

**PLANNING APPEALS COMMISSION**

**THE PLANNING ACT (NORTHERN IRELAND) 2011  
SECTION 58**

**Appeal by HFK Construction  
against the refusal of full planning permission for the construction of 4 dwellings, 2  
semi-detached and 2 detached on an existing housing development  
at  
Approximately 150m Northeast of 17 Long Meadow, Portglenone, Antrim, BT44 8FG**

**Report  
by  
Commissioner Gareth McCallion**

**Planning Authority Reference: LA02/2022/1080/F**

**Procedure: Written Representations**

**Commissioner's Site Visit: 25<sup>th</sup> March 2024**

**Report Date: 1<sup>st</sup> May 2024**

## 1.0 BACKGROUND

1.1. Mid and East Antrim Borough Council received the application for planning permission on 28<sup>th</sup> December 2022. By notice dated 3<sup>rd</sup> July 2023 the Council refused permission giving the following reason: -

- 1. The proposed development is contrary to the Strategic Planning Policy Statement for Northern Ireland relating to Housing in Settlements and Policy QD1 of Planning Policy Statement 7 Quality Residential Environment in that insufficient information has been submitted to enable the Council to properly assess and determine the application in terms of access and parking arrangements together with hard and soft landscape areas with respect to road layouts.**

1.2. The Commission received the appeal on 18<sup>th</sup> July 2023 and advertised it in the local press on 2<sup>nd</sup> August 2023. No representations have been made by 3<sup>rd</sup> parties to the appeal.

1.3. Mid and East Antrim Borough Council adopted the Local Development Plan (Plan Strategy) on 16<sup>th</sup> October 2023. Following this change in circumstances, the Council provided updated reasons for refusal as follows:

- 1. The proposed development is contrary to the Strategic Planning Policy Statement for Northern Ireland Regional Policy, Housing in Settlements and Transportation together with General Policy GP1 (c)(i) Policy HOU 1 Quality in New Residential Development in Settlements and Policy TR6 Parking and Servicing of the Mid and East Antrim Borough Council Local Development Plan 2023 – Plan Strategy in that insufficient information has been submitted to enable the Council to properly assess and determine the application in terms of Access and Servicing arrangements in accordance with the latest guidance published by the Department for Infrastructure.**
- 2. The proposed development is contrary to the Strategic Planning Policy Statement for Northern Ireland Regional Policy Housing in Settlements and Policy HOU7 Adaptable and Accessible Homes criteria a – e of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy in that no information has been provided to demonstrate compliance with the policy requirement to deliver adaptable and accessible homes.**
- 3. The proposed development is contrary to the Strategic Planning Policy Statement for Northern Ireland Regional Policy Housing in Settlements and Transport together with Policy TR5 Active Travel criteria a – c of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy in that no information has been provided to demonstrate compliance with the requirement to ensure the needs of pedestrians and cyclists have been taken into account.**

- 1.4 The appellant was provided with the opportunity to comment on the revised reasons for refusal.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The appeal site is located c. 200 metres east of the junction where the access to the Long Meadow housing development meets with Gortgole Road, Portglenone. The housing development, of which approximately 60 dwellings have been constructed, comprises of modest sized, detached and semi-detached dwellings. The external finishes of the constructed dwellings, comprise a mixture of red brick and concrete rendered veneer, painted cream. Several of the houses, in and around the appeal site, are occupied. The appeal development comprises two semi-detached and two detached houses, already under construction. They are of a similar style, size and scale to those built within the larger development scheme.
- 2.2 There is a hedgerow along the eastern boundary of the appeal site, interspersed with mature trees. Access to the appeal site is restricted by c. 1.8 metres high security fencing located along the western, northern and southern boundaries. Construction equipment, including a boom lift, a small excavator, portable cement mixer, a front-end loader and transferrable (temporary erected) cement silo were located within the fenced off appeal site.
- 2.3 The appeal site is accessed from the Gortgole Road through the existing housing development. All the existing constructed dwellings have off road parking. The housing development also includes pedestrian access via demarcated footpaths, which tie into the established footpath system located along the Gortgole Road. This links to Main Street (the A42), which is the principal thoroughfare of Portglenone.
- 2.4 Beyond the housing development, and directly opposite the access to the same, is an established small housing estate, Bann View Terrace. Directly to the south of Bann View Terrace is the Portglenone Community Centre and beyond this is the Portglenone Marina, located on the eastern bank of the River Bann. Almost directly 100 metres north of Bann View Terrace, and some 180 metres directly northwest from the junction of Long Meadow and Gortgole Road, is an operational NI Water Wastewater Treatment Works (WwTW). This facility is located c. 350 metres, in a straight-line distance, from the appeal site. Directly south of the housing development, wherein the appeal site is situated, is the established residential development of Riverdale Park.

## **3.0 PLANNING AUTHORITY'S CASE**

- 3.1 The planning history is as follows:
- LA02/2023/0199/CA – *“alleged non-compliance with LA02/2017/0962/F x 2 extra dwellings”*;
  - G/2004/0493/O granted 21<sup>st</sup> April 2005, *“proposed housing”*;
  - G/2006/0692, granted 15<sup>th</sup> August 2008 for *“the demolition of two private dwelling (No. Gortgole Road & No 18 Townhill Road) and a proposed housing development to include 5 No. detached dwellings, 20 No. semi-detached dwellings, 12 No. 3 Block (Mid-terrace dwellings), 59 No. townhouse dwellings and 31 No. apartments”*;

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- LA02/2018/0413/DC approval May 2018, for “*the discharge of condition number 05 on planning approval LA02/2016/0156/F*”;
  - LA02/2017/0962/F granted 25<sup>th</sup> July 2018 for “*42 No. dwellings (2 detached, 40 semi-detached) with associated roads and parking*”; and
  - LA02/2020/0341/NMC consent refused 21<sup>st</sup> August 2020, “*for domestic garage – roof changed from gabled ended to hipped roof. Finish changed to facing brick, brick to match detail on main house and neighbouring properties – LA02/2019/0600/F*”.
- 3.2 The Department for Infrastructure Roads (Dfi) provided a consultation response received on 25/01/23 requesting detailed information relating to car parking provision and road layouts. Additional information, referred to in the title block as PSD Drawing and referenced 7395-PD-06, was uploaded to the portal on 03/05/2023 and further consultation sought from Dfi as the statutory body. A formal response from Dfi was received dated 23/05/23 seeking further clarity in relation to roads layout and detailing the following requirements:
- On street parking to be removed from the PSD and it must include:
- all road, footpath verge and service strip widths;
  - Finished floor levels;
  - Spot levels at chainage points on carriageway;
  - Spot levels at back of footway and 5m into all driveways;
  - All gully positions and house connections/tails;
  - Junction radii dimensions;
  - Sight lines at all new junctions;
  - Forward sight lines;
  - Horizontal centre line radii;
  - All street furniture; and
  - Traffic calming measures.
- 3.3 The Appellant was also made aware by email on the same day (23/05/23) that the response was available on the public portal. No further response or information was received from the Appellant.
- 3.4 To progress the application the Appellant was contacted by letter dated 8<sup>th</sup> June 2023, setting out that there was insufficient information available to determine the application and to forward the required information within the next 14 days. It was made clear to the Appellant that in the event of no further information being received the application would be determined based on the material available which would result in the refusal of planning permission.
- 3.5 The deadline for the submission of information to address Dfi queries passed on 22<sup>nd</sup> June 2023. The Appellant registered a call on Monday 26<sup>th</sup> June, this call was returned on 27<sup>th</sup> June 2023, without answer. No further information had been received. No further correspondence had been submitted. The application was formally refused on 3<sup>rd</sup> July 2023 due to lack of information.
- 3.6 The Policies of Planning Policy Statement 11 ‘Planning & Waste Management’ (PPS 11) have been superseded by General Policy GP1 (b) Criteria relating to
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Safeguarding Residential Amenity part iii and Policy WMT4 'Development in the vicinity of a Waste Management Facility'. Proposals involving the development of land in the vicinity of existing or approved waste management facilities and wastewater treatment works (WWTWs), will only be permitted where all the following criteria are met:

- it will not prejudice or unduly restrict activities permitted to be carried out within the waste management facility; and
- it will not give rise to unacceptable adverse impacts in terms of people, transportation systems or the environment.

- 3.7 Within the response from NI Water, published on 25<sup>th</sup> January 2023, the statutory consultee states, the proposed development may experience nuisance due to its proximity to the operations of the existing Wastewater Treatment Works. Before NI Water would be prepared to recommend approval of this application confirmation [is needed] that the requirements of Planning Policy Strategy PPS11, particularly Policy WM5, can be satisfied.
- 3.8 As the site is located wholly or partially within the Wastewater Treatment Work's 400m odour consultation zone boundary an Odour Encroachment Assessment is required to determine the compatibility of this proposal with the existing operation of the Wastewater Treatment Works. Depending on circumstances this may also require the procurement of an Odour Dispersion Model to NI Water specification.
- 3.9 On balance as part of the original determination, it was not felt reasonable to withhold a planning determination pending the submission of an Odour Encroachment Assessment. However, without prejudice, a condition should be added to any determination documentation stating that a resolution is reached prior to the commencement of any development.
- 3.10 Since determination, Mid and East Antrim Borough Council adopted the Local Development Plan 2030 - Plan Strategy on 16th October 2023. The Plan Strategy (PS) became effective from the date of adoption and is relevant to the consideration of the above planning appeal. Section 45(1) of the Planning Act (NI) 2011 (the Act) states regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The Planning Act (NI) 2011 establishes a plan-led planning system which gives primacy to the plan in the determination of planning applications unless other material considerations indicate otherwise.
- 3.11 The Council has yet to adopt its LPP, so in the interim decisions fall to be made in light of current circumstances. The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended) makes provision for the preparation of a LDP by a Council. Part 9 and the Schedule contain the arrangements for the transition from departmental development plans made under the Planning (Northern Ireland) Order 1972 or the Planning (Northern Ireland) Order 1991 to the new council local development plans. It also defines what constitutes an LDP during the transition period until the council has fully adopted its own LDP. In line with the transitional

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arrangements set out in the Schedule to the Regulations, the LDP is currently a combination of the departmental development plan (DDP) and the PS read together.

- 3.12 Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS. The Ballymena Area Plan 1986-2001 comprises the DDP for this proposal. No conflict arises between the DDP and the PS.
- 3.13 Policy HOU7 of the PS seeks to secure Adaptable and Accessible Homes in line with the regional policy brought forward by the Strategic Planning Policy Statement for Northern Ireland (SPPS). The above policy sets out a number of criteria that applies to all housing developments, regardless of scale. No information has been provided to demonstrate compliance with the adopted policy.
- 3.14 Policy TR5 of the PS ensures the needs of pedestrians and cyclists are taken into account in line with the regional policy brought forward by the SPPS. The above policy sets out a number of criteria that applies to all urban developments, regardless of scale. No information has been provided to demonstrate compliance with the adopted policy.
- 3.15 The appellant relies heavily on the assertion that the provision of PSD drawings was not required as part of the determination process. This is contrary to the request being made by DfI as the statutory authority, on two separate occasions.
- 3.16 It could be contended that the Appellant accepted that PSD drawings may form part of the consideration by adherence to the first request made by the statutory authority through the provision of PSD drawings previously approved under LA02/2016/0156/F.
- 3.17 The Appellant received clarification on the level of information required by email, outside of the Planning Portal on 11<sup>th</sup> May 2023 directly from the DfI officer, to which the Council was not privy. This email clarified the DfI position that further information regarding the PSD drawing was a requirement. No further information was provided by the Appellant despite requests and reminders from the Council. The Appellant references an historical application on site reference LA02/2021/1141/F in which PSD drawings were not submitted in this instance. No inference should be drawn from the previous case, firstly as each application is determined on its own merits but more specifically no PSD information was requested by the Statutory Authority (DfI) in that instance. An informative was suggested by the Statutory Authority.
- 3.18 Should the appeal be allowed, the following conditions are proposed on a without prejudice basis:
- Time limit;
  - Hard and soft landscape requirements prior to the occupation of the dwellings;
  - Development to be carried out in accordance with approved plans; and
  - The provision of an odour encroachment assessment prior to commencement shall be submitted.

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## 4.0 APPELLANT'S CASE

- 4.1 The appeal proposal is a modest component within a larger residential development, comprising of a further 70 houses approved, or built, in addition to the four houses in this proposal. In the assessment by the case officer in pages 5-7 of his report, the proposal is satisfactory in every other respect, save for the details relating to private streets. The application should not have been refused permission on this basis, because the road which serves the proposed development is already determined as a private street. The information requested by the Council was not properly relevant to its decision.
- 4.2 Whilst it is acknowledged that there is a necessary relationship between the development of housing estates and the roads which serve them, the approval of the private streets is not provided for in the Planning (Northern Ireland) Act 2011. In the same way that the drainage from housing developments, and the construction of houses are controlled by separate legislation, the determination of private streets is beyond the remit of a local Council.
- 4.3 The Private Streets (NI) Order 1980 (the Order) and the Private Streets (Amendment) Order 1992 provide the statutory basis for the adoption of roads constructed by Developers. The Order further provides for the Department [DfI] to adopt the determined layout on satisfactory completion by the developer. Developers are required to enter into an agreement, often called a Bond, with DfI so that, on satisfactory completion of the road construction, the roads become public roads.
- 4.4 Only those carriageways and footways, cycle tracks, footpaths, visibility splays and verges that DfI considers necessary for public access and passage, will be adopted, provided that they are laid out in accordance with the 'Creating Places' design guide and constructed to the standards set out in the Private Streets (Construction) Regulations (NI) 1994.
- 4.5 The Long Meadow residential development was approved in a series of applications. Two of those applications (LA02/2016/0156/F and LA02/2017/0962/F) included the determination of private streets which, between them, covered the entirety of those streets necessary to serve all of the housing within this development.
- 4.6 The decision for LA02/2017/0962/F explicitly includes approval of private streets which would serve the appeal site. The set of approved documents listed on the decision notice includes [drawing] 11/1, which is a Site Layout with roads and footpaths coloured red. The wording of Condition 2 of that decision is curious. It reads: "*the Private Streets (Northern Ireland) Order 1980 as amended by Private Streets (amendment) (Northern Ireland) Order 1992. The Council/Department hereby determines that the width, position and the arrangement of the streets and the land regarded as being comprised in the streets, shall be as indicated on Drawing 11/1 bearing the date stamp 7th June 2018*". The reason for the condition is cited as: "*to ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980*".
- 4.7 Listing the legislation and amending legislation at the beginning of a planning condition is unusual. The "Council/Department" reference suggests confusion in the mind of the decision taker about whose decision this was. The Council has no

- authority to determine a street, and reference to the council does not belong in the condition.
- 4.8 Similarly, condition 4 of that decision with its list of slash-separated structures, none of which is contained in the proposal, suggests that the decision taker was uncertain about the decision they were taking, and had pasted a form of words from somewhere else unthinkingly.
- 4.9 Condition 3 anticipates that the roads will not be complete before the houses served are occupied. This is the normal expectation in residential developments. The ongoing construction activity, with heavy vehicles and machinery causes damage to roads, kerbs, manholes etc. Minor changes are made to access positions, gully positions, speed control devices etc during the life of the development.
- 4.10 An application for permission to build 7 houses along the development's eastern boundary was approved in January 2022. Similarly, to the appeal proposal, it proposed that access for those houses would be taken off the private streets determined previously, and by that stage bonded. That application involved the addition of access points onto the determined road, including dropped kerbs, which would have represented a minor alteration of the details on the determined private street.
- 4.11 In that case the council did not seek a new private streets determination drawing, nor included reference to private streets in their planning conditions. That was the correct approach.
- 4.12 On 24th March 2023 the case officer wrote to the Appellant to say that the appeal proposal was acceptable in principle, before going on to say "should you wish to address concerns raised by roads service" that the Appellant should do so. Given the Appellant's experience in similar matters it was understood that what Dfl were asking for was not necessary and the Appellant read the passive tone of the email to mean that the "concerns" raised were not material to the planning decision.
- 4.13 In the officer report, which led to the refusal of planning permission, the case officer discusses requests for information which was not provided. There is a degree of confusion regarding the Council's request for further information and the consultation responses received from Dfl.
- 4.14 On 10th May 2023 the Appellant wrote to the Dfl officer in order to attempt to clarify the request being relayed via the planning case officer, saying: *"Hi Gerry, we've made a planning application for the last couple of houses on the HFK site at Gortgole Road, Portglenone. Sean O'Kane is the planning case officer in Newtownabbey. He's asking for a PSD drawing to accompany the suite of application drawings. All the roads on this site were determined in previous applications (LA02/2017/0962). Do you want to see all of the roads in red again, or is it just the new dropped kerbs around the driveways that you wanted to be shown on a smaller red area?"*
- 4.15 On 11th May the Dfl officer replied saying: *"Hi Liam, A new [s] PSD is needed with the new proposed houses on it. You do not have to re-determine the entire site! Regards Gerry"*.
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- 4.16 That response was clearly inconsistent with the approach taken on LA02/2021/1141/F, approved a year earlier. There had been no change to the private streets' legislation in the interim, and no legitimate expectation that the outcome (in that limited respect) would be different.
- 4.17 The determination of private streets involves a separate piece of legislation, in the same way that the Building Regulations and the Drainage Order address separate aspects of the development of a residential estate. The private streets serving the appealed proposal has previously been determined and it is the subject of a bond between the appellant and Dfl. Within that bond it is expected that details will change during the construction phase. These matters will be addressed by the inspecting officer for Dfl through the management of that bonded work and in advance of adoption. To have two overlapping determinations on the same section of road is problematic, for the purposes of bonding and ultimately adopting private streets, and should be avoided.
- 4.18 The Council's statement makes much of the correspondence relating to roads matters. What it doesn't record is the confusion which was involved in the interpretation of the consultee response from Dfl, and how that was relayed to the Appellant. The first consultation response from Dfl, dated 25<sup>th</sup> January 2023 had asked for a list of detailed information, which was responded to by the Appellant with the submission of additional information on 5<sup>th</sup> March. The second consultation response dated 23<sup>rd</sup> May referenced a PSD. Given that the relevant streets were already determined this response, and the types of information requested seemed to be a mistake, or a misunderstanding. All the requested information relevant to private streets had previously been submitted, approved, and bonded in previous approvals at this development.
- 4.19 In the Council's letter to the Appellant dated 8<sup>th</sup> June it seemed as though the case officer had failed to understand that the determination of private streets is a separate process. The alleged failure to respond to the Council tends to distort the situation pertaining at that time. The Appellant was confused about the inconsistency in approaches taken by the same authority and consultee, which had approved a similar application on the adjacent plots a year earlier. It appeared to the Appellant that the Council's officers would not open themselves to a charge of inconsistency. The Appellant did not expect them to believe that a Private Streets Determination was a precondition before the grant of planning permission. It was expected that the Council would interpret the relevance of the Dfl response, considering the current situation.
- 4.20 The original reason for refusal relates to a request for information in the form of a drawing which the council sought, and which was not provided. It seems that the council was unclear about what it was asking for and did not know that a further determination of private streets was not required. The approach taken in the refusal of this application differs from that properly taken in respect of LA02/2021/1141/F, in that case no further private streets drawings were sought before the approval was issued, and no condition relating to the adoption of those streets was included in the decision notice. It was not necessary to add such a condition in order to make the development acceptable in planning terms.

- 4.21 Mid and East Antrim's Local Development Plan: Plan Strategy was adopted on 16<sup>th</sup> October 2023. It is disappointing that it has taken the three months from then until the exchange of Statements of Case for the Appellant to be advised that the Council had found additional reasons for refusal based upon that Plan Strategy. Nonetheless, the new PS is a material consideration.
- 4.22 The proposed change to the wording of the original refusal reason is challenged. Whilst it is acknowledged that the PPS policies in the decision have been superseded there is nothing in the processing of the application or appeal which indicates that there is an issue with the "access and servicing arrangements". Whilst Dfl, in their consultation responses asked for information relating to private streets, there is sufficient information included within the application documents to permit the Council to assess the proposals under Policy TR6. Drawing 7395-PD-02, and 7395-PD-06, submitted on 3<sup>rd</sup> May 2023 include the parking arrangements for the houses.
- 4.23 The Council's policy for the promotion of Adaptable and Accessible Homes is a departure from the regional policy pertaining at the date of the decision. Whilst it is normally poor practice to evolve a design during the appeal process we suggest to the Commission that in this case a relaxation might be appropriate in order to address an entirely new policy, introduced after the date the appeal was made.
- 4.24 If admitted to this appeal, we append revised plans which address the requirements of Policy HOU7. The revised drawings are:
- 7395-PD-02 A – Site Layout
  - 7395-PD-03 A – Plans and elevations for House type A
  - 7395-PD-04 B – Plans and elevations for plot 69
  - 7395-PD-05 A – Plans and elevations for plot 70
- 4.25 We also append a new drawing, 7395-Pd-07 – Site Layout, which is a site layout for the appeal site at a smaller scale. It attempts to show the parking spaces more clearly.
- 4.25 The two versions of the site layout have been amended to show parking at the proposed dwellings which includes one space at each dwelling which is capable of being widened to 3.3m.
- 4.26 The revised floorplans indicate turning space for wheelchairs in the dining, living and bathroom on the bedroom floor level in each house. The other criteria in HOU7 were already satisfied in the decision drawings. These internal changes have not necessitated any changes to the building envelopes. The external dimensions, and window and door positions remain unaffected.
- 4.27 The proposed addition of a refusal reason based on Policy TR5 is wholly unjustified. The application site is served by footpaths which are a component of determined private streets, and which are the subject of road bonds between the appellant and Dfl. These footpaths extend from the appeal site to the town centre of Portglenone, and to the public amenity space extending to the River Bann.

- 4.28 Regarding the proposed planning conditions. The landscape condition does not reference a landscaping plan or scheme. It would not be enforceable and is not necessary. The broader development previously approved had a landscaping plan approved, and those decisions can be relied upon for their own implementation conditions, and enforcement, if necessary.
- 4.29 The addition of a concern about odour, in the context of the appealed proposal being the last four dwellings in a development of 70+, and amongst the furthest from the wastewater treatment works, is disappointing. The separation distance is approximately 370m, whereas the closest home on the same residential development is only 150m from the WWTW. The late addition of this condition is unreasonable. The condition is unreasonable, unnecessary and unenforceable. Aside from the submission of an assessment it does not require any approval of such an assessment, or otherwise control the development as a consequence of the completion of an assessment.
- 4.30 Conditions regarding the time limit for implementation and adherence to plans are not challenged.
- 4.31 The adoption of the Mid and East Antrim PS introduces a different policy context for the Commission as the new decision taker. Given that this Strategy was adopted after the appeal was submitted, and that the adjustment to plans tabled in order to address its policy HOU7 is modest in nature, we contend that, in the interest of fairness the revised (and new) plans should be admitted to this appeal, and be available for the Commissioner to list as approved documents.

## **5.0 CONSIDERATION**

### **Claim for Costs**

- 5.1 A claim for costs was made by the Appellant against Mid and East Antrim Borough Council. This claim is the subject of a separate decision.

### **Consideration**

- 5.2 The main issues in the appeal are whether the proposal would be acceptable in terms of access and servicing arrangements and would deliver adaptable and accessible homes.
- 5.3 Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
- 5.4 On the 16<sup>th</sup> October 2023, the Council adopted the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy (PS). In line with the transitional arrangements as set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the Local Development Plan is now a combination of the Departmental Development Plan

(DDP) and the PS as read together. In this case, the DDP is the Ballymena Area Plan 1986 – 2001. Pursuant to the aforementioned legislation, any conflict between policy contained within the DDP and those of the PS must be resolved in favour of the PS.

- 5.5 In accordance with paragraph 1.9 of the Strategic Planning Policy for Northern Ireland (SPPS), as the Council has now adopted the PS, the previously retained regional policies, such as the Planning Policy Statements, now cease to have effect within this Council Borough.
- 5.6 The DDP advises that sufficient land is included within the development limits to allow each village to fulfil its role within the development strategy by providing adequate opportunities for housing. As defined within the DDP, the appeal site is located within the settlement limit of Portglenone. Herein, the site is identified as land suitable for housing. Therefore, the proposal accords with the DPP. Land suitable for housing is identified off the Gortgole Road. No conflict arises between the DDP and PS pursuant to those policies raised in this appeal.
- 5.7 Policy GP1 ‘General Policy’ for all Development’ of the PS states that “*planning permission will be granted for sustainable development where the proposal accords with the [Local Development Plan] and there is no demonstrable harm to interests of acknowledged importance. Where this is not the case there will be a presumption to refuse planning permission*”. The policy advises that all development proposals requiring planning permission, with the exception of minor proposals, will be assessed against general policy criteria a) through to e) and will, where relevant, be required to demonstrate compliance with them.
- 5.8 The Council’s concern lies exclusively with criterion (c)(i) of Policy GP1, in that insufficient information has been submitted to allow the Council to properly assess and determine the application. Policy GP1 (c)(i) states “*access arrangements shall be in accordance with the latest guidance published by the Department for Infrastructure*”.
- 5.9 Footnote 24 of Policy GP1, criterion (c)(i) indicates that the latest Departmental guidance is contained within ‘Development Control Advice Note 15, Vehicular Access Standards, 2<sup>nd</sup> Edition,’ (DCAN 15). DCAN 15 provides guidance, from the Department, on matters relating to, inter alia, new development access standards to the public road with associated sight visibility splays. Access to the appeal site is taken directly from an approved road that serves the housing development currently under construction at Long Meadows. Both parties acknowledge that this road, and access arrangements to the public road, were approved by the Council pursuant to the grant of planning permissions LA02/2016/0156/F, LA02/2017/0962/F and LA02/2021/1141/F. This road is currently the subject of a bond. Furthermore, from my site inspection, it was evident that the access arrangements to the public road are in place. No evidence was presented that this junction is operating in an unsafe manner and therefore, the concerns of the Council pursuant to Policy GP1 (c)(i) and the Department’s guidance pursuant to DCAN 15 have not been sustained in this regard.

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- 5.10 Policy HOU1 'Quality Residential Development in Settlements' states that "*planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a high quality, sustainable and safe residential environment*". The Council did not provide any clarification as to why the scheme was unacceptable under this policy. The policy directs that the design and layout of residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area, provides adequate public and private open space and ensures good connectivity with existing local facilities and amenities.
- 5.11 From the information contained within the submitted plans and my site visit, it is noted that the appeal proposal comprises of 4 units within an existing housing development. The appeal proposal reflects the size, scale, design and layout of the existing housing as previously approved. Whilst the PS has been adopted since the previous approval, it does not alter the position with regards to what constitutes a quality residential development. For the reasons stated above, the Council's concerns in this regard are not sustained.
- 5.12 Policy TR6 'Parking and Servicing' of the PS states that "*a development proposal will be required to provide adequate provision for parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the proposed development and its location having regard to DfI published standards. Proposals should not prejudice road safety or significantly inconvenience the flow of people or goods*". Drawing numbers 7395-PD-02 and 7395-PD-06, which are dated in the title box as being produced in November 2022 and April 2023 respectively, denote the planned in-curtilage parking provision of 2 spaces per proposed dwelling. The position of footpaths pertaining to the proposed appeal buildings, as well as dropped kerbs corresponding to the provision of in-curtilage parking provision at each of the proposed new dwellings, is shown as directed by the Department's guidance on 'Parking Standards' dated October 2019. There appears to have been no issues arising from the quantum or positioning of these parking spaces, or from these servicing arrangements with the proposed development. Therefore, in this regard the Council's parking and servicing concerns are not sustained.
- 5.13 Regarding the provision of the PSD, the Appellant submitted plan titled 'PSD Site Layout' reference '7395-PD-06' dated April 2023. DfI advised the Appellant by way of an email response on 11<sup>th</sup> May 2023 that a new PSD was required. On 23<sup>rd</sup> May 2023 DfI further requested that they required further amendments to the PSD, including, but not limited to, the removal of on-street parking, spot levels at chainage points on the carriage way, finished floor levels, gully positions and house connections/tails. Both parties acknowledge that a request for this information was issued by the Council on the 8<sup>th</sup> June 2023. This request was not fulfilled, and the planning application was refused.
- 5.14 The Appellant raises the issue of inconsistencies in approach as to when PSD drawings are required. Whilst the Appellant contends that the determination of private streets is a separate process, Article 3(4) of the Private Streets (Northern Ireland) Order 1980 (the Order) states that "*the Department may, where it considers it necessary for the exercise of street planning functions, require the applicant for*
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*permission for the development of any land to submit plans and particulars showing the general scheme for the development of the land of which any street is intended to form part". Article 4(1) of the Order directs that, functions exercisable in relation to development under the Planning (Northern Ireland) Order 1991 [now the Planning Act (Northern Ireland) 2011] shall be deemed to include street planning functions.*

- 5.15 Therefore, irrespective of the alleged inconsistencies in approach undertaken by the Council on planning permissions on lands adjoining the appeal site, the Appellant was aware that, following the responses from DfI to his email of 10<sup>th</sup> May 2023 and the consultation response dated 23<sup>rd</sup> May 2023, matters regarding the submitted PSD drawing needed to be addressed. Furthermore, these requirements were confirmed by the Council in its letter to the Appellant on 8<sup>th</sup> June 2023. An amended PSD drawing is required to address changes to the previously approved layout, including dropped kerbs to facilitate access to the proposed dwellings. This information should have been addressed at application stage, pursuant to statutory provisions as discussed above. It is, however, a matter which can be addressed by a condition.
- 5.16 Policy HOU 7 'Adaptable and Accessible Homes' informs that, to assist with the delivery of adaptable and accessible homes, planning permission will be granted for a new dwelling, flat or apartment where criteria (a) through to (e) of the Policy are met. Although stated as a reason for refusal, there has been no attempt by the Council to substantiate its position with evidence, save for the assertion that 'no information has been provided to demonstrate compliance with the adopted policy'.
- 5.17 Scaled drawings were submitted with the planning application and the Council could have accepted these in terms of the requirements under Policy HOU 7. The Appellant has provided annotated drawings, based on those plans as submitted during the planning application stage, in an endeavour to demonstrate adherence to the Policy. These drawings, provide minor revisions to optional internal furnishing arrangements but do not alter the internal layout of the rooms nor the footprints of the dwellings. A slight alteration to the appeal site layout is provided in drawings 7395-PD02A and 7395-PD-07 to accommodate the widening of the parking bay.
- 5.18 Whilst the annotations on the appeal drawings make an assessment of whether the proposed dwellings are 'adaptable and accessible' easier, it is possible to scale the drawings submitted at application stage. In doing so, it is clear that the requisite rooms are positioned at required levels and turning space can be provided in the relevant rooms. Outlook from the principal window in the living space is also adequately catered for. An exception exists in relation to the requirement for one parking space being capable of enlargement. This requires a slight adjustment to the position of building, in plot 70, from the drawing provided at the planning application stage. This dwelling is currently under construction.
- 5.19 At paragraph 8.1.45 of the justification and amplification, it advises that the intention of this policy is that homes are accessible for those who live in them. At paragraph 8.1.47 it states that "*it is recognised that there may be some exceptional circumstances where not all of these policy criteria can be accommodated whilst still meeting other planning policy requirements. Such cases will be considered on their merits whilst carefully balancing all policy and other material considerations*".

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- 5.20 Given the failure of the Council to articulate fully its concerns with the policy, the timing of the adoption of the PS and the only issues arising with a single parking space, I agree with the Appellant that a relaxation would be warranted in this instance. Whilst the appellant submitted amended drawings at appeal stage, in the event that approval was to be forthcoming, I am satisfied that the decision can be based on the drawings considered at the planning application stage.
- 5.21 For the reasons stated above, the Council's second reason for refusal, pursuant to Policy HOU7, is not sustained.
- 5.22 Policy TR5 'Active Travel' states that "*a new proposal within an urban area should ensure that the needs of pedestrians and cyclists are taken into account*". The policy lists three criteria which, where appropriate, will be required. The Council has failed to provide any substantive evidence to justify its reason for refusal pursuant to Policy TR5. It merely states that "*no information has been provided to demonstrate compliance with the adopted policy*".
- 5.23 The plans, submitted with the planning application, demonstrate how the road and pedestrian linkage will connect to the existing approved system. The plans demonstrate safe and convenient pedestrian access in the form of a network of footpaths running adjacent to the private amenity spaces, located in front of the proposed dwellings. During my site visit, I was able to walk the c. 0.5km from the appeal site, into Portglenone availing of the existing pedestrian footpath network. Each of the 4 No. houses would have adequate rear private amenity space for secure cycle parking and the road network, including that of the Gortgole Road into Portglenone, provides cycle access. For the above reasons, the Council's third reason for refusal is not sustained.
- 5.24 In line with the above reasoning, the proposal is compliant with Policies GP1, TR6, HOU7 and TR5 of the Mid and East Antrim Borough Council's PS and the Council has not sustained its reasons for refusal.
- 5.25 Regarding the matter of the location of the WwTW, PPS 11 has now been superseded by the adoption of the PS. Whilst no reason for refusal, pursuant to prevailing policy contained within the PS, was brought forward by the Council, the issue of a condition requiring the submission of an Odour Encroachment Assessment (OEA) remains live.
- 5.26 The Council did not provide any evidence to demonstrate that the occupants of the existing housing, in closer proximity to the WwTW, have experienced any odour nuisances. Following my visit to the appeal site and the surrounding area, I was not aware of any odour issues emanating from the WwTW at that time. The appeal proposal, by virtue of its location, will not prejudice or unduly restrict activities permitted to be carried out within the waste management facility. Furthermore, I am not persuaded those residents of the proposed 4 dwellings, under construction, will experience any nuisance, due to the proximity of the WwTW, over and above that experienced by those living within dwellings which are considerably closer to the works. These include the occupied dwellings found within Bann View Terrace and those within Long Meadow, west of the appeal site. I find the Council's concerns in this regard to be unjustified and the suggested condition to be unnecessary.
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5.27 As the development is under construction, a condition relating to the time limit for commencement is unwarranted. There is a scarcity of landscaping details exhibited on the drawing No. 7395-PD-02. Therefore, a condition requiring the submission of a landscaping scheme, to be agreed with the Council, prior to the occupancy of the proposed dwellings, would be required in the interests of residential amenity.

## 6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be allowed and full planning permission to be granted subject to the following conditions: -

1. No dwelling, hereby approved, shall be occupied until a determination has been made under Article 3(1) of the Private Streets (Northern Ireland) Order 1980 (as amended).
2. No dwelling shall be occupied until there has been submitted to and approved by the Planning Authority a scheme showing hard and soft landscaping requirements. This scheme, as finally approved, shall be carried out during the first available planting season after the dwellings are occupied.

This decision relates to the following drawings:

Drawing No.	Title	Scale	Date
7395-PD-01	Site Location	1:1250	Council Date Stamped 28 <sup>th</sup> December 2022
7395-PD-02	Site Map	1:500	Council Date Stamped 28 <sup>th</sup> December 2022
7395-PD-03	Plans and Elevations, House Type A	1:100	Council Date Stamped 28 <sup>th</sup> December 2022
7395-PD-04	Plans and Elevations, Plot 70	1:100	Council Date Stamped 28 <sup>th</sup> December 2022
7395-PD-05	Plans and Elevations, Plot 70	1:100	Council Date Stamped 28 <sup>th</sup> December 2022



**List of Documents**

Planning Authority: - Statement of Case, by Mid and East Antrim Borough Council.  
Rebuttal Statement, by Mid and East Antrim Borough Council.

Appellant: - Statement of Case, Ward Design on behalf of HFK Construction.  
Rebuttal Statement, Ward Design on behalf of HFK Construction.