

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2018/1402/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>22<sup>nd</sup> November 2022</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	Senior Planning Officer

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	<b>N/A</b>
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.
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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:

**No:** LA01/2018/1402/F **Ward:** CLOGHMILLS

**App Type:** Full Planning

**Address:** 79b Finvoy Road Ballymoney

**Proposal:** Retrospective Application for Existing Workshop/Store and Office for industrial use pertaining to the research, development and testing of overland slurry distributors, RHI Boiler and Flue.

**Con Area:** N/A **Valid Date:** 14 Nov 2018

**Listed Building Grade:** N/A

**Agent:** Simpson Design 42 Semicock Road, Ballymoney. BT53 6PY

**Applicant:** Mr J O'Kane 79B Finvoy Road, Ballymoney.

**Objections:** 0 **Petitions of Objection:** 0

**Support:** 0 **Petitions of Support:** 0

## EXECUTIVE SUMMARY

- Retrospective planning permission is sought for a Workshop/Store and Office for industrial use pertaining to the research, development and testing of overland slurry distributors, RHI Boiler and Flue.
- The site is not located within any settlement development limit as defined by the Northern Area Plan 2016 and is not subject to any specific designations.
- The principle of development is considered unacceptable having regard to the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- The proposal is considered contrary to the SPPS and Policies PED2, PED3, PED4, PED6 and PED9 of PPS4 as it has not been demonstrated that the proposal is an appropriate use in the countryside or that it would not adversely impact on the natural environment.
- The proposed site is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and does not visually integrate into the surrounding landscape.
- A number of outstanding planning and environmental issues remain to be resolved.
- Insufficient environmental information has been provided to assess the impact on priority habitats and designated sites of International and National importance.
- A Drainage Assessment has not been submitted to facilitate consultation with DFI Rivers or demonstrate that surface water flooding will not result.
- DAERA, Shared Environmental Services, NI Water, DFI Roads, Historic Environment Division and Environmental Health, were consulted on the application.

- DFI Roads, NI Water, Historic Environment Division and Environmental Health raise no objections.
- There are no third party objections to the proposal.
- The application is recommended for Refusal.

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

## 1.0 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** planning permission subject to the reasons set out in section 10.

## 2.0 SITE LOCATION & DESCRIPTION

- 2.1 The site is accessed off the Finvoy Road via a tarmac lane and is set back approximately 110m from the public road. The site comprises a detached dwelling and adjacent commercial buildings. The existing dwelling on site is a single storey rural dwelling with side and rear return and integral garage. The additional industrial buildings are positioned to the north-western corner of the existing site and are constructed of steel framework with blockwork and pre-fabricated metal sheeting.
- 2.2 The industrial buildings extend to approximately 850 sqm in area and comprises three main elements. The first element consists of the main building which extends to approximately 21m x 22m and is sub-divided to incorporate a workshop and office. The building is 7.0m in height with pitched roof. The southern elevation of the building comprises a large double height roller door as well as a pedestrian door and windows serving the office. A smaller extension to the main part of the building is stepped back from the southern elevation and incorporates the pitched slope of the main roof. This part of the building extends to approximately 9.5m x 17m and includes a single pedestrian door. The remaining element extends forward from the southern elevation and creates a triangular shaped extension to the western end of the main building tapering to the northern elevation. Internally the building appears to incorporate a single large floor area with the exception of the office, store and w.c.
- 2.3 To the immediate west of the buildings is a yard area which includes a large wood pellet burner and hopper which serve the

commercial premises. A large concrete yard exists to the rear of the existing dwelling and to the southern end of the industrial buildings which appears to be used as a storage and parking / turning area in association with the business, beyond this the current site is adjacent existing agricultural land.

- 2.4 The site is located within the open countryside as designated by the NAP 2016. The character of the area is generally defined by individual rural dwellings and small farm-holdings. The nearest unrelated dwelling is approximately 140m from the site.

### **3.0 RELEVANT HISTORY**

D/2006/0112/RM - Reserved matters for a retirement dwelling.  
Permission Granted 28-Jun-2007.

D/2010/0040/F - Erection of new domestic workshop/garage and utility space. Application included additional extension of site curtilage. Permission Granted 15-Nov-2010.

D/2011/0097/F - Workshop in association with a farm diversification business and light industrial use pertaining to the research, development and testing of overland slurry distributors. Permission Granted 22-Jul-2011.

LA01/2017/1174/F - Proposed extension to existing workshop to include workshop and stores (Rural Development Grant).  
Permission Refused 17-Oct-2018.

### **4.0 THE APPLICATION**

- 4.1 The application is described as a Retrospective Application for Existing Workshop/Store and Office for industrial use pertaining to the research, development and testing of overland slurry distributors, RHI Boiler and Flue. The application also incorporates a large yard area providing storage and additional car parking / turning areas.

## **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 in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). It has not been demonstrated that the proposal would not be likely to have a significant effect on the features of any European site.

## **5.0 PUBLICITY & CONSULTATIONS**

**External:** N/A

**Internal:**

DAERA:

Water Management Unit - Requires additional information regarding proposed catchment tank.

Land / Soil / Air- No objections

Natural Environment Division - Potential impact on designated sites.

SES: Further information required to undertake HRA.

NI Water: No objections.

DFI Roads: No objections.

HED: No objections.

Environmental Health: No objections.

## **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**

Regional development Strategy 2035.  
The Northern Area Plan 2016.  
Strategic Planning Policy Statement (SPPS) 2015.  
A Planning Strategy for Rural Northern Ireland.  
Planning Policy Statement 2: Natural Heritage.  
Planning Policy Statement 3: Access, Movement and Parking.  
Planning Policy Statement 4: Planning and Economic Development.  
Planning Policy Statement 6: Planning, Archaeology and the Built Heritage.  
Planning Policy Statement 21: Sustainable Development in the Countryside.



## **8.0 CONSIDERATIONS & ASSESSMENT**

- 8.1 The proposal relates to the retrospective granting of permission for the existing use and buildings / yard which also requires alterations to the existing access arrangements.
- 8.2 The application is described as relating to the research, development and testing of overland slurry distributors with an RHI Boiler and Flue. Class B1: Business Use (c) relates to use for research and development which can be carried out without detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. As the application proposes research and development which includes designing and constructing prototype slurry spreader components with some testing on site the use does not fall within Class B1. The current description relates more readily to manufacturing. The business use therefore falls under Class B3 – General Industrial as per the Planning Use Classes Order 2015.
- 8.3 The main planning considerations for this application relate to the principle of the scheme in terms of policy provisions under PPS21, PPS4; and the provisions within the SPPS.

### **Principle of Development**

- 8.4 The principle of development must be considered having regard to the Northern Area Plan, the SPPS and PPS policy and guidance documents above. Paragraph 3.8 of the SPPS asserts a presumption in favour of development which accords with an up-to-date development plan unless the proposed development will cause demonstrable harm to interest of acknowledged importance.
- 8.5 Significant planning history exists in relation to the site. Application D/2010/0040/F proposed the erection of new domestic workshop/garage and utility space incorporating a single store shed located to the rear of the existing dwelling extending to approximately 9m x 18m with additional extension of site curtilage. The permission included a condition restricting

the use for domestic purposes based on the description submitted by the applicant.

- 8.6 The applicant subsequently complained that this condition restricted his ability to avail of a grant relating to farm diversification and as a result submitted an additional application in 2011(D/2011/0097/F) described as a workshop in association with farm diversification and light industrial use pertaining to the research, development and testing of overland slurry distributors. This application proposed a single storey shed extending to 18.6m x 12.5m and 5.5m in height positioned to the north-west corner of the site (which incorporated an extension to the original domestic curtilage).
- 8.7 As part of that application the applicant confirmed both verbally and in writing that the exact nature of the business proposal related to the development of specialist slurry spreading systems. The agent also submitted a supporting statement which outlined the proposal and included a farm map which indicated that the registered farm holding extended to just over half a hectare. At that time DARD verbally confirmed that the applicant was a registered farmer (since October 2009) and registered under the business name Agquip. This would appear to relate to DARD Business ID Category 2.
- 8.8 The Supporting Statement on this previous application included a breakdown of the business structure (para 1.17). The business model indicated that the proposal comprised desk top research and design, engaging local manufacturing companies to fabricate parts, assembly of the applicator systems for testing and the packaging of product and delivery to customers.
- 8.9 The location adjacent agricultural land was indicated as necessary to facilitate the testing process with one of the applicants fields utilised for testing to ensure no cross contamination of materials between farms. Para 1.18 of this document went on to state that the application does not involve any on-site manufacturing although in some cases there may be on-site assembly of smaller parts. It was confirmed that no manufacturing would take place on site and the proposed shed was required for a workshop to "undertake research and investigations into design" and "assembly and attachment of the

machinery". The proposal therefore was considered to fall under Class B2 - Light Industrial, relating to research and development or any industrial process on the basis of no detriment to amenity, and in policy terms fell to be considered under Policy CTY11 Farm Diversification. This application was granted on 22nd July 2011 with a condition limiting the use to that as described.

- 8.10 A further application was submitted in 2017(LA01/2017/1174/F) for a proposed extension to existing workshop. No information was provided relating to farm diversification. Site inspection revealed that the buildings on site were not in compliance with the permission granted, being much more extensive and incorporating additional lands. The use was also noted to extend significantly beyond that which would be considered necessary for research and development or testing.
- 8.11 The existing industrial buildings, use and extension to the curtilage were deemed unauthorised, and the original permission was noted to have expired. The application for extension to the unauthorised buildings was subsequently refused on 16.10.2018.
- 8.12 The current application seeks retrospective permission for the existing buildings and use on site which is described as "industrial use pertaining to the research, development and testing of overland slurry distributors, RHI boiler and flue". The current application also relates to retrospective permission of the extension to the original site area although not specifically referenced in the description.
- 8.13 The buildings are of considerable scale extending to approx. 850sqm floor space and are partially located outside the originally approved site. Internally the buildings incorporate significant industrial machinery for welding, cutting and drilling in conjunction with lifting equipment, compressors and forklifts etc. The business employs 6 members of staff as noted on the P1 form and site operations comprise a significant degree of industrial works including modification and assembly /

manufacturing. Although some individual components may be manufactured off-site, the on-site operations go significantly beyond that of the approved permission in terms of scale and use. The current description relates more readily to manufacturing. The business use therefore falls under Class B3 – General Industrial as per the Planning Use Classes Order 2015.

- 8.14 Policy CTY1 of PPS21 outlines the range of types of development which in principle are considered acceptable in the countryside and that will contribute to the aims of sustainable development. This includes non-residential development in the countryside pertaining to industry and business uses in accordance with PPS4 (no information has been submitted supporting the proposal under policy CTY11 – Farm Diversification).
- 8.15 Policy PED2 of PPS4 permits proposals for economic uses in the countryside in accordance with Policies PED3, 4, 5 and 6 and states that all other proposals for economic development in the countryside will only be permitted in exceptional circumstances.
- 8.16 Both policies PED 3 and PED 4 relate to established economic development uses in the countryside. In support of the application the agent has submitted numerous documents in relation to the business AGQUIP Ltd which is registered to the current address, including receipts, patent application documentation and a copy of the registration of the limited company all of which date between 2009 – 2019.
- 8.17 As part of application D/2011/0097/F, DARD verbally confirmed that the applicant was a registered farmer (since October 2009) and registered under the business name AGQUIP therefore there is no dispute that the named business has operated from the current address in some capacity since this time. However the existing buildings and extent of use on site has only been in existence since 2015, is not in compliance with any previous planning permission granted and is not immune from enforcement. An enforcement notice was served on this site on 7<sup>th</sup> October 2020 requiring the reinstatement of the land to its former

use. This enforcement notice has subsequently been appealed to the Planning Appeals Commission and we are awaiting a decision on this appeal. In Planning terms the buildings and use on site are unlawful and for this reason Policies PED 3 and PED 4 relating to established economic development uses do not apply.

- 8.18 Policy PED5 permits major industrial development in the countryside which makes a significant contribution to the regional economy and where it is demonstrated that the proposal needs a countryside location due to its size or site specific requirements. The justification and amplification in paragraph 5.2 of this policy requires that developers will need to demonstrate that there is an overriding reason for such development in the interest of the region as a whole and that a thorough exploration of alternatives, including urban and edge of urban has been made.
- 8.19 The most recent permission granted in relation to the identified site was done so on the basis that it was a small scale research and development business and that it was reasonable due to the nature of the testing procedures which required access to agricultural land. The current application relates to an industrial / manufacturing use which would ordinarily be required to locate within an appropriate industrial location. The proposal currently employs six people and does not make a significant contribution to the regional economy. No information has been submitted demonstrating overriding reasons or that alternatives have been explored. The proposal does not meet the test of PED5.
- 8.20 Policy PED6 allows for a firm proposal to develop a small community enterprise park / centre or a small rural industrial enterprise on land outside a village or smaller rural settlement where it is demonstrated that all the outlined criteria are met. No information has been submitted which would indicate that either of the first two criteria have been met and the proposal is not clearly associated with a settlement as required by criterion (c). The proposal fails Policy PED 6.

8.21 In addition to the policies outlined above, Policy PED 2 of PPS4 allows for other proposals for economic development in the countryside in exceptional circumstances. Policy PED 2 does not define what is considered “exceptional” but the common understanding would be that the proposal is extremely unusual or out of the ordinary. No supporting information has been submitted by the agent identifying the proposal as being exceptional. The proposal would be more readily considered appropriate within an industrial site or within the countryside as a farm diversification proposal if land zoned for industrial use was not considered feasible. The site is located 2.4km outside Ballymoney Town which incorporates an over-supply of land zoned for industry. As provisions exist within current policy for a proposals of this nature (where the requisite policy provisions are met), it could not be considered unusual or “exceptional” and therefore does not meet the additional provision of Policy PED2.

8.22 Proposals for economic development use under PPS4 will also be required to meet all the criteria outlined in Policy PED 9 – General Criteria for Economic Development. These are assessed below.

### **Amenity**

8.23 Criteria (a) “it is compatible with surrounding land uses” and (b) “it does not harm the amenities of nearby residents”. The site is located approximately 140m from the nearest third party dwelling. The application relates to an industrial use within the countryside and would be more appropriately located within a designated industrial site. The proposal includes significant noise emanating from machinery as well as vehicles moving within the site and includes drills, compressors, welding equipment and lifting equipment etc. The proposed RHI boiler and flue appear to serve the proposed business and are located to the rear of the building will additional hopper for inputting fuel. The local Environmental Health Department has been consulted regarding the proposal and raise no objections on amenity grounds subject to a number of conditions relating to noise abatement.

## **Natural and Built Heritage**

- 8.24 Criterion (c) “it does not adversely affect features of the natural or built heritage”. The site is mainly associated with an approved domestic curtilage although the current proposal has increased the site curtilage extensively to the northern and western boundaries. The site is laid out in hardstanding and the boundaries do not include any significant level of vegetation along the relevant boundaries. Land to the rear comprises reclaimed grassland with low biodiversity potential. Where adjacent hedgerows exist, these are to be retained and additional planting defining the relocated boundary is proposed. The proposal is likely to have very limited effect on biodiversity within the immediate context of the site.
- 8.25 DAERA -Natural Environment Division (NED) has been consulted in relation to the potential impact from land spreading of manure. As part of the original permission granted the applicant previously stated that an agreement was in place with DARD regarding the spreading of slurry from multiple sources on one identified plot of land adjacent the site to prevent any potential cross-contamination or biohazard risk. The current application includes a revised site plan (drawing 02B) which indicates the inclusion of an existing underground catchment tank utilised to empty slurry tankers on site from multiple sources. The slurry is stored and spread on the applicants land.
- 8.26 DAERA (NED) advise that the application site is within 7.5km of Garry Bog Area of Special Scientific Interest / Special Area of Conservation , Caldanagh Bog ASSI, Main Valley Bogs SAC, Craigs ASSI and Tully Hill ASSI which are of international and national importance and are protected by the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and The Environment (Northern Ireland) Order 2002.
- 8.27 DAERA (NED) will only accept an additional loading capacity of 10% of the Critical Level for designated sites that are located within 7.5km of the proposal. This includes potential in-combination impacts of other installations that could contribute nitrogen emissions.

- 8.28 DAERA (NED) has raised concerns with this proposal and considers that in the absence of further information (Air Dispersion Modelling), the proposal would be contrary to the Habitats Regulations, Planning Policy Statement 2: Natural Heritage and the Strategic Planning Policy Statement for Northern Ireland. To date this information has not been submitted. The development would have an unacceptable adverse impact on priority habitats and insufficient information has been submitted to establish otherwise.
- 8.29 Shared Environmental Services (SES) has also been consulted and advise that the additional information requested by NIEA and their subsequent comment is necessary for the accurate completion of the Habitat Regulation Assessment.
- 8.30 DAERA -Water Management Unit (WMU) has been consulted and require additional information in relation to the structure and operation of the indicated underground catchment tank to assess the potential impact of the proposal on the surface water environment. This information has not been provided.
- 8.31 NIEA - Regulation Unit has not raised any objections regarding potential ground contamination.
- 8.32 The site is located within the consultation zone of a known archaeological site (enclosure), and the previous application incorporated conditions relating to this matter. DFI Historic Environment Division has been consulted in relation to the current application and advises that as the works are retrospective, any archaeological potential has been significantly reduced and no mitigation can take place. HED advises that the current proposal is satisfactory to the requirements of the SPPS and PPS6 on the basis that the previous conditions were not complied with and are now redundant as the potential impact on built heritage can no longer be assessed.

### **Drainage / Flooding**

- 8.33 Criterion (d) “ it is not located in an area at flood risk and will not cause or exacerbate flooding. The site is not affected by an



identified area of fluvial flooding or pluvial ponding. However, the footprint of the unauthorised building extends to approximately 1500 sqm with additional hardstanding which forms the yard and storage area. Policy FLD3 of Revised Planning Policy Statement 15 requires the submission of a Drainage Assessment for all proposals which exceed any of the identified thresholds. This includes a change of use involving new buildings and / or hardstanding exceeding 1000sqm. A Drainage Assessment has not been submitted as part of the application to facilitate consultation with Rivers Agency and as a result it has not been demonstrated that the proposal will not result in an impact from flooding. The proposal is contrary to the provisions of the SPPS and Policy FLD3 of PPS15.

- 8.34 Criterion (e) “it does not create a noise nuisance. See criteria (b).

### **Pollution**

- 8.35 Criterion (f) it is capable of dealing satisfactorily with any emission or effluent. As part of the use on site, fuels, oils and grease form part of the operations as well as the spreading of slurry in conjunction with the testing products manufactured. The business also includes toilet facilities and proposes the discharge of foul sewage from the premises to a septic tank and the discharge of surface water to soakaways. Water Management Unit requires additional information to ensure no impact on the water environment.

### **Access**

- 8.36 Criterion (g), (h) and (i). The proposal utilises the existing access serving No 79b which is the applicants’ residential address. Satisfactory access arrangements are achievable and a large turning area and parking facilities are included within the yard. DFI Roads has been consulted and raise no objections to the proposal.
- 8.37 Criteria (j, k and m). The site layout comprises utilisation of a significant element of the original residential curtilage to facilitate the buildings and yard as well as additional lands. The

buildings are located to the north-western corner of the current site with access shared between the two. Although there is some degree of separation between the residential and commercial premises there is a significant overlap which potentially creates some conflict between the two, particularly with the movement of heavy machinery etc.

### **Design**

- 8.38 The building design comprises an extensive footprint with the narrowest elevation towards the public road. Materials comprise a combination of blockwork and fabricated metal sheeting which is common in the construction of agricultural buildings. However, the scale and design of the building incorporating the extensive flue to the rear is more redolent of an industrial commercial use. This is exacerbated by the extensive machinery and parts on site.

### **Integration**

- 8.39 The site is set well back from the public road and the landscape is fairly flat. However, the site incorporates large, industrial type buildings and an extensive yard utilised for the storage of machinery and parts. The previous permission which comprised a modest building incorporated an earth bund along the original eastern boundary adjacent the approved building to assist integration. This has been removed to facilitate the extent of development now on site and critical boundaries are poorly defined. Extensive roadside vegetation exists to the north of the access point and which assists to screen views of the site although views of the yard and storage area are much more open to the south. Additional landscaping is proposed along the western boundary to the adjoining agricultural land which incorporates native species planting. The proposal fails to satisfactorily integrate due to the scale of the buildings and extensive yard / storage area, combined with the sustained nature of views where they do exist. Both design and integration also fall to be considered under Policy CTY13 of PPS21 and is considered unacceptable in relation to parts (b), (c) and (e).
- 8.40 Criterion (l). The site is self-contained and significantly deters any potential crime. In terms of safety some concerns do exist

in relation to conflict between the existing residential premises and what is essentially an industrial / commercial site.

8.41 Representations – None.

## **9.0 CONCLUSION**

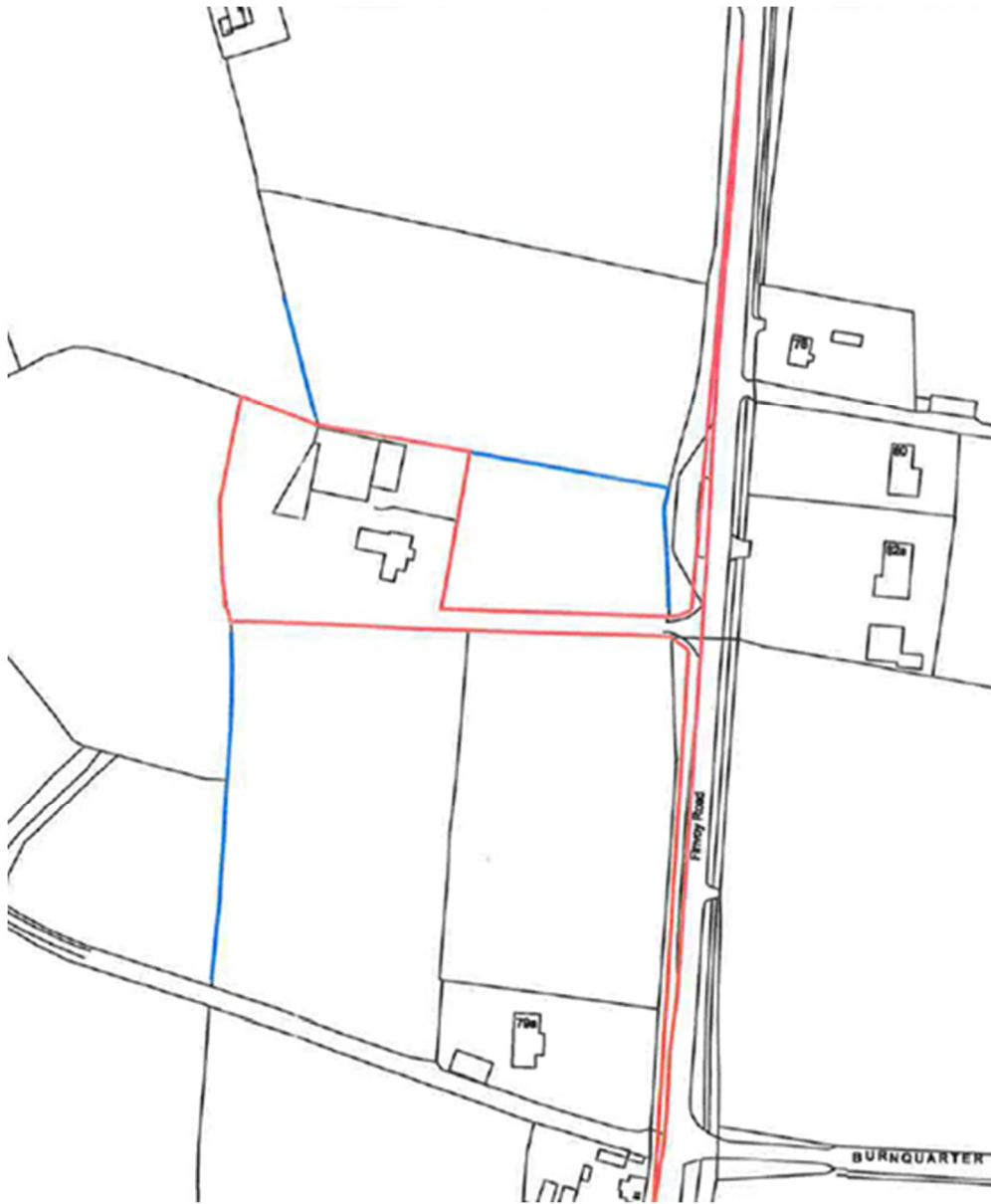
9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material considerations.

9.2 The existing buildings and use on site are unauthorised, the original permission has not been implemented, the previous archaeological conditions have not been appropriately discharged and the permission expired. The current application relates to an inappropriate use and scale of development in the countryside which does not satisfactorily integrate. A number of outstanding planning and environmental issues remain to be resolved and the HRA cannot be satisfactorily completed as a result. It has not been demonstrated that there is no unacceptable impact on groundwater or natural heritage issue including designated sites or that surface water flooding will not result. The scheme is contrary to current planning policy as highlighted above. Refusal is recommended

## **10.0 Refusal Reasons**

1. The proposal is contrary to 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to paragraphs 4.12 and 6.88 of the Strategic Planning Policy Statement for Northern Ireland and Policies PED2, PED3, PED4, PED6 and PED9 of PPS4: Planning and Economic Development in that it has not been demonstrated that the proposal is an appropriate use in the countryside or that it would not adversely impact on the natural environment.

3. The proposal is contrary to the paragraph 6.192 Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies NH1, NH3 and NH5 of Planning Policy Statement 2 in that insufficient environmental information has been provided to assess the impact on priority habitats and designated sites of International and National importance.
4. The proposal is contrary to Paragraph 6.77 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the design of the building is inappropriate for the site and locality, the proposed site lacks long established natural boundaries/ is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and therefore would not visually integrate into the surrounding landscape.
5. The development is contrary to paragraph 6.113 of the SPPS and FLD 3, of revised PPS 15, Planning and Flood Risk, in that it has not been demonstrated that the proposal will not result in a potential flood risk from surface water.



# Erratum

## LA01/2018/1402/F

### **1.0 Update**

- 1.1 Paragraph 8.8 states “An enforcement notice was served on this site on 7<sup>th</sup> October 2020 requiring the reinstatement of the land to its former use.”
- 1.2 Paragraph 8.8 should state “An enforcement notice was served on this site on 31<sup>st</sup> April 2020 requiring the reinstatement of the land to its former use.”

### **2.0 Recommendation**

- 2.1 That the Committee note the contents of this Erratum and agree with the recommendation to defer the application in accordance with Paragraph 3.1 of the Addendum to the Planning Committee Report.

# Addendum

## LA01/2018/1402/F

### 1.0 Update

- 1.1 On 15 October 2021 e-mail correspondence was received from Lee Kennedy Planning referencing the fact that a pending Enforcement Appeal (PAC Ref: 2020/E0012 & Council Ref: EN/2020/0106) remains in progress in relation to the subject site. The correspondence states that the forthcoming PAC decision is a major material consideration in the determination of this planning application, the Council cannot proceed to determine the current planning application on this basis and to do so would constitute maladministration.
- 1.2 In response, the Planning Department advised that there is no provision in planning legislation which restricts the ability of a Council to progress or determine a planning application where the same development is subject to an enforcement appeal where a decision is pending. It was also advised that while a relevant decision of the PAC is a material consideration in determining a planning application under Section 45 of the Planning Act (Northern Ireland) 2011, at this time no such decision has been made.
- 1.3 In relation to the refusal reasons outlined, reason 5 stated:

“The development is contrary to paragraph 6.113 of the SPPS and FLD 3, of revised PPS 15, Planning and Flood Risk, in that it has not been demonstrated that the proposal will not result in a potential flood risk from surface water”.
- 1.4 On 15 October 2021 a Drainage Assessment dated 06 September 2021 was submitted by e-mail to the Council. Further to submission, consultation was carried out with DFI Rivers on 22 October 2021. Their consultation response is awaited.

## **2.0 Assessment**

- 2.1 As set out above, there is no provision in planning legislation which restricts the ability of a Council to progress or determine a planning application where the same development is subject to an enforcement appeal. A relevant decision by the PAC is a material consideration in determining a planning application. However, at this time no such decision has been made. In a recent PAC decision (Appeal ref. 2020/E0021, dated April 2021) an award of costs was made against the Council in respect of the unnecessary costs incurred by the appellant for the preparation and attendance at a PAC hearing. In this case a concurrent planning application was under consideration by the Council and the PAC ruled that it was within the gift of the Council to decide on the application without all parties having to appear at the hearing. While it is acknowledged in that case the position was distinguishable as the subject proposal was being progressed as being acceptable, the principle of timely decision making is common to both. In light of this, it is incumbent on the Council to decide on planning applications in a timely manner and move them forward to a conclusion.
- 2.2 Policy FLD3 of Revised Planning Policy Statement 15 requires the submission of a Drainage Assessment for all proposals which exceed any of the identified thresholds. This includes a change of use involving new buildings and / or hardstanding exceeding 1000sqm in area. Previously, a Drainage Assessment had not been submitted as part of the application to facilitate consultation with DFI Rivers. Failure to provide this information formed refusal reason 5 when the application was placed on the contentious list on 21 June 2021. This information was again requested by e-mail on 10 September 2021. Receipt of the Drainage Assessment facilitated consultation with DFI Rivers on 22 October 2021 and a formal response remains outstanding.

## **3.0 Recommendation**

- 3.1 That the Committee note the contents of this Addendum and agree with a new recommendation to defer the application to enable the Planning Department to obtain a consultation response from DFI Rivers and in turn provide advice to the Planning Committee. This



recommendation supersedes that set out in Paragraph 1.1 of the Planning Committee Report.

# **Addendum 2**

## **LA01/2018/1402/F**

### **1.0 Update**

- 1.1 Planning Application LA01/2018/1402/F was presented to Planning Committee on 27/10/2021 with a recommendation to refuse for five (5) reasons for refusal. It was considered that the proposed development was contrary to the SPPS, PPS 21, PPS 4, PPS 2 and PPS 15.
- 1.2 The existing buildings and use on site were considered unauthorised, the original permission not implemented, the relevant archaeological conditions not appropriately discharged and the permission expired. The application was considered to relate to an inappropriate use and scale of development in the countryside which does not satisfactorily integrate. A number of outstanding planning and environmental issues remained to be resolved and the HRA could not be satisfactorily completed as a result. It had not been demonstrated that no unacceptable impact on groundwater or natural heritage issue including designated sites or that surface water flooding would not result. The scheme was contrary to planning policy and refusal recommended.
- 1.3 At the Planning Committee in October 2021 it was noted that a Drainage Assessment had recently been submitted and consultation with DFI Rivers was ongoing. Taking account of the need to consider the farm diversification case and the outstanding DFI Rivers consultation, Planning Committee recommended deferral of the application to allow consideration of these outstanding matters.
- 1.4 A revised Drainage Assessment (DA) and Schedule 6 consent was received 04/5/2022 and DFI Rivers Reconsulted. The response from DFI Rivers was received 9/6/2022 and confirms that the DA demonstrates that the design and construction of a suitable drainage network is feasible and that the 1 in 100-year event could be contained via SuDS methods, oversized pipes and a hydro brake, when discharging at existing green field runoff rate. The DA

states that “It is recommended that prior to any development, a final detailed drainage design is undertaken at the site to ensure these proposals are correctly carried out on-site and are in line with the relevant NI Water standards”. DFI Rivers is content with drainage measure outlined subject to a condition (Condition no. 8 in Part 4 of this Addendum).

On the basis of the additional information and subject to the condition proposed, DFI Rivers has no further objections.

- 1.5 Subsequent to the decision to defer the proposed application a Certificate of Lawfulness (Existing) was received on 2/12/2021 (LA01/2021/1485/LDE). This sought to regularise existing development and use on the subject site on the basis that these have been operational / erected for a period more than 5 years and are immune from enforcement. The use and development is described as:

“2 No. Existing industrial Buildings & Industrial/Storage Yard.

(Buildings 1 & 2 have been constructed and used for the Research & Development, Manufacturing & Assembly of overland specialist innovative slurry spreading equipment for the agricultural industry.

The external industrial concrete hard standing/yard area has been used for the storage of industrial machinery and equipment in association with Agquip Ltd).“

- 1.6 The Certificate of Lawfulness was certified on 17/05/2022 and the extent of use and operations described, deemed lawful. On this basis the use as described as well as Buildings 1 and 2 and the hardstanding identified in Annex A are lawful and the current proposal relates to the remainder of development including Building 3, RHI Boiler and flue and extension to the yard area and car parking and underground catchment tank.

## **2.0 Assessment**

- 2.1 As the majority of works on site have been deemed lawful, the current proposal relates to an extension to the existing business which is considered Class B3 of the Planning Use Classes Order 2015. The proposal falls to be considered under Policies PED 2 and PED3 of PPS4 which states that the expansion of an

established economic development use in the countryside will be permitted where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise.

- 2.2 Based on the lawful works, the extension as described above is not considered a major expansion and the additional tests outlined in PED3 are not engaged. Building 3 comprises an additional mono-pitch structure extending from the eastern gable / eaves of Building 2 (5m in height) reducing in height to approximately 3.3m and extending to 17m x 9.5m. The RHI Boiler and flue comprises a pre-fabricated store, hopper, and burner to the immediate rear (west) of the existing buildings. The store building is small in scale extending to approximately 7m x 2.5m and sits below the eaves of the main building. The flue extends to approximately 12.3m in height.
- 2.11 The site is located approximately 115m from the public road (98m from adjacent layby) with a 1.5m hedgerow defining the extent of the roadside boundary. Critical views of the site extend approximately 140m south of the access point and 230m north of the access point. The site is set slightly below the level of the public road within an otherwise flat landscape with limited screening provided by vegetation. Assessing the proposal in light of the lawful works, additional visual impact is limited from the works proposed and remains in keeping with existing form, design and materials of structures on site. The additional structures and plant associated with the RHI Boiler are screened to the rear of the existing building with only the flue having any significant visual impact. Although extending to just over 12m in height it remains of a scale which does not appear incongruous when read with the lawful structures on site and does not significantly impact on rural character. Additional planting is proposed to the rear (western) boundary of the subject site which will appropriately define the site but will provide limited backdrop.
- 2.12 In terms of archaeology, HED refers to negative archaeological conditions proposed on planning application LA01/2017/1174/F due to the proximity to an enclosure (ANT017:021). However, this application was refused, and no previous permission incorporated archaeological conditions which were required to be discharged. HED (HMU) points out that as the works have already been carried

out any archaeological potential has been significantly reduced and no mitigation can take place as part of the current proposal. HED: HM advises that on the basis of the information provided it is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

- 2.13 The proposal is considered generally acceptable within the established site context and use, does not propose a major expansion of the site area, sufficiently integrates, and will not unacceptably impact rural character. On this basis it is considered acceptable in terms of both the SPPS and PPS 4.
- 2.14 In relation to natural heritage issues. Water Management had pointed out that additional information was necessary in relation to the structure and operation of the underground catchment tank to assess the potential impact on surface water. Natural Environment Division advised that in the absence of Air Dispersion Modelling the proposal would be contrary to the Habitats Regulations, PPS 2: Natural Heritage and the SPPS.
- 2.15 Additional Site Drainage Information was received on 4th November 2021. This states that the existing underground slurry tank within the centre of the site is required from time to time when the applicant is working on slurry tanks which are ordinarily emptied before they are brought to site. However, on occasion a residual amount of slurry is still present within the tanks which is disposed of within the underground slurry tank. Water Management Unit notes that this is a partially retrospective development, and the applicant must ensure that the site and tanks comply with the Nutrient Action Programme (NAP) Regulations (Northern Ireland) 2019. Raised kerbing around the perimeter of the underground slurry tank is also proposed to prevent any further surface water ingress from the surrounding area entering the tank. Although the Drainage Information indicates that land-spreading can be carried out, the agent has subsequently confirmed in the submitted Nutrient Management Plan received 13/3/2023 that the current application is for industrial development and no land spreading is now proposed as part of the proposal. The agent states that initially, when new industrial machinery was under prototype design the applicant tested some machinery in the adjacent farm fields, but no testing has occurred in 3 – 4 years in relation to this industrial development.

2.16 Water Management Unit is content with the proposal subject to the applicant noting the advice contained within the explanatory note, and referring and adhering to DAERA Standing Advice, and obtaining any relevant statutory permissions.

2.17 The application site is in close proximity (within 7.5km/hydrologically linked) of a number of nationally, European and internationally designated sites:

- Caldanagh Bog SAC and ASSI, Garry Bog SAC and ASSI, Bann Estuary SAC, Craigs ASSI Tully Hill ASSI and Bann Estuary ASSI.

The applicant's farm holding and spreading of slurry is noted in the Nutrient Management Plan (NMP) as separate to this planning application. The NMP confirms the source of slurry/digestate is the applicant's herd of 38 dairy cows with the total volume of 312 tonnes spreading on land equating to 34 Ha. NED note total volumes do not exceed 988 tonnes and are therefore content. For each of these sites the Process Contribution has been calculated as <1% of the Critical Level. This is in line with DAERA's operational protocol.

2.18 This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Causeway Coast and Glens Borough Council which is the competent authority responsible for authorising the project.

2.19 SES advised in a consultation response dated 06/11/2023 that having considered the nature, scale, timing, duration and location of the project it is eliminated from further assessment because it could not have any conceivable effect on a European site. This is on the basis that the testing of machinery using imported digestate has not occurred in 3-4 years. The only slurry generated on site now is from the existing farm and no conceivable effect on any European site has been identified.

2.20 SES advises that it is accepted by government officials that organic manures will have to move between farms to ensure compliance with the Nutrients Action Plan therefore no additional restrictions are proposed in relation to land spreading associated with the applicant's farm-holding. However, SES advise that the

following condition should be imposed on any planning approval to ensure the proposal proceeds as assessed:

- There shall be no import of slurry/digestate pertaining to the research, development and testing of spreading equipment at any time.

Reason: To ensure the project is not likely to have a significant effect on any European site.

2.21 On the basis of the information submitted and consultation responses from NIEA and SES the proposal will not adversely impact on the natural environment.

## **CONCLUSION**

2.22 Additional information has been submitted including a Drainage Assessment, a separate Certificate of Lawfulness Application, Schedule 6 Consent, and an updated Nutrient Management Plan. Additional consultation has been carried out with DFI Rivers, NIEA and Shared Environmental Service. The issues outlined in Planning Committee Report dated 27/10/21 have been resolved and the proposal is now considered acceptable.

## **3.0 Recommendation**

3.1 That the Committee note the contents of this Addendum and agree with the recommendation to approve the application with the following conditions.

## **4.0 Proposed Conditions**

1	This planning permission has effect from the date which the development hereby approved was carried out. Reason: As required by Section 55 of the Planning Act (Northern Ireland) 2011.
2	The premises shall be used only for the use as described and for no other purpose in the Planning (Use Classes) Order (NI) 2015.

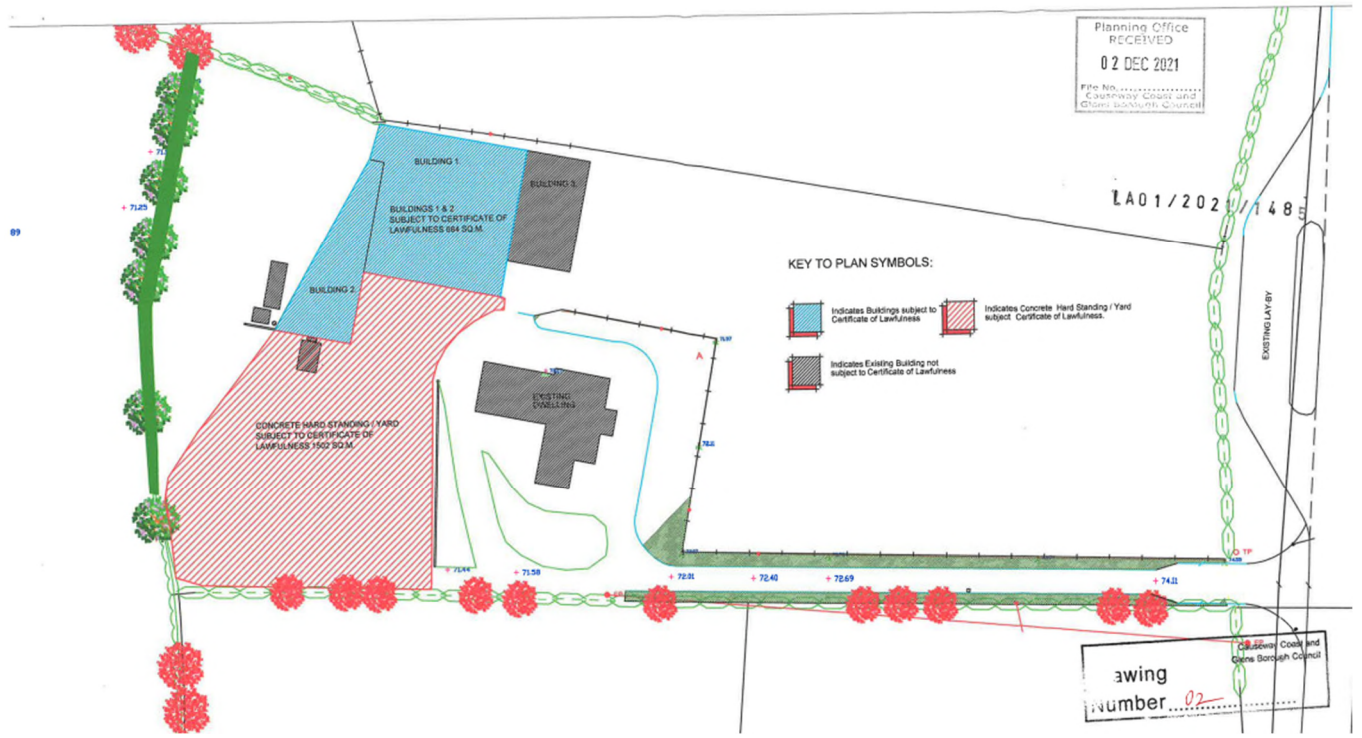
	Reason: To prohibit a change to an unacceptable use and prevent an unacceptable impact on the residential amenity and the rural character.
3	There shall be no import or land-spreading of slurry/digestate pertaining to the development hereby approved at any time.  Reason: To ensure the project is not likely to have a significant effect on any European site.
4	The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No 02C date received 10-Nov-2023, within (6) months of the date of approval. 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.  Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.
5	No retailing or other operation in or from any building hereby permitted shall commence until hard surfaced areas have been constructed and permanently marked in accordance with the approved Drawing No 02C date received 10-Nov-2023 to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.  Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.
6	All contaminated run-off (from the facility and, concrete apron) must be directed to an appropriate collection tank, with no overflow or outlet to any waterway or soakaway, as detailed within the Additional Site Drainage Information (dated, 13/01/2021).  Reason: To prevent adverse impacts to the designated sites.
7	Within 6 months of the date of the permission hereby approved, a final drainage assessment, containing a detailed drainage



	<p>network design and compliant with Annex D of PPS 15 shall be submitted to the Planning Authority for its consideration and approval.</p> <p>Reason: To safeguard against flood risk to the development and elsewhere.</p>
8	<p>Within 6 months of the date of the permission hereby approved, the foul water drainage works on-site and off-site shall be submitted to and approved by the relevant authority and constructed by the developer in line with approved design.</p> <p>Reason: To prevent pollution and to ensure public safety.</p>
9	<p>All vehicles operating within the development site shall be fitted with white noise (full spectrum) reversing alarms or variable loudness reversing alarms whose noise level does not exceed the background noise level by greater than 5 dB(A) at the nearest noise sensitive dwelling as agreed with Planning Department and in consultation with Environmental Health.</p> <p>Reason: In the interest of residential amenity.</p>
10	<p>All roller doors shall remain in the closed position except when used for access or egress.</p> <p>Reason: In the interest of residential amenity.</p>
11	<p>The premises shall not remain open for business prior to 08:00 hrs or after 18:00hrs (Monday-Friday).</p> <p>Reason: In the interest of residential amenity.</p>
12	<p>All planting comprised in the approved details of Drawing No 02C date received 10-Nov-2023 shall be carried out during the first planting season following the commencement of the development and any shrubs which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with other similar size and species.</p> <p>Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.</p>

# ANNEX A

## Site layout for LA01/2021/1485/LDE.



# ANNEX B

## Proposed site layout

