

<b>Planning Committee Report</b>  LA01/2018/1106/F	<b>27 January 2021</b>
<b>PLANNING COMMITTEE</b>	

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

<b><u>App No:</u></b>	LA01/2018/1106/F	<b><u>Ward:</u></b>	Churchland
<b><u>App Type:</u></b>	Full		
<b><u>Address:</u></b>	Unit 17 and adjoining land Riverside Regional Centre, Castleroe Road, Coleraine.		
<b><u>Proposal:</u></b>	Construction of a 40,000 sq ft gross approx (3716 sqm gross approx) retail warehouse unit and an associated 8000 sq ft gross approx (743 sqm gross approx) garden centre to seek a bulky goods permission incorporating alterations and extension to existing Unit 17, along with general ancillary site works.		
<b><u>Con Area:</u></b>	N/A	<b><u>Valid Date:</u></b>	06.09.2018
<b><u>Listed Building Grade:</u></b>	N/A		
<b>Applicant:</b>	Kelvin Properties Ltd		
<b>Agent:</b>	Gravis Planning		
<b>Objections:</b>	3 (3)	<b>Petitions of Objection:</b>	0
<b>Support:</b>	5	<b>Petitions of Support:</b>	0

## **Executive Summary**

- The proposed development is considered unacceptable in this location having regard to the NAP 2016 and other material considerations, including the SPPS.
- The site is outside the Town Centre of Coleraine as designated in the Northern Area Plan 2016.
- The proposed development does not comply with the retail policy provisions within the SPPS in terms of providing an out of town centre site when there is sequentially preferable sites within Coleraine town centre and the edge of Ballymoney town centre.
- The proposal is contrary to the SPPS in that it is likely to have a significant adverse impact on the vitality and viability of Coleraine town centre.
- The proposal fails to comply with the relevant planning policies including the SPPS and Northern Area Plan 2016.

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 Unit 17 and adjoining land at Riverside Regional Centre, Castleroe Road, Coleraine. The Riverside Regional centre is located approximately 1km to the south of Coleraine Town Centre.
- 2.2 The topography of the site is relatively flat and consists of areas of hardstanding with planting bays between the car parking bays. The existing retail unit at No. 17 is presently vacant and has a red brick and rendered finish in the front façade. There is a large amount of glazing in the front elevation and existing signage at roof level via an existing metal roof feature which is apparent on adjacent retail units. The rear elevation consist of a red brick and there is a large area of hardstanding and loading bays which would allow capacity for large vehicle movements and loading and unloading of goods.
- 2.3 The boundary treatment on part of the site consists of approximately 1.5m high fencing to the north and west of the site. The existing building on site has a modern contemporary design. The immediate context within Riverside is characterised by commercial units such as retail, restaurants and leisure uses. There is an existing petrol station north-west and to the south-east. There is an existing Premier Inn hotel to the east of the site and beyond that the River Bann. There are housing estates to the north, west and south of the site which are

separated from Riverside by the main Dunhill and Somerset Road.

- 2.4 The site is not zoned for development within the Northern Area Plan 2016. The proposed site is within the development limit of Coleraine but outside the town centre area of Coleraine. The NAP 2016 states on Volume 1 Page 34 “The Riverside Centre, Coleraine, has developed with a particular commercial role accommodating a range of retailing commonly found in out of town centre sites. It includes a large DIY store, a suite of retail warehouses selling predominantly bulky goods, car showrooms, fast food restaurants and leisure / fitness facilities. The site also includes a superstore. The Plan will seek to ensure that any future development of the Riverside Centre is complementary to, rather than competing with, the town centres, and does not adversely affect the vitality and viability of the latter”.
- 2.5 To the south of the site is there is a specific Economic Development Zoning CEED 07- Riverside Retail Park. The application site falls outside this particular zoning.

### **3.0 Relevant History**

- 3.1 LA01/2018/0495/PAN- Unit 17 and adjoining land, Riverside Regional Centre, Castleroe Road, Coleraine- Construction of a 40,000 sq ft gross approx. (3.716 sqm gross approx.) retail warehouse unit and an associated 6,000 sq ft gross approx. (560 sqm gross approx.) garden centre (plus small storage area) to seek a bulky goods permission, incorporating alterations and extension to existing Unit 17, along with general site works- PAN Acceptable: 10.05.2018

C/2010/0536/F- Adjacent to Laser Electrics Unit, Riverside Regional Centre, Coleraine- Demolition of existing Laser Unit and relocation of floorspace adjacent to RM approval C/2009/0712 (no increase in floorspace). Reallocation of approved cafe/sandwich bar/restaurant units (approved under C/2009/0823) to site of existing Laser Unit and associated works- Granted: 26.09.2011

C/2009/0712/RM- Riverside Regional Centre, Coleraine- Proposed extension to mixed use retail park and associated car park and access arrangements- Approval granted: 13.01.2010.

C/2005/0491/O- Riverside Regional Centre, Coleraine- Proposed extension to mixed use retail park and associated car park and access arrangements- Planning appeal Upheld- Approval granted: 10.11.2006.

C/2007/0587/F- Riverside Retail Park/1299/F Castleroe Road, Coleraine- Retrospective application for erection of bulky comparison retail unit (incorporating the configuration of floorspace previously approved under application ref C/2005/1299/F & C/2005/0491/O), associated carparking, service yard and access works- Approval granted: 14.02.2008

C/2005/1299/F- Riverside Retail Park, Castleroe Road, Coleraine- Reconfiguration of existing retail warehouse units and associated car parking with landscaping, crib wall, service yard and access works- Approval granted: 14.12.2006.

C/2007/0316/F- Riverside Retail Park, Castleroe Road, Coleraine- Variation of condition 6 of planning consent C/2005/1299/f to permit the total gross floorspace to comprise of one unit measuring 725sqm and the remaining floorspace contained within units measuring not less than 929 sqm each- Approval granted: 30.08.2007

## **4.0 THE APPLICATION**

- 4.1 The proposed development consists of the construction of a 40,000 sq ft gross approx (3716 sqm gross approx) retail warehouse unit and an associated 8000 sq ft gross approx (743 sqm gross approx) garden centre to seek a bulky goods permission incorporating alterations and extension to existing Unit 17, along with general ancillary site works. External walls will be finished with a buff coloured brick, cream coloured render band, render cream finish and glass canopy. The proposed roof will be flat and finished with a polyester powder coated aluminium overhang, polyester powder coated aluminium louvres and a polyester powder coated aluminium entrance canopy. Curtain walling and a large signage panel has been proposed in the front façade. The proposed garden centre will be surrounded by a large 5m high wall.

### **Design & Access Statement**

- 4.2 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.
- 4.3 The design and access statement provides 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.
- 4.4 The report date received on 6<sup>th</sup> September 2018 demonstrates that the applicant undertook detailed consideration of the proposal in terms of the design principles and concepts in relation to the location of the proposed retail development, the design and the impact on the character of the immediate context.

### **Environmental Impact Assessment**

- 4.5 This proposal was subject to an environmental impact assessment screening in accordance with The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.
- 4.6 The application was considered to fall within Schedule 2: Category 10(B) of the Regulations- The carrying out of development to provide for urban development projects, including the construction of shopping centres and car parks which states that the threshold is when the area of the development exceeds 0.5 hectare. The area exceeds this threshold and is 1.01 hectares.
- 4.7 Having considered the proposal in line with the Regulations it was determined that the development proposal would not have any likely impacts of such a significance to warrant an environmental statement.

## **5.0 PUBLICITY & CONSULTATIONS**

### **5.1 External:**

**Neighbours:** There are 3 objections to the proposal. The objections raise the following points of concern:

- The Coleraine Business Improvement District has analysed the figures presented within the applicant's retail impact assessment study. CBID investigations show a considerably lower turnover in the majority of those figures attributed to specific town centre retailers within the retail impact assessment, in some cases these were inaccurate by up to 500%. In reality this would result in a much higher percentage diversion of trade out of Coleraine Town Centre if this application was to be successful.
- The fragility of the retail sector is demonstrated by way of several of the retailers listed as trading in the town centre have subsequently gone out of business.
- It is assumed that the intended operator is 'The Range'. A high percentage of goods sold by this business do not reflect the bulky goods criteria required by planning policy for the Riverside Park.
- There are a number of sites within the town centre that could, with a little imagination and effort, accommodate a general merchandise retailer such as The Range. CIBD has a mandate from over 600 levy payers within Coleraine Town Centre to champion a town centre first policy. In this capacity CIBD objects strongly to the application.
- A robust retail impact and capacity assessment, including a sequential sites assessment cannot be completed correctly when the end tenant is unknown as the assumptions for the proposed turnover would vary depending on the end user or occupant.
- How a sequential assessment can be completed if there are no retailer requirements to compare alternative sites against. There is an absence of evidence from the applicant in this regard.
- In the absence of such evidence by the applicant, the proposal can only be viewed as speculative. The size is therefore a deliberate attempt to try and drive a 'coach and horses' through the sequential test. Likewise the timing is contrived, as it seeks to try and gain consent in advance of the emerging development plan, so that the floorspace will be considered as part of the updated Nexus retail capacity and evidence base.
- Due to the emerging LDP, paragraph 5.73 of the SPPS applies to this development which states "Where a new LDP is under preparation or review it may be justifiable, in some circumstances, to refuse planning permission on the grounds of prematurity. This may be appropriate in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant planning permission would prejudice the outcome of the plan process by predetermining decisions about

the scale, location or phasing of new development which ought to be taken in the LDP context. A proposal for development that has an impact on only a small area would rarely come into this category, but refusal might be justifiable where a proposal would have a significant impact on an important settlement, or a substantial area, with an identifiable character. Where there is a phasing policy in the LDP, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect”.

#### Miscellaneous comments

- Dunelm (Soft Furnishings) Ltd have concerns regarding the potential negative impacts of this proposed development during its construction phase on existing retailers within the retail park.
- Dunelm Ltd suggest 11 building methods to avoid potential impacts on existing retailers within the retail park and would suggest that they are implemented as a form of mitigation.
- The current volume of traffic. The issues with access and egress to and from Riverside Retail Centre. Which causes traffic jams, long tailbacks, and delays for residents and visitors from Somerset Road and Castleroe Road unto the Dunhill Road and Newbridge Road. Which causes frustration and is time consuming.
- Increased traffic noise, increase of heavy goods deliveries at unsocial hours.
- Environmental impact (noise and air pollution). Riverside Retail Centre is currently serviced by multiple retail outlets and B&Q has a substantial garden Centre.

5 letters of support have been received which raise the following points:

- Given the economic benefits of this application, in that it will create around 80 retail jobs and an investment of around £4 Million to the local economy.
- Presence of another retail unit would be a massive attracter in filling the vacant stores in the retail park.
- COVID-19 appears to be continuing, an investment of this magnitude will have a very real and significant impact on the Coleraine economy for many years.
- Developer will upgrade the entrance at AutoZone



- Delay in planning approval. Site has previously been granted planning permission 5 times.
- As a result of COVID 19 pandemic a number of companies have recently closed their stores in the retail park. In these difficult economic times, the creation of new jobs and new investment in the area is to be more welcomed than ever.

## 5.2 Internal:

**DFI Roads:** Has no objections

**Environmental Health:** No objection subject to conditions.

**NI Water:** No objections.

**DFI Rivers Agency:** No objections

**Historic Environmental Division:** Historic Monuments and Buildings unit: No objections.

**DAERA:** Water Management Unit: No objections.

**DAERA:** Land, Soil and Air: No objections subject to conditions

## Proposal of Application Notice

5.3 The proposal falls within the Major category of development and as such the applicant was required to carry out community consultation at least 12 weeks prior to the submission of the application.

5.4 A Proposal of Application Notice was submitted on 30th April 2018 under LA01/2018/0495/PAN. The applicant advised that they intended to undertake the following forms of consultation:

- Drafting a stakeholder briefing document, outlining the details of the application and responses to expected queries, for use in smaller meetings with specific groups.
- Offer of individual meetings with elected representatives at Westminster, Stormont and Council level.
- Individual meetings with existing retailers within Riverside Regional Centre as requested.

- Initial Pre-Application discussions with Causeway Coast and Glens Borough Council and other key statutory bodies
- Drafting a feedback form for use during the public event
- Drafting an information sheet to provide to attendees at the public event.
- Gravis Planning organised and managed one public event on Friday 25th May 2018 between 12pm and 3pm in line with Regulation 5(2) of the Planning (Development Management) Regulations.
- Notification of the date, time and place of the public event was advertised in the Coleraine Times Newspaper.
- Existing retailers within the within the Coleraine retail Regional Centre were notified of the consultation event through the posting of leaflets with an invitation to the event.

### **Community Consultation Report**

- 5.5 The community consultation report (CCR) was submitted as part of the planning application, received on 6th September 2018 more than 12 weeks after the Proposal of Application Notice was received, as required by the legislation.
- 5.6 It contains a copy of the methods of consultation carried out comments and feedback from the consultation exercise in the local context. The report demonstrates that consultation was implemented as agreed in the Proposal of Application Notice.
- 5.7 One public event was held on Friday 1st June 2018 between 12pm and 3pm at the former Frankie & Benny's restaurant unit (adjoins the Costa Coffee unit) at Riverside Retail Park. Statutory requirements for advertisement of the event were met through placing a public notice in the Coleraine Times on Wednesday the 16th May 2018.
- 5.8 In regard to the meeting on 1st June 2018 18 people and an political representatives attended the meeting. Feedback forms were provided but only 7 forms were completed from the event. The feedback received from the event indicated general support for the proposal as did the feedback forms from the public event. No concerns were raised about the proposed use, design, scale or

massing of the scheme. Respondents did raise concerns regarding traffic management within the retail park and as a result of the proposed development. The applicant engaged traffic consultants to consider these concerns in further detail.

- 5.9 The CCR demonstrates that adequate community consultation has taken place and the key issues of concern have been considered prior to the submission of the application.

## **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

Planning Strategy for Rural Northern Ireland

Strategic Planning Policy Statement (SPPS) 2015

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 15: Planning and Flood Risk

## **8.0 CONSIDERATIONS & ASSESSMENT**

8.1 The main considerations in the determination of this application relate to: planning policy; the principle of development; town centre and the sequential test; retail impact assessment; design; contamination; drainage assessment; access and parking; Habitats Regulation Assessment; and archaeology.

### **Planning Policy**

8.2 The principle of development proposed must be considered having regard to the Northern Area Plan (NAP), the SPPS, and relevant Planning Policy Statements specified above.

8.3 The SPPS requires planning authorities to adopt a town centre first approach for retail and main town centre uses as highlighted in paragraphs 6.272-6.273.

8.4 The SPPS states that all policies and proposals must ensure that there will be no unacceptable adverse impact on the vitality and viability of an existing centre within the catchment, and meet the requirements of policy elsewhere in the SPPS.

### **Principle of development**

8.5 The application site is located within the defined Settlement Development Limit of Coleraine and located outside the town centre area. As set out in section 3 above, there are numerous planning histories in the Riverside Retail Park.

- 8.6 The agent in their statement gives significant weight to planning permission C/2007/0587/F. The retrospective application approved a gross retail floor space to not exceed 8,106m<sup>2</sup>. The red line of this application site and the applications cited above in section 3 of this committee report all include this application site currently under consideration within the redline. However, the block plan and elevations of the application only apply to units 17 -12. The permission and plans do not relate to the current application site. The area of this application is shown on the block plan as Phase 2. The decision notice refers to 9 units in condition 4, though the plans only relate to 7 units, this can only be seen as an error in the decision notice. As this permission did not apply to the remainder of the site it is not material to the assessment of this proposal.
- 8.7 The most relevant planning history on the application site is: C/2009/0712/RM- Riverside Regional Centre, Coleraine- Proposed extension to mixed use retail park and associated car park and access arrangements. This permission proposed 3 units. The gross floor space approved was 3329m<sup>2</sup>. This application has now expired.
- 8.8 C/2010/0536/F was the relocation of the retail floorspace of Laser to allow the change of use to café/restaurant use. The unit was relocated to proposed unit 21. The floor space is approx. 762m<sup>2</sup>.
- 8.9 The combination of the above two relevant histories on this site equate to 4091m<sup>2</sup>. However, a lesser weight is attributed to C/2009/0712/RM in that: the application has now expired; and, due to the change in the retail market in the last 10 years since the above application was considered, a fresh Retail Impact Assessment would be required to be undertaken.
- 8.10 The agents throughout the application have also argued that bulky goods are not a town centre use. The SPPS is clear in paragraph 6.270 that the “aim of the SPPS is to support and sustain vibrant town centres across NI through the promotion of established town centres as the appropriate first choice location of retailing.” Bulky goods retailers are already existing and operating in the town centre. The section below identifies appropriate sites in the town centre and edge of centre locations for bulky goods retailing.

## **Town Centre and the sequential test.**

8.11 The SPPS states that Planning authorities must adopt a town centre first approach for retail and main town centre uses.

8.12 Paragraph 6.280 of the SPPS states that a sequential test must be adopted to planning applications for retail and main town centre uses that are not within an existing centre and are not in accordance with an up to date Local Development Plan. Under paragraph 6.281 it states that main town centre uses should be considered in order of preference of:

1. The primary retail core;
2. Town centres;
3. Edge of centre; and
4. Out of centre locations last, and only where the site is accessible by good public transport links.

It concludes that where it is established that an alternative sequentially preferable site or sites exist within a proposed developments catchment, an application which proposes development on a less sequentially preferred site should be refused permission.

8.13 The proposed development would fall into bracket 4 as being an out of centre location proposed in a location which would be less sequentially preferable than potential other sites within its catchment area.

### Coleraine alternative sites

8.14 CET 02 The Mall Car Park: There is a current planning application on part of this site (LA01/2018/0864/F) for two new retail units, for with a total of 4,161sqm of floorspace, with parking and servicing. This site has the potential to accommodate the proposed development within a town centre location with a short fall of 298m<sup>2</sup> that could be accommodated with a two-storey building. The development of the site would incur costs, in reference to site clearance and any archaeological works. However such costs would not be considered prohibitive to a development of this nature. The agent has not demonstrated adequately why the proposed development could not be accommodated upon this site.

8.15 CET 04 Abbey Street Car Park: The planning permission on this site has now lapsed. As the Council is reviewing its carpark strategy, it is unlikely this site would come forward in the immediate future.

#### Ballymoney alternative sites

8.16 In terms of Ballymoney there is an edge of town centre site at development opportunity zoning BYT 03, Meeting House Street (1.08 ha). One of the key site characteristics states that commercial development including warehousing and offices will be acceptable on this site. The only retail development acceptable will be retail warehousing with units of not less than 1000 square metres gross floorspace, selling bulky goods. This site provides the greatest capacity for the proposed development to be developed on and extends to an area of over 1 hectare. If the applicant proposed a two-storey building the proposed development could be provided upon this edge of town centre site in line with the provisions within the SPPS.

8.17 The agent has indicated that this site cannot accommodate the proposed development as a site of 1.74 hectares is required. Paragraph 6.289 of the SPPS states that flexibility may be adopted in seeking to accommodate developments onto sites with a constrained footprint. For example including multi level schemes. The SPPS states that applicants will be expected to identify and fully demonstrate why alternative sites are not suitable, available and viable. The agent has stated that there is no existing retail warehouse available for extension, no car parking or servicing at this site. The arguments provided by the agent are not sustainable in that in the development could propose a two-storey and be easily accommodated on site from a floorspace perspective. The agent has argued that the development is an extension to an extension retail unit. This does not preclude the applicant from constructing a new retail unit upon BYT 03. The fact that there is no car parking or servicing on the site does not preclude the applicant from including these types of provisions to serve any proposed development on BYT 03. Therefore, this site is considered a sequentially preferable site that the site proposed a Riverside Retail Park.

## **Retail Impact Assessment**

8.18 Paragraph 6.283 states that applications for retail or town centre developments above a threshold of 1000 square metres which are not proposed in a town centre location and not in accordance with the LDP are required to complete a full retail impact assessment as well as a need assessment. Paragraph 6.290 provides the elements which should be considered in a retail impact assessment and statement of need which include:

- The impact of the proposal on trade and turnover on town centre turnover overall for all centres in the catchment;
- The impact on existing committed and planned public and private sector investment;
- The impact on the delivery of planned/allocated sites and the LDP strategy;
- The impact on vitality and viability, taking into account retail mix and diversity of other facilities and activities;
- Cumulative impact taking account of committed and planned development including plan commitments in the town centre and wider area; and
- A review of local economic impacts.

8.19 The NAP 2016 is not considered up to date plan in relation to its retail findings and the scheme relates to an out of centre location. The status of NAP in relation to retail was confirmed in a PAC decision 2015/A0129. Therefore, a sequential test, full retail impact assessment and assessment of need are required.

8.20 NEXUS Retail and Leisure Capacity Study was commissioned by council to assist in the preparation of the Local Development Plan. This report was presented to the Planning Committee and it was agreed that it would be used as a material consideration in the assessment of planning applications. Planning also in the summer of 2020 sought a further Retail audit from NEXUS due to the dispute between Planning and the agents of the Retail impact assessment and concerns raised by the objectors. Both of these documents are available to view on the Planning portal and are a material consideration in the assessment of this application.

8.21 The initial step in the impact assessment is to define the catchment for the proposal. NEXUS have used the agent's catchment area for the purposes of the assessment which includes the settlements of Portstewart, Portrush and Ballymoney. Both recognise that the



proposal will be of a scale which is likely to draw custom from beyond Coleraine itself and will have a sub-regional attraction.

8.22 It is also agreed by both the agent and NEXUS that there would be a trading overlap with the town centre on the sale of bulky goods.

#### Health of Coleraine Town Centre

8.23 Objections to the proposal have been received from Retail NI and Coleraine Business Improvement District. Both objections raised concern that there is no intended occupier for this proposal. However, the end user is not material to the consideration of this application. They also question the turnover figures used in the agents RIA and cite the fragility of the Coleraine town centre.

8.24 The NEXUS Audit, using established reports such as Goad and surveys taken in 2017 and 2019, find that the Coleraine town centre is performing below average when based against Northern Irish averages for 'town centre uses' (19.8% versus 17.3%). The Plan team also surveyed the town in August 2020 and found that there has been an increase in 'all uses' in vacancies in the town centre from 15% in 2019 to 19.3% in 2020.

8.25 The agent has not fully considered the health of Coleraine Town Centre in their submission, which would normally be required to assess the impact of the proposal. NEXUS clarifies the importance of this "For example, a 10% impact on a healthy centre maybe acceptable, whereas a 5% impact on an unhealthy centre may not be."

8.26 This agents have calculated that the proposal will have an 8% impact of the existing bulky goods operators within Coleraine Town Centre. The NEXUS Retail Audit concluded that the proposal if approved would have an impact of 16.6% on the trade of existing bulky good retailers in Coleraine town centre. NEXUS advised that some bulky goods businesses would not be able to withstand that level of turnover impact and that closures in Coleraine town centre could occur as a result of the application proposals.

8.27 Planning would agree with the NEXUS statement that the health of town centres is expected to decline, rather than improve, in the short to medium term. The 16.6% impact would have a significant adverse impact on the town centre and be contrary to paragraphs 6.290 and 6.291 of the SPSS.

## Need Assessment

- 8.28 The SPPS requires the applicant to demonstrate an assessment of need for the proposal. Para 6.282 of the SPPS requires in absence of an upto date area plan, applicants to prepare an assessment of need which is proportionate to support their application, which may include a quantitative and qualitative assessment.
- 8.29 As part of that assessment significant weight has been attributed by the agents on the economic benefits of the proposal totalling an investment of £4 million, with around 80 jobs and 60 construction jobs. They also state that the proposal would claw back levels of trading that are currently leaking to other destinations outside the Borough.
- 8.30 It should also be noted that employment and construction figures and investment would still be the same if built in the town centre or at an out of centre location.
- 8.31 The NEXUS Retail Audit carried out a quantitative and qualitative assessment of need. It advises that the existing leakage on bulky goods in the catchment is very minimal across electrical (96.4% retention, DIY Goods 100% retention), Furniture goods (90.6% retention). Combined with the audit of available floor space provision in Coleraine town centre, suggesting that the existing level of floorspace provision in Coleraine is likely to outstrip demand, along with a significant shift towards internet and other forms of special trading spend, reduced growth rates there is no qualitative or quantitative need for this proposal.
- 8.32 Para 6.219 of the SPPS states that where an impact on one or more of the the criteria of a RIA is considered significantly adverse then it should be refused. The above assessments highlight the concern that there it has not been demonstrated thah there is a need for the proposal and that if approved would have a significant adverse impact on the vitality and viability of the Coleraine town centre.

## **Design**

- 8.33 The design, scale and massing is in keeping with the surrounding development and is considered acceptable at this location.

## **Contamination**

8.34 The agent did provide an environmental site assessment and generic quantitative risk assessment to address and potential land contamination concerns in terms of hydrology and potential gas conditions within the ground. DAERA: Land, Soil and Air, Water Management Unit, Environmental Health raised no concerns regarding potential concerns surrounding: surface water, soil contamination, ground gas, radon, ground water or potential pollutants from the proposed development subject to conditions.

### **Drainage Assessment**

8.35 DFI Rivers was consulted in relation to the scheme regarding the proposed drainage assessment in accordance with policy FLD 3 of PPS 15. DFI Rivers have no objection to the proposal from a drainage or flood risk perspective.

### **Access and Parking**

8.36 Planning permission will only be granted provided the proposal does not prejudice road safety or significantly inconvenience the flow of traffic. DFI Roads was consulted in reference to the scheme and raised no areas of concern regarding car parking, access or road safety matters. There is an existing public car park located in close proximity to the site which could serve the proposed development at this location. The proposed scheme meets the requirements within PPS3.

### **Habitats Regulations Assessment**

8.37 The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation 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 of any European site.

### **Archaeology**

8.38 Historic Environment Division Protecting Historic Buildings and Monuments was consulted in relation to the proposed development. Historic Buildings considers that the proposal is sufficiently removed from the historic buildings and would have no greater demonstrable harm on their setting when considered against the policy requirements of paragraph 6.12 of Strategic Planning Policy Statement (SPPS) and Policy BH11 Development affecting the Setting of a Listed Building of the Department's

Planning Policy Statement 6: Planning, Archaeology and the Built Heritage. Historic Monuments has also raised no concerns regarding potential archaeology matters. The scheme complies with the SPPS and PPS6 regarding archaeology matters.

### **Other Matters**

- 8.39 The objectors raised concern in relation to prematurity. The LDP is not at an advanced stage to consider prematurity.
- 8.40 Objection points have been raised to the construction of the proposal and the impact on adjacent businesses. This is a civil matter between the applicant and the businesses in the area.

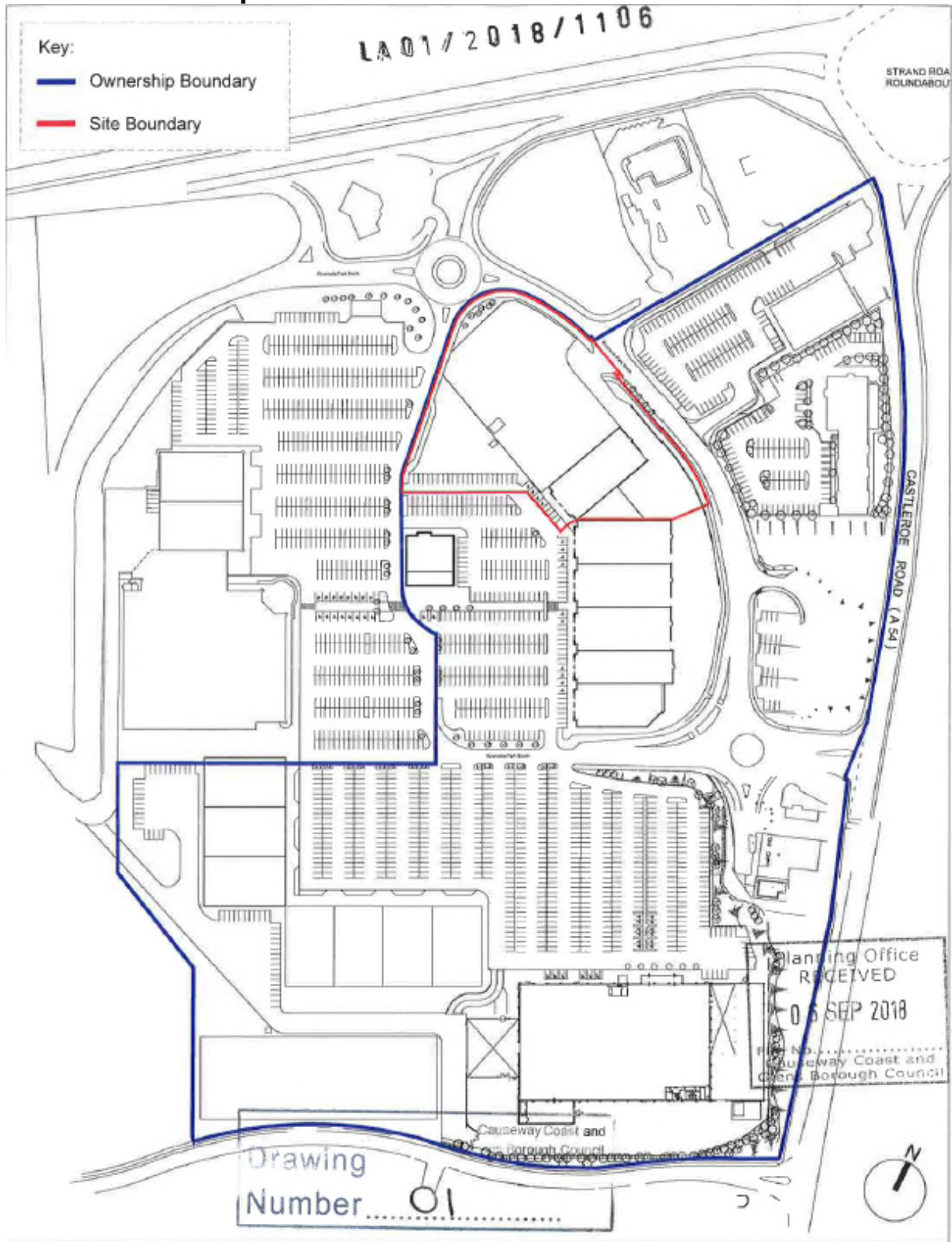
## **9 CONCLUSION**

- 9.1 The SPPS provides the main policy framework for retail development within NI. The application site lies in an out of centre location which is the least preferred site for future retail provision within the SPPS. The policy states that where an alternatively sequentially preferable sites or sites exist in a whole catchment, an application for a less sequentially preferred site should be refused. In terms of order this would be
1. CET 02- The Mall Car Park site
  2. Edge of town centre site (Ballymoney) BYT 03 Meeting House Street.
  3. Application site at Riverside Retail Park- Out of centre site
- 9.2 The proposed development is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material considerations, including the SPPS. The commissioned Retail Audit advises that there is no quantitative or qualitative need for the proposal and that it would, if approved, have a significant adverse impact on Coleraine town centre which is already underperforming in the Northern Ireland context. Refusal is recommended.

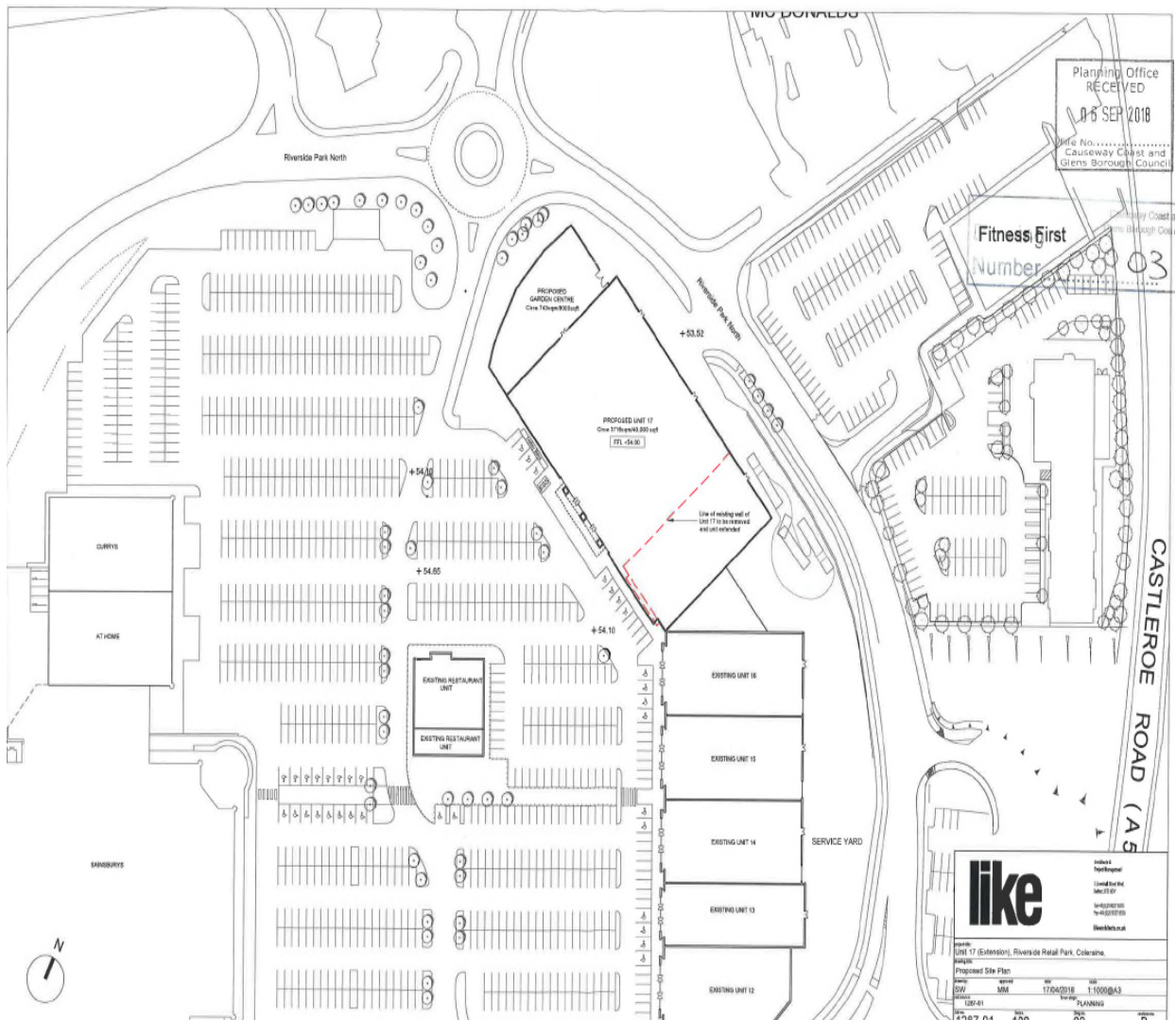
## **10.0 Reasons for Refusal**

1. The proposal is contrary to paragraphs 6.273, 6.279 and 6.280-6.281 of The Strategic Planning Policy Statement for Northern Ireland (SPPS) 2015, in that the proposal has not complied with the sequential test for a main town centre use in that alternative sequentially preferable sites exist within the proposal's whole catchment.
2. The proposal is contrary to paragraph 6.282 and 6.283 of the SPPS in that it has not been demonstrated that there is a need proportionate to support the application.
3. The proposal is contrary paragraphs 6.279 and 6.291, in that if approved the proposal would have a significant adverse impact on the vitality and viability of Coleraine town centre.

# Site Location Map



# Site Layout Plan



# **Addendum**

## **LA01/2018/1106/F**

### **1.0 Update**

- 1.1 Since the publication of the Planning Committee Report on 14<sup>th</sup> of October 2020, there has been 4 letters of support received for this application from the Economy Minister Diane Dodds, Cara Hunter MLA, Gregory Campbell MP and Karen Yates of the Causeway Chamber.
- 1.2 The letters of support have detailed the potential for job creation and investment in the Coleraine area especially considering the present circumstances and the impact the Covid 19 pandemic is having upon the retail sector in Coleraine. The letters of support have detailed a potential job creation of 80 jobs and 4.5 million of investment as a result of the proposed application. It has also been cited that this scheme will help support the already existing 600 jobs at Riverside.
- 1.3 The letters of support note the recent closure of existing business at Riverside Retail Park, consisting of DW Sports, Harveys, Benson Beds and Starplan. With the closure of these businesses at Riverside this has resulted in significant job loss. The proposed development would help offset the job losses experienced by Riverside during the present pandemic.
- 1.4 The letters have expressed concern at the length of time the application has been in the planning system and request that the Planning Committee give consideration to the potential job creation and investment potential this development could create for the Coleraine area.

### **2.0 Recommendation**

- 2.1 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application in accordance with Paragraph 1.1 of the Planning Committee report.



# Addendum 2

## LA01/2018/1106/F

### 1.0 Update

- 1.1 A Senior Counsel's Opinion by Stewart Beattie QC has been submitted on behalf of the applicant. This reviews the content of Paragraph 8.6 of the Planning Committee Report regarding the planning history Ref: C/2007/0587/F. This planning history was for "Retrospective application for erection of bulky comparison retail unit (incorporating the configuration of floorspace previously approved under application ref: C/2005/1299/F and C/2005/0491/O) associated car parking, service yard and access works". The application was approved on 14 February 2008.
- 1.2 The approved plans (block plan, elevations and floor plans) for this approval comprise a total of 6 retail units. The remainder of the site inside the red line is shown as car parking, a service yard and a greyed out area labelled "PHASE 2". The 6 retail units comprise a total of 5319 sq. metres gross retail floor space.
- 1.3 Condition 03 of the permission states that *"The total gross retail floor space on this site shall not exceed 8106 sq. metres when measured internally."* Condition 04 states that *"The total retail floor space referred to in Condition 03 shall comprise: - seven units measuring 929 sq. metres each; one unit measuring 878 sq. metres and; one unit measuring 725 sq. metres."*
- 1.4 Subtracting the 6 approved units totalling 5319 sq. metres from the overall total of 8106 sq. metres leaves a residual 3 units comprising 2787 sq. metres. In the context of this application details of buildings were not approved comprising these residual 3 units and 2787 sq. metres.

- 1.5 The Planning Committee Report comments at Paragraph 8.6 that this mismatch between the approved plans and conditioned floor space figures can only be seen as an error in the decision notice. The exact circumstances of this mismatch are unclear as the main application working file has been destroyed in accordance with the Council's Data Retention and Disposal Schedule.
- 1.6 Regardless of the specific circumstances, which now took place over 12 years ago, the fact remains that detailed planning permission was not granted in the context of this application for the residual 3 buildings comprising 2787 sq. metres and that such planning permission would be required.
- 1.7 The Senior Counsel's Opinion states that the statement in the Planning Committee Report that the foregoing "*can only be seen as an error in the decision notice*" is wrong in law. The Opinion refers to *McClurg and Another v Department of the Environment for Northern Ireland (1990) NI 112* which referred to an outline planning permission for 20 apartments while the plans showed 18. The Opinion states that the main points of this case are that the general rule was that if a planning permission was on the face of it a complete and self-contained document, not containing by reference any other document, the application should not be taken into account in construing the planning permission. The fact that the plaintiffs had knowledge that they had reduced their application to 18 apartments did not affect interpretation of the planning permission. The Opinion goes on to recount that permission C/2007/0587/F was retrospective and the terms of Conditions 03 and 04. The Opinion sets out that the permission is live and valid and that this position has been confirmed by the Planning Department. The Opinion requests that it be made known to the Planning Committee that the permission is lawful.
- 1.8 The Planning Department acknowledges that this subject planning permission was implemented insofar as it was a retrospective consent. It is acknowledged that it does constitute a lawful planning permission. As set out above, the exact circumstances regarding

the mismatch between the conditions and approved plans are unclear.

1.9 The Planning Committee Report comments at Paragraph 8.6 that “As this permission did not apply to the remainder of the site it is not material to the assessment of this proposal”. The Senior Counsel’s Opinion states that this permission is material. The Opinion sets out how the permission is extant, implemented and lawful and that Unit 17 is to be extended by the proposed application. This position is accepted and the relevant statement in the Planning Committee Report is withdrawn accordingly. Application C/2007/0587/F presents a planning history which is relevant to assessment of the application.

1.10 Referring to High Court Judgements, the Opinion underlines the importance of the content of Planning Committee Reports.

1.11 Weight to be attached to planning history in assessment of the current application is a matter for the Planning Committee to consider. Relevant factors include:

(i) The extent of retail floorspace sought in the current application (Ref: LA01/2018/1106/F) 3716 sqm, is the same, excepting the garden centre, to that specified in the conditions of application C/2007/0587/F.

(ii) The planning permission was retrospective and was granted under Article 28a of The Planning (Northern Ireland) Order 1991. This means that permission was only granted for development already carried out, not further, proposed development.

(iii) The approved drawings for the application do not include any plans for the residual 3 units comprising 2787 sq. metres.

(iv) *Barnett v Secretary of State for Communities and Local Government (2008) EWHC 1601 (Admin)* is relevant to the

issues raised here. In this case, in the context of a full planning permission, Mr Justice Sullivan held that plans were an essential part of any grant of planning permission and it could not be said that such a grant was to be interpreted without having regard to the plans that accompanied it. He explained that the plans and drawings describing the building works were as much a part of the description of what has been permitted as the permission notice itself. He continued that on its face, a grant of full planning permission for building operations is incomplete without the approved plans and drawings showing the detail of what has been permitted. This judgement was subsequently approved by the Court of Appeal (2009 EWCA Civ 476).

- (v) The approved plans include an external side elevation to Unit 17, showing the stamped approved development terminating there.
- (vi) The planning history is from a considerable time ago, in excess of 12 years ago in which time retail planning policy has changed with the introduction of the SPPS which has placed an added emphasis on a town centre first approach.

1.12 While the Planning Department acknowledge the planning history to be a relevant material consideration in assessment of application LA01/2018/1106/F, significant weight is not attached to it given the factors set out at 2, 3, 4, 5 and 6 above. These are considered to definitively outweigh factor 1.

1.13 Mr A Stephens of Matrix Planning has made further objections on the application. He has provided a video of a HGV accessing and turning at the former JJB site, Hanover Place, Coleraine. This is a town centre site. This site is considered by the Planning Department to be too small to accommodate the proposal. Therefore it is discounted as an alternative sequentially preferable site.

1.14 Mr A Stephens of Matrix Planning forwarded a letter to the Planning Department from Glyn Roberts, Chief Executive Retail NI dated 27 October 2020, addressed to Angus Kerr, Chief Planner Department for Infrastructure.

The letter:

- sets out the refusal reasons
- expresses concerns about the lobbying of the application and wishes to place this on “DfI’s radar”.
- asks DfI to use their “over watch powers” and to maintain public confidence in the planning system
- underlines the relevant considerations in the Northern Area Plan.
- sets out vacancy in Coleraine TC at 20%
- Argues that the proposal is ‘premature’ in terms of the Northern Area Plan preparation.
- Supplies PAC appeals at Riverside Regional Centre.

The position of the Planning Department on this is that prematurity is not a consideration until the draft Plan Strategy is published.

1.15 Mr A Stephens made a further submission to argue that the Northern Area Plan should be included within the refusal reasons. The position of the Planning Department is that this is not necessary and that the refusal reasons as set out in the Planning Committee Report should be considered in their current form.

1.16 Mr Stephens made a further submission to argue that a Certificate of Lawful Use on Development (CLUD) is the correct mechanism to

demonstrate the lawfulness of C/2007/0587/F. He argues that the approval of C/2007/0587/F is unlawful and that it is relied on by the applicant. The position of the Planning Department on these matters is as set out above.

1.17 The Agent for the application has stated that the proposal would provide 80 jobs. Given that the proposal is speculative i.e. there is no specified retailer, the Planning Department asked for clarification on how this figure was calculated. Furthermore, to make the figure of 80 jobs more meaningful, the Planning Department requested this figure to be recalibrated on a full time equivalent basis. To date no response has been received.

1.18 Paragraph 8.26 of the Planning Committee Report states that some bulky goods businesses in Coleraine Town Centre would not be able to withstand the level of turnover impact and that closures could occur as a result of the application proposals. Those businesses are as follows:

- Heart and Home, Captain Street Lower
- Lighting, Sound & Vision, Queen Street
- Community Rescue Service Charity Shop, The Diamond
- Homemakers Discount Furniture & Carpets, New Row
- Causeway Fabrics, Beresford Place
- Star Fuels Cash and Carry, Long Commons
- McIlreavy's Furniture, Society Street
- Pro Fit Plastics and Bathrooms, Society Street
- McCloskey Hardware, Lodge Road

- Crown Decorating Centre, Railway Road
- Car Repairs and Mechanics, Railway Place
- Smyth's Cycles & Camping/ Smyth's Baby Needs, Long Commons
- Baby's Needs, Long Commons
- John Meldrum Interiors, New Row
- Elegance Interiors, Strand Road
- Woodcall.com, Castle Lane
- Willis McCloskey Door Showroom, Lodge Road

1.19 Access to the Public Access has now changed. Note that drawings and additional information are available to view using Public Access at <http://epicpublic.planningni.gov.uk>

## **2.0 Recommendation**

2.1 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application in accordance with Paragraph 1.1 of the Planning Committee report.

# **Addendum 3**

## **LA01/2018/1106/F**

### **1.0 Update**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## 2.0 Recommendation

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

# Addendum 4

## LA01/2018/1106/F

### 1.0 Update

- 1.1 At its meeting on 25 November 2020 the Planning Committee agreed with the recommendation to defer the application to enable the Planning Department to obtain the advice of an independent planning barrister to in turn provide specific advice on certain issues to the Planning Committee. Such advice has since been obtained.
- 1.2 The Legal Opinion and Advice comprises two documents. **These are attached for consideration by Planning Committee members only. These documents are protected from public circulation as they are legally privileged information.**
- 1.3 Having considered the Legal Opinion and Advice, further assessment of the application is as follows on the points set out below.
- 1.4 It remains acknowledged that the planning history for “Retrospective application for erection of bulky comparison retail unit (incorporating the reconfiguration of floorspace previously approved under application ref: C/2005/1299/F and C/2005/0491/O) associated car parking, service yard and access works” approved on 14 February 2008 (Ref: C/2007/0587/F) is both a valid planning permission and a material planning consideration in assessment of the current application.
- 1.5 It remains acknowledged that there is an apparent mismatch or inconsistency between conditions 3 and 4 of planning permission Ref: C/2007/0587/F which refer to a total of nine retail units and the

approved and specifically referenced drawings which depict a total of six retail units.

- 1.6 If it were established that that the developer could lawfully erect the three additional retail units referred to in conditions 3 and 4 of planning permission C/2007/0587/F without any further planning consent, this would present a fall-back position, this being a matter for the Planning Committee to take into account and determine the weighting to be attached to such when considering it to other relevant matters. Consequently, such a fall-back position is a material consideration in assessment of the subject planning application. Submission of an application for a Proposed Certificate of Lawful Use or Development (CLUD) is the appropriate mechanism to establish whether this fall-back position is definitively available to the developer.
  
- 1.7 In the absence of such a CLUD, there is some uncertainty as to whether there is still such a fall-back position. Notwithstanding this, in the event that it was considered that planning permission Ref: C/2007/0587/F comprised full planning permission both for the retention of six retail units and three additional proposed retail units, it has not been demonstrated that the proposed element commenced lawfully within the timeframe for commencement of such. Article 34 (2) of The Planning (Northern Ireland) Order 1991 states that if planning permission is granted without a specified time period (as is the case in the instance of Ref: C/2007/0587/F), it shall be deemed to be granted subject to the condition that the development to which it relates must be begun within five years of the date of the grant. At condition 1 of the planning permission it states "This approval is effective from the date of this decision notice and is issued under Article 28A of the Planning (Northern Ireland) Order 1991". In this case, the relevant five year period for the commencement of the additional three retail units appears to have expired on 14 February 2013 given there was no commencement of construction of those units at that time.



1.8 Given the foregoing, there is insufficient evidence at this time to state definitively that the Council would not be barred from undertaking enforcement action in the event that the developer proceeded to erect the three additional units referred to in planning permission Ref: C/2007/0587/F without further planning consent.

## **2.0 Recommendation**

2.1 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application in accordance with Paragraph 1.1 of the Planning Committee report.