

PLANNING APPLICATION LA01/2021/1014/F

Change of use from 12 No. 3-bedroom student accommodation flats to 12 No. 2-bedroom flats at Millthorne Mews, Main Street, Limavady

This application was received by Council on 23rd August 2021 and now a year later the application is being presented to the Planning Committee with a recommendation to refuse. When you are approached by a developer to advise on a potential planning application you advise on the potential planning difficulties. In terms of this application which related to an existing residential building with internal changes from 12 No. 3-bed self-contained flats to 12 No. 2-bed flats, the advice was that if a Planning Application was indeed necessary, it should be very straightforward and an approval should issue very quickly. **The delay of a year to get this application to this stage has resulted in severe [REDACTED] for the applicant.**

History

The history of the site and building is very significant to the determining of this application. On the 24th October 1997 planning appraisal issued for a new build residential development consisting of 2 No. 3-bed self-contained flats. The use of the residential development was for student accommodation and the development became operational in 1998. The occupants of the flats were largely student attending the Limavady College of Further and Higher Education who travelled from an extensive geographical area across Northern Ireland and the Republic of Ireland. Due to reorganisation of the Further Education sector and downward pressure of student financial support, the need for the accommodation was no longer there and the development has been unoccupied for a number of years.

There are a number of important factors relating to the 1997 planning approval that need to be taken into account and are material to the application.

1. **There is no condition on the 1997 approval restricting the use to student accommodation. Had the Department, at the time of the approval, wanted to restrict the use to student accommodation, a condition would have been attached to the approval in the same way as on agricultural occupancy is attached to a farm dwelling.**
2. **The accommodation was for mature students yet there was no requirement for amenity space.**
3. **The accommodation approved and built was NOT for a student halls of residence type accommodation but for 12 No. 3-bed self-contained flats.**

Proposal

The proposal is to bring the redundant building into serviceable use again. The application relates to the internal reconfiguration of the existing building from 12 No. 3-bed self-contained flats to 12 No. 2-bed flats.

There are no proposed external changes to the building and all existing detail will remain.



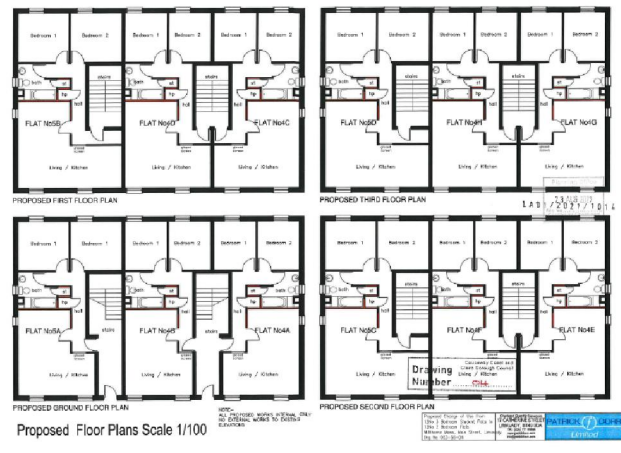
Existing Elevations



Proposed Elevations



Existing Floor Plans



Proposed Floor Plans

The building is in very good condition and, as can be seen from the plans, any changes are internal.

The history of the building is fundamental to the decision making. The building has approval for residential use (12 No. 3-bed self-contained flats). **While the use related to student accommodation it was residential and whether students were the occupants is irrelevant – residential use is residential use. While it is accepted that student accommodation is sui generis there was no planning condition attached to the 1997 approval restricting the future occupancy of the flats to student.**

Precedent

Rockmills in Derry & Strabane District Council area was approved in 1987 as student accommodation associated with the University. The University subsequently developed their own student accommodation complexes and the approved student accommodation was occupied by professionals. A planning application LA11/2016/0603/F was submitted and approved to remodel the existing 86 shared living accommodation to 94 self-contained dwelling units. **There was no requirement for this development to provide open space and any green/landscape area is only incidental and very small given the approval for 94 self-contained dwelling units.**

Amenity

The existing private courtyard is a mixture of loose stone and bitmac and has a run-down look. The current proposal is to resurface the courtyard and provide the car parking spaces in Grasscrete. In

addition, amenity space and planting will be provided. The proposed works will result in an enhanced quality to the existing environment.

The site is located in close proximity to the River Roe where residents can avail of access to landscaped areas, recreational, and rural walks. There are numerous apartment/flat developments approved throughout Northern Ireland and in the Causeway Coast and Glens Council area where no specific amenity provision is provided.

Case Law

There are a number of case laws that need to be considered when determining this application.

- Departures from policy

Planning policies are not a “straightjacket”: *per* Carswell LCJ, *In the matter of an application by James Stewart for judicial review* [2003] NICA 4. Just as the development plan does not have to be slavishly adhered to, so too other sources of policy need not be followed literally, for example *EC Gransden & Co Ltd v Secretary of State for the Environment* [1986] JPL 519, *Wycombe District Council v Secretary of State for the Environment and Queensgate Developments Ltd* [1988] JPL 111, *Re Lisburn Development Consortium’s application for judicial review* [2000] 7 BNIL 96, *per* Kerr J. Thus, the decision-maker is “not obliged to adhere to each point of [a planning policy], and is entitled to override or depart from any part if it considers it justified”: *per* Carswell LCJ, *In the matter of an application by Belfast Chamber of Trade and Commerce, Belfast City Council and North Down Borough Council for judicial review* [2001] NICA 6.

- Unjustifiable reliance on policy

For the decision-maker to reach a determination on the basis of policy will be vulnerable to attack if the circumstances make it wholly unreasonable to do so, or if a wholly unwarrantable use or disregard of evidence has taken place in order to sustain that policy, or if the decision-maker’s interpretation of policy results from a failure to have regard to a material consideration, for example *In re Blair’s application* [1985] NI 68, *Northavon District Council v Secretary of State for the Environment and ors* [1993] JPL 761.

This Case Law, while not a legal precedent, should be a major consideration in the assessment of this application and would be considered such by the Planning Appeals Commission.

Comments on Planning Report to Committee

On page 17 of the report, it is stated that the proposal is unacceptable having regard to the Northern Area Plan, the SPPS and Planning Statements 2, 3, 6 and 7. This is incorrect and the only policy that refusal has been recommended on is Planning Policy Statement 7. On reading the Planning Report you could be forgiven for thinking the recommendation would be to approve as the proposal fully meets all policy except, in the view of Planners, on one criterion.

Policy

The report details extensive policy, however, it omits any reference to policy that would be in support of the application.

Strategic Planning Policy Statement for Northern Ireland (SPPS) states –

The use of greenfield land for housing should be reduced and more urban housing accommodated through the recycling of lands and BUILDINGS (my emphasis) and the encouragement of compact town and village forms. More housing should also be promoted in city and town centres and mixed-use development encouraged.

The recommendation to refuse is on the basis that the development is contrary to Criteria 'a' and 'c' of Policy QD1 of Planning Policy Statement 7 and Policy LC2 of the Addendum to PPS7.

The preamble to PPS7 states:

This Planning Policy Statement PPS7 'Quality Residential Environments' sets out the Department's planning policies for achieving quality in NEW RESIDENTIAL DEVELOPMENTS (my emphasis).

Policy LC2 of the addendum to PPS7 relates to the conversion or change of use of Existing Buildings to Flats or Apartments.

The proposal is not a new residential development, it was approved and operated as a residential development. The proposal does not relate to the conversion or change of use of existing buildings to Flats or Apartments – it was approved and operated as a flats development.

The reason for refusal recommended to the Planning Committee based on PPS7 and the addendum are not valid reasons for refusal as the development currently exists, is residential and approved for 12 No. 3-bed flats.

Despite the fact that the policies do not apply, the report attempts to justify the refusal reasons on the basis that the amount of private amenity space is inappropriate and unsatisfactory and that the area proposed would not be a safe area for children to play or to be used for any other amenity.

This justification is based on the development being a new flat development and ignores the fundamental point that the building exists and has approval for 12 flats.

Currently Council and Roads rely on the Department's Design Guide – Creating Places for advice and guidance on housing developments. This guide allows for the provision of shared surfaces which may be provided in the form of a mews court or a housing square. It is generally accepted that a housing square is essentially a square that is developed on the sides with the centre providing turning for service vehicles and car parking along the edges to facilitate the housing. Traffic speeds are slow and vehicles and pedestrians coexist. Many housing squares have been approved throughout Northern Ireland and continue to be approved. The proposed layout is very similar to a housing square where turning is provided for service vehicles and parking is provided around the perimeter.

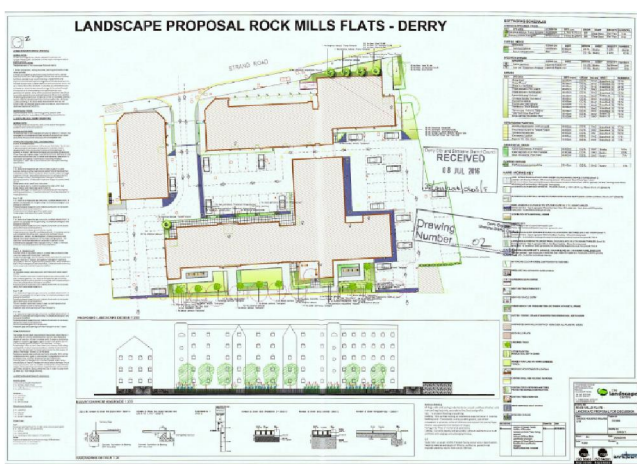


A shared surface housing square providing a safe place for children at play.

Extract from the Department's design guide 'Creating Places'

Supporting Information and Precedents

Under the section of the Planning Report it is stated that Rock Mills is not a comparable development as several different areas of usable amenity space are provided for Rock Mills. Rock Mills was approved in 1987 as student accommodation and in 2016 a planning application was approved to remodel the existing shared living accommodation to 94 self-contained dwelling units. Below is the layout approved for Rock Mills and the layout proposed under this application. I will leave it to the Planning Committee to draw their own conclusions regarding the amenity space for 94 units and that proposed for this development. To ensure an accurate and fair comparison both layouts were submitted at the same scale.



Rock Mills Amenities Space



Millthorne Mews Amenities Space

The report correctly states that the case law examples cited are relevant in the context of the decisions in which they relate. They do, however, relate to how the decisions were made in the particular cases. **This application, which relates to an existing building, which had an approval for flats would clearly fall within the judicial review decision – that the decision maker is not obliged to adhere to each part of a planning policy and is entitled to override or depart from any part of it.**

The case law relating to unjustifiable reliance on policy states that a decision will be vulnerable to attack if it is unreasonable or if it results from a failure to have regard to a material consideration. **To apply one element of a policy to this application is unreasonable and does not consider the existing building and approved use as a material consideration.**

Reference is made to two Planning Appeals Decisions.

Planning Appeal 2020/A0041 relates to a site at 25 Princess Street, Portrush and entails the demolition of both a single storey and two storey return and extending the footprint of the building to facilitate a three storey extension.

This proposal relates to a new build and is not comparable with this application that relates to an existing residential development.

Planning Appeal 2010/A0052 relates to a site at Eglinton Street, Portrush, however, the PAC on line service is not available and it is not possible to comment on this decision.

Conclusion

The application relates to an existing building currently approved for flats. The recommendation to refuse is based on policies relating to new developments and does not apply to this application.

The development has social and economic benefits and provides affordable housing of which there is a chronic shortage in the Limavady area.

The development results in a redundant building being brought back into serviceable use by providing affordable housing.

The development is located in the town and complies with SPPS in that it adds to compact town and village forms.

Should approval not be granted to this application it will result in this quality building, which will provide much needed housing, falling into disrepair.

Given the previous approval on the site this application results in a continuation of residential use in the building.

There have been no objections to the application and all consultees have recommended approval.

Any purchasers of the flats will know exactly what type of development they are buying in to.

I would ask that Council Planning Committee do not accept this recommendation to refuse in in light of the above vote to approve this application.