

LA01/2023/0615/F – PROPOSED REPLACEMENT DWELLING AT NO 40 STRAND ROAD PORTSTEWART

CONSIDERATION OF PLANNING POLICY CONTEXT

Introduction

This note is in response to a request for further consideration of how Designation PTL 06 in the Northern Area Plan should be interpreted with regard to the proposed replacement dwelling, designed by Bell Architects.

The replacement was recommended for refusal by Officers on an assertion that the proposal offends Designation PTL06 and Policy ENV1 of the Northern Area Plan. They also assert that the proposal fails to comply with PPS7 and PPS7 Addendum.

The application has been deferred by Committee for further consideration of the PTL06 considerations.

Policy Context

Section 45 of the Planning (NI) Act 2011 indicates that, when determining planning applications the Council must have regard to the local development plan, so far as material to the application, **and to other material considerations.**

In this case the application site is **within the designated settlement limit of Portstewart**. Plainly the site and its surroundings were determined through the statutory process as being part of the urban fabric of the town. The principle of residential development is therefore firmly established.

As the focus in this case is upon Designation PTL06, this is reproduced below:

DESIGNATION PTL 06

Dominican Walk LLPA

A Local Landscape Policy Area is designated as identified on Map No. 3/05a – Portstewart.

Those features or combination of features that contribute to the environmental quality, integrity or character of this area are listed below.

1. The shoreline backed by grass areas and in places by low cliffs, provides the setting for an important and widely used coastal path.

No further development is appropriate, other than the replacement of existing buildings of comparable footprint and height.

The Dominican Walk LLPA extends around part of the Portstewart coastline. It includes an area of undeveloped coastline, a pedestrian walkway, and a number of residential properties which are within the defined settlement limit of the town.

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The designation indicates that the key features are the **shoreline, the grass areas and the low cliffs** which provide the setting for the coastal path.

The supporting text notes that **'no further development is appropriate, other than the replacement of existing buildings of comparable footprint and height'**.

Designation PTL06 cannot be set in isolation. In particular, **Policy ENV1** sets the **policy** context for development within designated LLPAs:

Local Landscape Policy Areas (LLPAs)

POLICY ENV 1:

Local Landscape Policy Areas

Planning permission will not be granted for development proposals that would be liable to affect adversely those features, or combination of features, that contribute to the environmental quality, integrity or character of a designated LLPA. Where development is permitted, it will be required to comply with any requirements set out for individual LLPAs in the District Proposals.

Importantly **Policy ENV1** does not prohibit development. Its objective is to ensure that the features that contribute to **'quality, integrity or character'** should not be adversely affected.

Furthermore, the supporting text to ENV1 notes that LLPAs should not **'dominate** (my emphasis) **areas of distinctive landscape and townscape character.'**

In essence, if a proposal does not adversely affect the key features of the LLPA then it should be approved.

Consideration

The Committee Report asserts that the PTL06 designation requires that any replacement buildings should be of comparable footprint and height to the buildings which they seek to replace.

The Applicant takes the view that the text requires replacement buildings to be of comparable footprint and height to those which already provide the local context for the development.

If the designation was to be interpreted in the way that Officers believe then the text should have finished with the words **'of comparable footprint and height to the buildings to be replaced'**. On the other hand, the Applicant's argument would be supported by the words **'of comparable footprint and height to the adjacent buildings'**.

Given the unfortunate ambiguity in the text, the argument is essentially a circular one.

Significantly however, the Planning Committee is not required to resolve this conundrum in order to arrive at a robust planning decision, for the following principal reasons:

- i) The fundamental principle of the planning system is set out in **para 5.72** of the SPPS. This is that **'planning authorities should be guided by the clear principle that development should be permitted, having regard to the development plan and all material considerations, unless the proposed development will cause**

demonstrable harm to interests of acknowledged importance. This proposal, for a replacement dwelling within the urban area, will not give rise to demonstrable harm.

- ii) Planning policies are not a '**straitjacket**', as confirmed by Lord Carswell in *Stewart's Application* 2003 NICA 4. And as Justice Kerr pointed out in a Lisburn judicial review '**the nature of planning policy is to provide general guidance... it is not a set of immutable rules.**' Furthermore, in the case of *Camden London Borough Council v Secretary of State for the Environment and PSP (nominees)* 1989 JPL 613 it was made clear that a decision maker is entitled to depart from policy or to make an exception to policy provided the reasons for doing so are not substantially wrong or irrelevant.

Plainly, the Planning Committee can legitimately exercise discretion and planning judgement in the determination of this proposal.

- iii) Case Law (eg *Corbett v Cornwall Council* (2020 EWCA Civ 508) also indicates that in considering planning applications, decisions should be made in consideration of the development plan '**as a whole**'. This may include consideration of aims, objectives and a range of policies. Overall compliance with the Northern Area Plan in this case must be considered not solely in the context of Designation PTL 06 but also with regard to relevant strategic policies in the Plan, and particularly Policy ENV1.

- iv) The Committee Report focuses mainly upon Designation PTL06, before turning to Policy ENV1. This is not a rational or logical approach. PTL06 is a 'designation'. It is not policy. The policy is contained in ENV1 and so **the fundamental consideration must be whether this proposal adversely affects the key features of the LLPA.** Significantly:

- the proposal has no impact upon the shoreline;
- it has no impact upon the open grassed areas; and
- the grassed bank to the rear will remain.

In short, it does not offend Policy ENV1.

- v) Furthermore, it would be irrational to ignore the overall context within which the development is set. The fact that the site is adjacent to a three-storey apartment block, and has a further backdrop of numerous buildings at a higher level within the town, is plainly an important material consideration. This is illustrated by the contextual montage below:



Proposed West Elevation in Context (Montage)
Scale 1:500

- vi) And finally, development plans are required to '**provide robust operational policies that provide certainty and transparency for all users of the planning system**' (para 5.7 SPPS). The text of PTL06 fails in this respect. Where there is ambiguity in a policy the Planning Appeals Commission has determined that a proposal should be assessed on the basis of the interpretation most favourable to the Applicant, for example as set out in the 2004/A583 extract below:

The Commission has considered the report by Commissioner McCabe and endorses her analysis of the issues and recommendation that the appeal should succeed. The Commission agrees that the potential overlap and lack of clarity between different sections within Policy AMP 3 of Planning Policy Statement 3 should be weighed in favour of the appellant and having so concluded, would emphasise the need for the provision of clear policy guidance in relation to Protected Routes as soon as possible to address this ambiguity. The Department's reasons for refusal and the other concerns of the third parties have not been sustained.

Conclusions

The LLPA designation recognises that this area has a particular character, and the key features are set out in PTL06. Whilst the guidance for development within PTL06 is ambiguous, the overriding objective of LLPA policy is clear. This is to ensure that development does not adversely affect the key features.

This proposal, for a replacement dwelling, set within the context of urban development in Portstewart, will not give rise to harm to the key features of this LLPA.

The proposal will not cause demonstrable harm to interests of planning importance, and so the presumption in favour of sustainable development should prevail.

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