

Sinead Devlin

From: Aileen McGarry on behalf of Planning
Sent: 26 January 2021 14:21
To: Sinead Devlin
Subject: FW: To Action: Speaking Request Items 5.1 - LA01/2018/1106/F - Unit 17 and adjoining land, Riverside Regional Centre, Coleraine
Attachments: Consideration of Applicants Fallback Propositon.pdf
Importance: High

From: [REDACTED]
Sent: 26 January 2021 13:15
To: Denise Dickson [REDACTED]; Shane Mathers [REDACTED]; Robert Kerr [REDACTED]
Cc: 'Glyn Roberts' [REDACTED]; 'Lisa McMaster' [REDACTED] <[\[REDACTED\]@infrastructure-ni.gov.uk](mailto:[REDACTED]@infrastructure-ni.gov.uk)>; 'Kerr, Angus' [REDACTED]
Subject: RE: Speaking Request Items 5.1 - LA01/2018/1106/F - Unit 17 and adjoining land, Riverside Regional Centre, Coleraine
Importance: High

Dear Denise/Shane

I write further to below and my review of the above application and the applicants proposition on fallback, which is predicated on C/2007/0587/F, permitting 8,106sqm of retail floorspace.

In my opinion and not to pre-empt the approach, but given the Committee has accepted by virtue of the Nexus Planning Update on 25/11/2020 that there is no retail capacity to 2035 and beyond. Both the applicants and committee will focus on the alleged fallback.

Attached our comments in this respect, which add some additional points to that of Mr Mathers thorough consideration. We all appear to be in agreement, which is also reinforced by the independent legal opinion obtained.

The very obvious question, which comes to mind, is if as the applicants have a fallback position for 8,106sqm, as they claim, then why have they submitted the current application at all?

In submitting this application they have undermined their fallback proposition, as there is a tacit acceptance that it doesn't exist. This is reinforced by the lack of an LDC. The application description and accompanying definitive drawings referenced on C/2007/0587/F clearly depict that 878sqm and Unit 12 was all that was permitted.

I would be grateful if this could please be circulated to members for consideration.

Kind regards

Andy Stephens

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From: Andy Stephens [REDACTED]

Sent: 21 January 2021 13:49

To: [REDACTED]@causewaycoastandglens.gov.uk; [REDACTED]@causewaycoastandglens.gov.uk;

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Subject: Speaking Request Items 5.1 - LA01/2018/1106/F - Unit 17 and adjoining land, Riverside Regional Centre, Coleraine

Dear Planning Office

Further to the above application being presented back to Planning Committee on 27/01/202 and Addendum 4 having and correspondence Committee Report having been uploaded on 13/01/2021.

I would please request speaking rights in opposition to the above application and in support of the officers well founded refusal recommendation. The speaking rights are for both myself on behalf of Retail NI and Mr Jamie Hamill of Coleraine Business Improvement District.

There are several points, which I feel I need to raise in advance:

1. I note the inclusion of the NAP 2016 in the Conclusion of the Commit Report further to our previous representations and as expressed on Page 9 of the attached Minutes from 25/11/2020. However, there is no updated consultation response from the Development Plan Team on EPIC, nor is NAP 2016 included in the amended Reason for Refusal 3 on the final page (P.21) of the Committee Report. In my opinion there are two conflicts in NAP – 1) V&V of Coleraine Town Centre as outlined on P.9 and 2) Conflict with Designation BYT03 in Ballymoney given it is a designated and sequentially preferable alternative site. I would be grateful if you could please ensure the Development Plan Team's updated response is placed in the public domain and that NAP 2016 is included in Reason for Refusal 3, as suggested in the minutes and including BYT03. I would not wish for any party to claim prejudice that it was not before them as per Paragraph 5.72 of the SPPS.
2. In the approach to 25/11/2020 Planning Committee, I noted that the LDP Retail Capacity Assessment Update was presented to Planning Committee Members at Item 8.2 and that the summary of Nexus Planning's findings set out at Section 4 of the 2020 update highlighted that there is no capacity for comparison goods to 2035 and beyond in the Plan Area. Members were advised to accept the Nexus Planning Retail Capacity Assessment Update (2020) and this motion was carried unanimously. In endorsing this approach all members of the Planning Committee involved on 25/11/2020 have now accepted that there is no capacity for comparison goods to 2035 and beyond. This is now a matter of public record, and

makes it an impossibility to consider approving a proposal for 40,000sqft of comparison goods floorspace some two months after accepting there is no capacity for this form of retailing beyond the life of the new emerging plan.

3. In addition to the above I note that Riverside is indicating through their letting agents TDK that the proposed unit is "under offer", as per the attached. This is despite no tenant being presented by the applicants throughout the processing of this application. It is also noteworthy that they indicate that 21,800sqft is already vacant within the Riverside Centre, as per the attached brochure. From a site visit on 25/11/2020 additional units for DW Sports, Harveys, Starplan are vacant. There would be no logical or rationale justification to entertain additional floorspace, when there is no end operator (No need/specific requirements) and where there is already 21,800sqft of vacant comparison units. Notwithstanding the accepted lack of capacity, impact of 16.6% on Coleraine Town Centre against a vacancy rate of 20% and conflicts with the SPPS and NAP.

To summarise there is no capacity for comparison goods to 2035 and beyond, which has been accepted and endorsed unanimously by all Planning Committee Members, the proposal is contrary to the extant NAP 2016, Coleraine Town Centre has a vacancy rate of 20% and the independent retail consultants indicate an impact of 16.6% and there is a sequentially preferable alternative site in Ballymoney, which was designated as a DOS (BYT03) in NAP 2016, where the alleged jobs and investment would still be realised.

Taking account of all of the matters, the detailed consideration of Planning Officers to refuse is consistent with the SPPS, NAP 2016 and the previous approach of the PAC in respect of proposals at the Riverside. Furthermore there is no need, no capacity and no point of this proposal, other than to try and exert influence on the new Local Development Plan process given the timing of decision.

I have copied in DFI as the revised reasons for refusal now include NAP 2016 and any attempt to permit this proposal would seek to undermine the plan led system and NAP 2016, which would have regional and sub regional impacts. Notwithstanding it would be in complete conflict with the SPPS, which is supposed to apply a town centres first approach.

Perhaps you could please confirm that speaking rights have been granted and that this information has been circulated to members, given that paragraph 2.1 of The Protocol of the Operation of the Planning Committee has been removed.

Kind regards

Andy Stephens

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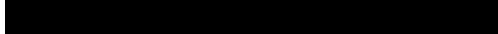
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Planning Permission - C/2007/0587/F

The applicant's proposition is outlined in the various Legal submissions by Mr Stewart Beattie QC and in simple terms the approach is premised on the concept of "fallback".

The "fallback" concept is fact specific, and in this instance based upon C/2007/0587/F including its P1, decision notice and definitive drawings.

Permission C/2007/0587/F

This was clearly a full planning application, and the applicants P1 form describes the proposal as follows;

"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".

The description of development is clear in that it relates to a singular retail unit (Unit 12), which has already been constructed, as it is for retrospective development. The erection of this singular retail unit fell outwith the earlier permissions as referenced.

The accompanying planning fee paid at Q.25 was £2,400 based on a Category 4 – Erection of industrial commercial buildings. This fee is based on each 75sqm of floorspace or part thereof at £200. In this case 12parts (878sqm /75sqm).

The application was also accompanied by definitive drawings as it was a full application and I note the applicant claims "There are no plans that contradict the 2007 planning permission....."

This is an erroneous statement as the following definitive plans formed part of the 2007 consent, as referenced on the decision notice and to which there is simply no ambiguity,

- **Drawing 01 -Site Location Plan** – Clearly depicting the application site via a red line boundary and bearing the date stamped of 14/02/2008 "Granted"
- **Drawing 05 – Proposed Elevations** - Clearly depicting Units 17 -13 as "approved scheme" and Unit 12 as not being excluded from the "approved scheme". The drawing bears the date stamped of 14/02/2008 "Granted". This drawing demonstrates the extent of the development approved within that plot.
- **Drawing 06 – Proposed Site Layout** – Clearly depicting Unts 17 -12, with Unit 12 coloured green so that it is distinguishable. It is significant to highlight the clear notation on the drawing "Phase 2" and the lack of units shown within this section. Again, the drawing bears the date stamped of 14/02/2008 "Granted".
- **Drawing 07 – Section A-A of Unit 12** – This drawings depicts a horizontal section through Unit 12 and bears the date stamp 14/02/2008 "Granted".

These definitive drawings, form part of the permission and clearly undermine the applicants proposition on "fallback". They demonstrate that C/2007/0587/F relates to Unit 12 and 878sqm of floorspace, as per Condition 2.

Decision Notice

The Planning Decision Notice relating to C/2007/0587/F clearly sets out the following details on the front page;

- Application reference number, date of application,
- Site Location, Description of Development, Applicant Details, Agent Details and,
- Drawing References to which the permission relates being 01,05,06,07

The decision notice is not read in isolation but is taken in conjunction with the definitive drawings which formed part of that decision, as clearly referenced on the front of the decision notice and notably before the associated conditions.

These definitive drawings depict the scheme to which planning permission C/2007/0587/F was issued and there is no ambiguity between the description of development or the accompanying drawings. They do depict some other scheme as purported by the applicants based on the conditions which follow.

Mr Beattie refers to the authority *Miller-Mead v Minister of Housing & Local Government (1963) 2Qb 196*. However, this decision dealt with a Planning Enforcement Notice and considered the concept of validity/nullity and whether the appellant was able to understand what was required of them within the 4 corners of the enforcement notice.

This is distinguishable to a Planning Decision Notice, which clearly references the site, description and drawings which form part of the permission.

Condition 2 clear states that;

"The gross retail floorspace of the new unit hereby approved shall not exceed 878sqm when measured internally" .

There has been no consideration of how Conditions 3 & 4, which follow relate to Condition 2, and description and definitive drawings. This has conveniently been overlooked by the applicants.

Definitive v Illustrative Drawings

There is a distinction between definitive drawings which constitute part of an application and illustrative drawings, which show one or more possible forms that the proposed development might take.

The latter can provide a useful indication of the applicant's thinking and enable the decision maker to be confident that a satisfactory form of development can be designed. However, illustrative drawings present possibilities and do not exclude other possibilities.

Only definitive drawings describe the actual development for which planning permission is being sought.



Legal Approach

In the referenced case of *McClurg and Another v Department of the Environment for Northern Ireland (1990) NI 112* there was a reduction in the number of residential units on the illustrative drawings to 18, whilst the planning decision notice permitted 20 units.

However, fundamentally this was an outline planning permission and as such included illustrative drawings that present possible forms that the development might take.

In the *Barnett v Secretary v Secretary of State for Communities, Local Government, East Hampshire District Council (2008)*. It was explained that where there is a full planning application, it is required to not only identify the land to which the development relates but also must be accompanied by such other drawings as are necessary to depict the development, which is the subject of the application.

C/2007/0587/F was a full planning application, accompanied by definitive drawings and as such it is distinguishable from the outline planning application in *McClurg and Another v Department of the Environment for Northern Ireland (1990) NI 112*, which the applicant relies upon.

Lawful Development Certificate

In *Saxby v Secretary of State for the Environment and Westminster City Council (1998)* it was established that the specific statutory scheme for the determination of lawful use of development was by application to the Council (or the Commission on appeal) for the issue of a Certificate of Lawful Development (or Use) (LDC).

If the applicant had considered that 8,106sqm was permitted under C/2007/0587/F, 12 years ago then it was open to them to submit a Lawful Development Certificate to seek confirmation that competition of approved works would be lawful.

Addendum 4 confirms that there is no Lawful Development Certificate in respect of C/2007/0587/F.

The onus is on the applicant to demonstrate the lawfulness of the purported development, but no persuasive evidence has been presented of any extant planning permission for 3Nos additional retail units. As such there is no fallback position available to the applicants as claimed and it is not a material consideration as it does not exist.

Conclusion

The approach of the applicants to C/2007/0587/F is to try parse the permission and consider only Condition 3 & 4, as these assist their argument. The reason why is there is no capacity for this proposal.

The applicant's approach is erroneous as both the Council Planning Officers and I have outlined.

A full planning permission (C/2007/0587/F) is read in accordance with the definitive drawings, which depict the development and formed part of that permission as described and are referenced on the front of the Planning Decision Notice.

The very obvious question is why have the applicants submitted this application at all, if as they claim, there is already 8,106sqm of floorspace, permitted under C/2007/0587/F ??

