

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2019/1036/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>25<sup>th</sup> August 2021</b>
<b>For Decision or For Information</b>	<b>For Decision</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Principal Planning Officer

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:

	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<b><u>App No:</u></b>	<b>LA01/2019/1036/F</b>	<b><u>Ward:</u></b>	<b>Roeside</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Land situated adjacent and south of The Church of The Christ King Parochial House, 4 Scroggy Road, Limavady</b>		
<b><u>Proposal:</u></b>	<b>Application under Section 54 to vary conditions 5 (transfer of social housing units), 7 (landscaping), 13 (Programme of Archaeological Work), 16 (Earthworks Management Plan) and 18 (Provision of Open Space) of Planning Approval LA01/2015/0349/O to enable the phased development of this site.</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	<b>17.09.2019</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>	<b><u>Target Date:</u></b>	
<b>Agent:</b>	<b>JPE Planning, 1 Inverary Valley, Larne, BT40 3BJ</b>		
<b>Applicant:</b>	<b>St Marys Church Parish Centre, 115 Irish Green Street, Limavady</b>		
<b>Objections: 0</b>	<b>Petitions of Objection: 0</b>		
<b>Support: 0</b>	<b>Petitions of Support: 0</b>		

## **Executive Summary**

- **Planning permission is sought to vary the wording of conditions 5 (transfer of social housing), 7 (landscaping), 13 (Programme of Archaeological Works), 16 (Earthworks Management Plan) and 18 (Provision of Open Space) of Planning Approval LA01/2015/0349/O.**
- **Planning Approval LA01/2015/0349/O was granted outline permission for a proposed residential development and open space with access onto Scroggy Road (rationalisation of housing and open space lands as identified under dNAP 2016 resulting in an overall increase in the provision of open space)**
- **The variation sought is to allow the phased construction of the development site to permit the sale of part of the site without the need to provide social housing on it, and prior to the completion of the provision of open space in its entirety**
- **Conditions 5,7,and 13 proposed the submission of the required information at each phase of development rather than at the submission of the first reserved matters application**
- **The application is recommended for Refusal as it is contrary to Policy HOU2 of the Northern Area Plan, Paragraph 6.205 of the SPPS and Policy OS1 of PPS8.**

Drawings and additional information are available to view on the Planning Portal- <http://epicpublic.planningni.gov.uk/publicaccess/>

## **1 RECOMMENDATION**

- 1.0 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **Refuse** planning permission subject to the conditions set out in section 10.

## **2.0 SITE LOCATION & DESCRIPTION**

- 2.1 The site comprises a large area of open space to the east of Scroggy Road, Limavady. The site is roughly L-shaped and consists of a three playing pitches and two additional fields. One of these is currently used for agriculture while the second field which slopes down from east to west is not heavily used and is somewhat overgrown.
- 2.2 The site is located within the settlement limit of Limavady and is situated to the south east of the town centre within a predominantly residential suburban area. To the north of the site there is a church and further playing fields, to the east and south is largely residential, while the west onto Scroggy Road is a mix of residential with a number of community facilities, including a further church and health centre.
- 2.3 The housing stock within the area includes a broad mix of designs including single storey, two storey and one-and-a-half storey dwellings.
- 2.4 The northern portion of the site is zoned open space while the southern portion is zoned housing land (LYH 18) as defined in the Northern Area Plan 2016 Map No. 4/01a.

## **3.0 RELEVANT HISTORY**

- 3.1 LA01/2015/0349/O - Lands Situated Adjacent and South Of The Church Of The Christ King Parochial House 4 Scroggy Road, Limavady - Proposed residential development and open space

with access onto Scroggy Road (rationalisation of housing and open space lands as identified under dNAP 2016 resulting in an overall increase in the provision of open space) – Permission Granted 28.08.2018

LA01/2019/0630/F - Lands to the rear of the existing Limavady Wolfhounds Pitch off Scroggy Road, Limavady - Proposed new grass pitch and 4G training area including flood lighting, the provision of team dugouts, ball catch nets, goal posts & fencing plus the provision of community walking path with 1m high bollard lighting and associated site works – Permission Granted 27.02.2020

## **4.0 THE APPLICATION**

- 4.1 The application seeks to vary the wording of Conditions 5, 7, 13, 16 and 18 of Planning Approval LA01/2015/0349/O, which relates to the provision of social housing, landscaping details, archaeological detail, earthworks management plan and provision of open space. The variation relates to the timing of the provision of the required information and provision of social housing and open space.

### **Habitat Regulations Assessment**

- 4.2 The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed under planning application LA01/2015/0349/O in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). It was concluded that the proposal would not be likely to have a significant effect on the features of any European site. As this application does not propose any physical alterations to the layout and design of the development it is considered that the proposal will not result in any adverse impact on any European designated site.

### **Design & Access Statement**

- 4.3 As per The Planning (General Development Procedure) Order (Northern Ireland) 2015, Section 6 4(a) a Design and Access

Statement is not required as the conditions to which the variation is sought do not relate to design and access issues.

## **Environmental Impact Assessment**

- 4.4 This proposal was subject to an environmental impact assessment screening in accordance with The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.
- 4.5 Having considered The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and taking into account the above information, it is considered that the proposed development is not EIA development and would not require the preparation of an Environmental Statement.

## **5.0 PUBLICITY & CONSULTATIONS**

**External:** No objections have been received to this application.

**Internal:**

**Housing Executive:** have no objection subject to variation of this condition.

- 5.1 Regulation 2(1)(b) of the DM Regulations has the effect that any change to or extension of an existing major development is to be treated as major where the change or extension itself meets or exceeds the relevant threshold or criterion in the corresponding entry in Column 2 of the Thresholds Table.
- 5.2 Application LA01/2015/0349/O was classified as major as it exceeded the thresholds outlined in the table within the Schedule. However, where an application is submitted for a change or extension to 'Major Development' the proposal is not subject to Pre-Application Community Consultation.

## **6.0 MATERIAL CONSIDERATIONS**

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The development plan is:
- Northern Area Plan 2016
- 6.3 The Regional Development Strategy (RDS) is a material consideration.
- 6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.
- 6.5 Due weight should be given to the relevant policies in the development plan.
- 6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7.0 RELEVANT POLICIES & GUIDANCE**

The Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 6: Planning Archaeology and the Built Heritage

Planning Policy Statement 7: Quality Residential Environments

PPS 7 Addendum: Safeguarding the Character of Established Residential Areas

Planning Policy Statement 8: Open Space, Sport and Outdoor Recreation

DCAN 8 - Housing in Existing Urban Areas

DCAN 15 - Vehicular Access Standards

Parking Standards

Creating Places

## **8.0 CONSIDERATIONS & ASSESSMENT**

### **Principle of Development**

- 8.1 The principle of development has been established on the site through planning permission LA01/2015/0349/O for a mix of housing and open space provision. The application included the rationalisation of land uses as designated within the Northern Area Plan 2016 which swapped an area of open space with an area of land zoned for housing to provide a more efficient use of lands for the respective end users. Planning approval was granted 28.08.2018. The application is currently extant.

### **Condition 5**

- 8.2 The approved wording of Condition 5 states as follows;

No unit shall be occupied until the details of the legal agreement for the transfer of the social housing units to a NIHE recognised Housing Association has been submitted to the Council for agreement.

Reason: To ensure the provision of social housing in Limavady and to comply with Policy HOU2 of the Northern Area Plan 2016.

- 8.3 The proposed wording of Condition 5 states as follows;



No unit within Phase 2, as indicated on Drawing P-19-152AA, shall be occupied until the details of the legal agreement for the transfer of the social housing units to a NIHE recognised Housing Association has been submitted to the Council for agreement.

- 8.4 The applicant proposes to develop the site in two phases with phase one comprising a small parcel of agricultural land at the northern end of the site. The proposed variation to the wording of the approved condition is to allow the applicant to sell/develop this small parcel of land for approximately 10 dwellings, without the requirement to agree for the transfer of social housing prior to any dwelling being occupied. The applicant outlines a desire to be able to generate some revenue to assist with other community projects and outlines that the ability to dispose of a portion of the site in the interim without the limitations imposed by the condition as approved would make the sale of lands more viable to potential purchasers, while also contributing in part to meeting local housing need.
- 8.5 The supporting text in relation to Social and Supported Housing within the Northern Area Plan outlines that applications on a larger site in phases of less than 25 units or 1 hectare to avoid the delivery of social housing will not be acceptable. It also acknowledges that in some cases a developer may have a reason for adopting a phased approach to developing a site.
- 8.6 The applicant argues that the variation of the condition does not undermine the intentions or ability to provide social housing as required on the site. However, to allow for the piecemeal development of the site in the manner shown could set a precedent for additional small piecemeal applications and would further reduce the certainty of ensuring subsequent applications come forward in a manner which provide for social housing. Moreover, the proposal is contrary to the provisions of the Northern Area Plan as set out at Paragraph 8.4 above.
- 8.7 No compelling argument has been provided by the applicant as to why only such a small parcel of land can be provided initially for housing or as to why social housing cannot be provided within the initial phase1 development. Additionally, no compelling reason has been provided as to why a phased

approach to construction cannot be implemented once a comprehensive scheme has been submitted for reserved matters approval, with the siting and arrangement of social housing units agreed prior to commencement/occupation of the first dwelling. With the necessary agreements in place the site could then be developed accordingly with the provision of social housing safeguarded.

- 8.8 Consultation with Northern Ireland Housing Executive was carried out in respect of the application. NIHE responded to outline that they have no objection to the location of social housing within phase 2. However, they have outlined that they are content with the wording of the conditions as approved under LA01/2015/0349/O as this will ensure the provision of social housing on the application site.
- 8.9 To permit the development of part of the site for housing without the need to agree the transfer of social housing units undermines policy HOU2 within the Northern Area Plan in that it can no longer safeguard the provision of social housing under the planning approval. To allow for piecemeal development of the site in this manner could set a precedent for similar small-scale applications which avoid social housing provision. The Planning Department is satisfied that the only way in which the adequate provision of social housing is ensured is through the retention of the existing condition. To vary Condition 5 as proposed would result in there being no guarantee that further planning applications for housing development comprising social housing would be forthcoming or if such applications were forthcoming, that approved social housing units would be constructed.

### **Conditions 7, 13 and 16**

- 8.10 The approved wording of Condition 7 states as follows

A landscaping scheme shall be agreed with the Planning Authority at Reserved Matters stage and shall include a survey of all existing trees and hedgerows on the land, together with measures for their protection during the course of development. The scheme shall detail species types, siting and planting distances and a programme of planting for all additional

landscaping on the site and will comply with the appropriate British Standard or other recognised Codes of Practice.

Reason: In the interest of visual amenity.

8.11 The proposed wording of Condition 7 states as follows

A landscaping scheme for each phase of development shall be agreed with the Planning Authority at Reserved Matters stage and shall include a survey of all existing trees and hedgerows on the land for the subject phase, together with measures for their protection during the course of development of that phase. The scheme shall detail species types, siting and planting distances and a programme of planting for all additional landscaping on the site and will comply with the appropriate British Standard or other recognised Codes of Practice.

8.12 The approved wording of Condition 13 states as follows

No site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Council. The programme should provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

8.13 The proposed wording of Condition 13 states as follows

For each phase of development (as indicated in Drawing P-19-152AA) no site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Council. The programme should provide for the identification and evaluation of

archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.

8.14 The approved wording of Condition 16 states as follows

No development shall take place until a detailed earthworks management plan has been submitted to and agreed in writing by the Council. All storm water from the development site shall not be discharged to nearby watercourses unless first passed through pollution interception and flow attenuation measures. Storm water can carry pollutants into watercourses and high volume discharges can alter the prevailing hydrological regime, both of which can impact on fisheries interests. The earthworks management plan shall include methods of control of run-off from working areas, and mitigating measures to prevent pollution of watercourses, during the construction phase.

Reason: To prevent pollution of surface waters.

8.15 The proposed wording of Condition 16 states as follows

No development shall take place until a detailed earthworks management plan has been submitted to and agreed in writing by the Council for each phase of the development, as indicated on Drawing P-19-152AA. All storm water from the development site shall not be discharged to nearby watercourses unless first passed through pollution interception and flow attenuation measures. Storm water can carry pollutants into watercourses and high volume discharges can alter the prevailing hydrological regime, both of which can impact on fisheries interests. The earthworks management plan shall include methods of control of run-off from working areas, and mitigating measures to prevent pollution of watercourses, during the construction phase.

8.16 The proposed re-worded conditions for the above conditions allows for the submission of the required information at each phase of development. The Planning Department has no objection to the re-wording of these conditions to such effect as these issues are site specific and each subsequent application can deal with them independently without impacting on the fundamental elements of the development.

### **Condition 18**

8.17 The approved wording of Condition 18 states as follows

No development shall take place until: planning permission has been granted for a new training pitch facility on the land identified by the orange hatching on Drawing 01 date stamped received 24 June 2015 and; the new training pitch on that land has been completed in its entirety.

Reason: To ensure appropriate provision of open space in accordance with the policy requirements of PPS 8 Open Space, Sport and Outdoor Recreation.

8.18 The proposed wording of Condition 18 states as follows

No part of Phase 2 of the development, as indicated on Drawing P-19-152AA, shall take place until: planning permission has been granted for a new training pitch facility on the land identified by the orange hatching on Drawing 01 date stamped received 24 June 2015 and; the new training pitch on that land has been completed in its entirety.

8.19 Policy OS1 of PPS8 outlines that development will not be permitted which would result in the loss of existing open space or land zoned for the provision of open space. As application LA01/2015/0349/O allowed for the construction of housing on open space it was determined that a condition requiring the provision of the alternative open space facilities was necessary, prior to any of the housing development being constructed. This was to safeguard and maintain the level, accessibility and usefulness of open space in line with Paragraph 5.7 of PPS 8.

This condition was not opposed by the applicant, or subsequently appealed following the granting of permission.

- 8.20 Application LA01/2019/0630/F was submitted for a proposed new grass pitch and 4G training area including flood lighting, the provision of team dugouts, ball catch nets, goal posts & fencing plus the provision of community walking path with 1m high bollard lighting and associated site works. Permission was granted 27<sup>th</sup> February 2020.
- 8.21 The applicant has confirmed the transfer of the lands in respect of the above application has taken place and works have commenced on site. These works amount to the grading and levelling of the site to accommodate the pitches and were completed in September 2020. The applicant advises that the estimated completion timeframe for drainage works is between February to September 2022 with final surface works to follow. This timeframe for completion of works extends beyond the timeframe for the submission of reserved matters application(s).
- 8.22 The applicant outlines a desire to be able to generate some revenue to assist with other community projects and outlines that the ability to dispose of a portion of the site in the interim without the limitations imposed by the condition as approved would make the sale of lands more viable to potential purchasers.
- 8.23 While the Planning Department acknowledge the works carried out to date in respect of the proposed pitches, they do not provide useable open space on a comparable level to the existing open space. To permit the development of housing on the existing open space would result in a loss of open space, with no certainty regarding the completion of the approved pitches. As the existing level of open space provision cannot be safeguarded through the proposed variation, the Planning Department do not consider the proposal acceptable.

8.24 To vary condition 18 to require the delivery of completed training pitch at some future specified date or phase would result in an interim period where there is no provision of alternative open space. This would fail to meet with the objectives of Policy OS1 of PPS 8. In addition, if such a future specified date or phase were used in a varied condition and the delivery of the completed training pitch were delayed beyond that date or phase, this would likely create significant enforcement challenges further delaying provision of the completed training pitch.

## **9.0 CONCLUSION**

9.1 The proposed variation of Conditions 7 (landscaping scheme), 13 (programme of archaeological work) and 16 (earth works management plan) is considered to be acceptable having regard to the Northern Area Plan 2016 and other material considerations. However, the Planning Department consider that the proposed variation of conditions 5 (provision of social housing) and 18 (provision of alternative open space) unacceptable as their variation as proposed has the potential to undermine the integrity of the planning permission by failing to safeguard the requirement for provision of social housing prior to any dwelling being occupied and failing to safeguard the existing level of open space at the site. The proposed variation of condition 5 is contrary to Policy HOU2 of the Northern Area Plan and the proposed variation of condition 18 is contrary to Policy OS1 of PPS8. Refusal is recommended.

## **10.0 Reasons for Refusal**

1. The proposal is contrary to Policy HOU2 of the Northern Area Plan in that it fails to ensure the provision of the social housing units on the application site.
2. The proposal is contrary to Paragraph 6.205 of the SPPS and Policy OS1 of PPS 8 in that it fails to ensure the provision of open space to offset against the loss of existing open space.

# Approved Site Location Map –LA01/2015/0349/O





# Approved Concept Plan - LA01/2015/0349/O



# Proposed Phasing Plan

