

## Derry City and Strabane District Council Planning Committee Report

**COMMITTEE DATE:** 4<sup>th</sup> November 2020

**APPLICATION No:** LA11/2020/0451/O

**Date of Application:** 24.06.2020

**APPLICATION TYPE:** Outline

**PROPOSAL:** Site for proposed infill dwelling in line with Policy CTY8 - Ribbon Development of PPS 21- Sustainable development in Countryside

**LOCATION:** Lands adjacent to No.17 Temple Road, Strathfoyle, Maydown, Derry

**APPLICANT:** Ibrahim Banat

**AGENT:** MKA Planning

**ADVERTISEMENT/STATUTORY EXPIRY:** 17.07.2020 05.08.2020

**RECOMMENDATION:** Refuse

**REASON FOR PRESENTATION TO COMMITTEE:** Recommendation to refuse.

All planning application forms, drawings, letters etc. relating to this planning application are available to view on [www.planningni.gov.uk](http://www.planningni.gov.uk)

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### 1. Description of Proposed Development

The proposal is for a site for an infill dwelling under policy CTY 8 of PPS 21

### 2. EIA Determination

The proposal does not meet any thresholds as set out in Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, therefore an EIA screening determination was not carried out.

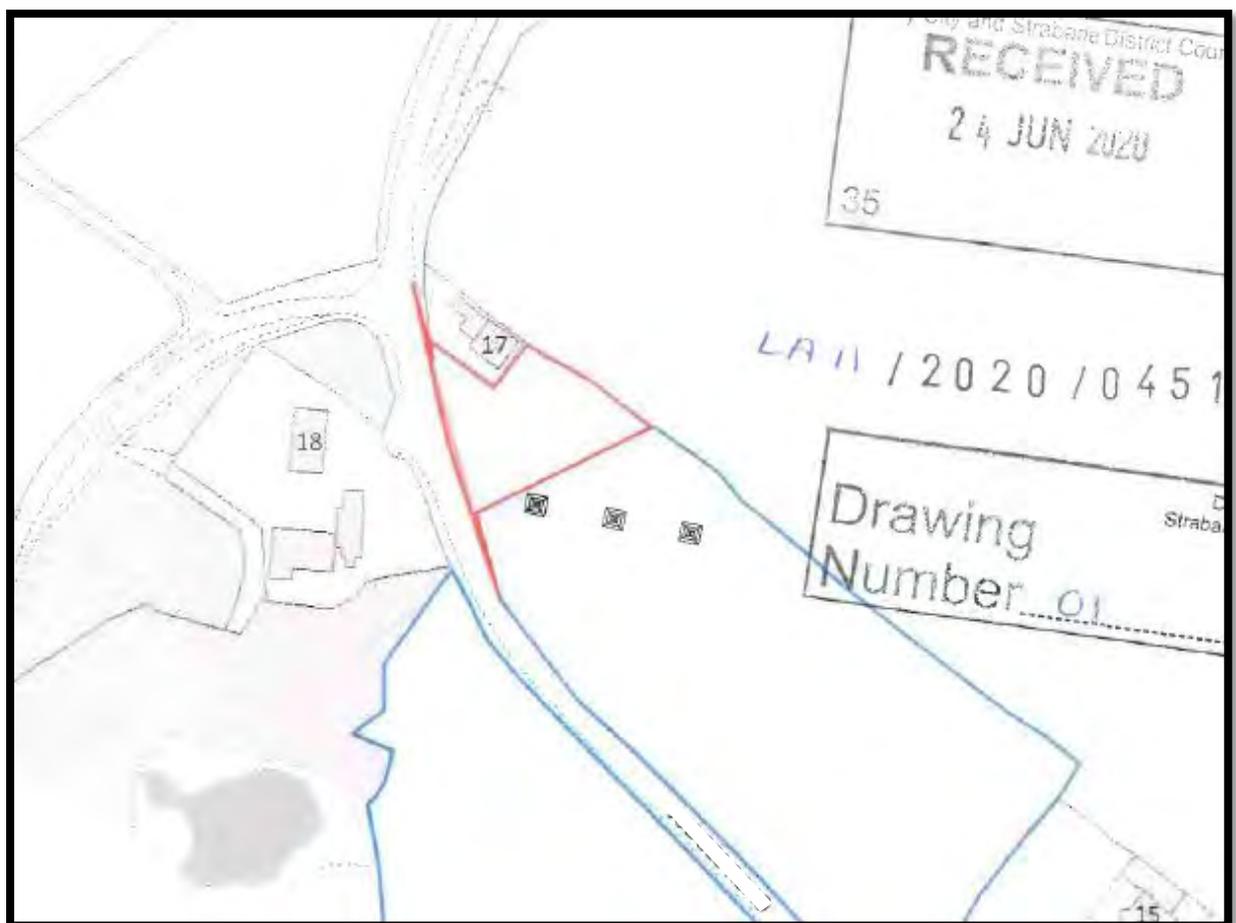
### 3. Habitats Regulations Assessment

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). The proposal would not be likely to have a significant effect on the features of any European site.

#### 4. Site and Surrounding Area

The site is set within the countryside as set out in the Derry Area Plan 2011. The proposed site is an irregular shaped parcel of land located to the immediate south of No 17 Temple Road. The site is free from vegetation apart from the northern boundary which abuts No 17 Temple Road. This is defined by thick manicured hedging. The proposed site is relatively flat with Temple Road abutting the site along its western boundary. Located immediately to the south of the site are three Electricity Pylons and associated wirescape. Located on the opposite side of the road are two derelict buildings previously Enagh primary school. Localised views of the site on Temple Road.

**Figure 1: Site Location Plan**



**Figure 2** Overhead view of the site



**5. Site Constraints**

Surface Water Flooding

DAP 2011 – Within Area of Local Nature Conservation and Amenity Importance LCA 3

Strathfoyle (Enagh Loughs)

**6. Neighbour Notification Report**

17 Temple Road, Strathfoyle, Londonderry, BT47 6TJ

18 Temple Road, Strathfoyle, Londonderry, BT47 6TJ

## **6. Relevant Site History**

No relevant site history

## **7. Policy Framework**

Strategic Planning Policy Statement

Derry Area Plan 2011

Planning Policy Statement 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 21: Sustainable Development in the Countryside

## **8. Consultee Responses, Internal/External**

**DFI Roads-** DFI Roads requires amended plans to address concerns.

**Environmental Health Service** – Advice to consult with NIE due to potential adverse impact of the adjacent pylons by reason of noise and electromagnetic interference.

**NI Water-** No Objection

**NIE-** Objection due to close proximity of electricity pylons

**DFI Rivers-** No Objection

**SES-**No Objection

## **9. Representations**

No objections have been received to date

## **10. Planning Assessment and Other Material Considerations**

Section 6 (4) of The Planning Act (Northern Ireland) 2011 requires the Council to make planning decisions in accordance with the local development plan, unless material considerations indicate otherwise.

In para 2.3 of the SPPS highlights that the planning system operates in the public interest and does not exist to protect the interests of one person against the activities of another. With regard to the public interest test, the proximity of NIE pylons is fundamental to the

consideration of this case. NIE have been consulted have reviewed the proposal and they note that the lands affected by the proposal are traversed by NIE 110kV Transmission Overhead Lines and associated equipment. This being the case, NIE Networks has concerns that the proposal may (either during the course of construction and/or following completion of the proposed development) infringe on the safety clearances that are required to be maintained. EHD of Derry City and Strabane District Council has also indicated a potential for an adverse impact upon the amenity of residents by reason of noise and electromagnetic field levels (EMF Levels) and have requested NIE to be consulted.

In light of the above and consultation with NIE, NIE Networks objects to this planning application at this stage due to potential operational concerns. Officers are of the opinion that the proposal has potential to adversely impact upon utilities within the locality and also result in an unacceptable impact on the amenity residents of the potential property and indeed 3<sup>rd</sup> parties due to health and safety concerns.

The SPPS echoes in para 6.73 the policy provisions of Planning Policy Statement 21: Sustainable development in the countryside (PPS21) in relation to policy CTY8 Ribbon development. Policy CTY 1 of PPS21 lists 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. The applicant has argued that the proposal is in accordance with Policies CTY 8, CTY13 & CTY14 of Planning Policy statement 21 Sustainable Development in the Countryside.

**Figure 3 View of Site Frontage**



**Figure 4 - View of location approaching from North on Temple Road.**



Figure 5 - View of location approaching from North on Temple Road.



**Figure 6 - View of location approaching from south on Temple Road.**



**Policy CTY8 Ribbon development.**

Under this policy planning permission will be refused for a building which creates or adds to a ribbon of development. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this reflects the existing development pattern along the frontage in terms of size, scale siting and plot size and meets other planning and environmental requirements.

For the purpose of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.

As one can see from figure 3 & 4 below there is a single dwelling No 17 Temple Road which overlooks the site to the north. To the south are three electricity Pylons staggered one behind

the other to the immediate south. The applicant has indicated that the pylons as can be seen in Figure 3 and 4 qualify as buildings as defined in Policy CTY8 and combined with No 17 Temple Road, constitutes a continuous and built up frontage along this stretch of Temple Road resulting in the proposed site fulfilling the criteria of Policy CTY8 as a gap site. The applicant and agent has indicated that this assessment of “what constitutes a building” is set out in the Planning Order (Northern Ireland) 1991 which defines buildings as

**“including any structure or erection, and any part of a building, as so defined but does not include plant or machinery comprised in a building”**

Section 250 of The Planning Act (NI) 2011 has since superseded the definition of building as outlined in the Planning Order (Northern Ireland) 1991, but the definition remains:

**“Building’ includes any structure or erection, and any part of a building, as defined, but does not include plant or machinery comprised in a building.**

In addition to Section 250 of the Planning Act 2011, The Planning (General Permitted Development) Order (NI) 2015 defines a building further, but specifically for the purposes of the order itself:

**“building” does not include plant or machinery or a structure or erection of the nature of plant or machinery and for the purposes of the Schedule does not include any gate, fence, wall or other means of enclosure but includes any structure or erection and any part of a building as so defined”.**

In the absence of a definition of a “building” within PPS 21, Officers consider the pylons are lattice towers in structure and are considered as apparatus required in association with the transmission and distribution of electricity. The Planning (General Permitted Development) Order (NI) 2105, differentiates between apparatus and buildings for the purposes of transmitting electricity.

It is widely understood and accepted the reference to buildings as outlined in CTY 8 refers to a line of line buildings along a road frontage without accompanying development to the rear. It is difficult to comprehend how three electricity pylons could be considered to constitute a substantial and continuously built up frontage,

Therefore officers consider the site is not within an otherwise substantial and continuously built up frontage that respects the existing development pattern along the frontage in terms of size, scale, siting and plot size. It is clearly evident that the proposed site could not be deemed a gap site and fails to adhere to the criteria as set out in Policy CTY8 of PPS 21.

### **CTY13 Integration and Design**

The site has no defined boundaries apart from the manicured hedging which defines the boundary of no 17 Temple Road which would not provide any significant enclosure or means of integration. The site is open and exposed when viewed in transit along the site frontage and from the south on temple Road. Due to the lack of any adequate means of enclosure a dwelling at this location would be conspicuous and would not integrate successfully into the landscape. Any development on site would rely primarily on the use of new landscaping for integration.

### **CTY14 Rural Character**

Due to the lack of existing vegetation and open nature of the site a dwelling would create a ribbon of development along Temple Road. Approval of a dwelling on this site would have an adverse impact upon the rural character and thus contrary to Policy CTY14 Rural Character.

### **PPS3 Access, Movement and Parking**

DfI Roads have been consulted and have indicated that the provision of the 2.4m x 80.0m visibility splay from the application site access to the north (critical direction) extends outside the site as outlined in red and into lands not indicated as being within the control of the applicant.

The provision of the 2.4m x 120.0m visibility splay to the north (critical direction) of the application site access will require the removal of approximately 32m of hedging and fence line within the red outline. Furthermore, approximately 25m of hedging and the gate at the neighbouring dwelling (number 17) requires to be removed and setback to achieve the visibility splay. There is no existing visibility splay.

To the south of the application site access approximately 75m of fence line is required to be removed to provide the visibility splay of 2.4m x 80.0m and earthworks will be required to provide the level verge no higher than 250mm above the adjoining carriageway and graded

embankment to the existing field level. There is no existing visibility splay, the proposal is therefore contrary to AMP 2 of PPS 3.

**PPS 2 Natural Heritage and Derry Area Plan- Within Area of Local Nature Conservation and Amenity Importance LCA 3 Strathfoyle (Enagh Loughs)**

The site is located within an Area of Local Nature Conservation and Amenity Importance known as LCA 3 Strathfoyle (Enagh Loughs) in the Derry Area Plan 2011. A number of Areas of Local Nature Conservation and Amenity Importance (AoLNCAI) have been defined either within or close to settlements. The areas are of particular local importance as they are found close to where development pressures are normally greatest and where there is a relative lack of other nearby nature conservation and amenity areas.

The site is within the Enagh Loughs AoLNCAI, which is described as follows; Enagh Loughs - an area on the urban edge containing open water bodies (Enagh Loughs), wetlands, mature deciduous woodland, sites of archaeological and historical interest and providing for recreation, principally angling. The area acts as a buffer between the housing and hospital areas to the west and the industrial estates at Maydown and is an area of local nature conservation importance. Its overall importance derives from the combination of interests found in this relatively small area in close proximity to the growing urban area and the intrinsic quality of the landscape. Development which would damage or result in inappropriate change to the crannog at Rough Island, the town house and crannog at Green Island or to the Enagh Church and Graveyard, or to their setting, will not be permitted. A relatively large area has been included to ensure protection of views from the lakes and the setting of the lakes themselves.

Policy ENV 4 deals with development within Areas of Local Nature Conservation and Amenity Importance (AoLNCAI). It states that new development will not normally be permitted within the AoLNCAI. Exceptions to this may include proposals which:

- relate to changes of use and conversions of existing buildings which could accommodate sensitive development and where such existing buildings and structures are neither unsightly nor obtrusive elements in the landscape;
- are aimed at enhancing and maintaining the interest of these areas.

Since some of these areas lie outside settlement boundaries, consideration of development proposals will take account of all other relevant rural planning policies. In assessing

development proposals, particular regard will be paid to the existing character and interests of the area and proposed changes to that character. Development which is likely to increase noise significantly, or detract from the quiet enjoyment of the areas will be resisted.

The AoLNCAI contain a small amount of built development, much of which consists of traditional and historic buildings. These add to the amenity of the areas and the DAP 2011 encourages the sympathetic re-use and rehabilitation of these properties. The loss of these remaining buildings and their replacement with unsympathetic design solutions will be resisted. However, proposals which may be acceptable include informal recreational activities, creation or enhancement of pedestrian access, tree planting, woodland management and schemes specifically aimed at enhancing the landscape or improving the nature conservation interest.

Given its location and nature, the proposal is unlikely to have an adverse impact on the identified areas of interest, such as the Crannogs, the graveyard and church within the AoLNCAI. That being said, ENV 4 states that other than in exceptional cases, new development will not normally be allowed in AoLNCAIs. This form of development does not constitute one of the stated exceptional circumstances and therefore the proposal is contrary to ENV 4 of DAP 2011.

In terms of Natural Heritage, PPS 2 provides the policy context. It sets out the planning policies for the conservation, protection and enhancement of our natural heritage. There are no watercourses evident abutting this site and therefore it is unlikely that this proposal would adversely affect the water environment including the selection features, conservation objectives or status of any European site. This has been confirmed through consultation with SES. The proposal will not impact on any of the natural features identified within the AoLNCAI area such as the lake or woodlands. There is no significant removal of trees/vegetation or landscape features proposed. As such it is unlikely that this proposal will adversely affect any priority species or their habitat which is afforded protection. Therefore the proposal complies with policies NH 1, NH 2, NH 3, HNH 4 and NH 5 of PPS 2 and Policies ENV 6, ENV 7 and ENV 8 of the DAP in this respect.

#### **PPS15 Planning and Flood Risk**

Maps have indicated that sections of the site are subject to surface are flooding. As such DFI Rivers have been consulted. The relevant policies have been assessed as follows:

**Policy FLD 2 Protection of Flood Defence & Drainage Infrastructure**

An open watercourse flows along the western boundary of the site. Under 6.32 of the policy a working strip with a minimum width of 5m from the top of the bank must be retained. Clear access and egress should be provided at all times. The open watercourse sinks partway along the site boundary. It was not clear from a site visit in which direction the presumably piped watercourse continues. Provision of a working strip applies to the piped watercourse also. The applicant should consider and manage flood risk from this watercourse when developing the site.

**Policy FLD 3 Development & Surface Water (Pluvial) Flood Risks Outside Flood Plains**

The development does not exceed any of the thresholds or fall under any other reason to provide a drainage assessment in Policy FLD 3. However, Policy FLD 3 states *'where a Drainage Assessment is not required but there is potential for surface water flooding as indicated by the surface water layer of the Strategic Flood Map, it is the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site.'*

**11. Conclusion:**

Having considered all material considerations, including the development plan, relevant planning policies, and consultation responses it is considered that the proposal fails to meet policies CTY1, CTY8, CTY13 and CTY14 of Planning Policy Statement 21, policy ENV 4 of DAP 2011 and policy AMP2 of Planning Policy Statement 3 and the Strategic Planning Policy Statement. Therefore refusal is recommended for a dwelling at this particular location for the reasons set out in Section 12 below.

**12. Refusal Reasons:**

1. The proposal is contrary to 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 Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Temple Road
3. The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside in that it would, if permitted appear as a prominent feature in the landscape as the site lacks long established natural boundaries and is unable to provide sufficient capacity to integrate a dwelling on the site.
4. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, result in a detrimental change to the rural character of the countryside by reason of ribbon development and build-up.
5. The proposal is contrary to the Strategic Planning Policy Statement in it has not been demonstrated that the amenity of the proposed dwelling would not adversely impacted by reason of noise and electromagnetic field levels (EMF Levels) and could if approved impinge in the safe operations of the adjacent NIE pylons.
6. The proposed development is contrary to AMP2 of Planning Policy Statement 3 Access, Movement and Parking, as it has not been demonstrated, that the proposal will not prejudice the safety and convenience of road users since adequate provision has not been demonstrated onto the existing road.
7. The proposed development is contrary to ENV 4 of Derry Area Plan 2011, as the site is located within the “Enagh Lake” Area of Local Nature Conservation and Amenity Importance (AoLNCAI) and the form of the development is not an accepted exceptional form of new development in an AoLNCCA.I.