

APPENDIX – POLICY ASSESSMENT FROM [REDACTED]

Planning Policy

3.2.1 Section 6(4) of the Planning Act requires planning authorities to take decisions in accordance with the provisions of the Local Development Plan unless material considerations indicate otherwise; it states:

“Where, in making any determination under this Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

3.2.2 The Local Development Plan is the BUAP; within BUAP an industry zoning is designated that encompasses the Mackie lands. A substantial portion of the proposed greenway lies within that zoning, the extent of which is shown on

Figure 17 of the D&AS. (for a copy of Figure 17 please refer to Appendix 5)

3.2.3 Draft BMAP, published in November 2003, remains in draft form and is not the LDP. It also contains an industry/employment zoning (referenced BT 010) at the Mackie lands. As shown on Figure 18 in the D&AS a substantial portion of the proposal site overlaps with the zoning (for Figure 18 refer to Appendix 5).

3.2.4 Draft BMAP also designated a **Local Landscape Policy Area (LLPA)** referenced BT 160 that covered the western part of the zoning BT 010 and a community greenway located on the line of the Forth River valley, which unequally bisects BT 010.

3.2.5 The PAC Report recommends on page 117 that the LLPA be removed from the final version of BMAP and that no other changes be made (see Appendix 6).

3.2.6 dBMAP 2014 included the PAC recommendations.

3.2.7 The adoption of BMAP was quashed by the Court of Appeal in May 2017 and the plan remains in draft.

3.2.8 BUAP policies in relation to industry and commercial zonings are:

3.2.8.1 Policy IND 1 - Land for Industry and Commerce, which states:

“A total of 375 hectares (940 acres) is zoned in suitable locations to meet the expansion needs of existing industry and commerce and to provide for new industries and enterprises.”

3.2.8.2 IND 1 goes on to state:

“The zoning of land for industrial and commercial uses will ensure that a supply and choice of sites are available throughout the urban area. ... The 335 hectares (840 acres) distributed throughout the Belfast Urban Area provides opportunities for local employment to be established close to where people live. The wide range of site sizes and

choice of locations should ensure that the needs of developers are met throughout the Plan period."

3.2.8.3 Policy IND 6 - Land use Policy for Industrial and Commercial Areas, which states:

"To ensure that lands zoned for Industrial and Commercial use are reserved for appropriate types of development."

3.2.8.4 IND 6 goes on to state:

"For various reasons, areas within the Belfast Urban Area previously zoned as 'industrial' now contain premises which do not reflect that description. Changes in the employment sector away from manufacturing and towards the service sector have resulted in the introduction of new uses, changing locational requirements have also made former industrial areas and industrial estates more attractive for non-manufacturing firms, and changing trading conditions have encouraged some existing manufacturing firms to diversify to include wholesaling and retailing, new technology industries have created difficulties with precise definition. As a result of all these trends and changes it is necessary to allow flexibility in the use of industrial and commercial land, the following additional uses will normally be acceptable in industrial estates: -

- *Light and general manufacturing*
- *Warehousing or stock-holding*
- *Car and commercial vehicle sales including showrooms, servicing, storage (stock piling), but excluding breaking and scrap/dismantling*

- *Repair businesses*
- *Builders suppliers with their associated open storage*
- *Training centres, Vehicle Inspection and Driving Test Centres*
- *Ancillary local needs, e.g. banks, cafés"*

3.2.8.5 BUAP also contains policies and initiatives intended to improve landscaping, improve the physical environment particularly in the inner city and expand recreational opportunities; these are policies L2 in relation to inner city landscaping and open space and R3 with regard to linear parks.

3.2.8.6 Policy L2 - The Inner City states:

"To extend the provision of local open spaces and landscaping within the Inner City."

3.2.8.7 L2 goes on to state:

"The quality of housing within the Inner City has improved greatly in recent years due to the concentrated efforts of both the public and private sectors. This will be complemented by measures to improve the quality of the environment of the inner City. The Inner City is, therefore, a priority area for landscaping projects and urban renewal measures to make it a more attractive location in which to live and work."

3.2.8.8 L1 provides 4 actions that are intended to contribute towards the achievement of the policy, these include:

"The encouragement of environmental improvements and landscaping on vacant, derelict or waste land by public authorities or voluntary groups"

3.2.8.9 Policy R3 - Linear Parks, which states:

"To establish linear parks based on streams and rivers within the urban area and, where possible, to develop a linking system of walkways within the valleys. These linear parks are:

-

- *Connswater/Knock River Valley*
- *Derriaghy River Valley*
- *Collin Glen River Valley*
- *Forth River Valley*
- *Ligoneil River Valley*
- *Carrs Glen, Ballysillan, Waterworks, Alexandra Park*
- *Glas-na-Cradan River Valley*
- *Three Mile Water River Valley"*

3.2.8.10 R3 goes on to state:

"The river valleys running through the urban area are attractive natural features which should be retained and developed as linear parks. They provide the opportunity to create local open spaces and to provide continuous walks through the built-up area to the open country."

3.2.8.11 The BUAP maps show that the proposed Forth River Valley linear park does not extend to include the Mackie lands. BUAP further states in R3: "The development strategy map shows in greater detail the lands reserved for landscape, amenity or recreation use."

3.2.8.12 Draft BMAP locates the site of the impugned approval in "Outer Belfast City". The zoning BT 010 zones the land as "Existing Employment/Industry" subject to a set of nine Key Site Requirements, which are:

"Development shall only include the following uses:

- *Light Industrial Use as currently specified in Class 4 of the Planning (Use Classes) Order (Northern Ireland) 1989 as amended*
- *General Industrial Use as currently specified in Class 5 of the Planning (Use Classes) Order (Northern Ireland) 1989 as amended*
- *Storage or Distribution Use as currently specified in Class 11 of the Planning (Use Classes) Order (Northern Ireland) 1989 as amended*

"Consideration shall be given to the exact type of industrial/employment use at this location with a view to protecting the amenity of the residential premises in close proximity;

"Development of the site shall only be permitted in accordance with an overall comprehensive masterplan for the site to be agreed with the Department. This shall outline the design concept, objectives and priorities for the site;

"Access shall be from the Springfield Road in accordance with Roads Service, DRD requirements;

"A Transport Assessment (TA), agreed with Roads Service, DRD, shall be required to identify any necessary improvements to the road network/public transport/transportation facilities in the area;

"The existing access onto Woodvale Road shall be restricted to pedestrian, cycle and public transport usage only;

"Buildings shall exhibit variety in their elevational treatment and heights, and particular consideration shall be given to views into the site;

"A comprehensive landscaping scheme for the proposed development shall require to be submitted with any planning application for development and agreed with the Department. This shall include all of the following: -

- "The existing vegetation on the northern, eastern and western boundaries of the site shall be retained (unless otherwise determined by the Department) and supplemented with trees and planting of appropriate native species to provide screening for the development and facilitate its integration into the landscape;*
- "A detailed planting plan and programme of works shall be provided for all new planting in relation to boundary definition and additional high quality landscaping proposals within the site to be agreed with the Department; and*

"Positive long term landscape management proposals shall be required to mitigate and integrate any development and to protect and maintain the landscaping on the site. An Article 40 Agreement may be required to ensure delivery of this in accordance with the Department's requirements."

3.2.8.13 At BT 160 draft BMAP designates a Local Landscape Policy Area (LLPA), shown outlined in green on Figure 18 of the D&AS. The draft BMAP designation of BT 160 states that the features that contribute to the environmental quality, integrity or character of the area include an *"area of local nature conservation interest - open ground and a section of the Forth River"*.

3.2.8.14 At BT 162 draft BMAP designates eight Community Greenways. The plan *"promotes the concept of Community Greenways which seek to re-establish corridor links between parks and natural areas to create a network of urban open space."* Designation BT 162/02 is titled *"Forth River/Glencairn/Ligoneil Route"*. Draft BMAP does not provide any details of the routes of any of the greenways but they are shown on the plan maps. Figure 18 in the D&AS shows the draft BMAP policy and designations framework with the site of the impugned permission superimposed upon it, the greenway route is denoted by green circles with back centres.

3.2.8.15 Draft BMAP was subject to a public inquiry and the PAC Report of that inquiry addressed the BT 010 zoning and the BT 160 and BT 162/02 designations (refer to Appendix 6 for an extract of the PAC Report). It stated:

"Zoning BT 010 - Existing Employment, Springfield Road (Former Mackies's Site)

"Designation BT 160 Woodvale/Springvale LLPA

"Designation BT 162/02 Community Greenway

"The objection to the failure to include business uses in the list of acceptable uses on employment sites has been conceded by the Department and is addressed in Part 1 of this report. The objection also related to that part of LLPA BT 160 and the community greenway BT 162/02 within Zoning BT 010. No map was supplied but we consider that it is clear from the letter that this was the extent of the Invest NI (INI) objection. The Department states that the river corridor has been affected by works associated with the development of the business park by INI and with the adjoining housing zoning WB 04/12. These works involved culverting the river and removal of riverside vegetation. This has had a detrimental impact on the landscape, amenity and nature conservation interest of that part of the site. The Department recommends that the part of the objection lands be excluded from LLPA BT 160. Note – there is no plan of the area to be excluded. There is no comment on the SLNCI designation, which is presumably also affected.

"The objection to the Community Greenway related to impact on Invest Northern Ireland's activities on the site. We see no reason for the development of a greenway to adversely impact on the business use of the site. Its purpose is to link existing areas of open space and this can be accommodated on the vacant land within the site.

"Objection 3645 refers to the LLPA being proposed as part of the Springvale development and as this has been substantially shelved then the LLPA should be zoned for housing. The Department has agreed to the deletion of the LLPA from the employment zoning. We have no information to suggest that the plans for the area have been shelved. A new access and roads into the site have been provided. Invest Northern Ireland maintains its interest in the site and objected to the Plan's provisions as they affect the site. We also note that the Springvale Campus is under construction on Zoning BT 164/03 to the south. In this context we consider that the lands should not be zoned for housing.

"Recommendation

"We recommend that designation BT 160 be removed from within Zoning BT 010. We recommend no change in respect of the other elements of the objections that relate to this site."

3.2.8.16 An adopted version of BMAP was published in September 2014, its adoption was subsequently quashed by the Court of Appeal in May 2017. There are competing views as to whether this version of BMAP has weight, however, those are opinion not fact and I address them in the subsequent section. I have included the provisions of this version of BMAP (dBMAP 2014) for completeness.

3.2.8.17 BMAP (2014) maintained the zoning although it was re-named BT 004 and the route of the community greenway (also re-named BT147/02) following the alignment of the Forth River Valley. BT 004 Existing Employment - Land at Springfield Road (former Mackie's Site) contains the same nine Key Site Requirements as those in draft BMAP updated to reflect the change to the Planning (Use Classes) Order (Northern Ireland) 2004.

3.2.8.18 The LLPA designation was removed in accordance with the PAC recommendation.

3.2.8.19 The designation of the community greenway was confirmed in designation BT 147/02.

3.2.8.20 The proposal, subject of the impugned permission, involves the use of land zoned for industry/employment for a greenway which is not an industrial or employment generating use but a recreational and open space use. Regional planning policy addresses these issues in the SPPS, PPS 4 and PPS 8.

3.2.8.21 The SPPS addresses "Economic Development, Industry and Commerce" from page 56 to 61 and sets out policies to be taken into account in the determination of planning applications. It sets out in paragraph 6.84 that within larger settlements "planning decisions must, to a large extent, be informed by the provisions made for economic development through the LDP process" and in relation to land zoned for industry/employment states, in paragraph 6.89, that:

"It is important that economic development land and buildings which are well located and suited to such purposes are retained so as to ensure a sufficient ongoing supply. Accordingly, planning permission should not normally be granted for proposals that would result in the loss of land zoned for economic development use. Any decision to reallocate such zoned land to other uses ought to be made through the LDP process."

3.2.8.22 The SPPS retained the majority of the earlier suite of Planning Policy Statements which include PPS 4 and its policy PED 7. PED 7 - Retention of Zoned Land and Economic Development Uses is sub-divided into policy for land that is zoned and policy for unzoned land in settlements. As the proposed greenway in part occupies zoned land it is the former that is relevant. PED 7 states:

"Development that would result in the loss of land or buildings zoned for economic development use in a development plan (either existing areas or new allocations) to other uses will not be permitted, unless the zoned land has been substantially developed for alternative uses."

3.2.8.23 PED 7 also provides an exception in this policy for:

"...the development of a sui generis employment use within an existing or proposed industrial/employment area where it can be demonstrated that: the proposal is compatible with the predominant industrial use; it is of a scale, nature and form appropriate to the location; and will not lead to a significant diminution of the industrial/employment land resource in the locality and the plan area generally."

3.2.8.24 In relation to greenway development the SPPS sets out applicable policy under "Open Space, Sport and Outdoor Recreation" from page 86 to 89; it comments in paragraph 6.210 that community greenways are "valuable in linking larger areas of open space and providing important wildlife corridors/ecological networks".

3.2.8.25 Planning Policy Statement 8 (PPS 8) Open Space, Sport and Outdoor Recreation also recognises the value of community greenways "many of which are valuable in linking larger areas of open space" and highlights the importance of protecting them. PPS 8 ascribes community greenways with a strategic function in Annex A3.

Third Party Objectors

3.2.9 Aside from the representations made by PPR supported by Pragma Planning and Development Consultants Limited, an objection was submitted by the **Town and Country Planning Association (TCPA)** a campaigning charity based in London (refer to Appendix 7). Its objection stated:

“While we support the principle of the community greenway in Belfast, we strongly object to the application for the greenway at the proposed site on two grounds:

“1. The proposals impact on industrial land

“Both the adopted Belfast Urban Area Plan (BUAP) and draft Belfast Metropolitan Area Plan (dBMAP) contain zoning for industrial/employment uses covering at least part of the site. Policy IND 2 seeks to provide land for business development in areas of urban renewal; the land at Woodvale falls into this policy also.

DBMAP contains a Local Landscape Policy Area (LLPA) designation to protect the landscape of the river valley. However, the Planning Appeals Committee have recommended its removal from this part of the site as it would be disruptive to the employment potential to the land.

Strategic Planning Policy Statement for Northern Ireland PPS 4 - Policy PED 7 states that:

“Development that would result in the loss of land or buildings zoned for economic development use in a development plan (either existing areas or new allocations) to other uses will not be permitted, unless the zoned land has been substantially developed for alternative uses.’

“And in paragraph 5.30:

“Planning permission will not be granted for proposals involving the loss of land zoned for economic development use, either existing or proposed, in a development plan to other uses. Any decision to reallocate such zoned land to other uses where necessary will be carried out as part of the development plan process.’

“2. Prematurity

“A decision to approve the planning application would be premature in accordance with paragraph 20 of the Joint Ministerial Statement (JMS) of January 2005, which indicates that where the planning authority can demonstrate that development proposals (either individually or cumulatively) would prejudice the outcome of a plan process by pre-determining decisions about the nature, scale, location or phasing of new development they should be refused.

“While the emerging Belfast Local Development Plan (LDP) contains policy in relation to community greenways and green and blue infrastructure development, in this case, the proposed greenway is not located on the land allocated for it but is sited on land zoned for industry and employment purposes in the adopted and draft development plans, while its development would as a matter of course displace the zoned employment land. In these circumstances PPS 4 PED 7 advises that decisions about reallocation ought to be taken through the development plan process. It is logical therefore to conclude that approval would be prejudicial to that process.

“The requirements of the draft Plan Strategy do not support the conversion of land from employment to any use other than housing and in advance of the plan completing its process are probably premature. Belfast City Councils Growth Strategy sets a goal for the creation of 46,000 additional jobs and the council intend to provide the employment floorspace and housing within the existing urban footprint of the city. As the Councils aspiration is that all the additional employment floorspace and all the additional housing is delivered within the existing urban area it is clear that all existing housing and employment land is needed for either one or the other and the loss of land from either housing or employment to any other purpose should not be considered until decisions have been made about the long-term future of the land following the Local Development Plan examination in public.”

“Policy OS 2 of PPS 8 states planning permission will not be granted for development either within or adjacent to a designated Community Greenway which would prejudice the retention, enhancement or further development of an identified route.”

3.2.15 This is factually incorrect, policy OS 2 of PPS 8 requires the provision of public open space in housing development. Policy OS 2 of draft BMAP protects the identified routes of community greenways from other forms of development.

Do the planning policies protecting land zoned for industry/employment from other competing uses constitute a presumption against development?

4.1.1 There are a number of separate policies applying in this instance that seek to protect the zoned employment land from competing land uses. These policies all have a strategic intent: to preserve a long-term supply of employment land in a choice of locations.

4.1.2 Of these policies, the SPPS states at paragraph 6.89 that:

“... planning permission should not normally be granted for proposals that would result in the loss of land zoned for economic development use. Any decision to reallocate such zoned land to other uses ought to be made through the LDP process.” (emphasis added)

4.1.3 Paragraph 1.12 of the SPPS outlines the transitional arrangements keeping the majority of the existing suite of PPSs, it states that where the SPPS is less prescriptive than a retained policy this should not lessen the weight to be ascribed to that policy.

4.1.4 PPS 4 PED 7 is worded more strongly than paragraph 6.89 of the SPPS; it states:

“Development that would result in the loss of land or buildings zoned for economic development use in a development plan (either existing areas or new allocations) to other uses will not be permitted...” (emphasis added)

4.1.5 Planning policy contains a number of instances where a presumption against development is operated and in this case it is useful to examine how they are worded.

4.1.6 Among the best known of these is the presumption against demolition of an unlisted building in a Conservation Area. This is governed by the SPPS and **PPS 6 Planning Archaeology and the Built Heritage (PPS 6)**, which states at policy **BH 14**:

“The Department will normally only permit the demolition of an unlisted building in a conservation area where the building makes no material contribution to the character or appearance of the area.” (emphasis added)

4.1.7 **PPS 8 Open Space, Sport and Outdoor Recreation (PPS 8)** also operates a presumption against the loss of existing public open space to other competing uses in its policy **OS 1**; it states:

“The Department will not permit development that would result in the loss of existing open space or land zoned for the provision of open space.” (emphasis added)

4.1.6 A further presumption against development is operated in the countryside, which is governed by the SPPS and in particular **PPS 21 Sustainable Development in the Countryside (PPS 21)**. Policy CTY 1 of PPS 21 states:

“There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Details of these are set out below.

“Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement...” (emphasis added)

4.1.7 These example policies exhibit a range of wording that is linked to the types of development that will not be permitted under the policy. The various policies exhibit three defining characteristics. The first of these is that they operate by placing a prohibition on the approval of specified types of development that would result in the loss of an asset the retention of which is in the public interest.

4.1.8 The wording of PPS 4 PED 7 is very similar to that of PPS 8 OS 1, its justification states that:

“It is important that economic development land and buildings which are well- located and suited to such purposes are retained and only exceptionally will the Department consider the loss of such land and buildings to other uses.” (paragraph 5.28)

“Planning permission will not be granted for proposals involving the loss of land zoned for economic development use, either existing or proposed, in a necessary will be carried out as part of the development plan process.” (paragraph 5.30)

“An exception may be made for a proposal for a sui generis employment use compatible with the existing or proposed economic development use e.g. a builders’ supplies merchant or a waste management facility provided a sufficient supply of land for economic development use remains in the locality and the plan area generally.” (paragraph 5.31)

4.1.9 The justification expands on the policy intent, in particular it highlights the importance of retaining economic development land in the public interest.

4.1.10 The second defining characteristic of the example policies is that they give specific exceptions to their general prohibition on the approval of the identified types of development. PPS 6 BH 14 provides for demolition where the building does not make a material contribution to the character and appearance of the Conservation Area, while PPS 8 OS 1 operates two specific exceptions and PPS 21 CTY 1 sets out a range of exceptions for housing and non-residential development in the countryside.

4.1.11 PED 7 also contains a specific exception permitting the development of a *sui-generis* employment use, with paragraph 5.31 providing examples of two such uses.

4.1.12 In operation, PED 7 places a prohibition on the approval of non-economic development uses in order to retain land zoned for economic development in the public interest, subject to a specific exception.

4.1.13 Paragraph 6.89 of the SPPS is worded similarly to PPS 6 BH 14; it does not contain an exception in relation to zoned economic development land, however, it has a

close relationship with PPS 4 PED 7 through its transitional arrangements and will in due course relate to policy EC4 within the LDP dPS.

4.1.14 The third characteristic is that all of these policies use their presumption against to achieve a strategic objective, such as the protection of unlisted buildings making material contributions to the character or appearance of conservation areas, the protection of public open space across any given urban area to meet the needs of the population, or the securing of an on-going supply of employment land in a range sizes and choice of locations.

4.1.15 PED 7 mirrors the other presumptive policies in strategic intent, wording and provision of exceptions; consequently I have concluded that it operates a presumption against the loss of economic development land to other competing uses and that paragraph 6.89 reinforces that presumption.