

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2021/1545/MDA</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>28<sup>th</sup> June 2023</b>
<b>For Decision or For Information</b>	<b>For Decision – Modification / Discharge of Planning Agreement</b>

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

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

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:

	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<b><u>No:</u></b> LA01/2021/1545/MDA	<b><u>Ward:</u></b> Lurigethan
<b><u>App Type:</u></b> Modification/Discharge of Planning Agreement	
<b><u>Address:</u></b> 1 Moneyvart Cottage, Layde Road, Cushendall, BT44 0NQ	
<b><u>Proposal:</u></b> Original application reference E/1999/0168/O dated 18/10/2001 and E/2004/0476/RM dated 25/05/2005. Planning Agreement restricting the use of property to holiday letting accommodation	
<b><u>Con Area:</u></b> n/a	<b><u>Valid Date:</u></b> 21.12.2021
<b><u>Listed Building Grade:</u></b> n/a	
<b>Agent:</b>	
<b>Applicant:</b> Jennifer Morgan, 1 Moneyvart Cottage, Cushendall, BT44 0LZ	
<b>Objections:</b> 0	<b>Petitions of Objection:</b> 0
<b>Support:</b> 0	<b>Petitions of Support:</b> 0

## EXECUTIVE SUMMARY

- Consent is sought for the removal of the Article 40 Planning Agreement attached to application E/1999/0168/O and E/2004/0476/RM for 'Site for 6 no self catering holiday cottages'.
- An Article 40 Agreement (The Planning (Northern Ireland) Order 1991) made on 11<sup>th</sup> October 2001 stated the self contained accommodation units shall be used as holiday letting accommodation only, the proposed application seeks to remove this agreement.
- The site is not located within any settlement limit as defined in Northern Area Plan 2016.
- The site lies within the Antrim Coast and Glens AONB.
- The principle of the resulting development is considered unacceptable having regard to Policy CTY 1 in that it does not fall within the acceptable developments as specified in Policy CTY 1.
- The proposal is also considered unacceptable having regard to paragraph 4.9 of the SPPS.
- The application is not currently available to view on the public register. A copy of the application form is included in Appendix A of this report.
- There are no objections to the proposal.
- The application is recommended for refusal.

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

## **RECOMMENDATION**

- 1.1 That the Committee has taken into consideration and agrees with the reasons for recommendation set out in Section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE** the discharge of a planning agreement for the reasons set out in section 10.

## **2 SITE LOCATION & DESCRIPTION**

- 2.1 The site is located within a small development of holiday cottages known as Moneyvart Cottages. The site comprises the existing cottage which is a single storey building with roofspace accommodation. The cottage is attached to the cottage to its rear, which sits at right angles to No. 1. There is an area of private amenity space which serves No. 1 located to its front and enclosed by a timber board fence approx. 1m high.
- 2.2 The topography of the site is sloping with the level rising in a northerly direction, the cottage sits in an elevated position relative to its amenity space which slopes down towards the communal parking area. Access and parking are existing, in a communal, unassigned arrangement.
- 2.3 The surrounding area is rural, characterised by Moneyvart House which sits to the north west of the Cottages, and the coastal views from Layde Road. The Cottages themselves are characterised by the arrangement of the individual cottages within, as two groups of cottages all linked or attached at right angles, forming a clachan style arrangement. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation.

- 2.4 The site lies within the countryside, outside of any defined settlement development limits. The site is located within the Antrim Coast and Glens Area of Outstanding natural Beauty and also lies within the Faughil LLPA, Designation CLL 03. Designation CLL 03 states that only sensitively sited, modest scale development essential for the efficient operation of agriculture will be acceptable.

### **3 RELEVANT HISTORY**

E/1999/0168 – Site adjacent to Moneyvart Youth Hostel Layde Road Cushendall.

Site for 6 No self catering holiday cottages.

Permission Granted – 18.10.2001

E/2004/0476/RM – Land at Moneyvart, 42 Layde Road Cushendall (previously approved E/1999/0168).

6 No. Self Catering Holiday Cottages

Permission Granted – 25.05.2005

E/2007/0175/MDA – Land at Moneyvart, 42 Layde Road, Cushendall.

Modification of planning agreement (previous app E/1999/0168).

Permission Refused – 06.09.2007

LA01/2021/0483/LDE – 3 Moneyvart Cottages, Moneyvart, Cushendall.

This property is, and always has been, used as a primary residential property and has never been used as a self catering holiday cottage. Adjacent cottages are all in full time occupation as primary residences or owner occupied holiday homes.

Permission Granted – 17.06.2021

### **4 THE APPLICATION**

- 4.1 The proposal is for the removal of the Article 40 Planning Agreement restricting the use of the property to holiday letting accommodation. Original application reference E/1999/0168/O dated 18/10/2001 and E/2004/0476/RM dated 25/05/2005.

## **5 PUBLICITY & CONSULTATIONS**

### **5.1 External**

No representations have been received in relation to this application.

The application was advertised in the local press in accordance with the requirements of Regulation 4 of The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015.

### **5.2 Internal**

None

## **6 MATERIAL CONSIDERATIONS**

6.1 Section 77 (7) of the Planning Act (Northern Ireland) 2011 states that where an application is made for a planning agreement to be discharged or modified, the Authority may determine if the agreement no longer serves a useful purpose that it can be discharged.

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 RELEVANT POLICIES & GUIDANCE

Regional Development Strategy (RDS) 2035

Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 7: Quality Residential Environments

Planning Policy Statement 21: Sustainable Development in the Countryside

Development Management Practice Note 21: Section 76

Planning Agreements

## 8 CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to: legislative context, principle of development; and layout and design.

### **Legislative Context**

8.2 Planning application ref: E/1999/0168 & subsequent reserved matters E/2004/0476/RM granted permission for 6 no. self-catering holiday cottages. The planning permission was subject to a Planning Agreement under Article 40 of The Planning (Northern Ireland) Order 1991, which was made on 11<sup>th</sup> October 2001. This stated that the self contained accommodation units shall be used as holiday letting accommodation only.

8.3 An Article 40 Planning Agreement, made under The Planning (Northern Ireland) Order 1991, is a legally binding document which the owner/occupier of the land must comply with as part of the planning permission.

8.4 The existence of the Agreement formed a material consideration in the determination of the planning application by the former Department of the Environment. As the principle of this development was only acceptable on the basis that it would

provide holiday letting accommodation only, and not permanent residential accommodation, without the Planning Agreement, the application would have been refused.

### **Principle of Development**

- 8.5 This application seeks to discharge this planning agreement, thereby removing the stipulation that the self-contained accommodation be used for holiday letting accommodation only. This would allow the units to be used as permanent residential dwellings, capable of fulltime occupation.
- 8.6 Section 77 (7) of The Planning Act (Northern Ireland) 2011 states that if the planning agreement no longer serves a useful purpose it will be discharged. By 'useful purpose' this refers to it no longer being required in terms of current planning policy or other material considerations. Therefore, it is necessary to consider and assess if the current building, covered by the Planning Agreement, would be considered acceptable under current planning policies.
- 8.7 Paragraph 6.73 of the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 21 – Sustainable Development in the Countryside, Policy CTY 1 states there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations.
- 8.8 The subject development which would result in the creation of a single rural dwelling, fails to fall within the range of development considered acceptable as outlined in Policy CTY 1 of PPS 21.
- 8.9 The application form submitted with this application indicated that the reasons for applying for the removal of the Article 40 was that this unduly limits the applicants longterm use of the property and subsequent valuations. The applicant states that she has invested heavily in the area and herself and her partner have family ties locally. The applicant would like to consider in the longer term retiring to the home and the Article 40 would prevent this. The applicant states that it is an excellent development and the majority of the residents are from the area.



The applicant goes on to state that neighbours have already removed the Article 40 which sets a precedent on the site and she is aware that the Article 40 is unenforceable. The majority of the neighbours live full time at the same development and the applicant would want to be afforded the same opportunity in the future.

- 8.10 The Planning Department is aware that enforcement of the Planning Agreement may be difficult, notwithstanding this, this does not mean that the Agreement would be unenforceable. The Agreement still serves a useful purpose in restricting the use of the accommodation to holiday letting accommodation only. The Planning Approval under E/1999/0168/O clearly describes the proposal as Self Catering Holiday Cottages and an informative (No. 17) was attached to this permission advising that the application is subject to a Planning Agreement under Article 40 of the Planning (Northern Ireland) Order 1991, restricting the use of the proposed cottages to holiday letting accommodation only.
- 8.11 The planning history on the site shows one previous application, E/2007/0175/MDA for the removal of the Planning Agreement. This application was refused. The Planning Agreement remains in place at this time.
- 8.12 The planning history on the wider site shows that a Certificate of Lawful Use was granted under planning application LA01/2021/0483/LDE for No. 3 Moneyvart Cottages for its use as a primary residential property. As the use was determined to have been established for more than 5 years the LDE established the lawfulness of this use in respect of No 3 only. The Planning Department have no record of any other applications or CLUDs to establish permanent residence at the development.
- 8.13 The principle of development on this site is therefore not acceptable and contrary to Policy CTY 1 of PPS 21.

### **Layout and Design**

- 8.14 The proposed development comprises one cottage, within an existing complex of 6no. cottages in total. No.1 Moneyvart Cottages is attached to the cottage to its rear, which is orientated at right angles to No. 1. The Cottages themselves are characterised by the arrangement of the individual cottages within, as two groups of cottages all linked or attached at right

angles, forming a clachan style arrangement readily identifiable as a holiday complex. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation.

8.15 The proposal would fail to provide adequate private amenity space to the appropriate standard required for a residential dwelling in accordance with the guidance contained in Creating Places. Amenity space is only available to the front of the cottage, enclosed by a timber board fence approx. 1m high. This is considered unacceptable for this rural location and would fail to provide any private, quality amenity space for the proposal. As such the proposal is contrary to paragraph 4.9 of the SPPS.

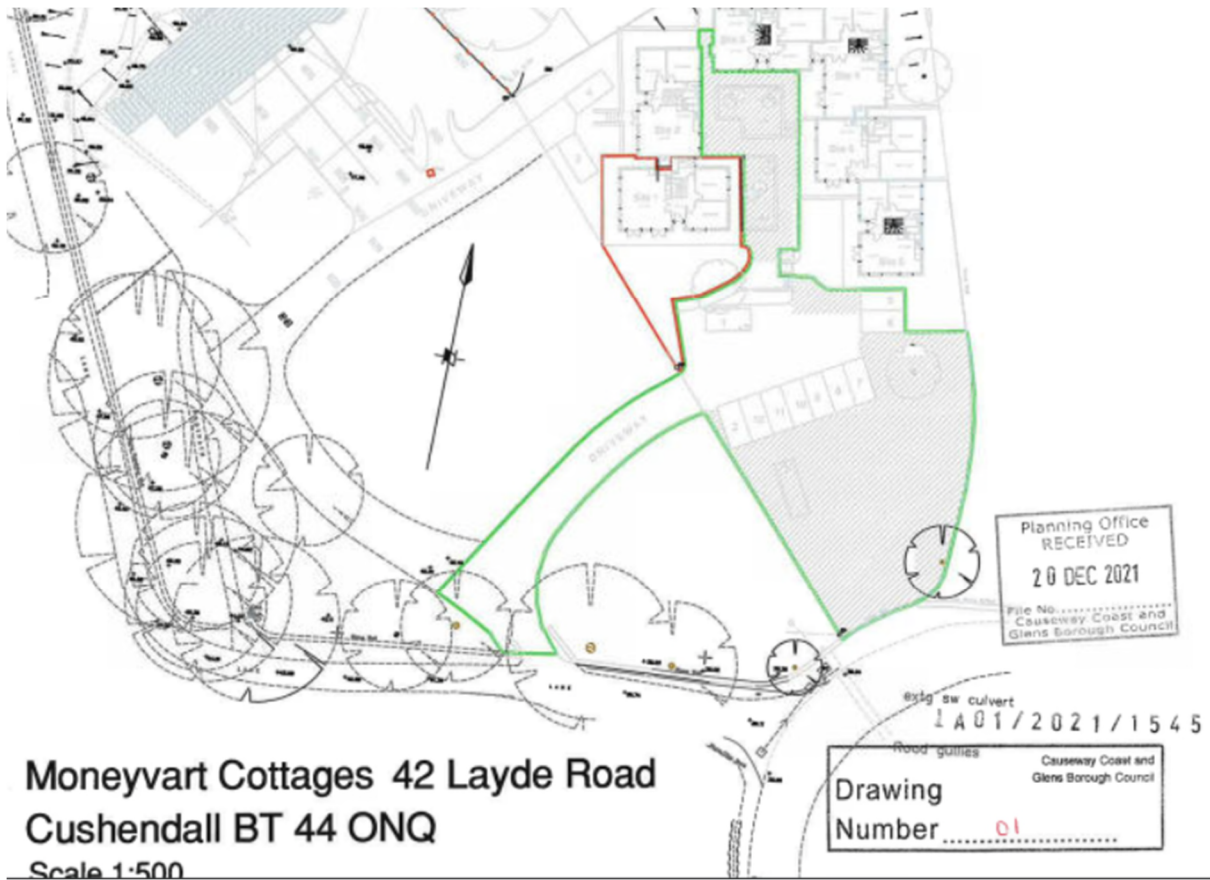
## **9.0 CONCLUSION**

9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material considerations including the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 21 – Sustainable Development in the Countryside. The proposal does not fall within one of the acceptable types of development permitted under Policy CTY1. Refusal to modify or discharge the Planning Agreement is Recommended.

## **10.0 REFUSAL REASONS**

1. The proposal is contrary to paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to paragraph 4.9 of Strategic Planning Policy Statement for Northern Ireland in that an inadequate level of private amenity space has been provided.

# Site Location



## Appendix 1 – Application Form

## Application to Modify or Discharge a Planning Agreement

This form is to be used only for modification or discharge of a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) 2011.

Please read the accompanying notes to help you complete this form.

Please complete in BLOCK LETTERS.

LA01/2021/1045

Please note that when you submit a planning application the information, including plans, maps and drawings, will appear on the Planning Register which is publicly available and, along with other associated documentation (with the exception of personal telephone numbers, email addresses or sensitive personal data), will also be published on the internet on the Public Access site ([www.planningni.gov.uk/public-access-info](http://www.planningni.gov.uk/public-access-info)). The Department for Infrastructure and the 11 Councils will process your information in line with the General Data Protection Regulations (GDPR) requirements. A copy of the full Privacy Statement is available at [www.infrastructure-ni.gov.uk/dfi-privacy](http://www.infrastructure-ni.gov.uk/dfi-privacy). To request a hard copy, please contact the relevant Data Protection Officer as listed in the statement.

**1 a. Applicant's name and address.**

**1 b. Agent's name and address (if any)**

Name:	JENNIFER MORGAN	Name:	
Address:	1 MONEYVART COTTAGE	Address:	
Town:	CUSHENDALL	Town:	
Postcode:	BT44 0LZ	Postcode:	
Tel:	[REDACTED]	Tel:	
		Ref. No.:	

**Type of Application**

*please tick*

**2 a.** Are you applying to: **Modify** a planning agreement

**Discharge** a planning agreement

**2 b. Nature of the Applicant's interest in the land**

I AM THE PROPERTY OWNER OF THE HOUSE CONCERNED.

**3. Council Employee / Elected Member Interest**

Are you / the applicant / applicant's spouse or partner, a member of staff within the council or an elected member of the council? Yes  No

Or are you / the applicant / the applicant's spouse or partner, a relative of a member of staff in the council or an elected member of the council or their spouse or partner? Yes  No

If you have answered yes, please provide details (name, relationship and role):

**Details of Agreement to be modified or discharged**

**4 a.** Address or location of the land to which the Agreement relates:

1 MONEYVART COTTAGE, LAYDE ROAD, CUSHENDALL, BT44 0LZ

**4 b.** Date on which Agreement was entered into:

18th OCTOBER 2021

**4 c.** Planning application reference:

E/1999/0168/O and E/2004/0476/RM

**4 d.** Description of Agreement:

Original Application Reference E/1999/0168/O dated 18/10/2001 & E/2004/0476/RM dated 25/05/2005  
Planning Agreement Restricting Use of Property to Holiday Letting Accommodation.

**5 a.** Please state the clauses you wish to be modified (application for modification only)

I AM APPLYING FOR THE REMOVAL OF THE ARTICLE 40.

**5 b.** Reasons for applying for modifications / discharge of the Agreement:

I WOULD APPRECIATE THE REMOVAL OF THE ARTICLE 40 AS THIS UNDULY LIMITS MY LONGTERM USE OF THE PROPERTY AND SUBSEQUENT VALUATIONS.  
I HAVE INVESTED HEAVILY IN AREA AND MYSELF AND MY PARTNER HAVE FAMILY TIES LOCALLY. I WOULD LIKE TO CONSIDER IN LONGER TERM RETIRING TO THE HOME AND UNDER THE ARTICLE 40 THIS WOULDN'T BE PERMITTED.  
IT IS AN EXCELLENT DEVELOPMENT WITH THE MAJORITY OF THE RESIDENTS FROM THE AREA. I AM ALSO AWARE THAT MY NEIGHBOURS HAVE ALREADY REMOVED THE ARTICLE 40 AND IN FAIRNESS THIS HAS ALREADY SET A PRESEDENT ON THE SITE. I AM ALSO AWARE THAT THE ARTICLE IS UNENFORCEABLE. THE MAJORITY OF MY NEIGHBOURS LIVE FULL TIME AT THE SAME DEVELOPMENT AND I WANT TO BE AFFORDED THE SAME OPPORTUNITY IN THE FUTURE.

**6. Requirements**

- 4 copies of this form, all duly signed and dated. Photocopies of the original are acceptable.
- 4 copies of a location plan to 1:2500 or 1:1250 scale, clearly identifying the land to which the agreement relates
- 4 copies of such other plans / drawings / submissions necessary to describe or illustrate the reasons for the request to modify or discharge the Agreement.
- 4 copies of the attached Certificate of Compliance fully completed.

**7. Declaration**

I / We apply to modify / discharge a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) Order 2011

Signed  Date 7th Aug 21

On behalf of (if applicable) \_\_\_\_\_

Please send your completed application to the appropriate local Planning Office or, as the case may be, the Department for Infrastructure.

## Certificate of Compliance

with the notification requirements set out in Regulation 3 of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015

### Certificate A

I certify that on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable against no person other than the applicant.

Signature of applicant or agent \_\_\_\_\_

Date 30 AUG 21

### Certificate B

I certify that the applicant has given notice to each person against whom, on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable as listed below (continue on a separate page if necessary).

Person on whom notice was served	Address at which notice was served	Date on which notice was served

Signature of applicant or agent \_\_\_\_\_

Date \_\_\_\_\_

### Certificate C

I certify that:

- the applicant cannot issue a Certificate A or B in respect of the accompanying application;
- \*\* the applicant has given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable (continue on a separate page if necessary);

Person on whom notice was served	Address at which notice was served	Date on which notice was served



- The applicant has taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. The steps taken were as follows:

*(insert description of steps taken)*

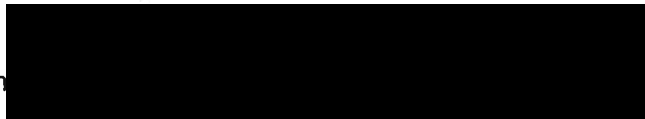
*(name of newspaper)*

*(date of publication)*

on

**\*\* Delete as appropriate**

Signature of applicant or agent



Date

3<sup>rd</sup> AUG 21

# Addendum

## LA01/2021/1545/MDA

### 1.0 Update

- 1.1 Correspondence was received via email on the 9<sup>th</sup> May 2023 from the applicant. This included a letter from the applicant and a series of correspondence from the former Department of the Environment.
- 1.2 The letter outlines that the correspondence from the former Department of the Environment confirmed that the Article 40 Planning Agreement was not registered in the Statutory Charge Register. The letter dated 25<sup>th</sup> February 2014 advised that;
  - The Article 40 Planning Agreement was not registered in the Statutory Charge Register, therefore any new owner may be able to argue that he/she was not aware of the existence of any such agreement and should therefore be bound by same.
- 1.3 The applicant confirms that, as stated at the Planning Committee, they have requested the removal of the Article 40 as they want to live permanently in the property in the next few years. They are also aware that No. 3 Moneyvart Cottage removed this condition and want to be afforded the same opportunity.
- 1.4 The applicant advises that they were unaware of the Article when the property was purchased off plan from the developer in 2007 and moved in Spring 2008. They only became aware of the existence of the Article 40 when the department issued a letter alleging a breach of the article and requesting that they cease use as a private holiday home. This investigation was completed, as detailed in letter dated 21<sup>st</sup> November 2013, and no breach of planning control was identified.
- 1.5 Further correspondence dated 25<sup>th</sup> February 2014 clarified the matter relating to the Article 40 Planning Agreement, as detailed above.
- 1.6 The applicant seeks the approval of the application as it feels unreasonable to be bound by an Article (40) that they were

unaware of at the time of purchase and has never been applied across any of the properties since its construction. They state that the majority of the properties are lived in full time by local residents and given that planning policy is moving towards limiting holiday letting to avoid difficulties for local residential housing, this removal should be viewed as a positive conclusion for the future of the Moneyvart Cottage development.

## **2.0 Consideration:**

2.1 The Planning Department confirmed receipt of the correspondence from the applicant and advised that the information would be considered as part of an addendum to the Planning Committee Report, to be presented to the Planning Committee at the earliest available opportunity.

2.2 In response to this submission, the specific circumstances surrounding the Article 40 Planning Agreement pertaining to Moneyvart Cottages are noted. The Planning Department are aware that this Agreement was not registered in the Statutory Charge Register.

2.3 Notwithstanding this fact, the use of the Cottage for permanent residential accommodation is a breach of the Planning Agreement. While it may not have been expedient to pursue this matter due to the Article 40 not having been registered, as detailed in the letter dated 25<sup>th</sup> February 2014, this does not mean that the Article 40 does not still serve a useful purpose.

2.4 The description of the approved development is;

- 6 No. Self Catering Holiday Cottages

It is quite clear that the use of the development was for self-catering accommodation and not permanent residential use.

2.5 The planning history in relation to No. 3 Moneyvart Cottages is as follows;

- LA01/2021/0483/LDE – 3 Moneyvart Cottages, Moneyvart, Cushendall. This property is, and always has been, used as a primary residential property and has never been used as a self catering holiday cottage. Adjacent cottages are all in full

time occupation as primary residences or owner occupied holiday homes. Permission Granted – 17.06.2021

A Certificate of Lawfulness for an existing use as primary residential accommodation was granted on the 17<sup>th</sup> June 2021 in accordance with Section 169 of The Planning (NI) Act 2011. The Planning Department was mistaken in its conclusion that the use as a primary residential property constituted “a breach of Planning Control” as defined by Section 131 of the 2011 Act. Rather the use of No. 3 as primary residential accommodation in fact constituted a breach of the Planning Agreement under Part 3, Section 76 of The Act. The Planning Department was misplaced in the consideration of the above under Section 169. The Cottages cannot be subject to immunity as the original permission was not subject to limitation by condition, but was instead subject to limitation by the Article 40 Planning Agreement.

- 2.6 The design and layout of the Moneyvart Cottages development is characterised by its clachan style arrangement. It is arranged as two groups of cottages all linked or attached at right angles in a tight compact form. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation. Notwithstanding the fact that the Article 40 Planning Agreement was not registered in the Statutory Charges Register, the description, along with the approved plans for the development, were clearly designed to provide self catering holiday accommodation and not permanent residential accommodation units. The development as constructed would fail to provide adequate private amenity space to the standard required for permanent residential development. The proposal is contrary to paragraph 4.9 of the SPPS.

### **3.0 Recommendation**

- 3.1 That the committee note the contents of this Addendum and agree with the recommendation to refuse the discharge of a planning agreement in accordance with paragraph 1.1 of the Planning Committee Report.