

Title of Report:	Planning Committee Report – LA01/2021/1545/MDA
Committee Report Submitted To:	Planning Committee
Date of Meeting:	27th September 2023
For Decision or For Information	For Decision – Modification / Discharge of Planning Agreement

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	Senior Planning Officer

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:

EXECUTIVE SUMMARY

- Consent is sought for the removal of the Article 40 Planning Agreement attached to application E/1999/0168/O and E/2004/0476/RM for 'Site for 6 no self catering holiday cottages'.
- An Article 40 Agreement (The Planning (Northern Ireland) Order 1991) made on 11th October 2001 stated the self contained accommodation units shall be used as holiday letting accommodation only, the proposed application seeks to remove this agreement.
- The site is not located within any settlement limit as defined in Northern Area Plan 2016.
- The site lies within the Antrim Coast and Glens AONB.
- The principle of the resulting development is considered unacceptable having regard to Policy CTY 1 in that it does not fall within the acceptable developments as specified in Policy CTY 1.
- The proposal is also considered unacceptable having regard to paragraph 4.9 of the SPPS.
- The application is not currently available to view on the public register. A copy of the application form is included in Appendix A of this report.
- There are no objections to the proposal.
- The application is recommended for refusal.

Drawings and additional information are available to view on the Planning Portal-
<https://planningregister.planningssystemni.gov.uk/simple-search>

RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for recommendation set out in Section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE** the discharge of a planning agreement for the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is located within a small development of holiday cottages known as Moneyvart Cottages. The site comprises the existing cottage which is a single storey building with roofspace accommodation. The cottage is attached to the cottage to its rear, which sits at right angles to No. 1. There is an area of private amenity space which serves No. 1 located to its front and enclosed by a timber board fence approx. 1m high.
- 2.2 The topography of the site is sloping with the level rising in a northerly direction, the cottage sits in an elevated position relative to its amenity space which slopes down towards the communal parking area. Access and parking are existing, in a communal, unassigned arrangement.
- 2.3 The surrounding area is rural, characterised by Moneyvart House which sits to the north west of the Cottages, and the coastal views from Layde Road. The Cottages themselves are characterised by the arrangement of the individual cottages within, as two groups of cottages all linked or attached at right angles, forming a clachan style arrangement. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation.

- 2.4 The site lies within the countryside, outside of any defined settlement development limits. The site is located within the Antrim Coast and Glens Area of Outstanding natural Beauty and also lies within the Faughil LLPA, Designation CLL 03. Designation CLL 03 states that only sensitively sited, modest scale development essential for the efficient operation of agriculture will be acceptable.

3 RELEVANT HISTORY

E/1999/0168 – Site adjacent to Moneyvart Youth Hostel Layde Road Cushendall.

Site for 6 No self catering holiday cottages.

Permission Granted – 18.10.2001

E/2004/0476/RM – Land at Moneyvart, 42 Layde Road Cushendall (previously approved E/1999/0168).

6 No. Self Catering Holiday Cottages

Permission Granted – 25.05.2005

E/2007/0175/MDA – Land at Moneyvart, 42 Layde Road, Cushendall.

Modification of planning agreement (previous app E/1999/0168).

Permission Refused – 06.09.2007

LA01/2021/0483/LDE – 3 Moneyvart Cottages, Moneyvart, Cushendall.

This property is, and always has been, used as a primary residential property and has never been used as a self catering holiday cottage. Adjacent cottages are all in full time occupation as primary residences or owner occupied holiday homes.

Permission Granted – 17.06.2021

4 THE APPLICATION

- 4.1 The proposal is for the removal of the Article 40 Planning Agreement restricting the use of the property to holiday letting accommodation. Original application reference E/1999/0168/O dated 18/10/2001 and E/2004/0476/RM dated 25/05/2005.

5 PUBLICITY & CONSULTATIONS

5.1 External

No representations have been received in relation to this application.

The application was advertised in the local press in accordance with the requirements of Regulation 4 of The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015.

5.2 Internal

None

6 MATERIAL CONSIDERATIONS

6.1 Section 77 (7) of the Planning Act (Northern Ireland) 2011 states that where an application is made for a planning agreement to be discharged or modified, the Authority may determine if the agreement no longer serves a useful purpose that it can be discharged.

6.2 The development plan is:

- 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 both 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

Regional Development Strategy (RDS) 2035

Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 7: Quality Residential Environments

Planning Policy Statement 21: Sustainable Development in the Countryside

Development Management Practice Note 21: Section 76

Planning Agreements

8 CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to: legislative context, principle of development; and layout and design.

Legislative Context

8.2 Planning application ref: E/1999/0168 & subsequent reserved matters E/2004/0476/RM granted permission for 6 no. self-catering holiday cottages. The planning permission was subject to a Planning Agreement under Article 40 of The Planning (Northern Ireland) Order 1991, which was made on 11th October 2001. This stated that the self contained accommodation units shall be used as holiday letting accommodation only.

8.3 An Article 40 Planning Agreement, made under The Planning (Northern Ireland) Order 1991, is a legally binding document which the owner/occupier of the land must comply with as part of the planning permission.

8.4 The existence of the Agreement formed a material consideration in the determination of the planning application by the former Department of the Environment. As the principle of this development was only acceptable on the basis that it would

provide holiday letting accommodation only, and not permanent residential accommodation, without the Planning Agreement, the application would have been refused.

Principle of Development

- 8.5 This application seeks to discharge this planning agreement, thereby removing the stipulation that the self-contained accommodation be used for holiday letting accommodation only. This would allow the units to be used as permanent residential dwellings, capable of fulltime occupation.
- 8.6 Section 77 (7) of The Planning Act (Northern Ireland) 2011 states that if the planning agreement no longer serves a useful purpose it will be discharged. By 'useful purpose' this refers to it no longer being required in terms of current planning policy or other material considerations. Therefore, it is necessary to consider and assess if the current building, covered by the Planning Agreement, would be considered acceptable under current planning policies.
- 8.7 Paragraph 6.73 of the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 21 – Sustainable Development in the Countryside, Policy CTY 1 states there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations.
- 8.8 The subject development which would result in the creation of a single rural dwelling, fails to fall within the range of development considered acceptable as outlined in Policy CTY 1 of PPS 21.
- 8.9 The application form submitted with this application indicated that the reasons for applying for the removal of the Article 40 was that this unduly limits the applicants longterm use of the property and subsequent valuations. The applicant states that she has invested heavily in the area and herself and her partner have family ties locally. The applicant would like to consider in the longer term retiring to the home and the Article 40 would prevent this. The applicant states that it is an excellent development and the majority of the residents are from the area.

The applicant goes on to state that neighbours have already removed the Article 40 which sets a precedent on the site and she is aware that the Article 40 is unenforceable. The majority of the neighbours live full time at the same development and the applicant would want to be afforded the same opportunity in the future.

8.10 The Planning Department is aware that enforcement of the Planning Agreement may be difficult, notwithstanding this, this does not mean that the Agreement would be unenforceable. The Agreement still serves a useful purpose in restricting the use of the accommodation to holiday letting accommodation only. The Planning Approval under E/1999/0168/O clearly describes the proposal as Self Catering Holiday Cottages and an informative (No. 17) was attached to this permission advising that the application is subject to a Planning Agreement under Article 40 of the Planning (Northern Ireland) Order 1991, restricting the use of the proposed cottages to holiday letting accommodation only.

8.11 The planning history on the site shows one previous application, E/2007/0175/MDA for the removal of the Planning Agreement. This application was refused. The Planning Agreement remains in place at this time.

8.12 The planning history on the wider site shows that a Certificate of Lawful Use was granted under planning application LA01/2021/0483/LDE for No. 3 Moneyvart Cottages for its use as a primary residential property. As the use was determined to have been established for more than 5 years the LDE established the lawfulness of this use in respect of No 3 only. The Planning Department have no record of any other applications or CLUDs to establish permanent residence at the development.

8.13 The principle of development on this site is therefore not acceptable and contrary to Policy CTY 1 of PPS 21.

Layout and Design

8.14 The proposed development comprises one cottage, within an existing complex of 6no. cottages in total. No.1 Moneyvart Cottages is attached to the cottage to its rear, which is orientated at right angles to No. 1. The Cottages themselves are characterised by the arrangement of the individual cottages within, as two groups of cottages all linked or attached at right

angles, forming a clachan style arrangement readily identifiable as a holiday complex. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation.

8.15 The proposal would fail to provide adequate private amenity space to the appropriate standard required for a residential dwelling in accordance with the guidance contained in Creating Places. Amenity space is only available to the front of the cottage, enclosed by a timber board fence approx. 1m high. This is considered unacceptable for this rural location and would fail to provide any private, quality amenity space for the proposal. As such the proposal is contrary to paragraph 4.9 of the SPPS.

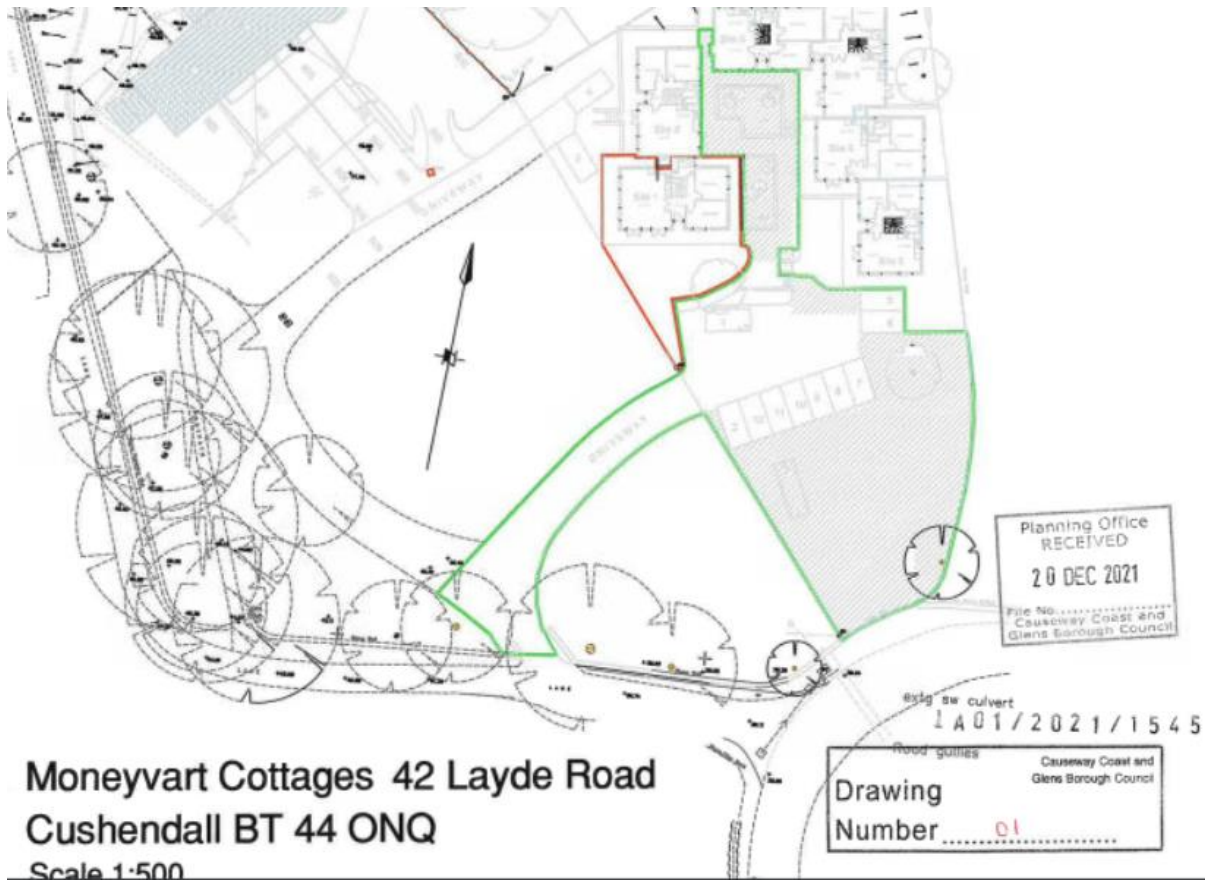
9.0 CONCLUSION

9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material considerations including the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 21 – Sustainable Development in the Countryside. The proposal does not fall within one of the acceptable types of development permitted under Policy CTY1. Refusal to modify or discharge the Planning Agreement is Recommended.

10.0 REFUSAL REASONS

1. The proposal is contrary to paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 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 paragraph 4.9 of Strategic Planning Policy Statement for Northern Ireland in that an inadequate level of private amenity space has been provided.

Site Location



Appendix 1 – Application Form

Appendix 1 – Application Form

Application to Modify or Discharge a Planning Agreement

This form is to be used only for modification or discharge of a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) 2011.

Please read the accompanying notes to help you complete this form.

Please complete in BLOCK LETTERS.

LA01/2021/1045

Please note that when you submit a planning application the information, including plans, maps and drawings, will appear on the Planning Register which is publicly available and, along with other associated documentation (with the exception of personal telephone numbers, email addresses or sensitive personal data), will also be published on the internet on the Public Access site (www.planningni.gov.uk/public-access-info). The Department for Infrastructure and the 11 Councils will process your information in line with the General Data Protection Regulations (GDPR) requirements. A copy of the full Privacy Statement is available at www.infrastructure-ni.gov.uk/dfi-privacy. To request a hard copy, please contact the relevant Data Protection Officer as listed in the statement.

1 a. Applicant's name and address.

1 b. Agent's name and address (if any)

Name:	JENNIFER MORGAN	Name:	
Address:	1 MONEYVART COTTAGE	Address:	
Town:	CUSHENDALL	Town:	
Postcode:	BT44 0LZ	Postcode:	
Tel:	[REDACTED]	Tel:	
		Ref. No.:	

Type of Application

please tick

2 a. Are you applying to: **Modify** a planning agreement

Discharge a planning agreement

2 b. Nature of the Applicant's interest in the land

I AM THE PROPERTY OWNER OF THE HOUSE CONCERNED.

3. Council Employee / Elected Member Interest

Are you / the applicant / applicant's spouse or partner, a member of staff within the council or an elected member of the council?

Yes No

Or are you / the applicant / the applicant's spouse or partner, a relative of a member of staff in the council or an elected member of the council or their spouse or partner?

Yes No

If you have answered yes, please provide details (name, relationship and role):

Details of Agreement to be modified or discharged

4 a. Address or location of the land to which the Agreement relates:

1 MONEYVART COTTAGE, LAYDE ROAD, CUSHENDALL, BT44 0LZ

4 b. Date on which Agreement was entered into:

18th OCTOBER 2021

4 c. Planning application reference:

E/1999/0168/O and E/2004/0476/RM

4 d. Description of Agreement:

Original Application Reference E/1999/0168/O dated 18/10/2001 & E/2004/0476/RM dated 25/05/2005
Planning Agreement Restricting Use of Property to Holiday Letting Accommodation.

5 a. Please state the clauses you wish to be modified (application for modification only)

I AM APPLYING FOR THE REMOVAL OF THE ARTICLE 40.

5 b. Reasons for applying for modifications / discharge of the Agreement:

I WOULD APPRECIATE THE REMOVAL OF THE ARTICLE 40 AS THIS UNDULY LIMITS MY LONGTERM USE OF THE PROPERTY AND SUBSEQUENT VALUATIONS.
I HAVE INVESTED HEAVILY IN AREA AND MYSELF AND MY PARTNER HAVE FAMILY TIES LOCALLY. I WOULD LIKE TO CONSIDER IN LONGER TERM RETIRING TO THE HOME AND UNDER THE ARTICLE 40 THIS WOULDN'T BE PERMITTED.
IT IS AN EXCELLENT DEVELOPMENT WITH THE MAJORITY OF THE RESIDENTS FROM THE AREA. I AM ALSO AWARE THAT MY NEIGHBOURS HAVE ALREADY REMOVED THE ARTICLE 40 AND IN FAIRNESS THIS HAS ALREADY SET A PRESEDENT ON THE SITE. I AM ALSO AWARE THAT THE ARTICLE IS UNENFORCEABLE. THE MAJORITY OF MY NEIGHBOURS LIVE FULL TIME AT THE SAME DEVELOPMENT AND I WANT TO BE AFFORDED THE SAME OPPORTUNITY IN THE FUTURE.

6. Requirements

- 4 copies of this form, all duly signed and dated. Photocopies of the original are acceptable.
- 4 copies of a location plan to 1:2500 or 1:1250 scale, clearly identifying the land to which the agreement relates
- 4 copies of such other plans / drawings / submissions necessary to describe or illustrate the reasons for the request to modify or discharge the Agreement.
- 4 copies of the attached Certificate of Compliance fully completed.

7. Declaration

I / We apply to modify / discharge a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) Order 2011.

Signed  Date 7th Aug 21

On behalf of (if applicable) _____

Please send your completed application to the appropriate local Planning Office or, as the case may be, the Department for Infrastructure.

Certificate of Compliance

with the notification requirements set out in Regulation 3 of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015

Certificate A

I certify that on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable against no person other than the applicant.

Signature of applicant or agent _____

Date _____

3rd AUG 21

Certificate B

I certify that the applicant has given notice to each person against whom, on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable as listed below (continue on a separate page if necessary).

Person on whom notice was served	Address at which notice was served	Date on which notice was served

Signature of applicant or agent _____

Date _____

Certificate C

I certify that:

- the applicant cannot issue a Certificate A or B in respect of the accompanying application;
- ** the applicant has given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable (continue on a separate page if necessary);

Person on whom notice was served	Address at which notice was served	Date on which notice was served

- The applicant has taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. The steps taken were as follows:

(insert description of steps taken)

(name of newspaper)

(date of publication)

on

**** Delete as appropriate**

Signature of applicant or agent

Date

3rd AUG 21

Addendum

LA01/2021/1545/MDA

1.0 Update

- 1.1 Correspondence was received via email on the 9th May 2023 from the applicant. This included a letter from the applicant and a series of correspondence from the former Department of the Environment.
- 1.2 The letter outlines that the correspondence from the former Department of the Environment confirmed that the Article 40 Planning Agreement was not registered in the Statutory Charge Register. The letter dated 25th February 2014 advised that;
 - The Article 40 Planning Agreement was not registered in the Statutory Charge Register, therefore any new owner may be able to argue that he/she was not aware of the existence of any such agreement and should therefore be bound by same.
- 1.3 The applicant confirms that, as stated at the Planning Committee, they have requested the removal of the Article 40 as they want to live permanently in the property in the next few years. They are also aware that No. 3 Moneyvart Cottage removed this condition and want to be afforded the same opportunity.
- 1.4 The applicant advises that they were unaware of the Article when the property was purchased off plan from the developer in 2007 and moved in Spring 2008. They only became aware of the existence of the Article 40 when the department issued a letter alleging a breach of the article and requesting that they cease use as a private holiday home. This investigation was completed, as detailed in letter dated 21st November 2013, and no breach of planning control was identified.
- 1.5 Further correspondence dated 25th February 2014 clarified the matter relating to the Article 40 Planning Agreement, as detailed above.
- 1.6 The applicant seeks the approval of the application as it feels unreasonable to be bound by an Article (40) that they were

unaware of at the time of purchase and has never been applied across any of the properties since its construction. They state that the majority of the properties are lived in full time by local residents and given that planning policy is moving towards limiting holiday letting to avoid difficulties for local residential housing, this removal should be viewed as a positive conclusion for the future of the Moneyvart Cottage development.

2.0 Consideration:

2.1 The Planning Department confirmed receipt of the correspondence from the applicant and advised that the information would be considered as part of an addendum to the Planning Committee Report, to be presented to the Planning Committee at the earliest available opportunity.

2.2 In response to this submission, the specific circumstances surrounding the Article 40 Planning Agreement pertaining to Moneyvart Cottages are noted. The Planning Department are aware that this Agreement was not registered in the Statutory Charge Register.

2.3 Notwithstanding this fact, the use of the Cottage for permanent residential accommodation is a breach of the Planning Agreement. While it may not have been expedient to pursue this matter due to the Article 40 not having been registered, as detailed in the letter dated 25th February 2014, this does not mean that the Article 40 does not still serve a useful purpose.

2.4 The description of the approved development is;

- 6 No. Self Catering Holiday Cottages

It is quite clear that the use of the development was for self-catering accommodation and not permanent residential use.

2.5 The planning history in relation to No. 3 Moneyvart Cottages is as follows;

- LA01/2021/0483/LDE – 3 Moneyvart Cottages, Moneyvart, Cushendall. This property is, and always has been, used as a primary residential property and has never been used as a self catering holiday cottage. Adjacent cottages are all in full

time occupation as primary residences or owner occupied holiday homes. Permission Granted – 17.06.2021

A Certificate of Lawfulness for an existing use as primary residential accommodation was granted on the 17th June 2021 in accordance with Section 169 of The Planning (NI) Act 2011. The Planning Department was mistaken in its conclusion that the use as a primary residential property constituted “a breach of Planning Control” as defined by Section 131 of the 2011 Act. Rather the use of No. 3 as primary residential accommodation in fact constituted a breach of the Planning Agreement under Part 3, Section 76 of The Act. The Planning Department was misplaced in the consideration of the above under Section 169. The Cottages cannot be subject to immunity as the original permission was not subject to limitation by condition, but was instead subject to limitation by the Article 40 Planning Agreement.

- 2.6 The design and layout of the Moneyvart Cottages development is characterised by its clachan style arrangement. It is arranged as two groups of cottages all linked or attached at right angles in a tight compact form. This, by its nature, results in areas of communal amenity space and limited private amenity space, typical of developments which have been designed as holiday accommodation. Notwithstanding the fact that the Article 40 Planning Agreement was not registered in the Statutory Charges Register, the description, along with the approved plans for the development, were clearly designed to provide self catering holiday accommodation and not permanent residential accommodation units. The development as constructed would fail to provide adequate private amenity space to the standard required for permanent residential development. The proposal is contrary to paragraph 4.9 of the SPPS.

3.0 Recommendation

- 3.1 That the committee note the contents of this Addendum and agree with the recommendation to refuse the discharge of a planning agreement in accordance with paragraph 1.1 of the Planning Committee Report.

Addendum 2

LA01/2021/1545/MDA

1.0 Update

- 1.1 An office meeting took place on the 14th August 2023 to enable further discussion of the specific issues pertinent to the determination of the application.
- 1.2 A detailed explanation of the background to the use of Article 40 Planning Agreements was provided to the applicant, including the requirement to Statutory Charge these agreements, which it is acknowledged by all parties was not done in this case.
- 1.3 The Applicant stated that the property was purchased off plan from the developer, with units being marketed as holiday homes (capable of occupation by a private individual / family). The Applicant was unaware of the Planning Agreement and the requirement for short-term letting.
- 1.4 It was stated that the Applicant is seeking to regularise the position. The Applicant is aware of the previous DoE position with regards to previous investigations. It was argued that the Agreement has not great utility as it is not expedient to enforce, and it is unlikely to set a precedent as Planning Agreements were routinely stat charged.
- 1.5 The Applicant stated that other units are occupied. An example of similar development with shared amenity was provided: E/2011/0257/F at Torr Road, Ballycastle. The garden was recently landscaped to improve amenity, with additional area in common ownership.
- 1.6 The proposal should be viewed as similar to apartment development with private and shared amenity. A case was presented in relation to holiday home use – Gravesham Borough Council v Secretary of State 1984. With reference also made to appeal ref: 2000/A039 para 3.35.

2.0 Consideration:

2.1 The Planning Department acknowledge the specific circumstances surrounding the Article 40 Agreement in this case. Notwithstanding this, the Agreement continues to serve the purpose for which it was intended, and planning permission for the building would not have been granted without it.

2.2 The description of the approved development is;

- 6 No. Self Catering Holiday Cottages

It remains clear that the use of the development was for self-catering accommodation and not permanent residential use. When the description of development is read alongside the approved conditions pertaining to both the outline and reserved matters decisions, there can be no doubt as to the intended nature of the proposed development and therefore the purpose with which the Article 40 Planning Agreement was intended.

2.5 The matter of private holiday use, relative to holiday letting use, is ordinarily distinguishable and thus should have been the case in this instance. However, the Planning Department acknowledge the specific difficulties surrounding the enforceability of the planning agreement and it is unlikely that the matter of private holiday use relative to holiday letting use would be pursued given the length of time the former has subsisted.

2.6 The specific cases presented are distinguishable from the subject case as they do not relate to the ability of a Planning Agreement regarding holiday use to continue to serve a useful purpose.

3.0 Recommendation

3.1 That the Committee note the contents of this Addendum and agree with the recommendation to refuse the discharge of a planning agreement in accordance with paragraph 1.1 of the Planning Committee Report.

Addendum 3

LA01/2021/1545/MDA

1.0 Update

- 1.1 Further to correspondence following the office meeting, the applicant intends to submit an amended application to modify the terms of the Planning Agreement to permit private holiday use in lieu of holiday letting use at the property.

2.0 Consideration:

- 2.1 The Planning Department will need to further consider any amended proposal and carry out re-advertisement as required.

3.0 Recommendation

- 3.1 That the Committee note the contents of this Addendum and agree to defer the application to allow for the submission of a substantively revised proposal.

Addendum 4

LA01/2021/1545/MDA

1.0 Update

- 1.1 An amended application form seeking the modification of the Planning Agreement to permit private holiday use in lieu of holiday letting use was received on the 16th November 2023. A copy of this is included at Annex A of this Addendum. In accordance with the legislative requirements, advertisement of this modification was carried out on the 6th December 2023.

2.0 Consideration:

- 2.1 The Planning Department has considered the amended proposal which now seeks the modification of the existing Planning Agreement to permit private holiday use at No. 1 in lieu of holiday letting use. While the matter of private holiday use, relative to holiday letting use, is ordinarily distinguishable, the Planning Department has considered the specific circumstances surrounding the Article 40 in this case.
- 2.2 The Applicant has previously advised that they were unaware of the Planning Agreement when the property was purchased off plan from the developer in 2007 with units being marketed as holiday homes (capable of occupation by a private individual / family). The Applicant was unaware of the Planning Agreement and the requirement for short-term letting. As set out previously, this was attributed to the Planning Agreement not being registered as a Statutory Charge with LPS.
- 2.3 The proposed modification would permit use of No 1 Moneyvart Cottage as a private holiday home and would not be at odds with the overall thrust and intent of the Planning Agreement, which was to prevent permanent residential use of the units. Their layout, design and arrangement, with limited private amenity space, is typical of a development designed for holiday letting use.

2.4 Given that the Applicant had purchased the property off plan on the understanding that it was suitable for private holiday use, the applicant's position would not be prejudiced by the proposed modification to permit the private holiday use. Given the length of time that No. 1 has been used as a private holiday home and the specific difficulties surrounding the enforceability of the Planning Agreement, it is considered that the proposed modification would result in the Planning Agreement continuing to serve a useful purpose, as per its original intention. Specifically, its useful purpose would be to deter permanent occupation, consistent with the specific reason for approving the development (which otherwise would not have obtained planning permission) and the unacceptable amenity provision.

3.0 Recommendation

3.1 That the Committee note the contents of this Addendum and agree to grant permission for the modification of the Planning Agreement to allow No. 1 Moneyvart Cottage to be used for private holiday use.

Application to Modify or Discharge a Planning Agreement

Official Use	
Application No.	_____
Fee Received	£ _____
Receipt No.	_____

This form is specifically designed to be downloaded and completed offline. If completing a printed version, please use black ink and block capitals as the document will be scanned once received by the Planning Authority.

This form is only to be used for requests to modify or discharge a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) 2011.

You are advised to read the notes at the end of this form before completing and submitting the application to the relevant Planning Authority. To find contact details for the Planning Authorities, including the postal or e-mail address to send offline applications to, please check their website or visit www.nidirect.gov.uk/contacts/planning-offices-ni.

If you would rather make this application online, you can do so on the Planning Portal (<https://submissions.planningsystemni.gov.uk/app/>).

Please note that when you submit a planning application the information you provide including all plans, maps, drawings, forms and associated assessments will appear on the Planning Register which is publicly available and, along with any other associated documentation (with the exception of personal telephone numbers, personal e-mail addresses or sensitive personal data), may also be published online on the Planning Portal (<https://planningregister.planningsystemni.gov.uk/>). The Planning Authority will process your information in line with the General Data Protection Regulations (GDPR) requirements. A copy of the full Privacy Statement is available on the Planning Portal. To request a hard copy, please contact the Data Protection Officer for the relevant Planning Authority.

Section A

Applicant's name and address

Agent's name and address (if applicable)

Name:	Jennifer Morgan	Name:	
Address:	1 Moneyvart Cottage	Address:	
Town/City:	Cushendall	Town/City:	
Postcode:	BT44 0LZ	Postcode:	
Tel:	██████████	Tel:	
Mobile:		Mobile:	
E-mail:		E-mail:	
Your Ref.:		Your Ref.:	

Section B

Under [Section 77 of the Planning Act \(Northern Ireland\) 2011](#) a planning agreement may not be modified or discharged except:

- by agreement between the relevant authority and the person or persons against whom the agreement is enforceable; or
- in accordance with [this section](#) and [section 78](#).

Interest in the Land

Please state the applicant's interest in the land (e.g. owner, lessee, occupier, trustee or other). An application is only permitted by someone who either has an interest in the land, or else is acting on the behalf of someone else who does.

Owner of 1 Moneyvart Cottage

If the applicant is not the owner, please give the name(s) and address(es) of anyone you know who has an estate in the lands. Please also include the nature of their estate (if known).

N/A

Have the owner(s) been informed of the application?

Yes

No

Section C - Site Address

Give the full postal address of the land to which the Planning Agreement relates. If you cannot provide a postcode, then please give the most accurate site description you can in order to help locate the site.

1 Moneyvart Cottage
Cushendall
BT44 0LZ

Section D - Details of Existing Agreement

Please provide the description of the existing Agreement as shown on the decision letter. Please complete as fully as possible, giving sufficient information to allow the Planning Authority to identify the existing Agreement.

Planning Agreement pursuant to Article 40 of the Planning (Northern Ireland) Order 1991 dated 11th October 2001 made between the Department of the Environment (1) and Youth Hostel Association of Northern Ireland (2)

What is the planning application reference number?

This is the reference number of the original agreed proposal.

E/1999/0168 & E/2004/0476/RM

Date on which the Agreement was entered into

11th October 2001

Has any work already started?

Yes

No

If Yes, please state when the work was started

Over a decade ago

Please describe the nature of the works already started

House constructed and occupied. Has at no time been used as a holiday letting accommodation.

Has the work already been completed? Yes No

If 'Yes' please state when the work was completed

Section E - Clause(s) – Variation / Discharge

For your existing Planning Agreement, please indicate what you now wish to do

Discharge

Modify

If Discharge, are you requesting to discharge only part of a clause? Yes No

If yes, which part(s) of the current clauses does this application now want to become discharged?

Reason for this application to discharge the original Agreement?

If Modify, please state which clause(s) of the existing Agreement you wish to modify?

Clause 2 to be modified to state: "2. The owner covenants with the Department not to use the self-contained accommodation units constructed pursuant to the Planning Application otherwise than for private holiday use only."

Schedule to be modified to refer only to link the modification of clause 2 above to 1 Moneyvart Cottage.

Please state the reason(s) for wanting to modify the original Agreement?

If you would like a clause to be varied, please state clearly how it should be rephrased. Example: If you wanted to change the opening hours for your premises: 'Variation to clause 3 to allow opening of the premises between 08:00 to 23:30 Monday to Fridays, 08:00 to 00:30 on Saturdays and 14:00 to 22:00 on Sundays.'

1. Modification as discussed between Mr Shane Mathers and Mr Gary McGhee.
2. Article 40 Agreement not registered in statutory charges register.
3. Proposed modification aligns with current and long-standing use of the property.

Section F - Authority Employee / Elected Member Interest

Are you / the applicant / the applicant's spouse or partner, a member of staff within the council or an elected member of the council?

Yes No

Are you / the applicant / the applicant's spouse or partner, a relative of a member of staff in the council or an elected member of the council or their spouse or partner?

Yes No

If you have answered yes to either of the above questions, you / the applicant / the applicant's spouse or partner may have a duty to declare an interest in this application under the Authority's code of conduct or scheme of delegation. If necessary, a council officer may be in touch with you to confirm details.

Declaration

I / We apply to modify / discharge a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) Order 2011.

I / We confirm that, to the best of my / our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the persons giving them.

Signature of *Applicant / Agent  Date 16/11/23

On behalf of _____

** Delete as appropriate*

Guidance Notes for Applicants

Introduction

Section 77 of the Planning Act (Northern Ireland) 2011 provides that a Planning Agreement may be modified or discharged by agreement between the parties at the end of the period of five years, beginning with the date the Agreement was entered into.

After the expiry of five years, an application for modification or discharge can be made. The Council, or as the case may be, the Department upon receipt of such an application will either decide that the Planning Agreement should continue to have effect without modification, discharge the Agreement, or modify the Agreement.

Where the Planning Authority has failed to respond to an application within the appropriate time limits or has refused to modify or discharge an agreement, there is a right of appeal to the Planning Appeals Commission.

This form is to be used for the modification or discharge of a Planning Agreement made under Section 77 of the Planning Act (Northern Ireland) 2011. The following guidance notes are in the same order as the questions on the form.

Applicant/Agent Details

The applicant is the name of the person for whom the application is being made. If you are using an agent to submit this application, all future correspondence will be sent to them.

Interest in the Land

Please tick the relevant box and give exact details of your interest in the land.

Site Address

Please give the full postal address of the site. If you cannot provide a postcode, then please give the most accurate site description you can in order to help locate the site.

Details of Agreement to be modified or discharged

Please complete as fully as possible, giving sufficient information to allow the Planning Authority to identify the existing Agreement.

Clause(s) – Variation / Discharge

Please complete the appropriate fields to indicate whether you are applying for modification or discharge of the Agreement and provide full details of the request. You should note that the Planning Authority can only consider and approve the modifications as stated in the application form.

Reasons for applying for either modification or discharge of an agreement should be given in full - continue on a separate sheet if necessary.

Council Employee / Elected Member Interest

You must declare whether the applicant or agent is a member of the council's staff, an elected member of the Council or related to a member of staff or elected member of the Council.

Serving elected members or planning officers who submit their own planning applications should play no part in their determination and such applications should be determined by the planning committee rather than by planning officers under delegated powers.

For the purposes of this question, "related to" means related by birth or otherwise closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias on the part of the decision-maker in the council.

Declaration

Please ensure the application form is signed and dated.

Certificate of Compliance

The applicant is required to give notice of the application to any other person against whom, on the day 21 days before the date of this application, the agreement is enforceable. You must take reasonable steps to find out the name and address of such person(s).

Where the names and addresses of all such persons are not known the applicant must, during the 21 day period immediately preceding this application, publish a notice in the newspaper. The form and content of the notice to be published in the paper or served on the person(s) mentioned above is prescribed in Regulation 3 of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015.

Consultation

On receipt of an application to modify or discharge a Planning Agreement made to the Department, the Department is required by legislation to consult with the appropriate Council for the area. Details of your application will be forwarded to the relevant Council and they will be given 4 weeks within which to comment. No recommendation can be made by the Department until this 4 week consultation period has expired.