

Derry City and Strabane District Council
98 Strand Road,
Derry
BT48 7NN

73 Palmerston Road,
Belfast
BT4 1QD

9th July 2021

Dear Sir/Madam

Re: Proposed Judicial Review of a decision of Derry City and Strabane District Council to approve planning application Nos. LA11/2020/0507/O

I refer to the above and set out below the appropriate Pre Action Protocol letter in accordance with the Judicial Review Practice Direction.

Section 1- Information required in a letter before application

1. Proposed claim for judicial review

To

Derry City and Strabane District Council, (referred to as the “**Proposed Respondent**”)

2. The Applicant

Gordon Duff (hereinafter referred to as “**the Applicant**”)

3. Reference details

Planning Reference **LA11/2020/0507/O**

4. The details of the matter being challenged

The decision by the Proposed Respondent to grant planning permission re planning application **LA11/2020/0507/O** on the 14th June 2021 (The Impugned Decision). This planning permission is for Proposed site for dwelling and garage at lands approximately 80m south of 21 Bigwood Road, Ardmore, Derry

THE ISSUES

5. The Applicant has an environmental interest in protection of Northern Ireland countryside and challenging unsustainable development which cumulatively locks Northern Ireland into perpetual breach of its climate change obligations. The DfI have published figures showing that over 2000 houses per annum are built in the countryside in NI. This development is entirely car dependent and destroys dozens of kilometres of hedgerow per annum

The Applicant will argue that everyone in Northern Ireland has a legitimate interest in protecting nature and the environment of the entire province as greenhouse gas emissions impact national targets and the effects are global.

Infill developments are rampant and infectious. Developers will observe the very easy money of getting approvals and selling off sites for profit. The bad administration in one Council area is pounced on by developers and followed by other developers and so on, so the knock on effects of bad decision accelerate widespread misinterpretation of policy and the worst decisions must be challenged for the wider interest of proper administration.

In this case the proposed Respondent has seriously abused its planning powers and made a seriously defective planning decision. The approved development is unsustainable and in very obvious breach of planning policy which in this instance if not quashed will open the door to more ribbon development in the future in the adjacent fields and spaces.

These highly significant facts drive this legal challenge and therefore the Applicant's address in Belfast is minor by comparison.

The Applicant claims standing.

6. As stated above the number of houses now being applied for and passed in the countryside in Northern Ireland exceeds 2000 per year. The proposed development results in the loss of fertile agricultural land, a long established hedgerow habitat, wildlife and represents an unsustainable car dependant development. Cumulatively with many of the other approved rural houses, this proposed development represents the incremental degradation of the countryside and the creation of long term living patterns that make it nearly impossible for us as a nation to meet our climate change obligations under the 2016 Paris Climate agreement. It represents urban sprawl and causes decline in settlements by drawing people and resources away from worthy sustainable developments into an unsustainable suburban style build up of houses. The Court and the Planning Appeals Commission have consistently accepted applications challenging infill development to be Aarhus Convention cases and for all the above reasons the Applicant claims this to be an Aarhus case

The inadequate instruction and information presented by the planning officer to the planning committee

7. Firstly the planning officer's report erred in deciding that an EIA determination is not required. The site in question is .85ha and residential developments in excess of .5ha should, if properly assessed require an EIA determination to be carried out. To not carry out an EIA determination where it is required is unlawful.

Secondly the Planning officer has not adequately examined how much hedge will require to be removed to provide adequate sightlines. The long established hedge is tight to the road and may in its entirety need to be removed. This will significantly impact rural character and increase the appearance of suburban build up in this narrow road. If the Respondent does not know the extent of hedge removal it cannot make an informed decision in relation to policy CTY8, CTY14 and the SPPS.

Thirdly the report fails to point out that the commercial building to the north-west has no frontage to Bigwood Road and whilst it may be guilty of adding to ribbon development it cannot be regarded as comprising part of a substantial and continuously built up frontage. This was not adequately pointed out in the officer report

The errors of the Proposed Respondent

8. The Proposed Respondent has made the following errors-
 - (a) It has granted permission for a development which will create or add to ribbon development. The impugned decision will also create more opportunities for further infill development. This future development has not yet occurred but that is why adding to the existing ribbon development is prohibited outright by CTY 14 and the SPPS. CTY8 is not a self contained policy; *DOE v the PAC [2014] NIQB 4*.
 - (b) It has allowed infill development that is not a small gap in a substantial and continuously built up frontage.
 - (c) It has failed to make the required EIA determination and made proper assessment of the impact of the approved development on the site and in particular the hedgerow. It did not carry out due assessment of this priority habitat under policy NH5.
9. **The details of the action the Proposed Respondent is expected to take**

The Proposed Respondent should accept it has made a mistake and that planning committee members carry personal financial liability for overturning the recommendation of the Respondent's planning officer. It is appropriate that the proposed Respondent submits to the judgement of the Court.

This will result in the Applicant requesting the Court to quash the decision without contest and in these circumstances the Applicant will not claim costs against the proposed Respondent nor will the proposed Respondent waste ratepayers money defending the indefensible decision that it has made.

10. The Details of legal advisers, if any, dealing with claim

The Applicant has no legal adviser

11. The details of any interested parties

Mr M Lusby
4 Glenmore Park
Derry
BT47

c/o
5050 Architecture
17 Linenhall Street
Limavady
BT49 0HQ

12. The details of any information sought

To provide minutes of the planning committee meeting of the 9th June 2021 which relate to this application.

13. Costs

The Applicant considers that the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 and The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 apply.

14. The address for reply and service of court documents

Gordon Duff
Correspondence address- 73 Palmerston Road, Belfast, BT4 1QD

15. Proposed reply date

Taking the holiday period into account Friday the 6th August 2021

16. Address for sending the letter before Application

Derry City and Strabane District Council
98 Strand Road,
Derry
BT48 7NN

Gordon Duff
Applicant