



<b>Planning Committee Report B/2013/0190/RM</b>	<b>23<sup>rd</sup> September 2020</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>No:</u></b>	<b>B/2013/0190/RM</b>	<b><u>Ward:</u></b>	<b>AGHANLOO</b>
<b><u>App Type:</u></b>	<b>Reserve Matters Application</b>		
<b><u>Address:</u></b>	<b>Site adjacent to 7 Bolea Park, Limavady</b>		
<b><u>Proposal:</u></b>	<b>Proposed 2 no one and half storey dwellings with detached garages incorporating alterations to roadway &amp; footpath on Bolea Park (Drainage Assessment Received 23rd March 2018)</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	<b>06.09.2013</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>Moore Design Market Court, 63 New Row, Coleraine, BT52 1EJ</b>		
<b><u>Applicant:</u></b>	<b>D.P.L. Properties Ltd</b>		
<b><u>Objections:</u></b>	<b>140+ from 4 addresses</b>	<b><u>Petitions of Objection:</u></b>	<b>1</b>
<b><u>Support:</u></b>	<b>2</b>	<b><u>Petitions of Support:</u></b>	<b>0</b>

**Drawings and additional information are available to view on the Planning Portal- [www.planningni.gov.uk](http://www.planningni.gov.uk)**

## **1 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 section 7 and 8 and resolves to Approve planning permission subject to the conditions and informatives set out in section 10

## **2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA**

- 2.1 The proposed site is a parcel of land set in the SW corner of a large agricultural field. The site is located close to the junction of Bolea Park and Bolea Road and is located between No 94 Bolea Road and 7 Bolea Park.
- 2.2 The site accesses onto Bolea Park just north of the junction with Bolea Road. A pedestrian footpath traverses the front of the site.
- 2.3 The site rises slightly in a northerly direction away from the public road. The SE boundary of the site is defined by mature trees a number of which are protected by TPO (TPO/2009/0089). The SW roadside boundary is defined by a mature hedge. The NE boundary is undefined.
- 2.4 Critical views of the site are localised from Bolea Park and from Bolea Road at its junction with Bolea Park.
- 2.5 The site is situated within a cluster of development known as Bolea. Bolea was identified as a hamlet within the Limavady Area Plan 1984 -1999 and the Limavady District Hamlet Subject Plan 1989 – 1999 but the defined settlement limit has since been removed under NAP2016 and the site is currently open countryside.
- 2.6 A small housing development is located to the west and north west and two further dwellings are located to the SE which front onto Bolea Road. The existing development displays various forms of boundary treatments ranging from low walls to mature vegetation reflecting the areas former status as a

hamlet. The site is located within the rural area within an Area of Outstanding Natural Beauty.

### **3 RELEVANT HISTORY**

B/2010/0270/O – Site for 2no. one and a half storey dwellings - Adjacent to 7 Bolea Park, Bolea, Limavady – Approved 25.03.2011

B/2008/0459/O - Site for 1 No.dwelling - Adjacent to 7 Bolea Park, Bolea, Limavady – Approved 29.06.2010

B/2005/0037/O - Site for dwelling - Lands adjacent to 7 Bolea Park, Bolea, Limavady – Refused 30.03.2005

B/1998/0275 - Erection of 1 No detached and 4 No semi-detached chalet – Site off Bolea Park, Bolea Limavady – Withdrawn 29.10.1998

B/1980/0209 - 10 No. Bungalows – Site off Bolea Road, Killybready – Withdrawn 25.12.1980

### **4 THE APPLICATION**

- 4.1 The application is a reserve matters on the back of the previous outline application (B/2010/0270/O) for a site for 2no. one and a half storey dwellings.
- 4.2 The access is positioned in the southern point of the site frontage adjacent to the existing dwelling at 94 Bolea Road. A 4.8m wide access is to be provided to serve the dwellings and land to the rear along with a 1m wide verge to the boundary with no 94.
- 4.3 The same house type is replicated on both sites. The dwelling to the north has a FFL of 52.30 and the dwelling to the south has a FFL of 51.50 (as detailed on drawing no 14/183:1.1B of the drainage assessment).
- 4.4 The proposed dwellings are 6m high above FFL with a 9.6m frontage length and gable of 7.6m with a modest rear return extending 1.5m further to the rear. The proposed dwellings are finished in flat black concrete tiles and white roughcast

walls with the plinth and front door surround coloured dark grey.

- 4.5 The dwellings have two bedrooms on the ground floor and two bedrooms on first floor. The first floor is served by velux roof lights to front and rear with one first floor bedroom window on the southern gable. One ground floor window is proposed on both gables serving the lounge to the north and bedroom to the south.
- 4.6 A detached garage is proposed on both sites. The garages are positioned on the northern side of each dwelling and measures 6m x 3.6m x 3.6m. External finishes match the proposed dwellings.
- 4.7 A 1.2m high post and wire fence with hawthorn hedge planting is proposed along the north eastern rear boundary of the site. A 1m high post and wire fence is proposed along the southern curtilage with the access lane. Temporary protective fencing is proposed to protect the trees along the SE boundary during construction.

## 5 PUBLICITY & CONSULTATIONS

### External:

- 5.1 **Neighbours:** Considerable objection have been received from 4 addresses and 1 letter of petition has been submitted with 14 names from 6 addresses.
- 5.2 2 letters of support were received one of which had originally objected by signing the petition but advised on 24/8/15 that they no longer objected.

Issues raised by the objections are as follows

- Name and address of applicant
- Ownership of land
- Change to red line
- Scale of drawings
- Time limit to make representation
- Determination time for applications
- Habitats Regulations Assessment

- EIA
- Other consents required
- Access to information on portal
- Failure to include third parties in consultation process
- Foul sewer
- mapping
- Impact on TPO
- Accuracy of maps
- Boundary crawl
- Visibility splays
- Design and layout
- Processing of application
- Drainage

**Internal:**

5.3 **Transport NI:** No objection subject to conditions.

**NIEA-NED:** No objections subject to conditions

**NIEA – WMU:** No objections

**NI Water:** No objection.

**Rivers Agency:** No objection.

**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 RELEVANT POLICIES & GUIDANCE**

Northern Area Plan 2016

Strategic Planning Policy Statement

PPS2 Natural Heritage

PPS 3 Access, Movement and Parking

PPS15 Planning and Flood Risk

PPS21 Sustainable Development in the Countryside

## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to: principle of development; siting; design, landscaping, access, integration and impact on rural character; other matters raised by third party representations.

### **Principle of development**

- 8.2 The application site is located in the rural area as defined by the Northern Area Plan 2016.
- 8.3 The SPPS states that sustainable development shall be permitted having regard to the development plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

- 8.4 The Northern Area Plan 2016 was adopted on 22nd September 2015. Section 45 of the Planning Act (NI) 2011 states that where a planning application is made for planning permission the council, in dealing with the application, must have regard to the Local Development Plan, so far as material to the application, and to any other material considerations.
- 8.5 From Monday 28th September 2015 the new Strategic Planning Policy Statement for NI- Planning for Sustainable Development is a material consideration in determining planning applications.
- 8.6 The aim of the SPPS with regard to the countryside is to manage development in a manner which strikes a balance between protection of the environment from inappropriate development, while supporting and sustaining rural communities consistent with the RDS. Planning and other environmental policies must therefore play their part in facilitating sustainable development in the countryside but not at the expense of the region's rich natural assets and not at the expense of the natural and built environment.
- 8.7 Policy CTY 1 of PPS 21 sets out the range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. The principle of development was approved under policy CTY1 and 8 of PPS21 under outline application B/2010/0270/O (see paragraph 3 for details). Therefore, the principle of development does not need to be revisited under this application. As stated by the PAC in 2019/A0032 "The appeal before me relates to a reserve matters application. The principle of development has already been granted under outline application and these matters raised by the third party cannot be considered under this appeal". As the principle of development has already been granted this reserve matters will consider whether the proposal is in compliance with the conditions stipulated at the outline approval and will assess the siting, design and external appearance of the dwellings, access and landscaping.
- 8.8 The main conditions of note on the outline approval are;

- Time limit
- Submission of details of siting, design, landscaping and access
- Remove PD Rights for walls, pillars or entrance gates
- The dwellings shall have a ridge height not exceeding 6.0m above finished floor level
- Underbuild not exceeding 0.45m
- Floor levels in relation to existing and proposed ground levels to be submitted and approved
- No development shall take place on site until a landscaping plan has been submitted and approved.
- Submission of access details as part of RM
- Bolea Park shall be widened to 5.5m and a 1.8m wide footpath provided along the frontage of the site
- The development shall be in accordance with the Departments Layout of Housing Roads Design Guide 1980.
- No tree protected under TPO shall be cut down, uprooted or destroyed or have its roots within the crown spread damaged or subject to soil level changes or be subject to any form of tree surgery without prior consent of Department.
- Protection of retained trees.
- All storm and surface water shall be directed to existing storm drainage system on Bolea Road or to soakaways.
- Proposed drainage measures shall be submitted to Department at reserve matters stage.

8.9 B/2010/0270/O was granted permission on 4<sup>th</sup> April 2011. The RM application was submitted and valid on the 6<sup>th</sup> September 2013 which is within the three year time frame for the submission of a reserved matters application. The proposal complies with condition 1 of the outline approval.

8.10 Plans have been submitted with the Reserve Matters which provide the detail of the siting, design, landscaping and access of the proposed development. The proposal complies with condition 2.

8.11 Condition 3 removed permitted development rights for walls, pillars or entrance gates at the access to the road. No walls, pillars or gates are proposed at the access in this proposal.



The proposal complies with condition 3 of the outline approval.

- 8.12 The proposed dwellings have a ridge height of 6.0m above finished floor level and comply with condition 4 of the outline approval.
- 8.13 The sections show a rise in the land from the southern site frontage of 50.51 to the northern site frontage of 52.84. Proposed ground level have been modestly reduced across the site to create two flat areas on which the two detached dwellings are positioned. The under build noted from the elevations is 0.3m. In addition a note has been added to the site plan that the depth of underbuilding between finished floor level and existing ground level shall not exceed 450mm at any point. The proposal complies with the under build condition 5 of the outline approval.
- 8.14 Drawing 03E provides the floor levels and the existing ground levels on the site plan and proposed ground levels can be ascertained from section A-A. Further detailed levels have been provided in the drainage assessment. The proposal complies with condition 6 of the outline approval.
- 8.15 Drawing no 03E includes details of a 1.2m high post and wire fence with hawthorn hedge planting along the north-eastern boundary. A 1m high post and wire fence is proposed internally between the south-eastern boundary and the proposed laneway. Eight silver birch trees are proposed internally within the site, the size of each tree and hedging can be subject to condition. Details of hard landscaping have not been provided but can be dealt with via condition in the event of an approval. An arboriculture report was submitted which details the trees to be permanently retained. The proposal complies with condition 7 of the outline approval.
- 8.16 A 1:500 scale site plan has been submitted which provides the details of the access arrangements. The proposal complies with condition 8 of the outline approval.
- 8.17 Drawing 03E is annotated to stipulate that Bolea Park shall be widened to 5.5m footpath and road verge adjusted to

provide 1.8m wide access across site frontage. The proposal complies with condition 9 of the outline approval.

- 8.18 Roads Service were consulted and have raised no objection to the proposal or private streets drawing. The proposal complies with the PSD condition 10 of the outline approval.
- 8.19 An arboriculture report was submitted which details the trees to be retained and the methods of protection of those trees. The proposal complies with condition 11 and 12 of the outline approval.
- 8.20 Various drainage assessments have been submitted and approved with Rivers Agency. The proposal complies with condition 13 and 14 of the outline approval.

### **Siting, design and external appearance of the dwellings, access and landscaping**

- 8.21 As required by condition 2 of the outline approval, this application considers matters reserved which in this case are the siting, design and external appearance, access and landscaping.
- 8.22 Policy CTY13 of PPS21 supports buildings in the countryside where development can be visually integrated and is of an appropriate design, the SPPS reiterates this requirement by stating that all development in the countryside must integrate into its setting, respect rural character and be appropriately designed. Policy NH6 of PPS2 supports new development within an Area of Outstanding Natural Beauty only where the development is of an appropriate design, size and scale for the locality and all the following criteria are met:
- a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and
  - b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and
  - c) the proposal respects:
    - local architectural styles and patterns;
    - traditional boundary details, by retaining features such as hedges, walls, trees and gates; and

□ local materials, design and colour.

- 8.23 The site is located within Benevenagh Area of Outstanding Natural Beauty. The site is the road side portion of a larger field. The south eastern boundary with no 94 is defined with mature trees and vegetation, the western boundary with no 7 Bolea Park and the road is defined with existing vegetation. The rear northeastern boundary is open to the remainder of the field. Views of the site are localised with views only possible from the road frontage due to the surrounding built development and mature vegetation.
- 8.24 The existing cluster of development is characterised by residential properties, garages and outbuildings. The dwellings are single, one and a half storey and two storey dwellings which display a variety of architectural styles and finishes. Most of the dwellings are positioned to front onto the road but there is no distinct building line of development.
- 8.25 The proposed dwellings are orientated to face the road, similar to the predominant character of the area. The siting of the proposed dwellings are staggered to sit between the existing development at no 94 and no 7 and to address the relationship to the road whilst maintaining adequate access, turning and amenity for the proposed units whilst not negatively impacting on the residential amenity of the existing properties. The northern dwelling (adj to no 7) has a separation distance of 7m from the rear boundary and the southern dwelling (adjacent to no 94) has a separation distance of 10m from the rear boundary. The southern dwelling is 13m at its closest point to no 94 and the northern dwelling is 10m from no.7 with the proposed garage in between. Adequate private amenity space has been provided for both proposed dwellings. Adequate space has been provided for access to the site and parking and to lands to the rear.
- 8.26 The proposed dwellings are modest with a ridge of 6m high above FFL with a 9.6m frontage length and a narrow gable of 7.6m with a modest rear return extending 1.5m further to the rear. The proposed dwellings are finished in flat black concrete tiles and white roughcast walls with the plinth and front door surround coloured dark grey. Given that the

character of the surrounding area displays a mix of house sizes, styles and finishes, the size, scale, design and finish of the proposed dwellings are acceptable within this AONB location and would integrate into the site and the wider locality.

- 8.27 The dwellings have two bedrooms on the ground floor and two bedrooms on first floor. The first floor is served by velux roof lights to front and rear with one first floor bedroom window on the southern gable. One ground floor window is proposed on both gables serving the lounge to the north and bedroom to the south. The gable of the southern dwelling is 7.5m from the boundary and is 13m from the adjacent dwelling at no 94. Given the separation distance between the first floor bedroom window and the mature vegetation along the intervening boundary with no 94, the fact that the window is small (1m x 0.6m) and does not serve primary living space, the first floor window is not considered to negatively impact on the residential amenity of no 94.
- 8.28 The northern dwelling is positioned between 4.5m and 10m behind the southern tip of the curtilage of no 7. This area currently accommodates a large shed/outbuilding and some open space. The proposed dwelling is single storey in appearance with only velux roof lights in the roof. When considering the current use of this part of the area of amenity space, the mature vegetation along the rear boundary and the single storey nature of the proposed dwelling and separation distance between the two, it is concluded that the northern dwelling will not have an unacceptable impact on the residential amenity of no 7. No 7 has supported the application in writing.
- 8.29 A detached garage is proposed for both sites. The garages are 6m x 3.6m x 3.6m with external finishes to match the proposed dwellings. The garage for the northern dwelling is positioned along the rear boundary of no 7 and is not considered to impact on the amenity of no 7.
- 8.30 The proposed dwelling to the north has a FFL of 52.30 and the dwelling to the south has a FFL of 51.70 which has later been clarified to be 51.50 in the drainage assessment. From the section and block plan the FFL are cut slightly into the

existing ground level by a maximum of 0.4m with an insignificant amount of fill for the southern portion of the southern dwelling. The FFL of the dwellings follow the existing ground levels of the field and are appropriate for the development.

- 8.31 The existing area displays various boundary treatments including many low walls, footpaths and mature vegetation. Drawing no 03E includes details of a 1.2m high post and wire fence with hawthorn hedge planting along the north-eastern boundary. A 1m high post and wire fence is proposed internally between the south-eastern boundary and the proposed laneway. Eight silver birch trees are proposed internally within the site and can be secured by condition. Similarly details of hard landscaping can be dealt with via condition. The mature hedge along the NW boundary and the mature trees and vegetation along the SE boundary can be conditioned to be retained. An arboriculture report was submitted which details the trees to be permanently retained and the means of protection to be erected. Given the surrounding context of development, the limited views of the site and the existing mature vegetation along the NW and SE boundary the landscape details are considered appropriate for the site and surrounding area.
- 8.32 The proposal complies with policy NH6 of PPS2 and policy CTY13 of PPS21 in that the design, size and scale, siting and finishes are appropriate to the AONB and the particular context of Bolea. The proposal is in accordance with the guidance set out in Building on Tradition.
- 8.33 Policy AMP2 of PPS3 supports a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where:
- a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
  - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
- 8.34 The proposed plans indicated access at the southern part of the site frontage. The access width is 5m, visibility splays are 2m x 15m and the existing public road is to be widened to 5.5m with a 1.8m wide footpath along the site frontage.

Transport NI have been consulted and are satisfied that the access arrangements can be carried out within/under the red line of the reserve matters application. As the proposal will not prejudice road safety or significantly inconvenience the flow of traffic and as the proposal does not conflict with Policy AMP3 of PPS3 DFI Roads offered no objection subject to conditions. The proposal complies with PPS3.

### **Visual Integration and Impact on Character**

- 8.35 Policy CTY 13 allows for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. As mentioned above the proposal will visually integrate into the surrounding landscape and is an appropriate design.
- 8.36 Policy CTY 14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The size, scale and design of the proposed development will not cause a detrimental impact to or further erode the rural character of the area.

### **Other matters raised by third party representations**

#### **Applicants address**

- 8.37 The P1 form states that the applicant is DPL Properties Ltd and no specific address is given except "care of the agent". Objection has been made regarding the lack of address for the applicant and the fact that the applicant is a dissolved company. This is a reserve matters which was submitted under the Planning (NI) Order 1991 and the Planning Authority is satisfied that the applicants address details are not required to be stated on the application. The details of the application P1 form therefore accords with the legislation at the time the application was submitted. The status of an applicant, be they a dissolved company, deceased or otherwise does not affect the processing of the application as permission goes with the land.

## **Certificate of ownership**

- 8.38 The P1 form, as originally submitted, was accompanied by a certificate of ownership which signed certificate A stating that the applicant was in control of the land located within the red line. Objections have raised the issue that the applicant is not in control of the lands located within the red line (site boundary and visibility splays) therefore an amended certificate of ownership is required to accompany the application. It is important to note at this stage that the red line has been amended twice during the processing of the application to take such land ownership issues into account. Changes to the red line are dealt with in paragraph 8.43. However, in regards the certificate of ownership officials would advise that the relevant legislation at the date of the submission of the outline application was the Planning (Northern Ireland) Order 1991. Article 22 requires that applications for planning permission in relation to any land shall not be entertained unless it is accompanied by a planning application certificate. In this case the subject outline application was accompanied by a planning application certificate. The legislation does not require that application for approval of reserve matters be accompanied by a further certificate. The P1 form states at question 23 that "If you are applying for Approval of Reserved Matters following a grant of outline permission a certificate is not required".
- 8.39 As a further certificate is not required at reserve matters stage the content of any such Certificate submitted with the application is redundant. Ownership of the application site is not a planning consideration at reserve matters stage.
- 8.40 Officials would advise that planning 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.
- 8.41 It should be noted that a certificate under Article 22 is not proof of ownership but intended to ensure that certain persons likely to be interested or affected by a planning application are notified of it, assuming the certificate is properly served. Therefore, there is no obligation on the

Council to check the accuracy of certificates unless it is challenged. Of relevance to this matter is Northern Ireland High Court Judgement – *Callan v PAC and DOE (NI)*. In this case Mr Justice Coghlin, found in favour of the Commission’s decision to proceed with a public inquiry in the face of an inaccurate certificate, where there was no prejudice to the parties.

- 8.42 This is an application for the approval of reserve matters on the back of an outline where certificate A was signed by the applicant. As the third party is aware of the proposed development and has had the opportunity to make representation, officials are of the opinion that no prejudice has been caused by the reissue of an amended certificate of ownership.

### **Red line change**

- 8.43 A separate issue was raised that the red line of the reserve matters does not accord with the outline and that the red line has changed throughout the processing of the reserve matters application.
- 8.44 There have been 3 versions of the location map submitted during the processing of the application. In comparison of the lands included and excluded from the red lines, the differences between map 1 from the outline would appear to be tip of the southern visibility splay. The visibility splay to the south and the southern boundary were changed on the second version of map 1 entitled 1B from the original numbered 1, and the southern boundary and the visibility splay appears to have changed again on version 1B.
- 8.45 The red line of reserve matters accords with the outline, the only difference appears to be the way the southern tip of the visibility splay has been drawn. Such a change to the visibility splay is permitted in the reserve matters providing no prejudice is caused to interested parties and as the adjoining property has been neighbour notified on 10 separate occasions during the processing of the application, officials are of the opinion that third parties are aware of the application and no prejudice has been caused by the minor change to the red line.



- 8.46 The change to the red line in maps 1A and 1B were to address third party representations regarding land ownership and as the third party has been neighbour notified no prejudice has been caused. No P2 is required for reserve matters therefore none was requested.

### **Scale of drawings**

- 8.47 Third parties have objected to the scale of the submitted drawings. As specified within the P1 application form, an application must be accompanied with an accurate, up-to-date Ordnance Survey site location plan to scale not less than 1:2500 clearly showing the boundary of the application site outlined in red. Any other land owned by the applicant should be shown with a blue line around its boundaries. For the purposes of planning, officials consider the drawings at the scale of 1:1250 or 1:2500 to be appropriate.
- 8.48 Ownership of land is a civil matter over which planning does not have jurisdiction. In this case, the 3<sup>rd</sup> party disputing title is aware of the planning application and has made representations therefore officials are of the opinion that the statutory provision remains unimpaired. Planning permission does not confer title it is up to the developer to ensure that they control necessary lands to carry out the proposed development.

### **Time limit for representation**

- 8.49 Objection was made to the timeline for making representation. The Planning Authority can consider representations up until the point an application is decided. The two week statutory consultation period is provided as a specified minimum period to allow representations to be received before an application is decided.

### **Determination period for applications**

- 8.50 Objection was made as to why a decision was not reached on the proposal sooner. The determination period for applications relates to the date by which an applicant may seek a non-determination appeal to the PAC. In practice, many applications take much longer to process where there

are detailed issues to consider including consultations with competent authorities, third party representations and the submission of many detailed reports.

### **Habitats Regulations Assessment**

- 8.51 The issue of assessment under the Habitats Regulations was raised as objection. NIEA were consulted on the application and carried out the HRA and concluded that the development would have no significant effect on designated sites provided mitigation is appended to any planning approval concerning surface water run off. Such issues can be dealt with via condition.

### **EIA**

- 8.52 A third party objected on the grounds that a determination was required under the Environmental Impact Regulations. This is an application for the approval of reserve matters for two dwellings within the rural area. The site is located within an AONB which is identified as a sensitive area within the EIA Regs. Such a proposal does not fall under schedule 1 or under any of the categories under Schedule 2 of the EIA Regs therefore the proposal does not require a determination under EIA Regs.
- 8.53 Furthermore in the case of a reserve matters application where the principle of development is established, an EIA determination would not be a requirement unless expressed in the conditions of the outline permission and as such EIA determination is not required.

### **Other consents**

- 8.54 A third party objected on the grounds that other consents will be required and planning permission should be withheld until such are in place. Consents unrelated to planning legislation such as consent to discharge are not required in advance of the approval of planning permission or reserve matters.
- 8.55 The granted of planning permission 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.

### **Access to information on the portal**

- 8.56 A third party expressed difficulty in accessing information on the portal within objection letters. Council acknowledged the difficulty the third party was experiencing accessing information on the portal in correspondence and advised that the third party could visit the office and an official would show them how to access the documentation. The drawings and documentation were available to view on request.

### **Inclusion of third parties in consultation process**

- 8.57 Third parties raised concern about the consultation process and the inability to partake in dialogue with consultees. During the processing of applications, it is sometimes appropriate to consult competent authorities / consultees on the content of the representations. This is usually done by sending an electronic consultation to the consultee and asking them to refer to the subject representation which has been uploaded onto the planning portal. This was done on various occasions during the processing of the application.

### **Foul sewer**

- 8.58 Third parties raised issue with the foul sewer in Bolea Park and advised that no sites should enter directly into the mains sewer in Bolea Road. NIW have been consulted and advised that “Foul sewer within 20m of your proposal, consultation with NIW is required to determine how your proposal can be served” and “None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved by the Department”. Planning permission relates to planning control only and does not cover any approval which is necessary by another statutory authority. This is a matter for consent with NIW and is not fatal to the reserve matters.

## **Mapping**

- 8.59 Third parties have raised the accuracy of the maps available for the site and whether the development can be accommodated within the red line of the site. It would appear from the third party that the mapping error dates back to a survey by ordnance survey. DFI Roads have advised that they are satisfied that all the road works can be carried out within the red line of the map. The amended block plan is slightly reduced from the outline plan because it has been straightened to pull it away from third party lands. There is also a small variation to the red line for visibility splay purposes but this is permissible. The location map is acceptable when considered in the context of the outline permission.
- 8.60 With regards the accuracy of maps and plans, both the Planning Authority and DFI Roads as the competent authority regarding access and road safety are satisfied with the plans submitted. While the extent of the application site does vary from that authorised by the outline permission, comparison shows that it does not exceed it and is within the remit of the outline approval. Notwithstanding that, the grant of planning approval does not confer title. It is up to the developer to satisfy themselves that they control the necessary land to carry out the development.

## **Impact on trees**

- 8.61 Objections were raised that the widening of the road as required by the application will impact on a tree subject to a Tree Preservation Order, that the drainage structure violates the root protection zone of a protected tree, that the tree protection methods are not based on a tree survey and need a proper assessment and that an arboricultural report taken on behalf of the third party has identified that the development will remove 3 trees.
- 8.62 One of the original versions of the block plan drawing number 03A included an annotation that the trees along the boundary between the site and no 94 were to be retained and root protection drawings were provided under drawing no 07 and 07A. The Councils tree officer considered the proposal and

advised that the plans lacked specific detail at that time and suggested the submission of a Tree Constraints Plan carried out by a qualified arboriculturist showing root protection areas of the trees and the extent of crown spread, potential for future growth and adequate amenity space and provide the detail of protective fencing to be provided. The tree officer also advised that if works are required by necessity within the RPA then a method statement should be provided.

- 8.63 An Arboriculture Impact Assessment was submitted on 27<sup>th</sup> January 2016 and a Tree Constraints Plan and Tree Protection Plan was submitted in March 2016, all of which have been considered by the Councils Tree Officer. As outlined above, during the processing of the application further information has been submitted in the form of the Arboriculture Impact Assessment therefore the objection on the grounds that the tree protection methods are not based on a tree survey is no longer applicable.
- 8.64 The Councils Tree Officer has advised that the Tree Constraints Plan displays the above/below constraints of each individual tree including the crown spreads and root protection area, the Tree Protection Plan illustrates the details of protective fencing, construction/exclusion and precautionary zones. The Tree Officer has confirmed that he is content with the construction exclusion zone relating to the SE boundary. A precautionary zone is identified in the vicinity of the remaining trees, this area includes T3. The future of the trees in the precautionary zone has to be considered within the context of the planning history affecting the site.
- 8.65 The TPO at no 94 affords a level of protection to 26 trees out of the 47 around the site. However the outline planning application B/2010/0270/O included a condition that “no protected tree, other than those required for the purpose of carrying out development authorised by the granted planning permission, shall be cut down, uprooted or destroyed, or have its roots within the crown spread damaged or subject to any soil level changes or be subject to any form of tree surgery, without prior written consent of the Department”. Therefore, as the planning history takes precedence over the TPO the Council cannot insist on the retention of the trees potentially affected by the access works given that the conditions of the

outline planning permission can permit the works or even their removal in order to facilitate the development. Planning permission does not confer title and it is a matter for the developer to ensure that they own or control all land necessary to carry out the development. Such civil issues are outside the remit of Planning.

## **Drainage**

- 8.66 The site is located outside the present day surface water flood map however part of no 94 is located within the map. The area is extended marginally by the climate change surface water map which breaches the boundary of no 94 into the application site at one point along the SE boundary. There is no history of flooding at the application site as identified on the OSNI Flood Maps however due to a known risk from surface water flooding Rivers Agency requested a drainage assessment.
- 8.67 Policy FLD3 of PPS15 states that a drainage assessment will be required for any development where the proposed development is located in an area where there is evidence of a history of surface water flooding. Such development will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere.
- 8.68 A drainage assessment was submitted on 16<sup>th</sup> May 2014. Rivers Agency advised that the DA was inconclusive and recommended that the application be withheld until the ongoing flooding problem at the junction is alleviated. An addendum to the DA was submitted on 7<sup>th</sup> August 2014. Rivers Agency advised that the DA was still not inclusive and did not indicate how the ongoing flooding problem at the road junction would be alleviated. Further information was received on 30<sup>th</sup> October 2014. Rivers Agency responded to advise that the DA does not fully demonstrate how the ongoing flooding issue will be resolved at the junction. A further DA was submitted on 21 April 2015. Rivers Agency responded to advise that the DA was incomplete as there is no consent to discharge storm water to

accompany the report. A further DA was submitted on 20<sup>th</sup> August 2015

Rivers Agency responded to advise that the DA demonstrates that the proposals will not cause the site to flood or increase flood risk elsewhere because the storm drainage will be the responsibility of NIW which in line with PPS15. While there is a long history of flooding at the entrance to the site the applicant has undertaken to carry out repairs to alleviate flooding. The mitigation should be put in place prior to the commencement of development to protect adjacent properties.

In response to letters from Rivers Agency indicating that there was an issue with the culvert under Bolea Road, a further DA was submitted on 25<sup>th</sup> May 2017. RA responded on the 1<sup>st</sup> August 2017 and advised that the DA did not address their concerns and consequently RA advised that they were not convinced that flood risk has been adequately dealt with. A further DA was submitted on 23<sup>rd</sup> November 2017. RA responded by seeking clarification of calculations and details of the cut off drain. A final Drainage Assessment was submitted on 23<sup>rd</sup> March 2018. Rivers Agency responded on 30<sup>th</sup> May 2018 to advise that providing the main drain is deep enough then the cut off drain is a viable means of land drainage and that the calculations provided within the DA demonstrate that the attenuation volume is in excess of what is required. Rivers Agency concluded that while they were not responsible for the preparation of the drainage assessment they accepted its logic and has no reason to disagree with its conclusions. Therefore Rivers Agency have concluded that they cannot sustain a reason to object from a drainage or flood risk perspective.

- 8.69 The proposed drainage arrangements incorporate the use of new sewers from the proposed dwellings with attenuation storage via the use of oversized pipes to deal with storm water from the proposed development. Drainage arrangements also involve the installation of a cut off land drain as a low capacity filter drain to intercept current overland flows and direct flow to the sheugh.
- 8.70 The Planning Authority has had adequate inquiry into the issue of drainage through requiring the submission of drainage assessments and the various addendums by a

competent person. Officials have consulted Rivers Agency as the competent authority regarding this matter. Rivers Agency subsequently advised that they were satisfied with the proposals and the mitigation measures. Such mitigation can be conditioned to take place before development commences. It is the responsibility of the developer to ensure that they can carry out the development. With regards the accuracy of issues considered in the Drainage Assessment, officials would advise that responsibility of the accuracy of the information provided by the competent person rests with the developer and their professional advisors.

- 8.71 As Rivers Agency have accepted the DA in that it has demonstrated adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere the proposal complies with FLD3 of PPS15.

## **9.0 CONCLUSION**

- 9.1 Issues have been raised by the 3 party objectors which relate to whether the applicant has control of land to remove trees and to provide the access or drainage arrangements, planning does not confer title and it is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.
- 9.2 This is an application for the approval of reserve matters, the principle of development has already been established and cannot be revisited. The matters reserved namely the siting, design and external appearance of the development, access and landscaping are acceptable in this location. This is a sustainable form of development located within an existing grouping of development which makes use of existing infrastructure. The matters raised by third parties have been carefully considered however on balance the matters raised do not outweigh the outline planning approval. Determining weight is given to the fact that this is a reserve matters on the back of an outline approval, the applicant has satisfied all conditions of the outline approval and no consultees have raised any objection to the proposal. The proposed development is acceptable in this location having regard to



the area plan and other material considerations subject to the conditions and informatives set out in section 10.

## **10 Conditions and Informatives**

1 As required by Section 62 the Planning Act (Northern Ireland) 2011 the development to which this approval relates must be begun by whichever is the later of the following dates:-

- i. The expiration of a period of 5 years from the grant of outline planning permission; or
- ii. The expiration of a period of 2 years from the date hereof.

Reason: Time limit.

2 The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.

The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 12 bearing the date stamp 4 March 2016.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

3 No development shall take place within the approved site until the vehicular access, including visibility splays and any forward sight distance, has been provided in accordance with Drawing No. 12 bearing the date stamp 4<sup>th</sup> March 2016. 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.

- 4 During construction all surface water run-off shall pass through silt traps and hydrocarbon interceptors before discharge to the storm system.

Reason: To prevent any contaminated surface water from entering the River Roe and Tributaries SAC selection features.

- 5 No development shall take place within the approved site until the drainage details, including the cut off drain, have been provided in accordance with the drainage assessment and Drawing No. 14/183:1.1B bearing the date stamp 23<sup>rd</sup> March 2018 as contained within the Drainage Assessment of the same date. And such works shall be retained and maintained thereafter.

Reason: To ensure there is a satisfactory means of drainage.

- 6 The drainage arrangements shall be carried out in accordance with the recommendations of the drainage assessment date stamped 23<sup>rd</sup> March 2018.

Reason: To ensure there is a satisfactory means of drainage.

- 7 The finished floor level and existing and proposed ground levels of the development hereby approved shall be as per drawing no 14/183:1.1B date stamped 23<sup>rd</sup> March 2018 as included within the drainage assessment.

Reason: To ensure a satisfactory form of development.

- 8 The driveways and parking areas shall be constructed in permeable paving to be agreed in writing with the Planning Authority prior to construction.

Reason: to ensure a satisfactory form of development.

- 9 All planting, landscaping and boundary treatments comprised in the approved details of Drawing No. 03E date stamped 10<sup>th</sup> February 2014 shall be carried out during the first planting season following the occupation of the dwelling and any trees, hedgerow or shrubs which, within a period of five years from the completion of the development, die, are 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 the maintenance of screening to the site.

- 10 No development shall take place within the Root Protection Zone of trees to be retained until an Arboricultural Construction Method Statement has been submitted and agreed in writing with the Planning Authority.

Reason: To ensure that retained trees are not damaged or adversely affected by building operations.

- 11 The lands granted Planning Permission are affected by a Tree Preservation Order (TPO). No protected tree, other than those required for the purpose of carrying out development authorised by the granted planning permission, shall be, cut down, uprooted or destroyed, or have its roots within the crown spread damaged or subject to any soil level changes, or be subject to any form of tree surgery, without prior written consent of the Council. Development will be taken to include the main development, any associated buildings, access and service provision.

Reason: To ensure the retention of trees protected by the TPO and to ensure continuity of the landscape amenity afforded by these trees.

- 12 All Arboricultural work and Tree Protection Measures shall be implemented in accordance with the relevant details submitted in the *Arboricultural Impact Assessment* (received 27- Jan-2016) and Tree Protection Plan (received 24-MAR-2016), and shall be carried out in general accordance with BS5837 (2012) '*Trees in Relation to Design, Demolition and Construction - Recommendations*'. The erection of fencing required for the protection of retained trees must be in place before any equipment, machinery or materials are brought on to the site for the purposes of the approved development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be

stored or placed within any area fenced in accordance with this condition.

Reason: To ensure that retained trees are not damaged or adversely affected by building operations.

- 13 Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no walls pillars or entrance gates shall be erected at the access onto the road other than those expressly authorised by this permission.

Reason: To preserve the amenity of the countryside.

## Informatives

1. 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.
2. This approval does not dispense with the necessity of obtaining the permission of the owners of adjacent dwellings for the removal of or building on the party wall or boundary whether or not defined.
3. 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.
4. The applicant's attention is drawn to the need to comply with all conditions imposed on the outline planning permission, some of which may need to be satisfied prior to the commencement of any work on the site pursuant to that permission and to this approval of reserved matters.
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 <http://epicpublic.planningni.gov.uk/publicaccess/>.

6. 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.
7. The Private Streets (Northern Ireland) Order 1980 and The Private Streets (Amendment) (Northern Ireland) Order 1992. Under the above Orders the applicant is advised that before any work shall be undertaken for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads (including road drainage) in accordance with The Private Streets (Construction) Regulations (Northern Ireland) 1994 and The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001. Sewers require a separate bond from Northern Ireland Water to cover foul and storm sewers.
8. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Any mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.
9. Notwithstanding the terms and conditions of the Department of Environment's approval set out above, you are required under Articles 71-83 inclusive of the Roads (NI) Order 1993 to be in possession of the Department for Regional Development's consent before any work is commenced which involves making or altering any opening to any boundary adjacent to the public road, verge, or footway or any part of said road, verge, or footway bounding the site. The consent is available on personal application to the TransportNI Section Engineer whose address is Limavady and Coleraine Section Engineer, County Hall, Castlerock Road, Coleraine, BT51 3HS. A monetary deposit will be required to cover works on the public road.
10. All construction plant and materials shall be stored within the curtilage of the site.

11. It is the responsibility of the Developer to ensure that water does not flow from the site onto the public road (including verge or footway) and that existing road side drainage is preserved and does not allow water from the road to enter the site.
12. The responsibility for the accuracy, acceptance of the drainage assessment and implementation of the proposed flood risk measures rests with the developer and their professional advisors.
13. The applicant is informed that they have a legal obligation under Part II of "The Water (Northern Ireland) Order (1999)" to obtain the consent of the Department prior to discharging effluent into a waterway or underground stratum for commercial, industrial or domestic premises. This includes any discharge intended to be made from the proposed drainage system as detailed in the application for planning permission.
14. The applicant is informed that it is an offence under Part II, Article 7 of "The Water (Northern Ireland) Order (1999)" to knowingly or otherwise discharge or deposit any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata. The penalty if found guilty of an offence under this Article is imprisonment for a term not exceeding 2 years or a fine or both.
15. For further information relating to water issues please contact Northern Ireland Environment Agency - Water Management Unit (Telephone 028 9262 3100)
16. The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild bird. It is also an offence to intentionally or recklessly: take, damage or destroy the nest of any wild bird while that nest is in use or being built; or take or destroy an egg of any wild bird. If any person intentionally or recklessly disturbs any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or disturbs dependent young of such a bird they shall be guilty of an offence. Any person

who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

17. Tree and hedge loss should be kept to a minimum and removal should not be carried out during the bird breeding season between 1st March and 31st August.
18. The applicant should comply with all the relevant Pollution Prevention Guidelines (PPGs) in order to minimise the impact of the project on the environment, paying particular attention to:

PPG 01 - General guide to pollution prevention

PPG 02 - Above ground oil storage

PPG 05 - Works in, near or liable to affect watercourses

PPG 06 - Working at demolition and construction sites

Compliance with the advice in PPG 05 and 06 will help to minimise the impact of the site clearance and construction phases of the project on the environment.

These PPGs can be accessed by visiting the NetRegs website at:

<http://search.netregs.org.uk/search?w=pollution%20prevention%20guidelines>

19. Due to the close proximity of the site to a watercourse (Curly River), care will need to be taken to ensure that no polluting discharges occur during the works phase. The site owner needs to make the selected contractor(s) aware that they will be held legally responsible for any polluting discharges which occur during the construction phase.
20. Care should be taken to ensure that only clean surface water is discharged to the surrounding water environment during the construction and operational phases of this development.

21. Consideration must be given at preliminary planning and design stages to ensure that impact on the receiving water environment during any testing, construction and operational phases are minimised.
22. Mitigation measures to address water quality concerns have not been covered at this stage. NIEA WMU has made comments below relating to considerations which should be made. The perceived risks to any waterway during the construction and operational phase are from oil, hydrocarbons, fuel, suspended solids, concrete, cement and grout.
23. With Regards to works in or near a waterway e.g. culverts, diversions and crossings whether temporary or permanent:  
  
NIEA WMU Pollution Prevention Team **MUST BE** consulted about any work to be conducted in; near or liable to affect any waterway in order to agree a method statement with the contractors prior to the commencement of any works.  
  
This should reflect all mitigation measures identified to prevent pollution of the water environment during the construction operational / maintenance phase of the project. Such measures must be in place prior to the commencement of any works and should be incorporated in method statements.

Works method statements should:

- Identify the perceived risks to a waterway e.g. from cement, concrete, grout, fuels/ oil/ hydrocarbons and suspended solids,
- Identify potential pollution pathways,
- Mitigation measures will be employed to minimise the risk of pollution to any waterway (as defined by the Water (NI) Order 1999) e.g.
  1. Safe refuelling, handling and storage practices for earth stockpiles and secondary containment for chemicals, oil, fuels etc
  2. Emergency spill procedures should be addressed and inclusion of the NIEA hotline 0800 80 70 60
- Demonstrate adherence of working practises to the precepts contained in relevant PPG's. e.g. PPG5 Works in, near or liable to affect watercourses and PPG6 Working at Demolition and Construction sites. These can be found at



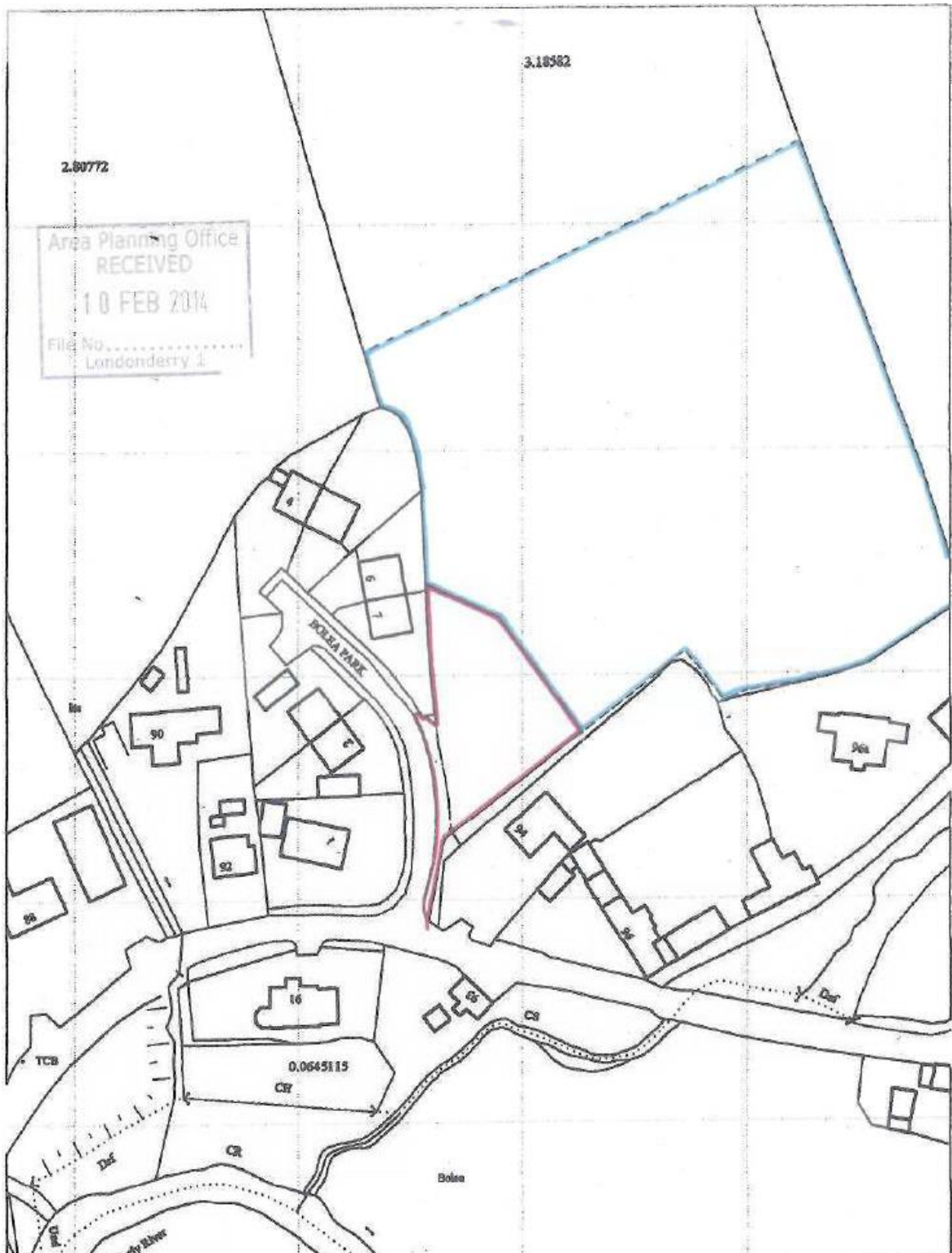
(This list is not exhaustive but should merely be used as a starting point for considerations to be made.)

24. The applicant should be informed that it is an offence under the Water (NI) Order 1999 (as amended) to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment.
25. The applicant should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during site clearance, construction and thereafter.
26. 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.
27. 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.
28. 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.
29. 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.

30. In order to decrease the risk of the incorrect diversion of 'foul' sewage to drains carrying rain/surface water each building shall be provided with such sanitary pipework, foul drainage and rain-water drainage as may be necessary for the hygienic and adequate disposal of foul water and rain-water separately from that building. The drainage system should also be designed to minimize the risk of wrongly connecting the 'foul' sewage system to the rain-water drainage system, once the buildings are occupied.
31. The buildings associated with this planning application should not be occupied unless the necessary sewerage infrastructure is in place to transfer foul sewage to a NIW sewer in an acceptable manner or a private wastewater treatment facility consented by NIEA WMU. It should be noted that NIEA WMU does not favour existing sewerage infrastructure being utilised in such a way as to act as a temporary 'cesspit'.

# Site Location



# Block Plan



# **Addendum**

## **B/2013/0190/RM**

### **1.0 Update**

- 1.1 The application was added to the Agenda for the Planning Committee Meeting in November 2019. Due to the detail and issues raised by the objections received after the application was committed to the November agenda, the application was withdrawn from the schedule.
- 1.2 Since the Application was committed to the November Planning Committee Meeting agenda, 27 separate pieces of correspondence have been received from 2 individual objectors both from the same address.
- 1.3 As the 27 pieces of correspondence raise a range of issues, each issue will be dealt with separately under topic headings.
- 1.4 To clarify paragraph 5.1 and 5.2 of the original committee report, considerable objection has been received from 4 addresses and 1 petition from 6 addresses. One of the signatories of the petition later wrote to advise that they no longer objected to the proposal. To date objections have been received from 7 addresses via individual objections and one petition.

### **2.0 Assessment**

#### **NIW**

- 2.1 A third party stated that the foul sewer terminates at Limavady WWTW which is currently in breach of EU Regulations regarding failure to remove Phosphates and Nitrogen from discharges to River Roe Special Area of Conservation (SAC) therefore approval of this RM to a system that is already polluting the SAC is unlawful.

- 2.2 NIW were asked to complete Question 5 of their consultation response which asks about the status of the receiving WWTW/sewer network. NIW responded to advise that the Bolea WWTW has headroom capacity and can serve the proposal.
- 2.3 A Third party representation was received which raised concerns about the capacity of the WWTW and impact on designated sites.
- 2.4 NIW was consulted and responded as follows
- As objector has correctly highlighted, there are 99 areas within Northern Ireland where NI Water is not approving new connections due to capacity constraints. These areas include many regional towns including Limavady. This information is in the public domain and is available to view or download on our website.
  - However, this proposed development would discharge to a small WWTW located approximately 150 metres downstream from this development site. This particular WWTW and the associated sewerage network has no existing capacity constraints and has adequate headroom capacity to serve this proposal. The WWTW has a Design Population of 130; current existing population is 113.
  - NI Water has no objection to this proposal on the basis that drainage works are carried out in accordance with drainage assessment dated 28 March 2018 and would approve connection to the existing public sewerage in accordance with our new connection application procedure.
- 2.5 Officials would advise that the development connects to the Bolea WWTW which has headroom capacity and can serve this proposal.

#### Habitat Regulations Assessment (HRA)

- 2.6 An objection was received which stated that
- (i) The HRA has not been published on portal
  - (ii) HRA was completed in 2014 under DAERA operational policy on nitrogen deposition and recently NIEA have recently stated that Planning can no longer rely upon this policy when making a determination. The 2014 HRA cannot be relied upon and no decision can be made until new NIEA guidelines have been published in 2020 and a new HRA made.

- (iii) NIEA provide advice it is up to the competent authority to be satisfied that their approval is compliant with HRA Regs.
- (iv) The project is immediately adjacent the curly burn which gives onto the river roe and the available documentation advises that the river roe and tributaries SAC are failing water quality standards for excess phosphates. The curly burn has traces of ancient oak on its banks and there is fauna of international significance.

2.7 Officials would advise that HRAs are not normally published on the portal but are available on request from the office.

2.8 Planning immediately contacted DAERA to seek comments on the content of the objection letter and to confirm whether the HRA completed in 2014 was still compliant with HRA Regulations.

2.9 DAERA responded to advise that following planning reform in 2015 responsibility to undertake HRA for planning proposals sits with the Planning Authority and that given length of time which has elapsed since the HRA was completed that Planning should consult with Shared Environmental Services to review the HRA. Planning proceeded to consult SES on 19<sup>th</sup> November 2019. SES responded on 25<sup>th</sup> February 2020 and advised that;

“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 Service 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.

2.10 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. The following mitigation should be included through conditions:

1. During construction, all surface water run-off from the site shall pass through appropriate treatment such as silt socks/traps before discharge to the storm drainage system.

Reason: To prevent any adverse impacts on the site features of the River Roe and Tributaries SAC through contaminated site run-off during the construction phase of the development entering the adjacent watercourse.

2. A suitable buffer of at least 10 metres must be maintained between all storm gullies and the location of any construction works; including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc.

Reason: To prevent any adverse impacts on the site features of the River Roe and Tributaries SAC through contaminated site run-off during the construction phase of the development entering the adjacent watercourse.”

2.11 The third party also makes reference to a more recent application for the replacement of 96 Bolea Road and that NIEA need to be aware of the application to assess potential impact and cumulative effect of two developments. The application for 96 Bolea Road is for a replacement dwelling. NIEA and SES have been consulted on the application under reference LA01/2019/0779/F. NIEA advise that this proposal is subject to the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) (known as the Habitats Regulations). SES who carry out HRA on behalf of the Council have advised that “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.”

2.12 Officials are satisfied that the HRA carried out by NIEA and later by SES is compliant with the Habitat Regulations.

#### Access to documents

2.13 A third party objected on basis that they could not get access to documentation or the committee report on the portal. A copy of the Planning Committee report was forwarded directly to the third party and planning contacted the third party on various occasions to advise that the inability to access the portal had been logged with DFI the service provider of the portal, that this was outside the



control of planning and to provide instructions to the third party to help them access the portal.

#### Widening of road

- 2.14 A Third party advises that the road is 4.5m wide and the eastern footpath is 1.1m wide giving a total width of 5.6m. The outline and RM requires the road to be widened to 5.5m with a 0.5m grass strip. The third party contends that the road and footpath is not wide enough to facilitate the widening of the road. The letter from Hannaway and Hannaway on behalf of the third party states that Roads require road to be widened from 4.5m to 5.5m and that a 1.8m wide footpath be provided across site, this cannot be accommodated within 2010 map, that the RM red line is different from outline and segment of site encroaches on 3<sup>rd</sup> party lands.
- 2.15 The third party states that given the evidence provided, the cautionary principle should apply in that given conditions of 1973 permission which retained “big tree” and its TPO status it is virtually impossible to adhere to regulations to widen road.
- 2.16 The issue of the widening of Bolea Park by 1m and the fact that it cannot be effected without encroachment onto third party land was raised previously. Officials would refer to paragraphs 8.38 to 8.42 of the original Planning Committee report which deals with ownership of land and paragraphs 8.43 to 8.46 which deals with any change to the red line. No further comments are necessary and Officials would reiterate that planning permission does not confer title it is the responsibility of the developer to ensure that they control all the lands necessary to carry out the proposed development.

#### Impact on trees

- 2.17 The third party advises that the access arrangements will impact on a tree which was to be retained as part of their 1973 approval and which is protected by a TPO.
- 2.18 Officials would refer to paragraphs 8.61 to 8.65 of the original planning committee report. In particular paragraph 8.65 outlines that the TPO at no. 94 affords a level of protection to 26 trees out of 47. However the outline planning application B/2010/0270/O included a condition that “no protected tree, other than those

required for the purpose of carrying out development authorised by the granted planning permission, shall be cut down, uprooted or destroyed, or have its roots within the crown spread damaged or subject to any soil level changes or be subject to any form of tree surgery, without prior written consent of the Department”

Therefore, as the planning history post dates the 1973 approval and takes precedence over the TPO, the Council cannot insist on the retention of the trees potentially affected by the access works given that the conditions of the outline planning permission can permit the works or even their removal in order to facilitate the development. Planning permission does not confer title and it is a matter for the developer to ensure that they own or control all land necessary to carry out the development. Such civil issues are outside the remit of planning.

#### Environmental Impact Assessment (EIA)

2.17 A later objection stated that Planning officials may have misinterpreted the EIA Regulations and seeks to challenge the analysis of the regulations on the grounds that

- (i) The project should have been screened for EIA because housing development fall under 2.10 (b) “urban development projects”. In a sensitive area, EIA screening can be required even if the thresholds in schedule 2 have not been exceeded. The site is in sensitive area (AONB) and is an urban development project it should therefore have been subject to EIA screening.
- (ii) Quoted C508/03 and C290/03 case law and advises that a multi stage EIA can be required at both O and RM and that UK is in breach of EC law with planners in UK and NI acting unlawfully when they failed to screen RM developments.
- (iii) Seeks withdrawal of paragraph 8.53 of case officers report.

2.18 Officials would refer to paragraph 8.52 of the original committee report. This is an application for the approval of reserve matters for two dwellings within the rural area. The site is located within an AONB which is identified as a sensitive area within the EIA Regulations. Such a proposal does not fall under schedule 1 or under any of the categories under Schedule 2 of the EIA Regulations therefore the proposal does not require a determination under EIA Regulations.

2.19 Officials would withdraw paragraph 8.53 of the original committee report and would rely solely on paragraph 8.52.

Name and address of applicant

2.20 The third party makes reference to 3 (2) of the Planning General Development Procedure Order (NI) 2015 which states that applications for planning permission shall contain the name and address of the applicant and where an agent is acting on behalf of the applicant, the name and address of that agent. This matter was dealt with previously under paragraph 8.37 of the original Planning Committee report.

Mapping Errors and accuracy of plans

2.21 The third party has stated that the accuracy of the drawings cannot be relied upon. Officials would advise that the plans submitted with this RM are sufficient for the purposes of planning.

2.22 The third party highlights the mapping errors with OS and LPS maps. Officials comment that this is a RM on the back of an outline approval. Planning permission does not confer title and it is a matter for the developer to ensure that they own or control all land necessary to carry out the development.

2.23 A third party submitted a further objection letter dated 6<sup>th</sup> September 2020 seeking further consultation with DFI Roads due to mapping errors. Officials contacted DFI Roads directly to which DFI confirmed that further consultation was not necessary.

### **Recommendation**

3.1 That the Committee note the contents of this Addendum and agree with the recommendation to Approve the planning application as set out in Section 9.0 and 10.0 of the Planning Committee Report.

3.2 Due to the additional consultations carried out since the application was first added to a schedule for committee in November 2019, any approval would be subject to the conditions as set out in the Section 10 of the original Committee report and the following additional conditions.

3.3 During construction, all surface water run-off from the site shall pass through appropriate treatment such as silt socks/traps before discharge to the storm drainage system.

Reason: To prevent any adverse impacts on the site features of the River Roe and Tributaries SAC through contaminated site runoff during the construction phase of the development entering the adjacent watercourse.

- 3.4 A suitable buffer of at least 10 metres must be maintained between all storm gullies and the location of any construction works; including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc.

Reason: To prevent any adverse impacts on the site features of the River Roe and Tributaries SAC through contaminated site runoff during the construction phase of the development entering the adjacent watercourse.