

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.