was not considered to include information that would mean new significant environmental effects were/are likely over and above those environmental effects previously considered in relation to the site. Therefore, there is no documentation on file 09/0591 relating to EIA screening as no screening was considered to be required."

However, the EIA Regulations do not allow local authorities discretion as to whether an Annex II development should be screened for EIA. Newport council had a duty to screen the Glebelands Development for EIA.

This was made abundantly clear in Welsh Circular Letter CL-05-06 [\[42\]](#) which provided guidance for local planning authorities when considering the need for Environmental Impact Assessment (EIA) at the reserved matters stage. The Circular states:

" when a LPA receives an application for approval of reserved matters, regardless of whether EIA was carried out at the OPP [Outline Planning Permission] stage, it should screen the development again to determine whether all of the likely environmental significant effects have been considered in order to satisfy the requirements of the EIA Directive. Where the detail at reserved matters has revealed new or additional likely significant effects on the environment not identified and/or assessed at the OPP stage, the approval of reserved matters without obtaining the necessary environmental information is likely to be in breach of the Directive and thus unlawful."

So when the Principal Planning Officer for Newport council wrote:

"there is no documentation on file 09/0591 relating to EIA screening as no screening was considered to be required",

the lack of EIA screening for the reserved matters application was not only in breach of the EIA Directives, the failure to screen the planning application for EIA also conflicted with the note at the top of Newport council's internal form 'Environmental Assessment Checklist' which states clearly and correctly:

'TO BE COMPLETED FOR ALL APPLICATIONS FOR PLANNING PERMISSION'

Newport council again failed in its duty to ensure that the Glebelands Development was subject to Environmental Impact Assessment, by failing to carry out the required EIA screening exercise in respect of planning application 09/0591.

In relation to planning application 09/0591, Newport council:

- (a) had a duty to screen the development in its entirety, not just *"for new significant environmental effects . . . over and above those environmental effects previously considered in relation to the site"*;
- (b) failed to apply the EIA criteria for the development by not carrying out an EIA screening exercise in respect of planning application 09/0591; and,
- (c) unlawfully discharged Condition 07.

The advantage to Newport council was clear. By not screening planning applications related to the original outline planning permission, Newport council was, once again, able to circumvent the need to consider the EIA criteria in respect of the reserved matters applications.

3.7 Applications to vary planning conditions

It is not clear why Newport council failed to identify that EIA was required for the Glebelands Development when assessing the following associated applications to vary or remove planning conditions:

- (a) 04/1536
- (b) 04/1537
- (c) 06/0171
- (d) 06/0184

However, the advantage to Newport council was clear. By not screening the applications to vary or remove conditions to the original outline planning permission, Newport council was, once again, able to circumvent the legal requirement to consider EIA criteria in respect of these applications.

3.8 Developer's request for EIA screening exercise

On 19th October 2012, Asbri Planning Limited wrote to Newport council requesting an EIA screening opinion in respect of a residential element of the Glebelands Development [\[51\]](#). In anticipation of a 'positive' (affirmative) screening opinion, this same letter also requested an EIA scoping opinion.

On 26th November 2012, the Principal Planning Officer, Newport council wrote to Asbri Planning Limited to provide details of the Council's EIA screening opinion [\[52\]](#). This letter confirmed that the proposed residential element constitutes 'EIA development'. In a separate letter, also dated 26th November 2012, the Principal Planning Officer, Newport council wrote to Asbri Planning Limited with details of the associated EIA scoping opinion [\[53\]](#).

Because the content of the EIA scoping opinion appeared not to consider all the development elements of the Glebelands Development, Chepstow Friends of the Earth became concerned that 'salami slicing' was being employed to circumvent EIA of the entire Glebelands Development.

On the 4th October 2013, Chepstow Friends of the Earth wrote to Newport council requesting clarification of the scoping opinion in respect of the proposed residential development [\[54\]](#).

On the 8th November 2013, Newport council wrote to Chepstow Friends of the Earth [\[55\]](#) stating:

"I understand your key concern lies with the Glan Usk School site to the north of the area in question and the lack of an ES accompanying the planning applications that permitted that development to proceed.

It is my view that any ES relating to the site considered under scoping opinion 12/1012 would need to reasonably and proportionally relate to the development and site in question. As such I consider that cumulative effects will be relevant in regard to matters such as traffic generation, visual and landscape impact, air pollution and potentially others since the development has the scope to cumulatively affect such matters."

concluding:

" . . . any future ES should consider relevant cumulative impacts (as required by the regulations) but should not consider issues that are not relevant to the development as applied for and the land it would occupy."

The scoping opinion falls short of specifically requiring the developer to consider the potential impacts of the Glebelands Development as a whole, especially those impacts relating to land contamination; land remediation; water pollution; and wildlife corridors. Therefore, Chepstow Friends of the Earth remains deeply concerned that an Environmental Statement (ES) prepared in accordance with the scoping opinion will fail to assess the most significant environmental impacts of the Glebelands Development, especially those relating to the Stadium Site.

The fact that Newport council considers EIA to be necessary for the smaller residential element, but not for the overall Glebelands Development (comprising both the primary school and the residential element) is inconsistent. The decision not to require an EIA that encompasses the entire Glebelands Development is irrational.

Both volumes of the resulting Environmental Statement (ES) that accompany application 13/1279 appear to indicate that Newport council is advocating 'salami slicing' of the project. That is, it appears that the unlawful practice of salami slicing is being used to split this highly impacting project into smaller parts to reduce the scoping of the current environmental impact assessment exercise.

Section 15 of the ES Non-Technical Summary (Volume 1) [\[56\]](#) that accompanies the application states:

"Regulation 2(1) of the Town and Country Planning (EIA) Regulations 1999 (as amended) emphasises the need for the consideration of cumulative effects at a project level. Cumulative impacts relate to 'other' projects and plans and not different aspects of the proposal. However, best practice guidelines recommend that an EIA should assess the effects of the development cumulatively with other development only when there are likely to be significant effects."

Adding:

"The scoping response received from the Local Planning Authority has not advised that any cumulative impact assessment will be necessary. As such, no assessment is included as part of this Environmental Impact Assessment."

And Para 2.11 of the ES Written Statement (Volume 2) [\[57\]](#) under 'Cumulative Impacts' states:

"Regulation 2(1) of the Town and Country Planning (EIA) Regulations 1999 (as amended) emphasise the need for the consideration of cumulative effects at a project level. Cumulative impacts relate to 'other' projects and plans and not different aspects of the proposal. However, best proactive guidelines recommend that an EIA should assess the effects of the development cumulatively with other developments only when there are likely to be significant effects. We note that no request for an assessment of cumulative impacts was made by Newport City Council's screening and scoping opinion (Appendix 1.2 refers); therefore, this is not considered in detail as part of each technical assessment contained in this written statement."

Newport council appears to have exercised more power than was reasonable, and acted against the public interest. It would appear that Newport council has distorted the aims of the EIA Directives and UK law to reduce the scope of the long overdue Environmental Impact Assessment.

Newport council must ensure that all environmental impacts of the Glebelands Development, including cumulative impacts, are properly assessed, and development options fully considered, prior to granting planning permission. The Environmental Statement that accompanies the application is not sufficiently broad in purpose or in scope. It would be unlawful to grant planning permission for the proposed 248 dwellings prior to considering all the potential environmental impacts of the entire project and other relevant projects.

4. REASONS WHY THE GLEBELANDS DEVELOPMENT IS EIA DEVELOPMENT

If a proper screening exercise had been carried out for the entire Glebelands Development, it would have resulted in a 'positive' screening direction – requiring the Glebelands Development to be subject to EIA. This section addresses the reasons why Chepstow Friends of the Earth believes this to be the case.

Because of the increased legal responsibility placed on local authorities through the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 – SI 1999 No 293 (the 'EIA Regulations'), a number of guidance documents and 'circular letters' were issued to local planning authorities to ensure that planning officers understood the EIA regulations and implemented them correctly.

Circular 11/99, Para 18 [43] states:

“Development of a type listed in Schedule 2 to the Regulations which:

- a. meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2; or*
 - b. is located in a 'sensitive area', as defined in Regulation 2(1);*
- is referred to in this Circular as 'Schedule 2 development'.”*

Circular 11/99, Para 33 [43] states:

“ in general, EIA will be needed for Schedule 2 developments in three main types of case:-

- (a) for major developments which are of more than local importance;*
- (b) for developments which are proposed for particularly environmentally sensitive or vulnerable locations; and*
- (c) for developments with unusually complex and potentially hazardous environmental effects ”*

In view of Paragraphs 18 and 33 of Circular 11/99, the Glebelands Development is Schedule 2 development requiring EIA for the following reasons:

(a) The proposed development is listed under Schedule 2 (Annex A of Circular 11/99), in the following category:

'Urban development projects (including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas).'

(b) Although schools and housing are not specifically mentioned as examples of an urban development project, the examples of development included in Annex A were not intended to be an exhaustive list, as has been made clear in guidance by Communities and Local Government [44] which states:

“The wording of the EIA Directive should be interpreted widely. The fact that a particular type of development is not listed specifically within one of the categories of projects in the Directive or the EIA Regulations does not imply that it is not caught. The categories of projects are illustrative, not exhaustive.”

(c) Para A18 of Annex A to Circular 11/99 makes the Glebelands Development more likely to be a Schedule 2 development because the new development is on a significantly greater scale than the previous use; and the types of impact are of a markedly different nature; and there is a high level of contamination.

(d) In addition, and with reference to Para A19 of Annex A to Circular 11/99, the Glebelands Development is more likely to require EIA because the proposed development site had not previously been intensively developed; and the site area of the scheme is greater than five hectares.

(e) With reference to Section 1 in Annex B to Circular 11/99, the Glebelands Development has special characteristics that need to be considered, including:

- (i) the size of the development (greater than five hectares);
- (ii) the production of waste (during land remediation);
- (iii) pollution (potential to release toxic substances to air, land, and water, including Lotery's Reen, during excavation and land remediation); and,
- (iv) the risk of accidents (potential to release toxic substances to nearby residential areas, the SSSI, and the SAC in the event of poor planning or poor site management).

(f) With reference to Section 2 in Annex B to Circular 11/99, the Glebelands Development has the potential to affect an environmentally sensitive area, due to:

- (i) existing land use (including its use as a hazardous waste landfill); and,
- (ii) the proposed site being adjacent to a densely populated residential area; allotments used for food production; and the River Usk SSSI and SAC.

(g) With reference to Section 3 in Annex B to Circular 11/99, the Glebelands Development has the potential for significant effects, due to:

- (i) the amount and types of hazardous waste that have been deposited on the land over many years;
- (ii) the lack of specific regulations and guidance for building a primary schools on land previously used to receive a range of different types of hazardous wastes in combination;
- (iii) the likelihood that at least some hazardous material will be released to air, land or water during site investigation, land remediation, and construction works; and,
- (iv) the potential for impacts to include long lasting effects that may also be irreversible due to the presence of sensitive areas, including the adjacent River Usk SSSI and SAC.

(h) Circular 11/99, Para 37 states:

"Special considerations apply to Sites of Special Scientific Interest (SSSIs), especially those which are also international conservation sites. In practice, the likely environmental effects of Schedule 2 development will often be such as to require EIA if it is to be located in or close to such sites, including candidate Special Areas of Conservation (SACs)"

(i) Circular 11/99, Para 41 states:

"A small number of developments may be likely to have significant effects on the environment [including] other types of development which are proposed for severely contaminated land and where the development might lead to more hazardous contaminants escaping from the site than would otherwise be the case if the development did not take place."

(j) Circular 11/99, Para 47 states:

"Where EIA is required for a planning application made in outline, the requirements of the Regulations must be fully met at the outline stage since reserved matters cannot be subject to EIA. When any planning application is made in outline, the local planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects of the proposal to enable them to determine whether or not planning permission should be granted in principle."

It is known that Newport council did not ensure that sufficiently detailed site investigation reports in respect of the proposed end-use had been provided at the time of granting planning permission.

5. EIA IS NOT DISCRETIONARY

Circular 11/99, Para 12 [43] states:

“While only a very small proportion of development will require EIA, it is stressed that EIA is not discretionary. If significant effects on the environment are likely, EIA is required.”

The content of a letter from Newport council's Chief Education Officer dated 25 November 2004 [45] suggests a fundamental misunderstanding of the EIA Regulations on the part of Newport council. The letter states:

“An Environmental Impact Assessment was not requested with the original outline application in 2000. The conditions attached to the outline consent were designed to ensure that there would be no significant environmental impact by considering such matters as human health, aquatic environment and the treatment of contaminated land.”

In the similar case of *Regina oao Lebus v South Cambridgeshire DC [2003 2PLR5]* a resident challenged the granting of planning permission where the officers had concluded that the potential adverse impacts of the development would be insignificant with proper conditions and management. The Court allowed the appeal and quashed the planning permission. So far as planning conditions and EIA are concerned it held that: *'it is not appropriate for a person charged with making a screening decision to start from the premise that although there may be significant impacts, these can be reduced to insignificance by the application of conditions of various kinds. The appropriate course in such a case is to require an environmental statement and the measures which it is said will reduce their significance'.*

Newport council granted itself planning permission without first ensuring that the necessary site investigations and risk assessments had been undertaken and, therefore, without knowing the likely significant effects of the development on the environment. Newport council had failed to fully consider EIA criteria before adopting a screening opinion, making the screening opinion invalid and, potentially, the granting of planning permission illegal under EIA Regulations.

This point may be further illustrated by reference to *'Burges Salmon Planning News'* for Winter 2007/2008 [46]. This newsletter comments on the case of *R (on the application of Mortell) v Oldham Metropolitan Borough Council [2007] EWHC 1526 (Admin)* for which the High Court concluded that failure to fully consider EIA criteria before adopting a screening decision that a development fell outside the EIA regulations meant that the decision was invalid and the development's planning permission, granted on the back of that screening decision, was quashed.

The court concluded that a site investigation was necessary prior to adoption of a screening opinion for the proper application of the EIA regulations. Oldham MBC had granted permission without such an investigation. The court did not accept Oldham MBC's argument that a site investigation condition would deal with this issue.

Therefore, it seems unlikely that a Court would accept the argument from Newport council's Head of Planning and Economic Regeneration, who has stated [47]: *“Both the Council and the consultees considered that the environmental implications of the development could be assessed satisfactorily from the supporting information submitted with the application and the imposition of planning conditions requiring investigative work”.*

The view held by Newport council that EIA is discretionary, and that planning conditions requiring site investigations can deal with environmental impact issues persists. In a letter dated 29 June 2009 [48] to Mr J Martin, Newport council's Development Control Manager wrote:

“ . . . The Council must use its discretion, based upon input from other relevant parties, whether or not an application can be determined in the absence of an Environmental Statement and in this case it was clear from the information available and received at the time that an Environmental Statement was not necessary as all relevant environmental matters had either been addressed or could be addressed and controlled by planning conditions attached to any planning permission.”

However, it is not true that “the Council must use its discretion” in developments of this type. As stated at the beginning of this section, Circular 11/99 makes it clear that: “EIA is not discretionary. If significant effects on the environment are likely, EIA is required.”

A presentation dated 6 March 2006 [49] by John Pugh-Smith Barrister, 39 Essex Street Chambers recalls the case of *Hereford Waste Watchers Limited v Herefordshire Council* [2005] EWHC 191 (Admin). Mr Pugh-Smith writes:

“ . . . the primary issue concerned the duty on the decision maker to obtain further information on the significant environmental effects of a waste treatment and recycling facility before granting consent. Here, the reporting officer had expressed concerns over the efficacy of a proposed system for controlling emissions, based on advice from the council's own environmental health officer. As a consequence, one of the planning conditions stated that no development should take place until a report had been prepared specifying the expected levels of all pollutants from the facility and their predicted emission level into the atmosphere. Mr Justice Elias found that the council should have insisted upon the provision of the additional information before granting planning permission. By taking the latter course it was effectively depriving consultees the opportunity to be consulted on the likely environmental impact. The planning permission was accordingly quashed on this ground.”

Despite the clear legal position in relation to EIA, in a letter dated 1 September 2009 [50], Newport council's Head of Law and Standards insists that adequate information about the site was available at the time of granting planning permission, stating:

“An Environmental Impact Assessment was not required in this case because the proposed development could be assessed satisfactorily from the other supporting information submitted with the planning application. The Planning Officers were also satisfied that the imposition of relevant planning conditions would adequately cover any need for site investigation work.”

Thank you for considering the content of this objection letter.

For your convenience, this objection letter may be downloaded as a Microsoft Word 2003 file from:

http://www.chepstowfoe.org.uk/glebelands/documents/20140121_NCC_SR.doc

or as a PDF file from:

http://www.chepstowfoe.org.uk/glebelands/documents/20140121_NCC_SR.pdf

Please keep in mind that the severely contaminated Stadium Site is adjacent to allotment gardens used by the local community for growing fruit and vegetables.

Both the Stadium Site and the Compton Webb Site are located near to a densely populated residential area.

Between the Stadium Site and the Compton Webb Site there exists a contamination pathway from the contaminated ground to an unlined ditch ('Lotery's Reen'), which empties directly into the River Usk which, in turn, flows into to the Severn Estuary.

The River Usk (SSSI, SAC) and the Severn Estuary (SSSI, SAC, SPA, Ramsar) have been granted the highest level of legal protection currently possible under the EU Habitats Directive.

Newport City Council must now use this opportunity to regularise the Glebelands Development by taking into account the cumulative environmental impacts of the entire development project, together with the impacts of any related projects and plans.

Yours faithfully

Steve Rawlings
Researcher
Chepstow Friends of the Earth

References

- [1] Form letter advising of planning application for school and housing at the Glebelands.
http://www.chepstowfoe.org.uk/glebelands/documents/20000707_JM_JV.pdf
- [2] Extract from Planning Application Schedule - 25 October 2000
http://www.chepstowfoe.org.uk/glebelands/documents/20001025_PAS_D.pdf
- [3] Original version of the Notice of Decision for Application 00/0768, dated 31 October 2000.
http://www.chepstowfoe.org.uk/glebelands/documents/20001031_NOD.pdf
- [4] Durham Road Schools PFI Project, Newport, Contamination Investigation Interpretative Report - June 2000
http://www.chepstowfoe.org.uk/glebelands/documents/200006_CIIR.pdf
- [5] Remediation Validation Report, WYG Environmental, November 2009
http://www.chepstowfoe.org.uk/glebelands/documents.htm#20091110_RVR_BODY
- [6] 'Draft Planning Brief for The Glebelands/Herbert Road', Newport council, June 2000
http://www.chepstowfoe.org.uk/glebelands/documents.htm#200006_DPB
- [7] 'Planning Support – Enhanced Ground Contamination Risk Assessment and Remediation Strategy: Land at Glebelands, Newport – Application No. 00/0768, Reference: E3803/GO/PSS-RemStrat/JAN06/V2', White Young Green Environmental, Version 2, January 2006
http://www.chepstowfoe.org.uk/glebelands/documents/200601_EGCRARS.pdf
- [8] Letter to Ms J Vaughan, Development Control, Newport council from Mr M J Fowler, Planning Services, Newport council, 11 August 2000
http://www.chepstowfoe.org.uk/glebelands/documents/20000811_JV_MJF.pdf
- [9] Letter to Mr J Martin from Ms C Dickenson, Senior Complaints Officer, Information Commissioner's Office, 26 February 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100226_JM_CD.pdf
- [10] Letter to Mr J Martin from Mr G O'Shea, Environment Agency Wales, 13 March 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20090313_JM_GO.pdf
- [11] Letter to Mr J Martin from Dr K M Murton, Conservation Officer, Countryside Council for Wales, 18 June 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100618_JM_KM.pdf
- [12] Letter to Ms S Essex, Environment Minister, Welsh Government from Mr C Hill, Glebelands Action Group
http://www.chepstowfoe.org.uk/glebelands/documents/nnnnnnnn_SE_CH.pdf
- [13] Letter to Ms J Davies AM from Ms S Essex, Minister for Environment, 13 June 2001
http://www.chepstowfoe.org.uk/glebelands/documents/20010613_JD_SE.pdf
- [14] Letter to Mr J Martin, Chairman, Glebelands Action Group from Mr C Ancrum, Planning Division, National Assembly for Wales, 13 September 2000.
http://www.chepstowfoe.org.uk/glebelands/documents/20000913_JM_CA.pdf

- [15] Letter to Ms Sue Essex, Minister for Environment, Planning and Transport from Ms J Davies AM, 13 December 2001
http://www.chepstowfoe.org.uk/glebelands/documents/20011213_SE_JD.pdf
- [16] Letter to Head of Planning, Newport County Borough Council from the Assembly's Head of Planning Division, 5 March 2003
<http://www.chepstowfoe.org.uk/glebelands/documents/johnbrightschool-cmo-report1.pdf>
- [17] The John Bright School Project, Conwy – Views of the Chief Medical Officer for Wales, Dr Ruth Hall
<http://www.chepstowfoe.org.uk/glebelands/documents/johnbrightschool-cmo-report1.pdf>
- [18] 'Building on Potentially Contaminated Land - Draft Report of Minister for Environment', Cabinet Sub-Committee on Children and Young People, 14 January 2002.
<http://new.wales.gov.uk/firstminister/publications/subcommittees/cyp/landfill.pdf?lang=en>
- [19] 'Parents voice landfill school worries', BBC News, 28 August 2001
<http://news.bbc.co.uk/1/hi/wales/1512866.stm>
- [20] Letter to Mr C Hill from Mrs L Scott, Planning Division, National Assembly for Wales, 5 October 2001
http://www.chepstowfoe.org.uk/glebelands/documents/20011005_CH_LS.pdf
- [21] Alnwick District Council v Secretary of State for the Environment, Transport and the Regions and Others [1999] EWHC Admin 782
<http://www.bailii.org/ew/cases/EWHC/Admin/1999/782.html>
- [22] Letter to Mr J Martin from Mr M Hand, Development Control Manager, Newport City Council, 15 February 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100215_JM_MH.pdf
- [23] 2002 version of the Notice of Decision for Application 00/0768. Note that this 2002 version is also dated 31 October 2000.
http://www.chepstowfoe.org.uk/glebelands/documents/200206_NOD.pdf
- [24] '*Consideration of issues relating to the approval of amendments to approved applications for planning permission*', North Lincolnshire Council, 31 August 2007
<http://www.chepstowfoe.org.uk/glebelands/documents/Considerationofamendmentstoapproveapplications.pdf>
- [25] Newport council Planning Application Schedule, 5 April 2006
<http://www.newport.gov.uk/stellent/groups/public/documents/report/cont056815.pdf>
- [26] Letter to Gamlins Solicitors from Mr G Price, Head of Law and Standards, Newport council, 15 April 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100415_GS_GP.pdf
- [27] Letter to Mr M Hunt, Vinci Investments Limited from Mr M Hand, Development Control Manager, Newport council, 18 November 2008
http://www.chepstowfoe.org.uk/glebelands/documents/20081118_MH_MH.pdf
- [28] Letter to Mr A Evans, Head of Planning, Regeneration & Strategic Housing, Newport City Council from Mr J Martin, Glebelands Alliance, 26 July 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20090726_AE_JM.pdf

- [29] 'Development at the Glebelands, Newport - Comments and Observations Concerning Planning Application 00/0768', Version 1.0, Glebelands Alliance, 26 July 2009
http://www.chepstowfoe.org.uk/glebelands/documents/GAD_CO_V10.doc
- [30] Letter to Mr J Martin from Mr G Price, Head of Law and Standards, Newport Council, 11 November 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20091111_JM_GP.pdf
- [31] Letter to Jane Davidson AM, Minister for the Environment, Sustainability and Housing from Mr J Martin, Glebelands Alliance, 26 October 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20091026_JD_JM.pdf
- [32] Glebelands Alliance document '*Comments and Observations Concerning Planning Application 00/0768*', Version 2.0, 26 October 2009
http://www.chepstowfoe.org.uk/glebelands/documents/GAD_CO_V20.doc
- [33] Letter to Mr J Martin from Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Government, 1 April 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100401_JM_TD.pdf
- [34] Letter to Mr S Rawlings from Mr L Cashman, Acting Head of Unit, ENV.A.2, European Commission, 23 June 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100623_SR_LC.pdf
- [35] Letter to Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Government from Mr J Martin, Glebelands Alliance, 9 August 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20100809_TD_JM.pdf
- [36] Letter to Mr J Martin from Ms H Jones, Decisions Branch, Planning Division, Welsh Government, 11 November 2010
http://www.chepstowfoe.org.uk/glebelands/documents/20101111_JM_HJ.pdf
- [37] Letter to Mr J Martin from Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Government, 24 March 2011
http://www.chepstowfoe.org.uk/glebelands/documents/20110324_JM_TD.pdf
- [38] Letter to Mr J Martin from Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Assembly Government, 6 April 2011
http://www.chepstowfoe.org.uk/glebelands/documents/20110406_JM_TD.pdf
- [39] Letter to Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Assembly Government from Mr J Martin, 13 April 2011
http://www.chepstowfoe.org.uk/glebelands/documents/20110413_TD_JM.pdf
- [40] Letter to Mr J Martin from Ms T Davies, Head of Decisions Branch, Planning Division, Welsh Assembly Government, 12 May 2011
http://www.chepstowfoe.org.uk/glebelands/documents/20110512_JM_TD.pdf
- [41] Letter to Mr J Martin from Ms R Thomas, Chief Planner and Deputy Director, Department for Environment and Sustainability, Welsh Government, 24 June 2011
http://www.chepstowfoe.org.uk/glebelands/documents/20110624_JM_RT.pdf
- [42] EIA Circular Letter CL-05-06, 14 July 2006
<http://wales.gov.uk/topics/planning/policy/circularletters/2006/cl0506/?lang=en>
- [43] Welsh Office Circular 11/99 - Environmental Impact Assessment (EIA)
<http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular1199/?lang=en>

- [44] 'Note on Environmental Impact Assessment Directive for Local Planning Authorities', Communities and Local Government
<http://webarchive.nationalarchives.gov.uk/+http://www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/noteenvironmental/>
- [45] Letter to Mr J Martin from Mr D Griffiths, Chief Education Officer, Newport Council, 25 November 2004
http://www.chepstowfoe.org.uk/glebelands/documents/20041125_JM_DG.pdf
- [46] Burges Salmon Planning News: '*The need for robust information - EIA and screening*', Winter 2007/8, Burges Salmon, Bristol
http://www.chepstowfoe.org.uk/glebelands/documents/Planning_Law.pdf
- [47] Letter to Ms J Morden MP from Mr S Wild, Head of Planning and Economic Regeneration, Newport Council, 11 October 2006
http://www.chepstowfoe.org.uk/glebelands/documents/20061011_JM_SW.pdf
- [48] Letter to Mr J Martin from Mr G Price, Head of Law and Standards, Newport Council, 29 June 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20090629_JM_GP.pdf
- [49] '*Recent Developments in Planning Case Law*' - A presentation by John Pugh-Smith, 39 Essex Street Chambers, 6 March 2006
http://www.39essex.co.uk/docs/articles/JPS_Recent_Developments_Planning_seminar_paper_060306.pdf
- [50] Letter to Mr J Martin from Mr G Price, Head of Law and Standards, Newport Council, 1 September 2009
http://www.chepstowfoe.org.uk/glebelands/documents/20090901_JM_GP.pdf
- [51] Letter to Head of Planning, Planning Department, Newport City Council from Ms L Hughson-Smith, Planner, Asbri Planning Limited, 19 October 2012
http://www.chepstowfoe.org.uk/glebelands/documents/20121019a_NCC_LHS.pdf
- [52] Letter to Ms L Hughson-Smith, Planner, Asbri Planning Limited from Mr G Roberts, Principal Planning Officer, Newport City Council, 26 November 2012
http://www.chepstowfoe.org.uk/glebelands/documents/20121126a_LHS_GR.pdf
- [53] Letter to Ms L Hughson-Smith, Planner, Asbri Planning Limited from Mr G Roberts, Principal Planning Officer, Newport City Council, 26 November 2012
http://www.chepstowfoe.org.uk/glebelands/documents/20121126b_LHS_GR.pdf
- [54] Letter to Mr G. Roberts, Principal Planning Officer, Newport City Council from Mr S Rawlings, Chepstow Friends of the Earth, 4 October 2013
http://www.chepstowfoe.org.uk/glebelands/documents/20131004_GR_SR.pdf
- [55] Letter to Mr S Rawlings, Chepstow Friends of the Earth from Mr G Roberts, Principal Planning Officer, Newport City Council, 8 November 2013
http://www.chepstowfoe.org.uk/glebelands/documents/20131108_SR_GR.pdf
- [56] ES Non-Technical Summary (Volume 1), Asbri Planning Limited, December 2013
<http://www.chepstowfoe.org.uk/glebelands/documents/05138836.pdf>
- [57] ES Written Statement (Volume 2), Asbri Planning Limited, December 2013
<http://www.chepstowfoe.org.uk/glebelands/documents/05138837.pdf>