

Addendum 3

LA01/2018/1106/F

1.0 Update

- 1.1 Job creation is a relevant material consideration in assessment of the application. Paragraph 1.17 of Addendum 2 refers to information regarding the number of jobs to be provided by the proposal supplied by the Agent. It remains that case that the Agent has not responded to the Planning Department's recent request on how the figure of 80 jobs was calculated given the speculative nature of the proposal and to recalibrate this on a full time equivalent basis.
- 1.2 The Government's (Homes & Communities Agency) Employment Densities Guide 3rd edition is the recognised means to calculate potential employment figures. On the basis of the 2973 sq metre net floorspace proposed, for a retail warehouse the Employment Densities Guide produces a full time equivalent figure of 33 jobs.
- 1.3 Jobs created by the proposal are likely to be offset by those jobs lost resulting from business closures in Coleraine Town Centre which could occur arising from the proposal (see paragraph 1.5 for a list of these businesses).
- 1.4 The retail impact assessment undertaken by Nexus of behalf of the Planning Department calculates that the retail impact on Riverside Regional Centre on bulky comparison goods to be 30.9%. Riverside Regional Centre is not a designated "centre" relevant to the provisions of the SPPS in the manner that Coleraine Town Centre is. However, the retail impact is relevant in terms of the assessment of employment/ jobs resulting from the application

proposals. The calculated impact of 30.9% is very high and some existing businesses at Riverside Regional Centre may not be able to withstand the level of turnover impact and closures could occur as a result of the application proposals. Therefore the circa 33 full-time equivalent jobs created by the proposal (as estimated by the Densities Guide) are likely to be additionally offset by those jobs lost resulting from business closures in Coleraine Town Centre and potentially at Riverside Regional Centre itself.

1.5 Paragraph 1.18 of Addendum 2 states that some bulky goods businesses in Coleraine Town Centre would not be able to withstand the level of turnover impact and closures could occur as a result of the application proposals. A list of businesses is provided. This list is revised below to align with the typologies of bulky goods used by both the applicant/ agent and the retail consultant procured by the Planning Department in undertaking the retail impact assessments i.e. furniture, electrical and DIY only (and excluding, for example, clothing and footwear, small media items, household textiles, toys and recreation goods). These typologies, which are recognised by Experian (a recognised retail information source) as “bulky goods”, are the only retailing typologies on which the retail impact arising from the proposal has been assessed by either party. Relevant businesses are:

- Heart and Home, Captain Street Lower
- Lighting, Sound & Vision, Queen Street
- Community Rescue Service Charity Shop, The Diamond
- Homemakers Discount Furniture & Carpets, New Row
- McIlreavy’s Furniture, Society Street
- Pro Fit Plastics and Bathrooms, Society Street
- McCloskey Hardware, Lodge Road

- Crown Decorating Centre, Railway Road
- Elegance Interiors, Strand Road
- Wills McCloskey Door Showroom, Lodge Road
- Auld Times, Railway Place
- Just as New, Railway Place

1.6 A further Senior Counsel's Opinion by Stewart Beattie QC has been submitted on behalf of the applicant. This reviews the content of the Verbal Addendum that was presented to the previous Planning Committee meeting on 28 October 2020. This Opinion, along with that submitted previously, has been uploaded to Public Access.

1.7 The Opinion comments that both the *McClurg and Another v Department of the Environment for Northern Ireland (1990) NI 112* and the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* cases are consistent. The Planning Department provided details on the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* case as this underlines the importance of the approved plans and drawings that accompany a planning permission. This is relevant as, set out at Paragraph 1.11 of Addendum 2, the drawings that accompanied application C/2007/0587/F did not include those for "Phase 2".

1.8 The Opinion from Stewart Beattie QC comments that the factual context of the two cases are different. However, that does not change the position that in *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* Mr Justice Sullivan underlined the importance of the plans and drawings describing the building works. In summary, Mr Justice Sullivan explained that the plans and drawings describing the building works were as much a part of the description of what has

been permitted as the permission notice itself. He continued that on its face, a grant of full planning permission for building operations is incomplete without the approved plans and drawings showing the detail of what has been permitted. Lord Justice Sullivan stated that any member of the public reading such a decision notice will realise that it is incomplete, indeed quite useless without the approved plans and drawings which are a, if not the, vital part of permission.

- 1.9 The Opinion from Stewart Beattie QC refers to *Miller-Mead v Minister of Housing & Local Government (1963) 2 QB 196*. This case refers to interpretation of an enforcement notice with an emphasis on the content of the notice. This does not alter the above position set out in the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* case regarding the significance of the approved plans and drawings.
- 1.10 The Opinion from Stewart Beattie QC states that the conditions that accompanied the C/2007/0587/F planning permission are to be regarded. In assessment of the application, these conditions have been considered as a relevant material consideration. Paragraph 1.11 of Addendum 2 recognises this position. However, significant weight is not attached to them given the other specific factors outlined in the same paragraph.
- 1.11 Paragraph 1.7 of Addendum 2 states that the *McClurg and Another v Department of the Environment for Northern Ireland (1990) NI 112* case pertained to an outline planning permission. Paragraph 1.11 of Addendum 2 states that the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* pertained to a full planning permission (as is approval C/2007/0587/F). The Opinion from Stewart Beattie QC does not engage with this distinction. However, in his judgement on the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* case, Lord Justice Sullivan drew attention to the fact that the case before him referred to a full planning permission rather than outline planning permission. Therefore the judgement made in *Barnett v Secretary of State for*

Communities and Local Government (2008) EWHC 1601 (Admin) is applicable to a full planning permission, underscoring its relevance to approval C/2007/0587/F.

- 1.12 In reviewing the *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* case, the Opinion from Stewart Beattie QC states that the approval C/2007/0587/F contrasts it by expressly stating the planning use and specifically identifying the units and extent of the floorspace of each of the units. This does not change the significance of the approved plans and drawings being a, if not the, vital part of the permission as established in *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)*. Central to the issue is the absence of the approved plans showing the development subject to Phase 2 rather than plans which present a contradiction.
- 1.13 Paragraph 1.11 of Addendum 2 states that the approval C/2007/0587/F was retrospective and was granted under Article 28a of The Planning (Northern Ireland) Order 1991. This goes on to state that this means that permission was only granted for development already carried out, not further, proposed development. The Opinion from Stewart Beattie QC does not engage with this point.
- 1.14 The Opinion from Stewart Beattie QC comments that it would not be sustainable for the Planning Department to take enforcement action if the developer implemented units relying on the approval C/2007/0587/F. The Planning Department requires the advice of an independent planning barrister to consider this issue in order to inform the Planning Committee appropriately.
- 1.15 The Opinion from Stewart Beattie QC refers to another case *Johnson and another v Royal Borough of Windsor and Maidenhead; Royal Borough of Windsor and Maidenhead v Secretary of State for Housing, Communities and Local Government (2019) EWHC 160 (Admin)* which refers to the use of conditions in interpreting planning

consent. The Planning Department does not dispute the relevance of planning conditions. However, this does not diminish the significance of the approved plans and drawings being a, if not the, vital part of the permission as established in *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)*.

- 1.16 Two further representations of support have been received on the application. One from an elected member of the Council, refers to the recent closure of businesses at Riverside Regional Centre. They welcome the £4.5 million investment associated with the proposal and the creation of 80 new jobs. A further representation of support is from a coffee shop retailer at Riverside Regional Centre. They refer to the recent downturn in footfall at their premises due to lockdown periods and welcome the proposal as a means of developing Riverside Regional Centre to competing schemes in other towns.
- 1.17 A representation has been received from the property development company who owns and is progressing the Mall retail scheme in Coleraine Town Centre which now benefits from planning permission (Ref: LA01/2018/0864/F). The property development company advises that their site is not suitable for the proposal subject of this application. They add that their investment in Coleraine will not be deterred or delayed by the subject application.
- 1.18 The position of the Planning Department on the provision of jobs relevant to this proposal is set out at Paragraphs 1.1- 1.4 of this Addendum.
- 1.19 The position of the developer progressing the Mall retail scheme in Coleraine Town Centre is noted. Accordingly the site, which is referred to in Paragraph 8.14 of the Planning Committee Report, is no longer considered as a sequentially preferable site to accommodate the proposal. However, the edge of centre site at Meeting House Street in Ballymoney remains a sequentially preferable site to accommodate the proposal.

2.0 Recommendation

- 2.1 That the Committee note the contents of this Addendum and agree with a new recommendation to **defer the application** to enable the Planning Department to obtain the advice of an independent planning barrister to in turn provide advice to the Planning Committee. This recommendation supersedes that set out in Paragraph 1.1 of the Planning Committee Report.