Q6 MATTERS OF CONCERN - LA05/2022/0033/F

The following paper addresses:

Q6 MATTERS OF CONCERN - LA05/2022/0033/F 1
1. HUMAN RIGHTS CONCERNS 1
Article 8 2
Article 8 (2) ECHR 2
First Protocol Article 1 ECHR 2
Article 6 ECHR 3
Aarhus Convention Compliance Committee (ACCC) 3
2. EQUALITY IMPACT ASSESSMENTS 4
3. PROCEDURAL CONCERNS 4
(A) Pre-eminence of LDP 2032 4
(B) EIA Screening 5
(C) Access to the Planning Committee Report 6
(D) Outstanding HRA 7

1. HUMAN RIGHTS CONCERNS

Relevant sections of the European Convention on Human Rights (ECHR) with relevance to application LA05/2022/0033/F are set out below. It is apparent from Article 8 that a fair balance has to be struck between the competing interests of the individual and of the community as a whole. We believe Article 8, together with the ruling in Britton v SOS in respect of the interpretation of Article 8(2) places requirements on Planners in relation to ensuring the protection of our right to private life and the enjoyment of our property. Britton v SOS ruled that private life encompasses not only one's home but also its surroundings. Article 1 of the First Protocol is also pertinent. It is wider than Article 8 as it applies to the peaceful enjoyment of all of a person's possessions and not merely to his home. This could include land, curtilage property, fixtures and fittings.

We consider our rights are negatively impacted due to the proposed removal of green spaces, the potential future flooding risks, the intrusion into our privacy and our right to enjoy a quiet and safe residential environment, caused by the scale of the proposed building which is out of character with the surrounding areas and the increased noise, traffic, and light pollution which will change the character of the village.

The proposed seventeen dwellings represent a 50% increase in at least 2 storey houses in the area of Quarterlands road or 59% of these in the immediate surrounding area of the proposed site. In the village of Drumbeg this will have a disproportionate impact on the locality. None of the homes adjoining this site are more than 1.5 storeys in height.
https://quarterlands.com/height-discrepancy/

Specific ECHR references are set out below to set the context for our request for protection of our rights under the ECHR.

Article 8

“Article 8 of the ECHR provides a right to respect one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". The margin of appreciation (i.e. the judicial doctrine whereby international courts allow states to have a measure of diversity in their interpretation of human rights treaty obligations) in Article 8 means that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation.”

Article 8 (2) ECHR

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime”

In the case of Britton v SOS (1997 JPL 617) the courts reappraised Article 8(2) and concluded that the protection of the countryside falls within the interest of Article 8. Private life therefore encompasses not only the home but also its surroundings. Arguably this could mean that Article 8 (2) would also apply where a listed building or a conservation area is affected, enabling people to demand respect for the special interest of the conservation area in which they live or nearby listed buildings as a human right.

First Protocol Article 1 ECHR

‘(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.’

In many cases there is likely to be a significant overlap between Article 8 and First Protocol Article 1. However, this right is wider than Article 8 in the sense that it applies to the peaceful enjoyment

of all of a person's possessions and not merely to his home. This could include land, curtilage property, fixtures and fittings.

The grant or refusal of planning permission, listed building consent or conservation area consent will frequently affect the lives, homes and property of others. Notably the applicants and the owners and occupiers of neighbouring properties, all of whom have the right to respect for their home and a right to the peaceful enjoyment of their possessions.

In practice it is unlikely that the interests of the community and those of the applicant will be balanced. It is, therefore, necessary for the local planning authority, the planning inspectorate and the courts to ensure this balance is fair.

Article 6 ECHR

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. 'This right has a criminal and civil limb. We are looking at the civil limb which covers planning decisions. We do not consider that our views as objectors have been afforded due regard by planners in reaching a decision to recommend approval of the planning application.

For Example, our concerns about the Environmental Impact Assessment (EIA) and the use of Y/N assessment were ignored by Planners. The negative EIA screening decision made on 11 January 2024 is seriously deficient and we contend, unlawful. The EIA screening decision is seriously deficient because it fails to justify how the application has been assessed against the Schedule 3 criteria in the EIA Regulations 2017. Nor does it give reasons as to why some criteria were considered while others were not. Instead, it simply addresses the various screening criteria with either a Y (yes) or a N (no/negative) - see last 3 pages of the EIA screening.

Aarhus Convention Compliance Committee (ACCC)

ACCC is a body of eminent experts in environmental law. The inadequacy of the Y/N scoring approach is reported in detail in the Aarhus Convention Compliance Committee communication ACCC/C/2013/90, paras 119 - 133; a case brought by the River Faughan Anglers, Derry against the UK because of planners' and the NI Courts failure to understand and properly apply the EIA screening process (https://unece.org/sites/default/files/2021-11/ECE_MP.PP_C.1_2021_14_E.pdf)

Paragraph 131 of the ACCC report found that the Y/N approach to EIA screening in Northern Ireland does not constitute proper environmental assessment process.

> '131. Having examined the judgment closely, the Committee [ACCC] cannot see any indication that the court [High Court] undertook any assessment itself of whether the schedule 3 criteria were applied correctly in determining whether the activity was likely to have a significant effect on the environment. **Rather, it relied on the affidavit evidence of the decision-maker that it had carried out a proper process**, **since that was not evident from the "Y/N" wording of the screening decision itself.'** (Highlighting added)

The ACCC considers that it is not acceptable and, therefore, vulnerable to legal challenge to rely on the Y/N method of EIA screening. This view was recently reinforced by the Department for

Infrastructure in its Development Management Practice Note 9b: Screening Projects for Environmental Impact Assessment published in December 2023. Section 4.4 specifically advises councils that:

> *"The degree of detail that is needed in completing such a template depends on the facts of each given case;* ***as such, a tick box approach to completing a template is very unlikely to prove acceptable and should be avoided.*** *The more complex the proposed development or the environmental considerations that it raises, the more detailed the explanation needed to justify a negative screening determination."* (Highlighting added)

It is alarming that considering the ACCC findings (2021) and DFI advice, that Lisburn City and Castlereagh Council (LCCC) is still adhering to an inadequate and legally questionable EIA screening assessment process. Particularly, when we as residents raised concerns about the process without being afforded a fair hearing by Planners. We consider that reports commissioned and paid for by the developer were treated preferentially to the evidence provided by residents and concerned others.

2. EQUALITY IMPACT ASSESSMENTS

Section 75 of the Northern Ireland Act (2000) places a statutory obligation on Public Authorities to carry out their functions with due regard to the need to promote equality of opportunity and good relations in respect of religious belief, political opinion, gender, race, disability, age, marital status, sexual orientation and those with dependents or without dependents.

The shared street arrangement proposed within the development is likely to place children and those with a disability at risk given the findings of the Holmes Report 'Accidents by Design'. No Equality Impact Assessment was conducted in respect of the proposed internal road and pedestrian systems.

3. PROCEDURAL CONCERNS

(A) Pre-eminence of LDP 2032

The Local Development Plan (LDP) 2032 and its relevance to this application. Para 1.11 of the Strategic Planning Policy Statement states:

> "Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date."

This means that once LCCC adopted its LDP in September 2023 previous plans (LAP 2001) and policies had no relevance in respect of determining this application. This despite the approach adopted by the developer in the Rebuttal Report added to the Planning Portal 6 December 2023 in respect of application LA05/2022/0033/F.

LCCC has already determined in the case of Magheraconluce Road that the adopted area plan is the primary policy consideration in determining applications that remained undecided at the time of adoption of the LDP. In that case a developer sought to make the case that the application should be determined on prior planning and policy requirements. Essentially, it was argued that as the application was submitted before the adoption of the LDP 2032 that it should be assessed and approved under the more favourable older policies. LCCC did not accept this argument and refused permission under the stricter area plan policies, even though the plan had only been adopted a week before and it had been processing the application for some time before.

We consider that the LCCC would be acting inconsistently if it now adopted a different approach in the Quarterlands case in relation to the pre-eminence of the LDP 2032.

(B) EIA Screening

The EIA screening decision is seriously deficient because it fails to justify how the application has been assessed against the Schedule 3 criteria in the EIA Regulations 2017. Nor does it give reasons why some criteria were considered while others were not instead, it simply addresses the various screening criteria with either a Y (yes) or a N (no) - see last three pages of the EIA screening.

The Aarhus Convention is international law which the UK is a signatory to and bound by. As such, there is a requirement for LCCC to respect it or risk being reported to the ACCC. The ACCC, a body of eminent experts in environmental law, finds that the Y/N approach to EIA screening in Northern Ireland does not constitute proper environmental assessment process:

> '131. Having examined the judgment closely, the Committee [ACCC] cannot see any indication that the court [High Court] undertook any assessment itself of whether the schedule 3 criteria were applied correctly in determining whether the activity was likely to have a significant effect on the environment. **Rather, it relied on the affidavit evidence of the decision-maker that it had carried out a proper process**, **since that was not evident from the "Y/N" wording of the screening decision itself.'** (Highlighting added)

The ACCC considers that it is not acceptable and therefore vulnerable to legal challenge, to rely on the Y/N method of EIA screening. This was recently reinforced by the Department for Infrastructure in its Development Management Practice Note 9b: Screening Projects for Environmental Impact Assessment published in December 2023. Section 4.4 specifically advises councils that:

> *"The degree of detail that is needed in completing such a template depends on the facts of each given case;* ***as such, a tick box approach to completing a template is very unlikely to prove acceptable and should be avoided.*** *The more complex the proposed development or the environmental considerations that it raises, the more detailed the explanation needed to justify a negative screening determination."* (Highlighting added)

It is alarming that considering the ACCC findings (2021) and DFI advice (2023), LCCC is still adhering to an inadequate and legally questionable EIA screening assessment process. Derry City and Strabane District Council abandoned this N/Y box tick process around five years ago based on legal advice from Senior Counsel.

(C) Access to the Planning Committee Report

Quarterlands, and the wider public, have been afforded limited time to access Planning Committee Reports in relation to planning application LA05/2022/0033/F. Generally, these Reports have been available on the Portal two or three days prior to the Planning Committee Meeting. It is noteworthy that the Aarhus Convention finds that the failure to make a planning report publicly available breaches citizens' rights as set out in communication ACCC/C/2013/90. Paras 163 - 164 are set out below for ease of access, as they emphasise the importance of the Planning Committee Report in the decision-making process:

> 163. The Committee recalls that the DCO [Development Control Officer's] report is one of the main, if not the main, reports to be put before the decision-makers prior to granting planning permission. The communicant's request for access to the report was directly related to its desire to participate in that decision-making prior to planning permission being granted. The competent authority's failure to provide the report to the communicant in these circumstances is a serious matter.
>
> 164. Given the foregoing, the Committee finds that, by not providing the communicant with access to the DCO report prior to the decision to grant planning permission, despite the communicant's multiple requests, the Party concerned failed to meet the requirements of article 3(2) to endeavour to ensure that its officials and authorities assist the public in seeking access to information and facilitate its participation in decision-making under the Convention.

Moreover, UN decision VII/8s issued against the UK in October 2021, found that not making reports available on the planning portal in a timely manner, that the planning authority is legally obliged to produce, is a breach of Article 5 of the Aarhus Convention (https://unece.org/sites/default/files/2022-01/Decision_VII.8s_eng.pdf

In particular, section 5(a) rules that:

> "By failing to promptly make accessible through its online planning register the documents related to a planning application that the Council was required by law to possess, the Party concerned failed to comply with article 5 (3) (d) of the Convention;"

The planning committee report is one such document. In essence, some of those who have objected will have been prejudiced by the absence of or the timeliness of planning committee reports being available on the portal.

Planners posted a Planning Committee Report on the Portal for the February 2024 Planning Committee Meeting which was subsequently removed a day later. We presume this action occurred because it was no longer planned to discuss application LA05/2022/0033/F at the planning committee meeting scheduled for 5 February 2024.

We consider the practice of removing documents from the Portal to be irregular and prejudicial to the public. Once a document appears on the planning portal it becomes a public document. Removing it from the public realm without clear and just reason, is unacceptable. Certainly, it could be viewed as having been done to ensure that citizens have

limited time to scrutinise a Report fully. While a document can be superseded, we consider that removal of a document is a serious matter which should be regulated by a LCCC protocol and authorised by a senior member of the Planning Department.

(D) Outstanding HRA

The DAERA response dated 24 January 2024 notes at Page 2 'As the Planning Authority is the competent authority under The Conservation (Natural Habitats, etc.) Regulations 1995 (as amended), this responsibility extends to the carrying out of Habitat Regulations Assessments (HRAs) before a planning decision is made.' This HRA remains outstanding.

Quarterlands Group February 2024