



Title of Report:	Planning Committee Report – LA01/2022/0130/F
Committee Report Submitted To:	Planning Committee
Date of Meeting:	26th October 2022
For Decision or For Information	For Decision – Referred Application by Cllr Beattie

Linkage to Council Strategy (2021-25)	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Development Management and Enforcement Manager

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

Screening Requirements	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:

<u>No:</u>	LA01/2022/0130/F	<u>Ward:</u>	LURIGETHAN
<u>App Type:</u>	Full		
<u>Address:</u>	Lands to the rear and adjacent to No. 45 Middlepark Road, Cushendall		
<u>Proposal:</u>	Application to vary condition 17 of approval ref. LA01/2018/0585/F "None of the dwelling units in the development hereby approved shall be occupied until such time as all the dwelling units in the development approved under ref. LA01/2020/1333/F are substantially complete" to "None of the dwelling units in the development hereby approved shall be occupied until such time as development has commenced on the adjoining site, as per approval ref. LA01/2020/1333/F"		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	02.02.2022
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Gravis Planning, 1 Pavilions Office Park, Kinnegar Drive, Hollywood, BT18 9JQ		
<u>Applicant:</u>	Mr Emerson, 45 Middlepark Road, Cushendall		
<u>Objections:</u>	0	<u>Petitions of Objection:</u>	0
<u>Support:</u>	0	<u>Petitions of Support:</u>	0

EXECUTIVE SUMMARY

- Full planning permission is sought to vary the wording of condition 17 of Planning Approval LA01/2018/0585/F which stated that;

"None of the dwelling units in the development hereby approved shall be occupied until such time as all the dwelling units in the development approved under ref. LA01/2020/1333/F are substantially complete"

To

"None of the dwelling units in the development hereby approved shall be occupied until such time as development has commenced on the adjoining site, as per approval ref. LA01/2020/133/F"

- Planning Approval LA01/2018/0585/F was granted full permission for a residential development of 24no units comprising of 6no. 4 bedroom detached units and 18no. 3 bedroom semi-detached units with associated roads and landscaping works.
- Planning Approval LA01/2020/1333/F was granted full permission for a residential development of 5no. bungalow units (5no. Cat 1 Units including 1no. WC Unit) comprising of 3no. 2 bedroom units & 2no. 1 bedroom units with associated private lane access & landscaping works. This permission had a condition attached that units would be solely for social housing and managed by a registered Housing Association.
- The proposed variation to the wording is to allow the dwellings on the application site to be occupied prior to the dwellings on the adjoining site being 'substantially complete'.
- The site is zoned for housing in the NAP 2016 under Designation CLH 12 which requires a minimum of 5 dwellings to be provided for social housing.

- The proposed variation of Condition 17 of LA01/2018/0585/F is unacceptable as it fails to ensure the delivery of the required social units for Cushendall and as such is contrary to Policy HOU 2 of the Northern Area Plan 2016.
- Refusal is recommended.

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

1 RECOMMENDATION

- 1.1 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** full planning permission subject to the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is comprised of a large part of an agricultural field together with two sections of adopted roadway serving the adjoining Mount Edwards Hill housing development. The western and southern boundaries of the site consist of the existing established field boundaries made up of stock proof fencing, native hedging, and mature trees. The northern boundary is defined by party fencing and hedging to the existing adjoining dwellings within Mount Edwards Hill which extends to over 2m in height. The eastern boundary is currently undefined and open to the remainder of the agricultural land. The topography of the site rises gradually in height from east to west with a total elevation gain of approximately 9.5m and no significant changes in ground level.
- 2.2 The site is located on the western side of Middlepark Road, in close proximity to its junction with Gortaclee Road and approximately 800m south of Cushendall town centre. Being on the edge of the settlement limits of Cushendall, the surrounding area is semi-rural in character. The lands to the north and east are dominated by established residential development, with agricultural land to the south and west.
- 2.3 The site is located within the settlement of Cushendall and is zoned for housing under designation CLH 12 of the Northern Area Plan 2016. Cushendall lies within the Antrim Coast and Glens Area of Outstanding Natural Beauty.

3 RELEVANT HISTORY

- 3.1 LA01/2020/1333/F - Phase 2 Housing Development at Lands Adjacent to No.45 Middlepark Road, Cushendall. Proposed residential development of 5no. bungalow units (5no. Cat 1 Units including 1no. WC Unit) comprising of 3no. 2 bedroom units & 2no. 1 bedroom units with associated private lane access & landscaping works. Permission Granted 23.08.2021.

LA01/2018/0585/F - Lands to the rear of and adjacent to No. 45 Middlepark Road, Cushendall. Proposed residential development of 24no. units comprising of 6no. 4 bedroom detached units and 18no. 3 bedroom semi-detached units with associated roads and landscaping works. Permission Granted 06.10.2021.

E/2007/0284/RM – Land to rear of 45 Middlepark Road Cushendall - Extension to housing development at Mount Edwards Hill. 19 dwellings comprising 6 no. 1.5 storey detached, 4no. 1.5 storey semi-detached, 4no. 2 storey semi-detached and 1no. 2 storey detached, 4no. 2 storey Terrace together with associated roads and landscaping works. Permission Granted 28.05.2010.

E/2003/0493/O - Land to the rear of 45 Middlepark Road, Cushendall. Site for extension to housing development at Mount Edwards Hill. Permission Granted 04.05.2005.

4 THE APPLICATION

- 4.1 This application is a Section 54 application seeking a variation to condition No. 17 of planning approval LA01/2018/0585/F. The proposal seeks to vary the condition from:
"None of the dwelling units in the development hereby approved shall be occupied until such time as all the dwelling units in the development approved under ref. LA01/2020/1333/F are substantially complete"
to
"None of the dwelling units in the development hereby approved shall be occupied until such time as development has commenced on the adjoining site, as per approval ref. LA01/2020/1333/F"

Environmental Impact Assessment

- 4.2 This proposal was subject to an environmental impact assessment screening in accordance with The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.
- 4.3 Having considered The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 it is considered that the proposed development is not EIA Development and would not require the preparation of an Environmental Statement.

5 PUBLICITY & CONSULTATIONS

5.1 External

Advertising: Advertised in the Coleraine Chronicle on the 23.02.2022.

Neighbours: 14 neighbours were notified on the 11.02.22.

One letter of support has been received. No letters of objection were received.

5.2 Internal

NIHE – Most recent projected housing need figures for Cushendall provided.

6 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:
- The Northern Area Plan 2016 (NAP)

- 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 RELEVANT POLICIES & GUIDANCE

The Northern Area Plan (NAP) 2016

The Strategic Planning Policy Statement (SPPS) for N. Ireland

Development Management Practice Note 24 – Section 54 Applications

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the variation of condition No. 17 of planning application LA01/2018/0585/F; and the requirement for social housing as identified under Designation CLH 12 in the NAP 2016.

Principle of Development

- 8.2 The principle of development has been established on the site through planning permission LA01/2018/0585/F. The application was associated with application LA01/2020/1333/F which covered Phase 2 of the lands identified under Designation CLH 12 in the NAP 2016. Application LA01/2018/0585/F was granted 06.10.2021, and application LA01/2020/1333/F was granted 23.08.2021.

Reasoning for Condition No. 17 of LA01/2018/0585/F

8.3 The approved wording of Condition No. 17 states as follows:

"None of the dwelling units in the development hereby approved shall be occupied until such time as all the dwelling units in the development approved under ref. LA01/2020/1333/F are substantially complete"

Reason: To ensure the provision of social housing units in Cushendall and to comply with the key site requirements of housing zoning CLH 12 of the Northern Area Plan 2016.

8.4 The proposed wording of Condition No. 17 states as follows:

"None of the dwelling units in the development hereby approved shall be occupied until such time as development has commenced on the adjoining site, as per approval ref. LA01/2020/1333/F"

8.5 The supporting information submitted by the agent (Date received 02.02.2022) outlines the reasons why the variation of condition is sought. The proposed variation to the wording is to allow the dwellings on the application site to be occupied prior to the dwellings on the adjoining site being 'substantially complete'. The agent's rationale for this is that the current condition introduces a direct link between the subject approval and the approval on the adjoining site.

8.6 Both planning application LA01/2018/0585/F and LA01/2020/0133/F are covered by the housing zoning CLH 12 in the NAP. A Key Site Requirement of designation CLH 12 is that 'a minimum of 5 dwellings shall be provided for social housing'. Planning application LA01/2018/0585/F is for 24no. dwellings none of which are for social housing. Planning application LA01/2020/1333/F, is for 5no. social housing units and as such, fulfils the key site requirement for this housing zoning relates. The condition (as identified in paragraph 8.3 above) is therefore necessary to ensure the development of the lands in accordance with the key site requirements, the designation of the lands for housing, and the identified allocation for social housing units within The Northern Area Plan 2016.

8.7 The agent states that these aims can be achieved without the need for an associated condition on the subject approval. The supporting

information details that the latest NIHE figures state that there is a social housing need in Cushendall for 23 dwellings up to 2025. This is taken from the NIHE 'Commissioning Prospectus' 2020.

8.8 Consultation was carried out with NIHE in respect of this Section 54 Application. In their response dated 22nd March 2022, it is stated that,

“At March 2021, we identified a projected housing need, from 2021-2026, of 39 social housing units for Cushendall. This took account of the Middlepark Road and Kilnadore Brae schemes. We fully support the provision of social housing at both the aforementioned sites.”

As such, the argument presented by the agent that the pending application at Kilnadore Brae, LA01/2020/0510/F, will not only deliver the social housing requirements for Cushendall up to 2025 but exceed them, is not sustained. The NIHE response confirms that the projected housing need from 2021 – 2026 is 39 units. The Kilnadore Brae application (LA01/2020/0510/F) will provide 34 no. social housing units and the additional 5 units are provided as part of this proposal at Middlepark Road.

8.9 The need for the condition is justified by the requirement for the development of the lands comprising designation CLH 12 to provide a minimum of 5 no. dwellings for social housing. Given the response from NIHE and the key site requirements for development of these lands, the wording of the condition as approved will ensure the provision and delivery of social housing on these lands. The condition is both necessary and justified in this instance.

8.10 While the agent goes on to state that the wording is not reasonable, it would appear that this is largely due to the agent's consideration of the projected housing figures taken from the NIHE 'Commissioning Prospectus' 2020, and NIHE confirming their support for application LA01/2020/0510/F. The agent goes on to say, “It cannot be assumed that support and funding for additional social housing provision will be forth-coming from NIHE for the approved scheme LA01/2020/1333/F. Without NIHE funding and support, development will not proceed on this site. This means that dwellings on the subject site, LA01/2018/0585/F, cannot be occupied and the timing of the occupation is totally reliant on a separate site and issues outside of the applicant's control. Such circumstances cannot be considered as reasonable.”

- 8.11 As detailed in the NIHE response of 22nd March 2022, there is a projected housing need, from 2021-2026, of 39 social housing units for Cushendall. As the applicant is in ownership of both sites, which are the subject of applications LA01/2018/0585/F and LA01/2020/1333/F, it is considered that the condition is reasonable in requiring that development of the lands as a whole is in compliance with the key site requirements as stipulated under Designation CLH 12 in The Northern Area Plan 2016. This will ensure that the necessary social housing units, which are identified as being required for Cushendall, are delivered as part of the development of these lands. It is not unreasonable to expect that the permission and therefore the wording of condition No. 17 seeks to ensure that these are provided.
- 8.12 In respect of the precision of the condition, the agent states that the current wording of the condition is not precise. It requires dwellings on the adjoining site to be 'substantially complete' before dwellings on the subject site can be occupied. The decision notice does not include a definition of what constitutes a 'substantially complete' development. On this basis it is left to the judgement and interpretation of the applicant and Council as to when dwellings are substantially complete or not, in order to discharge this condition. Given that this condition is not precise, it either needs to be varied or removed.
- 8.13 A letter of support has been received by the Rural Housing Association (received 17th October 2022). The letter advises that they will be delivering the 5no. social housing units approved and confirms a commitment to delivering them. They advise the current wording of Condition 17 requires a phased approach to development on site which is unhelpful and complicates their working relationship with the landowner. They advise the proposed re-wording will still ensure the delivery of the approved social housing unit. Although the letter provides support for the application it doesn't overcome the uncertainty of the delivery of the social housing units as required by Policy HOU 2 and Key Site Requirement CLH 12 of the Northern Area Plan 2016.
- 8.14 The contents of the agent's supporting information have been considered in their entirety. As detailed in the agent's rationale for seeking the variation, the agent acknowledges that occupation of dwellings on the subject site is reliant upon development progressing to a near completed stage on the adjoining site. Relevant case law in this regard, see Sage v. Secretary of State for the Environment,

Transport and the Regions & Ors [2003] UKHL 22 (10 April 2003), adopts the position that what is substantially complete must always be decided as a matter of fact and degree. The use of the term 'substantially complete' is well established and in the course of the erection of a dwelling, as indicated by the agent, would require development to have progressed to a near completed stage. The condition is precise in that it seeks to ensure that the social housing units, required by policy and delivered through the key site requirement for this site, are delivered as part of the overall scheme. Varying the condition to,

*"None of the dwelling units in the development hereby approved shall be occupied until such time as development has **commenced** on the adjoining site, as per approval ref. LA01/2020/1333/F" (Planning Officer's emphasis)*

could not guarantee that the development of the social housing units would be completed and therefore delivered in order to meet the identified local need for Cushendall.

- 8.15 The variation of the condition as proposed would fail to meet comply with Policy HOU 2 and Allocation HOU 3 of The Northern Area Plan 2016.

Habitats Regulation Assessment

- 8.16 The potential impact this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). The Proposal would not be likely to have a significant effect on the Features, conservation objectives or status of any of these sites.

9 CONCLUSION

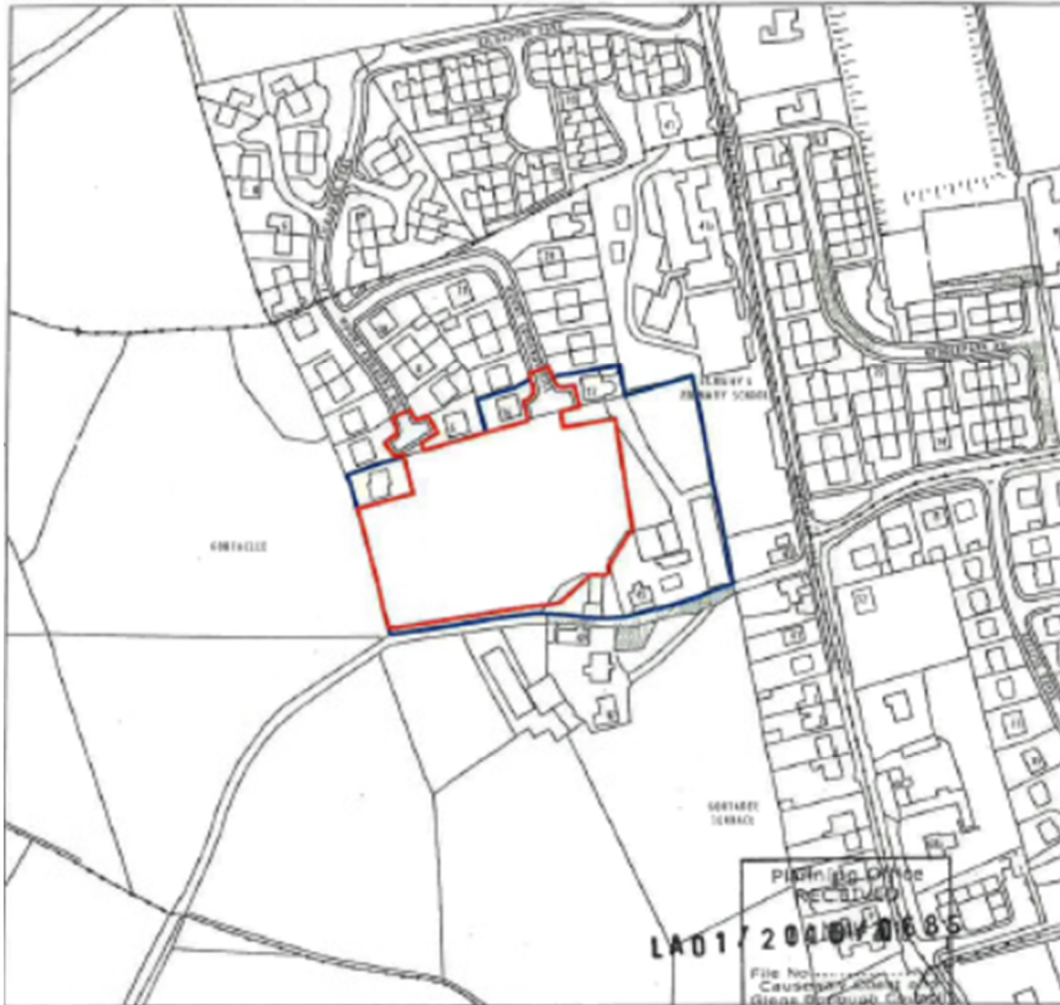
- 9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016. The proposed variation of Condition No. 17 is unacceptable as the wording proposed would fail to ensure the delivery of required social housing units for the settlement of Cushendall. The proposed variation of Condition No. 17

is contrary to Policy HOU 2 of the Northern Area Plan 2016. Refusal is recommended.

10 Reasons for Refusal

1. The proposal is contrary to Policy HOU 2 and Allocation HOU 3 of the Northern Area Plan 2016 in that it fails to ensure the provision of the social housing units as required by zoning CLH 12.

Site Location Map



Location Map scale 1:2500



KEY

- Extent of land relating to application
Site size = 0.9ha/2.224ac
- Applicant controlled lands

Causesway Coast and
Glebe Borough Council

Drawing Number 01

Site: Emerson	Drawing Reference: 16137	Date: 10.05.17	<p>The Top Team 1 Newborough Road, Colchester, Essex, S12 1JG T: +44 (0)20 7102 3000 F: +44(0)20 7102 3100 E: info@studiorogers.com</p> <p>studiorogers™</p>
Project Title: Housing Development @ lands adjacent to no.45 Middlepark Road, Cuxhendale	Code: S01	Version: c	
Drawing Title: Location Map	Author: tok	Checked by: rgr	
Number: Rev at Title update 09.08.18	Date: 17.05.2010	Drawn by: tok	
	Checked by: rgr		

Annex 1

From: Orla Beattie

Sent: 15 May 2022 08:38

To: Planning <Planning@causewaycoastandglens.gov.uk>

Subject: La01/2022/0130/F

LA01/2022/0130/F

Application to vary a condition controlling the timing/phasing of delivery of social housing units within a development at Middlepark Road, Cushendall.

Good morning

Could I please request the above application be deferred to the Planning Committee for decision. The agent has made the following points to support this:

1. The application seeks to vary a condition and affects only the phasing of delivery of the social housing units, not whether or not they will be delivered.
2. The case officers report appears to assess the application on the basis of removing the condition, this is not what the applicant has applied for.
3. Justification for refusing the application is based on a lack of surety regarding the completion of the social housing units. However, the council does not ever attach conditions regarding the completion of Development proposals.
4. The refusal if this application effectively dictates the phasing and timing of Development on both sites. Here are no sound planning grounds to do so.
5. No other approved housing development includes a condition that dictates the phasing of development on site to ensure the social housing element is delivered first. Why is one being added in this instance?
6. In the interests of administrative fairness, there are sound grounds to call in this application for review and discussion at committee.

Kind regards,

Councillor Orla Beattie

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