
Appeal Reference:	2021/A0127.
Appeal by:	JP McGinnis / MG Famco Ltd.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Housing development consisting of 77 no. units, creation of new access, associated infrastructure and ancillary works.
Location:	Lands at Ballygudden Road, to the north and west of 11 Ballygudden Road, Eglinton.
Planning Authority:	Derry City & Strabane District Council.
Application Reference:	LA11/2017/0902/F.
Procedure:	Hearing on 6 November 2023.
Decision by:	Commissioner Mark Watson, dated 2 August 2024.

Decision

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

Preliminary Matters

2. The Commission issued a decision on this appeal on 31 March 2023. Following an application for a judicial review to the High Court, the decision was quashed and remitted to the Commission for redetermination. Parties were afforded an opportunity to submit supplementary statements of case in respect of the appeal development and a hearing also took place. I have considered this appeal afresh, taking into account the background papers, the written evidence previously submitted, the supplementary evidence and the oral evidence at the hearing.
3. The Appellant submitted a revised Site Layout Plan, which removed the “Stable Block” element of development from the proposed layout with their supplementary evidence prior to the hearing taking place, reducing the number of dwellings from 97 to 77. This led to consequential amendments to other drawings. A revised set of drawings was submitted to properly account for what is now proposed. The reduction in the quantum of housing units does not alter the substance of, or go to the heart of, the appeal development. I am satisfied that the changes are such that no third party unaware of them would be prejudiced, nor represent a new matter as understood against Section 59 of the Planning Act (NI) 2011 (the Act). Copies of the amended drawings were provided post-hearing to the parties who had participated in the hearing.
4. Parties were also afforded opportunity post-hearing to comment on a flood mitigation measure comprising a depressed area of land, hereafter referred to as the ‘scrape’. Whilst that measure entails an alteration of a portion of the southern

site boundary treatment from a close-boarded fence to a paladin fence, this does not go to the heart of the proposal and no third party unaware of this alteration would be prejudiced, nor would it offend the provisions at section 59 of the Act.

5. The amended proposal, which now relates to a full application for 77 dwellings, with accompanying drawings, will form my consideration of the appeal. I will amend the proposal description in this decision accordingly. Issues raised by the parties in relation to the appeal development will be addressed insofar as they relate to the amended proposal.
6. The Objectors submitted further information relating to the flooding issue subsequent to the hearing, relating to ground works being undertaken on land outwith but adjacent to the appeal site. The Commission accepted this information on the basis that there was a point of public interest and it was relevant to one of the main issues. The Council and Appellant were afforded opportunity to comment on this and no prejudice has arisen.
7. A number of Objectors stated that an Environmental Impact Assessment (EIA) had not been submitted for the proposed development. The Council undertook an EIA determination in October 2020 during processing of the application. It considered that the appeal proposal fell within Category 10(B) of Schedule 2 of the Planning (Environmental Impact Assessment) (EIA) Regulations (NI) 2017 (“EIA Regulations”) and so carried out an EIA screening determination. It determined that an EIA was not required. The Objectors refuted the Council’s screening determination, quoting Regina (on the application of Jones) v. Mansfield District Council [2003]. I have been given no persuasive evidence that the Council’s determination was incorrect, nor that its final position, which not alter as a consequence of the more recent flooding event, was incorrect either.

Claim for Costs

8. A Costs Claim by the Appellant was submitted against the Council. That claim was the subject of a separate decision. Whilst the appeal decision was quashed, the costs decision as previously determined still stands.

Reasons

9. The main issues in this appeal are whether or not the proposed development would:
 - be in compliance with the provisions of the DAP;
 - be at risk from flooding;
 - constitute a quality residential environment;
 - be at risk from unacceptably adverse noise and odour impacts;
 - adversely impact on protected flora and fauna; and
 - prejudice road safety and result in congestion.

Policy Context

10. The Derry Area Plan (DAP) 2011, operates as the Local Development Plan for the area where the appeal site is located. Within it, the appeal site is on unzoned land within the development limit of Eglinton village. The southern site boundary forms part of the development limit itself. The DAP defines two Areas of Local Nature Conservation and Amenity Importance (AoLNCAI), one of which is the Castle

River, which lies adjacent and west of the appeal site. The Council's sole reason for refusal was predicated on the protection of this designation, which includes woodland. A portion of the proposed mini-roundabout lies within the Eglinton Area of Townscape Character (ATC).

11. A number of policies within the DAP are of relevance to the appeal development, including Policy H1 which requires high standards of design and layout in all new housing developments and Policy ENV4 'Development within Areas of Local Nature Conservation and Amenity Importance'. Other policies in the DAP also relevant are Policy BE1 'Urban Design', Policy BE2 'Listed Buildings', Policy BE7 'Archaeological Sites and Monuments and Historic Landscapes', Policy BE12 'Areas of Townscape Character', Policy ENV 6 'Trees and Woodland', Policy ENV7 'Retention of Trees and Hedges and Landscape Requirements' and Policy ENV9 'Development adjacent to Rivers and Open Water Bodies'. The matters considered under these policies are captured within the more recent regional policy Planning Policy Statements (PPSs). The matter of compliance with the DAP will be addressed later in this decision.
12. The Strategic Planning Policy Statement for Northern Ireland - Planning for Sustainable Development (SPPS) sets out the transitional arrangements that will operate until a Plan Strategy (PS) for a Council area is adopted. Objectors referred to the draft Plan Strategy 2032, including its intentions in relation to a presumption against greenfield sites, but it remains in draft form and has not been adopted. It is not material to this appeal. Accordingly, during the transitional period, the SPPS retains certain PPSs, and it sets out the arrangements to be followed in the event of a conflict between the SPPS and a retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements, must be resolved in favour of the provisions of the SPPS.
13. The Objectors raised matters that fall to be considered under Revised Planning Policy Statement 15 – Planning and Flood Risk (PPS15), Planning Policy Statement 7 – Quality Residential Environments (PSS7) and the second Addendum to PPS7 – Safeguarding the Character of Established Residential Areas (APPS7). They raised further issues that fall to be considered under Planning Policy Statement 2 – Natural Heritage (PPS2) and Planning Policy Statement 3 – Access, Movement and Parking (PPS3). There is no conflict or change in policy direction between the provisions of the SPPS and those aforementioned PPSs in respect of the appeal development. Those PPSs remain applicable to the appeal development. Guidance contained in Creating Places – Achieving Quality in Residential Environments (CP) is also of relevance.

The appeal site and proposed development

14. The appeal site comprises grassed agricultural land on the western side of Ballygudden Road. It lies slightly below the level of the road along the frontage and slope gently down westwards. The boundary that divides the two fields is interspersed by a hedgerow of approximately 1-2m high and some trees. There is also a sheugh traversing the site and a post and wire fence, around 1m high.
15. A line of mature trees lie to the rear of the Ballygudden Road verge and within the site. The Castle River and a strip of mature trees adjoin the western site boundary. This linear strip of land is locally known as The Points. Residential development exhibiting a variety of designs in several housing estates at

Millbrook, Brooklyn Park and Mill Path lie some distance to the west of the appeal site on the opposite side of the Castle River from the appeal site. Mill Path Lane abuts the southern site boundary and can be accessed from the west by a ford at Mill Path and from Ballygudden Road to the east. An undesignated watercourse is south of Mill Path Lane. Adjacent and north is an agricultural field, whilst to the north-east on the opposite side of Ballygudden Road lie the residential developments of Gransden Park and Granchester Park. Two dwellings, with a farm complex, stables and sand arena lie adjacent and east / south-east of the site on the same side of Ballygudden Road as the site.

16. As outlined earlier, the appeal development now seeks full permission for 77 dwellings. These are to be made up of a mix of detached and semi-detached dwellings of varying height and design, along with several apartment blocks. Areas of open space are interspersed amid the layout and at several peripheral locations. Landscaping is also proposed along with retention of the Tree Preservation Order (TPO) protected trees along the northern site boundary. The proposed development also includes the culverting of short sections of the sheugh that bisects the site for access purposes. The access from the Ballygudden Road into the development would be at the north-eastern section of the site, with proposed improvements to the public road width and provision of a footpath. A mini-roundabout is also to be provided within the village at the Ballygudden Road/Moulton Park/Main Street crossroads.

The DAP

17. Section 6.19 of the DAP identifies that 2 Areas of Local Nature Conservation and Amenity Importance (AoLNCAs) have been designated within or adjacent to the village, with proposals for development in these areas to be assessed against Policy ENV 4 of the DAP. It goes on that these areas are designated to protect the following features considered to be of greatest local amenity value, one of which is the aforementioned Castle River, adjacent to the south eastern development limit of the village. Paragraph 16.20 goes on to state that development proposals along the development limits and at the interface with landscape features should provide for substantial and appropriate tree planting in order to protect the character of the rural area and setting of Eglinton village. These areas include the northern development limit on the western side of Ballygudden Road. The DPA states that an appropriate tree planting scheme should be incorporated with development proposals.
18. The Council's sole reason for refusal is based upon paragraph 2.5, page 166, at Appendix 2 of the DAP. This appendix is entitled 'Areas of Local Nature Conservation and Amenity Importance' and paragraph 2.5 falls under the sub-heading of 'Eglinton'. It refers to a linear strip of woodland associated with the Castle River. It states that this woodland provides a strong defining edge to the south-eastern edge of Eglinton and acts as a visual buffer to the more open agricultural land along the Ballygudden Road. It further states that there will be a strong presumption against development in this area and development proposals on adjoining land should have regard to the impact on the woodland. The framing of this is such that it precludes development within the designation, but not adjacent to it, provided regard is had in any such development proposal to the adjacent woodland.

19. The landscaping plans for the appeal development indicate that the rear gardens of some proposed detached dwellings and a proposed amenity area (Amenity Area 3) would be adjacent to the boundary of Castle River AoLNCAI. The nearest dwelling would be around 5m from this boundary. Again, Policy ENV4 relates to development *within* (my emphasis) AoLNCAIs. Notwithstanding the Objectors' concerns regarding infilling and more recent removal of deposited material from within this area, those works are unrelated to the appeal development itself. The appeal proposal lies adjacent to, but not within, the Castle River AoLNCAI and I agree that Policy ENV4 is not engaged in this instance.
20. As no built development would be within Castle River AoLNCAI and any proposed built form would be at least 5m away, I am satisfied that regard has been given to the impact on the woodland. Whilst the Objectors raised concerns in their most recent post-hearing submission as to potential damage of some of the trees given the recent excavation works and earth bank along the western boundary of the appeal site, that development is not related to the appeal before me, but to ongoing remediation works in respect to an enforcement case. The southern end of Castle River AoLNCAI separates the countryside on Ballygudden Road from the development limit and provides a strong definition to the south-eastern edge of Eglinton. I consider that the Castle River AoLNCAI could continue to provide this strong defining edge given that the appeal proposal would be north of this part of the settlement limit. Paragraph 2.5 of page 166 of the DAP is not offended and the Council's sole reason for refusal and related concerns of the Objectors are not sustained. Furthermore, for the reasons given throughout this decision, the appeal development complies with the provisions of the DAP taken as a whole.

Flooding matters

21. Objectors raised concerns that the development proposal would be at risk from flooding and contribute to flooding elsewhere. Policy FLD1 'Development in Fluvial (River) and Coastal Flood Plains' of PPS15 indicates that development will not be permitted within the 1 in 100-year fluvial flood plain (AEP of 1%) unless the appellant can demonstrate that the proposal constitutes an exception to the policy. The River (Fluvial) Flood Plain is described as the extent of a flood event with a 1 in 100 year probability (or 1% annual probability) of exceeding the peak floodwater level. One of the exceptions in undefended areas is the use of land for amenity open space.
22. Paragraph 6.22 of the amplification text states that the policy allows for the provision of areas for amenity open space, sports, outdoor recreation and nature conservation purposes on the basis that such areas are not generally occupied and are unlikely to incur major damage as a result of flood inundation. The only part of the site that is within the floodplain is proposed as amenity open space. Accordingly, the appeal proposal falls within the exceptions category.
23. Policy FLD1 adds that where the principle of development is accepted by the planning authority through meeting the 'Exceptions Test', the applicant is required to submit a Flood Risk Assessment (FRA) for all proposals. Policy FLD1 expands to say that planning permission will only be granted if the FRA demonstrates that; (a) all sources of flood risk to and from the proposed development have been identified and (b) there are adequate measures to manage and mitigate any increase in flood risk arising from the development.

24. Policy FLD3 of PPS15 'Development and Surface Water (Pluvial) Flood Risk outside Flood Plains' states that a drainage assessment will be required for all development proposals that exceed certain thresholds, one of which is a residential development comprising 10 or more dwelling units. The policy states that such development will be permitted where it is demonstrated through the Drainage Assessment (DA) that adequate measures will be put in place to effectively mitigate the flood risk to the proposed development and from the development elsewhere. It goes on to say that where the proposed development is also located within a fluvial flood plain, then Policy FLD1 will take precedence.
25. A FRA (and its addenda) accompanied the Appellant's planning application and they covered fluvial flooding and surface water impacts. The July 2021 document refers to the detailed predicted Fluvial Flood Extents Map which indicated that lands within the north-west and west of the proposed development were affected by the 1% AEP fluvial floodplain of the "Castle River Ext." The Assessment stated that prior consultation with DfI Rivers confirmed that the flood data modelling was updated to incorporate changes to flood hydrology (increased flood flows) and changes to land levels in the vicinity. The indicative Surface Water Flood Extents Map also indicated that lands within the north-west and west of the site were affected by surface water flooding for the 0.5% AEP event.
26. The Objectors considered that the FRA's data modelling was inaccurate and that it related to site levels before the removal of the majority of alleged illegally dumped infill at The Points. The July 2021 FRA stated that the Department for Infrastructure's (DfI) Strategic Flood maps for the Eglinton area were updated in 2020 to reflect hydraulic model updates, post the significant flooding event in 2017. It indicated that the detailed flood mapping was derived from a revised model for Eglinton which was carried out as part of an Eglinton feasibility study. It stated that within that model, the hydrology was reviewed and updated to consider the 2017 flood event data and the infilling of the field adjacent to Castle River.
27. The July 2021 Assessment infers that it was submitted in response to a request from DfI Rivers. That request was for the model to be updated to take into account the changes in ground profile between the site and Castle River where landfill had been removed in response to enforcement proceedings. Whilst the Objectors expressed concern regarding the levels in that they were not based on the most up to date data available and reflective of the levels at The Points, I note the Council and DfI Rivers accepted the July 2021 FRA modelling. Based on the totality of the evidence provided, I too accept the model used in the July 2021 FRA. The Objectors' position on this matter would not persuade me otherwise.
28. The FRA indicated that the revised site-specific modelling of the Castle River including the updated ground levels adjacent to the western site boundary indicate that in-channel flood levels adjacent to the site are unchanged. It went on to say that there was a slight increase to flood extents within the site boundary as a result of increased overland flooding across the right-overbank onto the site. The FRA considered flooding from the undesignated watercourse that drains a culverted watercourse flowing from lands south-east of the site, and the sheugh that bisects the site. The Appellant's FRA stated that the surface water flow map indicated no flood extents arising from either source and that the potential for any significant flood risk from the watercourses could be discounted.

29. In the event of channel exceedance from the minor watercourse, the FRA stated that ground levels suggest that flows would tend onto the Mill Path and flow west towards the Castle River, rather than into the appeal site. The Assessment went on to say that in the unlikely event water entered the site, lands in the south and south-west corner of the site are of green/amenity space and therefore no built development would be affected. The predicted 1% AEP present day flood extent relevant to the appeal proposal is shown in Figure 3-1 of the July 2021 FRA. It indicated that lands within the north-west and west of the appeal site fall within the 1 in 100 year fluvial flood plain and that some of the proposed amenity areas (namely 3 and 6) would encroach onto it. No persuasive evidence was presented by the Objectors that this was incorrect.
30. With respect to surface water, the assessment found that its flood extents and flow path tend to coincide with the fluvial flooding of Castle River and that the more detailed fluvial flood maps take precedence and provide a more accurate representation of flooding at the site. It went on to consider the effect of the development on surface water and stated that the increase in the impermeable footprint (without mitigation) would increase the rate and volume of runoff, when compared to the existing scenario. The FRA considered that uncontrolled surface water would tend toward the watercourse and would not cause a direct effect to adjacent land given that the site predominantly falls from south to north towards the Castle River and would continue to do so post-development. It considered that surface water could be mitigated by the provision of a suitable surface water drainage network.
31. The Objectors considered that the site's current green field state acts as a natural sustainable drainage system, with its development rendering a sizable proportion of the land in question impermeable. Decreased permeability would expediate waters discharging into Castle River. The FRA stated that attenuation and drainage infrastructure would be required to limit and attenuate runoff from the proposed development and that it could be accommodated by the proposed layout. The Council and DfI Rivers had no objections in respect of this matter. In the absence of persuasive evidence from the third parties and given the Council's position, as well as that of DfI Rivers, I accept the attenuation and drainage infrastructure proposed in the FRA. With respect to additional development undertaken by future homeowners that could further reduce permeability, a planning application would have to be submitted for any development that was not considered to be Permitted Development (PD) under the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO). Any associated flooding risk would have to be assessed at that time. In respect to development considered to be PD, I am not persuaded that this would be of such significance to radically impact upon the FRA findings.
32. The FRA and addenda set out further measures, one of which is that no built development (including gardens) would be proposed within the 1% AEP flood extents of the Castle River Ext and that land within the flood plain would be used for amenity and public green space. The FRA recommended that the proposed amenity space (Areas 3 and 6) should be at existing grade and should cause no net displacement of floodwater. The Council recommended that these proposed amenity areas should be protected from any land raising, tree/bush planting or permanent fencing. Given the FRA and Council's recommendation, it would be necessary in the event of permission being granted that these two areas be kept

free from any land raising, tree/bush planting or permanent fencing. While the landscaping plans indicate that there would be a large area of screen planting in Amenity Area 6, a condition could address this matter without detriment to the overall quality of the development proposal and this element of planting discounted from the relevant drawings (and noted thusly in the drawing list accompanying this decision).

33. The FRA went on to say that a minimum freeboard of 0.6m to the adjacent climate change flood level should be facilitated and that all built development should have a minimum finished level of the adjacent climate change flood level + 0.6m. Whilst the Objectors argued that climate change had not been factored in, the FRA explicitly referred to climate change and stated that flood levels had been mitigated by ensuring that siting of the proposed development levels and freeboard to adjacent flood level were based on the climate change scenario. I am therefore satisfied that the FRA factored in climate change.
34. A more recent flooding event in July 2022 had not been taken into account in the Appellant's July 2021 FRA given it predated this event and focused on hydraulic modelling of the Castle River. The Appellant's most recent FRA Addendum (Surface Water) document, dated September 2023, carried out an analysis based upon this event, which was unrelated to the Castle River. The modelling included a 1% climate change scenario. Based on the information compiled within the FRA, it equated that flooding event to one of an estimated probability of 1 in 146 years (0.7% AEP).
35. The baseline flooding scenario predicted surface water flooding that would flow off Ballygudden Road into the farmyard adjacent to the south-eastern site boundary, flowing north through the site. The post-development model factored in increased impermeable areas, associated losses, final proposed levels and drainage outlets to the Castle River to assess the effects of the appeal development in regard to this surface water flooding scenario. The conclusions of the analysis were that the proposed dwellings with frontage to the Ballygudden Road were unaffected, surface water entering the appeal site in the south-east would be managed safely through the site and routed into the existing sheugh that bisects the site and the appeal development would prevent the pre-development flow path that previously left the site at the northern site boundary. The overall conclusions were that the appeal development would have no offsite effects attributable to the appeal development.
36. Objectors challenged the levels used within the document, again considering that the flood risk had not been properly assessed. Whilst the DfI Rivers witness raised some minor queries during the hearing in regard to the document, the explanations given by the Appellant's witness satisfied them. Whilst the stamped refused Site Layout Plan showed finished floor levels (FFL) for the proposed dwellings against the Ballygudden Road levels, which in the case of one dwelling did not correspond to the recommendation in the FRA that all built development should have a minimum finished level of the adjacent climate change flood level +0.6m, this matter was resolved in the amended layout. The post-hearing response from the Council stated that the Council carried out a review of the levels in the most recent FRA Addendum and those of the Site Layout Plan, confirming the levels were the same. It also stated that the survey levels shown on the topographical survey on the adjacent land within the floodplain (subject to the

enforcement action) have been verified as an accurate reflection of what was on site at that time. Despite Objectors' position to the contrary, I have no reason to disagree with the Council on this.

37. Mitigation measures were also included in the most recent FRA Addendum. These entailed, again, finished floor levels some 300mm above the critical 1% AEP & CC rainfall event and that the culvert over the road access was to be designed to account for the more recent event, with its size greater than that of the predicted flow. The 'scrape' is a low-level area to be formed next to units 1, 54, 55 and 56 and Amenity Area 7.
38. The purpose of the 'scrape' is to ensure that run-off / shallow flooding could pass onto the appeal site and be managed without increasing flood risk to the proposed dwellings on the site, nor the adjacent farm and yard. Visually it would appear as an elongated depression covered in grass. It would be separated from the proposed dwellings by a 1.8m paladin fence and controlled gates at either end. It would not be accessible to the public and it is proposed that it would be maintained by the same company that would manage and maintain the areas of landscaping and open space with the appeal development. I accept the Appellant's proposition that a 5m maintenance strip is not required as it does not represent either a flood defence in itself or drainage infrastructure as read against the definitions within the Glossary to PPS15 and I note that the Council's and DfI Rivers' final position concurred. Therefore, I do not accept the Objectors' position that Policy FLD2 of PPS15 applies in respect to the 'scrape', nor of the potential for clashes between those maintaining the 'scrape' where it intersects with the maintenance strip along the watercourse within the site. In the event of permission being granted it would be necessary to condition both the maintenance of the 'scrape', as well as ensuring it remains free from any buildings, structures, hedges or trees. Likewise, the maintenance strip to serve the watercourse that traverses part of the site would require conditioned to be kept clear of any impediments including fencing and planting in order to allow access to it.
39. The most recent post-hearing submission from Objectors pointed to removal of infilling from land adjacent and west of the appeal site at The Points as a consequence of ongoing enforcement action there. It was stated that an earth bank was being in effect constructed along the western site boundary of the appeal site as part of the excavation works. Objectors pointed to potential changes to the floodplain as a result. The Council comments on this were that DfI Rivers advised that the removal of material from the land would likely alter the extent of the floodplain but to what extent was currently unknown. The Appellant's response provided by the FRA author was that the intended remedial works would have the intent of returning the level in The Points back to their original state, as had been assessed in the first iteration of the Appellant's FRA from September 2017.
40. Irrespective of whether or not The Points levels have as yet been returned to their initial, pre-infill levels, I agree with the Appellant's position that with the reduction in levels adjacent to the appeal site, it would (in broad terms) serve to reduce water levels slightly as a consequence of increased storage and conveyance capacity in the floodplain at The Points. I am therefore not persuaded that the recent groundworks invalidate the Appellant's overall assessment in regard to flood risk, including the most recent analysis in relation to overland flooding. The matter of a

potential earthworks bank along the western site boundary does not form part of the appeal development. Whilst the Objectors considered that no development on the appeal site should be allowed until DfI Rivers remodel the floodplain at The Points to factor in the more recent flood events and final post-enforcement works levels at The Points, I am not persuaded that this would be justification for withholding planning permission given the information before me.

41. Irrespective of the Objectors' assertions relating to ground levels and the levels used throughout the Appellant's flood risk analyses, I have been given no substantive evidence that the levels employed throughout the FRA analysis taken as a whole are inaccurate or that they undermine their overall conclusions. I note that DfI Rivers accept the levels used, both in terms of the site itself and the adjacent land at The Points (in its variation iterations in respect to infilling and excavation). I am therefore satisfied that no buildings within the appeal development would be constructed within the q100 floodplain, even accounting for the climate change factor. A condition requiring provision of a final drainage assessment for approval in writing by the Council prior to implementation of the drainage network would be necessary to ensure the proposed measures are effective.
42. Objectors provided evidence as to the effects of flooding on their properties, the wider Eglinton village and the difficulties they faced throughout and after such events. Whilst I do not discount these experiences or the challenges arising from such flooding events, nevertheless, for the reasons given, all sources of flood risk to and from the proposed development have been identified and there are adequate measures to manage and mitigate any increase in flood risk arising from the development. Objectors drew my attention to a proposed flood alleviation scheme for the village raising concerns that the appeal development could have implications for that scheme. I note that the DfI Rivers witness accepted that the appeal development would not impact upon that scheme, having informed the hearing that the Flood Alleviation Design Group for that project had no objections to the appeal development. I have been given no substantive evidence that the appeal development would have any adverse impact on that scheme, nor any potential future alleviation measures relating to Castle River.
43. For the reasons given above, the appeal development complies with Policies FLD1 and FLD3 of PPS15, as well as the related provisions of the SPPS. The Objectors' concerns on this matter are not sustained

Character and design matters

44. Policy SE1 of the DAP states that proposals for development within settlement limits will normally be acceptable provided they are in keeping with the size and character of the settlement; do not lead either individually or cumulatively to a loss of amenity; and comply with all other relevant plan policies. Paragraph 16.2 of the plan goes on to say that a limit of development has been defined for each village and small settlement within which development will normally be acceptable. It adds however that not all land within the development limit will necessarily be capable of development. It states that the inclusion of land within a settlement limit does not imply approval for any particular proposal.
45. The Objectors considered that the site should remain free from built development as it provided a visual buffer with the surrounding area. Again, section 16.20 of

the DAP indicates that development proposals along the development limits and at the interface with landscape features should provide for substantial and appropriate tree planting to protect the character of the rural area and setting of Eglinton village. It goes on to list areas that this would include. The use of the word 'include' implies that the list is not exhaustive. At the southern boundary of the appeal site, there would be two amenity lawned areas (Amenity Areas 1 and 2) with some trees and pedestrian routes. There would also be a turning head adjacent to the southern boundary.

46. The Council's Development Management Officer's Report (DMOR) indicated that a 10m planting buffer was considered but given the intervening vegetation that exists at this boundary and what is proposed, the Council found the appeal proposal at its southern boundary acceptable. I accept that on balance it would provide an acceptable solution to protect rural character, which to my mind is the underlying aim of the DAP in this regard. The appeal proposal falls within the settlement limit boundary and the intervening vegetation and open space buffer along the southern boundary of the site are such that the appeal development would maintain the distinction between urban area and countryside and avoid resulting in urban sprawl.
47. Policy QD1 of PPS7 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 subject to complying with certain criteria. Policy QD1 also states that in Areas of Townscape Character (ATCs) housing proposals will be required to maintain or enhance their distinctive character and appearance. The proposed mini roundabout at the Main Street/Ballygudden Road junction would partially fall within the designated ATC.
48. 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. The Objectors considered that the appeal proposal offended this criterion, as well as arguing that the style and density of the proposed housing would be inappropriate in a historic plantation village.
49. Castle River, its surrounding mature trees and vegetation separates the appeal site from the properties on the opposite side of the river, providing a natural break. Given this visual and physical buffer, those dwellings west of Castle River do not form part of the surrounding context in my judgement. Despite its position on the periphery of the village, it was undisputed that the appeal site lies within an established residential area. The surrounding context for the purposes of the appeal development comprises those properties that can be accessed from the Ballygudden Road. This mainly comprises the detached dwellings at Granchester Park and Gransden Park that sit in relatively spacious plots. Single, one-and-a-half and two storey dwellings are evident within both those developments.
50. The appeal development entails housing units set in several distinct areas within the overall layout, comprised of a mix of house types. The areas consist the 'Walled Garden' at the northern end of the site, 'Ballygudden Road Frontage' and 'Hall House' (and an adjacent apartment block) and 'Development to the West'. Beyond the latter area towards Castle River, there would be an amenity area. At the southern end of the development would be another amenity area that would

abut Mill Path Lane. Additional public open space would be part of the development, such as a large central green area around Hall House that would be visible on entering the development from the Ballygudden Road.

51. With respect to the Walled Garden area to the north, there would be three two storey apartment blocks surrounding a courtyard for communal parking. In relation to the scale, proportions, massing and appearance of the walled garden apartment blocks, I am satisfied that these elements would respect the surrounding context and would not be detrimental to the character of the site. Paragraph 7.17 of CP states that where new residential schemes, such as apartments, include living rooms or balconies on upper floors are proposed on green-field sites or in lower density areas, good practice indicates that a separation distance of around 30m should be observed. There would be a separation distance of approximately 25m between Apartment Block A (units 13 -16) and Apartment Block A (units 21 – 24).
52. Given that no balconies are proposed on either of these blocks, their two storey height and that the separation distance broadly aligns with the guidance, their disposition to one another is satisfactory. I do not accept that units 21 – 24 would present as over-development. The proposed bin storage areas would be enclosed with decorative walls and there would be appropriate landscaped and hard surfaced areas. Accordingly, the general layout at the Walled Garden end of the development, and its structures and landscaped and hard surfaced areas are considered acceptable.
53. ‘Hall House’ would present as a key landmark building within the appeal development given it would be positioned within the proposed central green area, as well as framing the entrance of into the site. It would have typical heritage design features and would be three storeys. Paragraph 7.10 of CP states that blocks more than two storeys in height should be located to provide focal points in the layout to enhance the overall impression of quality. The overall height of Hall House would be acceptable in its context given its important entrance location. Apartment Block D would be around 25m from Hall House and would sit at right angles to it. It would be two storeys and would read as subordinate to Hall House. The design and materials of the building would contrast with Hall House and provide variety and interest in the streetscape.
54. Given the juxtaposition and height differential of Apartment Block D relative to Hall House, the proposed separation distance between them is acceptable. The car park for both apartment blocks would be enclosed by a high decorative wall and the associated bin store would also be enclosed. Communal public open space and a play area would surround both buildings. This part of the development would be 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.
55. A mix of detached and semi-detached dwellings would be located behind Hall House. The urban grain would be relatively loose to the north (units 25, 38-53) and tighter to the south (units 54-74). Paragraph 7.15 of CP states 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. It expands to say that consideration may, however, be given to a smaller separation distance in order to meet the overall

quality objectives set out in the design concept for the development, or in cases where it is important to reflect traditional building forms in the locality.

56. The proposed dwellings to the north would generally have well-sized back gardens ranging in depth from around 20m to around 7.5m at the corner plot of unit 53. The depths of most of the rear gardens would be in and around 15m to 20m. Consequently, the back-to-back separation distance between those properties (units 38 - 53) would well exceed 20m. Given that unit 53 would face onto the side gable of unit 38 rather than its rear gable elevation, the proposed separation distance between both properties is acceptable in this context. For those proposed dwellings at units 54 - 74 that would be back-to-back with each other, the separation distance would be adequate. I therefore find the layout of this part of the proposed development acceptable.
57. The 'Ballygudden Road Frontage' dwellings (units 2 - 9) would front onto the Ballygudden Road, whilst their rear gardens would back onto a proposed internal road where their individual driveways would be accessed from. Their rear gardens would be enclosed by a brick wall, approximately 1.8m high, and a hedgerow would be planted in front of it. Immediately opposite, there would be communal green areas and a bungalow (unit 36). Apartment Blocks A, D and Hall House would be sited beyond the amenity areas and would be a significant distance away at approximately 28 - 40m. The proposed high wall would immediately enclose the rear gardens of those properties and would be softened by the proposed planting. It would also be broken up by the individual driveways. The house types of units 2 - 9 vary, as do the design of their rear gable elevations that would face onto the proposed internal road. Given the above factors and the separation distances from other properties the layout of these dwellings is acceptable.
58. The three proposed detached dwellings (units 75 - 77) at the south-western corner of the layout would face onto the area that is to be subject of a future planning application (previously the Stable Block area). The arrangement of these dwellings is acceptable in the context of the wider layout. For the reasons given above I find that the appeal 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 (a) of Policy QD1 is met.
59. The Objectors raised further concerns regarding various plots within the development being undersized in depth and area. Criterion (c) of Policy QD1 requires that adequate provision be made for public and private open space and landscaped areas as an integral part of the development. Paragraph 5.19 of CP states that "on greenfield sites and in lower density developments all houses should have an area of private open space behind the building line. To promote choice for residents a variety of different garden sizes should be provided, and back garden provision should therefore be calculated as an average space standard for the development as a whole and should be around 70 sq. m per house or greater". It goes on that "garden sizes larger than the average will generally suit dwellings designed for use by families, while smaller areas will be more appropriate for houses with 1 or 2 bedrooms or houses located opposite or adjacent to public or communal open space. For any individual house however an area less than around 40 sq. m will generally be unacceptable."

60. The Objectors considered that the private amenity provision of certain dwellings would be substandard. Those proposed with smaller private rear open space provision are Nos. 53, 63, 68, 70 and 71, some of which would be around 40 sq. m. However, given their disposition relative to other proposed dwellings within the layout, they are acceptable in context. The 'scrape' is to be located to the side of unit 1 and rear of units 54, 55 and 56. Although units 55 and 56 would have rear amenity spaces reduced as a consequence, they would still be more than 80 sq. m each and acceptable. I however agree with the Council that in order to preserve the private amenity space area for those properties, a close-board fence along the northern edge of the 'scrape' would be necessary. Although not suggested by the Council, the permanent retention of that fence would also be necessary. This could be secured via planning condition in the event of permission being granted.
61. The Objectors considered that the appeal development would not provide the required 10% public open space. The public open space must be designed in a comprehensive and linked way as an integral part of the development and only useable open space can be counted in calculating the precise amount of public open space provision needed. Seven amenity areas are shown in the site layout plan. The Appellant stated that those seven areas would equate to 15.99% of total useable public open space, though this would be fractionally lessened with the addition of the 'scrape'. The Objectors considered that Amenity Areas 1 and 2 should not be counted given their remote location, making them unsuitable for all residents. The proposed Amenity Areas 1 and 2 would provide pedestrian access to Mill Path. Whilst these areas could be considered as remote relative to the development taken as a whole, they would likely be used to access Mill Path. I am therefore satisfied that both areas can be counted as public 'useable' open space.
62. In relation to Amenity Area 4, there would be a maintenance strip around the watercourse that dissects the site. This maintenance strip would be enclosed on either side by a hedgerow or steel balustrade for health and safety reasons and could therefore not be counted as 'useable' public open space. Notwithstanding this, I am content that the Appellant has excluded this area in their calculations. Again, whilst the 'scrape' has not been deducted from the initial calculations, it would remove approximately 100 sq. m from the overall figure and it is clear to me that it is not an area of open space. Therefore paragraph 4.30 of PPS7 is not offended in relation to the peripheral location of the 'scrape'.
63. Paragraph 5.20 of CP states that "in the case of apartment or flat developments, or 1 and 2 bedroomed houses on small urban infill sites, private communal open space will be acceptable in the form of landscaped areas, courtyards or roof gardens. These should range from a minimum of 10 sqm per unit to around 30 sq. m per unit. Apartment developments on green-field sites and within lower density areas should normally seek to provide the higher figure, although this may be reduced where some private open space is provided in the form of patios or balconies."
64. The Objectors argued that 75% of Amenity Area 4 would account for the private amenity provision required for the apartment block. Block D would accommodate four apartments. The site layout plan indicates that there would be two private paved areas for the ground floor apartments in Block D. Hall House would accommodate six apartments, with a path area and greenery immediately surrounding it, with a bin storage area further to the rear. The Appellant indicated

that Amenity Area 4 would be over 3,300 sq. m. The size of this area is such that even if the higher threshold of private amenity space was subtracted (excluding the space for the two paved areas) from Amenity Area 4, a significant amount of approximately 3000 sq. m would still remain that constituted useable public open space.

65. The Objectors also considered that Amenity Areas 3, 4 and 6 cannot be counted as useable public open space given they are either in the flood plain or are prone to flooding. As outlined earlier, PPS15 permits amenity open space on flood plains and given the definition of a fluvial flood plain where there is a 1% annual probability of exceeding the peak floodwater levels, I accept these areas can be counted as useable public open space. With respect to Amenity Area 7, the Objectors considered that given its position within the development, it would not be utilised by all residents. Amenity Area 7 is shown on the site layout plan as a piece of open space set between two proposed dwellings (units 1 and 54) at the edge of the layout. Although I agree with the Objectors that it would not be easily accessible to the residents and has not been designed in a comprehensive and linked way to the rest of the development, that is partly a consequence of the arrangement of the site as a whole and a design intention to preserve the amenity of the dwelling immediately adjacent and south, but outside of, this part of the site. Nevertheless, it would still have some functionality for those residing closest to it, even in its slightly reduced form given the 'scrape'. In any event, even if discounted, at least 10% of the total site area for the appeal development would still be useable public open space and that there would be adequate provision for same as an integral part of the development.
66. Provision of the open space areas within the development will require securement through conditions in the event of permission being granted, including the equipped play areas and pedestrian connections to Mill Path prior to occupation of the 50th dwelling. The management and maintenance of these areas would be also necessary to ensure a quality residential environment is maintained through provision of an agreement between the Council and Appellant in this regard. For the reasons given above, the appeal development taken as a whole would comply with criterion (c) of Policy QD1 of PPS7. The Objectors' concerns in this regard are not sustained.
67. The Objectors also argued that the proposal offended criterion (g) of Policy QD1; that the design of the development should draw upon the best local traditions of form, materials and detailing. The proposed development entails a range of materials and detailing, with the buildings taking various forms that would mainly draw upon those found in the surrounding area at large. The detailing in the bin storage structures, the walls and the detached dwellings, along with the contrast in materials would create an interesting streetscape in general. I am not persuaded that the proposed palisade fencing to enclose the 'scrape' would induce an overly 'hard' visual feature within the appeal development, the wider village, or from vantage points from the private dwelling to the south. Again, taken as a whole, the appeal proposal satisfies criterion (g) of Policy QD1 of PPS7. The Objectors' concerns in this regard are not sustained.
68. 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. Objectors raised overshadowing concerns on those residing at Mill Path. Whilst this objection was framed predominantly in respect to the now removed Stable Block element, the nearest proposed dwelling to the Mill Path (unit 77) is sufficiently distant that there would be no adverse effect on those properties in terms of overshadowing. The appeal proposal would therefore not offend criterion (h) of Policy QD1 in this regard and the Objectors' concerns on this matter are not upheld.

69. The Objectors expressed 'secure by design' concerns in that they contended that private rear gardens should be set back-to-back. Criterion (i) of Policy QD1 requires that development is designed to deter crime and promote personal safety. Again, this was largely framed on the arrangement of the Stable Block element, which does not form part of the appeal, but also on the Objectors' position that some of the dwellings, namely units 61, 25, 47, 46, 45, 44, 43 and 42, all lay within or close to the floodplain. For reasons given earlier in this decision I am satisfied that no buildings will be within the floodplain and I am not persuaded that given the proposed site and FFL for the dwellings, that the development would fail to promote personal safety in this regard. Taking the development as a whole I am satisfied that the development would provide a feeling of security and a sense of vitality in all parts of the layout. The back gardens of dwellings would be enclosed and generally back onto each other. The layout is such that the public areas within it would be overlooked and a sufficient level of surveillance provided. Whilst concerns were raised that an access point to the 'scrape' could become a magnet for antisocial behaviour and litter, this assertion would not persuade me that the development should be rejected on this basis. The appeal development satisfies criterion (i) of Policy QD1 of PPS7 and this matter would not warrant the withholding of planning permission.
70. It would in the event of permission being granted be necessary to condition retention of existing trees, shrubs and hedges on the site boundaries and replacement of any tree being removed or becoming damaged or dying within the first five years from the date of completion of the development in order to ensure visual amenity is maintained. Completion of boundary treatments to each dwelling as shown on the submitted plans would also be required prior to occupation in order to ensure a quality residential environment.
71. The density of the proposed development was also raised by Objectors. Policy LC1 of APPS7 states that in established residential areas planning permission will only be granted for the infilling of vacant sites to accommodate new housing, subject to certain criteria. Criterion (a) is that the proposed density is not significantly higher than that found in the established residential area. Whilst the Appellant argues that the density of the appeal proposal would be lower than that found in the area, the policy states that density is generally considered to be a calculation of dwellings per hectare (dph). The Appellant stated that the appeal proposal would reflect 17 dph and that this would be less than the average density in the area at 17.8 dph, even when factoring in Granchester Park and Gransden Park.
72. The density of the surrounding context in comparison to that of the appeal development is such that the appeal proposal taken as a whole would not be significantly higher than that found in the established residential area. The mix of house types and character areas within the proposed layout provides for a degree

of variety and density within the layout. However, notwithstanding concerns raised by Objectors in respect to various particular densities, the position of the site relative to the nearby residential areas is such that a degree of variance is tolerable in terms of density and consequent design and appearance. Nor would that density be significantly higher than that found in the established residential area. Criterion (a) of Policy LC1 of APPS7 is met, as is the policy read as a whole, along with the related provisions of the SPPS. The Objectors' concerns on this matter are not sustained.

73. Taken as a whole the appeal development is acceptable read against both the nearby development as well as the character of the wider village, which despite its historic legacy, also contains examples of unsympathetic design and layout. The proposed design and arrangement of the various elements are of a satisfactory standard that they would not be at odds with the plantation character of the historic core of the village. These matters would not warrant the withholding of planning permission.

Residential amenity matters

74. The Objectors considered that the appeal development would be adversely impacted by nearby farm buildings both in terms of noise and odour. There are farm buildings in use and a stable development with sand arena adjacent and to the south-east of the appeal site, as well as a milking parlour on the opposite side of the Ballygudden Road. These matters fall to be considered under criterion (h) of Policy QD1 of PPS7; that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on either or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. The Council raised no objections under this criterion.
75. Turning first to noise, the Appellant's Noise Impact Assessment (NIA) was predicated on a survey undertaken in July 2017 at various locations as identified within the report. The NIA identified that noise from passing traffic on the Ballygudden Road was audible and dominated the background levels in the area. It went on to say that there was little or no impact on the background noise levels in the area from the adjacent agricultural buildings and operations, or from the horse stables and horse-riding area. The NIA pointed out that it can be expected that noise levels would be higher during daytime rather than during evening and night-time when traffic volumes on the Ballygudden Road decrease.
76. The NIA compared the noise levels measured with the criteria contained within the World Health Organisation (WHO) Guidelines for Community Noise and British Standard BS8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings with measured daytime noise levels in compliance with the recommended daytime guideline values. The NIA stated that based on the ProPG recommended Noise Risk Categories for new developments near existing noise sources, the appeal development site falls within the Low Risk Category, based on the measured LAeq, 30 min values of less than 50dB and the measured LA90, 40 min values of less than 35dB on the proposed development during daytime. The NIA also determined the measured noise levels taken on the appeal site to be less than 50dB LAeq and 35 dB LA90 and therefore in compliance with the requirement under BS8233:2014 for external areas that are used for amenity space, such as gardens and patios.

77. The NIA concluded that standard construction methodologies in accordance with Building Regulations would allow for appropriate noise mitigation measures to be BS8233:2014 compliant during construction. I have been given no evidence to refute this and I note that the Council's Environmental Health Department (EHD) did not raise objection in respect to noise. I have been given no substantive evidence that the noise environment has changed since the NIA was undertaken. Taking the evidence on this matter as a whole I consider that there would be no unacceptable noise emissions from the adjacent agricultural operations that would adversely affect the proposed dwellings. The Objectors' concerns on this issue are not sustained. In the event of permission being granted, submission of and written agreement with the Council of a Construction Management Plan detailing mitigation measures for construction on site in relation to noise, vibration and dust would be necessary to ensure the residential amenity of nearby properties would be protected.
78. In respect to potential odour impacts, the Appellant's Odour Impact Assessment (OIA) identified the two active slurry tanks and a manure pile within the adjacent farm, south-east of the appeal site. The manure pile adjacent to the horse stables is identified in the submitted drawings as located approximately 15m from the appeal site boundary. The OIA stated that there are apparently just two horses housed over winter at this location, though the Council's EHD witnessed three horses on land on the opposite side of the road close to the dwelling at No. 16 Ballygudden Road. Irrespective of this, the OIA stated that potential odour sources from manure piles or slurry tanks tend to be relatively benign in terms of odour release for the vast majority of a year. Odour tends to be released when slurry is being stirred prior to land-spreading and similarly for manure piles, gases are released when such a manure pile is disturbed periodically. It indicated that predominant wind direction recorded at the Derry Meteorological Station is from a south-westerly direction and for in excess of 70% of the year, any potential odours from these sources would be blown away from the appeal development.
79. The OIA stated that as access to the third party owned slurry tanks (in order to undertake source specific odour monitoring) was not possible, site-specific subjective odour surveys were undertaken instead. Odour surveys were carried out in the afternoon of two days during periods when the prevailing weather conditions had the potential to allow for odours to disperse from the slurry tanks across a portion of the appeal site. On both days, no odours that could be associated with the slurry tanks and/or manure piles were detected within 10m of the appeal site. It was concluded that following the completion of a series of subjective odour assessments during times of optimal meteorological conditions for such assessment, odours from slurry tanks or manure piles at the neighbouring farm were not detected on the appeal site. The OIA found that the prevalence of any odours at the appeal proposal that were at a level that could be deemed to have the potential to give rise to significant nuisance, or to significant impairment of, or significant interference on the environment of future residents, would be rare and infrequent.
80. The OIA stated that intermittent agricultural odours are an accepted occurrence on residential sites in such areas and intermittently the land spreading of slurry would take place and should there be a westerly or south-westerly wind direction, as is most likely to occur during such land spreading of slurry, then there would be no potential for odour impact on the appeal proposal. An interim EHD consultation

response pointed to the limited scope of the subjective odour assessments, and they could not be taken as conclusive in terms of the potential impact of odour from adjacent agricultural buildings or farming activity in the vicinity of the appeal proposal. However, I note that no objection was ultimately put forward against the appeal development on this basis.

81. Whilst EHD accepted that the prevailing wind direction is south-westerly and the locations of the adjacent farm hold and separate stable development are to the east and southeast of the appeal site, the impact of odour during slurry mixing and spreading on land was not included in the OIA. EHD therefore initially considered that the potential impact during those times was unknown. In their opinion, there remained the potential for residential amenity to be adversely impacted by odour by virtue of adjacent farming activities unless there was a minimum separation distance of 75m. From the submitted drawings, the closest slurry tank located north of No. 15 Ballygudden Road would be slightly outside the 75m distance, being approximately 77m from the private amenity space of the nearest new dwelling. Given the separation distances, the Council had no objections to the proposal in this regard.
82. I accept that there would likely be occasional or intermittent odours from the adjacent operational slurry tanks and horse pile, particularly when preparing for and during land spreading. However, this would not be a constant and when taken with the prevailing south-westerly wind direction and the private rear amenity space of the closest proposed dwelling being approximately 77m away, I am not persuaded that odour from the adjacent agricultural properties would have an unacceptable adverse impact on future occupants of the appeal development.
83. The Objectors referred to a nearby planning application (A/2008/0125/F) which was refused permission and subsequent dismissed appeal on the grounds of farmyard odour and noise. Those refused dwellings were located much closer to the potential odour sources and in the prevailing south-westerly wind of No. 9. That application is not comparable. Taken in the round I am not persuaded that the Objectors' concerns in relation to odour would warrant the withholding of planning permission and criterion (h) of Policy QD1 of PPS7 is met. For the reasons given above the appeal development complies with Policy QD1 of PPS7 read as a whole, as well as the related provisions of the SPPS.

Protected Flora and Fauna

84. Policy NH5 of PPS2 states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known other natural heritage features worthy of protection. Paragraph 5.12 of the amplification text states that 'other' natural heritage features worthy of importance are most likely to include trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity.
85. The Objectors considered that the appeal development would undermine the status of those trees along the northern and eastern boundaries of the site that are subject to a TPO. The Council's DMOR indicated that the trees on the north-eastern corner of the site are protected by a TPO, as well as six oak trees along Ballygudden Road and trees at the junction of Main Street and Ballygudden Road. Whilst the Council accepted that full visibility splays at the junction would impact

on the TPO trees, they acknowledged that a relaxation in standards had been accepted by DfI Roads and that those relaxed road improvement works would not impact on any protected trees at the junction. The Council therefore considered that the proposed mini-roundabout would respect the existing TPO trees at the junction and I have no reason to disagree with this assessment.

86. The appeal development includes a proposed pavement along Ballygudden Road. The Appellant's Tree Survey Report (TSR) that accompanied the planning application now subject of this appeal indicated that this would be close to the base of the six oak trees and within the Root Protection Area of each. The TSR recommended that all construction work associated with the pavement installation should be carried out by hand. The Council accepted this approach subject to conditions in the event of approval being granted. With regards to the TPO trees on the north-eastern corner of the site, the Council considers that all development would be outside the crown spread of the protected trees, but a small section of access path would encroach into the Root Protection Area.
87. The Council considered that the construction methodology for footpath construction within the Root Protection Area as set out in the Appellant's submissions could be conditioned to adhere to that methodology. The Council went on to conclude that there would be no impact on the TPO trees subject to such conditions. This would entail a condition withdrawing permitted development rights for any extensions to unit 11 given its proximity to a protected tree, as well as appropriate fencing to protect identified trees and no changes to ground levels in and around those trees without the prior written consent of the Council. I do not agree that the Appellant's suggested wording for such a condition should relate purely to the plans, as a simple prohibition on alteration of the levels is more easily monitored. Measures would also include careful construction of the footpath around the apartment block (units 13 – 16) in accordance with the Appellant's Tree Survey Report and hand digging of other footpaths that are beneath the spread of a tree canopy. In the absence of persuasive evidence from the Objectors to the contrary and given the mitigation put forward by the Appellant and subject to securement through those conditions, the appeal proposal would not have an unacceptable adverse impact on the TPO trees. The Objectors' concerns in this regard are therefore not sustained.
88. Policy NH2 of PPS2 states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species. Objections were raised as to the potential impacts on wildlife from the appeal development, particularly in reference to potential disturbance of bats. It was also suggested that the Appellant's supporting information out of date given the time elapsed since the application was first submitted.
89. Northern Ireland Environment Agency (NIEA) - Natural Environment Division (NED) informed the Council that the site surveys were submitted within a year of assessment and that this accorded with NIEA's specifications. The Appellant's bat survey is dated 30th August 2017. NED further informed the Council in July 2020 that given that there had been no change to the condition of the site, it was their view that the ecological information remained valid. Subsequently, the Council went on to accept the robustness of the 2017 bat survey that identified no bat roosts on the appeal site but did identify two main areas of bat activity. They were to the north-east of the site and along the southern hedgerow. The retention of

hedgerows on site were recommended and this could be secured by condition in the event of permission being granted. Notwithstanding the passage of time, I have been given no evidence that there has been any change in circumstances that would alter the assessment and its conclusions. In the absence of verifiable evidence to persuade me otherwise, I agree with the Council's conclusion on this and find that it would not warrant the withholding of planning permission.

90. The Objectors expressed concern that the Habitats Regulations Assessment was based on a single site visit in April 2017 and prior to the flooding events. They also contend that the mitigation suggested by the Council would not be satisfactory in protecting the integrity of the European designated site. The site is not in or immediately adjacent to a Natura 2000 site. It is hydrologically connected to two Natura 2000 designated sites - Lough Foyle Ramsar Site and Lough Foyle Special Protection Area (SPA), located approximately 2.5km north-east of the site. The Habitats Directive (92/43/EEC) transposed by the Conservation (Natural Habitats) Regulations (Northern Ireland) 1995 (as amended) requires every public body to consider the implications of a proposal on European designated sites and make an appropriate assessment where there are likely significant effects.
91. The Appellant submitted a Shadow Habitats Regulation Assessment at application stage. This was to inform the Council's Habitat Regulations Assessment (HRA) who were the competent authority at that time. The Shadow HRA was completed around the time of the first flooding event and before the more recent flooding event. The competent authority now rests with the Commission. Within the Shadow HRA, it indicated that the appeal development has the potential to result in the following impacts on Lough Foyle SPA and Lough Foyle Ramsar Site:
- habitat would be lost and replaced with hardstanding that would reduce the permeability nature of the site and may lead to an increase in surface water flow which could be contaminated from contamination sources on-site and off-site;
 - potential for ground water to be contaminated via incorrect storage and bunding on site during the construction phase;
 - potential to directly contaminate surface water flow via ground excavation resulting in sedimentation and via incorrect storage of materials/oil/and refuelling accidents, both during the construction and operational phase of the development;
 - potential for PAH/hydrocarbon emissions to increase from increased traffic movements in the local area during both the construction and operational phase; and
 - potential for noise and visual disturbance from personnel during the construction phase and the new residents residing in the development with an increased population/cars.
92. The above impacts could potentially result in likely significant effects on the two designated sites' conservation objectives. Given that the above impacts could result in likely significant effects on the two designated sites' conservation objectives, it is necessary to carry out an Appropriate Assessment (AA).
93. The Shadow HRA outlines that the above likely significant effects could be avoided or minimised by incorporating the following mitigation for construction or operational phases:
- storm water would drain off the site into the watercourse located to the west of the site and relevant Pollution Prevention Guidelines (PPGs) would be followed.

Foul water would drain into an existing NIW network for treatment at a NIW Waste Water Treatment Works either by pumped or gravity network;

- all relevant Pollution Prevention Guidelines (PPGs) would be adhered to and a groundwater and surface water monitoring programme would be implemented during the construction and post-construction phases;
- all relevant PPGs would be adhered to and to implement a groundwater and surface water monitoring programme during construction and post-construction phases;
- a buffer of 10m must be provided from the Castle River to the northwest of the site at construction phase;
- agreement of a Construction Environmental Management Plan (CEMP) with the authority prior to the commencement of works on site; and
- if unexpected contamination is encountered during construction, samples should be obtained and sent for analysis and an updated risk assessment completed and if appropriate remedial works identified.

94. The Shadow HRA does not propose mitigation for the potential increase in PAH/hydrocarbon emissions and from the temporary increase in noise and visual disturbance from the development during the construction phase. The distance between the appeal development and the designated sites, being approximately 2.5km, will act as a natural buffer. Again, it is considered that this distance between the appeal development and the designated sites will act as a buffer and so no significant impact would result on the designated sites. Shared Environmental Services (SES) informed the Council that provided the following mitigation measures were conditioned, if the appeal were to be granted, the development would not have an adverse effect on the integrity of any European designated site:

- a suitable buffer of at least 10 metres to be maintained between the location for refuelling, storage of oil/fuels, concrete mixing and washing areas, storage of machinery/materials/spoil etc. and all watercourses within or bordering the site;
- all refuelling, storage of oil/fuel/machinery, concrete mixing and washing to be positioned outside of the Q100 floodplain, as identified within the Flood Risk Assessment dated September 2017; and
- no direct discharge of contaminated surface water from the site to any watercourse during construction.

95. The Shadow HRA considered other significant plans in the wider area which might contribute to an 'in combination' effect with the appeal development. It identified that there was a potential for in-combination effects due to water quality degradation and aerial deposition on Lough Foyle SPA and Lough Foyle Ramsar Site to arise from development activities in the DAP area. In considering the in-combination effects, the Shadow HRA went on that other planning applications would be assessed individually, and no application will be permitted without proper mitigation in place to ensure water quality integrity is maintained. In undertaking this AA, it is determined that the identified likely significant effects of the appeal proposal, when considered alone and in combination with other relevant plans and projects, would not result in an adverse effect on the integrity of any designated site. In the event of permission being granted, conditions would be required for the above measures as well as pollution interception and flow attenuation measures, as well as submission of a Construction Method Statement and Earthworks Management Plan to ensure no adverse effects.

96. The Objectors considered that the proposed mitigation was not satisfactory. However, no persuasive evidence was presented to substantiate this position, nor was any alternative mitigation put forward. I note that SES endorsed the conclusions of the Shadow HRA and the Council's DMOR confirms that they as the competent authority at that time carried out an HRA and that subject to mitigation measures provided by conditions, the Council considered that the proposal would not have an adverse effect on designated sites. The Department of Agriculture, Environment and Rural Affairs Natural Heritage & Conservation Areas response also raised no objections in this respect. The Council did not change their final position on the conclusions of their HRA during the appeal process, nor after the identification of the Ballygudden Road flow path. In the absence of persuasive evidence to convince me otherwise, I accept and adopt its conclusions. Given this and bearing in mind the separation distance from the Natura sites, along with the suggested mitigation measures, I am not persuaded that the appeal proposal would have an adverse effect on the integrity of both European designated sites. The Objectors' concerns in this regard are not sustained.

Road safety and parking matters

97. Policy AMP2 of PPS 3 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 two criteria are met. These are firstly that such access will not prejudice road safety or significantly inconvenience the flow of traffic; and secondly, that the proposal does not conflict with Policy AMP 3 Access to Protected Routes. As the Ballygudden Road is not a protected route the second criterion is not engaged.
98. Objectors raised concerns regarding road safety, congestion arising from the appeal development, both within the layout itself and exacerbating parking within the village itself. They considered that there are existing parking problems in Eglinton due to the volume of cars and on a daily basis there are queues to enter and exit the village on the Coolafinny Road. They had further concerns in relation to parking within the development and regarding the new mini-roundabout.
99. The Appellant's Transport Assessment (TA) assessed the impact of no more than around 120 residential units on the surrounding transport network. Whilst it was submitted in support of the original 97-unit development, its analysis and conclusions remain valid to the reduced scheme before me now, which is for a lower quantum of development and subsequently lower number of traffic movements. It provided vehicular collision statistics for 2012-2015 which indicates that there were two minor incidents in 2012 and one minor incident in 2014. Two of those incidents were at Ballygudden Road/Moulton Park junction. Traffic surveys were carried out in May 2017 to determine the existing traffic flows. The TA indicates that the traffic network was analysed during peak time to consider the worst-case scenario. The TRICS database was used to generate trip rates to and from the development. The Assessment factored in that one access would serve the proposal and that it would be located on Ballygudden Road.
100. Objectors pointed to the queuing that takes place during peak periods in the village and that the appeal development would only serve to exacerbate this. However, it was found that in 2035 with the site constructed and growth factor applied, the junction with Ballygudden Road/Moulton Park would be working at

41% capacity. The TA recommended that to enhance the movement of vehicles along the Ballygudden Road that a right-hand turning lane be incorporated into the proposal to facilitate the movement of vehicles along Ballygudden Road. The TA concluded that given the introduction of the right-hand turning lane, the development would have minimal impact on the surrounding road network.

101. The Objectors raised concerns about the lack of a right-hand turning lane (RTL) into the development. Although a RTL was initially proposed and referenced in the Appellant's submissions, as well as in the TA, DfI Roads informed the Council that one would not be required and should be removed from the proposal. They indicated that the priorities were that there should be a footway linkage, that the Ballygudden Road should be 6m wide and that the Main Street/Ballygudden Road junction should be improved. The Council endorsed this and stated in their DMOR that no right-hand turning lane would be required as the TA indicated that traffic flows along the Ballygudden Road would be relatively low.
102. The submitted drawings shows that the existing Ballygudden Road would be 6m wide, a 2m footpath be provided and that there would be improvements to the Ballygudden Road/Main Street junction, entailing the new mini-roundabout. The proposed mini-roundabout would be located at the Ballygudden Road/Moulton Park/Main Street crossroads where St. Canice's listed church, a manse and a local health centre are located. Whilst the Objectors expressed reservations regarding the technicalities of the proposed mini-roundabout, this claim was unsubstantiated.
103. DfI Roads stated in one of their consultation replies that Ballygudden Road at 6m wide would be the full standard for a road carrying less than 5000 vehicles per day. They considered that the proposal to construct a mini-roundabout at the Main Street/Ballygudden Road junction would be an improvement on the existing crossroads situation and would improve traffic flows through the junction. The increased traffic flow through the junction would be less than 100 vehicles in the AM peak hour. It was the Council's view that the appeal proposal measures would mitigate the impacts arising from the development. I have no reason to depart from this conclusion.
104. In respect to road safety, the proposed development provides sufficient visibility splays onto the Ballygudden Road itself, along with calming features. I note that DFI Roads raised no objections to the proposed development, subject to conditions. From my examination of the proposed layout there would be sufficient parking for vehicles within the various curtilages and I have been given no persuasive evidence to suggest otherwise. Whilst the provision of residential development on the site would inevitably add to the population of Eglinton, along with traffic associated with it, I have no reason to believe that the traffic levels would result in unacceptable congestion within the village, even at peak times.
105. In relation to concerns that the appeal proposal would exacerbate any existing parking issues in the village, I note that a new footpath would be provided along Ballygudden Road and that it would give any future residents the opportunity to walk into the village. Given that the Council had no traffic concerns and in the absence of persuasive evidence from the Objectors, I am not persuaded that the appeal development would prejudice road safety or significantly inconvenience the flow of traffic, even at Coolafinny Road or when services, funerals or weddings are

taking place at St. Canice's Church. I am satisfied that the appeal development satisfies Policy AMP2 of PPS3 and the related provisions of the SPPS. The Objectors' concerns in this regard are not sustained.

Other matters

106. The Objectors raised issue that the proposed mini-roundabout would adversely affect the historical character of the village given its proximity to St. Canice's Church, the Old Rectory and the setting of the jubilee tree that fall within Eglinton's ATC. The Old Rectory is a good distance away from the appeal site, whilst St. Canice's Church is on the corner of Ballygudden Road and Main Street at the crossroads where the proposed mini-roundabout is to be sited. The Council nor its consultees did not raise any objection regarding the impact of the appeal proposal on any listed buildings and their settings. Given this and in the absence of persuasive evidence from the Objectors, I am satisfied that the appeal proposal would not adversely affect a listed building and its setting. These matters would not warrant the withholding of planning permission.
107. The Objectors considered that the consultation process for the application now subject of appeal was not adequate, as well as the community consultation event organised by the Appellant taking place prior to the flooding event in 2017. The appeal development constitutes a major development (being over 50 residential units) as understood in relation to section 27 of the Act. Irrespective of the timing in relation to the aforementioned flooding event, from the information before me the process was followed in accordance with the provisions of section 27, with the requisite minimum of 12 weeks' notice that an application for planning permission was to be submitted and at least one public event was held in the locality. The Objectors also alleged that there is Japanese knotweed at the flood plain. However, no persuasive evidence was provided to substantiate this claim.

Conclusions

108. For the reasons given above the Council's sole reason for refusal and the Objector's various concerns are not sustained. The appeal shall therefore succeed. The matter of conditions remains to be considered.
109. Conditions requiring a programme of archaeological works to be agreed with the Council prior to development taking place on site along with allowing access to the site by any archaeologist from the Department to observe and monitor the works would be necessary to ensure any such archaeological remains would be properly identified, recorded and appropriate steps taken.
110. Conditions requiring the provision of the road improvement works to the Ballygudden Road, footpath and new mini-roundabout, as well as provision of access visibility splays, some prior to the commencement of development and some prior to occupation of the dwellings (as specified below in those conditions) would be necessary in the interests of road safety. A condition requiring submission and written agreement of the Council of Stage 3 and Stage 4 Safety Audits in relation to the provision of the mini-roundabout would be necessary to ensure the works have been carried out to meet the safety requirements. Likewise, a determination under the Private Streets (NI) Order 1980 prior to development commencing would be necessary in order to ensure the road layout for the appeal proposal is to an adoptable standard. Verges marked for adoption on the submitted plans would also require to be kept clear from any buildings,

boundary treatments or planting that would obstruct the functionality of these verges and prejudice road safety.

111. A condition requiring provision of the service road to base course level and street lighting prior to occupation of any dwellings would also be necessary to avoid prejudice to road safety, as would conditioning the visibility splays for units 40 – 47 to be permanently kept clear. It would also be necessary to require provision of parking for the dwellings at units 13 – 24 and 26 – 35 prior to occupation and the use of those areas for parking only to ensure a safe residential environment. A condition requiring provision of the wearing course to the service road for the development upon completion of the development would be necessary to ensure a safe driving environment. Conditions relating to the gradients of access to individual dwellings and provision of a boundary fence or wall where finished ground levels of dwellings adjoin the footway or verge at a height 150mm lower than the footway would be necessary to ensure pedestrian safety.

Conditions

- (1) All existing trees, shrubs and hedges on the site boundaries as shown on drawing No. PA/05 F1 dated 17 November 2023 and drawings 6524-L-100F and 6524-L-101F, both dated November 2023 shall be permanently retained unless otherwise agreed in writing with the planning authority.
- (2) Prior to commencement of the development all existing trees to be retained shall be protected by appropriate fencing in accordance with British Standard 5837:2012 – Trees in Relation to Design, Demolition and Construction and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within these areas shall not be altered, nor any excavation be made or any other works carried out, or fires lit within the prior written consent of the planning authority.
- (3) If any retained tree is removed, uprooted or destroyed or dies within five years from the date of completion of the development it shall be replaced within the next planting season by a tree or trees in the same location of a species and size to be agreed in writing with the planning authority.
- (4) All works associated with the development of the pavement installation shall be carefully hand dug where such development is required directly beneath the spread of the tree canopy.
- (5) The footpath as shown around apartment block A at sites 13 – 16 where it encroaches within the Construction Exclusion Zone shall be constructed in accordance with the methodology set out in section 3.2 of the Tree Survey Report stamped received by the planning authority on 3 July 2019.
- (6) Prior to completion of the 50th dwelling unit hereby approved, the development shall provide the proposed public amenity open space, equipped play areas, pedestrian connection onto Millpath and all landscaping as indicated on the approved drawing No. PA/05 F1 dated 17 November 2023 and drawings 6524-L-100F and 6524-L-101F, both dated November 2023.

- (7) The open space play areas referred to in condition 6 shall be managed and maintained in accordance with the agreed Landscape Management and Maintenance Plan stamped received by the planning authority on 24 February 2020.
- (8) Prior to occupation of any dwelling unit, the Developer shall submit to the planning authority and agree in writing details of the proposed Open Space Provider (not being a Private Management Company) and the Open Space Agreement shall be entered into by the Developer and Open Space Provider for the development to manage the Open Space to be constructed as part of the development. The open space shall be managed and maintained in perpetuity by the Open Space provider.
- (9) The boundary treatments to each dwelling unit as identified on drawing Nos PA/26/D, PA/27/D and PA/28/A, all dated 22 November 2023, shall be completed prior to the occupation of each individual unit hereby approved.
- (10) Amenity Areas 3 and 6 as identified on drawing PA/05 F1 dated 17 November 2023 shall have no development, infilling, or tree or bush planting and shall be protected from future development.
- (11) The maintenance strip for the watercourse traversing the site as identified on drawing PA/05 F1, dated 17 November 2023 shall be protected from impediments including any future development, tree planting, hedges and permanent fencing.
- (12) Prior to the occupation of any dwelling unit, the Developer shall submit to the planning authority and agree in writing details of the proposed maintenance and management of the hatched area identified on the approved Site Layout Plan numbered PA/05 F1, dated 17 November 2023 as '*strip maintained at low lying area to suit specification in Flood Risk Assessment Addendum (Surface Water)*' and hereafter referred to as the 'scrape'. This area shall be managed and maintained in perpetuity in accordance with the agreed maintenance and management plan.
- (13) Prior to the occupation of the dwellings on sites 1, 54, 55 & 56 the Developer shall erect a 1.8m high close-board fence along the northern boundary of the 'scrape' as identified on the approved Site Layout Plan numbered PA/05 F1, dated 17 November 2023. The fence shall be permanently retained thereafter.
- (14) The 'scrape' as identified on drawing PA/05 F1, dated 17 November 2023, shall have no development, infilling, or tree or bush planting and shall be protected from future development.
- (15) Prior to construction of the drainage network, the Developer shall submit a final drainage assessment for approval in writing to the planning authority, including details of any Article 161 Agreements with NI Water.
- (16) All storm water from the development site shall not be discharged to nearby watercourses unless first passed through pollution interception and flow attenuation measures.
- (17) At least 8 weeks prior to the Prior to commencement of the development hereby approved, A Construction Method Statement, as well as a detailed Earthworks Management Plan, shall be submitted to the planning authority for agreement.

These shall include methods of control of run-off from working areas and mitigation measures to prevent pollution of watercourses. All works shall be carried out as agreed.

- (18) A suitable buffer of at least 10 metres shall be maintained between the location all construction works, including refuelling, storage of oil / fuels, concrete mixing and washing areas, storage of machinery / material / spoil etc. and all watercourses within or bordering the site.
- (19) All refuelling, storage of oil / fuel / machinery, concrete mixing and washing shall be positioned outside of the q100 floodplain.
- (20) There shall be no direct discharge of contaminated surface water from the site to any watercourse during construction.
- (21) If during the development works, new contamination or risks are encountered which have not previously been identified, works shall cease and the planning authority shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11) and / or the Land Contamination: Risk Management (LCRM) guidance. In the event of unacceptable risks being identified, a remediation strategy shall be agreed in writing with the planning authority and subsequently implemented and verified to its satisfaction.
- (22) After completion of any remediation works under condition 21, if engaged, and prior to the occupation of the development, a verification report shall be submitted in writing to and agreed with the planning authority. This report shall be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11) and / or the Land Contamination: Risk Management (LCRM) guidance. The verification report should present all the remediation, waste management and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and wastes in achieving the remedial objectives.
- (23) No site works of any nature or development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the planning authority. The programme shall provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains and for preparation of an archaeological report.
- (24) Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department to observe the operations and to monitor the implementation of archaeological requirements.
- (25) Prior to the commencement of the development hereby approved, the Developer shall submit for approval in writing to the planning authority a detailed Construction Management Plan of all mitigation measures that will be adopted at the site to minimise the impact of noise, vibration and dust on nearby residential properties. All works shall be carried out as agreed.
- (26) Prior to the commencement of the development hereby approved, the vehicular access, including the visibility splays of 4.5 metres by 90 metres and any forward

sight distance, shall be provided in accordance with drawing No. P344/R-01X dated 20 November 2023. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway. These splays shall be permanently retained thereafter.

- (27) No development shall take place until a determination has been made under Article 3(1) of the Private Streets (Northern Ireland) Order 1980.
- (28) The development hereby approved shall not be occupied until the works necessary for the improvement of the public road have been completed in accordance with the details outlined in blue on drawing P344-R-01X dated 20 November 2023.
- (29) The development hereby approved shall not be occupied until the works necessary for the improvement of the Ballygudden Road / Main Street junction have been completed in accordance with drawing 33 Rev4 date stamped as received by the planning authority on 18 February 2020.
- (30) Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, no buildings, walls or fences shall be erected, nor planting other than grass, flowers or shrubs with a shallow root system and a mature height of less than 500mm shall be carried out in verges determined for adoption.
- (31) The area shown hatched at sites 40 – 47 on drawing No. P344/R-01X, dated 20 November 2023, shall be kept clear to provide a level surface no higher than 250mm above the level of the adjoining carriageway to provide adequate visibility splays from the aforementioned sites. No walls or fences shall be erected, nor hedges nor formal rows of trees or planting other than grass, flowers or shrubs with a shallow root system and a mature height of less than 500mm shall be carried out within or grown within this hatched area.
- (32) The dwellings at sites 13 – 24 and sites 26 – 35 shall not be occupied until hard surfaced areas have been constructed and permanently marked in accordance with drawing No. P344/R-01X, dated 20 November 2023, to provide adequate facilities for parking. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking of vehicles.
- (33) No dwellings shall be occupied until that part of the service road which provides access to it has been constructed to base course level and street lighting has been provided.
- (34) The wearing course to the service road referred to in condition 33 shall be applied on the completion of the development.
- (35) The access gradient to the dwellings hereby permitted shall not exceed 8% (1 in 12.5) over the first 5m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.
- (36) If the finished ground level of the property, 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 1.1m above the footway or verge level.

- (37) On completion of the works required under condition 29, a Stage 3 and subsequent Stage 4 Road Safety Audit shall be submitted to and approved in writing by the planning authority and implemented as agreed.
- (38) Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and / or re-enacting that Order, no extension or enlargement shall be made to the dwelling on site 11 hereby permitted without the grant of a separate planning permission from the planning authority.
- (39) The development shall be begun before the expiration of five years from the date of this decision.

This decision relates to the following drawings:

DRAWING No.	TITLE	SCALE	DATE
01 Rev1	Site Location Plan	1:2500	22/03/2019
02	Site Location Map: Topographical Survey	1:500 @ A0	29/09/2017
03	Existing Site Sections	1:500 @ A1	29/09/2017
PA/05 F1	Site Layout Plan (except in regard to planting at Amenity Area 6)	1:500 @ A0	17/11/2023
PA/06/B	Proposed Site Sections	1:500 @ A1	22/11/2023
06	House Types: 1B & 1R/SD	1:100 @ A1	29/09/2017
07	House Types: 2B & 2 S/D	1:100 @ A1	29/09/2017
08	House Types: 2R/D	1:100 @ A1	29/09/2017
09	House Types: 3S & 3B/D	1:100 @ A1	29/09/2017
10	House Types: 3R/D	1:100 @ A1	29/09/2017
11	Gatehouse & Retirement Bungalows	1:100 @ A1	29/09/2017
17	Walled Garden Apartments Central & Linear Blocks	1:100 @ A1	29/09/2017
18	The Walled Garden – Apartments Elevation Studies	1:100 @ A1	29/09/2017
19	Farmleigh Manor Apartments	1:100 @ A1	29/09/2017
6524-L-100F	Softscape Layout – Zoom 1 (except in regard to planting at Amenity Area 6)	1:500 @ A1	Nov. 2023
6524-L-101F	Softscape Layout – Zoom 2 (except in regard to planting at Amenity Area 6)	1:500 @ A1	Nov. 2023
P344/R-01X	Proposed Road Layout – Overall Site	1:500 @ A0	20/11/2023
P340/R02J	Longitudinal Sections	1:100 & A0	06/08/2021
33 Rev4	Proposed Mini-Roundabout Option 1	1:250	18/02/2020

34	Hall House: Context	1:100 @ A1	03/07/2019
35	Central Green Apartment Block D	1:100 @ A1	03/07/2019
36	TPO Tree Trunk Proximity to Road Edge	1:20	18/02/2020
PA/28/A	Boundary Treatment (Fences & Walls)	1:10	22/11/2023
PA/26/D	Boundary Treatment Key Part Plan 1 (except in regard to planting at Amenity Area 6)	NTS	22/11/2023
PA/27/D	Boundary Treatment Key Part Plan 2 (except in regard to planting at Amenity Area 6)	NTS	22/11/2023
P344/D-01G	Proposed Drainage Layout	1:500 @ A0	22/11/2023

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:-	Ms A McNee (D&S DC) Ms S Barrett (D&S DC) Mr N Jenkinson (DFI Rivers) Mr C O'Neill (DFI Rivers)
Appellant:-	Mr C Bryson (Gravis Planning) Mr A Ryan (TLT Solicitors) Mr K Somerville (McCloy Consulting) Ms M Nixon (McCloy Consulting) Mr JP McGinnis (Appellant)
Third Parties:-	Mrs G Simpson (Objector) Mr J McLoughlin (Objector) Mr P Harty (Objector) Mr J Feeny (Objector)

List of Documents

Planning Authority:-	'A1' Statement of Case & Appendices (DC & S DC) 'A2' Rebuttal Statement (DC & S DC) 'A3' Response to Concerned Residents of Eglinton Village [CREV] submission & Appendix (DC & S DC) 'A4' Supplementary Statement of Case (DC & S DC) 'A5' Post-hearing comments on the 'scrape' and Appendix C levels drawing (DC & S DC) 'A6' Post-hearing comments on Concerned Eglinton Residents Group [CERG] submission re changes in levels at The Points (DC & S DC)
Appellant:-	'B1' Statement of Case & Appendices (Gravis Planning) 'B2' Rebuttal Statement (Gravis Planning) 'B3' Response to CREV submission (Gravis Planning) 'B4' Supplementary Statement of Case & Appendices (Gravis Planning) 'B5' Post-hearing full-size copy of Amended Site Layout Plan for amended layout & other relevant consequentially amended drawings (Gravis Planning) 'B6' Post-hearing large scale copy of Appendix C levels drawing (dated 14 August 2023) from Flood Risk Assessment contained in document B4 (McCloy Consulting) 'B7' Post-hearing comments on the 'scrape' (Gravis Planning) 'B8' Post-hearing comments on CERG submission re changes in levels at The Points (McCloy Consulting)
Third Parties:-	'C1' Statement of Case & Appendices (Concerned Eglinton Residents Group – CERG) 'C2' Rebuttal Statement & Appendix (CERG) 'C3' Submission re July 2022 flooding event (CREV)

'C4' Supplementary Statement of Case & Appendices (CERG)

'C5' Post-hearing comments on the 'scrape' and Appendix C levels drawing (CERG)

'C6' Post-hearing additional submission & Appendix re changes in levels at The Points (CERG)

'D1' Statement of Case & Appendix (Mr W Lamrock)