

<b>Planning Committee Report LA01/2015/0459/F</b>	<b>27<sup>th</sup> November 2019</b>
<b>PLANNING COMMITTEE</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	Protecting and Enhancing our Environment and Assets
<b>Outcome</b>	Pro-active decision making which protects the natural features, characteristics and integrity of the Borough
<b>Lead Officer</b>	Development Management & Enforcement Manager
<b>Cost: (If applicable)</b>	N/a

<b><u>No:</u></b>	<b>LA01/2015/0459/F</b>	<b><u>Ward:</u></b>	<b>PORTRUSH and DUNLUCE</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Former Castle Erin Hotel and Conference Centre Castle Castle Erin Road, Portrush</b>		
<b><u>Proposal:</u></b>	<b>Development of one detached house, 12 semi-detached houses and 8 apartments with associated landscaping and site works.</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	<b>23.07.2015</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>David Donaldson 50a High Street, Holywood, Co Down</b>		
<b><u>Applicant:</u></b>	<b>McLaughlin &amp; Harvey Ltd</b>		
<b><u>Objections:</u></b>	<b>17</b>	<b><u>Petitions of Objection:</u></b>	<b>0</b>
<b><u>Support:</u></b>	<b>0</b>	<b><u>Petitions of Support:</u></b>	<b>0</b>

**Drawings and additional information are available to view on the Planning Portal- [www.planningni.gov.uk](http://www.planningni.gov.uk)**

## **1 RECOMMENDATION**

- 1.1 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 **APPROVE** planning permission subject to the conditions set out in section 10.

## **2 SITE LOCATION & DESCRIPTION**

- 2.1 The site is located close to the coast line of Portrush between the Promenade and the railway line. It comprises of a crescent shaped parcel of land that runs along the railway line with steep slopes which runs toward the coastal pathway and beach. The site has now been cleared but once housed the former Castle Erin Hotel/Centre. The site is accessed via the Castle Erin Road. To the North the site is bounded by a 2 metre high metal gate and fencing which makes up the boundary to Barry's Amusements and the Castle Erin Road. To the east the site is bounded by a 2 metre high metal fence which bounds the railway line. To the south the site is bounded by a post and wire fence which bounds an area of grassland at Mill Strand Carpark. To the west the site is bounded by post and wire fencing which bounds the coastal path.
- 2.2 The proposed site is located within an area where there is a mix of development to include railway station, Barry's Amusements and Café Koko. There are also residential dwellings and apartments located along Eglinton Street and Kerr Street. The dwellings located at Eglinton Street and Kerr Street are made up predominantly of three storey dwellings but there are some two storey properties. There will be critical views of the proposed site from Eglinton Street, Kerr Street, Harbour Road, Dhu Varren and the Promenade pathway.

### 3 RELEVANT HISTORY

C/2013/0104/F - Proposed change of use from two storey dwelling to restaurant with first floor extension, West Strand House, 2 Castle Erin Road, Portrush  
Permission Granted 29.08.2013

C/2007/0692/F - Four terraced houses with associated underground car parking, West Strand House Castle Erin Road Portrush  
Application Withdrawn 03.10.2013

### 4 THE APPLICATION

4.1 Development of one detached house, 12 semi-detached houses and 8 apartments with associated landscaping and site works.

### 5.0 PUBLICITY & CONSULTATIONS

#### 5.1 External Neighbours and Representation

Public Representation – To date 17 objections have been lodged against this proposal. However this includes only 5 separate objections. This application was placed on the weekly contentious list to the Council and was referred to the Planning Committee on 11<sup>th</sup> May 2018. These objections are assessed later in this report.

#### 5.2 Internal

**DFI Roads:** Has no objection, in principle, to the proposal.

**NI Water:** Has no objection, in principle, to the proposal.

**Rivers Agency:** Has no objection, in principle, to the proposal.

**DAERA:** Has no objection, in principle, to the proposal subject to conditions.

**Environmental Health:** Has no objection, in principle, to the proposal subject to conditions.

**Northern Ireland Transport Holding Company:** Has no objection, in principle, to the proposal subject to conditions.

**Shared Environmental Services:** Has no objection, in principle, to the proposal subject to conditions.

**Housing Executive:** Did request a provision for social housing but given the site is less than 1 hectare and includes provisions for 21 units it falls below the thresholds as set out in Policy HOU 2 of The Northern Area Plan.

## **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 (NAP)
- 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 both 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**

Regional Development Strategy 2035

The Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

PPS 2- Natural Heritage

PPS 3- Access, Movement and Parking

PPS 4: Planning and Economic Development

PPS 6: Planning, Archaeology and the Built Heritage

Planning Policy Statement 7: Quality Residential Environments

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

PPS 8: Open Space, Sport and Outdoor Recreation

PPS 15 (Revised) Planning and Flood Risk

Supplementary Guidance

DCAN 8: Housing in Existing Urban Areas

Creating Places

## **8.0 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to: the principle of development; quality in new residential development; design concept; the impact on the character of the surrounding area; housing in existing urban areas, traffic consideration, impacts on economic uses, social housing and representations.

### **Principle of development**

- 8.2 The proposed site is located within the Settlement Development Limit for Portrush and is partially located within a Local Landscape Policy Area designation PHL 02 in the Northern Area Plan. Those features or combination of features that contribute to the environmental quality, integrity or character of this area includes Mill Strand, also known as West Strand and the related slopes behind the beach including the railway embankment. In regard to this application consideration has been given to the previous use of the site which was Castle Erin Hotel/Centre.

This development was located within the confines of this site and attempts have been made to retain the sloping features of the site onto the promenade walkway through infilling and proposed vegetation.

- 8.3 The principle of the type and scale of development proposed must be considered having regard to the SPPS and PPS policy documents specified above.
- 8.4 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.

### **Quality in New Residential Development**

- 8.5 Policy QD 1 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment.

(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;

- 8.6 Development within this area is mixed with the train station, Barry's Amusements, Café Koko and a range of residential dwellings and apartments located at Eglinton Street and Kerr Street. The dwellings and apartments are predominantly three storey but there are some two storey buildings located at Kerr Street. Many of these buildings are of the Victorian and Edwardian eras and make up the existing skyline of Portrush. These buildings include a generally uniform and consistent eaves height, strong vertical emphasis and angle bay windows.
- 8.7 The proposed site is located at a prominent site within Portrush and consideration has been given to the impact of the proposal on the existing skyline of Portrush. Within the initial application all the dwellings located along the crescent were 4 storey in height. However, it was considered that the overall height of the proposed dwellings and apartments would have a detrimental impact on the existing skyline of Portrush given the dominance

of the proposed buildings. Amended plans were requested to reduce the overall height of the proposed buildings. These plans were provided and now all the dwellings and apartments associated with this scheme are two and three storey. Given this change it is considered that the proposed development is now in keeping with the character of the general area as the buildings are not higher than the ridgeline of the existing buildings at Kerr Street and Eglinton Street.

8.8 The proposed design, scale, massing and appearance of the buildings are considered acceptable given the combination of traditional and contemporary materials to include natural slate roof, smooth painted render walls, timber cladding and coated aluminium dormers, windows and Louvres. The use of these materials allows the proposed development to blend in with the existing built form located at Eglinton Street and Kerr Street. The scale of the proposed buildings at three storey is also considered acceptable and in keeping with existing development at Kerr Street and Eglinton Street.

8.9 The dwellings proposed will also have landscaped front and rear gardens which will retain the existing sloping features of the site and help to break up the areas of hardstanding associated with the access roads, parking areas and driveways. Although the existing ground levels will be reduced in parts of the site by 2-3 metres, infilling and the use of vegetation will enhance and raise ground levels at other parts of the site. This will help to offset this impact. The reduction of the existing ground floor levels will also reduce the visual impact of the proposed buildings and will ensure that the proposed buildings are not higher than the ridgeline of the existing buildings at Kerr Street and Eglinton Street. To reduce the overall visual impact of the proposed development permitted development rights will be removed to restrict any development located to the rear of the dwellings at sites 1 to 13. This will protect the integrity of the local landscape and the sloping features of the site.

***(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;***

- 8.10 The site is located within proximity to a number of Archaeological Sites and Monuments but it is not located within an Area of Archaeological Potential. The site is also located close to the Railway Station which is a listed building. A consultation was sent to NIEA to which the Historic Buildings Unit and Historic Monuments Unit were under at the initial consultation stage to consider the impacts of the proposal on these features. The Historic Buildings Unit and Historic Monuments Unit was content with the proposed development. However, within this response it was stated that the Signal Box and the Water Tower of the Railway Station have been recommended for listing, HB03 10 003B and HB03 10 003C respectively. It was stated that should the listing process be completed within the time frame of this application that Historic Buildings Unit seek to be re-consulted to allow a reconsideration of the impact of this application on their setting and the overall impact of the group value of the Railway Station.
- 8.11 On further inspection, it was found that these structures were listed on 11 April 2017. On this basis Historic Environment Division was re-consulted. Their response stated that, the proposal has no greater demonstrable harm on the setting of the Signal Box and Water Tower as the listed buildings have sufficient presence to remain unaffected by this application, as assessed under SPPS (NI) and Policy BH11 (Development affecting the Setting of a Listed Building) of PPS6 Planning, Archaeology and the Built Heritage. Officials are in agreement with this.

***(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;***

- 8.12 There are adequate provisions for private open space for each dwelling proposed as part of this application. This ranges from approximately 75 sq metres at unit 1 to 159.5 sq metres at unit 8. This is over the 70 sq metres which is recommended in the



Creating Places document. In regard to the 8 apartments there will be a shared area of amenity space to the rear of the apartment development which totals 286 sq metres. Therefore each apartment would have 35.75 sq metres of private amenity space. This is above the 10 to 30 sq metre recommended for apartment developments in the Creating Places document. In regard to unit numbers 2 to 11 their open space provision will be located at the slope of the site in which the ground level falls by two metres. These areas are considered appropriate as useable areas of amenity space.

8.13 Given the proposal includes provisions for 21 dwellings and apartments it is below the 25 unit threshold as stated in PPS 8 Open Space and Recreation policy OS 2 relating to open space in new residential development. In smaller residential schemes the need to provide public open space will be considered on its individual merits. The proposed development falls below the threshold and given the location of the site within Portrush Settlement Development Limit and its close proximity to the beach, it was considered that further public open space was not required.

8.14 The areas of open space and boundaries of the site will be landscaped with grass, tree and hedge planting which will soften the visual impact of the proposed development.

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

8.15 This proposal involves 21 units and does not require local neighbourhood facilities as the proposal is located close enough to the town centre of Portrush for potential residents to use facilities located nearby.

***(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;***

8.16 This proposal is located within the settlement development limit of Portrush. The dwellings and apartments are located within walking and cycling distance to the town centre of Portrush. The site is also located beside the Promenade walkway and cycle route. The proposal will also provide convenient access to public transport as it is located beside the train station and bus links.

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

8.17 The proposal incorporates at least two in-curtilage parking spaces per dwelling with a further 27 car parking spaces for the apartments. DFI Roads was consulted in relation to this scheme and raised no concern in regard to parking provision.

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

8.18 The design of the proposed development is considered acceptable given the combination of traditional and contemporary materials to include natural slate roof, smooth painted render walls, timber cladding and coated aluminium dormers, windows and Louvres. The proposed buildings will reflect the form and scale of buildings located along Eglinton Street and Kerr Street. The proposal will include glazing which aims to capture the views along the coast. The removal of one storey helps the balance between roof and building. Regard has been had to a more modern interpretation of the Victorian terraces.

***(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;***

8.19 In terms of layout the key issue in relation to this proposal, is the relationship between the proposed development and Barry's Amusements which are located close to the site. Particular emphasis has been placed on the dwellings located at plots 1

and 2 and apartments 20 and 21 which are located closest to the boundary of Barry's Amusements. In regard to plot 1 this dwelling looks toward the outdoor amusements located within Barry's complex. There is a separation distance of approximately 8 metres from the front of the proposed dwelling at plot 1 to the boundary to the outdoor amusements at Barry's and this includes the width of the road. At plot two this separation distance increases to 15 metres and at apartments 20 and 21 this increases to 20 metres to the common boundary of Barry's. Also in regard to plots 20 and 21 there is a parking area located between the apartments and Barry's. The dwelling at plot 1 is two storey while the dwelling at plot 2 and the apartments at plots 20 and 21 are three storey. Given the separation distances to Barry's amusements, the scale and positioning of the dwellings and the parking area and road located between Barry's and the proposed dwellings and apartments it is considered that there would be no substantive issue in regard to overlooking, loss of light or overshadowing.

8.20 In regard to noise, Environmental Health was consulted as the competent authority. With the initial application a noise impact assessment was provided to consider the impact of Barry's and the railway line on the proposed development. A further noise impact assessment was submitted by an objector to the scheme. In regard to the initial reports, Environmental Health raised some concerns that the predicted noise impacts would not have adequately taken into account the highly colourful noise from Barry's Amusements to include music, screaming and shouting. These concerns are also highlighted by the objectors report. On the back of this, a further Noise Impact Assessment was provided in an attempt to address these concerns. Further to this two dwellings to be located along Castle Erin Road were removed from the scheme. Environmental Health was again consulted and within this response reference is made to the World Health Organisation Guidelines for Community Noise 1999 Section 4.3.1 which states, "*To protect the majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB  $L_{Aeq}$  for a steady, continuous noise. To protect the majority of people from being moderately annoyed during the daytime, the outdoor sound pressure level should not exceed 50 dB  $L_{Aeq}$ .*" Environmental Health also stated that the noise from Barry's could not be considered as

either steady or continuous noise. It was stated that the noise to include shouting and screaming would be considered more annoying than steady, continuous noise.

8.21 Consideration was also given to the screening and barrier attenuation available to the external private amenity areas. This includes the construction of a semi enclosed area adjacent to dwelling 1 and the inclusion of a 2.5 metre high barrier along the boundary of dwellings 2 and 3. In regard to dwelling 1 it was stated in the Noise Impact Assessment that the area directly to the front of this dwelling would have been presented as 65 dB  $L_{A,r}$  with levels of 55 – 60 dB  $L_{A,r}$  within the covered area and 65 dB  $L_{A,r}$  within the other external amenity areas are above the upper recommended thresholds of 55 dB within the WHO/BS8233 guidelines. In regard to dwellings 2 and 3 with the inclusion of the 2.5 metre high barrier the acoustic consultant predicts levels of 54 – 59 dB  $L_{A,r}$  again above the upper recommended thresholds of 55 dB within the WHO/BS8233 guidelines.

8.22 Within the initial noise impact assessment provided by the applicant reference was made to BS8233 which states, *“it is also recognized that these guideline values (noise levels of less than 55 dB  $L_{Aeq,16hour}$ ) are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.”* Within Environmental Health’s consultation response it is stated that The Planning Department are best placed to balance the development needs for the Borough and Portrush specifically and whether the benefits of the proposal outweigh the high noise levels experienced (during the seasonal operation of the amusements) within the external amenity areas of Dwellings 1, 2 and 3.

8.23 In considering this proposal consideration has been given to the seasonal operation of this development and the fact that Barry’s is not in operation all year round. On Barry’s website details of

opening times are provided. Barry's is open from 12.30pm to 10.00pm every day in July and August. In June Barry's is open Monday to Friday from 10.00am to 6.00pm with later opening times to 9.30pm and 10.00pm at the weekend. In April and May it is open at weekends from 12.30pm to 9.30pm and 10.00pm. It is also open during the Easter holidays and on some weekends from 12.30pm to 10.00pm on Saturday and 9.30pm on Sunday in March.

8.24 Furthermore the noise associated with Barry's is not considered to be steady, continuous noise. It is also stated within the WHO guidelines that *the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB L<sub>Aeq</sub>*. It must be noted that it states should and not shall which again is a consideration in the assessment of this application. Furthermore mitigation measures have been included as part of this proposal and this has helped to reduce noise emissions to more acceptable levels.

8.25 Another consideration in regard to this proposal is the knowledge any prospective purchaser will have that Barry's is currently in operation. In a recent Planning Appeal reference 2016/A0210 related to variation of condition No. 1 of planning approval C/1996/0485 (holiday units) to exempt 3 Ballygelagh Village, Portstewart from being used for holiday accommodation only. In regard to this appeal the provision of open space was a concern. However the Commissioner stated within their decision that the fact the building is constructed and in place would allow for any prospective purchaser to be aware of the property's constraints in regard of private amenity space. Although the issue in regard to this application is noise the relevance of the principle of "buyer beware" for existing development applies.

8.26 In regard to this application the agent has identified the Supreme Court ruling in the *Coventry and another v Lawrence and another* also known as the Fens Tiger Case. In this case it was found that if it can be demonstrated that actions amounting to a nuisance such as noise have been ongoing for the requisite 20 year period, a prescriptive right arises. In the Fens Tiger case the defendant was unable to establish that the level of noise caused was sufficient throughout the requisite period so as to amount to a noise nuisance and therefore their claim to have the prescriptive right failed. In regard to this application,

Environmental Health as the competent authority has not identified the source of noise from Barry's Amusements as a noise nuisance which would trigger a prescriptive right over the requisite period. In any case, on assessment, noise levels generated from Barry's Amusements have not been found incompatible with the proposed development and therefore both can co-exist

8.27 Given the mitigation measures provided, the fact that Barry's runs on a seasonal basis, the fact that the noise emissions from Barry's is not considered continuous, and the fact that any prospective buyer would know that Barry's is in operation, it is considered that the proposed development on balance it is acceptable having regard to noise impacts. Further to this it has been found that efforts have been made to reduce noise to its lowest practicable level within this development proposal.

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

8.28 This proposal will not lead to the creation of areas where anti-social behaviour may be encouraged. The back garden of the proposed dwellings and the apartments will be enclosed with fencing and this will increase security at the site.

### **Design Concept**

8.29 Policy QD 2 requires the submission of a Design Concept Statement to accompany all planning applications for residential development. This has been accompanied with the application and has been deemed acceptable.

### **Impact on the character of the surrounding area**

8.30 Policy LC 1 states that in established residential areas planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (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.***

8.31 This proposal will provide 21 dwellings on a white land site within the Portrush Settlement Development Limit. The proposed density is considered acceptable at this site having regard to existing residential development located along Kerr Street and Eglinton Street.

8.32 Development within this area is mixed with train station, Barry's Amusements, Café Koko and a range of residential dwellings and apartments located at Eglinton Street and Kerr Street. Initially the proposed development included provisions for 2, 3 and 4 storey buildings. Amended plans have since been reduced and all the dwellings and apartments proposed are now two and three storey. Given this change it is considered that the proposed development is now in keeping with the character of the general area as the buildings are not higher than the ridgeline of the existing buildings at Kerr Street and Eglinton Street.

8.33 All the dwellings proposed are of a size not less than those set out in Annex A of the policy.

### **Access, Movement and Parking**

8.34 Initially DFI Roads raised concerns but amended plans have since been provided and DFI Roads are now content with the proposal subject to conditions. The PSD drawings have been accepted by DFI Roads. The proposed development is in keeping with Policy AMP 2 of PPS 3 Access, Movement and Parking as the proposal does not prejudice road safety or significantly inconvenience the flow of traffic.

## **Development incompatible with Economic Development Uses**

8.35 PPS 4 Economic Development provides policy to protect existing economic development uses from incompatible development. A proposal for development in the vicinity of an existing or approved economic development use that would be incompatible with this use or that which would prejudice its future operation will be refused. Consideration has been given to this policy in the assessment of this application. However within the The Planning (Use Classes) Order (Northern Ireland) 2015 the use as an amusement arcade or centre, or a funfair is considered a sui generis use and no class is specified for this type of development. Barry's Amusements are therefore not considered an economic use and this policy is not relevant in this case.

## **Social Housing**

8.36 Consideration has also been given to Policy HOU 2 of the Northern Area Plan which relates to Social and Supported Housing. Within this policy it is stated that proposals for schemes of more than 25 residential units, or on 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, as established by the Housing Needs Assessment. Where this need is established it is stated that a minimum of 20% of the total number of dwellings in the scheme will be required to be provided subject to need. As the proposal does not meet either of the thresholds, there is no social housing requirement.

## **Objections**

8.37 There have been 17 representations to this proposal from 5 separate addresses.

- Foundation design and ground stabilisation measures
- Concern in regard to the submitted Drainage assessment.
- Accuracy of the plans and their detail
- Limited detail in regard to detailed sections, cross sections and longitudinal sections at the site.
- Close to an ASSI and potential for pollution.



- Access arrangements during construction and operation.
- No Traffic Impact Assessment or wheel tracking analysis provided.
- Public safety during construction
- Access concern and traffic increase
- 4 metre high wall presenting visual obstruction for drivers
- Standard of documentation supporting the application inadequate for such a sensitive site
- Castle Erin Road not suitable for shared surface
- Digging into the bank to the rear closer to promenade and make it more dominant
- The site is located within a Local Landscape Policy Area to which the seaward facing slopes are an important visual feature.
- Appearance of the buildings not befitting the beautiful site should be used for hotel, Portrush swamped with apartments and townhouses, not sympathetic to the surroundings
- Noise Impact Assessment provided has been queried and a NIA has been provided by the objector.
- Overdevelopment of the site.
- Red line encroaches land owned by the council.
- Impact on existing adjacent commercial operations.
- Social housing and adoptable standard of road.
- Lack of movement in relation to required info from consultations.
- Time to process the application.
- No Construction Details
- No Finished ground levels provided.
- Landscaping on third party lands
- Quality Residential development- Landscape design public open space, cramming in units
- Public Open Space- No provisions as of PPS 8 doesn't meet this policy
- Private Open Space- how much useable space is there due to levels
- Disabled Access
- Issues with noise
- Economic Development – impact on existing business at Barry's review policy PED 8 of PPS 4
- Issue with new gates for private access as this is an emergency evacuation route for Barry's consultation with HSE required

- Extract from PPS 4 and the potential impact on businesses 14th June 2017
- Impacts of the visibility splays and on Barry's land, scale of drawings showing parking and splays not clear.

## **Construction Detailing**

8.38 Concern was raised in regard to the construction process of the proposed development. In regard to this and in line with consultee requirements, DAERA Water Management Unit, Shared Environmental Services and NI Transport Holding Company, a Construction Management Statement condition will be used to gain further information in relation to the construction process prior to the commencement of development. In regard to construction works required outside the red line it is up to the developer to ensure these works are carried out within the confines of the red line. In regard to foundation design and ground stabilisation, these fall within the remit of the Building Control Regulatory Regime during the construction phase. Building Control approval is required to confirm that given the ground conditions, they are satisfied that all necessary precautions have been taken to protect future occupants from ground stability risks. Further details of this will be provided through the Construction Management Statement condition which will be required to be submitted prior to construction. Further impacts will be assessed when the information is provided. In regard to public safety during the construction period it is up to the developer to follow best practice guidelines in regard to Health and Safety and Building Control.

8.39A Construction Method Statement, Site Investigation report and the Assessment of the need for Marine Mammal Observer was submitted by the agent which provided details in regard to site operations, laboratory work, ground conditions, proposed construction, recommendations for construction, information in regard to foundations and ground floor construction potential impacts, piling impacts on marine mammals and proposed mitigation. The proposed development will use two proposed piling methods during the construction phase which include Continuous Flight Auger or rotary piling rig. A further consultation was sent to DAERA, Shared Environmental Services and NI Transport Holding Company in relation to this. It was stated that pile driving can result in the generation of

substantial underwater noise. It was stated that Noise disturbance is widely accepted as one of the main threats to the Harbour Porpoise. Given this the following mitigation conditions were recommended to reduce this potential impact. This includes limiting work to the confines of the site boundary, requesting the submission of a final Construction Environmental Management Plan prior to construction, the use of and appointing a Marine Mammal Observer prior to the commencement of development to ensure there is no disturbance or injury/harm to marine mammals during piling works.

8.40 Further to this a Risk Assessment has been provided by the agent which sets out the risks and the mitigation measures used to ensure the safety of the public and construction workers. These mitigation measures include a proposed reduction in carriageway width and providing employees and contractors with information, instruction, training and supervision. A condition will be used to ensure the mitigation measures detailed in this risk assessment are adhered to.

### **Drainage Assessment**

8.41 Under Policy FLD 3 of Planning Policy Statement 15 a Drainage Assessment will be required for a residential development comprising of 10 or more dwelling units or when the development site exceeds 1 hectare. Given the proposed development includes provisions for 21 residential units a Drainage Assessment was required.

8.42 A drainage assessment has been submitted as part of the application given the proposed development. A consultation was sent to DFI Rivers who identified that storm water will discharge to the sea but correspondence from NI Water has not been provided to demonstrate this. It was pointed out that the method by which the applicant discharges storm water to the discharge point is a matter for the applicant and Northern Ireland Water. Given this is a matter between the developer and NI Water, DFI Rivers stated that while not being responsible for the preparation of the Drainage Assessment accepts its logic and has no reason to disagree with its conclusions. Consequently, DFI Rivers cannot sustain a reason to object to the proposed development from a drainage or flood risk perspective.

8.43 In response to this a representation letter was received which raised a number of concerns with the submitted Drainage Assessment. This included concern in regard to the accuracy of the maps, exceedance and risk of increased flood risk elsewhere, surface water run-off, and location of storm water sewer which will require works outside the confines of the red line and that the information provided is out of date. A further consultation was sent to DFI Rivers in relation to this and the following comments in relation to the points raised in the representation letter were provided.

- Point 1 – The map provided is sufficient to determine the location of the proposal.
- Point 2 – The provided information does not address all points in D17 and D18.
- Point 3 – The proposal will have an internal drainage system and outfall designed to NIW adoptable standards. Exceedance of the system has been addressed.
- Point 4 - The proposal will have an internal drainage system and outfall designed to NIW adoptable standards. Exceedance of the system has been addressed including flow paths.
- Point 5 – Works outside the red line boundary is a matter for Planning. The Drainage Assessment states that storm water will discharge to the sea but correspondence has not been provided from NIW to demonstrate this. The method by which the applicant discharges storm water to the discharge point is a matter for the applicant and Northern Ireland Water.
- Point 6 – The letter from NIW dated 7/6/2016 states that no storm water discharge point is available. Paragraph 6.3 of the drainage assessment states that the applicant will apply to NIW to requisition a sewer. Correspondence has not been provided.
- Point 7 – Information provided by Rivers Agency in 2015 remains the same in 2018.

8.44 The response was ended with Rivers Agency reiterating the comments made previously in the consultation dated 18<sup>th</sup> January 2018. Although it is stated within the response that all the points set out in section D17 and D18 of Annex D of PPS 15 DFI Rivers overall accept the logic of the provided Drainage

Assessment and did not object to its findings. Therefore the information provided within the Drainage Assessment is considered acceptable. In regard to the potential for works outside the confines of the red this is a matter for the developer to consider. Although the readings are taken from 2015, DFI Rivers did not raise any concern in regard to this matter.

### **Accuracy of the plans and Land Ownership**

8.45A concern was raised in regard to the accuracy of the proposed plans and site ownership. This included a section of land that was in the ownership of Barry's Amusements. A set of amended plans and a letter dated 7th July 2016 was submitted by the Agent in response to this query and a revised site location plan was provided removing the section of land in question from the red line boundary. This has removed the concern in regard to the ownership issue. A representation letter was also provided stating that the site location plan included lands owned by the Council. This was raised by a third party. While Council has knowledge of this application, there is no land included within the site on which it wishes to claim title. Qu.27 on the P1 form constitutes a statement of ownership, not proof of ownership, and planning permission does not confer title. Officials are satisfied that this question has been satisfactorily completed.

### **Limited Details on Plan**

8.46A concern was raised in regard to the lack of detailed sections to include cross sections and longitudinal sections of the site. These plans have since been provided and considered sufficient to assess the proposed development. Although the proposed block plan does not provide finished floor levels it does include Ground Floor Levels which is considered sufficient to assess the proposed scheme.

### **Traffic Impacts**

8.47 It was identified through a representation letter that no Traffic Impact Assessment had been completed at the site or a wheel tracking analysis provided. Concern was also raised in regard to traffic increase, disabled access, provisions of visibility splays

and the clarity of the plans provided. In regard to this application DFI Roads was consulted as the competent body and did not request a Traffic Impact Assessment or a wheel tracking analysis. DFI Roads did not raise any concern in regard to disabled access and the proposed development is considered acceptable having regard to this. A set of PSD Drawings has been provided and have been signed off as acceptable by DFI Roads. Given this the information identified within the representation letter was not a requirement as part of this application. It is considered that the quality of the drawings are acceptable.

### **Designated Areas**

8.48A concern was raised that the proposed development is located close to an ASSI and that there is the potential for pollution. The proposed development is located directly adjacent to the Skerries and Causeway SAC and Portrush West Strand ASSI. In regard to this potential impact Shared Environmental Services and DAERA were consulted as the competent authorities. Shared Environmental Services concluded that, provided the following mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. These mitigation conditions include the submission of a final Construction Environmental Management Plan prior to works commencing and the use of a Marine Mammal Observer to minimise risks during piling. DAERA was content with the proposed development subject to conditions relating to construction activity, the use of a Marine Mammal Observer to monitor potential impacts and the submission of a final Construction Environmental Management Plan prior to works commencing. Water Management Unit, in its response of 30<sup>th</sup> August 2016 sought mitigation in the Construction Management Statement. However, officials are satisfied that this matter can be conditioned.

8.49 In regard to the potential impacts on the Local Landscape Policy Area designation PHL 02 in the Northern Area Plan a consideration of this has been made under paragraph 8.2 of this report. It was also identified that the digging into the bank would make the proposed development more dominant. In regard to this the proposed development towards the front has been

reduced from 4 storey to three storey and attempts have been made to retain the features to include the railway embankment through infilling and vegetation which again will reduce the visual impact of the proposed development.

### **Appearance, overdevelopment and Character**

8.50 Concern was raised in regard to the appearance of buildings and impact on the character of the area. An assessment of this has been completed under paragraphs 8.5 to 8.9 and 8.42 of this report. It is considered that there is no overdevelopment at the site with the proposed dwellings having adequate separation distance, adequate parking areas and areas of open space. The density of the site is 22.1 dwellings per hectare and is considered acceptable having regard to development within Kerr Street and Eglinton Street.

### **Open Space**

8.51 Concern has also been raised in regard to the provisions for private and public open space and whether existing provisions of open space are useable. A full consideration of the provisions for public and private open space has been made under paragraphs 8.12 to 8.14 of this report.

### **Noise Impacts**

8.52 Concern has been raised in the representation letters relating to the provided Noise Impact Assessment and potential noise impacts of the proposed development. A full consideration of the potential noise impacts has been made under paragraphs 8.20 to 8.26 of this report.

### **Impacts on Commercial Businesses**

8.53 A concern was raised in the representation letters provided that the proposed development had the potential to impact on Barry's Amusements. These potential impacts have been considered throughout this report. See paragraph 8.34 and paragraphs 8.20 to 8.26 of this report. Policy PED 8 is not considered relevant in this case as an amusement arcade or centre, or a funfair is considered a sui generis use and not an economic use.

## **Issue with Private Access**

8.54 Initially within the proposed plans the Castle Erin Road was to be closed up toward the entrance of the proposed residential development. Within a representation letter it was raised that this road was used as an emergency evacuation route for Barry's and that consultation with Health and Safety Executive was required. These private gates have since been removed from the plans and the access along Castle Erin Road will remain open. In regard to the evacuation route, The Health and Safety Executive was consulted via email on 14<sup>th</sup> June 2017 and a response was provided on the 15<sup>th</sup> June to which it was identified that HSE are not required to be consulted. It is considered that this concern is a matter outside the control of planning.

## **Processing of the Application and standard of documentation**

8.55 Concern has been raised in the regard the amount of time the agent has taken to provide information requested by consultees. Given the complexity of the reports requested additional time was allowed for the submission of reports which have now been submitted. A query was also raised in regard to the standard of the documentation provided with the application. It is considered that the reports provided are of a satisfactory standard to allow the application to be moved to the decision making stage. The relevant statutory consultees raised no significant concern in regard to the standard of documentation provided.

## **Social Housing**

8.56A consideration of Policy HOU 2 of the Northern Area Plan is set out in paragraph 8.35 of this report. This proposal does not meet the thresholds of HOU 2.

## **Other Issues Contamination**

8.57 Within the initial consultation response from DAERA a concern was raised in regard to the potential for contamination at the site given the former activities in the surrounding area. A preliminary



and generic quantitative risk assessment was subsequently submitted and a further consultation was sent to Environmental Health and DAERA for further consideration. This report identified that there would be no unacceptable risks to the environmental receptors from the proposed development. DAERA was content with the findings of this report and raised no objection subject to condition. Environmental Health was also content subject to conditions and also recommended the use of a condition to ensure remediation measures identified in the Preliminary and Generic Quantitative Risk Assessment Report are implemented.

### **Environmental Impact Assessment**

8.58 This proposal is considered to fall within Category 10 (B) of Schedule 2- The carrying out of development to provide for urban development projects, including the construction of shopping centres and car parks. As part of the process to determine whether an Environmental Statement was required, consultations were carried out with the competent authorities. Having considered The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and taking into account the above information, it is considered that the proposed development is not EIA development and would not require the preparation of an Environmental Statement. This determination was made on 16/09/2015.

### **Habitats Regulations Assessment**

8.59 The proposed development is located in proximity to Mill Strand ASSI and the Skerries and Causeway SCI. Given the proximity of the proposed development to these designations it was considered that Shared Environmental Services and DAERA would be formally consulted. The consultees were content with the proposed development subject to conditions relating to construction activity, the use of a Marine Mammal Observer to monitor potential impacts and the submission of a final Construction Environmental Management Plan. It is considered that 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). The

proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

## **CONCLUSION**

- 9.0** The proposed housing development is considered acceptable in this location having regard to the Northern Area Plan 2016, and other material considerations, including the SPPS. Given the reduction in scale through amended plans and the use of these materials which allows the proposed development to blend in with the existing built form located at Eglinton Street and Kerr Street, the proposal is considered acceptable. The proposal offers adequate amenity. Approval is recommended.

## 10 Conditions

1. As required by Section 61 the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2. All soft and hard landscaping incorporated in the stamped approved Drawing No.14 Rev 5 bearing Planning Authority date stamp 12th February 2018, shall be completed in accordance with these plans and the appropriate British Standard or other recognised Codes of Practice before occupation of the first residential unit in the development.

Reason: To ensure the provision of a high standard of landscape and adequate amenity space, consistent with Planning Policy Statement 7 'Quality Residential Environments'.

3. The scheme of planting as finally approved shall be carried out during the first planting season after the commencement of development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Planning Authority gives written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape in the interests of visual amenity.

4. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no extension, enlargement (including alteration to roofs) or the construction of external structures, walls or fences shall be carried out to the development hereby permitted without the grant of a separate planning permission from the Council.

Reason: In the interests of visual amenity.

5. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.

The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 15 (Rev. 4) bearing the date stamp 27th July 2017.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

6. The access gradients to the dwellings hereby permitted shall not exceed 8% (1 in 12.5) over the first 5 m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

7. No dwelling shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of the development

Reason: To ensure the orderly development of the site and the road works necessary to provide satisfactory access to each dwelling

8. No part of the development hereby approved shall be occupied until the Developer has provided an efficient system of street lighting in accordance with Schedule 8 of The Private Streets (Construction)

Regulations (Northern Ireland) 1994 as amended by The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001.

Reason: To ensure the provision of adequate street lighting and in the interests of safety.

9. Prior to occupation of dwellings labelled 2 and 3 as presented on submitted Drawing Number 02 Rev 7 and 03 Rev 5 date stamped 1st September 2017 an acoustic barrier shall be constructed in accordance with Drawing Number 02 Rev 7 and Drawing Number 03 Rev 5 date stamped 1st September 2017 and as per the construction specification detailed within the Noise Impact Assessment – Proposed Residential Development, Castle Erin Road, Portrush, May 2016, stamp dated 7th July 2016”.

Reason: To protect the amenity of proposed residents.

10. Prior to occupation of the permitted dwellings, the facades of the permitted dwellings shall be capable of providing a sound reduction of at least that stated within Table 1 entitled – ‘Façade Attenuation Requirements’ with respect to the transmission of noise from the exterior to the interior of the building, shall be provided to all habitable rooms within the permitted development.

Reason: To protect the amenity of existing and proposed residents.

11. Prior to occupation of the permitted dwellings, passive and mechanical ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of at least that stated within Table 1 entitled – ‘Façade Attenuation Requirements’ when in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all habitable rooms on all façades as stated within Table 1 entitled – ‘Façade Attenuation Requirements’. Mechanical ventilators shall not have an inherent sound pressure level (measured at 1 metre) in excess of 30 dB(A), whilst

providing a flow rate of at least 15 litres per second. All provided mechanical ventilators shall meet the requirements contained within, “The Building Control Technical Booklet K – Ventilation 1998.”

Table 1 – Façade Attenuation Requirements

Site Number as per submitted Drawing No.14-46-03	Required Façade Attenuation (dB R <sub>w</sub> )	Facades orientation
1	40	North, East, South
1	31	West
2	34	North West, East, South East
3	34	North West, South East
3	31	South West
4	31	North East, South East
4	21	West
5	31	South East, South
5	21	West
6	31	North, East
6	21	West
7	31	East, South
7	21	West
8	31	North, East
8	21	South West
9	31	East, South East
9	21	South West

10	31	North West, North East
10	21	South West
11	31	North East, East
11	21	South West
12	31	North, West
12	21	South
13	31	North, East
13	21	South
14, 16, 18, 20	31	West
20, 21	31	North
15, 17, 19, 21	31	East

Reason: To protect the amenity of existing and proposed residents.

12. Prior to occupation of dwelling 1 as presented on submitted drawing No. 02 Rev 7, stamp dated 1<sup>st</sup> September 2017, an acoustic shelter of 2.5m in height shall be constructed in the position coloured blue on page 11 of the noise impact assessment entitled 'Noise Impact Assessment, Proposed Residential Development, Castle Erin Road, Portrush, May 2016', stamp dated 7th July 2016 and submitted in support of planning application LA01/2015/0459/F. The acoustic shelter shall have three solid walls constructed to roof height (open facade facing the West Strand), with a solid roof, both walls and roof having a minimum self-weight of 25kg/m<sup>2</sup>.

Reason: To protect the amenity of residents.

13. The development shall not be occupied until the remedial measures specified within Section 4 of the Preliminary and Generic Quantitative Risk Assessment Report, Document 2, date stamped 7th

July 2016 have been fully implemented and verified to the satisfaction of the Council"

Reason: Protection of environmental receptors to ensure the site is suitable for use.

14. If during the development works, new contamination or risks are encountered which have not previously been identified, works should cease and the Council shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Planning Councilin writing, and subsequently implemented and verified to its satisfaction”.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

15. After completing remediation works required under conditions 13 and 14 and prior to occupation of the development, a verification report is required to be submitted in writing and agreed with the Council. This report should be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11). The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives”.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

16. All construction activity shall be confined within site boundaries, and the boundary of the designated areas shall not be disturbed in any way without written consent from the Council.



Reason: To protect the integrity of the adjacent designated sites Skerries and Causeway SAC and Portrush West Strand ASSI

17. The applicant shall appoint a suitably qualified and experienced Marine Mammal Observer (MMO) prior to any construction work commencing, as detailed in the Assessment of the need for marine mammal observer document submitted on 07 July 2016, proposed mitigation section 2.3, to ensure there is no disturbance or injury/harm to marine mammals during piling works and/or the use of vibrating machinery. The MMO must follow procedures outlined in the JNCC guidance on The protection of marine European species from injury and disturbance (October 2010) which can be found at:

[http://jncc.defra.gov.uk/pdf/JNCC\\_Piling%20protocol\\_August\\_2010.pdf](http://jncc.defra.gov.uk/pdf/JNCC_Piling%20protocol_August_2010.pdf).

The area to be observed will be a 500m radius from the centre of the percussive activities. The MMO will be stationed at a point of elevation to give a clear view of the observation area. The area will be slowly and minutely inspected using high powered binoculars for marine mammals and other species of potential concern before, after and while percussive operations take place. A visual and voice communication will be agreed with the workforce in case the work needs to stop immediately. All works shall cease on the instruction of the MMO and only begin again on the MMO instruction.

Reason: Marine mammals are afforded protection throughout their range under the The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and The Wildlife (Northern Ireland) Order 1985 (as amended).

18. A final Construction Environmental Management Plan (CEMP) must be submitted and agreed in writing to the Council and Marine and Fisheries Division by the appointed contractor at least 8 weeks prior to works commencing. This plan should reflect all the mitigation and avoidance measures (including proposed mitigation measures with regard to piling works) to be employed as stated within the Assessment of the need for marine mammal observer received 07 July 2016 and for the protection of waterways as defined by the Water (NI) Order 1999. Development shall be carried out in accordance with the agreed CEMP

Reason: To ensure that the appointed contractor undertaking the works is well informed of all the risks associated with the proposal and is aware

of all the proposed mitigation and avoidance measures to ensure that there are no significant effects on the site selection features and conservation objectives of Skerries and Causeway SAC or any other European site.

19. A suitable buffer of at least 10m must be maintained between the location of machinery refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc and the western edge of the red line boundary adjacent to Portrush West Strand ASSI.

Reason: To ensure that the appointed contractor undertaking the works is well informed of all the risks associated with the proposal and is aware of all the proposed mitigation and avoidance measures to ensure that there are no significant effects on the site selection features and conservation objectives of Skerries and Causeway SAC or any other European site.

20. All surface water run-off during the construction phase shall be directed away from the western edge of the red line boundary adjacent to Portrush West Strand ASSI.

Reason: To prevent contaminated runoff from entering designated sites during the construction phase.

21. Storm drainage of the site, during construction phases, must be designed to the principles of the Sustainable Drainage Systems (SuDS) in order to prevent the polluting effects of storm water on aquatic environments. Construction of SuDS should comply with the design and construction standards as set out in The SuDS Manual - Construction Industry Research and Information Association (CIRIA) Report C697.

Reason: To prevent contaminated runoff from entering designated sites during the construction phase.

Informatives

1. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

2. The Private Streets (Northern Ireland) Order 1980 and The Private Streets (Amendment) (Northern Ireland) Order 1992.

Under the above Orders the applicant is advised that before any work shall be undertaken for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads (including road drainage) in accordance with The Private Streets (Construction) Regulations (Northern Ireland) 1994 and The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001. Sewers require a separate bond from Northern Ireland Water to cover foul and storm sewer

3. Notwithstanding the terms and conditions of the Department of Environment's approval set out above, you are required under Articles 71-83 inclusive of the Roads (NI) Order 1993 to be in possession of the Department for Infrastructure's consent before any work is commenced which involves making or altering any opening to any boundary adjacent to the public road, verge, or footway or any part of said road, verge, or footway bounding the site. The consent is available on personal application to the DFI Roads Section Engineer whose address is Trillick House, 49 Queen Street, Ballymoney, BT53 6JD. A monetary deposit will be required to cover works on the public road.

4. The Applicant is advised that developers are also now responsible for the cost of supervision of the construction of streets determined under The Private Streets Order. A fee of £1,000 plus 2% of the total Bond value will be paid directly to DFI Roads before the Bond Agreement is completed

5. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the

construction site. Any mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.

6. All construction plant and materials shall be stored within the curtilage of the site.

7. The applicant should be aware that the proposed development is located in close proximity to Barry's Amusements. Such activities may give rise to offensive conditions and a resulting impact upon the amenity enjoyed by the proposed development due to elevated levels of distinctive noise. The applicant should be advised that nuisance action cannot be used to subsequently address these prevailing conditions and that only future increases or intensification of adverse impacts may be considered in the determination of nuisance.

8. Full regard shall be given to all relevant and current guidance and standards during the remediation and verification processes. Such detail shall be incorporated within any reports required to be submitted for prior approval by the Planning Department.

9. The applicant and their consultant are advised to have full regard to the Council Guide to Interested Parties, Development of Land Affected by Contamination (March 2006) which provides details of the information which the Council expects to be contained within reports submitted for approval (including checklist documentation for remediation and verification stages).

10. Building control approval is required to confirm, that given the ground conditions, they are satisfied that all necessary precautions have been taken to protect the occupants and properties from contamination/ and or ground stability risks.

11. Care should be exercised in the removal of contaminated sources from the site, to ensure that the existing contamination load within soil

and ground water is not increased. All contaminated/hazardous waste shall be appropriately classified in accordance with Waste Management Legislative Requirements, and removal and reuse on site shall be suitably demonstrated to the satisfaction of the Planning Department in consultation with the NIEA/DAERA NI.

12. Whilst Causeway Coast and Glens Borough Council Environmental Health Department has assessed the information provided in the current state of knowledge, it ultimately is the responsibility of the developer, to ensure the development is safe and suitable for the purpose for which it is intended and that any unacceptable risks from contamination will be successfully addressed through remediation. He/she should recognise the importance of ensuring thorough and competent professional assistance supported by professional indemnity insurance.

13. In relation to any preparatory/construction works, as required on site (ground works, excavation and construction), it is advised that the applicant should minimise disturbance to noise sensitive receptors, by restricting noise emissions at source, employing quiet plant and equipment, restricting hours of working and ensuring noise emissions are within the attached limits.

14. Dust emissions shall be minimised, to reduce off-site exposure by the employment of suitable and sufficient dust control/mitigation measures as deemed appropriate.

15. "Noise from construction activities should –

(a) not exceed 75 dB LAeq, 1hr between 07.00 hours and 19.00 hours on Monday to Fridays, or 75 dB LAeq, 1hr between 08.00 hours and 13.00 on Saturdays, when measured at any point 1 metre from any façade of any residential accommodation, and

(b) not exceed 65 dB LAeq, 1hr between 19.00 hours and 22.00 hours on Monday to Fridays, or 13.00 hours to 22.00 hours on Saturdays when

measured at any point 1 metre from any façade of any residential accommodation, and

(c) not be audible between 22.00 hours and 07.00 hours on Monday to Fridays, before 08.00 hours or after 22:00 hours on Saturdays, or at any time on Sundays, at the boundary of any residential accommodation. (As a guide the total level (ambient plus construction) shall not exceed the pre-construction ambient level by more than 1 dB(A). This will not allow substantial noise producing construction activities but other “quiet” activities may be possible). Routine construction and demolition work which is likely to produce noise sufficient to cause annoyance will not normally be permitted between 22.00 hours and 07.00 hours.”

16. The applicant is advised to ensure that suitable and sufficient provision is in place for the adequate storage and disposal of refuse arising from the residential units. Such provision should be suitably located and constructed so as to obviate any adverse impacts due to odour and pests. Further information can be sought from Causeway Coast and Glens Borough Council.

17. A scheme for limiting the transmission of noise between properties, each residential unit of accommodation and/or any other part of the building which will not exclusively be used as a unit of accommodation shall be undertaken in order to meet as a minimum the sound insulation requirements as stipulated under the Building regulations (NI) 2012, Technical Booklet G “Resistance to the passage of sound”.

18. The applicant’s attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order

1985 (as amended), under which it is an offence to intentionally or recklessly kill, injury or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximus*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to national marine protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5<sup>1</sup>) use for shelter or protection; damage or destroy anything which conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time<sup>2</sup>.

Any person who knowingly causes or permits an act which is made unlawful under

Article 10 or Article 13 shall also be guilty of an offence.

If there is evidence of Schedule 5 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Marine and Fisheries Division Klondyke Building, Cromac Avenue, Belfast BT7 2JA.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

19. The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

(a) deliberately disturb such an animal while it is occupying a structure or place which

it uses for shelter or protection;

(b) deliberately to disturb such an animal in such a way as to be likely to;

(i) affect the local distribution or abundance of the species to which it belongs;

(ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or

(iii) impair its ability to hibernate or migrate;

(c) deliberately take or destroy the eggs of such an animal;

d) deliberately obstruct access to a breeding site or resting place of such an animal;

or

(e) damage or destroy a breeding site or resting place of such an animal.

It is an offence for any person;

(a) to have in his possession or control,

(b) to transport,

(c) to sell or exchange, or

(d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

If there is evidence of Schedule 2 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Marine and Fisheries Division Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.



20. The applicant should be made aware that all construction or deposition works below the Mean High Water Spring Tide (MHWST) mark are subject to licensing under the Marine and Coastal Access Act 2009. If any elements of the construction in this proposal, for example the construction of access steps/slipways/pathways may cross the intertidal area below the MHWST mark, contact must be made with the Marine Licensing Team, DAERA Marine and Fisheries Division, 2nd Floor, Klondyke Building, Gasworks Business Park, Cromac Avenue, Belfast BT7 2JA, Tel: 028 90569247 to apply for a Marine Construction Licence.

The applicant should be aware that it is an offence under the Marine and Coastal Access Act 2009 to carry out a licensable marine activity except in accordance with a marine licence granted by the DAERA Marine and Fisheries Division. Conviction of such an offence may incur a fine of up to £50,000 and/or two years imprisonment.

21. Water Management Unit notes the development includes excavation of a basement structure. Depending on the geological setting, the potential exists for the water table to be encountered during these works. If water is encountered, an appropriate abstraction/impoundment licence under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 and consent to discharge under the Water (Northern Ireland) Order 1999 may be required from Water Management Unit.

22. The applicant should refer to Standing Advice Note No. 18 – Abstraction and Impoundment (May 2015) and Standing Advice Note No. 11 – Discharges to the Water Environment (April 2015).

23. Water Management Unit would direct towards the advice contained in Standing Advice Note No. 4 – Pollution Prevention Guidelines (April 2015) for consideration for inclusion in the final Construction Environmental Management Plan to be submitted 8 weeks prior to the commencement of the development.

24. The purpose of the Condition 13 is to ensure that any site risk assessment and remediation work is undertaken to a standard that enables safe development and end-use of the site such that it would not be determined as contaminated land under the forthcoming

Contaminated Land legislation i.e. Part 3 of the Waste and Contaminated Land Order (NI) 1997. It remains the responsibility of the developer to undertake and demonstrate that the works have been effective in managing all risks.

25. The applicant should ensure that the management of all materials onto and off this site are suitably authorized through the Waste Management Regulations(NI) 2006 and/or the Water Order (NI) 1999.

26. The applicant should refer and adhere to the precepts contained in Standing Advice Note 4. Pollution Prevention Guidance, 5. Sustainable Drainage Systems and 11. Discharges to the Water Environment

27. The applicant's attention is drawn to the attached information from NI Water.

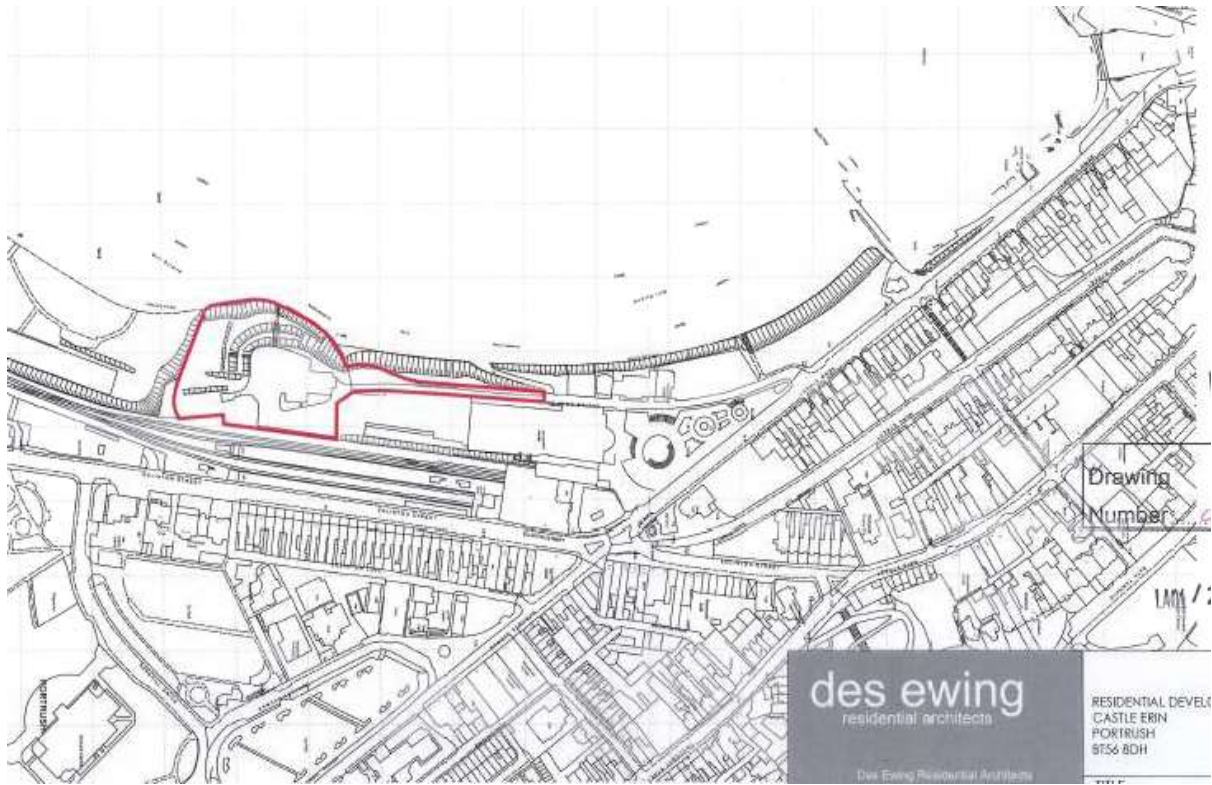
28. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.

29. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

30. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

31. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.

# Site Location



# Erratum

**LA01/2015/0459/F**

While the agent has revised the site layout plan to reflect the changed layout configuration, amended PSD drawings were not submitted. Therefore the former PSD conditions that related to specific drawings are superceded by a condition requiring a PSD to be made before dwellings are occupied.

Conditions 5 and 8 of the Planning Committee report which states,

*5. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.*

*The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 15 (Rev. 4) bearing the date stamp 27th July 2017.*

*Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.*

*8. No part of the development hereby approved shall be occupied until the Developer has provided an efficient system of street lighting in accordance with Schedule 8 of The Private Streets (Construction) Regulations (Northern Ireland) 1994 as amended by The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001.*

*Reason: To ensure the provision of adequate street lighting and in the interests of safety.*

shall be replaced by the following condition.

*No dwelling shall be occupied until a determination has been made under Article 3 of the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.*

*Reason: To ensure there is a safe and convenient road system within the development.*

# **Addendum**

## **LA01/2015/0459/F**

### **Update**

The Agent has provided a link to a video showing the proposed development superimposed on the site. Views include: Portrush Harbour; West Strand; the internal development road and; aerial shots.

In addition, the Agent has provided a “Briefing Note for Councillors”. This sets out the nature of the proposal, how revisions have been submitted and how the application has been accompanied by various supporting reports. The Briefing Note includes reference to the planning history of the site and the specifics of the site location. It summarises the design concept of the development, explaining why a domestic scale development was favoured over a larger building similar to the one that occupied the site previously.

The Briefing Note sets out planning policy considerations and states that amendments to the proposal have been made and other design measures incorporated to produce a scheme acceptable in amenity terms.

### **Recommendation**

That the Committee notes the contents of the Addendum and agrees with the recommendation to approve, as set out in paragraph 9.1 of the Planning Committee Report.

# Addendum 2

## LA01/2015/0459/F

### 1.0 Update

- 1.1 This application was brought forward before the June 2018 Planning Committee. During this meeting it was agreed that the application would be deferred for determination for one month for the Applicant/Agent to discuss the proposal with Barry's Amusements; for the Agent to carry out further methods of soundproofing the car parking area and other acoustic mitigating measures and; for the Agent to consider the removal of sites 1 and 2 and if acceptable delegate the decision to officials. The reasons for this was to consider the impact on Barry's provide clarity on sound proofing measures and prevent overdevelopment of the site.
- 1.2 Following on from this amended plans and information was received and this included drawing numbers 02 Rev 8, 03 Rev 6, 04 Rev 5, 06 Rev 2, 07 Rev 2, 13 Rev 1, 14 Rev 5, 20 and 21 which included amended elevations, floor plans, landscaping plan and site layout plan. An amended P1 form was submitted which changed the description to 10 semi-detached dwellings and 11 apartments. An Addendum to Noise Impact Assessment was also submitted by the agent. All this information was submitted on 31<sup>st</sup> July 2018. The agent removed Site 1 which was the detached dwelling and changed sites 2 and 3 of the former Site Layout plan to three apartments. A 2.5 metre wall was also placed along the eastern boundary of the site which makes up the boundary to Barry's Amusements. Additional planting has also been added to a section of this boundary.
- 1.3 Further to this additional information was submitted by Robinsons and Sons who have made a representation against the proposed development. This included a Further Measurement of Sound Doc

11 and Review of Planning Committee Report Doc 12 date stamped 27<sup>th</sup> July 2018. Since the initial Noise Impact Assessment a new ride has been incorporated into the Barry's complex. The Freak has been replaced by the Extreme Orbitor Ride. The Noise Impact Assessment completed in July 2018 found that sound levels at the closest dwellings are predicted to be some 5db greater than was previously noted to be the case.

- 1.4 Given this increase a request was made by the Planning Authority for the agent of the proposed development to consider the impact of this increase in noise levels given the potential impact on the amenity of proposed residents. Following on from this amended drawings to include proposed site plan 02 Rev 9 and 03 Rev 7, amended Landscape Plan drawing number 14 Rev 7 and drawing number 22 which provided details of a proposed acoustic shelter to protect the amenity spaces of the apartments at plots 1-3 was provided. An Addendum to Noise Impact Assessment Doc 14 was also submitted.
- 1.5 Environmental Health was consulted in regard to the amended plans and additional Noise impact information submitted by the agent and by Robinsons and Sons. The Applicants consultant agreed that the noise levels had increased given the new ride which was added to the Barry's complex. In order to attenuate these noise levels at the facades of the apartments at plots 1,2 and 3 mitigation measures are proposed. These include cavity wall construction, acoustic glazing system capable of providing 39db attenuation and an Acoustically Attenuated Ventilation System capable of providing 39 db new attenuation to all habitable rooms to allow adequate ventilation whilst allowing windows to remain closed. Environmental Health had no further adverse comment in relation to impacts on the facades of the apartments at plots 1-3 but did state that conditions should be updated to reflect these mitigation measures.
- 1.6 With regard to the external amenity space serving the apartments at plots 1-3 the applicant's consultant suggested that noise levels would be 54db-59db with 15db-20db attenuation provided by acoustic protection measures. The resultant noise levels would therefore remain above the World Health Organization and BS



8233 Guidelines of 50dB and 55dB. The mitigation proposed, if 20dB attenuation is achieved, would equate to 1dB below 55dB LAeq (which equates to “serious annoyance” within the WHO criteria). Environmental Health also referred to the content of BS8233:2014 in which it is stated, “It is also recognized that these guideline values (noise levels of less than 55 dB LAeq,16hour) are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.” Environmental Health also stated that, the Planning Department are best placed to balance the development needs for the Borough and Portrush specifically and whether the benefits of the proposal outweigh the high noise levels and adverse impacts experienced (during the seasonal operation of the amusements) within the external amenity areas of the aforementioned properties.

- 1.7 Given the mitigation measures provided, the fact that Barry’s runs on a seasonal basis, the fact that the noise emissions from Barry’s is not considered continuous and the fact that any prospective buyer would know that Barry’s is in operation, it is considered that the proposed development on balance it is acceptable having regard to noise impacts. Further to this it has been found that efforts have been made to reduce noise to its lowest practicable level within this development proposal.
- 1.8 A further representation letter dated 5<sup>th</sup> September 2018 was received from Robinsons and Sons. The key concerns raised include,
  - A request for FR Marks to re-assess their report in light of the new data.
  - Concern regarding an interpretation by the applicant’s consultant that Shared Amenity spaces do not require as much protection as a single dwelling.

- Concern regarding the attenuation of the proposed 2.5 metre high block wall given the tallest ride in Barry's is 14 metres.
- Concern that when windows are opened the acoustic integrity of the external envelope is compromised and the requisite standard will not be achieved.
- There is no overriding reason or housing need for this type of development in this location which justifies setting aside policy.
- Concern that Policy HOU 2 relating to provisions of social housing has not been met.

1.9 A new noise impact assessment and amended site layout which has included an acoustic shelter has been provided and considered by Environmental Health. A further notification was sent to Robinsons and Sons on receipt of this information.

1.10 The Planning Authority would consider that the proposed shared amenity spaces of the apartments at plots 1-3 should be afforded the same protection as the private amenity space of a single dwelling. An additional Noise Impact Assessment submitted by the objector concluded that as a result of a new ride that noise levels would increase by 5db. Having considered this information the Planning Authority requested that the applicant considered this. Following on from this the agent submitted an amended site layout to include an acoustic shelter to provide further protection of this shared amenity area. An updated Noise Impact Assessment was also submitted. This information has been considered by Environmental Health.

1.11 Environmental Health raised no concern in regard to the use of the 2.5 metre high wall. Environmental Health recommended the use of conditions which included the construction of this wall to reduce noise impacts.

1.12 Having regard to the impact of opening windows it must be noted any occupier would have the option of keeping windows closed. Further to this Environmental Health raised no further adverse impact in terms of the impact of the increased noise on the facades of the apartments at plots 1-3. Environmental Health recommended conditions relating to Acoustic Glazing Systems and

Acoustically Attenuated Ventilation Systems to reduce noise impacts and protect the amenity of potential occupiers.

- 1.13 It must be stated that a full consideration has been made in regard to the increased noise impact from the new ride at the Barry's complex. It has been considered for the reasoning set out in paragraph 1.7 that on balance the proposed scheme is considered acceptable having regard to policy requirements set out in Policy QD 1 of PPS 7. While the noise levels will exceed the 55db level in the revised layout, the level of the exceedance is no greater than that of the previous scheme considered by the Committee in June 2018.

## **2.0 Recommendation**

- 2.1 That the Committee notes the contents of the Addendum and agrees with the recommendation to approve, as set out in paragraph 9.1 of the Planning Committee Report. All the conditions remain relevant from the Planning Committee Report with the exception of conditions 2, 9, 10, 11 and 12 which are updated below.

## **Conditions**

2. All soft and hard landscaping incorporated in the stamped approved Drawing No.14 Rev 6 bearing Planning Authority date stamp 31<sup>st</sup> July 2018, shall be completed in accordance with these plans and the appropriate British Standard or other recognised Codes of Practice before occupation of the first residential unit in the development.

Reason: To ensure the provision of a high standard of landscape and adequate amenity space, consistent with Planning Policy Statement 7 'Quality Residential Environments'.

9. Prior to occupation of the dwellings (1, 2, 3, 20 and 21) an acoustic barrier of 2.5metres effective height shall be constructed in accordance with the specification (rendered concrete block wall, 300mm width) as submitted on Drawing No. 03 Rev 6, date

stamped 19th November 2018. The acoustic barrier shall be positioned as depicted in blue on Drawing Number 3 Revision 6 date stamped 19th November 2018.

Reason: To protect the amenity of proposed residents.

10. Prior to occupation of the permitted dwellings, the facades of the permitted dwellings shall be capable of providing a sound reduction of at least that stated within Table 1 entitled – ‘Façade Attenuation Requirements’ with respect to the transmission of noise from the exterior to the interior of the building, and shall be provided to all habitable rooms within the permitted development.

Reason: To protect the amenity of existing and proposed residents.

11. Prior to occupation of the permitted dwellings, passive and mechanical ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of at least that stated within Table 1 entitled – ‘Façade Attenuation Requirements’ when in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all habitable rooms on all façades as stated within Table 1 entitled – ‘Façade Attenuation Requirements’. Mechanical ventilators shall not have an inherent sound pressure level (measured at 1 metre) in excess of 30 dB(A), whilst providing a flow rate of at least 15 litres per second. All provided mechanical ventilators shall meet the requirements contained within, “The Building Control Technical Booklet K – Ventilation 1998.”

Reason: To protect the amenity of existing and proposed residents.

Table 1 – Façade Attenuation Requirements

Site Number as per submitted	Required Façade Attenuation	Facades orientation
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Drawing No.3 revision 6 19/11/2018	(dB R <sub>w</sub> ) (to all habitable rooms)	
1	Minimum 39	North West, East, South East
2	Minimum 39	North West, East, South East
3	Minimum 39	North West, East, South East
4	31	North East, South East
4	21	West
5	31	South East, South
5	21	West
6	31	North, East
6	21	West
7	31	East, South
7	21	West
8	31	North, East
8	21	South West
9	31	East, South East
9	21	South West
10	31	North West, North East
10	21	South West
11	31	North East, East
11	21	South West
12	31	North, West
12	21	South
13	31	North, East
13	21	South
14, 16, 18, 20	31	West

20, 21	31	North
15, 17, 19, 21	31	East

12. Prior to occupation of apartment dwellings labelled 1, 2 and 3, as presented on submitted Drawing No. 2 Revision 9 date stamped 19th November 2018, an acoustic shelter shall be constructed in the position coloured blue. The acoustic shelter shall be constructed in accordance with the specification stipulated within FR Marks & Associates Addendum to Noise Impact Assessment Document 14, date stamped 19th November 2018 in order to achieve acoustic performance properties to attenuate noise levels by a minimum of 15dBA – 20dBA.

Reason: To protect the amenity of residents.

# Addendum 3

## LA01/2015/0459/F

### 1.0 Update

1.1 Following on from email correspondence dated 8<sup>th</sup> February 2019 with Environmental Health a further consideration of the Fens Tiger case law has been provided. This specifically relates to informative 7 of the Planning Committee report and paragraph 8.26 of the Planning Committee report. Following a Northern Ireland Pollution Group meeting in January 2019 it was the consensus that a legal opinion concerning the Fens Tiger ruling should be sought through the Heads of Service Group. It was suggested at the meeting that the wording of informative 7 in its current form shall cease to be used until the legal opinion has been obtained. Although there was no formal minute of the meeting it is Environmental Health's view that that given the uncertainty concerning the implications of the ruling in relation to Statutory Nuisance, at this juncture the absence of a legal opinion, that informative 7 should be withdrawn in its current form. The Planning Authority has been advised that the wording of informative 7 should be changed to remove reference to the nuisance action element of the informative.

1.2 On this advice the wording of informative 7 which currently reads,

*“The applicant should be aware that the proposed development is located in close proximity to Barry’s Amusements. Such activities may give rise to offensive conditions and a resulting impact upon the amenity enjoyed by the proposed development due to elevated levels of distinctive noise. The applicant should be advised that nuisance action cannot be used to subsequently address these prevailing conditions and that only future increases or intensification of adverse impacts may be considered in the determination of nuisance.”*

Will be changed to read,

*“The applicant/future occupiers should be aware that the proposed development is located in close proximity to an existing amusement business, and as such associated levels of noise may be anticipated.”*

- 1.3 The proposal description as shown on page 1 of the Planning Committee report currently reads,

*“Development of one detached house, 12 semi-detached houses and 8 apartments with associated landscaping and site works.”*

This was incorrect on the Planning Committee report. This description has been amended and should read,

*“Development of 10 semi-detached houses and 11 apartments (in one block of 8 and one block of 3).”*

## **2.0 Recommendation**

- 2.1 That the Committee notes the contents of the Addendum and agrees with the recommendation to approve, as set out in paragraph 9.1 of the Planning Committee Report.



# Addendum 4

## LA01/2015/0459/F

### 1.0 Update

- 1.1 This application was presented to the Planning Committee on 27<sup>th</sup> February 2019 and was deferred until Committee was appraised of the outcome and ramifications concerning Fens Tiger case law. This legal advice has since been obtained and Environmental Health has considered same. Environmental Health stated that further to consideration it can confirm that the content of Environmental Health comments dated 14<sup>th</sup> December 2018, with suggested planning conditions and informatives remain valid. As indicated on Addendum 3 to Planning Committee report the wording of informative 7 was changed to:

*“The applicant/future occupiers should be aware that the proposed development is located in close proximity to an existing amusement business, and as such associated levels of noise may be anticipated.”*

Following on from this legal advice Environmental Health has recommended that this be changed back to the original wording which states:

*“The applicant should be aware that the proposed development is located in close proximity to Barry’s Amusements. Such activities may give rise to offensive conditions and a resulting impact upon the amenity enjoyed by the proposed development due to elevated levels of distinctive noise. The applicant should be advised that nuisance action cannot be used to subsequently address these prevailing conditions and that only future increases or intensification of adverse impacts may be considered in the determination of nuisance.”*

No further advice was provided in regard to this. A full consideration of potential noise impacts has been made under 8.20 to 8.27 of the Planning Committee report.

- 1.2 Since this application was presented to the Planning Committee on 27<sup>th</sup> February 2019 a representation was received on 1<sup>st</sup> March 2019 regarding this application. The key issues are as follows:
- The site is to be built on a block of sand, which is supported from the seaward side by the promenade wall already showing signs of distress to which the development would add.
  - The development is not in keeping with the character of the surrounding area architecturally and would create a big blot from the beach and sea.
  - Fears that prospective occupants would issue proceedings against an iconic attraction for visitors to Portrush.
  - Concern regarding the increasing number of holiday homes which lie unoccupied for a large part of the year which will be increased by this development.
- 1.3 Concern regarding construction and ground stability has been addressed in section 8.38 to 8.40 of the Planning Committee report. An assessment of impacts on character has been provided under paragraphs 8.5 to 8.9 and 8.30 of the Planning Committee report. The concerns raised in regard to the potential for potential occupiers to issue proceedings against the iconic attraction of Barry's has been addressed in paragraph 1.1 of this addendum, paragraphs 8.19 to 8.27 and 8.53 of the Planning Committee report. In regard to the concerns relating holiday homes and their occupancy we cannot be sure that the proposed dwellings and apartments would be used for holiday homes. These dwellings could be used to accommodate permanent residents.
- 1.4 A further consultation response from DFI Roads was received on 23<sup>rd</sup> May 2019 regarding this application. Within this response it was stated that as the housing layout has changed DFI Roads will require the full package of PSD drawings to be resubmitted. It was also stated that the 2.0mx 33.0m visibility splay at the access to the private parking area adjacent to Site 20 and 21 was not detailed as previously and is still required.

- 1.5 The amended PSD drawings were not submitted. Therefore the former PSD conditions that related to specific drawings are superceded by a condition requiring a PSD to be made before development commences. The required visibility splay to the parking area adjacent to Site 20 and 21 is available but has not been detailed on the plans. This can be addressed when the PSD drawings have been submitted. The wording of this condition as shown in the Erratum to Planning Committee report should be changed to,

*No development shall commence until a determination has been made under Article 3 of the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.*

*Reason: To ensure there is a safe and convenient road system within the development.*

- 1.6 As updated plans have been submitted Condition 2 regarding landscaping of Addendum 2 to the Planning Committee report should be changed to,

All soft and hard landscaping incorporated in the stamped approved Drawing No.14 Rev 7 bearing Planning Authority date stamp 19<sup>th</sup> November 2018, shall be completed in accordance with these plans and the appropriate British Standard or other recognised Codes of Practice before occupation of the first residential unit in the development.

Reason: To ensure the provision of a high standard of landscape and adequate amenity space, consistent with Planning Policy Statement 7 'Quality Residential Environments'.

- 1.7 Condition 9 relating to an acoustic barrier of Addendum 2 to Planning Committee report should be changed to,

Prior to occupation of the dwellings (1, 2, 3, 20 and 21) an acoustic barrier of 2.5metres effective height shall be constructed in accordance with the specification (rendered concrete block wall, 300mm width) as submitted on Drawing Nos. 02 Rev 9 and 03 Rev

7, date stamped 19th November 2018. The acoustic barrier shall be positioned as depicted in blue on Drawing Numbers 02 Rev 9 and 03 Revision 7 date stamped 19th November 2018.

- 1.8 Condition 13 of the Planning Committee report should be changed to,

13. The development shall not be occupied until the remedial measures specified within Section 4 of the Preliminary and Generic Quantitative Risk Assessment Report, Document 7, date stamped 7th July 2016 have been fully implemented and verified to the satisfaction of the Council"

Reason: Protection of environmental receptors to ensure the site is suitable for use.

## 2.0 **Recommendation**

- 2.1 That the Committee notes the contents of the Addendum and agrees with the recommendation to approve, as set out in paragraph 9.0 of the Planning Committee Report.