

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2023/1053/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>27<sup>th</sup> November 2024</b>
<b>For Decision or For Information</b>	<b>For Decision – Referred Item</b>
<b>To be discussed In Committee YES/NO</b>	<b>No</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Development Management and Enforcement Manager

<b>Estimated Timescale for Completion</b>	
Date to be Completed	N/a

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Legal Considerations</b>	
Input of Legal Services Required	<b>NO</b>
Legal Opinion Obtained	<b>NO</b>

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<b><u>App No:</u></b>	<b>LA01/2023/1053/F</b>	<b><u>Ward:</u></b>	<b>Greysteel</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Lands immediately North of 15 Loughermore Road, Ballykelly, Limavady</b>		
<b><u>Proposal:</u></b>	<b>Residential development consisting of 6no. detached and 2no. semi detached dwellings and garages. Access off Loughermore Road constructed in accordance with approval Ref: LA01/2018/0106/F</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	<b>16.10.2023</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>	<b><u>Target Date:</u></b>	<b>29.01.2024</b>
<b>Agent:</b>	<b>Kevin Cartin Architects, Unit 5 Belmont Office Park, 242-240 Belmont Road, Belfast, BT4 2AW</b>		
<b>Applicant:</b>	<b>KAR Homes Ltd, 101 Greystone Road, Limavady, BT49 0ND</b>		
<b>Objections: 0</b>	<b>Petitions of Objection: 0</b>		
<b>Support: 0</b>	<b>Petitions of Support: 0</b>		

## **Executive Summary**

- Planning permission is sought for a proposed Residential development consisting of 6no. detached and 2no. semi detached dwellings and garages. Access off Loughermore Road constructed in accordance with approval Ref: LA01/2018/0106/F
- The application site is located Lands immediately North of 15 Loughermore Road, Ballykelly, Limavady
- The application has been assessed against the relevant policies within The Regional Development Strategy, Strategic Planning Policy Statement for NI, Northern Area Plan 2016, Planning Policy Statement 3 – Access, Movement and Parking, Planning Policy Statement 7 – Quality Residential Environments, Addendum to Planning Policy Statement 7 – Safeguarding the Character of Established Residential Areas, Planning Policy Statement 8 – Open Space, Sport and Outdoor Recreation, Planning Policy Statement 12 – Housing in Settlements, DCAN8 – Housing in Existing Urban Areas, Creating Places
- The proposal, if permitted, would result in a failure to ensure the provision of an identified social housing need within Ballykelly.
- In considering the proposal against Policy QD1 of PPS 7, revisions are required due to an unacceptable level of overlooking into Plot 2.
- Consultation was carried out with DFI Roads, Environmental Health, NI Water, NIEA Regulation Unit, Northern Ireland Electricity, Northern Ireland Housing Executive and Loughs Agency.
- Northern Ireland Housing Executive has requested that provision is made for social housing and that the proposed house types are too large to cater for the applicants on the waiting list.
- No representations have been received in relation to this application.
- Refusal is recommended.

**Drawings and additional information are available to view on the Planning Portal- <https://planningregister.planningssystemni.gov.uk/>**

## **1 RECOMMENDATION**

- 1.0 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **Refuse** planning permission for the reasons set out in section 10.

## **2.0 SITE LOCATION & DESCRIPTION**

- 2.1 The application site is located at lands immediately north of 15 Loughermore Rd, Ballykelly. The application site is contrived from part of the former Bob Mullan car dealership site. The lands within the application site were formerly part of the associated forecourt area with the adjacent lands to the north which, formed the remainder of the forecourt, currently under construction for residential use approved under LA01/2018/0106/F. The application site comprises a linear strip on the southern side of the access road into the approved housing development (Hollow Hills) with the internal road and approved area of public open space defining the northern boundary. The eastern boundary is defined by a dwarf wall and paladin fence with an overall height of approximately 2.4m associated with the former use with the entrance wall/pillars for the approved housing development constructed to the rear. The western boundary is defined by 2.4m high palisade fencing with a number of trees along the boundary ranging from 8-10m.
- 2.2 The application site is located within the settlement limits of Ballykelly Town as defined in the Northern Area Plan 2016 (NAP). The application site is on part of the former Bob Mullan car sales site, and is identified as an Existing Area of Economic Development within the NAP. The existing character along Loughermore Rd is predominately residential, with residential development to the north of the site at Caman Park, and to the east and south east with housing along Loughermore and at Willow Crescent and Drumacony Heights. The surrounding housing is a mix of single, one and a half storey and two storey and is of a mixed density. The lands to the south of the site, beyond the confines of the Bob Mullan site, and to the west of the site are currently undeveloped agricultural land but are

zoned for specific land use within the NAP. To the west of the site the lands are zoned for housing under zoning BKH 17 and open space under designation BKO 01, while the lands to the south are zoned for housing under designation BKH 18.

### **3.0 RELEVANT HISTORY**

3.1 B/2000/0407/F -15 Loughermore Road, Limavady - Erection of customer service building including car servicing, car valeting and ancillary offices and extension to sales area and additional customer car parking. (amended scheme) – Permission Granted 30.08.2001

B/2002/0195/F - 15 Loughermore Road, Ballykelly, Limavady - Erection of customer service building including car servicing, car valeting and ancillary offices and extension to sales area and additional customer parking (amendment to planning approval reference no. B/2000/0407/F) – Permission Granted 12.06.2002

B/2003/0059/F - 15 Loughermore Road, Ballykelly - Erection of building for customer service, car servicing, car valeting and ancillary offices – Permission Granted 18.11.2004

B/2005/0755/O - Adjacent to B Mullan Motors, Loughermore Road, Ballykelly - Site for residential development with associated landscaping, amenity open space and car parking provision – Permission Granted 30.04.2007

B/2008/0146/F - Adjacent to 15 Loughermore Road, Ballykelly - Proposed housing development to consist of 24 No. apartments (3 No. two storey blocks and 2 No. three storey blocks), 1 No. two storey detached, 18 No. two storey semi-detached dwellings, access road and associated landscaping. – Permission Granted 04.04.2011

LA01/2018/0106/F - Lands immediately North of 15 Loughermore Road, Ballykelly - Residential development consisting of 4 no detached and 20 no semi-detached dwellings and garages with associated roads infrastructure and landscaping – Permission Granted 19.12.2019.

LA01/2023/0137/F - Lands immediately north of 15 Loughermore Road, Ballykelly, BT49 9PD - Amendment to extant approval LA01/2018/0106/F - Change of house type on sites 14, 15, 18, 19, 20, 21, 22, 23 & 24. Minor road amendments to private roads and adjustment of dwelling positions on sites 20-24 – Permission Granted 21.08.2023

#### **4.0 THE APPLICATION**

- 4.1 The application seeks full planning permission for a proposed Residential development consisting of 6no. detached and 2no. semi detached dwellings and garages. Access off Loughermore Road constructed in accordance with approval Ref: LA01/2018/0106/F.

##### **Habitat Regulation Assessment**

- 4.2 Habitat Regulations Assessment Screening Checklist - Conservation (natural Habitats, etc) (Amendment) Regulations (Northern Ireland) 2015: The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). There are no watercourses in the vicinity of the proposal. The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

#### **5.0 PUBLICITY & CONSULTATIONS**

- 5.1 **External:** All neighbours that have been identified for notification within the terms of the legislation have been notified on 19<sup>th</sup> October 2023 and 26<sup>th</sup> April 2024. The application was advertised on 1<sup>st</sup> November 2023 and 1<sup>st</sup> May 2024.

No representations have been received for this application.

- 5.2 **Internal:**

DFI Roads – No objection

Environmental Health – No objection  
NI Water – No objection  
DAERA Regulation Unit – No objection  
Northern Ireland Electricity – No objection  
Northern Ireland Housing Executive – Objection - need for Social Housing  
Loughs Agency – No objection

## **6.0 MATERIAL CONSIDERATIONS**

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The development plan is:
- Northern Area Plan 2016
- 6.3 The Regional Development Strategy (RDS) is a material consideration.
- 6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.
- 6.5 Due weight should be given to the relevant policies in the development plan.
- 6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7.0 RELEVANT POLICIES & GUIDANCE**

The Regional Development Strategy

Strategic Planning Policy Statement for NI

Northern Area Plan 2016

Planning Policy Statement 3 – Access, Movement and Parking

Planning Policy Statement 7 – Quality Residential Environments

Addendum to Planning Policy Statement 7 – Safeguarding the Character of Established Residential Areas

Planning Policy Statement 8 – Open Space, Sport and Outdoor Recreation

Planning Policy Statement 12 – Housing in Settlements

DCAN8 – Housing in Existing Urban Areas, Creating Places

## **8.0 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main consideration in the determination of this application relate to the principle of development, Policy HOU 2 – Social and Supported Housing, Policies QD1 & LC 1, Safeguarding residential and work environs, Access, Movement and Parking, Natural Heritage and Open Space.

### **Principle of Development**

- 8.2 The application site is on part of the former Bob Mullan car sales site and is identified as an Existing Area of Economic Development within the Northern Area Plan 2016. There is policy provision within the SPPS and PPS4 for the retention of lands zoned for and lands used or last used for economic development use. The SPPS clarifies that economic development uses comprise industrial, business and storage and distribution uses as currently defined in Part B of the Planning (Use Classes) Order (NI) 2015.
- 8.3 The established/last authorised use on the site was car sales, which is classified as a ‘sui generis’ use within the Planning (Use Classes) Order (NI) 2015. Therefore, as the existing/last use on the site does not fall within the definition of economic development the Policy requirements of the SPPS and Policy



PED7 – Retention of Zoned Land and Economic Development Uses within PPS4 are not applicable in this instance, with respect to preserving lands for economic use. For this reason the principle of housing on the site is acceptable.

## **Policy HOU 2 – Social and Supported Housing**

- 8.4 Policy HOU2 – Volume 1 of the Northern Area Plan outlines that proposals for schemes of more than 25 units or a site of 1 hectare or more will be required to contribute to meeting the needs of the wider community where there is an established need for social or specialist housing.
- 8.5 The application site initially formed part of a larger site which was submitted to planning under LA01/2018/0106/F and was for 36 units. Northern Ireland Housing Executive was consulted and indicated a need for 7 units (20%) to be provided for social housing. Following that response, the planning application was amended, reducing the number of proposed dwellings to 24, while concurrently reducing the site boundary removing the land that is now subject to this application. This was to overcome the need to deliver social housing.
- 8.6 The lands within the subject application relate to the area of lands which was removed from application LA01/2018/0106/F. The supporting text to Policy HOU2 states that applications to develop a larger site in phases of less than 25 units or less than 1 hectare to avoid the delivery of social housing will not be acceptable. This is what has happened to avoid the need to deliver social housing.
- 8.7 As the initial larger site was artificially divided to avoid the need to deliver social housing under LA01/2018/0106/F, when the current application is considered with the previously approved site (LA01/2018/0106/F), the overall development meets the thresholds set out within HOU2 for the provision of Social Housing. Consultation with the Northern Ireland Housing Executive has identified a need for social housing within Ballykelly, and have requested 7 units of social housing to be provided within this application. That, in turn, would deliver 20% social housing unit for the combined sites. However, given

this application has been amended to 8, officials have adopted an approach that the 20% delivery of social housing units should be limited to the number of dwellings submitted within this application. Therefore, there is a requirement to deliver 2 (20% of application numbers) social housing units. This approach is set out further in Para.8.11 of this Report.

8.8 The applicant/agent contends that the current application is a separate legal entity/parcel of land from the lands previously approved under LA01/2018/0106/F, and that both applications are submitted by separate limited companies. While there may be or have been several folios registered across the lands which made up the former Bob Mullan Car Sales site, the lands appear and were historically used as one entity/site. Furthermore, the carving up of the site is arbitrary, and not linked to any identifiable or natural feature on the ground. Therefore, the application site is not a physically or visually separate parcel of land from the adjoining approved housing lands. It forms part of the one parcel of land and is included within the defined extent of the overall housing development. This is supported when assessing the plans which show the proposal forms an integral part of the overall housing development, utilising the existing road network, shared open space, utility connections etc.

8.9 The agent advises that it would be unfair to seek the applicant (KAR Homes) to provide social housing under this current application when they were not the applicant within the previous application (Coll Developments Ireland Ltd) or indeed that social housing would be a requirement for any subsequent application at the site. However, a named officer within KAR Homes was also a named officer within Coll Development. Therefore, there is overlap in the continuous ownership/control of the lands.

8.10 The sub-division or transfer of lands should not be regarded as the establishment of a separate or distinct site/entity for the purposes to avoid delivering an established need for social housing. The sub division of the land is afforded limited weight in the context of this application having regard to the planning history and does not outweigh the social housing requirement.

The proposal represents piecemeal development of the site and when considered with application LA01/2018/0106/F, meets the threshold for the provision of social housing.

8.11 Planning Officials accept that the amended application site, LA01/2018/0106/F, did not trigger the threshold for the provision of social housing. That said, it was evident that the land removed from the original application site submitted would form part of a phased/piecemeal approach as it was highly likely there would be a future application. At that time further consideration such as a pro-rata approach to the inclusion of social housing, should have been explored, seeking a request to deliver an element of social housing following the revisions. As this wasn't, it would now be unfair to seek the full extent of social housing (7 units) under this application. A proportionate approach is being adopted seeking 20% of the subject application number requiring the delivery of 2 social housing units on the site. The 2 units is based on 20% of 8 which is 1.6 units; rounded up to 2.

8.12 The applicant and agent are aware of the Planning Department's position on the matter and consider such an approach to be at odds with Policy HOU2. The agent advises that the applicant will not be amending the scheme to provide social housing units. Therefore, the proposal is contrary to Policy HOU2.

### **Policies QD 1 & LC 1**

8.13 Planning Policy Statement 7, Quality Residential Development, Policy QD 1 applies and states all the following criteria must be met:

*(a) the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas;*

8.14 The proposal is for 8 dwellings and comprises a mixture of detached and semi-detached dwellings. The dwelling types are largely the same as the dwellings approved within the

remainder of the site, other than the dwelling proposed at plot 1, therefore respecting the surrounding character and appearance. The dwellings are finished in a smooth render finish to the walls and chimneys with dark blue or black slate to the roof. Seven of the dwellings are two storey in scale and have hipped roofs, while the house type B1 dwelling at plots 5+6 include two-storey bay projections at the outer gable side of the front facade, again a feature which is found elsewhere in the development. These dwelling types (A, A1 and B1) have ridge heights of 9.1 and 10m above finished floor level respectively. The dwelling at plot 1 is a one and a half storey dwelling, which is of traditional gable and pitched roof form, with dormer windows on the front roof slope and has a ridge height of 6.5m above finished floor level.

- 8.15 The dwelling at plot 8 is set back into the site from Loughermore Rd which, in addition to reducing its dominance on the streetscape, also maintains the building line onto Loughermore Rd with those to the north within development and further north at Caman Park. As the dwellings have a similar scale and design approach to the approved application which is under construction, the proposed development is appropriate in terms of layout, scale and design. The proposal complies with criterion 'a'.

*(b) features of the archaeological and built heritage, and landscape features are identified and, where appropriate, protected and integrated in a suitable manner into the overall design and layout of the development;*

- 8.16 No archaeological sites or monuments were identified within the application site and the site is not located within an area of archaeological potential. There are no listed buildings within the immediate vicinity of the application site which would be impacted upon by the proposed development.

- 8.17 The application site is devoid of any significant vegetation other the trees along the western boundary which are beyond the application boundary. These trees are annotated on the plans to be retained. The proposal complies with criterion 'b'.

*(c) adequate provision is made for public and private open space and landscaped areas as an integral part of the development.*

*Where appropriate, planted areas or discrete groups of trees will be required along site boundaries in order to soften the visual impact of the development and assist in its integration with the surrounding area;*

- 8.18 While this application relates to the provision of less than 25 dwellings and the site area is less than 1 hectare, the cumulative site area and number of dwellings provided when considered alongside planning approvals LA01/2018/0106/F and LA01/2023/0137/F (24 dwellings) now exceeds both thresholds for the provision of public open space.
- 8.19 Under planning approval LA01/2018/0106/F the applicant had provided an area of public open space within the application site which equates to approximately 985m<sup>2</sup>, a figure which related to 10% of the reduced red line application site area. When assessed against the overall site area now proposed (approximately 1.38 Hectares) the public open space would only account for approximately 7.25% of the total site area. It is noted that there is a small area of open space located at the site entrance adjacent to plot 8. This area has been increased in size to approximately 354 Sq. M. This small wedge of open space is of little recreational value, given the size and location within the development. Additionally, given its proximity to the dwelling at plot 8, its use could potentially lead to detrimental impact on the amenity of its occupants due to noise and nuisance.
- 8.20 The area is of some visual amenity benefit, providing a small buffer between the road/footpath and the dwelling at plot 8 and providing a softer landscaped area as an entrance feature. When counting the wedge along with the public open space the overall provision is approximately 9.7%. An additional area of public open space is identified to the northern side of the entrance. This is a small sterile piece of land resulting from the access arrangements to plots 1-4 within the previously approved layout. While of no notable use it does provide some visual amenity and takes the overall level of open space provision to in excess of 10%. In its current form the proposal meets with both Policy QD1 and Policy OS2 of PPS8.
- 8.21 In terms of private amenity space each of the proposed dwellings benefits from a private rear garden space, which are

of a variety of sizes. The proposed private gardens are of a size which complies with the recommended guidance within Creating Places, with each rear garden in excess of 80 Sq. M. The private garden areas to plots 2-9 are to be defined to the rear by a 1.8m rendered wall along the boundary with the adjacent office building, as well as the side boundaries to plots 1 and the roadside boundary at plot 2.

8.22 The common boundaries between the proposed dwellings will be defined by 1.8m timber fencing. A planted hedgerow is proposed along the southern site boundary which will provide some screening from the adjacent office building and will soften the visual impact of the proposed dwellings when viewed from the southern approach along Loughermore Rd. The proposal complies with criterion 'c'.

*(d) adequate provision is made for necessary local neighbourhood facilities, to be provided by the developer as an integral part of the development;*

8.23 The proposal relates to a relatively small number of dwellings the need for local neighbourhood facilities is not considered necessary. The proposal complies with criterion 'd'.

*(e) a movement pattern is provided that supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way, provides adequate and convenient access to public transport and incorporates traffic calming measures;*

8.24 The application site has been laid out in a manner which is user friendly to all forms of transport providing a safe means of travel without any significant conflict between vehicle users and pedestrians/cyclists, using traffic calming measures in the form of speed bumps. The application site is located an approximate 450-500m walk to the closest local shop/pharmacy and 520m to the local bus stops, with other local services within the immediate vicinity of the bus stops. The proposal complies with criterion 'e'.

*(f) adequate and appropriate provision is made for parking;*

8.25 Each of the proposed dwellings proposed in-curtilage car parking spaces which can accommodate 3 cars per dwellings. On-street car parking is also proposed throughout the development. DfI Roads has been consulted on the proposed development and raise no concerns regarding the level of parking. The proposal complies with criterion 'f'.

*(g) the design of the development draws upon the best local traditions of form, materials and detailing;*

8.26 The design of the proposed dwellings are largely the same as those already approved and under construction within the remainder of the development. The dwellings are of a relatively traditional form, using a mix of pitched and hipped roofs to provide some variation to the overall design and appearance of the development. The dwellings are finished in a render finish with slates to the roof. The wider area comprises a mix of dwelling styles and a mixture of finishes, with no dominant character prevailing in the area. The dwellings are appropriate for their setting and will blend satisfactorily with the urban fabric surrounding it.

8.27 The proposed garages are single storey with a pitched roof. The garages have a footprint measuring 3.2m by 6m and have an overall height of 4.8m above ground level. The garages are finished in the same external finishes as the dwelling. The proposal complies with criterion 'g'.

*(h) the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance;*

8.28 Given the existing land use around the application site is predominately residential there is not likely to be any conflict arising from the development co-existing in this location. The existing building to the south of the site which was the former Bob Mullan car showroom (sui generis) appears to be currently vacant having been last used as office space for W and R Holdings. That said no formal planning history exists for such a use. Both uses would be unlikely to generate any significant nuisance in terms of noise, odour etc, which would render the application site incompatible adjacent to other. Future use of the

building for an alternative use would require planning permission and the potential impact of that use upon the adjacent housing would be assessed within any application.

- 8.29 Within the urban environment, given the proximity to adjacent land uses, there is the potential for issues arising from overlooking and loss of privacy. Within this application the proposed dwellings at plots 2-8 back onto the existing commercial property/offices immediately south of the application site which contains windows at first floor level on the northern façade which faces towards the proposed dwellings. The dwelling at plot 1 is orientated to have its gable facing the southern site office block.
- 8.30 The dwellings at plots 2-8 have separation distances of between 10 and 12.9m to the rear boundary of their respective plots. The commercial building is sited approximately 18.5m off the southern application boundary which results in separation distances of between 28.5m and 31.4m between opposing facades. Creating places provides guidance in respect of separation distances between dwelling and apartment developments but makes no comment on separation distances to commercial properties. However, given the separation distances proposed it is considered that this is adequate separation to avoid any unacceptable level of overlooking. Additionally, it is likely that any commercial use of the building would operate within normal working hours, which would reduce the potential for overlooking of properties in the evening and weekend periods.
- 8.31 The dwelling at plot 1 is sited in the south western corner of the site with its front façade facing the gable and rear garden of the dwelling at plot 2. Paragraph 7.12 of Creating Places advised that layouts where dwellings face onto the rear gardens of other dwellings as it can result in an unsatisfactory relationship between dwellings through loss of privacy.
- 8.32 While the dwelling at plot 1 faces towards the rear garden area of plot 2 it is noted that the dwellings the dwellings are separated by a private drive which serves 2 dwellings. In addition the first floor dormer windows proposed at plot 1 are set back within the slope of the roof and are approximately 14.5m from the boundary of plot 2. Creating places advises on



a separation distance of 10m between proposed dwellings and common boundaries. In this instance the dwelling at plot 1 is considered to have ample separation to the private amenity space at plot 2 and that the proposed arrangement will not result in an unacceptable loss of privacy.

8.33 There is the potential for some loss of amenity to the dwelling at plot 2 given the presence of a ground floor bay window in the western elevation which faces onto the private driveway which serves 2 dwellings. The driveway is in proximity to the proposed ground floor windows and would give rise to views into a main habitable room. As the principle of development is considered to be unacceptable due to lack of social housing delivery, amendments were not sought. Should the decision be to approve this application, amendments should be sought to remove windows in this façade to address the loss of amenity.

8.34 The proposed garages are single storey with a pitched roof. The garages have a footprint measuring 3.2m by 6m and have an overall height of 4.8m above ground level. The garages are finished in the same external finishes as the dwelling. The garages are considered to be of an appropriate scale and be appropriately designed and will not result in any significant detriment to residential amenity. The proposal fails to comply with criterion 'h'.

(i) *the development is designed to deter crime and promote personal safety.*

8.35 The application proposes to have all dwellings orientated to face out towards the road and open space. As such there will always be an element of informal surveillance over the public aspect of the development i.e. footpaths and open space. There are no pedestrian walkways or cycle paths or other spaces proposed within the layout which could result in places where gatherings or loitering could take place or fail to have adequate level of surveillance. The proposal complies with criterion 'l'. Overall, the proposal is complies with Policy QD 1.

8.36 The addendum to PPS 7 : Safeguarding the Character of Established Residential Areas applies and Policy LC 1 Protecting Local Character, Environmental Quality and Residential Amenity. It states that in established residential areas planning permission will only be granted for the redevelopment of existing buildings, or infilling of vacant site (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD 1 of PPS 7, and all the additional criteria set out below are met:

(a) the proposed density is not significantly higher than that found in the established residential area;

(b) the pattern of development is in keeping with the overall character and environmental quality of the established residential area; and

(c) all dwelling units and apartments are built to a size not less than those set out in Annex A.

8.37 The proposed housing density within the application site is in keeping with the remainder of the approved housing development. The density figures in the surrounding areas vary, with no clear pattern of development with other housing developments being approximately 22.2 dwellings per hectare at Riverside Cottages, and 21 dwellings per hectare at Riverview. The public sector housing site at Caman Park has a density of 31.8 dwellings per hectare. The housing density proposed is acceptable and broadly similar to other housing developments within the settlement. The pattern of development within the site is considered to be acceptable and is broadly in keeping with existing development patterns along Loughermore Rd. The proposed dwellings comply with the space requirements as outlined within Annex A of the document. The proposal complies with criteria 'a', 'b' and 'c' and Policy LC 1.

### **Safeguarding residential and work environs**

8.38 Paragraph 4.12 of the SPPS is relevant. This paragraph relates to safeguarding residential and work environs. Other amenity considerations arising from development, that may have potential health and well-being implications, include design

considerations, impacts relating to visual intrusion, general nuisance, loss of light and overshadowing. Adverse environmental impacts associated with development can also include sewerage, drainage, waste management and water quality. However, the above mentioned considerations are not exhaustive and planning authorities will be best placed to identify and consider, in consultation with stakeholders, all relevant environment and amenity considerations for their areas.

8.39 DAERA Regulation Unit advised that previous activities at the application site (Car Sales) and in the surrounding area (Ceramics, cement and asphalt manufacturing works) may have caused the land to be affected by contamination and sought a Preliminary Risk Assessment to identify all unacceptable risks to the water environment and public health.

8.40 A Phase 1 Preliminary Risk Assessment was submitted by MCL Consulting and comprised the following scope of works:

- A site walkover with a review of current and historical mapping;
- A review of the environmental setting of the site to include discussion on geology, hydrogeology, hydrology and groundwater vulnerability;
- Regulatory searches including: NIEA Waste and Contaminated Land Database, NIEA Abstraction Licence Database and NIEA Discharge Consent Database;
- The development of an initial Conceptual Site Model (ICSM) in consideration to sources, pathways and receptors.

8.41 The report identifies a low risk to construction and end users of the site and to the ground water environment. The report concludes that a maximum designation of LOW is appropriate for the site. No further assessment is recommended. Recommendations are proposed for the removal and appropriate disposal of stockpiled material and construction material as well as installing radon protection measures within the buildings.

8.42 Both DAERA Regulation Unit and Environmental Health were consulted on the findings of the report. DAERA advise that no

unacceptable risks to environmental receptors have been identified for the development. Regulation Unit Land and Groundwater Team have no objections to the development provided conditions and informatives are placed on any Planning Decision Notice as recommended. Environmental Health advise that they have no adverse comment. The proposal complies with paragraph 4.12 of the SPPS.

### **Access, Movement and parking**

8.42 Policy AMP 2 of PPS 3 Access, Movement and Parking applies and states planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where:

- a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
- b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.

8.43 Loughermore Road is not a protected route. DfI Roads has been consulted as the competent authority on traffic matters and confirm it has no objection to the proposal in terms of AMP 2. Having regard to the DfI Roads response, the proposal meets the requirements of Policy AMP 2 of PPS 3 Access, Movement and Parking.

### **Natural Heritage**

8.44 PPS 2 Policy NH2 – Species Protected by Law and Policy NH5 – Habitats, Species or Features of Natural Importance are applicable. There is no mature vegetation on site. There is no watercourse in the vicinity of the site. On this basis the proposal complies with policies NH 2 and NH 5 in that it has been demonstrated that the proposal is not likely to harm any European protected species, Habitats, Species or Features of Natural Importance.

### **Open Space**

8.45 Policy OS 2 of PPS 8 Open Space in new residential development is a material consideration and it states that the

Department will only permit proposals for new residential development of 25 or more units, or on sites of one hectare or more, where public open space is provided as an integral part of the development. In smaller residential schemes the need to provide public open space will be considered on its individual merits. The open space has been considered above under Paras 8.18 – 8.22 of this report. The proposal complies with policy OS 2 of PPS 8.

## **9.0 CONCLUSION**

**9.1** The proposal is considered unacceptable at this location having regard to the Northern Area Plan and other material considerations, including the SPPS and Planning Policy Statements 2, 3, 7, the Addendum to Planning Policy Statement 7 and PPS 8. While the proposed dwelling type and layout are acceptable with the existing and approved development and meet with the relevant sizing and amenity space standards for private dwellings, the application site fails to provide for social housing as required by Policy HOU2 of the Northern Area Plan. The application site represents the piecemeal development of the overall parcel of land in a manner to avoid the provision of social housing which is contrary to its provisions. Should planning permission be granted, revisions should be sought to windows on Plot 2 due to an unacceptable impact on residential amenity. As the proposal is contrary to HOU 2 of the NAP 2016, it is considered unacceptable, and refusal is recommended.

## **10.0 Reason**

1. The proposal is contrary to Policy HOU 2 of the Northern Area Plan 2016 in that it would, if permitted, fail to ensure the provision of an identified social housing need within Ballykelly.
2. The proposal is contrary to criterion h of Policy QD 1 of PPS 7 due to the unacceptable impact on the residential amenity of Plot 2 as a result of overlooking from neighbouring properties.

# Site Location



# Site Layout



## Appendix 1

### Referral Request



Development Management  
Information Note 07  
January 2024

#### Annex 1

#### Template for Requesting Referral of a Contentious Delegated Decision to Issue' List Planning Application to Planning Committee for Determination

The Protocol for the Operation of the Planning Committee provides for an Elected Member to request a planning application listed on the weekly list of 'contentious delegated decisions ready' to be referred to Planning Committee for determination. This request must be received by the Planning Department no later than 10am on the Monday following the issuing of the contentious list and submitted via email to [planning@causewaycoastandglens.gov.uk](mailto:planning@causewaycoastandglens.gov.uk).

<b>Planning Reference</b>	LA01/ 2023/1 053/F
<b>Elected Member Name</b>	Aaron Callan
<b>Contact Details</b>	Tel: Email:
<p>The Planning Department's final response set out in their email dated 24th May 2024 is clearly not based on current planning policy and Council is not entitled to require two social houses. Policy HOU 2 is clear. It only applies to proposals for more than 25 units or on a site of 1 hectare or more. This current application does not exceed either the numerical or spatial threshold as set out in Policy HOU 2 and piecemeal/phasing type development does not constitute part of the policy.</p> <p>The Applicant's legal opinion, set out by William Orbinson KC, is clear and unambiguous on this point. The Council, in terms of planning policy or legally are not entitled to require 2 social dwellings as part of this application which is an entirely separate and distinct proposal. Council now acknowledge in this email their errors in the original application in that they did not seek social housing in the original proposal and did not make it expressly clear that they would seek social housing in this current application.</p> <p>The Council's logic for asking for two social houses is that there is some sort of linkage between the original and current application which justifies their request. In terms of planning policy I see no policy support for this approach. The Applicants has indicated they will not provide social housing for the application as their legal opinion indicates it is not required.</p> <p>The Applicant has also pointed out that a number of the existing dwellings were affordable dwellings bought through the NI Co-Ownership HA.</p> <p>The Applicant also proposes a number of affordable houses in the current proposal. The Applicants have indicated that they are willing to pursue any refusal of planning permission to the Planning Appeals Commission. Considering the previous legal opinion Council run a significant risk of being found to have acted unreasonably at any appeal.</p>	



# Addendum

## LA01/2023/1053/F

### Update

- 1.1 The recommendation set out in the Planning Committee Report is to Refuse planning permission for a residential development consisting of 6no. detached and 2no. semi detached dwellings and garages. One reason relates to the potential impact on the privacy and amenity of the living room of Plot 2 due to the proximity of the car parking for another dwelling which was approved under permission LA01/2023/1058/F.
- 1.2 The concern raised in the PCR under Para. 8.33 is the potential for some loss of amenity to the dwelling at plot 2 given the presence of a ground floor bay window in the western elevation which faces onto the private driveway which serves 2 car parking spaces for previously approved dwelling. The parking's proximity to the proposed ground floor windows would give rise to views into a main habitable room.
- 1.3 Further to publication of the Planning Committee Report, the Agent, MKA Planning, submitted further information stating that an identical plot arrangement has already been approved and for this reason the Council cannot sustain this objection. However, the arrangement quoted in the Agent's submission is habitable window to habitable window and is therefore not comparable.
- 1.4 The concern is car parking for the dwelling annotated *F* is only 6 metres from the proposed window. Any car user either entering or exiting the car, or attending to the car boot, would be so close to the proposed window that this would have an impact on the occupants of Plot 2. Furthermore, the car lights of the car when using the parking would be shining into the living room, or the car driver and any passengers using the parking would come within touching distance of the window. This arrangement is considered to be contrary to the principle of delivering quality residential

development and criterion (h) of QD1. That said, it can readily be overcome by implementing or designing an alternative solution.

## **2.0 Recommendation**

- 2.1 That the Committee note the contents of this Addendum and agree with the recommendation to refuse the application in accordance with Paragraphs 1.1 and 9 of the Planning Committee report.

# **Addendum 2**

## **LA01/2023/1053/F**

### **1.0 Update**

- 1.1 An information only drawing for an amended layout was received on 26 November 2024. The amendment substitutes 2 semi-detached dwellings at site 1 in place of one chalet bungalow. The application was deferred at the 27 November 2024 meeting of the Planning Committee to allow consideration. The Agent advised these units are for social housing.

### **2.0 Consideration**

- 2.1 The layout change for site 1 has an unacceptable relationship which will overlook the rear gardens of sites 2 – 8 inclusive (as originally numbered). It is acknowledged that a modest chalet bungalow (with small study and bedroom upstairs) is on the previous layout but the change to two 2 storey semi-detached dwellings will overdevelop this corner of the development and will have an adverse impact from overlooking and result in a loss of privacy for the all gardens which will be overlooked.
- 2.2 Further to a response to the Agent as per paragraph 2.1, they submitted further comment stating that an identical plot arrangement has already been approved at sites 10 – 11 (as originally numbered). It is considered that the previous approved development is not comparable. For example, site one has a clear view from both first floor windows along rear gardens at sites 2 – 8, while the example noted at site 10, given its specific siting, does not have the same uninterrupted view from both first floor windows.

### **3.0 Recommendation**

- 3.1 That the Committee note the contents of this Addendum and agree with the recommendation to refuse the application in accordance with Paragraph 1.1 of the Planning Committee report.