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<b>Appeal Reference:</b>	2023/A0096
<b>Appeal by:</b>	Mr Jimmy Mark
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Erection of 5 residential units (3 detached & 2 semi-detached dwellings) with garages, accessed off turning head and shared private drive. Part of Bannside Road to be widened
<b>Location:</b>	To the south and south east of Lackan House, 8 Tierkelly Hill Road, Ballyrone, BT32 5EW.
<b>Planning Authority:</b>	Armagh City, Banbridge and Craigavon Borough Council
<b>Authority's Reference:</b>	LA08/2020/1133/F
<b>Procedure:</b>	Written Representations with Commissioner's site visit on 18 <sup>th</sup> September 2024
<b>Decision by:</b>	Commissioner Carrie McDonagh, dated 7 <sup>th</sup> November 2024

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## Decision

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

## Reasons

2. The main issues in this appeal are whether future residents would be at risk from unacceptable adverse noise and odour and if the proposal would adversely affect features of natural and built heritage, road safety and drainage.
3. Section 45(1) of the Planning Act (Northern Ireland) 2011 (the Act), requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) acts as the LDP for the area in which the appeal site is located. The site is within the settlement development limit (SDL) of Ballyrone, designated as a small settlement. The LDP settlement strategy describes small settlements as focal points for the rural community. They take the form of a rural cluster or cross roads development where consolidation of the built form can provide opportunity for individual dwellings and small groups of houses.

4. The BNMAP Policy CVN3 titled “Local Landscape Policy Area” is framed in such a way that it relates not only to those sites within a designated LLPA but also on land adjoining such a designation and is therefore relevant as the designation BY 02 “Ballyroney LLPA” abuts the appeal site. Among the features which contribute to the LLPA’s environmental quality, integrity and character are the views and setting of Ballyroney Presbyterian Church, to the west of the site, the Upper Bann corridor, which is 20m to the south of the site with its associated Ballyroney Bridge, a twin arched bridge located to the south west. The policy requires a landscape buffer to protect the environmental quality of the LLPA which is facilitated by the proposed layout as the dwellings would be set back behind an area of proposed open space alongside Bannside Road and the river and the bridge to the south. A planting buffer is also proposed along the eastern boundary which would soften the edge to the SDL. In any event, none of the parties argued that the proposal would adversely affect the key features of the LLPA, and I concur that Policy CVN3 is not offended.
5. There are no other policies in the plan that are specific to the proposal. The Council do not object to the principle of this small residential development and as the proposal assists in consolidating the built form, it is in accordance with the BNMAP.
6. The Strategic Planning Policy Statement for Northern Ireland ‘Planning for Sustainable Development’ (SPPS) is material to all decisions on individual appeals. The Council’s sole reason for refusal and third party concern relating to noise and odour on prospective residents are predicated on the use of a neighbouring shed for agricultural purposes, immediately north of the appeal site. Paragraph 4.11 and 4.12 of the SPPS make it clear that environment and amenity considerations should be taken into account by planning authorities when managing development and ‘the planning system has a role to play in minimising potential adverse impacts, such as noise or light pollution on sensitive receptors by means of its influence on the location, layout and design of new development’. The SPPS retains policies within existing planning policy statements (PPS) until such times as a Plan Strategy (PS) for the Council area has been adopted. There is no PS for this council area at this time. Any conflict between the SPPS and a policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. As there is no conflict between the provisions of the SPPS and retained policies on the issues raised in the appeal, in accordance with the transitional arrangements, the proposal should be determined under the retained policies of the PPSs.
7. Matters related to the living environment for each of the prospective residents also fall to be considered within Planning Policy Statement 7 ‘Quality Residential Environments’ (PPS 7) and it’s 2010 Addendum ‘Safeguarding the Character of Established Residential Areas’ (APPS 7). The third party representation on behalf of a number of residents and the objections submitted to the planning application raise matters which fall to be considered under Planning Policy Statement 2 ‘Natural Heritage’ (PPS 2), Planning Policy Statement 3 ‘Access, Movement and Parking’ (PPS 3), Planning Policy Statement 6 ‘Planning, Archaeology and the Built Heritage’ (PPS 6) and Planning Policy Statement 15 ‘Planning and Flood Risk’ (PPS 15). Guidance contained in Creating Places – ‘Achieving Quality in Residential Environments’ (CP) and Development Control Advice Note 15 ‘Vehicular Access Standards’ (DCAN 15) is also of relevance.

8. The 0.67h site is located in the eastern section of Ballyroney. It is positioned within a corner of the host field at the junction of the Tierkelly Hill Road (western boundary) and the Bannside Road (southern boundary). Both roadside boundaries are formed by mature hawthorn, ash and bramble hedges up to around 2m in height, with some interspersed trees on the Bannside Road boundary which sits above and rises northwards from the Bannside Road and then falls in an easterly direction towards the undefined eastern site boundary. Electricity poles and lines are within the site, which is currently used as a paddock. A large vehicular access has been formed on Bannside Road, with excavation works also evident however, they are not part of the appeal proposal.
9. Ballyroney Presbyterian Church and graveyard are located on the opposite side of the Tierkelly Hill Road, with its car park beyond. Abutting the site to the north-west, on higher ground, is Lackan House and its associated out-buildings (Nos. 8 and 10 Tierkelly Hill Road), with the boundary comprising a mix of wooden fencing and the rear wall of an outbuilding and a low wall. To the north east is a small, grassed area accessed via the yard of Lackan House. No 6 Tierkelly Hill Road, a converted railway halt is to the northern/road end of Tierkelly Hill Road, with the higher Lackan Road behind. To the east is the remainder of the host field. To the south, beyond the Bannside Road, is the Upper Bann River.
10. Five dwellings with garages are proposed, comprising of 3 detached dwellings in the western and northern section of the site and 2 semi-detached dwellings in the south eastern section, with communal open space to the front and side of the semi-detached dwellings. A grassed bank with interspersed landscaping and a 1.8m close boarded fence is to be provided along the shared boundaries with Lackan House. To the south side of Bannside Road an area is to be retained free from development other than the proposed storm drainage outfall to the river. Access is via Bannside Road, with its widening proposed along the south west section of the site as far as Tierkelly Hill Road. A 2m wide pavement is also proposed on exit past the road junction as far as the site boundary on Tierkelly Hill Road.

#### *Quality Residential Design and Amenity Matters*

11. In the absence of a statement of case from the Council, I have relied on their development management report (DMR) to the Planning Committee, dated 4<sup>th</sup> October 2023 and the Environmental Health Department (EHD) response. The Council argue the closest building, whilst not currently in use for agriculture has potential to be used for such purposes at a later stage. It is physically capable of housing up to 56 cattle based on current space standards for buildings with solid floors. They further argue this may give rise to significant adverse impact on the amenity of the five prospective residents due to noise, odour, and pests if a subsequent landowner begins to operate a farm business or the current owner rented the building out to a farmer. The Council do not argue that the traditional stone building, to its north and closer to Lackan House, would be used to house livestock due to its restricted size.
12. PPS 7 Policy QD1, which is titled "Quality in New Residential Development" provides policy for the creation of a quality and sustainable residential environment. It seeks to prevent unacceptable damage to the local character, environmental quality, or residential amenity of an area. Criterion (h) requires that

the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on proposed properties.

13. The southern elevation of the building subject of the Council's concern, forms part of the appeal site's northern boundary (western section). The building sits 2m above the proposed dwelling on plot 1, which at the closest point (the northern elevation of the proposed dwelling) is 12m. The separation from the western elevations of the proposed dwellings on plots 2 and 3 are a minimum of 16m and 28m respectively. The building is 170m<sup>2</sup> and 6.7m high and is perpendicular to Tierkelly Hill Road. Its walls are formed with a concrete base and corrugated tin, and it has a barn type roof. Access is via a sliding corrugated tin door in its eastern elevation. This opens towards a yard area enclosed by a low wooden post fence and hedge in part. Whilst the building has been designed as an agricultural barn, it not disputed by any party that it is currently in use for domestic storage associated with Lackan House.
14. The third party, who own Lackan House, argue the agricultural use has not been abandoned. They provide evidence of owning a poultry flock since 2020. Based on my observations, eleven hens moved between an outdoor pen and the traditional stone building to the north of the barn. The pen is not physically connected to the barn. I did not observe any associated noise arising from the flock that I would consider to be adverse, nor do I consider such a small flock is likely to generate pests to an extent that could be considered a disturbance, as argued. Accordingly, there is no ongoing use in the barn or at Lackan House that could be harmful to the residential amenity of future residents.
15. The appellant disputes the potential for a future lawful agricultural use in the barn, including any noise or odour impact on prospective residents arguing that whilst its use for domestic storage did not require planning permission, there is no permitted development provision or planning permission to allow the change of use back to agricultural (to house livestock). Referring to Section 23(3)(d) of the Act, they argue that the use of a building for agriculture specifically refers to "any building occupied together with land so used" for the purposes of agriculture. As the current owners are not farmers and do not own agricultural land the barn is not occupied together with land used for this purpose, and they argue that planning permission would be required. I am also directed to the absence of a Certificate of Lawfulness of Proposed Use to demonstrate that the use for agriculture, including the housing of livestock, represents a lawful fallback.
16. Having considered its scale, design, and siting in the context of Lackan House, I agree with the Council and third party that I cannot rule out the possibility that the building could be used for agricultural use, including the housing of livestock in the future. However, my assessment must be based on the evidential context before me at the time of the decision rather than on conjecture so whilst a future agricultural use may be possible, I must consider the evidence to determine if there is a valid fallback. Whilst the third party argue it is not the appellant's place to decide on the likelihood of any future use of the neighbouring building, the issue of fallback is before me, and I must consider if such a use is a realistic possibility.
17. The third party acquired Lackan House prior to the submission of the appellant's planning application in September 2020. Despite having concerns that their future plans may be impacted by prospective residents, no persuasive evidence has

been submitted to this appeal to demonstrate that an agricultural use for the barn has been pursued in the intervening period of almost four years. Whilst they refer to rental enquiries, including prospective arrangements with farmers, no documentary evidence was provided to support the assertions made or indicate such would involve the housing of livestock. They may desire to have a small holding and reuse the building for income generation, but they did not provide a specific timeline or any detail of what this may entail. I also note, as they did not rebut the appellant's evidence, that they do not own adjacent agricultural land. The barn is within the settlement limit and based on my observations segregated from adjacent farmland, with a small area of land to the north of the yard not in agricultural use. The access to the barn is via the yard access which is sandwiched between the dwelling & its parking area/outhouse and the large traditional stone building. Accordingly, any movement of animals to/from fields for grazing elsewhere means that the housing of animals in the barn would be likely to be detrimental to the residential amenity of the third party. Consequently, and in the absence of a certificate of lawfulness, legal contract, or any firm commitment to demonstrate that a future agricultural use is probable, I conclude that there is no realistic possibility and no fallback for a future agricultural use, including the housing of livestock, in my overall consideration.

18. The proposal is within a small settlement, a focal point where the LDP advocates the consolidation of the built form which can provide opportunity for small groups of houses such as the proposal. Against the plan policy context, I do not attach significant weight to the argument that there is no local need for the dwellings.
19. It is argued that two previous planning permissions for seventeen dwellings on land including the appeal site (Q/2004/0565/O and Q/2008/0281/F) do not set a precedent for residential development as they can be distinguished due to the appellant's circumstances at that time when they had control over the use of the barn and thus the responsibility for any loss of amenity and there was no evident intention to house livestock. However, planning permission runs with the land. Once the dwellings were occupied by their respective owners, neither permission contained a mechanism to exclude the appellant or any future owner from using the building for agricultural purposes. Notwithstanding, both planning permissions have expired, and my assessment of amenity is based on current circumstances.
20. The DMR references the dismissal of an appeal for dwellings within 75m of agricultural buildings because of the potential for loss of amenity to the prospective residential occupiers. However, in the absence of any further detail, I cannot be sure it is directly comparable to the circumstances of this appeal.
21. Even had I considered agricultural use of the barn was more than a hypothetical prospect, the site is within an area where odour and noise associated with farming activities is to be expected and there is always the principle of caveat emptor or 'let the buyer beware.' Moreover, acoustic attenuation barriers such as intervening garages, high planted banks and fencing as proposed within the scheme, would provide mitigation measures meaning that objections on noise and odour may not have been sustained.
22. Noise and odour impact from the proposed septic tanks are also raised by the third party. The nearest tank is 35m from Lackan House and there is no objection from

the EHD on the basis that the proposal complies with the minimum 15m separation distance standard. This objection is not sustained.

23. The third party raise other matters of amenity under Policy QD1. The proposed dwelling on Plot 3 is sited 18m from the boundary with Lackan House and 47m from the dwelling itself. This significantly exceeds the minimum separation distances of 10m to boundary and 20m between opposing windows as recommended by CP. I do not therefore accept there would be any adverse effect on the privacy of the third party. Concerns about damage from “raised yards or buildings” within the proposal have not been substantiated. Concerns that the proposal will cause light or air pollution, impacting on all existing residents, are general in nature and are not specific to any property. In any event, I am not persuaded that these issues would warrant refusal on residential amenity grounds.
24. Taking account of the above, I am satisfied that whilst the use of the adjacent barn for agricultural use is possible, I can only give this potential future use limited weight, particularly in the context of the statutory weight to be accorded to the LDP. On the basis that the case has not been made out that there would be adverse impact on the amenity of future residents or on the privacy or amenity of the third party, their objection and the Council’s reason for refusal based on criterion (h) of Policy QD1 of PPS 7 and paragraphs 4.11 and 4.12 of the SPPS is not sustained.

#### *Natural and Built Heritage*

25. The third party advise that since the agricultural activity on the appeal site has ceased, its natural biodiversity has grown exponentially and nature should be allowed to continue to reclaim the site. Neither the Natural Environment Division (NED) of DAERA (the statutory nature conservation authority), or Shared Environment Services (SES) raise concerns in respect of unacceptable impacts on the species referred to including bats, birds of prey, wading birds, badgers, otters and spawning dollaghan or the loss of mature trees and hedgerows. PPS 2 “Policy NH5 titled “Habitats, Species or Features of Natural Heritage Importance” requires that proposals should not result in an unacceptable adverse impact on, or damage to known features including priority habitats, species or wetlands. The bat survey and Biodiversity Checklist and Preliminary Ecological Assessment detail the potential for any harm to natural habitats and identifies hedgerow as a NI priority species. The hedgerow along the Tierkelly Hill Road (B1) is described as heavily trimmed and comparatively species poor with no associated hedge based flora and therefore it does not correspond to a priority type species rich hedge. The Bannside Road boundary (B2) has a higher conservation value as it contains mature trees. The loss of a section of roadside hedgerow, which includes the felling of a mature larch and ash trees is necessary to facilitate the Bannside Road widening and footpath installation works. A like for like replacement boundary hedge of native tree and shrub species is proposed, with additional new planting provided in line with the proposed landscape plan Dwg. 12. On this basis, I consider these measures are sufficient to prevent unacceptable adverse impact on priority habitats or species and Policy NH 5 is not offended.
26. The proximity to the Upper Bann and its hydrological connection to Lough Neagh ASSI and Lough Neagh Lough Beg Special Protection Area is detailed within the Habitats Regulations Assessment undertaken by SES on behalf of the Council. Policy NH1 titled “European and Ramsar Sites – International” requires that a

proposal is not likely to have a significant effect on these internationally designated sites. SES eliminated the proposal from further assessment due to the scale/nature of the proposal and the scale of the land buffer intervening the primary construction works and the nearest watercourse and the tenuous and distant hydrological linkage (40 kms) to the designations and associated magnitude of hydrological dilution/dispersion. As the competent authority I can adopt this assessment and conclude there is no conceivable effect on the qualifying features or habitats.

27. NED require a 20m buffer zone between the proposal and the river and the attachment of a condition to ensure the area is not used by any activity that could cause pollutants to enter the river during construction. A Construction Environmental Management Plan (CEMP) has also been provided setting out the mitigation measures to prevent likely significant effects on either designated site and a condition requiring the submission and agreement prior to commencement of a final CEMP will also minimise the impact of the development on the aquatic environment. In the absence of any persuasive evidence from the third party to dispute the consultee 's lack of objection, no reasonable scientific doubt remains and accordingly, combined with the conditions referred to above, I am satisfied that subject to both conditions, the proposal will not have a significant effect on the designated sites. Policy NAT 1 of PPS 2 is not offended.
28. The focus of the third party concern in respect of built heritage is that a “modern, estate-style group of properties will significantly alter the character and appearance of the existing settlement, including its historic context.” An additional third party representation referred to the absence of an appraisal of how the development relates to the listed buildings nearby however, policy does not require such an assessment and no detailed argument was presented on which buildings are of concern or how the proposal would dominate these or other vernacular buildings on approach to the settlement. I am therefore guided by my own on-site observations.
29. The closest listed building is Ballyroney Presbyterian Church and cemetery (HB17/09/008) to the west. The proposed layout shows a detached dwelling set back in a generous garden on the corner site maintaining an open nature. Their separation by the Tierkelly Hill Road and the proposed footpath, and the lower ridgeline of the proposed one and half storey design ensure that the proposed closest dwelling does not undermine the views or setting of the church. The post office and the disused railway and halt, a large two storey red brick building located further to the north of the site, below Lackan Road also form part of the historic setting and the character of Ballyroney and occupy prominent roadside plots along with Lackan House. Little of the proposal will be seen on approach into the settlement from the south given the roadside and riverside vegetation to the south side of the Bannside Road and the alignment of Tierkelly Hill Road, in particular over Ballyroney Bridge with the land rising behind towards the former railway station. From the north and east, the proposal will appear well integrated within the lower landform against the backdrop of the river. I do not consider that the proposed dwellings would appear as incongruous. I am further reinforced by the Department for Communities, Historic Environment Division's (HED) lack of objection. Given this, I am satisfied that the appeal proposal would not dominate or adversely affect the setting of the historic buildings or the wider setting of the settlement.

30. The third party also refer to this area as one of significant archaeological importance and potential, referencing recent discoveries at Knock Iveagh enhancing the area and increasing the likelihood of an archaeological impact. The settlement of Ballyrone dates to the mid-18<sup>th</sup> Century and the townland contains an un-located medieval church and graveyard (DOW 042:076). HED advise there is potential that it could lie within the appeal site, and therefore require an archaeological assessment and evaluation as part of a programme of archaeological works as provided for within PPS 6, Policy BH 3 "Archaeological Assessment and Evaluation". Archaeological investigation requirements can be controlled by way of a negative condition in the event of an approval and access by a qualified archaeologist can also be secured at all times in the interests of the preservation of any potential remains. The appellant refers to their previous failure to comply with such a condition prior to undertaking development works on their now expired permissions and are fully aware of the consequences of this inaction. The Council is in the position to enforce conditions. On the basis of my consideration above, the built heritage matters would not warrant the withholding of planning permission and subject to the conditions referred to above, the third party concerns in this respect are not sustained.

#### *Road Safety and Drainage*

31. The third party raise two matters related to road safety which they consider that the Department for Infrastructure, TransportNI, a consultee, have failed to adequately address. The first relates to the termination of the proposed footpath on Tierkelly Hill Road. The second relates to the intensification of traffic as a result of the proposal, including the impact on the junction with Bannside Road.
32. Neither Bannside Road nor Tierkelly Hill Road have a footpath, so one must walk on the road when moving along their length. The third party argue the proposed footpath termination at the end of the appeal site without joining with another footway, leaves pedestrians with nowhere to walk, pushing them onto the road thereby compromising road safety. For the avoidance of doubt, I am assessing the proposed footpath along the side of Site 1 as per the private street determination layout, shown to extend from Bannside Road, through to the short stretch along Tierkelly Hill Road. wherein the appellant has provided for the trips associated with the proposed development, as per the requirement of policy.
33. My observations indicate that vehicles travel slowly on Tierkelly Hill as they leave the bend at the church car park towards the junction with Bannside Road. This is due to the imposing nature of high walls either side belonging to the church graveyard and the side gable of the traditional stone building. The lack of grass verge and hedge height along the appeal site's western boundary also creates an impression of a restricted road width, introducing a sense of caution, which restrains the driver, slowing vehicle movements and allows for increased reaction times in the event a pedestrian should emerge on the road. On approach from the bridge, I also observed the traffic travelling slowly as the vehicles came over the bridge towards the narrower section close to the subject junction. I did not observe any traffic on Bannside Road. Based on my observations, I consider that the short stretch of footpath would be beneficial as it allows for pedestrians to move further away from the junction before being forced onto the road. In coming to this conclusion, I am mindful that the visibility splays on exit from Bannside Road onto Tierkelly Hill Road would be improved providing greater visibility for all road users.



For the reason set out above, I consider that the proposed footpath complies with the requirements of CP.

34. Policy AMP 2 of PPS 3 relates to 'Access to Public Roads'. It deals with the intensification of the use of an existing access onto a public road to ensure such an access will not prejudice road safety or significantly inconvenience the flow of traffic. There is no dispute that the proposal will intensify the use of Bannside Road and, by default, the use of the junction with Tierkelly Hill Road. While described by the third party as a "hither to little-used side road" Bannside Road has the status of a minor road. It is approximately 2.7m in width and the proposal seeks to widen it as far as the junction, with improved visibility splays on exit onto Tierkelly Hill Road. Whilst reference is made to the risk of injury or death to road users, residents and those using the church car park, I have not been provided with information on the proximity of the alleged accidents to understand if they relate to the specifics of the appeal development and consider the church car park is too far removed from the subject junction to be impacted by its additional movements. Notwithstanding, Transport NI have access to incident reports and have advised that the improvement of the visibility splay provides betterment on the current situation. In the evidential context, I do not accept that the intensification of the use of the junction for 5 dwellings would prejudice road safety and accordingly PPS 3 is not offended. The third party objection in respect of road safety is not sustained.
35. The third party argue the proposed site access could flood on a more frequent basis than indicated by the 1:100-year fluvial flood event information. They cite examples from two flood incidents, providing images of floodwater blocking the site entrance preventing access. They further argue that the proposed soakaways and the septic tanks would be seriously affected in the event of more frequent flooding.
36. Policy FLD 1 "Development in Fluvial (river) and Coastal Flood Plains" of PPS 15 is the relevant policy context. It provides for exceptions to the prohibition on development within the 1 in 100-year fluvial flood plain. The use of land within the floodplain for amenity open space associated with residential development, as per the proposal, is one such exception. Policy FLD 1 further adds that where the principle of development is accepted (through meeting the 'Exceptions test'), the appellant is required to submit a Flood Risk Assessment (FRA). An FRA (including a preliminary drainage assessment) was submitted at application stage which defined the floodplain and set out the measures to mitigate and manage flood risk. The site access was moved as a consequence to avoid the 1:100 year floodplain. DFI Rivers were consulted, who have expertise on this matter, and they raised no objections, confirming that they have granted discharge consent for 8.2l/s of stormwater runoff from the site to the Upper Bann River and the storm drainage outfall within the area that is to be left undisturbed will be unaffected by flooding as it is underground. Final drainage details can be provided as part of a Final Construction Environmental Management Plan (CEMP) referred to earlier, which will also ensure there is no detrimental impact on the surface water environment. A separate condition can be attached to ensure the area to be retained free from development and the open space area are kept clear in perpetuity removing any risk from movement of materials in the event of flood water impinging on this area, along with warning signage to indicate those areas which are subject to flooding.
37. NIWater has raised no objection to the non- mains sewage disposal. A condition can be attached to ensure that the dwellings shall not be occupied until the

approved drainage arrangements are in place including consent from NIEA WMU for any discharges from the proposed septic tanks to ensure there is no detrimental/adverse impact upon the surface water environment. On this basis, Policies FLD1 and FLD 3 of PPS 15 are not offended and I cannot apply a more onerous test than that allowed for in policy. Accordingly, subject to the conditions referred to above, the third-party objection in respect of flood risk and drainage arrangements is not sustained.

### *Conclusion*

38. As previously set out the proposal accords with the BNMAP. For the reasons given above, the Council's sole reason for refusal and the third party concerns are not sustained. The appeal shall therefore succeed. Several conditions are necessary for reasons set out above including those relating to natural heritage, archaeological and drainage works. The matter of other conditions remains to be considered.
39. Conditions requiring the provision of the road improvement works to the Bannside Road, as well as provision of a footpath and access visibility splays would be necessary in the interests of road safety. Conditions are required for the provision of landscaping and communal open space, and for continuing maintenance and replanting where necessary in the interest of visual amenity. I note from the background papers that a condition is necessary to agree an alteration to the overhead line crossing the site including other works in accordance with the Northern Ireland Electric Networks in the interest of public safety.

### **Conditions**

1. The vehicular access, including visibility splays, shall be provided in accordance with Dwg. No. 11 Rev1 bearing the date stamp 13/05/22, prior to the commencement of any other development. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.
2. The width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be provided in accordance with Dwg. No. 11 Rev1 bearing the date stamp 13/05/22. Footway and road widening along the site frontage and on Tierkelly Hill Road as shown on the above plan must be complete prior to the occupation of any house hereby approved.
3. No development activity, including ground preparation or vegetation clearance, shall take place until a Final Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The approved CEMP shall be implemented in accordance with the approved details and all works on site shall conform to the approved CEMP, unless otherwise agreed in writing by the Planning Authority. The CEMP shall include the following:
  - Pollution Prevention Plan: including details of the establishment of buffer zones to watercourses, 20 metres to streams and 20 metres to minor drains and details of watercourse crossings.
  - Site Drainage Management Plan; including a final detailed drainage network design and maintenance arrangements for the proposed septic

- tanks/foul water disposal, surface water arrangements and storm outfall, Sustainable Drainage Systems (SuDS) and silt management measures.
  - Peat/Spoil Management Plan; including identification of peat/spoil storage areas and details of the reinstatement of excavated peat/spoil.
  - Water Quality Monitoring Plan including effective avoidance and mitigation methodologies for the protection of the water environment.
  - Environmental Emergency Plan.
  - Details of the appointment of an Ecological Clerk of Works and their roles and responsibilities.
4. A 20-metre buffer must be maintained free from development between the watercourse adjacent to the site and the location of any refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc. The area identified as undisturbed other than the storm outfall and the proposed communal open space area fronting Bannside Road, as indicated in Dwg. 02 Rev. 3 and Dwg. 12. shall be kept free from any development in perpetuity. Signage shall be erected and maintained as a warning that the area is subject to flooding.
  5. No development should take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a Consent to Discharge has been granted under the terms of the Water (NI) Order 1999. Consent will be required from NIEA WMU for any discharges from septic/treatment tanks. The dwellings shall not be occupied until the approved arrangements are in place.
  6. No site works of any nature or development shall take place until a programme of archaeological work (POW) has been prepared by a qualified archaeologist, submitted by the applicant, and approved in writing by the Planning Authority in consultation with Historic Environment Division, Department for Communities. The POW shall provide for:
    - The identification and evaluation of archaeological remains within the site.
    - Mitigation of the impacts of development through licensed excavation recording or by preservation of remains in-situ.
    - Post-excavation analysis sufficient to prepare an archaeological report, to publication standard if necessary.
    - Preparation of the digital, documentary and material archive for deposition.
  7. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved.
  8. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the POW approved. These measures shall be implemented, and a final archaeological report shall be submitted to the Planning Authority within 12 months of the completion of archaeological site works, or as otherwise agreed in writing.
  9. 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.

10. During the first available planting season after the occupation of the first dwelling, or as otherwise agreed in writing with the Council, landscaping shall be carried out in accordance with the 'Planting Plan' dated 15<sup>th</sup> June 2022 (Dwg. 12). The landscaping, including the roadside hedge at Site 1 shall be managed and maintained in accordance with the agreed Landscape Works Specification and Management and Maintenance Plan Rev 1 stamped received by the Planning Authority on 15<sup>th</sup> June 2022.
11. Prior to the occupation of any dwelling unit, the developer shall submit to the Planning Authority and agree in writing details of the agreement for the maintenance in perpetuity of the communal open space as referred to in the Landscape Works Specification and Management and Maintenance Plan Rev 1, stamped received by the Planning Authority on 15<sup>th</sup> June 2022. It shall be binding on the developer and the open space provider for the development to manage in perpetuity the open space as per Dwg. 02 Rev. 3 and Dwg. 12.
12. If within a period of 5 years from the date of the planting of any tree shrub or hedge that tree shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.
13. No construction works shall take place until permission has been granted by Northern Ireland Electricity Networks for an alteration to the overhead line crossing this site and any related works undertaken in accordance with that permission. All services within the development shall be laid underground.
14. The development shall be begun before the expiration of five years from the date of this decision.

This decision relates to the following drawings:

<b>Drawing No</b>	<b>Title</b>	<b>Scale</b>	<b>Date Received</b>
01	Location Map	1:1250	25 <sup>th</sup> Sept 2020
02 Rev 3	Proposed Site Plan	1:500@A3	16 <sup>th</sup> June 2022
03 Rev 1	Proposed Plans – Plots 2 & 3	1:100	29 <sup>th</sup> October 2021
04 Rev 1	Proposed Plans – Plot 1	1:100	29 <sup>th</sup> October 2021
05 Rev 1	Proposed Plans – Plots 4 & 5	1:100	29 <sup>th</sup> October 2021
06 Rev 1	Proposed Elevations – Plots 4 & 5	1:100	29 <sup>th</sup> October 2021
07 Rev 1	Garage Plans and Elevations	1:100	29 <sup>th</sup> October 2021
08 Rev 1	Proposed elevations – Plots 2 & 3	1:100	29 <sup>th</sup> October 2021
09 Rev 1	Proposed Elevations – Plot 1	1:100	29 <sup>th</sup> October 2021
10 Rev 1	Proposed Site Sections	1:200@ A1	5 <sup>th</sup> October 2022
11 Rev 1	Private Streets Determination	1:500 @A3	20 <sup>th</sup> May 2022
12	Planting Plan	1:250@A1	15 <sup>th</sup> June 2022
	Landscape Works Specification and Management Maintenance Plan	Booklet	15 <sup>th</sup> June 2022

**COMMISSIONER CARRIE McDONAGH**

**List of Documents**

Appellant: - Sharkey O'Toole Planning on behalf of Mr Jimmy Mark  
"A1" Statement of Case and Appendices  
"A2" Rebuttal Comments

Third Party: - "B1" Statement of Case  
"B2" Rebuttal Comments