

Title of Report:	Planning Committee Report – LA01/2016/0127/F
Committee Report Submitted To:	Planning Committee
Date of Meeting:	22/05/2024
For Decision or For Information	For Decision
To be discussed In Committee YES/NO	No

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

Budgetary Considerations	
Cost of Proposal	Nil
Included in Current Year Estimates	NO
Capital/Revenue	N/a
Code	N/a
Staffing Costs	N/a

Legal Considerations	
Input of Legal Services Required	NO
Legal Opinion Obtained	NO

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	No	Date:
	EQIA Required and Completed:	No	Date:

Rural Needs Assessment (RNA)	Screening Completed	No	Date:
	RNA Required and Completed:	No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	No	Date:
	DPIA Required and Completed:	No	Date:

No: LA01/2016/0127/F

Ward: Magilligan

App Type: Full Planning

Address: 235m S E of 75 Duncrun Road, Magilligan, Limavady

Proposal: Retrospective farm diversification scheme to include fishing lakes, amenity building plus parking area

Con Area: n/a

Valid Date: 26.01.2016

Listed Building Grade: n/a

Target Date: 23.08.2016

Agent: D M Kearney Design, 2a Coleraine Road, Maghera, BT46 5BN

Applicant: Mr and Mrs George Canning, 76 Duncrun Road, Limavady, BT49 0JD

Objections: 0 **Petitions of Objection: 0**

Support: 1 **Petitions of Support: 0**

Executive Summary

- The proposal is a Retrospective farm diversification scheme to include fishing lakes, amenity building plus parking area.
- As a major application this proposal was subject to the Proposal of Application Notice (PAN) process and the public consultation laid out within that before the application was submitted.
- No objections have been received regarding the proposed development. All concerns raised by the statutory consultees have been addressed and the required mitigation will be dealt with by the proposed conditions attached.
- One letter of support has been received
- The proposal has been assessed against the relevant policy, mainly the SPPS and Planning Policy Statement 21, Policy CTY11: Farm Diversification, and has been found acceptable in terms of the character and scale of the proposal, the potential impact on the natural and built environment and upon the residential amenity of nearby resident.
- The development poses a flood risk to buildings, lands and transportation routes downstream of the lakes in the event of a dam failure/uncontrolled release of water. However, it has been demonstrated that the lakes and embankments have been constructed in an appropriate manner and are in good condition. the risk of dam failure is small with appropriate management and maintenance regimes to be put in place. In the event of a dam failure the risk to buildings, public safety and transport routes has been demonstrated to be acceptably low.
- The proposal is considered acceptable at this location having regard to the Northern Area Plan 2016 and all other material considerations.
- Approval is recommended subject to the proposed conditions.

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

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

2.0 SITE LOCATION & DESCRIPTION

- 2.1 The application site is located at lands 235m S E of 75 Duncrun Road, Magilligan, Limavady. Access to the application site is via an existing track to the immediate west of No. 75 Duncrun Rd. The application site contains a car park and amenity building to the north western side of the lakes, located on the crest of a slope. The lakes are sited in a pre-existing concave section of landscape, surrounded to the north by a vegetated embankment and to the south the forested foothills of Binevenagh, rising agricultural lands to the west and wooded lands to the east. The application site is sympathetically sited within the landscape with views of the proposed generally unattainable from the surrounding road network.
- 2.2 The application site is located within the rural area, outside of any settlement limit as defined in the Northern Area Plan 2016, and is within the designated Binevenagh AONB. The surrounding landscape is predominately characterised by a mix of agricultural lands and forested areas along the foothills of Binevenagh Mountain. The application site is located within a rising and undulating landscape, rising from the low-lying flat lands, of Magilligan, to Binevenagh Mountain to the south of the application site. There is considerable roadside development along the Duncrun Rd, comprises a mix of farm complexes and dwellings houses. Several historic monuments and archaeological sites are located within the application site and within the surrounding area. The site is not located within other designated sites but is hydrologically linked to Lough Foyle Special Protection Area (SPA)/ Ramsar/ ASSI and Magilligan Special Area of Conservation (SAC), and a short distance from Binevenagh Special Area of Conservation (SAC)/ASSI and Nature Reserve.

3.0 RELEVANT HISTORY

- 3.1 LA01/2015/0737/PAN - 235m S.E. of no.75 Duncrun Road, Magilligan, Limavady - Retrospective farm diversification scheme to include fishing lakes, amenity building, services bays for 4 touring caravans, plus parking area – PAN Acceptable 26.10.2015.
- 3.2 LA01/2018/1396/F - 300m S E of 75 Duncrun Road, Limavady - Farm diversification scheme incorporating three units of tourist self-catering accommodation and campsite – Current Application.
- 3.3 LA01/2023/0141/F - 55m SW of 75 Duncrun Road and finishing 125m SE of Duncrun Road Limavady - New 1 Span Of 11kv Overhead Line Starting 55m SW Of 75 Duncrun Road And Finishing 125m Se Of 75 Duncrun Road Plus Approximately 175 Metres Underground Cable For New Electricity Supply - Crossing Townland: Duncrun. Total Length: 106m - 2 New Wood Poles, 175m Underground Cable – Current Application

4.0 THE APPLICATION

- 4.1 The proposal seeks retrospective approval for a farm diversification scheme to include two fishing lakes. Both lakes are fed from natural springs with the smaller, western lake also feeding the larger eastern lake, with the outfall for the lake located in the south-eastern corner, feeding into an existing watercourse. The proposal includes a small amenity building providing kitchen, office and WC facilities and a reception area. Access to the site is via a laneway from the Duncrun Rd which leads to the amenity building and associated parking area.
- 4.2 During the processing of the application significant works and alterations to the lakes have been carried out, primarily to reduce the overall volume and to address structural integrity concerns.

Environmental Impact Assessment

- 4.3 This proposal was subject to an environmental impact assessment screening as required by The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017).

- 4.4 The application was considered to fall within Schedule 2: Category 10(i) of the Regulations- Dams and other installations designed to hold water or store it on a long-term basis.
- 4.5 On 10th December 2020 the Council concluded that the proposed development could result in significant environmental effects by reasons of the inundation of lands, buildings and transport routes and associated risk to human life from an uncontrolled release of water from the lakes in the event of a failure in the retaining structures, and subsequently the application should be accompanied by an Environmental Statement.
- 4.6 The applicant submitted an appeal to the Planning Appeals Commission against the Council's EIA Determination. During the appeal process significant works were undertaken on the site and additional information submitted to address the issues raised within the Determination. In assessing the information, the PAC concluded that the development currently present on the application site would not have significant effects on the environment and did not require the submission of an Environmental Statement.
- 4.7 The Planning Department accepted the recommendation of the PAC and advised the applicant on 11th May 2023 that an Environmental Statement was not required for the application.

Design & Access Statement

- 4.8 A Design & Access Statement is required under Article 6 of the Planning (General Development Procedure) Order (NI) 2015 as the application is considered to be a major application.
- 4.9 The Design and Access Statement is to provide details of the design principles and concepts that have been applied to the development and how issues relating to access to the development have been dealt with.
- 4.10 The Design and Access Statement details how the design of the development was considered to make use of the existing topography and natural vegetation cover to create a major tourist attraction within a sensitive landscape with minimal impact.

- 4.11 Access to the site is via the re-use of an existing access onto Duncrun Rd. The proposed access is to be constructed in accordance with DFI Roads' requirements. The development makes provision for people with disability in the form of wheelchair access and dedicated disabled facilities within the amenity building.
- 4.12 The Design and Access statement demonstrates that the applicant has undertaken detailed consideration of the proposal in terms of the design principles and concepts.

5.0 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours:** 2 identified addresses were notified.
- 5.2 There were no objections to this proposal and one letter of support.

The letter of support outlines the positive impact the proposal will have for tourism within the area and that the development blends with its surroundings without adverse impact on the Area of Outstanding Natural Beauty

Internal Consultation

- 5.3 **Dfi Roads:** No objections
- Northern Ireland Water:** No objections
- Environmental Health:** No objections
- Historic Environment Division – Historic Monuments:**
Concerns regarding destruction of archaeological site
- DAERA Water Management Unit:** No objections
- DAERA Natural Environment Division:** No objections
Conditions & Informatives provided.
- DAERA Environment, Marine & Fisheries Group:** No objections
- Shared Environmental Services:** No objections
- Loughs Agency:** No objections

DFI Rivers: Advice provided

DAERA(DARD): No objections

DfE Geological Survey (NI): No objections

Translink: Initial Concerns – No Final Comments submitted

Proposal of Application Notice

- 5.4 As this application is considered a major application, it must comply with the Proposal of Application Notice and carry out community consultation at least 12 weeks prior to the submission of the application.
- 5.5 A Proposal of Application Notice was received by the Council on 5th October 2015 under LA01/2015/0737/PAN.
- 5.6 The applicant advised that they intended to undertake the following forms of consultation:
- Public meeting to be held in the amenity building adjacent to the Duncrun Fishing Lakes, Duncrun Rd, Magilligan on the 21st October 2015.
 - Advertisement of public event in local newspapers the week commencing 5th October 2015.
 - An information leaflet issued to residential properties along the Duncrun Rd and local Spar shop.

Community Consultation Report

- 5.7 The community consultation report was submitted as part of the planning application, received on 26th January 2016 which is more than 12 weeks after the Proposal of Application Notice was received, as required by the legislation.
- 5.8 Copies of the following have been provided in the report:
- Copy of Public Consultation Newspaper Advertisement;
 - Copy of Public Consultation notification placed in public buildings in Magilligan
 - Copy of advertisement leaflets;

- List of matters raised at Public Consultation Meeting.
- List of Attendees at Public Consultation Meeting.

- 5.9 The public meeting took place on 21st October 2015 at 7pm in the amenity building adjacent the fishing lakes. The planning agents and applicants were available during the public event to discuss the proposal. The public event focused on the planning process and the need for retrospective planning given the works had largely been completed. The meeting was attended by 30 people, as per the signed attendance sheet. Information leaflets were available at the event which provided information on the operating times, facilities available at the site and pricing. The report outlines that all comments received at the meeting were supportive of the proposal outlining the high quality of facilities provided, accessibility for disable people, extended angling season, job creation, increased tourism and visitor spend/inward investment.
- 5.10 Overall, sufficient evidence has been provided to demonstrate that appropriate consultation has been carried out to show compliance with section 27 of the Planning Act (Northern Ireland) 2011.

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 the Northern Area Plan 2016 (NAP). The site falls within the Binevenagh AONB as indicated in the plan.
- 6.3 The site is not within any European designations. However, it is hydrologically linked to the Lough Foyle Special Protection Area (SPA)/ Ramsar/ Area of Special Scientific Interest (ASSI) and Magilligan Special Area of Conservation (SAC)/ASSI. The site is also a short distance from Binevenagh Special Area of Conservation (SAC)/ASSI and Nature Reserve which are of international and national importance.

- 6.4 The Regional Development Strategy (RDS) is a material consideration.
- 6.5 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.
- 6.6 Due weight should be given to the relevant policies in the development plan.
- 6.7 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)

Planning Policy Statement 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 6: Planning, Archaeology and The Built Heritage

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

Planning Policy Statement 15: Planning and Flood Risk

Planning Policy Statement 16: Tourism

PPS 21: Sustainable Development in the Countryside

Supplementary Guidance

8.0 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to: the Principle of Development, Access and Parking, Flood Risk, Tourism and Open Space, Sport and Outdoor Recreation.

Principle of development

- 8.2 The Both the SPPS and Policy CTY1 of PPS21 set out the range of type of development which are considered to be acceptable in principle in the countryside. One type of development considered to be acceptable is farm diversification projects in accordance with the SPPS and Policy CTY11 of PPS21.

- 8.3 CTY 11 states that Planning permission will be granted for a farm or forestry diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm. The following criteria will apply:
- (a) the farm or forestry business is currently active and established;
 - (b) in terms of character and scale it is appropriate to its location;
 - (c) it will not have an adverse impact on the natural or built heritage; and
 - (d) it will not result in detrimental impact on the amenity of nearby residential dwellings including potential problems arising from noise, smell and pollution.

Proposals will only be acceptable where they involve the re-use or adaptation of existing farm buildings.

- 8.4 Exceptionally, a new building may be permitted where there is no existing building available to accommodate the proposed use, either because they are essential for the maintenance of the existing farm enterprise, are clearly unsuitable for adaptation and re-use or cannot be adapted to meeting the requirements of other statutory agencies. Where a new building is justified, it should be satisfactorily integrated with an existing group of buildings.
- 8.5 Within the supporting statement it is outlined that the applicant's farm business involves farming 130 acres and rears beef cattle. The applicant also grew vegetables to supply local market. However, due to health reasons, ceased producing vegetables and has sought an alternative method of subsidising the farm business. Policy CTY 11 does not clarify the term 'run in conjunction with'. However, Paragraph 7.24 of PPS21 outlines that the policy aims to promote forms of diversification which are sustainable, including suitable tourism or agri-tourism schemes. Given the nature and scale of the proposal in relation to the farm business officials are content that the proposal will operate in conjunction with the farm business.

(a) the farm or forestry business is currently active and established;

8.6 As part of the planning application submission, the applicant has completed the P1C Form and provided a copy of their farm maps. The P1C form outlines that the farm business was established 2-3 generations ago and provides the applicant's Business ID Number and Herd Number. DAERA (formerly DARD) were consulted and have confirmed that the applicant's Business ID number has been in existence for more than six years and that the business has claimed Basic Payment Scheme or other Agri-Environment scheme in each of the last six years. Criteria a has been met.

(b) in terms of character and scale it is appropriate to its location;

8.7 The application site is located within the designated Binevenagh AONB, an area which is of high scenic quality. The application site is located within the foothills of Binevenagh Mountain which is a significant landscape feature.

8.8 The application site is located at an elevated position above the Duncrun Rd within an undulating landscape. The natural topography of the site lends itself to the proposed development by accommodating the two lakes and surrounding paths within a natural hollow, surrounded by rising lands and mature vegetation, which enclose the development and screen views from the surrounding road network.

8.9 The proposed amenity building comprises a single storey building with a linear floorplan and small rear return. The building has a footprint measuring 11.1m X 5.7m, with the rear projection extending to 2.57m x 2.5m, and a ridge height of 3.4m above ground level. The building is finished in timber cladding to the walls and green metal cladding to the roof. The amenity building is sited to the north west of the lakes in front of the mature vegetation. However, the building is set back from the crest of the hill leading up from Duncrun Rd, and due to its modest scale is not visible from the Duncrun Rd. Likewise, the car parking area sits back from the crest of the hill and is not visible from the Duncrun Rd. Given the siting and scale of the proposed development the proposal will be satisfactorily integrated into the landscape with no

adverse visual impacts and will not have a detrimental impact on the rural character or detract from the visual amenity or setting of Binevenagh or the wider AONB. Criteria b has been met.

(c) it will not have an adverse impact on the natural or built heritage; and

- 8.10 There are no identified listed buildings, Historic Park, Garden and Demesnes or Industrial heritage features within the immediate vicinity of the application site.
- 8.11 The application site is located in an archeologically sensitive landscape with a significant concentration of archaeological sites and monuments in the vicinity. Within the limits of the application site there are two archaeological sites recorded in the Department's Sites and Monuments Record. LDY 005:011 consists of a substantial flint scatter likely to represent the remains of significant Bronze Age (c. 2500- 500 B.C.) activity in the area and is an likely indicator of settlement and/or industrial activity at this location. LDY 005:012 may represent the remains of an Early Christian souterrain.
- 8.12 Within their initial consultation response HED Historic Monuments (HM) advised that the retrospective work will have had a direct adverse impact on two recorded archaeological sites. Historic Monuments advised that development works cease immediately until such time as the applicant commissioned a developer-funded programme of archaeological works. This was to identify and record any further archaeological remains located at the site which may be impacted upon by development works. In addition, given the nature of previous groundwork at the site, HED:HM advise that the programme of work includes an archaeological assessment of extant spoil heaps so as to facilitate the recording of any archaeological remains, disturbed during previous work on site.
- 8.13 An Archaeological Programme of Works was submitted by the applicant which advised that the proposed development was fully retrospective with works being complete and no spoil heaps evident and no further survey works were possible at that time.

- 8.14 Further consultation with HM advised that site LDY005:012 relates to a hole in a field recorded after a night of heavy rain. Although originally suspected to be a souterrain, this is probably not archaeological in nature.
- 8.15 HM advise that on the basis of the recorded information about LDY005:011, the archaeological site would appear to have been destroyed, although it is unclear what the nature and magnitude of this archaeological impact was. However, having reviewed the case HM would consider there may be potential for the survival of archaeological material associated with LDY005:011 within any topsoil spoil heaps which remain on site. Consequently, some remedial archaeological mitigation in the form of the evaluation of in-situ spoil heaps would be possible in the context of any approval granted to this scheme as per Policy BH4 of PPS6.
- 8.16 While it appears that the proposal may have destroyed an archaeological site of local importance and would therefore be contrary to Paragraph 6.9 of the SPPS Policy BH2 of PPS6, the exact extent of impact is unknown. Refusal of the application will not remedy this issue. However, HED has advised that archaeological mitigation is possible at the site which would identify and record any artefacts associated with the site. On this basis, subject to further archaeological investigation, the proposal is considered acceptable.
- 8.17 The application site is in close proximity/hydrologically linked to the following national, European and international designated sites:
- Lough Foyle Ramsar, which is designated under the Convention on Wetlands of International Importance, Ramsar 2.2.1971 (as amended);
 - Lough Foyle SPA, Binevenagh SAC, River Roe and Tributaries SAC and Magilligan SAC, which are designated under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended);
 - Lough Foyle ASSI, Binevenagh ASSI, River Roe and Tributaries ASSI and Magilligan ASSI, which are declared under the Environment Order (Northern Ireland) 2002.
- 8.18 Initial consultation with natural heritage bodies including NIEA, Shared Environmental Services, Loughs Agency highlighted

concerns regarding potential detrimental impacts on designated sites primarily through degradation of adjacent aquatic environment from contaminated runoff during construction and operational works, other polluting discharges and the potential release of fish stock to aquatic environment and its impact on designated site selection features (Atlantic Salmon).

- 8.19 Through an extensive consultation process, the applicant was requested to provide additional information to address concerns in regard to the aforementioned designated sites. A Construction Environmental Management Plan was requested to indicate how proposed works in proximity to the watercourse would be managed to prevent pollution. Despite being largely retrospective, some works remained to be completed such as construction of the headwall at the outfall. The finalised CEMP contained appropriate mitigation measures to be put in place with regards to works in proximity to the watercourse including silt fencing, spill kit locations etc.
- 8.20 Additional information was sought in regard to the management of the lakes and the fish stock. The primary concern related to the use of chemicals to treat the water in the lakes, the use of supplementary feed for the fish and the use of antibiotics in the lakes to treat disease and the potential release of fish stock to the aquatic environment and the potential impact this could have on Atlantic Salmon, a selection feature of the River Roe and Tributaries SAC, through competition for food and through infection/disease. It was advised through the consultation process that the lakes was required to operate a closed system to prevent the release of fish from the lakes.
- 8.21 The applicant provided information in respect of the operation of the lakes outlining that the fish (trout) were bought from Glens of Antrim Trout Farm which is a regulated fish stock supplier and that as the fish are bought from a regulated supplier, disease control measures are already in place to ensure fish are healthy and disease free on arrival. The lakes are stocked at a rate of a maximum 100 per month and there is no supplementary feeding of fish or antibiotics added to lakes. The applicant provided photographic evidence of a fish screen in place at the outfall to prevent the release of fish from the lakes. As the lakes are fed by

natural springs there is no water treatment required (chemicals/silt removal).

- 8.22 Following consideration of all information, the relevant consultees are content that the proposal will not significantly impact designated sites subject to the implementation of appropriate mitigation contained within the planning conditions and that the relevant Guidance for Pollution Prevention (GPP) documents are adhered to in addition to the recommendations outlined below.
- 8.23 This planning 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) by Shared Environmental Services on behalf of Causeway Coast and Glens Borough Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.
- 8.24 Having considered the nature, scale, timing, duration and location of the project it is 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.
- 8.25 DAERA Natural Environment Division raised concerns regarding the impact of development on protected/priority species and associated loss of habitats. A badger and bat survey was submitted which included a Phase 1 habitat survey of the application site. The survey found no evidence of badgers foraging or habitation within the site or 50m buffer. While retrospective, the survey advises that the likelihood is that if there were badger setts in the vicinity of the site they would have been located within the adjacent woodland rather than the agricultural fields and would not have been disturbed.
- 8.26 The bat roost potential survey comprised of a site walk-over and an emergence/re-entry survey of the amenity building which was classified as having negligible potential. Four species of bat were recorded during the surveys. Without the baseline data for species it is difficult to assess the impact/change since construction. The area would have been low value for feeding and foraging bats and

indeed the creation of the lakes may have benefited bats, especially Daubentons with the creation of feeding habitat.

- 8.27 During the application, the loss of habitat was queried with the applicant confirming that no mature trees were removed during the construction process with the only vegetation removal being sections of whin/gorse. Re-consultation was carried out with Natural Environment Division following submission of the relevant requested information. The most recent consultation responses outline no objections in relation to protected/priority species and habitats.
- 8.28 Taking account of the above the proposal will not result in any unacceptable adverse effects on features of natural heritage importance, and the proposal meets with Criteria C and with the relevant nature conservation policies contained within the SPPS and PPS2 – Natural Heritage.

(d) it will not result in detrimental impact on the amenity of nearby residential dwellings including potential problems arising from noise, smell and pollution.

- 8.29 The application site is located approximately 235m south east of No. 75 Duncrun Rd, and approximately 230m south west of no. 81. The nature of the development is not considered to be likely to generate significant levels of noise, odours or pollution which would have an unacceptable adverse impact on nearby dwellings. Environmental Health, as the competent authority on such matters, have been consulted on the proposal and have no objections. Criteria d has been met.
- 8.30 Officials are content that the proposal meets with CTY11.

Access

- 8.31 Access to the proposed site is via a laneway onto the Duncrun Rd immediately to the western boundary of No. 75. The proposal initially submitted included serviced bays for 4 touring caravans. DFI Roads (formerly Transport NI) raised concerns regarding the touring caravans element of the proposal, highlighting concerns regarding the suitability of Duncrun Road for use by towing

caravans. Transport NI advised that given the expected difficulties relating to the turning movements for towed caravans, it may be more prudent to remove the proposed caravan pitches from the application. Subsequently, the application proposal and accompanying plans were amended to remove this element from the scheme.

- 8.32 DFI Roads was reconsulted on the revised scheme and offer no objections subject to a condition requiring the access to be upgraded within 3 months of the date of any grant of approval. An area of car parking exists adjacent to the amenity building which can provide parking for in excess of 25 vehicles which, given the scale and nature of the proposal is considered to be an acceptable provision. The proposal meets with the SPPS and Policies AMP2 and AMP7 of PPS3.

Flood Risk

- 8.33 The application site is not located within the strategic fluvial or coastal floodplain. A small portion of the site is identified as being affected by surface water flooding. DFI Rivers provided comment on the initially submitted Drainage Assessment to advise that the assessment fails to meet the requirements of PPS 15 as the existing lakes create a potential increase in flood risk elsewhere which has not been addressed.
- 8.34 A revised Drainage Assessment was received which assessed the potential for downstream flooding. The assessment concluded that in the unlikely event of failure of the lakes/dam that floodwaters would follow the natural topography along the existing watercourse adjacent the site which the lakes discharge to. Floodwaters would flow towards the lower lands to the north of the site with the adjacent woodland and culvert at the Duncrun Rd reducing the volume and velocity of floodwater and lowering the risk to dwellings downstream.
- 8.35 Upon reconsideration, DFI Rivers again advised that the Assessment fails to meet the requirements of PPS 15 as the assessment has not identified a scientific assessment of depth and velocity to determine flood risk downstream, no details have been provided regarding the construction of the dam or standards used

and the structural integrity of the dam has not been assessed by a suitably qualified person.

- 8.36 A Flood Risk Assessment was submitted by Flood Risk Consulting in May 2020 which used hydraulic modelling to assess the depth and velocity of downstream flow in the event of a worst-case uncontrolled release of water from the lakes. The FRA did not include consideration of the dam and outfall construction or structural integrity of the embankments. The FRA calculated the volume of water stored above adjacent ground level as being approximately 15,510m³, which would result in the lakes being classified as a controlled reservoir, which would place stricter standards on the reservoir manager/developer for example through structural improvement works and on-going maintenance costs.
- 8.37 The FRA assesses the hazard rating from inundation to both buildings and to people. The modelling identified dwellings along the Duncrun Rd and in proximity to the Limestone Rd/Curragh Rd junction to be affected by inundation. The FRA concludes that the flood extent would cause inundation only (lowest hazard rating), no buildings fall within the identified areas with the potential to cause partial or full destruction. The hazard to people assessment identified two dwellings close to the Limestone and Curragh Rd junction as being peripherally affected by the orange category which is defined as dangerous to the general public.
- 8.38 The FRA proposed to reduce the overall volume of the lakes by reducing the bank levels. The amendments sought to reduce the overall volume to approximately 7633m³ to assist with reducing flood risk emanating from the proposal and also remove the development from controlled reservoir status. Impact modelling was carried out on the reduced volume. The modelling found all buildings to be affected by inundation only. The hazard rating to people reduced the hazard rating at the two properties previously identified as dangerous to the general public to a rating which is not considered dangerous to people.
- 8.39 DFI Rivers was consulted on the Flood Risk Assessment who note that the hazard rating at two inhabitable properties within the inundation zone is considered high. This is considered by Dfl

Rivers to be an unacceptable combination of depth and velocity. DFI also note that while the proposed reduction works would reduce the hazard risk to low at these properties, which would be an acceptable rating, the proposal will still create flood risk which would be considered as high to currently uninhabited receptors, i.e. gardens, roads, agricultural outbuildings and agricultural land.

- 8.40 In addition to DFI Rivers, Translink objected in principle to the application until their concerns relating to flood risk to Translink's railway line, earthworks, structures and NITHC lands from dam breach inundation or associated flood risk had been addressed to their satisfaction.
- 8.41 Given the concerns regarding the potential risks from inundation from the existing lakes the planning Department sought additional information and assurances from the applicant regarding the construction of the lakes and the structural integrity of the embankments.
- 8.42 In June 2021 the applicant submitted a Condition Report prepared by Jeremy Benn from JBA Consulting, who is a member of the UK Reservoir Supervising Engineers Panel. The report notes that works were carried out in 2020 to the larger eastern lake to reduce its volume. This was achieved by widening the dam embankment along the eastern edge to by importing/infilling the lake with soil. The report provides estimated lake volumes based on a 2021 bathymetric survey which estimate that the total volume of escapable water as being 9728m³, which falls below the threshold for controlled reservoir status.
- 8.43 The report provides information on two separate visual inspections of the lakes carried out by Mr Benn and by Mr Stephen Heaney a Chartered Civil and Structural Engineer. The report concludes that both reservoirs and associated infrastructure are currently in a good state of repair with no measures requiring immediate action to alleviate the risk of imminent collapse or uncontrolled release of water. The report provides for a regime of maintenance, surveillance and inspection checks.

- 8.44 A Slope Stability Survey and Preliminary Landslide Risk Assessment were also submitted in support of the application.
- 8.45 The slope stability survey concluded that the preliminary analyses and risk assessment suggest that risks associated with the existing embankment, both in terms of superficial slips and a more substantial failure, are not routine and do require remedial measures to be taken. It was advised that the reprofiling of the embankment would be sufficient to achieve stability and mitigate the risk of water ingress causing instability to the embankment.
- 8.46 The Preliminary Landslide Assessment carried out an assessment of the north western slope of Binevenagh Mountain. The report concludes that based on the landslide risk assessment findings, the fishing lakes development does not adversely impact the site and there is no significant increase in the level of risk. The report advises that the landowner will perform a site walkover twice a year, recording changes in the slope, and perform water monitoring in the existing wells every three months. Additional advice has been provided with regards to precipitation monitoring, surface drainage monitoring and surface drainage improvements to maintain the current landslide risk status.
- 8.47 The issue of landslide was further discussed during the EIA Determination Appeal Hearing (October 2022). During the hearing Mr McKibben (engineer) from Geoman Ltd advised that that the lakes had been built from largely impermeable material and are built on stiff clay which has a low possibility of movement. Additionally, raised bog is sited adjacent the lakes which would prevent landslide occurring. Mr McKibben advised that the site had been visited by engineers several times during 2020, 2021 and 2022 and there was no evidence of surface scarring which would be indicative of any landslide or movement.
- 8.48 Geological Survey of Northern Ireland (GSNI) were consulted on the application and, having reviewed Preliminary Landslide Risk Assessment (Revision 01) Report, dated October 2022, consider the geotechnical risk has been appropriately assessed and are content with the reports conclusions and recommendations. On the

basis of the information available, GSNI is content with the development as proposed.

- 8.49 A revised Flood Risk Assessment was submitted in January 2022, from JBA Consulting. The FRA provides an assessment of flood risk from the lakes to the built development and downstream of the lakes. The lakes are modelled, at top water level, by routing a 1 in 100 year rainfall event through them. The FRA demonstrates that there is ample freeboard to the built development associated with the development and that there is no increase in flood risk downstream of the development compared to the pre-development scenario; i.e. the volume of water that pours out of the lakes in the model is equal to the volume of water that would have been in the existing river channel for the same rainfall event prior to construction of the lakes.
- 8.50 DfI Rivers was re-consulted on the proposal and advise that has no reason to doubt the technical content and findings of the FRA. The FRA did not assess the impact of a failure of the dam wall.
- 8.51 Translink were re-consulted following the submission of the above information and in their response dated 7th June 2023 advised that they maintain their objection in principle as the FRA did not assess the potential impact of the development on the Translink's railway line, earthworks, structures and NITHC lands from dam breach inundation.
- 8.52 An addendum to the original Flood Risk Assessment was submitted December 2023 by Flood Risk Consulting. The addendum uses hydraulic modelling to assess the risk to the railway line from a dam failure based on the reduced lake volumes. The modelling indicates that floodwaters would take approximately 22 minutes to reach the railway line embankment and a further 5 minutes to overtop the railway line. The modelling indicates that flood depths would not exceed 100mm at any point and velocity would not exceed 0.2m/s. this combination of depth and velocity results in a hazard rating which is not considered to be dangerous to people. The report also notes that the railway line is also at risk of flooding from a 1 in 100 year fluvial event and from a worst case scenario dam breach from Binevenagh Lake.

- 8.53 DFI Rivers was re-consulted on the addendum and have advised that while not being responsible for the preparation of the report accepts its logic and has no reason to disagree with its technical content. Translink were also re-consulted on the addendum and have to date provided no response.
- 8.54 Further hydraulic modelling was carried out to establish the risk from flooding to existing properties and the risk to human health. The hydraulic modelling provides a worst-case scenario, using conservatively low finished floor levels (FFLs) and an assumption that no external walls exist. The modelling indicates that all three considered dwellings (No. 41 Limestone Rd, No. 38 Curragh Rd and Dwelling North of No. 38) have a predicted velocity of less than 2m/s and depth x velocity of less than 3m²/s, neither destruction nor partial structural damage of the three dwellings is predicted during a worst-case failure of the two lakes, with only inundation predicted.
- 8.55 The predicted risk to people falls into the 'blue' category (very low hazard – caution), for the full extent of dwelling at No. 41 Limestone Rd and Dwelling North of No. 38. The majority of the dwelling at No. 38 Curragh Rd is categorised as very low hazard – caution, with a small area of risk to some identified in the south-western corner. The report advises that in reality this would not actually happen as the external wall of the dwelling would deflect flood water away from the building.
- 8.56 The report concludes that should the extremely unlikely scenario of dam failure occur, it has been demonstrated that the three properties at risk of flooding downstream of the lakes are not deemed to be at risk of structural damage and the risk to people within the properties is considered to be at an acceptable level.
- 8.57 Additionally, the applicant has provided further information in the form of an Asset Management and Action Plan, Emergency Contact Card and a template of the embankment inspection form which sets out the safety measures to be implemented going forward to ensure the maintenance of the embankment in a satisfactory condition.

8.58 Given the technical information submitted in support of the application and the comments from the consultees, the lakes have been constructed to a standard which ensures that the risk of dam failure is unlikely to occur. Additional assurances have been provided by way of the requirement to carry out regular monitoring of ground water and slope/embankment conditions to ensure any issues are identified and rectified as necessary. In a worst-case scenario event of a dam failure it has been demonstrated that the risk to buildings, transport routes and human health is low.

Tourism

8.59 TSM 8 considers the safeguarding of tourism assets by not granting permission for development which would in itself or in combination with existing and approved development in the locality have an adverse impact on a tourism asset. In this case, the tourism asset is the Binevenagh Mountain and the wider AONB within which the proposal is located. Given the siting and scale of the proposal, there will be a limited visual impact from the proposed development when viewed from the surrounding countryside and road network. Officials are satisfied that there is no unacceptable adverse impact on the tourism asset of the AONB.

Open Space, Sport and Outdoor Recreation

8.60 Policy OS 3 - Outdoor Recreation in the Countryside outlines that proposals for outdoor recreational use in the countryside will be permitted where all the following criteria are met:

(i) there is no adverse impact on features of importance to nature conservation, archaeology or built heritage;

8.61 As outlined above at paragraphs 8.10 to 8.28 the proposal will not have any significant adverse impact on features of natural, archaeological or built heritage importance.

(ii) there is no permanent loss of the best and most versatile agricultural land and no unacceptable impact on nearby agricultural activities;

8.62 The proposed development is sited on former agricultural land. The application site is located within a natural hollow which is sited at an elevated hillside location and would not be considered to comprise the best or most versatile agricultural lands. The use of these agricultural lands will not have an unacceptable impact on nearby agricultural activities. The only potential impact on agricultural lands would be from inundation due to failure of the dam/uncontrolled release, which as outlined above is considered unlikely to occur.

(iii) there is no adverse impact on visual amenity or the character of the local landscape and the development can be readily absorbed into the landscape by taking advantage of existing vegetation and/or topography;

8.63 As outlined above at paragraph 8.7 to 8.9 the natural topography of the site lends itself to the proposed development by accommodating the two lakes and surrounding paths within a natural hollow. Additionally, the amenity building and car parking are set back from the crest of the hillside and not visible from the Duncrun Rd. Given the limited visual impact of the proposal, there will be no adverse impact on the character of the surrounding countryside and AONB.

(iv) there is no unacceptable impact on the amenities of people living nearby;

8.64 Given the nature of the development, it is not anticipated that the development will have any unacceptable impact on the amenity of people living nearby as a result of noise, odour or other nuisance.

(v) public safety is not prejudiced and the development is compatible with other countryside uses in terms of the nature, scale, extent and frequency or timing of the recreational activities proposed;

8.65 The proposed development sits within the rural area with a limited visual impact. The use of the facility as recreational fishing lakes will have no adverse impact on the surrounding lands use or upon amenities of nearby occupants through odour, noise or other

nuisance. As outlined above at paragraph 8.33 to 8.58, the lakes have the potential to result in flood risk to buildings, lands and transportation routes downstream of the lakes in the event of a dam failure scenario. It has been demonstrated that the lakes/embankments have been constructed to a good standard and have been assessed by competent persons as being in good condition. While the risk of dam failure is considered low, it has also been demonstrated that even in such circumstances the risk to public safety is low given the combined speed and depth of floodwaters.

(vi) any ancillary buildings or structures are designed to a high standard, are of a scale appropriate to the local area and are sympathetic to the surrounding environment in terms of their siting, layout and landscape treatment;

8.66 The proposal amenity building is a relatively modest single storey building which is finished externally in a mix of timber cladding to the walls and tin sheeting to the roof. The building is sited back from the crest of the hillside leading to the fishing lakes and is not visible from Duncrun Rd. The scale and design of the building is considered appropriate for the location.

(vii) the proposed facility takes into account the needs of people with disabilities and is, as far as possible, accessible by means of transport other than the private car; and

8.67 The Design and Access Statement outlines that there are disabled facilities contained within the amenity building on site, and that access to the stands for patrons within disabilities can be facilitated. Given the rural setting, access to the site will largely be via private transport, with some potential for walking and cycling for those residing in the surrounding vicinity.

(viii) the road network can safely handle the extra vehicular traffic the proposal will generate and satisfactory arrangements are provided for access, parking, drainage and waste disposal.

8.68 As outlined above at paragraphs 8.31 - 8.32 DFI Roads has been consulted on the proposal and have no objections in terms of road safety. Adequate parking provision has been provided within the application site and adequate provision for waste and disposal and drainage have been made.

9.0 CONCLUSION

9.1 The proposal is considered acceptable in this location having regard to the Area Plan and other material considerations. The nature and scale of this development is considered to be acceptable in this rural location. The proposal will not have any unacceptable adverse impacts on the visual amenity of the area, features of the natural or built environment or upon the residential amenity of nearby dwellings. The risk of collapse of the impounding embankments/uncontrolled release of water is considered to be low with the associated risk to human health, existing buildings, transport routes and lands also considered to be acceptably low. Approval is recommended.

10.0 PROPOSED CONDITIONS AND INFORMATIVES

Conditions

1. This decision notice is issued under Section 55 of The Planning Act (Northern Ireland) 2011.

Reason: This is a retrospective application.

2. Within 3 months of the date of this approval the vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with approved Drawing No. 03D. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

3. The access gradient to the development hereby permitted shall not exceed 8% (1 in 12.5) over the first 5 m outside the road boundary.

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

4. Within 3 months of the date of this approval, a programme of archaeological work (POW) shall be prepared by a qualified archaeologist, submitted by the applicant and approved in writing by The Council in consultation with Historic Environment Division, Department for Communities.

The POW shall provide for:

- The identification and evaluation of archaeological remains within the site;
- Mitigation of the impacts of development through licensed excavation recording or by preservation of remains in-situ;
- Post-excavation analysis sufficient to prepare an archaeological report, to publication standard if necessary; and
- Preparation of the digital, documentary and material archive for deposition.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

5. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under Condition 4.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

6. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the

programme of archaeological work approved under Condition 4. These measures shall be implemented and a final archaeological report shall be submitted to The Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with The Council.

Reason: To ensure that the results of archaeological works are appropriately analysed and disseminated and the excavation archive is prepared to a suitable standard for deposition.

7. The appointed contractor must adhere to all of the mitigation measures outlined within the Revised Construction Environmental Management Plan date stamped, 24th January 2019 and the Site Drainage Plan 06 Rev 03.

Reason: To prevent adverse impacts on designated sites.

8. A suitable buffer of at least 10 metres shall be maintained between the location of all refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc., and the onsite and adjacent watercourses.

Reason: To prevent adverse impacts on designated sites.

9. Within 3 months of the date of this approval, the applicant shall demonstrate to the Council that the fish screen has been adequately installed over the outlet within lake 2 as indicated on approved Drawing 06 Rev 03 (C-01 Rev C). The fish screen shall be permanently retained thereafter and maintained to ensure there is no fish stock escapement from the site.

Reason: To prevent adverse impacts on designated sites.

10. There shall be no chemicals, antibiotics or supplementary feed added to the lakes at any time.

Reason: To prevent adverse impacts on designated sites.

11. There shall be no direct discharge of untreated surface water run-off during the construction and operational phases into any watercourse at any time.

Reason: To prevent adverse impacts on designated sites.

12. No retained tree, shown as retained on approved drawing 03/D (site layout) shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree to be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Planning authority. Any arboricultural work or tree surgery approved shall be carried out in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction- Recommendations.

Reason: To ensure continuity of the biodiversity value afforded by existing trees.

13. If, within a period of five years from the date of this permission, any retained tree as identified on approved drawing 03/D (site layout) dies, is removed or become seriously damaged or diseased shall be replaced in the next planting season with other similar size and species.

Reason: To ensure the development integrates into the countryside and to ensure continuity of the biodiversity value.

14. The development hereby approved shall be managed and maintained to ensure that the impounding structures remain structurally safe. The management and maintenance of the proposal shall be undertaken in accordance with the Asset Management and Emergency Response Plan (received 19/12/2023).

Reason: In the interest of Public Safety

Informatives

1. This approval does not dispense with the necessity of obtaining the permission of the owners of adjacent sites for the removal of or building on the party wall or boundary whether or not defined.
2. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
3. 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.
4. This determination relates to planning control only and does not cover any consent or approval which may be necessary to authorise the development under other prevailing legislation as may be administered by the Council or other statutory authority.
5. You should refer to any other general advice and guidance provided by consultees in the process of this planning application by reviewing all responses on the Planning Portal at <https://planningregister.planningsystemni.gov.uk/simple-search>.
6. Under the terms of Schedule 6 of the Drainage (NI) Order 1973, any proposals either temporary or permanent, in connection with the development which involves interference with any watercourses such as culverting, bridging, diversion, building adjacent to or discharging storm water etc requires the written consent of DfI Rivers. This should be obtained from the Western Regional Office at DfI Rivers Coleraine Area Office, Castleroe Road, Coleraine, BT51 3RL.
7. 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.

8. 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.
9. 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.
10. Consent to discharge additional storm run-off to the watercourse(s) serving the site may need to be deferred pending completion of proposed drainage infrastructural improvements necessary to provide adequate capacity for increased flows. The Rivers Agency should be consulted about proposed timing of development at the earliest possible time.
11. 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.
12. Where an undesignated watercourse flows through or adjacent to a development site, it is strongly advised that a working strip of appropriate width is retained to, in future, enable riparian landowners to fulfil their statutory obligations/responsibilities.

Site Location



