

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2020/0559/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>26<sup>th</sup> October 2022</b>
<b>For Decision or For Information</b>	<b>For Decision</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>App No:</u></b>	<b>LA01/2020/0559/F</b>	<b><u>Ward:</u></b>	<b>Portstewart</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>3 Berne Road, Portstewart</b>		
<b><u>Proposal:</u></b>	<b>External ground works to improve site access and levels, proposed canopy &amp; extraction pipe for internal ventilation and external adjoining store.</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>	<b><u>Target Date:</u></b>	
<b>Applicant:</b>	<b>Mr David Lynas</b>		
<b>Agent:</b>	<b>Shane Birney Architects</b>		
<b>Objections:</b>	<b>73</b>	<b>Petitions of Objection:</b>	<b>0</b>
<b>Support:</b>	<b>2</b>	<b>Petitions of Support:</b>	<b>0</b>

## **Executive Summary**

- Full planning permission is sought for external ground works to improve site access and levels, canopy & extraction pipe for internal ventilation and external adjoining store.
- DFI Roads has recommended refusal of the application and stated that, the proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 7, in that it would, if permitted, prejudice the safety and convenience of road users since adequate provision cannot be made clear of the highway for the parking, turning and loading / unloading of vehicles which would be attracted to the site.
- Environmental Health Services requested a noise and odour assessment which have not been provided by the applicant.
- There have been 73 objections in relation to the scheme.
- There are 2 letters of support.
- Insufficient information has been provided to address DFI Roads and Environmental Health concerns.
- Refusal is recommended.

Drawings and additional information are available to view on the Planning Portal- <http://epicpublic.planningni.gov.uk/publicaccess>

## 1.0 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 **Refuse** planning permission subject to the reasons set out in section 10.

## 2.0 SITE LOCATION & DESCRIPTION

- 2.1 The site is located at 3 Berne Road, Portstewart. The site consists of a single storey detached building used as a Café with ramps to the front and side to provide level access and a small, open cordoned off area. The building had formerly been a toilet block. The building incorporates a pitched roof orientated parallel to the road and features a projection to the front, evoking the form of a sail, which incorporates circular porthole type windows.
- 2.2 Immediately to the south of the site is a public carpark and to the north of the site is, The Berrins, a three storey apartment block comprising 6 apartments. Beyond the carpark to the south of the site is Bearnville, a three storey apartment block comprising nine apartments. The ground rises steeply beyond the eastern boundary of the site with a dwelling at the top.
- 2.3 The building is finished externally with painted render to walls, black window frames and rainwater good and low profile black slate roof tiles. External pedestrian access to the building is via a door on the southern gable. The party boundary with The Berrins is defined with a 1m pebbledash wall and a 1.8m close board fence atop a pebbledash wall. The eastern boundary is defined with a 1.4m retaining wall. The southern boundary is defined with the aforementioned cordon which comprises a rope barrier interspersed with vertical timber poles. With the exception of a short run of level access ramp the western boundary with the street is not defined.

- 2.4 The site is located within the settlement development limit for Portstewart and the eastern boundary abuts Strand Head LLPA designation PTL 07. The site is not subject to any other specific zonings or designations as set out in the Northern Area Plan 2016.

### **3.0 RELEVANT HISTORY**

C/2014/0493/F- Public Toilet Block located approximately 17m's to the Rear of No 42 Strand Road, Portstewart, BT55 7LU- Change of Use from disused toilet block to tourist/cafe outlet. Internal re-configuration, new window installation and external works- Permission Granted: 04/06/2015.

LA01/2017/0804/A- 3 Berne Road, Portstewart- Shop signage to South & West elevation- Consent Granted: 22/08/2017.

LA01/2018/1340/F- 3 Berne Road, Portstewart- Proposed external alterations to existing cafe premises- Permission granted: 02.07.2019.

### **4.0 THE APPLICATION**

- 4.1 Full Planning Permission is sought for external ground works to improve site access and levels, proposed canopy & extraction pipe for internal ventilation and external adjoining store.

#### **Habitats Regulations Assessment**

- 4.2 The application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The potential impact of the proposal on any 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 designations.

## **5.0 PUBLICITY & CONSULTATIONS**

### **5.1 External:**

73 objections from XXX objectors have been received in respect of the proposal.

Summaries of the objections are provided below.

#### **Traffic movement and parking**

- Vehicles continuously use the private access and parking areas associated with The Berrins to turn vehicles making it unsafe for children to play unsupervised.
- Existing issue with congestion and poor parking on footpaths and grass verges.
- Traffic obstructing flow and access to and from driveways
- Road safety/traffic speed
- The development will bring additional traffic to the site which has inadequate facilities.
- The owner has applied for a liquor licence, and this will increase use of the site and detract from the character of the area.
- There should be a presumption that access to the café is pedestrian only after the adjacent carpark is full.
- There should be disabled parking bays in the adjacent carpark.
- There should provide double yellow lines to discourage nuisance parking.
- The proposal will reduce space in a carpark that is already too small.
- The Council should make an arrangement with the nearby school to use parking at peak times.
- Parking on O'Hara Drive is prohibited as it is private.
- The existing issues detrimentally affect parents with pushchairs and disabled people.
- The site is not big enough for a commercial premises.
- DFI Roads has recommended refusal of the application.
- The existing issues detrimentally affect parents with pushchairs and disabled people.
- A parking survey should be completed during peak times.

- The previous approval was granted without a parking report.
- Cars using the existing café contravene the Highway Code.
- The site is not big enough for a commercial premises.
- The Café should be closed permanently.
- The figures stated in question 25 of the P1 form are inaccurate.
- Parking restriction should be introduced on Berne Road.
- The proposed scheme improves disabled access however there are no disabled parking spaces.
- The carpark is not in the ownership of the applicant so how can it be for sole use of the café.
- A parking space would block the gate in the boundary wall of Bearnville.

### **Odour and Noise**

- No Noise or odour reports have been submitted by the applicant.
- Littering is a concern due to the lack of a public waste bin and overflowing commercial bins.
- Impact on property values
- No need
- The smell of cooking is unpleasant in the morning and will get worse with the extension.
- Concerns about and increase in vermin.

Note: The objectors have submitted their own parking survey and noise and odour surveys to demonstrate that the scheme is not acceptable.

There are 2 letters of support with this application.

## **5.2 Internal:**

DFI Roads: Object to the proposal

Environmental Health: Request additional information

Historic Environment Division (HED): No objections

DFI Rivers: No objections

NIEA- Water Management Unit: Request additional information

NIEA Marine and Fisheries: No objection

## **6.0 MATERIAL CONSIDERATIONS**

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

## **7.0 RELEVANT POLICIES & GUIDANCE**

The Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)



PPS 3 - Access, Movement and Parking

PPS6- Planning, Archaeology and the Built Heritage

Planning Strategy for Rural Northern Ireland

## **Supplementary Planning Guidance**

DCAN 4 – Restaurants, Cafes and Fast Food Outlets

Development Control Advice Note 15 Vehicular Access Standards

## **8.0 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to the road safety, parking and traffic matters, odour and potential noise concerns, visual amenity.

### **Planning Policy**

- 8.2 The proposal must be considered in line with the SPPS, PPS policy documents and the supplementary planning guidance specified above.

### **Visual amenity**

- 8.3 The proposal is for external ground works to improve site access and levels, proposed canopy & extraction pipe for internal ventilation and external adjoining store.
- 8.4 The scheme involves a single-storey store to the north of the site. A new canopy to the south and higher ground levels for access purposes for pedestrian access. The canopy will result in more customers to the site and a new extraction flue has been proposed on the roof of the building. From a visual perspective the design of the building will remain largely the same as what has been previously approved.

- 8.5 In terms of the proposed canopy, extension and ground level alterations these will not impact upon the streetscape it is noted that the open sided canopy will not come any further forward than the boundary wall associated with Bearnville. The canopy, extension, flue and ground level alterations will not be detrimental to the streetscape due to its modest scale, open design and natural materials and will make a positive contribution as per policy DES2 from a design and visual amenity perspective.

### **Road safety, Parking and access**

- 8.6 DFI Roads was consulted in reference to the application and stated the following in reference to the application: On the previous planning application for this site ref. LA01/2018/1340/F DFI Roads pointed out that additional car parking was required for the extension to the premises and did not recommend approval. This proposal is for a further extension which will require additional car parking. As no details of existing /proposed car parking or servicing have been provided, DFI Roads recommend the following refusal reason:

*The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 7, in that it would, if permitted, prejudice the safety and convenience of road users since adequate provision cannot be made clear of the highway for the parking, turning and loading / unloading of vehicles which would be attracted to the site.*

- 8.7 The objectors have submitted a parking and road safety survey which concluded that there is very limited available parking on the Berne Road within the vicinity of the site to service the proposed development. They ask that the applicant s demonstrate that the proposed developments will meet the relevant parking standards and to adequately demonstrate how their proposals will be in accordance with the published standards, will not prejudice the safety and convenience of road users.
- 8.8 The applicant has not addressed DFI Roads concerns and has not demonstrated that the scheme is acceptable in terms of road safety, parking and access matters pertaining to the site. DFI Roads has clearly stated that the applicant has been

unable to demonstrate that the scheme is in compliance with current policy provisions.

### **Amenity and Surface Water concerns**

- 8.9 The Environmental Health Department was consulted in relation to the scheme and have stated that no odour or noise impact assessment has been submitted by the applicant to demonstrate that the development will have no effect on nearby residential receptors. Environmental Health state that as no information regarding potential noise and odour impacts has been submitted by the applicant to support this application. In previous applications where commercial extraction was proposed the applicant was made aware of the need for such assessments.
- 8.10 Environmental Health acknowledges the odour and noise assessments submitted by the objectors and states that: "The noise assessment has considered the existing noise emanating from the site and referred to relevant standards, namely BS4142:2014, WHO Guidance on Community Noise and BS 8233:2014- Guidance on Sound Insulation and Noise reduction in Buildings. A noise survey was conducted between 21 & 27 July 2020 and it was determined that the daytime and night-time background noise levels were 46dB and 39dB respectively. The noise report suggests that current noise standards are being exceeded on site.
- 8.11 Environmental Health also state that the objectors' consultants have referred to DEFRA documentation Guidance on Control of Noise and Odour from Commercial Kitchen Exhaust Systems. It is appreciated that the consultancy are not in a position to fully assess the odour impact, as they are not acting on the applicant's behalf but they have identified that the topography of the site and proximity of adjoining buildings will make it difficult to achieve adequate dispersion. The number of covers represent an increase on existing numbers and the method of cooking has not been confirmed.
- 8.12 EHD advised that following a review of the complaint history, it was noted that they have received no complaints relating to noise associated with this premises. However, they have

received a complaint relating to food odours alleged to be emanating from this premises but was unable to substantiate this claim due to being unable establish communication with the complainant.

- 8.13 The proposal requires the submission of both a noise and odour assessment which has been requested on numerous occasions and failed to have been submitted. Figures on the P1 Application Form show that the proposal anticipates an increase in customers by 50% (currently 120 and increasing by 60 to 180). This is a significant level of intensification that could give rise to both noise and odour issues by reason of the increased level of activity. Regarding noise, the external seating/ pergola area is likely to have limited, if any, noise attenuation. This combined with the upgraded mechanical ventilation system for the kitchen, the details of which are not specified, could have an adverse effect on neighbouring residential receptors by reason of unacceptable noise. Therefore, a noise report is required to objectively assess this impact.
- 8.14 Regarding odour, as set out above, the details of the upgraded mechanical ventilation system are unspecified. Details of this system are required, accompanied by an odour report to demonstrate the acceptability of performance of this system so that it does not have an adverse effect on neighbouring residential receptors by reason of unacceptable odour. No information has been submitted to assess the potential impact on nearby residential properties. Refusal is recommended.

## **9.0 CONCLUSION**

- 9.1 The proposal is unacceptable in that insufficient information has been presented to the Planning Department to address, DFI Roads, Environmental Health and NIEA concerns. The applicant has not presented and relevant reports to address these concerns having regard to the Northern Area Plan 2016 and other material considerations including the SPPS and PPS 3. Refusal is recommended based on the consultation responses and lack of information.

## **10 Reasons**

1. The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 7, in that it would, if permitted, prejudice the safety and convenience of road users since adequate provision cannot be made clear of the highway for the parking, turning and loading / unloading of vehicles which would be attracted to the site.
2. The proposal is contrary to Development Control Advice Note 4 Restaurants, Cafes and Fast food outlets and paragraph 4.11 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) in that it has not been demonstrated that the development would not be likely to harm residential amenity in the area due to potential noise and odour impact and insufficient information has been submitted in the form of a noise and odour assessment which may include appropriate mitigation or compensation measures.

# Site Location



# Addendum

## LA01/2020/0559/F

### 1.0 Update

- 1.1 The application was deferred at the October Planning Committee. Members voted to defer the application for one month only to allow all outstanding information to be submitted. The information that was required is as follows:
- 1) An amended P1 form to describe the works as retrospective
  - 2) An odour assessment
  - 3) Noise assessment
  - 4) Response to DFI Roads refusal reason and Objectors comments/survey.
- 1.2 A noise and Odour impact assessment was submitted 6<sup>th</sup> December 2022 and consultation was carried out with Environmental Health Department.
- 1.3 A revised P1 form was submitted 19<sup>th</sup> December. Re advertisement was carried out 1<sup>st</sup> January 2023.
- 1.4 Two further letters of objection were received raising the following issues: application does not respect the previous permission in the type of food to be provided; commercial extraction system; increase in volume of traffic; HGVs have to reverse along the access road, traffic safety; protracted application; road safety issues failed to be addressed.

## **2.0 Assessment**

- 2.1 Environmental Health advised in their consultation dated 21<sup>st</sup> December 2022 that the odour risk from the proposed kitchen facility/extraction system was classified as high. To further assess the impact on residential properties they requested further information.
- 2.2 The submitted noise assessment was also reviewed in conjunction with the noise assessment submitted by the objectors. On review of the background levels, no complaints having been received and the hours of operation, it is recommended that the refusal reason relating to noise can be removed.
- 2.3 Following the assessment by Environmental Health the reference to noise issues has been removed from the refusal reason as set out below:

The proposal is contrary to Development Control Advice Note 4 Restaurants, Cafes and Fast food outlets and paragraph 4.11 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) in that it has not been demonstrated that the development would not be likely to harm residential amenity in the area due to potential odour impact and insufficient information has been submitted in the form of an odour assessment which may include appropriate mitigation or compensation measures.

- 2.4 A further email was sent 2nd May 2023 to the agent seeking the additional information requested by Environmental Health. This information along with the further information relating to the DFI Roads refusal reason and Objectors comments/survey is still outstanding and beyond the one month afforded to the agent to submit by the Planning Committee Members.
- 2.5 The objection points have been fully addressed in the Committee report.

## **3.0 Recommendation**

- 3.1 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application in accordance with sections 1 and 9 of the Planning Committee report.



# **Addendum 2**

## **LA01/2020/0559/F**

### **1.0 Update**

- 1.1 The application was deferred on a second occasion at the August Planning Committee meeting to allow consideration of an odour assessment submitted 22<sup>nd</sup> August 2023.
- 1.2 The agent also advised in August that an amended P1 form was required, this was submitted 19<sup>th</sup> December 2022 and the description amended to include retrospective.
- 1.3 In response to the DFI Roads refusal reason relating to car parking the agent has stated:

“With regards to DFI Roads the premises has always been a cafe and there is no intention to increase internal seating beyond that illustrated 26-28? The parking was overruled previously and would presume it would be the same stance as it is essentially the same facility with the additions of facilitating walking trade on coastal route.”

### **2.0 Assessment**

- 2.1 The odour assessment advises that; the size of the kitchen is small and provides between 30 and 100 covers or medium sized takeaway. On the basis of the mitigation measures, odour impact is anticipated to be low. Environmental Health recommend that conditions are used for any subsequent approval to protect residential amenity.
- 2.2 The parking and road safety study submitted by the objectors who employed their own consultants carried out surveys in 2020. The survey highlights the issue of congestion for service vehicles and traffic with cars parking on the footpaths and roads, blocking access to their residential properties and footpaths. The consultant’s report was accompanied by photographs demonstrating the extent of on street parking.

In response to this and the DFI Roads refusal reason, the agent has submitted the statement set out above in paragraph 1.3.

- 2.3 It has always been accepted by Planning that the café will also be used by people walking along the coastal path. However, as set out in the Planning Committee report in paragraphs 8.6 to 8.8 it is considered that the works in the provision of fixed external seating and the fixed canopy will result in more customers to the site requiring additional car parking. The submitted P1 form indicates an increase in cars attending from 6 to 12. The number of persons attending the premises daily to increase by 60 from 120 to 180 persons. No persuasive rebuttal/evidence to the traffic and parking problems experienced and presented in the objectors survey / objections and DFI Roads objection has been submitted to allow a change in the recommendation to refuse.

### **3.0 Recommendation**

- 3.1 That the Committee note the contents of this Addendum and agree with the recommendation to: withdraw refusal reason 2 set out in section 10 of the Planning Committee Report, and to Refuse the application in accordance with refusal reason 1 of section 10 of the Planning Committee Report.