

---

<b>Appeal Reference:</b>	2022/A0162.
<b>Appeal by:</b>	Millwell Properties Ltd.
<b>Appeal against:</b>	The refusal of outline planning permission.
<b>Proposed Development:</b>	Residential Development.
<b>Location:</b>	Lands south and west of Nos. 55 – 57 Gulf Road, Killaloo, Co. Derry.
<b>Planning Authority:</b>	Derry City & Strabane District Council.
<b>Application Reference:</b>	LA11/2021/0017/O.
<b>Procedure:</b>	Hearing on 12 September 2023.
<b>Decision by:</b>	Commissioner Mark Watson, dated 7 August 2024.

---

## Decision

1. The appeal is dismissed.

## Claim for Costs

2. A Costs Claim by the Appellant was submitted against the Council. That claim is the subject of a separate decision.

## Reasons

3. The main issues in this appeal are whether or not the proposed development would:
  - constitute a quality residential environment; and
  - respect the established residential area it is located in.

### *Policy Context*

4. 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 Killaloo, which is classified as a small settlement in the DAP. Section 16.48 of the DAP relates to Killaloo, stating that a development limit has been defined within which small scale development and further expansion of the settlement will be permitted. It goes on to state that the potential development site allows for potential in-depth development opportunities and will require substantial landscaping proposals to ensure integration with the surrounding landscape.
5. Several policies within the DAP are of relevance to the appeal development and referenced in the Council's reasons for refusal. There are Policy H1 'Housing Design and Layout', Policy BE1 'Urban Design', Policy SE1 'Development within Villages and Small Settlements' and Policy ENV7 'Retention of Trees and Hedges

and Landscape Requirements'. The matters considered under these policies are also 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.

6. 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. No PS has yet been adopted for this council area. 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.
7. The matters fall to be considered under Planning Policy Statement 7 – Quality Residential Environments (PSS7), the second Addendum to PPS7 – Safeguarding the Character of Established Residential Areas (APPS7) 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*

8. The appeal site comprises a portion of a larger grassed field on the eastern side of the Gulf Road. The site is relatively level with the roadside along the frontage but slopes gently down in a south-easterly direction over its length. The roadside boundary comprises a post and wire fence with saplings planted along it. There is a 2m footpath and wide grass verge between the road and site frontage. There is a field gate at the northern most corner of the frontage, with a concrete apron crossing the verge from the gate to the roadside. The north-eastern boundary is defined by a mature hedge and several semi-mature trees, which lie within the adjacent property at No. 53 behind a wire fence. The south-western boundary is a post and wire fence, though there are three mature trees along it, but set within third party land outside the site. A post and wire fence separates the appeal site from the remainder of the larger host field.
9. A row of two storey dwellings, predominantly comprised of three terraces, lies opposite and west of the site along Gulf Road. A smaller, but more recently constructed development at Lettermire Mews, comprised of one-and-a-half storey dwellings, lies to the north on the opposite side of Gulf Road, positioned adjacent and west of the junction between the Gulf Road and old Foreglen Road. Nos. 55 and 57, two single storey dwellings, lie adjacent and to the north-east of the site. Beyond that lies a larger two storey dwelling, No. 59. There is an informal playing field / recreation area adjacent and south-west of the site. The recently constructed slip road / flyover junction of the Gulf Road and A6 Foreglen Road dual carriageway lies approximately 400m to the south-west of the appeal site.
10. The appeal proposal seeks outline permission for residential development on the site. Although no specific number is referenced in the proposal description, an indicative Design Concept Statement (DCS) drawing accompanied the proposal, showing 9 dwellings laid out in two terraces set at a right angle to one another. 4

units would occupy the 'rear' of the site, set parallel to the road and south-eastern site boundary, whilst the remaining 5 would be set perpendicular to the road, but parallel to the south-western site boundary. A version of this containing further details, but not changing the overall layout in fundamental terms was submitted in a drawing with the Appellant's statement of case (hereafter referred to as the appeal layout).

*Quality Residential Design Matters*

11. The Council had concerns that there was insufficient detail accompanying the proposed development to demonstrate whether a quality residential environment could be achieved on the site. 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. I will return to this policy later.
12. Policy QD2 of PPS7 indicates that the submission of a DCS or where appropriate a Concept Master Plan, to accompany all planning applications for residential development will be required. The justification and amplification at paragraph 4.42 of PPS7 states that the submission of DCSs will therefore be required to support all planning applications for residential development. It goes on that such information is necessary to accompany outline as well as full planning applications, to show how the developer will deliver a quality residential environment on a particular site. Furthermore, it will indicate how the design concept has evolved and provide a clear idea of what is intended for the site without the need for fully detailed plans. It ends by indicating that without the submission of this information at outline stage it is considered that a satisfactory layout and design that meets acceptable quality standards cannot be guaranteed.
13. It is the case that the Appellant submitted a DCS with the application. Notwithstanding the justification and amplification referred to above, which espouses the importance of providing sufficient detail, the policy itself only requires that a DCS accompanies all planning applications for residential development. There is no qualitative aspect to this basic requirement in regard to this appeal development. Therefore, notwithstanding my conclusions elsewhere in this decision in respect to the level of detail provided, Policy QD2 of PPS7 and the related provisions of the SPPS are met. The Council's first reason for refusal is not sustained.
14. 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. The crux of the Council's overall objections to the appeal development was the lack of detail contained within the DCS in relation to its design layout, boundary treatments, private open space provision, as well as parking and turning provision. These fall respectively under criteria (a), (b), (c) and (f) of the policy.
15. 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 proposed layout includes reference to double-fronted dwellings for units 1 – 5 which would lie perpendicular to the Gulf

Road, with their rear facades evident from views approaching from the south-west along Gulf Road towards the site. The suggested use of terraces obviously takes its cue from the Gulf Road dwellings on the opposite side of the road. I note the potentially unsatisfactory relationship between units 5 and 6, wherein unit 6 would be facing directly onto the side gable of unit 5, with overlooking available into the rear amenity space of unit 5. Taken as a whole, the DCS and refined layout are not persuasive that the development would respect its surrounding context, nor be appropriate to the character and topography of the site, partially in terms of layout, massing and appearance of the buildings. Criterion (a) of Policy QD1 of PPS7 and the related provisions of the SPPS are not met, nor are Policies BE1, SE1 and H1 of the DAP in this regard.

16. The Council considered that in respect to the appeal development, existing trees had not been identified, protected and integrated into the overall design of the development. Policy ENV7 of the DAP states that Development proposals will be expected to take account of existing trees and hedges which in the interests of visual amenity or wildlife habitat should be retained. It goes on that proposals will be expected to provide appropriate landscaping as an integral part of the design. Criterion (b) of Policy QD1 requires that features of the archaeological and built heritage, and landscape features are identified and, where appropriate, protected and integrated in a suitable manner into the overall design and layout of the development.
17. There are no trees within the appeal site, or even on its site boundaries. Whilst I noted several trees in proximity to the south-western boundary, as well as a mature hedge and semi-mature trees in proximity to the north-eastern boundary, those all lie on third party land and outwith the site itself, notwithstanding the Appellant's DCS including reference to retaining the vegetation on the north-eastern boundary. The appeal site is fairly unremarkable in terms of landscape features of note, but the site does not have existing trees or hedges for a development proposal to take account of. Nevertheless, I accept that the DCS includes reference to "structured indigenous planting where applicable" and I accept that a landscaping scheme could be agreed in writing with the Council to overcome concerns in respect to landscaping. For these reasons I am not persuaded that the appeal development offends criterion (b) of Policy QD1 of PPS7, the related SPPS provisions, nor Policies ENV7, BE1, SE1 and H1 of the DAP in this regard. The third reason for refusal is not sustained.
18. 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. Given the potential quantum of development, no public amenity space would be required, though the DCS shows a small area along the site frontage, though in the appeal layout, it is relocated to the north-eastern boundary. Furthermore, the site is adjacent to an informal playing field. Paragraph 5.19 of CP provides private open space standards, which for green field sites, should be around 70 sq. m or greater set behind the building line. It also advises 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, but that for any individual house however an area less than around 40 sq. m will generally be unacceptable.

19. The Appellant considered that whilst a range of garden sizes would be provided within the development. From the provided evidence these would range from approximately 48 sq. m at the lowest end to approximately 176 sq. m for two of the corner dwellings at units 6 and 9. Whilst technically the minimum quantum of private space is met for all units, it is unclear whether the dwellings would be family sized or smaller, particularly as the DCS and appeal layout show 9 identically sized units. I am therefore not persuaded that there is sufficient detail in this regard to properly determine whether adequate provision be made for public and private open space and landscaped areas as an integral part of the development. Again, there is the potentially unsatisfactory relationship between units 5 and 6 in this respect also. I find that criterion (c) of Policy QD1 of PPS7, the related provisions of the SPPS and DAP Policies BE1, SE1 and H1 are not met in this regard.
20. Policy AMP7 of PPS3 states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. This is also captured within criterion (f) of Policy QD1 of PPS7; that adequate and appropriate provision is made for parking. The DCS shows a general layout, whilst the appeal layout shows parking spaces and corner radii also. However, I nevertheless agree that there is insufficient detail in order to properly assess whether the correct parking and turning provision within the layout can be achieved, particularly as such matters are inextricably linked to the positioning of the internal service road and disposition of dwellings and their plots, matters which are lacking adequate detail and given other issues already addressed above, could be subject to change.
21. Both parties referred to a planning application previously granted at Sion Mills (ref. LA11/2018/1076/O). Although that application was granted outline permission without full details and a condition imposed requiring general compliance with the DCS, the Council stated that when it came to consideration of the reserved matters, it became apparent that a number of matters, predominantly relating to road and parking arrangements, could not be achieved in line with the outline permission. It was ultimately resolved through an amended scheme submitted as an application for full permission. Notwithstanding that I am not persuaded the application and that before me now are on all fours, I disagree that a general conformity condition linked to the DCS would be appropriate in the appeal before me, as it could be the case that similar issues to those that frustrated the Sion Mills application referenced above could arise given the insufficient detail provided and the potential issues referred to earlier in this decision. For the reasons given above, the appeal development does not satisfy Policy AMP7 of PPS7, criterion (f) of Policy QD1 of PPS7, the related SPPS provisions and DAP Policies BE1, SE1 and H1 in this respect.
22. The parties referred me to a previous permission granted on the appeal site for 19 dwellings (ref. A/2007/1139/F). Notably, that development included not only the appeal site, but the entirety of Nos. 55 and 57 Gulf Road also. That site therefore had a broader frontage and differing site context to that of the appeal site. Application A/2007/1139/F was never implemented and has expired. Whilst it did encompass the appeal site, that decision predated the publication of APPS7 and for reasons given above is not on all fours with the appeal development before me. Furthermore, that application was for full permission and presumably entailed detailed drawings allowing the then planning authority to fully assess that

development. Even though the terraced layout shown in the current DCS may broadly follow part of the previously approved layout in conceptual terms, that in itself does not render the appeal development acceptable or indicate that there is sufficient information to adequately assess it.

23. The Appellant suggested that the proposed layout with its terraced arrangement was for information only, with the suggestion for terraces coming from the Council itself. Also that a permission could be granted without reference to that particular arrangement, or any number of dwellings at all. Whilst it is the case that generally less detail is needed in respect to an outline planning application, sufficient detail nevertheless is required in order to assess whether a proposed development can satisfy the relevant prevailing policy provisions and design standards. In the case before me, although the DCS and appeal layout drawing provide a general idea as to the how the proposed development would be laid out, I am not persuaded they contain sufficient detail to fully assess the proposal, both in terms of the relationships of dwellings within the layout, private open space and the parking and turning provisions for vehicles within the site. The suggested removal of any reference to a particular number of dwellings or the terraced layout arrangement would not assist, as they would only serve to reduce the level of detail even further.
24. Although I have found criterion (b) of Policy QD1 is met, for the reasons given above criteria (a), (c) and (f) are not met and given their critical nature in respect to the appeal development, Policy QD1 of PPS7 is not met when read as a whole, nor are the related provisions of the SPPS and DAP. The second, fourth, fifth and eighth reasons for refusal are sustained.

*Density and character*

25. The Council also considered that the density of the proposed development was unacceptably high and the pattern of development proposed was out of keeping with that in Killaloo. 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 (ERA). Criterion (b) is that the pattern of development is in keeping with the overall character and environmental quality of the ERA.
26. There was dispute over the extent of the ERA, but from my own assessment I would agree that it not only includes the terraces of older dwellings directly opposite the appeal site, but also the more recently constructed Lettermire Mews to the north-west. I accept, however, that the character is predominantly set by the Gulf Road terraces given their more prominent location along the roadside and disposition within Killaloo itself. The parties accepted that the density of the terraced Gulf Road dwellings was approximately 20 dwellings per hectare (dph), with Lettermire Mews at approximately 30 dph. The density of the appeal development (using the 9 dwellings as shown in the DCS) also equated to approximately 30 dph. Whilst I accept that the appeal development would be at a higher density than the dwellings directly opposite in numerical terms, the Gulf Road terraces are unusual in that the dwellings are set within narrow, but generously deep plots. This, taken with the wider variety of density arising from Lettermire Mews forming part of the ERA, is such that the proposed density would not be significantly higher than that found in the ERA. Criterion (a) of Policy LC1

of APPS7 and the related SPPS provisions are met and the sixth reason for refusal is not sustained.

27. However, in regard to the ERA's pattern of development, I accept that it is predominantly established by the three blocks of terraced dwellings on Gulf Road opposite the site. Although Lettermire Mews is, again, within the ERA, it occupies a less prominent corner position between the end of the Gulf Road terrace and the old Foreglen Road / Gulf Road junction, consequently contributing much less to the character and overall pattern of development at Killaloo. The Council pointed to the second terrace within the DCS, which would sit at a right angle to the Gulf Road, as being contrary to the pattern of development. The Appellant stated that the proposed terraced layout, itself again suggested by the Council during negotiations at application stage, respected the existing pattern. Even if accepting this and despite similarities to elements of the previous, now expired permission on the site and wider lands (which pre-dated the advent of APPS7), based on the evidence before me, the perpendicularly set terrace taken together with its disposition within the proposed overall layout, would result in the pattern of development of the appeal proposal being out of keeping with the character and environmental quality of the ERA. I therefore agree that the appeal development is contrary to criterion (b) of Policy EXT1 of APPS7 and the related provisions of the SPPS.

*Other matters*

28. Objectors at application stage raised several matters, some reiterated by a letter submitted directly to the Commission by an elected representative. In respect to the alleged potential strain on existing sewage infrastructure, I have been given no evidence that there is a capacity issue at the local waste water treatment works at Killaloo. I note the NI Water consultation response indicated there was available capacity and did not raise any objection in this regard. Whilst the recent road junction improvements may have given rise to increased traffic using the Gulf Road to travel between the A6 Foreglen dual carriageway and the old Foreglen Road, I have been given no evidence that the appeal development would prejudice road safety or significantly inconvenience the flow of traffic. Objectors also raised concerns as to the potential impacts on biodiversity assets including bogland further east of the appeal site. However, I note that both the Northern Ireland Environment Agency and Shared Environment Service consultation responses raised no objection to the appeal development. These matters would not warrant the withholding of planning permission.
29. Concerns relating to potential flooding occurring on the appeal site were raised, but the Department for Infrastructure Rivers consultation response accepted the Appellant's draft Drainage Assessment, subject to certain conditions. I have no persuasive evidence that permission should be withheld on this basis. Whilst it may be the case that development on the site might have some degree of restriction upon views of the wider countryside, including the Sperrins, from the terraced residences on Gulf Road, this would not warrant rejection of the development, nor would ribbon development be applicable in policy terms to proposed development located within the Killaloo development limit. These matters would not warrant rejection of the appeal development. The alleged lack of consultation between the developer and local residents relating to submission of the planning application is not a matter for this appeal.

*Conclusions*

30. Whilst the Appellant stated that the Council had on several occasions, including at the Council Planning Committee Meeting, stated that the development was acceptable in principle, that related to the site's location within the Killaloo development limit where some form of housing would be acceptable. It does not however indicate that simply any design or layout would in itself be acceptable on the site without sufficient accompanying information to demonstrate that a quality residential environment can be achieved.
31. Although it may be the case that some form of residential development would be acceptable on the appeal site and in some cases a development proposal can be granted outline permission subject to conditions, that is dependent on a number of factors including the site itself, its context and constraints, as well as the level of information accompanying an application in the first instance. In the case before me, the submitted evidence taken as a whole is not persuasive that there is sufficient detail, even for an outline permission, to adequately demonstrate that a quality residential environment can be achieved. For the reasons given the Council's first, third and sixth reasons for refusal, as well as various third party concerns, have not been sustained. However, the remaining reasons for refusal are sustained and determining. The appeal must fail.

This decision relates to the following drawings submitted to the planning authority:

<b>DRAWING No.</b>	<b>TITLE</b>	<b>SCALE</b>	<b>DATE</b>
01 (Rev3)	Site Location Plan	1:1250	11/10/2021
03 (Rev8)	Design Concept Plan	1:500	31/08/2022

**COMMISSIONER MARK WATSON**





## **List of Appearances**

Planning Authority:- Ms R McMenamin (DC & S DC)  
Ms C Higgins (DC & S DC)

Appellant:- Mr M Kennedy (MKA Planning Ltd)  
Mr M Sheehan (Appellant)

## **List of Documents**

Planning Authority:- 'A1' Statement of Case & Appendices (DC & S DC)

Appellant:- 'B1' Statement of Case & Appendices (MKA Planning Ltd)