

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

73 Palmerston Road,
Belfast
BT4 1QD

20th August 2021

Dear Sir/Madam

Re: LA11/2020/0609/O | Proposed 1.5 storey infill dwelling and detached garage | Site between No 27 & 31 Loughan Road Donemana

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 **LA11/2020/0609/O**

4. The details of the matter being challenged

The decision by the Proposed Respondent to grant planning permission re planning application **LA11/2020/0609/O** on the 14th July 2021 (The Impugned Decision). This planning permission is for Proposed 1.5 storey infill dwelling and detached garage / Site between No 27 &31 Loughan Road, Donemana.

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. The Applicant believes much of this is in breach of existing policy and making decisions contrary to policy, without scrutiny by the DfI or the Courts, allows the intent of policy to be lost in the proposed Respondent's "new normal" interpretation of policy built on its own previous errors.

The Applicant notes the proposed Respondent has on more than one occasion presented weak planning officer reports recommending refusal to its planning committee when in fact the report should be far more robust and informative. This is the second really flawed overturn of the planning officer recommendation on an infill application by the Committee within the space of one month. These flawed decisions, if unchallenged give the proposed Respondent a false sense of competence in these matters. That is why this decision must be challenged. A successful challenge will clarify the interpretation of the policy to inform proper decisions in the future. The flawed decisions both infect the proposed Respondent but also they are insidious and will creep to other Councils and infect their decision making as well.

That is why this decision must be challenged and as there appears to be no adequate scrutiny in place in County Londonderry the Applicant intends to raise the issue before the Courts.

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. The environmental impacts of unsustainable development and cumulative destruction of the environment affect us all and cause escalating climate problems in the most vulnerable countries. It is certainly not vexatious or being a busybody to fight such obvious harm.

Infill developments are rampant and cumulative. Most destroy hedgerows and habit of some sort. 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. The knock-on effects of bad decisions 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 by departing from an obvious and all reasonable interpretation of policy.

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

The Applicant claims standing.

6. The 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 in a rural area.

7. The proposed Respondent has declared a climate emergency in the following terms-

“Climate change is one of the biggest challenges facing society. The Earth’s climate has already become warmer, with scientists predicting further increases in global temperatures. The consequences of our greenhouse gas emissions will continue to leave a legacy of flooding, famine, drought, migration, coastal flooding and erosion, and will lead to the mass extinction of species. The impacts of climate change are affecting people in our City and District today.

Across the North West we have seen the impact of severe weather with a number of significant flood events in the last decade as well as disruption from heat waves and storms.

Council Climate Action

At a time when global action is required, we in Derry City and Strabane District Council have decided to act locally while thinking globally.

We recognise the need to tackle climate change by reducing greenhouse gas emissions to minimise future global warming and being ready for the unavoidable impacts of climate change in the City and District through adaptation planning.

We have recently declared a Climate Emergency, launched our Climate Change Adaptation Plan, established an All Party Working Group and developed a Climate Change Pledge committing us to climate action.

Council’s Climate Emergency Pledge outlines our commitment to achieve net zero greenhouse gas emissions by 2045 and the need to adapt to climate change impacts now and in the future.”

The proposed Respondent, in making the impugned decision, is in breach of its own commitments to make massive changes to achieve net zero by 2045. The high maintenance of rural car dependant homes bakes in high CO2 output permanently and will make the Council’s proposal an insincere pipe dream and green wash rather than a serious objective.

8. 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

The planning officers have not referred to the necessary Guidance within Building on Tradition (BOT) within the report to the Planning Committee. Referring to BOT is not

optional as the SPPS states at paragraph 6.78 that “*supplementary planning guidance contained within ‘Building on Tradition’: A Sustainable Design Guide for the Northern Ireland Countryside’ must be taken into account in assessing all development proposals in the countryside*”.

Consequently the planning Officer and the Committee have not considered the advice on visual breaks within BOT or the diagrammatic explanations that show that the policy considers plots which exclude garages and ancillary buildings.

BOT explains policy grants new development for plots between plots. Ancillary buildings such as garages are not additional buildings in this guidance for the purpose of enabling the quota of 3 buildings required by CTY8 or which restrict infill development to one plot if that plot contains a garage. A successful infill for two dwellings can contain 4 buildings because garages are not counted.

It is clear to me, that the Proposed Respondent is unfamiliar with BOT and is consistently making decisions without the benefit of guidance and in contravention to the SPPS paragraph 6.78.

BOT at Paragraph 4.5.1 explains the “*Sites may also be considered to constitute an important visual break depending on local circumstances. For example; if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.*” This means existing single rural dwellings which are surrounded by countryside on all sides are excluded from a substantial and continuously built up frontage because the rural setting must be retained to maintain the amenity and character of such a dwelling).

Recent Guidance from the DfI addresses and clarifies some of these issues and it is attached to this letter for reference.

The errors of the Proposed Respondent

9. The Proposed Respondent has made the following errors-
 - (a) It has granted permission for a development which will create or add to ribbon development. This is contrary to policy CTY8, policy CTY14 and the SPPS
 - (b) It has allowed infill development that is not a small gap in a substantial and continuously built up frontage.
 - (c) It has allowed garages to contribute to the quota of 3 buildings.
 - (d) It has failed to recognise that the farmland completely surrounding number 31 Loughan Road is a visual break.
 - (e) It has failed to recognise that number 27 Loughan Road and the proposed new house are both accessed by a private lane and neither have frontage to the public road.
 - (f) It has failed to consider BOT and the SPPS where it instructs that BOT must be taken into account.

10. The details of the action the Proposed Respondent is expected to take

The Proposed Respondent should accept it has made a mistake. 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.

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

The Applicant has no legal adviser

12. The details of any interested parties

Mr Alan Wallace, 9 Cregglea, Claudy

c/o Creative Architecture, 2 Grovemount Park, Altnagelvin, L'Derry BT47 5SQ

13. The details of any information sought

To provide the Applicant the link to the recorded meeting of the planning committee of the 7th July 2021 with the section identified which relates to this application.

14. 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.

15. The address for reply and service of court documents

Gordon Duff

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

16. Proposed reply date

Friday the 13th August 2021

17. Address for sending the letter before Application

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

Gordon Duff
Applicant