Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2020/A0151
Appeal by:	McGinnis Group
Appeal against:	The refusal of full planning permission
Proposed Development:	Residential development of 33 houses comprising 8 bungalows and 25 two storey dwellings with landscaped amenity space, internal road layout and pedestrian / cycle link to riverside walkway. Junction improvements at Ebrington Park / Limavady Road and Rockport Park / Limavady Road junctions to provide visibility splays.
Location:	Lands at Rossbay off Limavady Road, Waterside, Derry City
Planning Authority:	Derry City and Strabane District Council
Application Reference:	LA11/2016/0976/F
Procedure:	Written representations and Commissioner's site visit on 17th December 2021
Decision by:	Commissioner Gareth Kerr, dated 25th January 2022

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Preliminary Matters

2. A revised drawing was submitted with the appellant's evidence to supersede drawing No. 03 Rev 3 (Site Sections Sheet 1 which was received by the Council on 16th May 2019). The purpose of the new drawing was to correct one of the cross sections so that it matched the retaining heights at one particular housing unit as shown on other submitted drawings. There is no evidence that this or other drawings were intentionally misleading. As this is simply a clarification of information that was already before the parties on other refused drawings and all parties had the opportunity to comment upon it at rebuttal stage, no prejudice arises and I do not accept the opinion of a third party that the drawing is a 'new matter' that should be ruled inadmissible under Section 59 of the Planning Act (Northern Ireland) 2011 (the Act). Accordingly the drawing shall form part of my consideration of the appeal and will be numbered 'PAC 1'.

3. The appellant's evidence states that drawing Nos. 14 (Boundary details) and 17 (foundation layout plan) which were received by the Council on 27th October 2017 had been superseded by other drawings and were erroneously stamped refused by the Council. The Council did not dispute this point. Accordingly, the above drawings will not form part of my consideration.

4. The Council carried out an EIA Determination under Category 10(b) – urban development projects – of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. It was determined that an environmental statement was not required. An objector argued that the proposal fell under Category 2(d) – deep drillings exceeding 1 hectare – because it includes piling and therefore required an environmental statement. However, this category relates to drillings for activities including geothermal, storage of nuclear waste and drilling for water supplies (which would generally be much deeper than the 10 metre piles proposed) and it specifically excludes drillings for soil stability, which is the purpose of this proposal. Therefore I find no fault with the Council's EIA screening and I am satisfied given the scale, nature, layout and location of the proposal that an environmental statement is not required to consider this development.

Reasons

5. The main issues in this appeal are:
   - whether there has been adequate public consultation with local residents;
   - whether there would be prejudice to road safety;
   - whether the development would respect the character of the surrounding area; and
   - other matters raised by third parties.

6. In the determination of this appeal, Section 45 (1) of the Act states that regard must be had to the local development plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Derry Area Plan 2011 (DAP) acts as the LDP for this area. A third party claimed that the DAP has been superseded by the Council's draft Plan Strategy 2032, which is currently at consultation stage. As the Plan Strategy has not been adopted, it is not an LDP and it cannot be given determining weight in the appeal. The appeal site lies within the settlement development limit for Derry City in the DAP and is on 'whiteland' or land not zoned for any particular land use.

7. Policy BE1 of the DAP deals with urban design and Policy H1 provides policy considerations for housing design and layout. These material considerations are replicated in regional policy and I will return to them later. Policy H3 of the DAP permits housing development on vacant sites within Londonderry and other defined settlements if a satisfactory residential environment is provided and subject to no over-riding need for other uses on that land. Whilst within the city limits, the appeal site is currently in agricultural use. Third parties referred to a historic proposal to use it and adjoining land for a second carriageway into the city from the east to relieve the pressure on Limavady Road. However, the Department for Infrastructure (DfI) stated that they have no knowledge of any such proposal and in any case, it is no longer possible due to the development of adjoining lands. The DAP specifies a number of major road proposals around the city and this is not one of them. As there is no firm proposal for a road scheme and no prospect of the site forming part of a suitable route due to development on adjacent lands, I am satisfied that the land will not be required for use as a strategic road and no weight is attached to this argument by third parties. The development of the appeal site for housing would accord with the DAP in principle.

8. The appeal site is a linear strip of existing agricultural land measuring some 2.7 hectares, located on the southern side of the River Foyle in the Waterside area of Londonderry. It is separated from the river by a railway line, the Waterside Greenway public footpath and a heavily vegetated slope. The elevated site sits approximately 10 metres above the footway and affords views across the river and the wider city. The land proposed for development is accessed from Rossbay to the south via a gap between two existing houses. The area to the south of the site is predominantly residential and most dwellings are detached properties on medium sized plots.

9. The main arterial route in this part of the city is the A2 Limavady Road approximately 300 metres south east of the site. Rossbay and the development site are accessed from this main road via either Rockport Park or Ebrington Park. A proposal for a further access point from Caw Park to the east was removed earlier in the planning process. The planning application was amended in 2017 to include alterations to the main A2 Limavady Road to improve visibility at all entrances along the north western side of a 475 metre section of the road including its junctions with Rockport Park and Ebrington Park which will serve the proposed development. The red line was extended to include this part of the Limavady Road and the streets connecting to the original site.

Public Consultation

10. Before coming to the policy considerations, I will consider the Council's first reason for refusal which is essentially procedural. The Council's Planning Committee considered that there had been inadequate public consultation with local residents regarding the proposed development. The Council's evidence indicates that a major concern of members was the extension of the red line to include the surrounding streets and works to the Limavady Road. Members considered that as these enabling works would affect more people than when the scheme was originally conceived, fuller public consultation should have been undertaken in respect of the changes. In assessing this objection, I have considered the legislative requirements for public consultation on a scheme of this nature and the actual consultation that was carried out before and during the planning application.

11. The Planning (Development Management) Regulations (Northern Ireland) 2015 set out a hierarchy of classes of development. In respect of housing, development that comprises 50 units or more, or where the area of the site is or exceeds 2 hectares is classed as a major development. As the appeal site exceeds 2 hectares, the proposal is a major development. Sections 27 and 28 of the Act, read with the above Regulations, require that before applying for planning permission for a major development the applicant must comply with certain provisions including inter alia, giving notice to the appropriate council (known as a 'Proposal of Application Notice' (PAN)), holding at least one public event in the locality where members of the public may comment on the proposal, publishing details of the public event in a newspaper and preparing a pre-application community consultation report.

12. A PAN (Ref: LA11/ 2016/0149/PAN) was received by the Council on 12th February 2016. The development was described as "proposed housing development of approximately 35 - 40 units". A public event was advertised in the *Derry Journal* on 16th February 2016 and by leaflet drop to surrounding houses. Third parties disputed the extent of the leaflet drop, but the applicant was not required by the legislation to

do this. Any leaflets delivered to homes were in addition to the statutory requirements set out in Article 5 of the Regulations. The public event was held in the Waterfoot Hotel at Caw Roundabout on 1st March 2016. The report of the public consultation indicates that over 130 people attended the event and 81 written comments were submitted. Attendees were reminded that participation in the event did not affect their ability to comment or object during the full planning application process.

13. Article 8 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 lays down the steps a council must take in giving notice of planning applications to the public. These include publishing notice of the application in at least one newspaper circulating in the locality, publishing the notice on its website and serving notice on any identified occupier on neighbouring land. Article 2 defines an 'identified occupier' as the occupier of premises within a 90 metre radius of the boundary of the application site. 'Neighbouring land' means land which directly adjoins the application site or which would adjoin it but for an entry or a road less than 20 metres in width. A property must be on neighbouring land to fall within the requirement for neighbour notification, so all properties within 90 metres of the boundary of the site do not require notification.

14. When the full application (now subject to appeal) was submitted, 34 identified occupiers on neighbouring land were notified by the Council on 28th November 2016 and it was advertised in the local press on 6th and 7th December 2016. The application documents were made available to view on the Northern Ireland Planning Portal. Following amendments to the application including a reduction in the number of housing units and extension of the red line to include the proposed works to the Limavady Road, the application was re-advertised twice more in the *Derry Journal* and *Londonderry Sentinel*. As there were now significantly more identified occupiers on neighbouring land, the list of neighbours to be notified was expanded considerably and notification letters were sent on three further occasions following various amendments. Over 2400 letters inviting comments were sent to local residents during the course of the application.

15. In response to the public consultation carried out during the application, the Council received 513 letters of objection, one petition of objection and one letter of support. The Council also held a pre-determination hearing in which third parties were able to participate. This level of engagement counters the suggestion that there was a lack of public consultation.

16. Some third parties queried whether the Council should have entertained such a significant change to the red line of the application. The making of an amendment to a planning application is a matter of discretion for a planning authority. It is in the public interest that planning applications should be capable of being amended during the planning process to address issues that arise provided an amendment is not so substantial as to constitute a different application and provided no prejudice arises. There should be no prejudice to the public interest if detailed public consultation takes place in respect of the amendments.

17. In this case, the development proposal remains for housing on the same land. The amendment concerns the provision of safe access to that housing. The works to the Limavady Road were proposed in response to concerns raised by the Council, DfI

and third parties at an early stage in the application process. Notwithstanding the view of many third parties that the works proposed will impair road safety, it is in the public interest that a proposal to improve visibility at a series of entrances and junctions along the Limavady Road be capable of consideration in the context of the application and now the appeal. Furthermore, in assessing whether any prejudice arose, I find the following points of relevance:

- the proposed road works were added to the description of the development;
- the matter was re-advertised on several occasions;
- many additional properties on neighbouring land to the new red line were notified on various occasions; and
- there was a high level of public comment on the proposal after the amendment was made.

I therefore conclude that the Council cannot be faulted for exercising its discretion to accept the amendment and that the steps it took to bring the proposal to the attention of the public complied fully with the relevant legislation. There was no prejudice to the ability of third parties to comment on the amended proposal.

18. It was queried whether the correct planning fee was paid to the Council given the increase in the red line. I note that there is no provision in legislation for adjustment to the fee payable if a planning application is amended by agreement. In any case the administration of planning fees is a matter for the Council and is not a matter I can adjudicate on in this appeal.

19. The Council's evidence indicates that members of the Planning Committee felt there should have been a new public consultation event when the red line was extended. However, the developer-led 'public event' required for a major application is by nature a means of engaging with the public at pre-application stage. Once an application is under consideration by a planning authority, jurisdiction rests with the authority as does responsibility for carrying out public consultation on the proposal and assessing any representations made. Some parties seem to have conflated 'public consultation' with a 'public event'. I have found that the Council's process of public consultation on the application and subsequent amendments was thorough and there was no legal requirement to hold a second public event. Whether more people would have commented on the alterations to the Limavady Road if a second public event was held is immaterial as it is the substance of the matters raised rather than the volume of representations that concerns the decision-maker.

20. A member of the Planning Committee asserted that the Planning Portal was difficult for residents to navigate. However, it is not the only means of viewing the application documents. The Council is required to maintain a public register of applications and members of the public can view hard copies of the plans and documentation at the Council's offices if they wish. This facility is highlighted in press advertisements and neighbour notification letters. Therefore I do not accept that any limitations of the present Planning Portal result in prejudice to third parties.

21. A number of residents complained that one of the rounds of neighbour notification was just before the Christmas holidays in 2019. While the Council is required by legislation to give a period of 14 days for comments, in practice they accepted comments well beyond this period, so there was no prejudice to anyone who wished to comment on the proposal.

22. Third parties queried the number of amendments that were permitted to the P2 land ownership declaration. Section 42 of the Act requires that a completed land ownership certificate accompanies a planning application. It is a normal feature of the planning process that if additional land is required for access purposes, an amended P2 certificate is submitted. The lands required for road improvements are within the bounds of the existing roads and no third party land is required. The appropriate notice has been served on DfI Roads. There is no evidence of any failure to serve notice on any interested party, so no prejudice arises.

23. In light of the above considerations, I do not accept that there was inadequate public consultation with local residents regarding the proposed development. The Council's first reason for refusal and associated objections by third parties are not sustained. I will now turn to policy considerations.

24. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. It also retains certain existing planning policy statements (PPSs). These include PPS 2 – Natural Heritage, PPS 3 – Access, Movement and Parking, PPS 7 – Quality Residential Environments, Addendum to PPS 7 – Safeguarding the Character of Established Residential Areas, PPS 8 – Open Space, Sport and Outdoor Recreation, PPS 12 – Housing in Settlements and PPS 15 – Planning and Flood Risk which are of relevance in the appeal. The SPPS further states that 'Living Places – An Urban Stewardship and Design Guide for Northern Ireland', 'Creating Places – Achieving Quality in Residential Developments', Development Control Advice Note (DCAN) 8: Housing in Existing Urban Areas and DCAN 15: Vehicular Access Standards will continue to be treated as material considerations. The SPPS is no more prescriptive than the abovementioned retained policies and thus the retained policies take precedence in decision making in accordance with the transitional arrangements outlined in the SPPS.

Road Safety

25. The Council's second reason for refusal states that the proposal is contrary to PPS 3 as the proposed development would cause congestion to existing roads due to the narrowness of the road and also road safety implications on Limavady Road due to the road being narrowed and the footpath being widened to accommodate the development. Neither the Planning Committee minutes nor the Council's evidence indicate which policies in PPS 3 would be offended. The majority of the arguments advanced by the parties fall to be assessed under Policy AMP2 – Access to Public Roads.

26. Policy AMP2 states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic. The policy goes on to set out factors that will be taken into account in assessing the acceptability of access arrangements. These include the number of access points onto the public road, the nature and scale of the development, the character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses, and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected

increase. More detailed requirements relating to accesses and visibility splays are set out in Development Control Advice Note 15 and 'Creating Places'.

27. The section of Limavady Road within the red line is approximately 510 metres long. It is a major route into the city centre from the east and statistics indicate that it carries some 16,000 vehicles per day on average. In addition to strategic traffic it serves the residential areas on either side and the recently erected Foyle College and Ebrington Primary School. Rockport Park is the most direct route from Limavady Road to the entrance to the development site on Rossbay. An alternative, but slightly longer route is via Ebrington Park to the south west.

28. Rockport Park is around 7.3 metres wide for most of its length, though the carriageway narrows to 5.4 metres close to its junction with the Limavady Road. Visibility at the junction is extremely restricted by garden walls and the existing narrow footway. The existing visibility splays measure 4.5m x 10m in the critical direction and 4.5m x 11m in the less critical direction. At the narrowest section of Rockport Park, there is a footway to only one side.

29. Ebrington Park is a curving residential street approximately 4.9 metres wide with a 1 metre footway along one side and partly along both sides. Forward sight distance is restricted on bends. Visibility at the junction with Limavady Road is extremely restricted by adjacent boundary features and the narrow footway. The existing visibility splays measure 4.5m x 14m in the critical direction and 4.5m x 16m in the less critical direction.

30. Under DCAN 15, intensification is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more. Even with traffic flows to and from the development split between the two potential routes to the Limavady Road, all parties accept that the development will result in intensification of use of the existing streets. Therefore, in order to avoid prejudice to road safety, DfI's initial response was that Ebrington Park should be widened to a minimum width of 5.5 metres, speed calming measures should be provided along with forward sight distance around the bends and visibility splays of 4.5m x 70m should be provided at both Ebrington Park and Rockport Park where they meet the Limavady Road. It was found that increasing the carriageway width along Ebrington Park was not achievable due to the need for third party land, removal of the existing footway or removal of mature trees.

31. The appellant then submitted the revised scheme which proposed the narrowing of a 475 metre section of the Limavady Road to increase the width of the footway and thereby improve the visibility splays at the junctions of Ebrington Park and Rockport Park, but also at the other minor roads and individual accesses along the north western side of the road. It would enable the provision of visibility splays of 2.4m x 70m at both junctions. The Design Manual for Roads and Bridges (DMRB) permits the relaxation of the x-distance to a minimum of 2.4m from the near edge of the major road running carriageway in "exceptionally difficult circumstances". It was submitted that achieving a 4.5m sightline would require the demolition of existing dwellings along the Limavady Road which is not economically viable. In widening the footway to provide a 2.4m x-distance, it is necessary to ensure that a suitable carriageway width is maintained and that there are no sudden changes in the alignment of the Limavady Road. The minimum width for a trunk road of this type is

specified in the DMRB as 7.3 metres. The final proposal maintains this width or greater for the full length of the works. The width of the narrowed section of the road would range from 7.3 metres to 9.09 metres.

32. DfI was satisfied with the appellant's Transport Assessment Form which included traffic flows for other committed developments such as the new schools and Foyle Arena. They noted that the appeal development would have very little additional impact on traffic volumes on Limavady Road. The main impact is on turning movements in and out of Ebrington Park and Rockport Park. These movements would result in intensification and so it was appropriate to seek improvements to safety. DfI was satisfied that the benefits of the revised proposal in road safety terms outweighed their previous concerns and had no objection subject to conditions requiring the road improvements to take place prior to the commencement of other development.

33. Third parties raised concerns that DfI had abandoned its initial position that Ebrington Park should be widened and forward visibility improved at bends. However, in its assessment of the amended proposal, DfI found that the width and alignment of Ebrington Park resulted in a highest mean speed of 19.2mph. They considered that widening the carriageway would potentially increase speeds. This would require additional traffic calming measures. In light of the improvements at the junction which would benefit all road users and the fact that the existing road limited traffic speeds along it, their professional assessment was that widening of the carriageway was no longer required. DfI are entitled to change their position in response to a significant change to the overall scheme.

34. One of the main concerns raised by the Planning Committee was the potential for congestion on the existing streets due to their narrowness. This concern relates mainly to Ebrington Park and a short section at the southern end of Rockport Park. They raised the matter of construction access through these narrow streets and the fact that cars regularly park on the footways so pedestrians have to step onto the road to get past. Members also questioned the rationale for the reduction in the width of the Limavady Road given the congestion caused by schools, a nursing home and a car wash. They considered the proposal would prejudice the safety of pedestrians and cyclists including children travelling to school. One objector described the narrowing of Limavady Road as a "ridiculous concept". It was pointed out that the Limavady Road was widened in other places such as the new Foyle College entrance and the Ebrington Hub entrance.

35. Third parties raised other related concerns. It was argued that Rockport Park met the criteria for the provision of a right turning lane and this this would be of more benefit than improved visibility splays. It was stated that the proposal would result in restricted access for emergency services. It was argued that air quality in the area would be harmed. An objector with frontage onto the Limavady Road questioned whether adequate drainage would be provided.

36. On the day of my site visit, I drove all of the above-mentioned streets in both directions and turned in and out of both Rockport Park and Ebrington Park onto both lanes of the Limavady Road. Limavady Road was quite busy, especially at the end of the school day at Foyle College when cars and buses were arriving and leaving. This resulted in some tailbacks on the main road. I observed the poor visibility at

both junctions and found that I had to “nose out” the car into the main road to get a sufficient view of the oncoming traffic. However, I was able to successfully negotiate the junctions on each occasion. There were very low levels of traffic on the side streets and so the narrowness of sections of them did not unduly impact on my progress along them. I am therefore persuaded by the opinion of DfI that the narrow curving nature of Ebrington Park acts as a traffic calming feature whereas the wide open nature of Rossbay and the northern section of Rockport Park would tend towards higher speeds.

37. Notwithstanding the low levels of traffic on the narrow sections of the streets, I accept that there are likely to be occasions when it is difficult to pass another vehicle either at the junction or because of parked vehicles, and that the propensity for this may increase as a result of the additional traffic that would be generated by the appeal proposal. However, the scheme must be looked at as a whole. I consider that the improvements to visibility splays at four street junctions and multiple individual accesses by widening the footway would be significant and that the resulting road safety improvements for all users of the Limavady Road ought to be afforded substantial weight in the determination of the appeal.

38. The Limavady Road will remain a minimum width of 7.3 metres, indeed it will be greater along most of the improved section. It will still have one lane each way, so there will be no reduction in the capacity of the road. I consider that a wider footway can only be beneficial to pedestrian safety including that of school children. I have been given no persuasive evidence that the slight narrowing of the road would reduce safety for cyclists. There will be no change to the radii of the junctions, so access for emergency services will be no worse than at present. As the streets are linked at Rossbay, even if one of the streets was obstructed, access would be available via the other.

39. Construction access through the streets would not be a permanent requirement. The appellant is willing to accept a planning condition requiring the submission and agreement of a Construction Environmental Management Plan (CEMP) which would include how construction traffic is managed. I consider that such a condition is necessary to ensure that the development is carried out in a way that limits its impacts on the amenity of neighbouring residents. They are also willing to comply with other conditions including wheel washing of construction vehicles and dust control. It is appropriate to include these and other related measures in the CEMP.

40. Each application must be assessed on its own merits and because it was found necessary to widen the Limavady Road to provide junction improvements at Foyle College and Ebrington Hub, it does not follow that reducing the road width elsewhere to improve visibility at junctions is unacceptable. The works to the Limavady Road would be subject to an Article 3 (4) (c) agreement with DfI. There is no evidence that they will result in inadequate drainage or flooding of existing properties. The road bond required is a normal feature of development projects that require improvements to a public road. It assures the quality of the work and does not call into question the viability of the project as suggested by an objector. Returning to the test posed by Policy AMP2, there would be no <u>significant</u> inconvenience to the flow of traffic.

41. Section 5 of DCAN 15 provides guidance on the provision of right turning lanes. Factors to be taken into account include the volume of right turning traffic or where right turns are the dominant movement, the speed and volume of the priority road, available forward sight distance, junction spacing, accident history, status of the priority road and relevant traffic model output. Traffic modelling carried out by the appellant indicates that the junctions will operate well within capacity. This section of the Limavady Road is straight (unlike at Ebrington Hub or Foyle College) and does not restrict forward visibility. Right turns into the development from the east are unlikely to be the dominant movement as the city centre is to the west. The scheme is not designed on a blank canvas, but within the constraints of the existing urban environment. Having regard to the guidance in DCAN 15, on balance, I consider that while a right turning lane at Rockport Park may be beneficial, the available width of this section of the Limavady Road would be better used to improve sightlines at all the junctions and private entrances along this part of the road. The objectors' argument for a right turning lane is not sustained.

42. Members of the Planning Committee referred to a separate proposal by DfI Roads to construct a 3 metre wide shared cycleway and footway from Foyle Arena to Foyle College on the north western side of the Limavady Road as part of the Minister's 'Active Travel Initiative'. It seems that there is no detailed design for this scheme at present. It would be subject to separate design, procurement and availability of funding. The proposal does demonstrate another circumstance where the main road could be narrowed in the public interest. However, as there is no certainty if or when it would be implemented and no firm proposals are before me, I cannot attach determining weight to it in the consideration of this appeal.

43. A number of objectors referred to the air quality implications of additional traffic to the development on the existing streets. One referred me to the airqualityni website. However, it is not for me to go looking for evidence that has not been submitted as part of the appeal process. I consider that the site is in a sustainable location within the city limits and the provision of a link to the Waterside Greenway will facilitate use of modes of transport other than the private car including bus, rail, walking and cycling. In the context of 16,000 vehicles that use the Limavady Road daily, I am not persuaded that the additional traffic generated by the development (estimated as approximately 20 two-way flows during the AM and PM peak periods) would have such an increased adverse effect on air quality as to justify refusal of permission.

44. An objector stated that the speed camera van parks on the section of Limavady Road to be narrowed indicating that there is a speed problem in the area. It is possible that narrowing of the road would have the effect of discouraging speeding. In any case, such enforcement is a matter for the relevant authorities. It would not have a significant bearing on the determination of this planning appeal.

45. A number of objectors referred to traffic queueing for the car wash south west of the junction with Ebrington Park. I observed this during my site visit. I have not been provided with the planning status of the use. The plans indicate that the road will be narrowed to 8.47 metres at this point – it will remain significantly wider than the minimum standard of 7.3 metres. Even on occasions when vehicles were queueing onto the road for the car wash, there would still be a remaining width of some 6 metres for the two traffic lanes, so the works would not significantly inconvenience the flow of traffic. The objectors' concerns on this point are not sustained.

46. Committee members and objectors were concerned about the access into the development site itself between two houses at Rossbay. A wide gap was left to facilitate access to this land and the proposed roadway and its junction with Rossbay will meet the requirements of PPS 3, DCAN 15 and 'Creating Places'. There will be a 6 metre wide carriageway with 2 metre footways to both sides and a 6 metre radius at the junction. Drainage and streetlights will be relocated and a pedestrian crossing point will be installed. Visibility splays of 2.0m x 39m will be provided to both sides and Rossbay will be 7.5 metres wide which will be adequate for all traffic entering the site during construction and operation. It will not prejudice road safety or significantly inconvenience the flow of traffic. The appellant has no objection to planning conditions requiring the provision and use of a wheel wash and control of dust on the surrounding road network during construction. As already noted, these measures can be conditioned to be included in the CEMP. An objector queried who would maintain the roadway within the development. A Private Streets Determination will ensure that it is adopted as a public road on completion and will be accessible for refuse collection. The Council's and third parties' concerns about the access from Rossbay are not sustained.

47. It was alleged that DFI Roads had a conflict of interest as they sold the site to the developer in the first place. There is no evidence to substantiate this claim. As the sale took place before submission and consideration of the planning application, there is nothing to suggest that it would have influenced the professional opinion of the highway engineers tasked with assessing the proposal. In any case, jurisdiction has now passed to the Commission.

48. Considering the access proposals as a whole and taking account of the concerns raised by third parties, whilst I acknowledge a certain level of existing congestion in the area, on balance I consider that the works proposed will improve road safety for both existing and proposed users of the entrances along a long stretch of the Limavady Road, something that I judge to be in the public interest. Having regard to the factors to be considered under Policy AMP2, I conclude that the access arrangements are acceptable, they will not prejudice road safety and they will not significantly inconvenience the flow of traffic. In the interests of road safety, planning conditions are necessary to ensure completion of the road upgrades prior to other development, adoption of the new roads, removal of permitted development rights within adopted areas, phasing of road surfacing and street lighting, control of gradients of private accesses (given that it is a sloping site) and provision of road boundary features where there is a sharp change in levels. Accordingly, subject to conditions, the Council's second reason for refusal and associated objections by third parties are not sustained.

Local Character

49. The Council's third reason for refusal argues that the proposal is contrary to PPS 7 as the development proposed is out of character and the level of engineering works required are out of character to the existing developments in Rossbay and the surrounding area. Both the Planning Committee minutes and the Council's evidence on this topic are scant and do not indicate which policies in PPS 7 or its addendum would be offended. Additional detail is provided by third parties who refer mainly to aspects of Policy QD1 including local character, design, open space management, security and residential amenity.

50. Policy QD1 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. The design and layout of residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area. In established residential areas proposals for housing development will not be permitted where they would result in unacceptable damage to the local character, environmental quality or residential amenity of these areas. The policy sets out nine criteria that proposals for residential development should conform to. Third parties raised concerns in relation to criteria (a), (b), (c), (e), (g), (h) and (i). Policy H1 of the DAP requires high standards of design and layout in new housing developments. The matters to be taken into account are similar to those set out in Policy QD1.

51. Criterion (a) of Policy QD1 requires that the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas. Criterion (g) requires that the design of the development draws upon the best local traditions of form, materials and detailing. A linked requirement in the Addendum to PPS 7 (Policy LC1) is that the proposed density is not significantly higher than that found in the established residential area and the pattern of development is in keeping with the overall character and environmental quality of the established residential area. Policy BE1 of the DAP concerns urban design. It requires development proposals to make a positive contribution to the townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials. Development opportunities should respect the opportunities and constraints of the specific site and have regard to the potential to create a new sense of place through sensitive design.

52. The Limavady Road area of the city has a mix of uses, the predominant of which is residential. This is particularly the case to the northern side of the A2. With the exception of the Territorial Army base which adjoins the eastern end of the appeal site, residential development is dominant along a 2km stretch from the Foyle Arena to the Caw Roundabout. Most properties in the area are detached and set on medium-sized plots. There is a mix of single and two storey properties, though the majority tend towards two storey. Considering the established residential area as a whole, I do not accept the view of a third party that most existing properties are bungalows or chalets. There is a mix of architectural styles and external finishes and the plots are generally well maintained and landscaped.

53. The appeal proposal is for 33 houses comprising 8 bungalows and 25 two storey dwellings – a split not dissimilar to the mix of house sizes in the established residential area. An access road will bisect the centre of the site with dwellings arranged to both sides except at the western end where the site narrows. Four main house types are proposed with some additional variations through orientation and external wall finish (stone or render). The dwellings range in size from the bungalows at 90.5m^2 to the 'Boathouse' at 264m^2 with most of the units measuring 211m^2. They have between 2 and 4 bedrooms. The plot sizes and overall density of the development (12 units per hectare) respect the established character and pattern of development exhibited in the established residential area. The scheme in its context could not be described as 'overdevelopment'. External finishes to be

employed include self-coloured smooth render, rusticated render bands, blue slate random rubble stone cladding, reconstituted stone surrounds to openings, grey flat concrete roof tiles, black uPVC rainwater goods and aluminium / wood composite system to doors and windows. Most of the dwellings would have hipped rooves which reduces the massing of the roof and increases views between buildings towards the river. None of the houses would be 2½ storey as alleged by a third party.

54. The four boathouse style dwellings display a slightly different design, having a more elongated plan-form, white roughcast render to the walls, black slate to the roof and an exposed truss feature above the balcony overlooking the river. A third party argued that the boathouse dwellings have an abnormally steep roof pitch and are abnormally high, but their roof pitch and overall height are both slightly less than the other two storey units, so they would not be incongruous in scale, massing, proportions or appearance. I consider the contemporary design proposed in the four boathouses at one end of the site to be a positive variation and one which does not dominate the overall site or its surroundings. Given the variety of local traditions of form, materials and detailing, the appeal proposal is not significantly at odds with the prevailing character of the area. The range of house types provides contrast and interest balanced by unifying elements to provide coherence and identity.

55. A third party argued that the proposed housing mix with only 8 bungalows out of 33 units does not adequately reflect the projected increase in over-65 population. They referred to the Council's 'Draft Inclusive Strategic Growth Plan 2017 – 2032' which estimates that over 65s will increase by 14,000 in the Council area by 2039. This document is not a planning policy, but it is a community plan and has a statutory link to the Council's emerging LDP. It is useful in setting the context for future growth and population change. However, the third party does not follow through this argument with an analysis of how many units should be bungalows. There remains other age groups and families to be catered for. The provision of a mix of house types and sizes is appropriate and bungalows are not the only house type that older people would wish to reside in. Planning Control Principle 4 of PPS 12 states that a mix of house types and sizes should be provided to promote choice and assist in meeting community needs. There is no persuasive evidence that the proposed mix of house types and sizes is inappropriate for the site. There is no evidence that they would be unsuitable for people with disabilities. The objector's argument regarding the housing mix is not determining.

56. The Council and objectors further argued that the level of engineering works required are out of character with the existing developments in Rossbay and the surrounding area. Objectors stated that the geology of the area (a raised beach) was not conducive to piling and that it would destabilise the slope and increase the potential for subsidence. They cited a previous landslip when the greenway was constructed. The geology of the area is such that some piling will be necessary to ensure adequate foundations for the development. The supporting information and technical reports demonstrate that it is a suitable solution and will stabilise the land, reducing the potential for subsidence. Piling is not unusual in the context of the city and as this aspect of the development will be entirely below ground, it will not have an adverse impact on the character of the area. Objectors complained that piling was only introduced in the third iteration of the application. Notwithstanding the point at which it was introduced, all parties have had the opportunity to comment on the concept and supporting information and no prejudice arises.

57. In addition to subterranean piling for the foundations of the houses on the northern side of the spine road, approximately 570 piles are proposed along the top edge of the slope on the northern boundary of the site. These are designed to retain the slope and prevent lateral movement of the land above. A portion of the northern boundary (behind units 11 to 19) also requires above ground retaining. This will range in height from 0.5m to 2.5m due to dips in the natural level of the land. The retaining structure will be a Terram grass embankment, details of which have been provided and assessed as being safe by consultees.

58. With regard to the above ground retaining, I have considered the character appraisal of proposed engineering works in the appellant's evidence and I have walked the Waterside Greenway to assess the impact of the structure from this public vantage point. While the finished angle of the structure will be somewhat steeper than the existing bank, the grass finish will ensure that it reads as a continuation of the existing slope. As much of the existing slope is landscaped with mature trees and shrubs which are to be retained (and in any case are outside of the site), they will screen much of the retaining structure and prevent views of it from the public footway. The finished height of the crest of the bank will not appear significantly different to other parts of the embankment to the east and west. Given the sympathetic grass finish and the obscuring effect of the existing mature vegetation along much of the slope, I consider that the retaining structures would be appropriate to the character and topography of the site. They would not be out of character with existing development in the area. The Council and objectors' concerns with regard to character and design have not been sustained.

59. Criterion (b) of Policy QD1 requires that features of the archaeological and built heritage, and landscape features are identified and, where appropriate, protected and integrated in a suitable manner into the overall design and layout of the development. Third parties raised concerns regarding the impact of the development on the mature trees on the bank leading to the greenway and railway line. This land is outside the site and there is no proposal to cut or damage the trees. An objector asked whether the quality of tree and hedge planting would be monitored. This is a matter for the Council. Another objector was concerned that the land is being engineered to provide level sites rather than following the natural slope. Some cutting and filling is normal in a development of this nature and the submitted sections indicate that it is not excessive. Lowering the upper part of the site slightly helps to reduce the impact of the development on existing housing at Rossbay. I am not persuaded that there will be any adverse impact on landscape features.

60. Criterion (c) of Policy QD1 requires that adequate provision is made for public and private open space and landscaped areas as an integral part of the development. Policy OS2 of PPS 8 requires the provision of at least 10% of the total site area as public open space in new residential developments of 25 or more units. It also requires suitable arrangements for the future management and maintenance in perpetuity of areas of public open space. The appeal proposal provides two main areas of public open space: a central lawn area with planting and a viewing area overlooking the River Foyle and a separate sloped and planted area with a pedestrian pathway and steps for access to the Waterside Greenway. The level of open space provision would meet the policy requirements.

61. Third parties questioned how this open space would be maintained, noting that management of open space in other developments in the city has a poor reputation. The Council's draft conditions include a requirement that the open space is managed and maintained in accordance with a submitted Landscape Management and Maintenance Plan and that, prior to the occupation of the 16th dwelling unit, details of the open space manager should be agreed with the Council. The Council states that it is preferable that the open space manager be the Council's Parks and Recreation Department and not a private company. The appellant considers that this is unreasonable as it is possible that an agreement could not be reached with the Council's Parks and Recreation Department.

62. I consider that the imposition of a condition affording more flexibility in the identity of the open space manager would best serve residents and ensure that the open space was properly maintained. Having considered the Landscape Management and Maintenance Plan and the proposed conditions, I am satisfied that they will ensure adequate management of the open space in perpetuity, whether by the Council or a private management company. The Council could take enforcement action against any breach of the conditions. To ensure that the public open space and pedestrian connections are provided in a timely manner for the benefit of occupiers, I agree with the council that a condition should require them to be in place prior to the occupation of the 16th dwelling unit. It is necessary to condition that the proposed planting takes place when 80% of the dwellings are occupied as the open space will be in place at this point and it will ensure that the development cannot be completed without the planting being undertaken. An objector posed the question, 'What if the developer stops construction at 16 units and is not therefore required to complete the open space?' It would not appear to be in the developer's interest to develop less than half the site given the extensive infrastructure works required before any dwelling can be occupied, so I do not regard this as likely. The objections in relation to open space provision are not sustained.

63. Criterion (e) of Policy QD1 requires that a movement pattern is provided that supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way, provides adequate and convenient access to public transport and incorporates traffic calming measures. The 'Living Places' urban design guide picks up on the theme of connectivity. It states that good urban places require a network of permeable routes that pass through them, thereby giving choice to users, limiting walking distances and maintaining a flow of movement that helps to keep places active and safe. Linking open spaces with a system of paths, often using rivers and former railway lines, can contribute to a valuable network of 'Green Infrastructure'.

64. Objectors have raised the issue of movement pattern mainly in the context of the additional traffic that will be attracted to the existing streets leading to the site, an issue I have addressed earlier in this decision. I have found that the improvements to visibility for all users of the Limavady Road at a series of junctions outweighs the harm caused by additional traffic on Rockport Park and Ebrington Park. However, there are additional aspects of the movement pattern of the development which I consider to weigh in its favour. Pedestrian and cycle links will be provided to Caw Park to the east and the Waterside Greenway to the north (which provides a link to the railway station and via the Peace Bridge to the city centre). The scheme will open up new walking and cycling routes not only for the development itself, but for

residents of the surrounding area. It has the potential to reduce car journeys and encourage use of sustainable means of transport. The council's Parks and Recreation Department supports the proposed link. The proposal improves the connectivity of the overall area and complies fully with criterion (e). Objections in relation to movement pattern are not sustained.

65. Criterion (h) of Policy QD1 requires that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. The 'Creating Places' design guide recommends that on green-field sites and in low density developments, good practice indicates that a separation distance of around 20m or greater between the opposing rear first floor windows of new houses is generally acceptable. Where the development abuts the private garden areas of existing properties, a separation distance greater than 20m will generally be appropriate to minimise overlooking, with a minimum of around 10m between the rear of new houses and the common boundary.

66. All proposed dwellings which back onto existing development meet or exceed the above requirements. Finished levels will be lower than at the existing dwellings to reduce any sense of overlooking. Bungalows with low hipped rooves are provided at key locations where existing dwellings are closest to prevent any loss of light. A third party argued that the 'Boathouse' dwellings would overshadow the bungalows at Rossbay, but this will not be the case given the separation distance of some 37m, their orientation (directly north of the existing dwellings) and the falling ground level. I am not persuaded that there would be any unacceptable overlooking or loss of light.

67. Third parties complained that it was unfair that existing properties at Rossbay would lose their view over the river while the developer was able to take advantage of views over the river by designing houses with balconies. Planning decisions must have regard to the public interest. It is not in the public interest to prevent development in order to preserve a private view. As the appeal site is the last land that can be developed before the river, it is natural that the developer should have regard to views across the river in their design and I find no contradiction in this.

68. Third parties were concerned about noise and vibration from the piling works on the site. A Piling Noise and Vibration Impact Assessment Report has been submitted. Piles will be installed by the Continuous Flight Auger method whereby the hole is drilled, concreted and reinforced in one continuous operation. This is much quieter than driven piling methods and does not result in vibration. The piles are to be installed within approximately 16 working days at a rate of 36 piles per day – a relatively short period in the context of the overall development.

69. The main noise will be from the operation of the piling rig. This will be mitigated by the use of a temporary moveable noise barrier. Further attenuation will be provided by perimeter hoardings that will be in place for the duration of construction. Conditions can be imposed to regulate the provision of the noise barrier and the maximum noise and vibration levels and I consider these necessary in the interests of residential amenity. An objector suggested there should be an additional requirement for independent monitoring of the noise level, but has not provided evidence of the need for this. An objector questioned whether portable lighting and

a generator would be required. This would be dependent on the time of year when the works are undertaken, but would still be subject to the overall noise limit and construction hours conditions, so could not harm amenity beyond the permitted hours. In light of the piling method, mitigation measures and relatively short duration of this phase of work, there will be no unacceptable adverse effect on existing properties through noise or other disturbance. The objections raised under criterion (h) are not determining in the appeal.

70. Criterion (i) of Policy QD1 requires that the development is designed to deter crime and promote personal safety. To deter crime, public areas such as open spaces, pedestrian routes and cycle linkages should be overlooked by the fronts of dwellings. Objectors' main concern in this regard was the opening of the link to the Waterside Greenway. It was argued that this new pedestrian route would bring increased traffic and potential for crime and anti-social behaviour. It was claimed that the Police shared residents' concerns about the opening of this link, but no evidence of this was provided. The guidance in 'Living Places', referred to above, highlights that permeable routes maintain a flow of movement that helps to keep places active and safe. While the increased permeability of the area may well result in more people walking or cycling through it, 'Living Places' views this as a positive change where the flow of movement past houses that overlook the route provides a level of activity that improves safety. There is no evidence that anti-social behaviour will increase as a result and I consider that the benefits of the link to the wider community outweigh any concerns in this regard. The objections raised under criterion (i) have not been sustained.

71. As I have found no conflict with the provisions of the SPPS, PPS 7 or associated policy and guidance (including the relevant provisions of the DAP), the Council's third reason for refusal and associated objections by third parties are not sustained. A number of other concerns were raised by objectors.

Other Matters

72. Third parties argued that the development would result in unacceptable habitat loss and adverse environmental impacts on the local ecosystem and Lough Foyle. It was argued that there is no independent up-to-date wildlife survey of the site. The Natural Environment Division, Shared Environmental Service and other relevant consultees were content with the ecological information submitted. This included a Habitats Regulations Assessment Stage 1 – Test of Likely Significance. No habitat features worthy of protection were found on the site. There will be no loss of bat foraging habitat. As an additional safeguard and to take account of any changes that take place before development commences, a condition can be imposed requiring a pre-commencement check for badgers. This is necessary to ensure no harm to this protected species. I cannot impose the suggested draft condition 10 in relation to otters as such surveys cannot be conditioned to extend beyond the site itself. The 10 metre deep piles will remain above the high water mark and at some distance from the river, so there is no persuasive evidence that they will harm water quality. No other evidence of specific adverse environmental effects has been provided. I am satisfied that provided the above pre-commencement check for badgers is completed, there will be no unacceptable harm to natural heritage interests in the area.

73. There are existing main sewers running through the site. A third party claimed that the development would be over these sewers and would harm the infrastructure. However, the sewers are clearly delineated on the submitted plans and all buildings maintain a suitable buffer from them, to the satisfaction of NI Water. It was claimed that the existing utilities are already overstretched, but NI Water advised that there is available capacity to serve the development. This concern is not determining in the appeal.

74. Concerns were raised about surface water discharge to the River Foyle. The flow will be discharged at a maximum rate of 120 litres per second which is no greater than the greenfield discharge rate for the site. No attenuation is required. It is necessary to condition the provision of pollutant interceptors in order to address the points made by the Loughs Agency and procedures for management of earthworks can be included in the CEMP. There is no evidence that Loughs Agency would not accept the proposed piling method. The proposal complies with the relevant requirements of PPS 15.

75. Concerns were raised about the impact of construction works on the nearby railway line, potential land movement and the use of lifting devices on the site. Translink was consulted and were content subject to conditions requiring further details to be signed off by a chartered engineer and the provision of monitoring stations along the northern boundary to identify any settlement. These conditions are necessary to ensure no risk of subsidence or landslip onto the railway, but the relevant information should be submitted to the Council as planning authority rather than directly to Translink. The CEMP can specify measures to prevent cranes or equipment slewing over the railway or into the path of trains to negate any risk of loads falling onto the railway line. I am not persuaded that it is necessary to submit the drainage design to Translink.

76. A third party criticised the appellant for not knowing how long construction would take. The timing of a scheme of this nature can be subject to many factors outside of the appellant's control and the lack of a precise timescale is not a reason to refuse planning permission. The Act requires the imposition of a planning condition to limit the period for commencement of development to 5 years. It does not require a timescale for completion. The Council does have the power to serve a Completion Notice under Section 64 of the Act if this is deemed necessary. Suitable securing of the site during construction is a matter for the developer.

77. I have not been provided with any persuasive evidence that the development would result in the devaluation of neighbouring properties and therefore I do not consider it determining in this appeal.

78. In order to control the environmental impacts of the construction works relating to the development and in the interests of public safety, a number of pre-commencement conditions are necessary including submission and agreement of a CEMP, contamination risk assessment and slope stability design, ecological check, completion of road improvements on the Limavady Road and Rossbay and provision of the access at Rossbay. It is also necessary to condition construction hours, noise and vibration limits for piling works, contamination remediation measures, storm water discharge, provision of public open space, landscaping, and adoption of the roads within the development.

79. The Council's construction hours condition allows construction work to commence earlier on Saturdays (8am) than weekdays (9am). This is inconsistent and the Council provided no persuasive evidence to justify a later start time on weekdays. It is accepted that night-time hours end at 7am, so it is reasonable to permit construction work from 8am Monday to Saturday with no work on Sundays. As recommended in the preliminary risk assessment by McCloy Consulting Ltd. which was received by the Council on 3rd November 2016, it is necessary to require a site specific quantitative risk assessment to be submitted prior to commencement of development and to condition remediation measures that should take place if unforeseen contamination that could be harmful to ground water or surface water is identified during construction. I agree with the appellant that the Council's draft conditions 18-20 and 38-42 duplicate the same requirements in relation to land contamination and remedial action, so both are not required. As control of run-off from working areas and measures to prevent pollution of watercourses will be covered in the CEMP, it is not necessary to request a separate earthworks management plan.

80. All in all, as I have found that none of the Council's or objectors' concerns have been sustained and the proposal complies with the DAP, the SPPS, PPS 3 and PPS 7, the appeal is allowed, subject to the conditions set out below.

Conditions

1. No development shall take place until there has been submitted to and approved by the Council a Construction Environmental Management Plan (CEMP). The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration and dust and should include:
   - Key contacts and who will undertake the role of project manager, site manager, environmental coordinator, construction health and safety manager and site health and safety manager;
   - A construction method statement for each phase of the development;
   - Procedures for maintaining good public relations including complaint management, public consultation and liaison;
   - Arrangements for liaison with the Council's Environmental Health Service;
   - A construction traffic management plan (including duration of construction / phases, working hours, workforce travel to site, delivery schedule and routing, abnormal loads, traffic management on site and public roads, wheel washing of vehicles, delivery and removal of plant, equipment and waste from the site);
   - Mitigation measures to minimise noise and vibration disturbance;
   - Procedures for emergency deviation from the agreed working hours;
   - Control measures for dust and other airborne pollutants and the minimising of dust on public roads;
   - An earthworks management plan including methods of control of run-off from working areas and prevention of pollution of watercourses;
   - Measures to prevent damage to trees outside the construction site;
   - Measures to prevent construction plant or equipment slewing over the railway;
   - The provision of monitoring stations along the northern boundary of the site to identify any settlement of land.

   Once approved, the CEMP shall be adhered to at all times unless otherwise agreed in writing with the Council.

2. No development shall take place until there has been submitted to and approved by the Council a site specific quantitative risk assessment on land contamination as recommended in the preliminary risk assessment by McCloy Consulting Ltd. which was received by the Council on 3rd November 2016. Should unacceptable risks to the water environment be identified, no development shall take place until there has been submitted to and approved by the Council a revised risk assessment and remediation strategy for the management of all unacceptable risks identified. The development shall not be occupied until the remediation measures have been implemented.

3. No development shall take place until there has been submitted to and approved by the Council a written report on the final design solution to ensure slope stability. The design shall be supervised by a suitably qualified geotechnical consultant who will be engaged to design, supervise and take overall responsibility for this aspect of the works. A written report detailing the as-built design shall be provided to the Council within 4 weeks of completion of the slope stability works. Within 4 weeks of the detection of any subsidence, an engineered remediation plan shall be submitted to and agreed by the Council and subsequently implemented and verified to its satisfaction.

4. No development shall take place until there has been submitted to and approved by the Council the design details of all temporary and permanent works for the slope retention system with consideration to dead and imposed loads. Designers shall ensure that there is no risk of subsidence within the railway property. A Chartered Civil Engineer carrying appropriate professional indemnity insurance shall sign off the retaining structure. Within 4 weeks of completion of the retention system, details of its ownership shall be provided to the Council.

5. Before any building operations commence, a badger check shall be carried out on the site to ensure that no new setts have been excavated by badgers since the initial ecological survey. The findings of the site check shall be submitted in writing to the Council for agreement and mitigation measures agreed if necessary.

6. No building operations shall commence until the works necessary for the improvement of Limavady Road have been completed in accordance with the details outlined in blue on drawing No. 25 Rev 1 which was received by the Council on 2nd February 2021, including the provision of visibility splays of 2.4 metres by 70 metres at the junctions of Ebrington Park with Limavady Road and Rockport Park with Limavady Road. The works shall be carried out in accordance with an agreement under Article 3 (4) (c) of the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. The area within the visibility splays shall be kept clear thereafter.

7. With the exception of the works required under condition 6, no building operations shall commence until the works necessary for the improvement of Rossbay have been completed in accordance with the details outlined in blue on drawing No. 09 Rev 3 which was received by the Council on 14th November 2018, including the provision of visibility splays of 2.4 metres by 39 metres at the junction of the new vehicular access with Rossbay. The works shall be carried out in accordance with an agreement under Article 3 (4) (c) of the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order

1992. The area within the visibility splays 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.

8. *The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.*
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. 09 Rev 3 which was received by the Council on 14th November 2018.

9. Notwithstanding the provisions of Article 3 and Parts 1 and 3 of the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 (or any legislation revoking that Order and re-enacting those provisions), no buildings, walls or fences shall be erected, nor planting other than grass shall be carried out in verges determined for adoption.

10. No dwelling unit shall be occupied until that part of the service road which provides access to it has been constructed to base course and street lighting has been provided. The wearing course shall be applied on the completion of each phase of the development.

11. The access gradients to the dwellings shall not exceed 8% (1 in 12.5) over the first 5 metres outside the road boundary. Where the vehicular access crosses footway, the access gradient shall be between 4% (1 in 25) and 2.5% (1 in 40) and shall be formed so that there is no abrupt change of slope along the footway.

12. If the finished ground level at any dwelling unit, within 1 metre of the footway or verge, is greater than 150mm below the finished level of the adjoining footway or verge, a boundary fence or wall shall be provided to a minimum height of 1.1 metres above the footway or verge level.

13. Construction work which is audible at any noise sensitive property outside the site shall only take place between the hours of 08.00 – 18.00 Monday to Friday, 08.00 – 13.00 on Saturday with no such working on Sunday. Outside these hours, work on site shall be limited to emergency works or construction work that is not audible at any noise sensitive property.

14. No piling works shall commence until each piling rig and associated equipment has an effective noise barrier in position between the piling rig and noise sensitive properties which provides a minimum sound reduction of 10dB.

15. Noise levels generated as a result of piling activities shall not exceed a noise level of 69 dB $L_{Aeq\ (1hour)}$ when measured at any point 1 metre from the façade of any occupied noise sensitive properties. In the event that noise levels from piling activities exceed 69 dB $L_{Aeq\ (1hour)}$ at any occupied noise sensitive receptor, all piling works shall cease until additional noise mitigation is provided which reduces the operational piling noise levels to at or below the target level.

16. Piling activity shall not generate vibration levels which exceed a peak particle velocity of 0.3mm/second at any noise sensitive property. In the event that a reasonable complaint relating to excessive vibration from piling activities is received

by the Council, all piling activities shall cease. Prior to the commencement of any further piling operations, the developer shall engage a competent acoustic / vibration consultant to establish the level of vibration at the complaint location (or equivalent location). In the event that vibration levels from piling operations exceed a peak particle velocity of 0.3mm/second at any noise sensitive property, the developer shall amend the piling process to reduce vibration levels to a peak particle velocity of 0.3mm/second or below.

17. If during development, new contamination and risks to the water environment are encountered which have not been previously identified, works shall cease and the Council shall be notified immediately. A 'no development area' will be agreed and this new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Council in writing, and subsequently implemented and verified to its satisfaction.

18. After completing all remediation works required under conditions 2 and 17, and prior to the occupation of the development, a remediation verification report shall be submitted in writing and agreed with the Council. This report shall be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11). The verification report shall present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all risks and achieving the remedial objectives.

19. All storm water from the site shall not be discharged to nearby watercourses unless first passed through pollution interception measures.

20. Prior to the occupation of the 16th dwelling unit, details of how areas of public open space within the development will be managed and maintained in perpetuity shall be submitted to and approved by the Council.

21. Prior to the occupation of the 16th dwelling unit, all areas of public open space and the pedestrian connections to the Waterside Greenway and Caw Park shall be provided in accordance with drawing No. 02 Rev 4 which was received by the Council on 18th September 2018. The open space and landscaped areas shall be managed and maintained in accordance with the Landscape Management and Maintenance Plan which was received by the Council on 15th February 2019.

22. During the first available planting season after the occupation of 80% of the approved dwellings, or as otherwise agreed in writing with the Council, all landscaping on site boundaries and within the site and open space areas shall be carried out in accordance with drawing No. 21 which was received by the Council on 15th February 2019.

23. The boundary treatments to each dwelling unit as shown on drawing Nos. 26 and 27 which were received by the Council on 26th January 2021 and the landscaping within the individual plots as shown on drawing No. 21 which was received by the Council on 15th February 2019 shall be completed prior to the occupation of each dwelling unit and shall be retained thereafter unless otherwise agreed with the Council.

24. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Council gives written consent to any variation.

25. The development shall be begun before the expiration of five years from the date of this permission.

This decision is based on the following drawings:-

Drawing No.	Title	Scale	Received by Council	Received by PAC
01 Rev 3	Location Map	1:2500	25 Feb 2020	09 Apr 2021
02 Rev 4	Site Layout Plan	1:500	18 Sep 2018	09 Apr 2021
PAC 1	Site Sections (Sheet 1)	1:250	-	22 Jun 2021
04	Plans & Elevations House Type A	1:100	03 Nov 2016	09 Apr 2021
05	Plans & Elevations House Type B	1:100	03 Nov 2016	09 Apr 2021
06	Plans & Elevations House Type C & Streetscape View	1:100	03 Nov 2016	09 Apr 2021
07	Site Survey	1:500	03 Nov 2016	09 Apr 2021
08 Rev 2	Drainage Layout	1:500	18 Sep 2018	09 Apr 2021
09 Rev 3	Road Layout (Private Streets Determination)	1:500	14 Nov 2018	09 Apr 2021
10 Rev 2	Road Profiles	1:500	18 Sep 2018	09 Apr 2021
11 Rev 2	Site Sections (Sheet 2)	1:250	18 Apr 2019	09 Apr 2021
12	Plans & Elevations House Type AX	1:100	27 Oct 2017	09 Apr 2021
13	Plans & Elevations House Types C & D	1:100	27 Oct 2017	09 Apr 2021
18	Piling Layout (Dwellings)	1:50	28 Jan 2019	09 Apr 2021
19	Ground Beams Layout (Dwellings)	1:50	28 Jan 2019	09 Apr 2021
20 Rev 1	Embankment Piling & Ground Beam Layout	1:50	18 Apr 2019	09 Apr 2021
21	Planting Plan	1:500	15 Feb 2019	09 Apr 2021
22	Footpath Widening Cross Sections (Sheet 1)	1:500	09 Dec 2019	09 Apr 2021
23	Footpath Widening Cross Sections (Sheet 2)	1:500	09 Dec 2019	09 Apr 2021
24	Footpath Construction Details	1:5, 1:8, 1:10	09 Dec 2019	09 Apr 2021
25 Rev 1	Article 3 (4) (c) Boundary for Works to Limavady Road	1:500	02 Feb 2021	09 Apr 2021
26	Boundary Conditions Layout	NTS	26 Jan 2021	09 Apr 2021
27	Boundary Treatment Fences and Walls Details	1:20	26 Jan 2021	09 Apr 2021

COMMISSIONER GARETH KERR

List of Documents

Planning Authority:-	A	Statement of Case Derry City and Strabane District Council
Appellant:-	B	Statement of Case Gravis Planning
	C	Rebuttal Statement Gravis Planning
Third Parties:- (objections unless stated)	D	Statement of Case (support) Michael Lynch
	E	Statement of Case Alexander Macdonald
	F	Statement of Case Arnold Don McClay and Heather McClay
	G	Statement of Case Mary L H Mokhebi
	H	Rebuttal Statement Mary L H Mokhebi
	I	Statement of Case Rudi Moore
	J	Rebuttal Statement Rudi Moore
	K	Statement of Case Martin Rodgers
	L	Rebuttal Statement Martin Rodgers
	M	Letter of Objection Conal Casey
	N	Letter of Objection Robert Lyttle
	O	Letter of Support Jack and Ursula Scoltock
	P	Letter of Objection R J & R V Wright