

September 2nd, 2022

**Notice Of Meeting**

You are invited to attend the Planning Committee Meeting to be held on **Thursday, 8th September 2022** at **2:00 pm** in **Chamber Monaghan Row.**

**Committee Membership 2022-2023**

- Councillor D McAteer (Chairperson)
- Councillor D Murphy (Deputy Chairperson)
- Councillor R Burgess
- Councillor P Byrne
- Councillor L Devlin
- Councillor G Hanna
- Councillor V Harte
- Councillor M Larkin
- Councillor A Lewis
- Councillor L McEvoy
- Councillor G O'Hare
- Councillor H Reilly

# Agenda

## 1.0 Introduction and Apologies

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### *Development Management - Planning Applications for determination*

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## 2.0 LA07/2021/0987/F - Section 54 application seeking planning permission to vary condition no. 17 of P/2013/0242/F - Lands at Watsons Road / Dorans Hill, Newry including lands to the east of Watsons Road. (Case Officer report attached).

### APPROVAL

- A request for speaking rights has been received from Richard O'Toole; Stewart Beattie QC and Grant McBurney on behalf of their client EDB, in objection to the application. **(Submission attached)**
- A request for speaking rights has been received from Tom Stokes; Karen McShane and Brian McConville, in support of the application. **(Submission attached)**
- DfI Roads representatives will be in attendance to answer any queries from Members.

 <i>Watsons Road.pdf</i>	<i>Page 1</i>
 <i>Addendum Report.pdf</i>	<i>Page 12</i>
 <i>LA07 2021 0987 F (objection).pdf</i>	<i>Page 18</i>
 <i>LA07 2021 0987 F (support).pdf</i>	<i>Page 21</i>



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin  
**Newry, Mourne  
and Down**  
District Council

**1.0 Application Reference:** LA07/2021/0987/F

**2.0 Date Received:** 13.05.21

### **3.0 Proposal:**

Section 54 Application to vary Condition 17 of Planning Permission P/2013/0242/F. Condition 17 reads:

“Prior to the commencement of any works hereby permitted, the developer will be required to comply with the legislative process to stop up and abandon relevant parts identified by Transport NI of the existing Watsons Road. These works will require the developer to contact Transport NI Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Transport NI”

to read:

'No more than those dwellings indicated within Phase 1, 2 and 3 of the development hereby permitted as indicated on drawing Nos 96, 97 and 98 received on the 7th July 2015, shall be occupied prior to the developer complying with the legislative process to stop up and abandon relevant parts identified by the Department for Infrastructure of the existing Watsons Road. These works will require the developer to contact Department for Infrastructure Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order

and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Department for Infrastructure.

#### **4.0 Site Characteristics & Area Characteristics:**

The application site is composed of 2 main sections, one section to the east of Watsons Road and one section to the west of Watsons Road located within the urban limits of Newry City. (Full details of site and characteristics/area can be viewed in planning report P/2013/0242/F)

#### **5.0 Site History:**

- P/2013/0242/F approved 6th September 2019 included condition No. 17 which read as:

Prior to the commencement of any works hereby permitted, the developer will be required to comply with the legislative process to stop up and abandon relevant parts identified by Transport NI of the existing Watsons Road. These works will require the developer to contact Transport NI Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Transport NI

- LA07/2020/0282/DC - Discharge of condition No. 17 of Planning Application P/2013/0242/F. Condition not discharged. 23.07.20
- LA07/2020/1918/DC - Discharge of condition no. 17 of P/2013/0242/F. Withdrawn

#### **6.0. STATUTORY CONSULTATIONS**

##### **Consultation responses from DfI (Roads)**

**23.12.21** - DfI Roads have noted the objection letters and our previous comments dated the 20th November (**20.11.21** - DfI Roads are content that this condition can be varied as per the wording submitted) are still applicable.

DfI Roads are content that the stopping up and abandonment are done in line with the phasing plan as the proposed roundabout and existing road network is deemed acceptable to cope with the initial phasing of the

development prior to completion of the remaining phases and the proposed spine road.

## 7.0. OBJECTIONS & REPRESENTATIONS

### Objections & Representations

- 36 neighbours notified
- Advertised initially in June 2021 and following change of proposal description was re-advertised November 2021.
- 6 letters of representation received:
  1. Carson Mc Dowell (3 letters from the same address).
  2. 25 Dromiskin court
  3. 16 Watsons Rd
  4. Watsons Road residents (no address)

#### Issues raised by objectors:

- Why this change is being requested by the developer/ applicant?

*It is the right of the developer/ agent in relation to any application to seek planning permission, this can also include applications made under Section 54 of the Planning Act (2011). This is outside of the remit of the Planning Department to control.*

- Adverse effect on all road users and existing residents.

*DFI in their consultation responses dated 20.11.21 and 23.12.21 raised no issues of concern.*

- The new link road may never happen/ phases 1-4 could be developed without need to construct the new road and phase 5.

*The Planning Department cannot pre-determine whether or not the developer will proceed with the development as this lies outside the remit of the Planning Department to control.*

- The introduction of a significant variation to the timescale of developing the road infrastructure is not acceptable to the local community

*The applicant seeks to vary condition No. 17 of P/2013/0242/F only, this does not introduce a significant variation to the timescale as the remaining conditions set out within the original notice P/2013/0242/F remain applicable including the time restriction in which to implement the permission.*

- Agreed with the developer that planning approval required before any houses are occupied to ensure the single-track Watsons Rd at the southern end does not become more dangerous.

*DFI in their consultation response dated 20.11.21 and 23.12.21 raise no issue of concern in relation to road safety.*

- Request for variation has not been set out in the letter

*It is not an unreasonable request by a developer or agent to seek a variation of condition.*

- Developer has not been able to reach an agreement with an adjoining landowner to allow the proposed new Watson's Rd to tie into the existing Watsons Rd to comply with planning and road service requirements.

*Agreements between landowners are a civil matter which lies outside the remit of the Planning Department.*

- Developer does not have the actual possession of every part of the land to which the application relates therefore the RVC1 application section 7 certificate of ownership dated 11th May 2021 not be acceptable to planning.

*The developer has completed the Certificate of Ownership under Section 42 of the Planning Act (NI) 2011, confirming ownership and control of lands for the development.*

- Increased volume of traffic in highly congested area

*DFI in their consultation response dated 20.11.21 and 23.12.21 raise no issue of concern.*

- Higher level ground will cause loss of light and privacy

*The application relates solely to a roads related matter, amendment to the condition will not cause loss of light or impact upon privacy.*

- Correspondence not uploaded

*All letters of representation have been uploaded to the Planning Portal*

## **8.0. PLANNING POLICY, GUIDANCE AND OTHER CONSIDERATIONS**

8.0.1 The principle for residential development and access arrangements have been established through the granting of planning permission under P/2013/0242/F with relevant planning policy and guidance considered which is fully detailed within the planning report.

Matters relating to policy will not be revisited as the application remains extant.

8.0.2 The applicant has applied for a variation of condition No. 17 of P/2013/0242/F under Section 54 of the Planning Act 2011 which is a roads related condition. The applicant proposes to amend the wording of the former condition as outlined in the proposal description (See 3.0).

8.0.3 Issues for consideration include impact upon road safety, traffic progression, phasing/orderly development of the site, ensuring that the development does not deviate from the requirements of the area plan and there is no impact upon neighbouring amenity, these will be considered further in detail below.

### **8.1 Background**

8.1.1 The original application for a housing development P/2013/0242/F was approved on 6<sup>th</sup> September 2019 included condition No. 17 which is now subject to a Section 54 application (see wording at section 3.0).



8.1.2 An application to discharge this condition was submitted on the 29<sup>th</sup> January 2020 (LA07/2020/0282/DC) with consultation carried out with DFI who advised (26.02.20) that the condition could not be discharged until the stopping up process has been fully completed through DFI Roads.

8.1.3 As the condition could not have been complied with, the Planning Department issued correspondence on the 23<sup>rd</sup> July 2020 refusing to discharge condition No. 17 of P/2013/0242/F until the stopping up process had been fully completed.

8.1.4 Following this, a further application to discharge Condition No. 17 of application P/2013/0242/F was sought some 11 months later (LA07/2020/1918/DC – received 16.12.20).

Having consulted DFI roads they responded on the 24<sup>th</sup> March 2021 advising that they could not discharge the condition. Given the likely outcome that condition No. 17 of P/2013/0242/F would proceed to refusal the agent subsequently withdrew the application.

8.1.5 After these unsuccessful attempts to discharge condition No. 17 of P/2013/0242/F. It was not deemed an unreasonable request by the agent to seek an amendment/ variation of the condition.

8.1.6 Within 4 months of the previous application (LA07/2020/1918/DC) a Section 54 application (Application for permission to develop land without compliance with conditions previously attached) was submitted on the 13<sup>th</sup> May 2021 (LA07/2021/0987/F).

8.1.7 Initially the Section 54 application LA07/2021/0987/F was submitted seeking planning permission to vary condition No. 17 of P/2013/0242/F from:

‘Prior to the commencement of any works hereby permitted, the developer will be required to comply with the legislative process to stop up and abandon relevant parts identified by Transport NI of the existing Watsons Road. These works will require the developer to contact Transport NI Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby



permitted will be commenced until this process has been fully completed to the satisfaction of Transport NI' to read:

'Prior to the occupation of any part of the development hereby permitted, the developer will be required to comply with the legislative process to stop up and abandon relevant parts identified by Transport NI of the existing Watsons Road. These works will require the developer to contact Transport NI Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Transport NI'

8.1.8 Following consultation with DFI in their reply dated 7<sup>th</sup> October 2021 it was advised that they considered the application unacceptable as submitted and further added that DfI Roads do not require this variation of condition to be a prior to occupation condition for the whole development.

The Department would accept a variation similar to the wording of condition 15 of P/2013/0242, which would link the phasing of the proposed development to this condition.

8.1.9 Given the consultation response from DFI the agent submitted a RVC 1 form on the 7<sup>th</sup> October 2021 which included a change of wording to:

'No more than those dwellings indicated within Phase 1, 2 and 3 of the development hereby permitted as indicated on drawing Nos 96, 97 and 98 received on the 7th July 2015, shall be occupied prior to the developer complying with the legislative process to stop up and abandon relevant parts identified by the Department for Infrastructure of the existing Watsons Road. These works will require the developer to contact Department for Infrastructure Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Department for Infrastructure'

8.1.10 The application was re-advertised on the 15<sup>th</sup> November 2021 and neighbours re-notified with the amended proposal.

8.1.11 DFI were reconsulted on LA07/2021/0987/F regarding the amended wording of the Section 54 and advised on the 20<sup>th</sup> November 2021 that they were content that the condition could be varied as per the wording provided.

A further consultation was forwarded to DFI on the 25<sup>th</sup> November 2021 asking for them to consider all representations received in relation the Section 54 application. They responded on the 23<sup>rd</sup> December 2021 advising that DfI Roads have noted the objection letters and our previous comments dated the 20th November 2021 are still applicable.

Overall DFI have no objection in principle to the proposed variation of condition and have raised no matters of concern in relation to road safety matters.

## **8.2 Phasing of Development/ Orderly development of the site:**

The decision notice P/2013/0242/F has specified planning conditions 13-15 in relation to the phasing of the development which allow for the progression of development through from:

Condition 13 (Relating to Phase 1 of the development):

No more than those dwellings indicated in Phase 1 shall be occupied prior to the completion of all roadworks associated with Phase 1 on Doran's Hill, Watsons Road and internal housing roads.

Condition 14 (Relating to Phase 2 of the development):

No more than those dwellings indicated within Phase 2 shall be occupied prior to completion of all road works associated with Phase 2 on the new distributor road, Glen Hill, Watsons Rd and internal housing layout.

Condition 15 (Relating to Phases 1, 2 and 3):

No more than dwellings indicated in Phases 1, 2,3 shall be occupied prior to the completion of all road works associated with Phase 3 on the new distributor road, Watsons Road and internal housing layout.

The proposed variation of condition of no.17 in this case follows the existing phasing of the development as set out within the original permission but also binds the developer to provide the required works within each of the phases and complete the legislative process to stop up and abandon relevant parts as identified by DFI.

DFI in their consultation response dated 20.11.20 and 23.12.20 confirm that they are also content with the variation of condition in this regard.

### **8.3 Road Safety/ Traffic Progression:**

DFI in its consultation response dated 23<sup>rd</sup> December 2021 are content with proposals and have not raised any objection upon road safety or traffic progression matters.

### **8.4 Area Plan**

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, insofar as material to the application, and to any other material considerations.

The site is located within the development limit of Newry. The section of the site which lies to the east of Watsons Road is zoned for housing development (NY53) with defined key site requirements.

The variation of Condition 17 of P/2013/0242/F will not prejudice the residential development of the site nor impact upon the key site requirements as set out within the Banbridge/ Newry and Mourne Area Plan 2015. Despite the requested variation of the condition, key site requirements can still be fully complied with. This proposal is not prejudicial to the area plan requirements.

### **8.5 Impact to Amenity:**

The variation of the condition relates specifically to a roads condition in relation to road safety and traffic progression. DFI in their consultation response dated 23.12.21 have raised no issues of concern and are content that the stopping up and abandonment are done in line with phasing plan as the proposed roundabout and existing road network is deemed acceptable to cope with the initial phasing of the development prior to completion of the remaining phases.

## 9.0 Recommendation:

The Planning Department has considered the objections submitted in relation to the planning application.

The development of the site for residential purpose as approved under P/2013/0242/F will not be prejudiced by the variation of the condition as proposed. The variation of the condition is in the public interest in that: it will enable the phased release of zoned housing lands; maintain the orderly development of the site; ensure that the key site requirements of the area plan are adhered to; ensure road safety and traffic progression is not compromised. DFI Roads is content with the proposal and has raised no issues of concern. There are no amenity concerns with proposal.

As this is a variation of condition proposal, all other conditions of approval P.2013/0242/F remain applicable unless otherwise discharged.

In this context and for reasons set out within the planning report above it is recommended to approve the application.

**Case Officer:** P Manley

**Date:** 20/06/2022

**Authorised Officer:** P Rooney

**Date:** 20/06/2022

## 11.0 Conditions:

1. The condition No. 17 of planning reference P/2013/0242/F is hereby varied to read:

'No more than those dwellings indicated within Phase 1, 2 and 3 of the development hereby permitted as indicated on drawing Nos 96, 97 and 98 received on the 7th July 2015, shall be occupied prior to the developer complying with the legislative process to stop up and abandon relevant parts identified by the Department for Infrastructure of the existing Watsons Road. These works will require the developer to contact Department for Infrastructure Lands Branch to provide the necessary plans for this procedure to

commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Department for Infrastructure.

Reason: In the interests of road safety and traffic progression.

2. This permission hereby granted relates solely to the variation of condition No. 17 of planning permission P/2013/0242/F and shall be read in conjugation with that decision notice. All other conditions of P/2013/0242/F remain (unless otherwise discharged) and shall be adhered to thereafter.

Reason: To ensure orderly development and that all other conditions of the previous approval are adhered to.



Comhairle Ceantair  
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and Down**  
District Council

**Planning Application LA07/2021/0987/F**

**Section 54 Application to vary condition 17 of planning permission  
P/2013/0242/F.**

**Addendum to the Case Officer Report**

**Background**

This application was removed from the schedule of the Planning Committee meeting of 27 July 2022. A number of matters had been raised on behalf of one objector; among them the failure of the Planning Department to consult with DfI Roads in respect of a letter of objection dated 18 February 2022 and the failure of the Planning Department to address the substantive issues raised in a series of letters of objection dating back to 10 August 2021.

**Consultations**

A consultation was issued to DfI Roads in respect of the letter of objection of 18 February 2022. In response DfI Roads advised that they had considered not only the letter of 18 February 2022 but also additional correspondence from the same objector dated 24 June 2022 and 17 August 2022, together with a written submission/speaking note dated 17 August 2022.

In their response DfI Roads advise that the inadequacy of the local road network adjacent to the proposed housing development is well documented and the

approach taken by DfI officials in respect of acceptable road improvements has been agreed through the original planning application process.

The first stage of new roadway will deliver the necessary infrastructure to support phases 1, 2 and 3 of the development. Full delivery in terms of traffic progression and safety along the new road alignment will not be fully achieved until these three phases of housing and infrastructure are complete.

It is unavoidable that as each housing site is developed, new carriageway will have to temporarily tie into an unimproved section. The benefits associated with the overall planned improvements will be considerable and ultimately an entire length of road will be provided to current standards if the development is allowed to progress.

DfI Roads are content that this condition can be varied as the variation is in line with the phasing plan of the original approval for phase 1, 2 and 3 and the relevant construction of phase 4 and 5 is at the developer's risk until the stopping up process has been completed.

DfI Roads are content that the infrastructure works carried out in the initial phases have the capacity to support the traffic generated within the first three phases of the proposed development as previously stated in the consultation response dated 25 February 2016 as part of the original application.

DfI Roads also noted that no further Transport Assessment is required as no changes have been made from the original application and this application solely relates to a variation of a condition.

DfI Roads would state that the applicant is also aware that there is a possibility for refusal of the stopping up legislation and continuing with works of phases 4 and 5 will be at the developer's risk.

In relation to the point raised of judgement by District Judge King, DfI cannot make comment at this time due to ongoing legal proceedings in relation to that case.

### **The failure to respond to substantive issues set out in letters of objection.**

A response to the substantive issues, set out in letters of objection dated 10 August 2021, 08 December 2021, 18 February 2022, 24 June 2022, 13 July 2022 and 17 August 2022, has issued to the objector.

In addressing the substantive issues the following comments were made;

The lack of justification/explanation does not invalidate the application nor prevent the Planning Authority from proceeding to consider the merits of the application.



The process of obtaining approval for the abandonment and stopping up of a public road is a separate stand-alone statutory process. The Planning Authority recognises that the outcome of the process could be negative and that participants have a right to object. If the outcome were to be negative, the road infrastructure would still have to be delivered, albeit in an amended manner. Most commonly this would be addressed by way of further planning applications. Neither would it be unusual for the detail of a development to be varied (perhaps several times) between the time of the first grant of planning permission and the time when a development would be completed. The Planning Authority does not accept that the applicant in this case is inviting the Council to Pre-determine a separate statutory process.

The stopping up process is a stand-alone statutory process and will be determined on its merits by the responsible authority. This Planning Authority rejects any suggestion that its actions would compromise the openness and transparency of the process or influence the decision-maker in that process.

The Planning Authority is content that the nature of the original planning permission is unchanged and the improvements to Watsons Road will be delivered as part of that approval.

Any breach of planning control in respect of the approved development will be dealt with in the appropriate manner. The possibility of future enforcement activity is not relevant to the consideration of this application.

The Planning Authority would reject the assertion that any variation of the current condition is unlawful. The application will be determined on its planning merits having regard to the relevant development plan and all other material considerations.

The Planning Authority further rejects the assertion by the objector that the DfI Roads response of 7 October 2021 is flawed and contradictory. The consultation response by DfI Roads should be read in the round rather than seek to infer particular meanings from isolated sections of the response. The Planning Authority considers the response from DfI Roads to be sufficiently measured and carefully considered in that they set out a version of a planning condition that would be acceptable, having regard to the entire volume of background material relevant to this application.

The Planning Authority is content that the DfI Roads consultation response of 7 October 2021 and subsequent responses set out the consultee's position in a clear and concise manner, sufficiently detailed to allow the Planning Authority to progress the application. There is no evidence that DfI Roads has not given proper consideration to the matter, no evidence that DfI Roads has failed to read and understand the original permission as a whole or to fail to understand the reasoning for particular planning conditions.

The Planning Authority recognises that the application is an application for a fresh planning permission. However this application cannot be entirely separated from the original grant of planning permission. The Planning Authority is content that a full and proper assessment has been applied.

### **Further Consideration**

The purpose of the application is understood by all parties, with or without justification/explanation. The application can be considered on its planning merits.

DfI Roads have set out their responses to the proposal and to the objections submitted. Those comments are capable of being understood by all parties. There are no objections from the statutory consultee.

The Planning Authority rejects any assertion that it is facilitating the pre-determination of the stopping up process, or that by its actions, it is influencing the decision-makers involved in that process.

What is being proposed is a housing development (which already benefits from the grant of planning permission) phased in its delivery, consistent with the requirements set out in the development plan. While an objector may have concerns that a comprehensive development may not be delivered; such concerns do not translate into a reason for refusal. The original approval for this site was granted on the basis that the entire scheme be delivered. The recommendation to approve this application is on the basis that the entire scheme is delivered. The proposal is not "piecemeal", it is "phased".

Having regard to the requirements of the development plan and all other material considerations the proposal is considered to be acceptable in planning terms and the recommendation for approval is as set out in the original case officer report.

Case Officer: Patricia Manley

Date: 31 August 2022

Authorised Officer: Anthony McKay

Date: 31 August 2022





Committee

***This party protests in the strongest possible terms about the unfairness of the process. The matter was pulled from the list at the last minute by email from the Council. That email promised that a substantive response to our letters (referred to below) by Monday, 29<sup>th</sup> August 2022. No substantive response has been received to date. Those representations have been outstanding for months despite repeated requests.***

***This party and its representatives have timetabling commitments and the proposition that any response should be considered and the subject of a speaking note today (absent the promised response) is plainly unsustainable.***

***The result is a process that is manifestly unfair and prejudicial to this party.***

## INTRODUCTION

Preliminary point - The case officer's report and DfI Roads fail to deal with the issues in the letters of objection lodged in December 2021, February 2022 and June 2022. That is unfair because we have had no time to properly deal with them now and they are material.

## THE APPLICATION

The application seeks amendment of Condition 17. This is a pre-commencement condition requiring the statutory abandonment and stopping up process to have been completed before development commences.

This is important because the separate statutory process under Article 68 of the Roads Order is not guaranteed and that could be refused. It is also consistent with DfI Roads' own guidance.

DfI guidance sets out that where an approved development requires abandonment of the public rights to any part of the public road network, the developer is required to apply for an Abandonment Order under Article 68 of the Roads Order.

DfIs' own guidance is clear that abandonment and stopping up should be dealt with prior to the commencement of development – consistent with the condition they seek to amend to be after phase 3.

Further, phase 1 of the development requires stopping up and abandonment (it is not solely after phase 3 as alleged).

The abandonment process may take in excess of 12 months to complete and involves consultation with statutory agencies and other interested parties.

My client has the statutory right to be heard at a public inquiry and due process must be followed.

The extant condition is reasonable, necessary and consistent with guidance.

DfI Roads seeks to ride roughshod over its own statutory process and published guidance.

DfI Roads seek to pre-empt the outcome of the statutory procedure which could result in refusal – that suggests pre-determination of a separate process.

The proposal will result in the potential construction and occupation of 132 dwellings with no guarantee and the potential refusal of necessary stopping-up / abandonment orders required by DfI Roads.

This conflicts with DfI Roads' advice to developers published on the DfI webpage. That guidance states:

“The abandonment process must be successfully completed and any Conditions satisfied, before any relevant development work commences.”

The Committee should not forget the necessary roads infrastructure improvement and its guaranteed delivery was the basis of the original approval. This proposal unilaterally at the suggestion of DFI Roads does away with that rationale without any evidence to support it.

Nothing has changed as to this key requirement to support this proposition.

There is no need nor basis for the Planning Committee to facilitate this amendment.

Furthermore, the following fundamental flaws in DFI Roads' approach arise:

1. Phase 1 of the development requires the stopping up of part of Watsons Road and Dorans Hill Road where the Roundabout is proposed to be built.
2. The stopping up and abandonment cannot be put off until after phase 3 as you are invited to do.
3. That is simply impossible and highlights the erroneous approach of DFI Roads.
4. The construction of phases 2 and 3 before the abandonment and stopping up occurs as suggested by DFI Roads and the Planners will further compromise road safety and traffic conflict.
5. Simply put, DFI Roads are mistaken as to fact and also its own guidance and invite the Committee into the same error.
6. The whole approach is predicated on the predetermination of the abandonment and stopping up not being refused. That cannot be so concluded absent a decision.
7. There is no need (or indeed evidence) for the Planning Committee to give support or credence to that predetermination.
8. The Committee is asked to allow development without the critical roads' infrastructure needed for it.
9. There has been (1) no evidence submitted in support of the proposed amendment and (2) no transport assessment considering the effects of this proposal.
10. The original Transport Assessment report for this application is dated April 2013 and the surveys were in February 2013. It is over 9 years old.
11. Transport Assessment reports completed using traffic information older than 36 months are normally unacceptable for review of updated proposals or revisions to applications.
12. This has never been set out for the Committee.

Further, the Council has failed to have regard to the decision of District Judge King which confirms the physical road works of the adjacent site consistent with what this Committee was told about the road network in December 2018 and the requirement for the planning applicant to secure additional land to be able to undertake the development.

## **PLANNING POLICY SUBMISSION**

The application should be refused for the following policy reasons:

1. The applicant has not submitted a Transport Assessment to properly consider the impacts of allowing Phase 1-3 traffic onto the existing road network, contrary to PPS3 Policy AMP6.
2. The proposal would prejudice road safety and significantly inconvenience the flow of traffic, contrary to PPS3 Policy AMP2. The existing infrastructure is unsuitable for all associated traffic. That is the rationale underpinning the original approval that requires stopping up and abandonment from the outset.
3. DFI Roads is well aware the (then) Minister overturned its original objection to the development proposal specifically on the basis of the delivery of the road improvements to Watsons Road, which includes its realignment and stopping

- up/abandonment. The proposed development was previously considered unacceptable by DFI Roads under PPS3 policy without the delivery of these works.
4. The condition would be difficult to enforce, contrary to SPPS Paragraph 5.65.
  5. The proposal would allow the piecemeal development of BNMAP Zoning NY19, which is contrary to PPS7 Policy QD2.
  6. The proposal is contrary to Key Site Requirement 4 of BNMAP Zoning NY55, which requires Watsons Road to be widened and realigned to agreed standards with footway linkage provision.



**Reference:** LA07/2021/0987/F

**Address:** Lands at Watsons Rd/Dorans Hill, Newry, inc. lands to the east of Watsons Road

**Proposal:** Section 54 application seeking to vary condition No.17 of P/2013/0242/F

**Committee Meeting:** Wednesday 27<sup>th</sup> July 2022, Item No. 6.0

Dear Members,

I write on behalf of MJM Group to set out the applicant's statement of support, welcoming the officer's recommendation to approve the requested variation of Condition No. 17 referenced above. The purpose of this application was to ensure a practical timeline in construction terms for the lawful delivery of road network improvements granted under P/2013/0242/F. Full Planning Permission was approved on 6<sup>th</sup> September 2019 for 200no. dwellings and associated improvements to existing road infrastructure. In addition to changes on Watsons Hill Road, these works included construction of a new roundabout at the junction of Watsons Road and Doran's Hill.

The applicant has positively engaged with the Council and other statutory bodies throughout the interim period to successfully discharge conditions regarding Roads, Drainage and Ecology. This work of complying with conditions remains ongoing, with the final prior to commencement conditions currently being worked through by the applicant to enable construction of these family homes to commence later this year.

This submission regarding Condition No. 17 requests variation of the condition wording to allow the applicant to commence development works on site, whilst still ensuring that all other legislative processes out with the remit and process of Planning are complied with. This will ensure the condition wording is not overly restrictive as to stymie the programme of development works commencing. The applicant has sought to tie these legislative processes for the compliance of the abandonment / stopping up processes of DfI Roads to each relevant phase of development works, rather than the original wording requiring these to be actioned prior to commencement of any works approved on site. The site phasing has previously been agreed across five phases of development on these lands, including for all associated road and infrastructure improvements in full within Phases 1 – 3 (as ensured under Conditions 13 – 15 of the parent permission).

We note there have been several representations objecting to the proposed variation on behalf of the adjacent developer (EDB Construction) to the south. We believe that the motive behind objecting is nothing to do with orderly planning or road safety, but the ill-conceived notion that they hold a ransom strip over the commencement of development of these lands due to the wording of this condition, having stopped their own access works 500mm short of the site boundary.

We note that the objector alleges in their submitted correspondence that DfI Roads has failed to understand that the proposed amendment of the condition pre-determines the outcome of the statutory vesting process and further invites the Council to pre-determine that stopping up/abandonment process. This is incorrect and the determination of this application does not pre-determine or fetter in any way what is a separate legislative process. In fact, the objector does remark that one possible outcome of that process could be negative, and the proposal refused and that moreover, participants in that process have a right to object. Nothing before the Committee today prejudices that right or process. They allege that if the outcome is negative, then critical roads infrastructure cannot be delivered, which again is a falsehood

considering that all necessary road works and infrastructure for the housing within Phases 1 – 3 are delivered. The effect of this wording change would be to prohibit the occupation of later phases until the relevant legislative process is satisfied.

The objector further alleges that our client's submission is not sufficient in content and form, and they seek to misrepresent the wording of the original DfI Roads consultation response dated 7<sup>th</sup> October 2021. However, following further engagement between the Council and DfI Roads, it was noted that this is standard wording employed, and that the requested amendments (from DfI Roads) to the application were met. The applicant now welcomes confirmation from DfI Roads, in both consultation responses dated 20<sup>th</sup> November 2021 and 23<sup>rd</sup> December 2021, that DfI Roads are content Condition No. 17 can be varied in accordance with the proposed wording.

The wording before the Council has been presented, upon recommendation from DfI Roads, to tie back to the phasing of housing development and roadworks as stipulated by other conditions attached to the parent permission (P/2013/0242/F). Condition Nos. 13-15 of the parent permission also remain as originally worded, ensuring that all road works associated with each phase will be completed prior to occupation of that number of houses within each.

This ensures that orderly and lawful development works can commence, in line with the approved plans, and to meet with the legislative requirements of the stopping up and abandonment processes.

The applicant remains committed to fulfilling all necessary road improvements, as already agreed with DfI Roads, and fulfilling all relevant statutory processes. The applicant intends to complete the relevant section of approved spine road within their land holding and to the boundary of their control, in accordance with the originally approved Private Streets Determination drawing. The actioning of these legislative processes, beyond the remit of Planning, are tied to the varied wording of occupation of dwellings within Phases 1-3 rather than prior to commencement of any works hereby permitted. This ensures that both the Planning and DfI Roads processes will be complied with in full.

The varied wording of Condition No.17 has been assessed by Officers to be necessary, relevant to the development permitted, enforceable, precise, and reasonable. All tests of a sound planning condition have been met through decision making of the Council and DfI Roads. The proposed variation does not prejudice the delivery of the zoning under the applicant's control, those lands under adjacent ownership, or nearby residents on Watsons Road.

The applicant welcomes assessment by the Council and DfI Roads to approve and respectfully requests members to endorse the officer recommendation so that all relevant legislative processes can be completed, and construction commence expediently on site, thereby ensuring the full upgrade of Watsons Road for not only the proposed development but those already residing in the surrounding locality.

Yours faithfully,

Tom Stokes *MRTPI MIOD*  
Director  
TSA Planning