



TOWN AND COUNTRY PLANNING

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1<sup>st</sup> September 2021

Denise Dickson  
Head of Planning  
Causeway Coast and Glens Borough Council  
Cloonavin  
66 Portstewart Road  
Coleraine  
BT52 1EY

Dear Denise,

**RE: PLANNING APPLICATION - LA01/2019/1105/F FOR TWO DETACHED DWELLINGS WITH DETACHED GARAGES AT LAND SOUTH OF 40 NEWTOWN ROAD AND WEST OF 16 CROSSNADONNELL ROAD, LIMAVADY**

I refer to the above planning application, and its deferral at June 2021 Planning Committee (PC).

As requested by the Planning Committee I now forward copies of the various documents that support our case that the original planning permission has been implemented on site, namely:-

**Full Planning Permission B/1997/0314**

Full permission granted for layout of associated roadways for 61 no. serviced plots on 03/06/1998. I attach a copy of this permission at **Appendix MK1**.

Matthew Kennedy (MRTPI) - [REDACTED]  
Claudine Christy (MRTPI) - [REDACTED]  
Lee Kennedy - [REDACTED]  
Leeanne Hegarty - [REDACTED]

Mary Kennedy - [REDACTED]  
NI 046486 VAI No. 77370 1817



Councillors will note that this is a full planning permission for all the serviced plots.

The PC Report at Para. 8.33 is therefore incorrect and needs to be amended. This 1997 permission is not an outline permission, it is a full permission with a 5 year time period.

The Applicant was therefore entitled to service this site with roads, sewers and utilities on the basis of this permission. I also attach the approved red line of Permission – B/1997/0314 at Appendix MK2.

Councillors will note that the attached approved red line does not simply cover the roads layout but encompasses all of the serviced sites. Implementation of this permission required the construction of the roadways and the provision of various services (water main, foul sewer, storm sewer, utilities etc) to the serviced sites.

At Appendix MK 3 I attach both a copy of the original Applicant's 1998 signed Article 17 Agreement with NI Water for B/1997/0314 and an NI Water extract of the drainage layout for the area showing the public foul and storm sewers constructed adjoining the site.

The Applicant has carried out excavations on the site and uncovered the existing foul and storm sewers into the site. These connections have been in place since 1998. The tails of the storm and foul sewers connections have also been uncovered. I attach photographs of same at Appendix MK 4.

Our Chartered Engineer – Mr Brendan Carey of Carey Consulting Ltd has already confirmed that the signed Article 17 Agreement has been implemented and the site has been serviced with both a foul and storm sewer connection for one dwelling under B/1997/0314 and no further consent is required from NI Water for this dwelling. The use of this existing sewer connection on the application site for a single dwelling is therefore lawful.

In terms of the proposed second dwelling on site it is accepted that this is not covered by the 1997 permission. The PC states at Para. 8.34 that the Council will not add a negative condition for this second dwelling as there is no guarantee that NIW will upgrade Limavady within the lifetime of any planning approval.

However, Councillors will also be aware of the NI Water letter submitted on the Gorteen residential application (LA01/2016/1265/RM) at **Appendix MK 5** of the June 2021 PC which states

*"Councillors should note that NI Water has a project for the upgrading of the Limavady Waster Water Network within PC21 Business Plan (2021/2022 to 2026/2027)*

As this is a full planning permission with a 5 year period, a negative planning condition is entirely appropriate for this second dwelling. Moreover, once the first approved dwelling has been commenced on site, the permission for the second dwelling will never expire.

Planning Permission LA01/2016/1265/RM at the June 2021 PC was granted with an identical condition and I see no reason why the Council will impose a similar negative condition which states:-

**The second dwelling hereby approved shall not be constructed beyond sub floor until such time as a foul sewer connections has been approved by NI Water, or an alternative means of disposal is agreed with NI Water and Causeway Coasts and Glens Council.**

I see no material difference between the two applications in terms of sewerage issues in Limavady, and request that our Client is treated by Council in a similar manner.

I also request that this letter and enclosures be circulated to all Planning Committee Councillors prior to the September 2021 meeting and that based on the above evidence Council Officers now recommend an approval with appropriate planning conditions. Please feel free to contact the undersigned with any queries.

Yours faithfully,

**Matt Kennedy (MRTPI)**  
**Principal**

**MKA Planning Ltd.**

c.c. Client – Mr Ryan Mc Laughlin  
Engineer – Mr Brendan Carey  
Architect – Mr Kevin Cartin

# Appendix MKA 1

**MKA PLANNING LTD**  
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\*\*\* COPY \*\*\*

PLANNING PERMISSION

Planning (Northern Ireland) Order 1991

APPLICATION NO.: B/97/0314

Date of Application  
: 3rd September 1997

Site of proposed  
Development : Land east of Crossnadmell Park and Lauravale Bovally  
Limavady

Description  
of Proposal : Layout of Associated Roadways For 61 no Serviced Plots

Applicant  
: B Mullan & Sons  
: Bovally House  
11-13 Anderson Avenue Limavady

Agent  
: G M Design Associates  
: 22 Lodge Road  
Coleraine  
BT52 1NB

Drwg Ref.:

\*\*\*\*\*

The Department of the Environment for Northern Ireland in pursuance of its powers under the above-mentioned Order hereby  
GRANTS PLANNING PERMISSION  
for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

- 01 The development must be begun not later than the expiration of five years beginning with the date of this permission as required by Article 34 of the Planning (Northern Ireland) Order 1991.
- 02 The development and means of access thereto shall be carried out in accordance with the submitted plans Drawing No 96278 D08, D09(E), 96/71(M)2:03, 96/71 M2:04 and Standard Detail Booklet dated 30.04.1998. The applicant's attention is drawn to note 03 below, regarding "Road Opening Permit".
- 02 Reason: In the interest of road safety and to ensure that the proposed development is completed to the Department's satisfaction.
- 03 The access works shall be completed to the Department's satisfaction within 12 months from the date of commencement of work within the site.  
Reason: In the interest of public safety and traffic management.
- 04 Adequate provision shall be made to ensure that surface water does not

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Order (Northern Ireland) 1993, or any Order revoking and re-enacting that Order no buildings, walls or fences shall be erected, nor hedges, nor formal rows of trees grown within the area coloured red and green and cross hatched in black on the approved 1:500 scale plan, drawing number 96278 D08, D09 (E) received 30 April 1998.

- 13 Reason: In the interest of visual amenity and public safety.
- 14 No planting other than grass, flowers or shrubs with a shallow root system shall be carried out on or over a 2 metre wide strip coloured green and cross hatched black on the approved 1:500 scale plan, drawing number 96278 D08, D09(E) received 30 April 1998 issued in respect of planning permission reference B/97/0314 for the access road serving the development.
- 14 Reason: In order to avoid damage to and allow access to the services within this strip.

INFORMATIVE(S)

- 01 Separate approval must be received from the Department in respect of standards required for the construction of streets as required under Article 5 of the Private Streets Order. Detailed construction drawings to be submitted to the Roads Service, 86 Main Street Limavady
- 02 PRIVATE STREETS ORDER (NI) 1980  
Under the above Order the applicant is advised that before any work shall be done in or for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads and sewers in accordance with the Private Streets Construction Regulations.
- 03 Notwithstanding the terms and conditions of the Department's approval set out above, you are required under Article 78 of The Roads (NI) Order 1993 to be in possession of the Department's consent before any work is commenced which involves making openings in the surface of a carriageway, footpath, verge or removing any part of a fence or hedge bounding it. The consent is available on personal application to the Department's Section Engineer whose address is: 86 Main Street Limavady
- 04 This decision relates to planning control only. The Department would advise that if the proposed works require Building Regulations approval this should be obtained from the relevant District Council before the works commence. The Department would also advise that this planning decision does not cover any other approval which may be necessary under other legislation.
- 05 The permission hereby granted does not confer title. The applicant should satisfy himself that he controls all of the land necessary to

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plans and longitudinal sections, etc,  
will be required.

NOTE: In advance of the preparation of detailed drawings an Applicant (or agent) is advised to call at or contact the local office (address above) of the Water Service, where officials will be pleased to discuss with the Applicant any queries the Applicant may have in regard to the proposal generally (water supply and sewerage) and the submission of drawings as stated.

- 17 A public water supply is available.
- 18 Main foul sewer not available.
- 19 Main storm sewer not available.
- 20 The applicant/developer should consult with Water Service about the provision of main storm and foul sewers.

Date 30th June 1998

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Authorised Officer



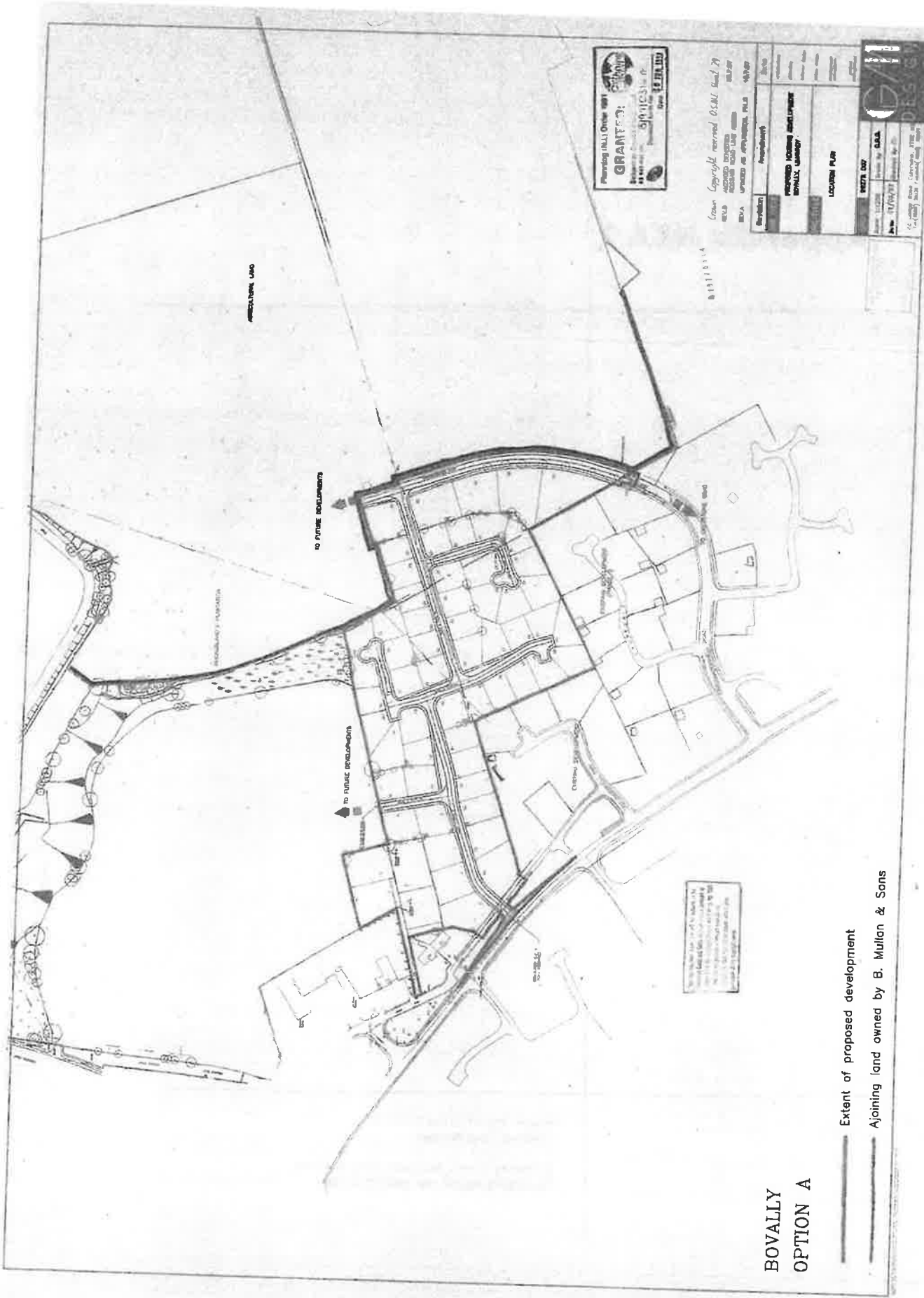
## Appendix MKA 2

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**BOVALLY  
OPTION A**

— Extent of proposed development  
 — Adjoining land owned by B. Mullin & Sons

Planning (NLI) Order 1991  
**GRANTED:**  
 5/11/2014  
 12.11.14

Drawn: Copyright reserved O.S.M.I. Scale 1:1000  
 10/12/13  
 10/12/13  
 10/12/13  
 10/12/13

|                     |                     |
|---------------------|---------------------|
| Project Name        | BOVALLY OPTION A    |
| Client              | B. MULLIN & SONS    |
| Location            | BOVALLY, CO. DUBLIN |
| Scale               | 1:1000              |
| Date                | 10/12/13            |
| Author              |                     |
| Checker             |                     |
| Approver            |                     |
| Project Manager     |                     |
| Project Engineer    |                     |
| Project Surveyor    |                     |
| Project Draughtsman |                     |
| Project Designer    |                     |
| Project Printer     |                     |
| Project Plotter     |                     |
| Project Finisher    |                     |
| Project Binder      |                     |
| Project Delivery    |                     |

1:1000  
 10/12/13  
 10/12/13  
 10/12/13

# Appendix MKA 3

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INC. SITE 44  
(PREVIOUSLY S1 PHASE 10)

## ARTICLE 17 AGREEMENT

### Sewers in Connection with New Developments

Proposer: B Mullan & Sons Ltd

Description and Location of Proposal: Housing Development at Bovally Phase 10 (Off Greystone Rd) Limavady

In pursuance of its powers under Article 17 of the Water and Sewerage Services (Northern Ireland) Order 1973 as introduced by the Water and Sewerage Services (Amendment) (NI) Order 1993 the Department of the Environment for Northern Ireland (hereinafter called "the Department") agrees to the proposal subject to the following terms and conditions:-

1. The specification for the construction of the foul and/or surface water sewers serving the development shall comply with the requirements of the current edition of the Standard Specification for Water and Sewerage Schemes of the Scottish Development Department and the Department.
2. Where surface water is to be discharged to a watercourse the proposer shall produce written evidence to the Infrastructure Manager of the Department's Water Service that the necessary consent has been obtained from Watercourse Management Division of the Department of Agriculture (NI).
3. Where excavation by the proposer requires an opening in the public road the proposer, shall submit a copy of the Road Opening Permit issued by the Department's Roads Service to the Infrastructure Manager of the Department's Water Service.
4. The layout of the sewers shall conform with the detailed plans approved by the Infrastructure Manager of the Department's Water Service.
5. Garages, garden sheds, retaining walls, etc shall not be constructed over the sewers without the written consent of the Department.
6. The proposer shall give the Department at least 5 working days' notice in writing of his intention to commence construction of the sewers, and shall not backfill any excavations until the Department has carried out an inspection of the sewers.



7. Responsibility and liability for the correct positioning of the line and level of manhole covers and frames in roads and their periodic inspection and maintenance shall remain with the proposer until the Department's Roads Service issues a certificate of adoption under the Private Streets (Northern Ireland) Order 1980.
8. On satisfactory completion of the sewers, a preliminary certificate of completion of sewers shall be issued. From the date of issue of the certificate, the proposer shall be responsible for the maintenance of the sewers for a period of 12 months.
9. On completion of the maintenance period a final inspection shall be carried out. Subject to the sewers being satisfactory and on receipt of 3 sets of "as constructed" drawings and manhole detail sheets, the Department shall issue a Certificate of Adoption of Sewers declaring that the sewers have been adopted by the Department.
10. The Department may undertake a CCTV survey of the sewers prior to the issue of the preliminary certificate of completion and the certificate of adoption. The cost of the CCTV survey shall be borne by the proposer if the survey shows the workmanship or the materials not to be in accordance with the specification stipulated in condition 1 of this agreement.

Dated this 9<sup>th</sup> day of July 1998

Signed by or on behalf  
of the proposer

Position

Agent for the Proposer

Date

9/7/98

Signed on behalf of  
the Department

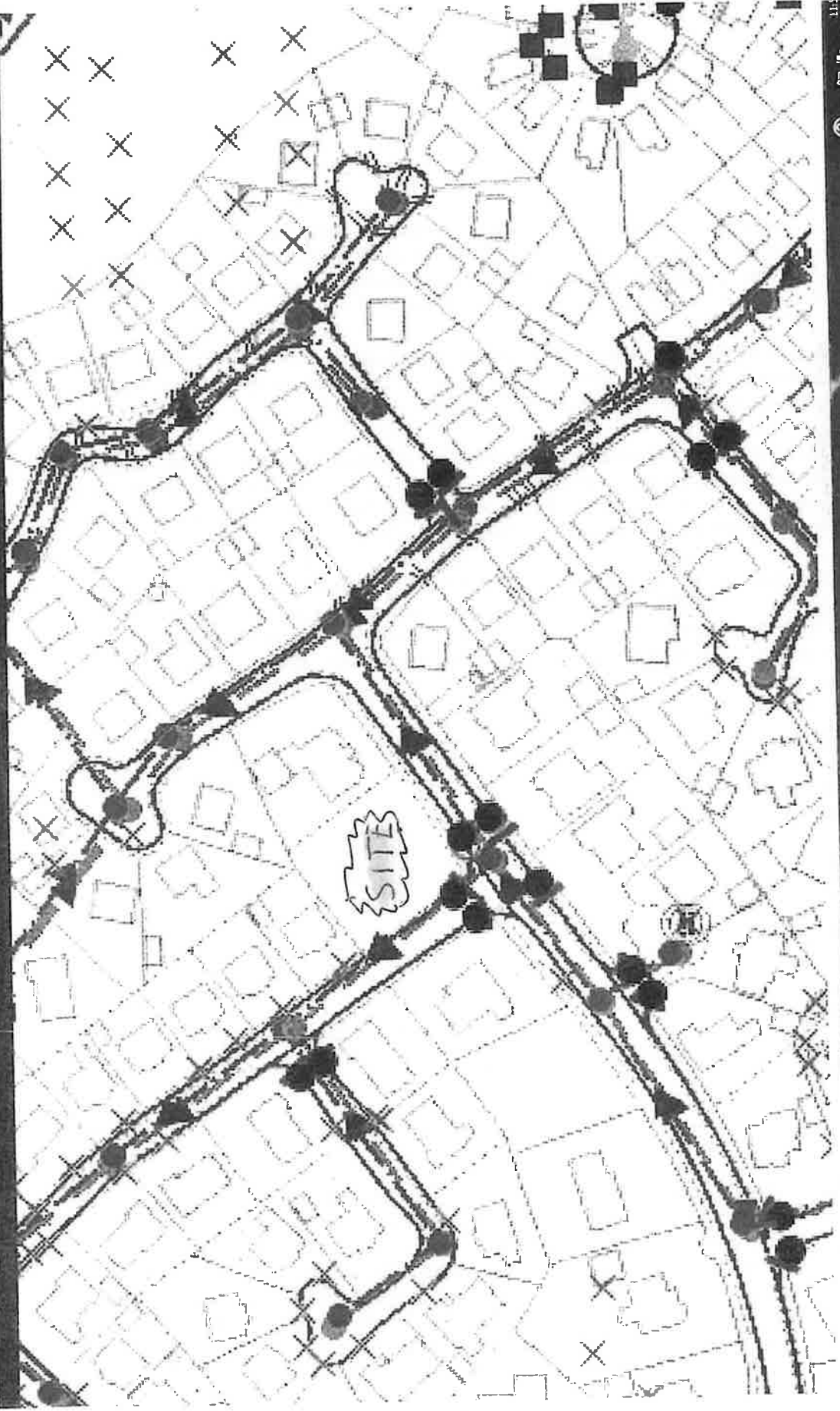
Position

Authorised Officer

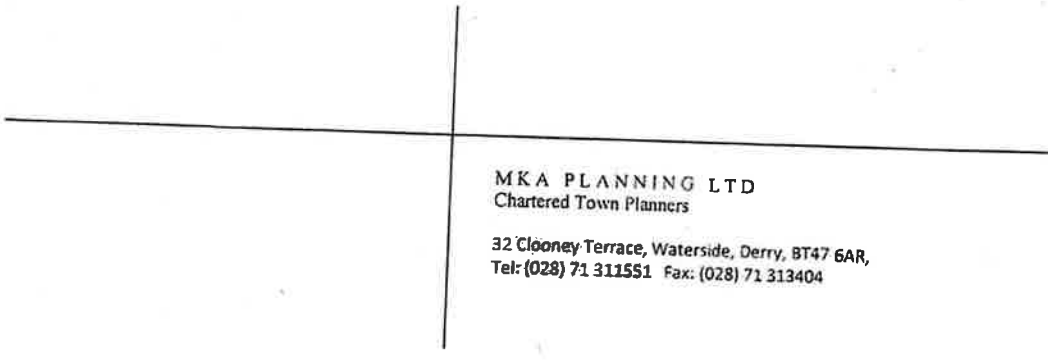
Date

17/9/98

NOTE: In accordance with the provisions of The Water and Sewerage Services (Northern Ireland) Order 1973, The Water and Sewerage Services (Amendment) (NI) Order 1993 and the Water Act (Northern Ireland) Order 1972 any person aggrieved by the decision of the Department, other than a decision in respect of conditions relating to costs and charges, may appeal to Water Appeals Commission, Park House, 87/91 Great Victoria Street, Belfast BT2 7AG within 28 days from the date on which he receives notice of the decision.



# Appendix MKA 4

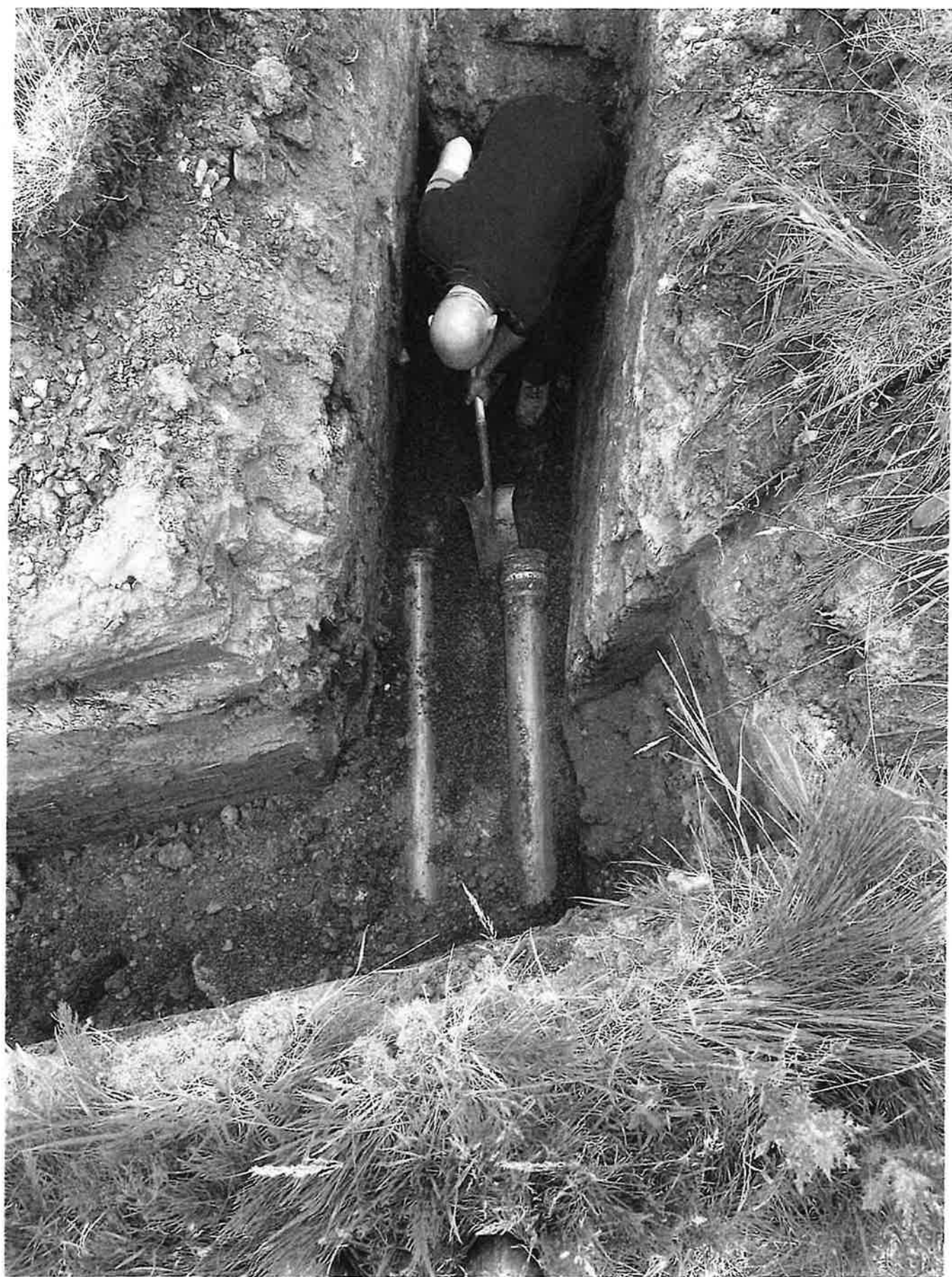


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# Appendix MKA 5



**MKA PLANNING LTD**  
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**Northern Ireland Water**  
Westland House  
Old Westland Road  
Belfast  
BT14 6TE  
www.niwater.com



Delivering what matters

Tel: 03457 44 00 88

FAO Denise Dickson  
Head of Planning  
Causeway Coast and Glens Borough Council,  
Cloonavin,  
66 Portstewart Road,  
Coleraine,  
BT52 1EY.

Date: 22/06/2021

Dear Denise,

**Limavady - Planning Application LA01/2016/1265/RM - LM 61/18**

NI Water wishes to communicate to members that the company has repeatedly identified that there are sewer capacity issues in Limavady and that no new connections will be permitted to that infrastructure.

A summary of the current existing issues and their impacts as well as outstanding questions that need to be addressed are provided below:

- NI Water has identified that there is already regular out of sewer flooding in the area causing environmental and amenity issues.
- The proposed development, due to its hydrological links to a number of designated sites, must be subject to a Habitats Regulation Assessment and can only proceed if it can be shown that the proposed development will not adversely affect the integrity of the designated site.
- The Council is bound by the Habitats Regulations Assessment
- The Habitats Regulation Assessment carried out by Shared Environmental Services concluded that the development can only proceed if two mitigation measures are conditioned. That mitigation includes draft condition 18.
- The Council can only lawfully grant consent if it includes the two mitigation conditions identified by Shared Environmental Services as part of the Habitats Regulation Assessment.
- If the Council grants planning permission without condition 18, that decision will be amenable to judicial review.
- The Council, when screening out the requirement for an Environmental Statement, relied on the ability to impose a condition which adequately addressed the sewer capacity issues. If the Council does not impose such a condition, the applicant must submit an Environmental Statement.

It is evident that further inputs to the system are likely to have a detrimental impact on the performance of the wastewater network, on customers and the environment. If the Council proceeds to grant planning permission without condition 18 as presently drafted, it would be doing so in breach of both the EIA Regulations and Habitats



Regulations. The Council would be acting ultra vires, unlawfully and irrationally. Such a decision would be amenable to Judicial Review.

If the Council are minded to grant planning permission without condition 18, the Council should require the Applicant to submit an Environmental Statement and Shadow Habitats Regulation Assessment which comprehensively addresses and identifies the current "baseline" out of sewer flooding and associated environmental implications. The Applicant should then assess the environmental effects of the proposed development in cumulation with existing development, modelling a number of scenarios including where there are no upgrade works to the existing sewer network and set out any mitigation measures to address this.

On receipt of these documents and associated consultation responses the Council could then consider the application afresh and any proposed mitigation measures contained within the Environmental Statement and Shadow Habitats Regulation Assessment and either refuse or grant consent subject to conditions.

Councillors should note that NI Water has a project for the upgrading of the Limavady Wastewater Network within its PC21 Business Plan (2021/22 to 2026/27).

Please do not hesitate to contact me should any matter require further discussion or explanation.

Yours Sincerely,

S. J. Blockwell

Dr Stephen Blockwell  
Head of Investment Management,  
Asset Delivery Directorate.  
Email: [REDACTED]@niwater.com

Ashlee 17.

No IUV