

## ARDS AND NORTH DOWN BOROUGH COUNCIL

30 April 2024

Dear Sir/Madam

You are hereby invited to attend an in-person meeting of the Planning Committee of the Ards and North Down Borough Council which will be held in the Council Chamber, 2 Church Street, Newtownards, on **Tuesday 07 May** commencing at **7.00pm**.

Yours faithfully

Susie McCullough  
Interim Chief Executive  
Ards and North Down Borough Council

### A G E N D A

1. Apologies
2. Declarations of Interest
3. Matters arising from minutes of Planning Committee meeting of 09 April 2024  
 (Copy attached)
4. Planning Applications (Reports attached)

4.1	LA06/2023/1573/O	Dwelling on a farm Approximately 70m East of No.18 Hillsborough Road, Comber
4.2	LA06/2022/1076/F	63 dwellings, open space, landscaping, parking and access 50 Main Street and lands to rear of 38-48 Main Street, Carrowdore
4.3	LA06/2022/1262/F	Demolition of existing ancillary residential accommodation, garage and workshop and erection of replacement residential accommodation, detached garage and workshop ancillary to existing dwelling at 225 Millisle Road, Donaghadee  The property known as 225A Millisle Road, Donaghadee

**Reports for Approval**

5. Review of Scheme of Delegation and Planning Committee Performance (report attached)
6. Proposed Amendments to the Protocol for the Operation of the Planning Committee (report attached)

**Reports for Noting**

7. Update on Planning Appeals (report attached)

**MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)**

Councillor Cathcart	Alderman McDowell (Vice Chair)
Councillor Creighton	Alderman McIlveen (Chair)
Alderman Graham	Councillor McKee
Councillor Harbinson	Councillor McLaren
Councillor Kendall	Councillor McRandal
Councillor Kerr	Councillor Morgan
Councillor Martin	Alderman Smith
Councillor McCollum	Councillor Wray

## ITEM 7.2

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**ARDS AND NORTH DOWN BOROUGH COUNCIL**

A meeting of the Planning Committee was held at the Council Chamber, Church Street, Newtownards on Tuesday 9 April 2024 at 19:00.

**PRESENT:**

**In the Chair:** Alderman McIlveen

**Aldermen:** Graham  
McDowell  
Smith

<b>Councillors:</b>	Cathcart	McRandal
	Creighton	McKee
	Harbinson	McCollum
	Kerr	McLaren (19:09)
	Kendall	Morgan
	Martin	Wray

**Officers:** Director of Prosperity (A McCullough), Principal Professional & Technical Officer (C Blair), and Democratic Services Officer (S McCrea)

**1. APOLOGIES**

There were no apologies.

**2. DECLARATIONS OF INTEREST**

Councillor Morgan declared an interest in Item 4.1: LA06/2023/1505/F at 19:15.

**3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE 5 MARCH 2024**

PREVIOUSLY CIRCULATED:- Copy of the above minutes.

NOTED.

**4. PLANNING APPLICATIONS**

**4.1 LA06/2023/1505/F - Development of three self-catering cottages (conversion and extension of existing building and new build) and associated changes to parking layout, including retention of car park barriers, The Old Inn, 15-25 Main Street, Crawfordsburn.**

**PREVIOUSLY CIRCULATED:- Case Officer's Report****DEA:** Bangor West**Committee Interest:** A local development application attracting six or more separate individual objections which are contrary to officers' recommendation.**Proposal:** Development of three self-catering cottages (conversion and extension of existing building and new build) and associated changes to parking layout, including retention of car park barriers.**Site Location:** The Old Inn, 15-25 Main Street, Crawfordsburn.**Recommendation:** Approval

The Planning Officer (C Blair) explained that the application was before members as a local development application which had attracted six or more separate individual objections that were contrary to officers' recommendation.

This was an application for the development of three self-catering cottages (conversion and extension of existing building from offices to two cottages and a new build to create a third cottage) and associated changes to parking layout, including retention of car park barriers.

The existing office building, which fronted onto Main Street, was located to the east of the main hotel building with an existing parking area to its rear.

The existing office building was sandwiched between two vehicle access points, one an entrance and the other the exit. There was an automatic barrier across each access point, the aim of which was to prevent external use of the car park by those not using the hotel. This application sought their retention.

Members were asked to note that consultation responses from DfI Roads, the Historic Environment Division (HED) and Environmental Health had no objections to the proposal. NI Water considered the application should be refused on sewerage capacity issues however a negative, pre-commencement, condition would be attached should Members approve the application to deal with this issue.

A significant number of objections had been received concerning this proposal which had been considered in detail in the case officer's report and Addendum report. The main points of objection related to the use of the vehicle barriers at the entrance, the proposed third self-catering cottage, a potential loss of a single tree in the existing car park, on-street parking and deliveries to the hotel and loss of residential privacy through overlooking.

The site was located within the Crawfordsburn Settlement Limit and formed part of the existing Old Inn hotel site. The site was not zoned for any particular use within the North Down and Ards Area Plan 1985 and draft Belfast Metropolitan Area Plan 2015. The site was located within the draft Area of Village Character. It had been stated by a number of residents that the car parking area had been previously used as an area of open space for community gatherings for local residents; however, as the Google Earth images on slides 3 to 5 demonstrated, the area to the rear of the



proposed development of three self-contained cottages had been used solely for parking for in excess of five years.

In terms of policies ATC 1 and ATC 3 of the Addendum to Planning Policy Statement 6, this policy only related to designated Areas of Townscape Character or Areas of Village Character, which had been set out by the Planning Appeals Commission. This site fell within a draft Area of Village Character under draft BMAP 2015 and therefore this policy context could not apply. Nevertheless, the overall character of the area was still a material consideration, and the proposal had been considered under this context.

The existing buildings on the site presently in use for office accommodation were to be converted, with an extension to the building to accommodate a third cottage. The proposal did not result in the removal of any building; however part of the front boundary wall would be removed. The removal of this small section of wall did not detract from the character of the area, nor did it adversely impact the visual amenity of the draft Area of Village Character and did not result in the loss of any special architectural or historic feature. Members were asked to note that the Historic Environment Division (HED) offered no objection to this or the proposal as a whole.

The proposal complied with the requirements of PPS 16 'Tourism' in that the development was located within a site for existing tourist accommodation inside the settlement limit. In terms of the development's proposed design, Members were asked to note from the upcoming plans and site photos that the proposed extension to the existing office accommodation was subordinate in size and scale and was in keeping with the existing character of the area in terms of proposed design and finishes. In fact, the design, which included two dormers in the front roof slope, was similar to existing frontages on the opposite side of the road.

As also could be seen from an existing street scene photo, the existing properties were not uniform in size or height, with varying ridge heights. It therefore could not be argued that the proposed design of the extension to the existing office accommodation to accommodate a third self-catering cottage was out of keeping with the character of the surrounding area.

To the rear, two storey returns were proposed to provide a dining room with bedroom extension and terrace above. Two bedrooms were proposed to be provided in each of the two converted units. It was proposed that each unit would have an enclosed courtyard area (enclosed by a 1.5m high wall) to assist privacy into and out of the units. At first floor level, a small terrace was proposed to be accessed from the master bedroom.

It was noted that the proposed work would result in the removal of two small trees located in the car park area. These trees had no historic value or merit; they were not a rare species, nor protected by a Tree Preservation Order and they were not clearly visible due to being located behind the existing office building. The dense, mature band of trees to the rear of the hotel site was unaffected by this proposal.

However, it should be noted that views of these existing trees from existing dwellings or premises on Main Street was not a material consideration and loss of view did not hold determining weight to warrant a refusal of this application.

In terms of residential amenity, the proposed development fronted onto the existing Main Street with the roadway located between the front façade of the proposal and the front façade of existing properties, which was a distance of 12.5 metres.

In terms of the adjacent dwelling at No.11 Main Street to the east of the site, there was no direct overlooking of its private amenity area, which was the first 3-4 metres of rear garden space behind a dwelling or overlooking into private habitable rooms given the orientation and siting of the proposal.

Prior to the erection of the car park barriers, the Old Inn facilitated 60 in-curtilage parking spaces. The retention of the barriers and proposed building works associated with the self-catering cottages would result in 45 available spaces; a loss of 15 spaces. However, it had been confirmed that the Old Inn's lower ground floor 100+ seater function room closed in December 2023 with no further social events of any nature taking place. At 180 square metres net floorspace approximately and the Parking Standards document recommending 1 space per 5 square metres this equated to 36 spaces.

Planning Service had recommended a condition, which was included on the Case Officer's Report preventing any future use of the former function room. This condition was considered enforceable. This was outlined in the Case Officer's Report. The cessation of the function room and, having taken this into account, this proposal resulted in an overall betterment of over 20 available spaces within the curtilage of the hotel site, which adequately enabled provision for the proposed three self-catering holiday cottages under this planning application. As such, the proposal did not rely on the need for on-street parking or off-site valet parking as was originally proposed. This element had been withdrawn from the scheme and there was adequate in-curtilage parking available within the site, given the permanent removal of the function room space.

Dfl Roads had no objections regarding available in-curtilage spaces for this proposal. In terms of the car parking barriers that had been erected within the site: these were installed to enable the use of the car park for hotel guests/users, as previously, the applicant stated that the car park was being utilised as a public car parking space in the village. Dfl Roads was consulted on the positioning of the barriers with no objection having been raised. The entrance barrier was set 5 metres back from the roadside and 4 metres from the footpath. This provided an adequate depth to allow one car to wait clear of the footway, for the entrance barrier to open. The site was located off a narrow street within a 30mph zone where road traffic was slower to move through the Main Street. The barriers did not prevent the flow of traffic through the village. The proposal was in keeping with Policy AMP 7 – Car Parking and Service Arrangements of PPS 3 'Access, Movement and Parking' and the Parking Standards advice document.

The Planning Service had fully considered all concerns raised by objectors. It was the Planning Service's recommendation to approve the application subject to specific conditions as the proposal was compliant with the local development plan and retained planning policies.

The Chair invited questions from Members to the Officer.

Councillor McRandal's primary concern was with regard to parking issues and congestion. He was curious why the report only referenced parking spaces in relation to the function room's change of use and not the needs of the hotel as a whole. The Officer advised that the application was for three self-catering units and the parking requirement for that particular proposal. It was deemed that there was betterment within the curtilage due to the closure of the function room with parking deemed as adequate thereafter for the hotel as a whole. The function room itself was not part of the planning application but its associated parking spaces were related and as such, a condition would be added if the application was approved to prevent further use of the function room space without additional planning applications. Councillor McRandal suggested that business owners were unlikely to reduce business on square meterage and would likely have a change of strategy on the use of the function room which in turn would require for Members to look at the bigger picture. The Officer advised that Officers could not act hypothetically but that the room had ceased use as a function room and as parking was made available from the change, it was taken into account when assessing the planning application.

Councillor Cathcart noted several objections had been received and continued to be. That, alongside an addendum being added to the report made him question if Officers were confident that no new planning material considerations had been voiced and whether car park barriers would have required planning permission if it had not been for the three self-catering cottages that had been proposed. The Principal Planner had the opportunity to review objections as well as those received after the addendum and was able to state that none of them had raised any new issues, instead focusing on concerns of parking and road safety within the village. The Officer explained that Officers had not looked into it, but given that the barriers extended above two metres, they would have required planning permission. The car park had already been established on the hotel site and so the application was solely with regard to the proposed cottages and car parking at the site as a result of those. If the Committee was to vote against the application, the developers would have the option to appeal through the Planning Appeals Commission.

Councillor Martin referred to NI Water's recommendation to refuse the application and whether it was common for a statutory consultee to do so. The Officer advised that NI Water's stance was due to sewerage capacity but that was an issue that could be dealt with prior to the commencement of any development works via a negative condition that would be applied. NI Water tended to recommend refusal across the board, however, the Council had sought legal advice on such matters, and it was deemed that negative conditions could be applied, but that the responsibility lay with a developer to meet the condition. Councillor Martin asked if he was correct in thinking that 60 spaces were on site with the proposed buildings dropping the number to 45 but being uplifted by 36 with the closure of the room. The Officer advised that 60 had existed in the main car park with a further 13 to the rear.

With the proposed cottages and disuse of the function room, the car park would stand in overall betterment of 20 spaces. Councillor Martin had experienced the busy nature of the car park in recent times and suggested the function room being brought into the equation would be a solution to get around parking issues. That said, he was concerned that the function room's future use could be used as a non-function room, such as a dining room which in turn would create issue with the parking dilemma. The Officer reminded Members that the developers had already indicated the function room's use had ceased and that the condition mentioned previously would prevent social events or ceremonies taking place. Though the space could be used by hotel guests, it could not be used for social events for those who were not staying in the hotel. Councillor Martin was not satisfied that the solution to the planning application was predicated on spaces freed up by a room that could be repurposed in the future.

(Councillor McLaren joined the meeting at 19:09.)

Alderman Graham believed the barriers were imposing on the street due to their bright red lights. The Officer directed Members to photographs of the barriers and explained that the entrance barrier was well set back from the street and if vertical, it wouldn't be seen at all whilst the exit barrier was behind a pillar. The views were restricted however, this being an urban setting with an established car park and vehicles, the area already was subject to noise and lighting which would mean the barriers were not of a dominant nature.

As Councillor McLaren stood to speak, the Chair (Alderman McIlveen) asked if the Member was well enough informed to speak on the matter given a late arrival. Councillor McLaren advised that she was familiar with the area and had spent time reading over reports. She, like Alderman Graham was concerned over barrier lights and recalled local residents' concerns before being elected with lights shining through bedrooms in the vicinity and asked if such an effect had been considered.

The Officer stated that they had been as part of a full planning application through objections. DFI Roads had no objections whilst no complaints had been put through to Environmental Health in regard to light pollution. He reiterated that the urban setting of existing street lights and regular traffic both passing through and entering the car park had been taken into consideration as well, leading to the conclusion that barrier lights did not appear to be dominant. Councillor McLaren suggested those present in the gallery would no doubt issue light pollution letters after today's meeting and, as the barriers were part of a retrospective planning application and caused problems with villagers including delivery lorries that, instead of entering past barriers, instead parked illegally on the road which caused further trouble and asked who would police such parking. Upon being told that illegal parking was a police matter, Councillor McLaren stated that car parking had been devolved to, 'redcoats,' and that police would not enforce car parking issues if they wouldn't attend a burglary with expedience.

The Chair (Alderman McIlveen) reminded Members that this part of the meeting was for questions as opposed to statements.



Councillor Kendall asked how frequently the function room had been used previously, citing PPS3 5.46 and the importance in rural areas/towns/villages where public transport was limited that there was adequate provision for car parking. Given the infrequency of bus routes travelling through Crawfordsburn and the closest station being Helens Bay, she believed that there was limited public transport. The Officer advised that the proposal was for self-catering cottages on a hotel site and that Policy AMP7 in relation to car parking and service arrangements had been met and was within full compliance with the car parking arrangements. Councillor Kendall believed the function room and associated spaces was a focal point upon which the planning application balanced and asked if there was no difference made in car parking use/requirements before the room's closure and after, how it could be used as the reasoning for recommending approval. The Officer advised that the proposal was in line with parking standards; a function room of approximately 180sqm ceasing use freed car park capacity.

Councillor McCollum asked if parking for the function room had been ringfenced or if it was generally available to anyone that used the car park. The Officer explained that barriers had been placed to prevent general public use of the car park and that the spaces associated with the room were part of the car park for use by patrons. Councillor McCollum queried if those spaces were dedicated, and the Officer advised they were not.

Alderman McIlveen asked if any assessment had been carried out in relation to car park users using the facility for off-street car parking as opposed to hotel patronage. As no assessment had been carried out in respect of this application, Alderman McIlveen suggested that as barriers were a part of the application, an evidence base would have been useful for such information.

In the absence of no further questions for the Officer, the Chair invited Mr Mike Davidson from the public gallery to join the meeting and was advised that he had five minutes to present his argument against the proposal.

Mr Davidson spoke of residents' experience that the in-curtilage capacity of the car park had been substandard and observed to operate at maximum capacity in peak times. Though the report stated that 36 spaces were freed due to the closure of the function room, these were historical spaces and not factored into the operational requirements of the Old Inn's activities. Work was already underway on the room to repurpose it. With carparking requirements changing, a baseline would need determined based on the Department for Infrastructure Parking Policy which stated that if a development incorporated more than one use, combined figures were applicable. Policy AMP7 stated that there should be adequate use of space for parking and manoeuvring to do so. With the Department for Infrastructure's requirement of one space per bedroom plus for every 5sqm, one space per three staff, lorry space and coach space, even without the function room, minimum spaces were well above figures implied in the planning application. Any reduction in on-site car parking would increase street parking and have an effect on road safety and the flow of traffic which would be in contravention of AMP2, AMP7 and the Department for Infrastructure Parking Policy.

Mr Davidson advised that the applicant had met with Councillors in relation to double yellow lines on one side of the street which he suggested would impact traffic flow and likely increase speed in the area; elements which appeared to have no mitigation considered. The barriers were already causing congestion on the road as well as health and safety concerns with cars parked on a blind corner beyond. There were no provisions made for delivery vehicles which was also in contravention to AMP7.

There would be a loss of two trees with the creation of three new cottages and the last open vista of greenery in the village would be blotted out. For over 40 years, residents had enjoyed the area cited for the cottages for use of Christmas tree celebrations and carol services which would conflict with the SP1 and SP4 of the Belfast Open Space Strategy. There should be a stipulation for hotel windows to be opaque for neighbour privacy whilst residents were concerned with access to daylight and the redirected noise from new properties. Mr Davidson asked the Council to ensure appropriate in-curtilage parking existed with the exact number of spaces as would actually be required and how the Department for Infrastructure policies would be met.

Councillor Cathcart asked if, since barriers were placed, had the car park been at full capacity often. The application also sought retrospective planning for the barriers. If the barriers were being used currently and the car park was for hotel use only, he wondered if people who used the hotel just parked on the street and made the situation worse. In addition, if approval could not be met, the function room would continue to exist and be used as such, raising issues for all.

Mr Davidson understood the reasoning behind barriers being installed but advised they did not take into account car park capacity, allowing more cars through than spaces available which had resulted in cars parking outside of designated spaces which partially blocked appropriately parked cars or indeed, the rear entrance to the hotel for deliveries. He explained a general awareness in the community of the applicant wanting to repurpose the function room and a lack of understanding as to why a hotel would remove spaces from a car park when the car park was already struggling with demand. If the function room's associated spaces in the car park were already regularly used whilst the function room had ceased operations, he asked where those 15 cars would park. Residents already had to place cones at entries to houses and developments to stop parking and it was likely the lost space would result in further difficulties here and on the street.

The Chair (Alderman McIlveen) reiterated Councillor Cathcart's question, asking if it would not be better for the proposal to be approved and have a condition on the use of the space for external social purposes rather than it remain open due to a refusal.

Mr Davidson understood the condition but believed it would slowly erode as applications would be made in future for it to be used for guests and more applications atop that. He was aware of the function room being repurposed as a fitness suite.

Alderman Graham asked if parking was the main issue and, as a local resident, if Mr Davidson had noticed any change since cessation of the function room in December

2023. Mr Davidson had not noticed an improvement but advised it did depend on the time of day as well; if the car park was full when the village was at the quietest time of day, and, whilst being used as a through-road for Bangor-Belfast commuters, how bad it could be with a reduction in car parking spaces.

Mr Davidson returned to the public gallery and Mr David Mountstephen of Fleming Mountstephen Planning and Mr Colin Johnston, Managing Director of Galgorm Collection, were invited to join the meeting to speak in support of the application; both being advised of the five minute time limit.

Mr Mountstephen explained that the application had been submitted in February 2023 and was subject to assessment. All statutory consultees, save NI Water were content which could be addressed by a negative condition, and they had now moved to an advanced stage of delivering a solution. Last week, objections had been received from nine addresses and letters of support had also been received. The SPPS set out that sustainable development within settlement limits should be permitted. The Tourism policy for development in settlement was permissive and supported the planning application. The proposal fell with an in-positive policy context. Its design was informed and in keeping with the village without adverse effect. There was no impact on residential amenity whilst barriers produced less light than street lights. Car parking provision and management were deemed acceptable and took into account the entirety of the hotel. As the function room had ceased operation, as would offices to account for the proposed three cottages, overall betterment was reached. The function room would be subject to a proposed negative condition in the event of approval, being subject to future planning control. The proposal would not increase deliveries and its management was subject to review. There were 19 suppliers with deliveries being undertaken within the curtilage of the site, but waste collection remained on-street at off-peak times. It would be a quality development and appropriate to context whilst being subject to a robust process.

Mr Johnston explained that the site had been purchased in April 2021 during the Coronavirus closures for £3.5m with £2.5m having already been invested in areas such as the bar, reception spa and five rooms. Future investment was projected to be around £3m bringing total investment up to £9m. Future plans included refurbishment of 25 more bedrooms, private dining, four treatment rooms and the three cottages which would take the premises to five star. The Old Inn was in the blue Book, only one of five in Northern Ireland. It had a £2.2m wage bill which was projected to increase to £3m as the team increased to 95. Over the last 12 months, £10k had been raised for local sports clubs and rates were set to £95k per year. The closing of the function room would be a loss of revenue. If the Committee decided to refuse planning permission, the business would rethink its strategies and return to the old model which would include 150+ weddings and dinners per year which the company felt was the wrong decision for both their business and the local village. Mr Johnston asked Members to note that when Templeton was bought over, it had previously had 12 weddings per year which they had increased to over 160.

Councillor Creighton asked if street furniture and the Christmas tree would be retained to which Mr Mountstephen advised, yes, whilst Mr Johnston explained that he did not understand why the Christmas tree had become an issue as it was never

mentioned, as well as the fact that the Old Inn funded the event at Christmas and ensured the car park was as empty as possible to facilitate it.

Councillor Cathcart asked if facilities such as the spa would be available to the general public or limited to residents only, as well as what considerations or alternatives had been made when erecting the barriers. Mr Johnston explained that spa use was for residents only. Some meetings had taken place with local residents with some issues being worked through. The lights up barriers were the recommendation received from the Health & Safety Officer of the hotel group, and though he was not against the use of reflectors and turning the lights off, a local MLA had reiterated the need for lights. Unless he received word that it was okay to do so and safe, he could not turn the lights off. The Galgorm's intention was to manage the car park, however that could be done.

Councillor McLaren asked if investment in the property would detract from the character of the village, referencing a wall recently built to enhance the area and if they could do anything to make deliveries to the premises better, as what was on the application wasn't necessarily the experience that villagers had. Mr Johnston believed the application would not detract from local character. The design of the scheme was informed and enhanced character. Design features reflected the character on the main street, such as the recent wall erection. From minutes of meetings with residents, it could be shown that the company was trying to work through a list based on level of importance. To date, there were 19 delivery companies whilst waste collection operated between 11:00-13:00 whilst everything else was, through agreement, delivered to the back of the building. One supplier had refused, leading to the Galgorm group moving suppliers. He was happy to circulate the list of works from meetings if required.

Councillor McRandal suggested that, as the report included the closure of the function room, it should also consider any other changes that may have taken place in the hotel since it was taken over and asked if a holistic approach would have been more appropriate. Mr Mountstephen advised that a baseline had been established with all hotel facilities/uses considered into the total number of spaces available. With office space and a function room being removed, that would be two less sources of parking and what would be in its place was essentially a smaller development which in turn meant a smaller requirement. The focus was to be on a low volume/high spend product with an aim to move to five-star, increase spend and rosette awards. Due to this, weddings were not seen as part of the right combination but if planning permission was refused, they would have no option but to revisit that model.

Councillor Martin directed attention to the development being predicated upon the function room ceasing to operate and asked what the future intentions were for a 100+ seating space. Mr Johnston advised that as some legal proceedings were ongoing, he could not speak on the subject as a whole, save that £200k had been spent on the sub-floor and ceiling with the likely idea to be a hotel gym. Mr Mountstephen added that nothing was of any material consideration at this time as any plans would first require permission in the event that the application was approved.



Alderman Graham asked if the Galgorm Group saw car parking as a problem and if the crux of the issue was to reduce car parking spaces in favour of accommodation space. Mr Johnston agreed that car parking had been an issue long before the Galgorm Group had taken over and continued to be, but that their intention was to be part of the solution, hence the suggestion of double yellow lines if it helped. They had also distributed 1000 discount cards to local residents in the general area.

The Chair (Alderman McIlveen) asked if those staff displaced by closing of offices would be relocated within the site. Mr Mountstephen advised that office staff would no longer be present on site as the Galgorm Group had some centralised functions whilst Mr Johnston explained that this had led to nine less staff on site. Alderman McIlveen asked if any assessments had been made in relation to public use of the car park and, in the event of refusal, how many weddings might take place alongside associated traffic. Mr Johnston explained that the property was bought over in April 2021 and did not open until September as they had decided to begin work straight away on refurbishment. When the hotel was not open, they were able to see that the car park was used by the general public but did not have figures. With a 100 person function room, it was likely a large proportion of any who attended a function would be driving hence the Department for Infrastructure's analysis of one parking space per 5sqm relating to 36 spaces. Using the Templeton example from earlier in the meeting (12 weddings up to 160+ after purchase of the hotel), he believed that option evidenced the reasoning behind closing of the function room for the betterment of the village and the product.

Alderman McIlveen paused proceedings to ask the public gallery for quiet, advising that it was important for Members to not be distracted in order to listen and provide the most balanced decision.

Mr Mountstephen and Mr Johnston returned to the public gallery and questions of clarification to the Officer were opened to the room. Councillor Kendall noted the Department of Infrastructure consultation that resulted in the distance of barriers set back from the road to allow for cars to wait without impeding pedestrians, asking if any consideration had been given to larger vehicles like delivery vans and their impact upon the space provided. The Officer advised that the Department for Infrastructure had been advised on that very issue and they were content that, on the basis of anything accessing any site, there was always a possibility of temporary stoppage for a small period of time, but once barriers opened, the vehicle could enter, out of the way of other traffic and pedestrians.

The Director of Prosperity pointed out to Members that, as Mr Mountstephen had previously referenced, they had negotiated with delivery companies and provided assurance by changing suppliers who refused to deliver via the car park.

Alderman Smith wished to confirm that, in the event of the function room being repurposed, that a planning application must be submitted, and a review of parking would occur once again. The Officer agreed, advising that as with any proposal as part of a planning application, which would be part of the process and would require consultation with the Department for Infrastructure, being assessed on material considerations including planning history.

Proposed by Alderman Smith, seconded by Councillor Cathcart, that the recommendation be adopted, and that planning permission be granted.

Alderman Smith agreed that the issue of traffic was contentious and well known whether local to the area or not. He understood the objective of the applicant and the concerns regarding barriers and changes to the car park capacity. He believed there were two key issues; that the Department for Infrastructure was content, a statement Members had to take at face value and that car parking capacity had been calculated as required based on facts.

Councillor Cathcart's opinion had swayed in both directions as he listened to speakers and the supporting evidence. He was concerned of the consequences of refusing the application given that no restriction would exist for the hotel and function room which would likely mean an increase in traffic. He hoped the applicants would continue to work on issues such as the barriers and residents' concerns as well as being proactive in finding long-term solutions. In addition, a refusal could also mean the removal of barriers which would lead to an open forum carpark which in turn could displace patrons, causing spill-out of parking on the streets.

Councillor McRandal had similar experiences to his colleague in relation to concerns if the application was refused. With the evidence supplied, and the fact that Members had to judge a planning application against relevant guidance led to his agreement that approval was the right approach.

Councillor Kendall understood points made by her colleagues but could not support the recommendation from a purely planning perspective, suggesting the decision was based on the technicality of the function room.

Alderman Graham felt the Department for Infrastructure's calculations were based partly on the function room ceasing to exist which created more of a theory than practice approach. The function room's space would have a commercial use of some sort in the future that would attract footfall which in turn would increase traffic. In addition, though it may have been the PSNI's responsibility to police dangerous parking, they had to base attendance at many different incidents based on importance/ severity which may mean a lack of ability to attend infractions at Crawfordsburn. His view was emphasised by Mr Davidson (speaking against the application) stating that there had been no difference to car parking levels since closure of the function room.

As there was a divided opinion amongst Members, the Chair called for a vote.

In a non-recorded vote with 9 FOR, 5 AGAINST and 1 ABSTENTION, the proposal passed, and planning approval was granted.

**RESOLVED, on the proposal of Alderman Smith, seconded by Councillor Cathcart, and a vote of 9 FOR, 5 AGAINST and 1 ABSTENTION that the recommendation be adopted, and that planning permission be granted.**

(Councillor Morgan returned to the meeting at 20:38 following conclusion of the item.)

#### 4.2 LA06/2023/1573/O – Dwelling, approximately 70m East of No.18 Hillsborough Road, Comber

PREVIOUSLY CIRCULATED:- Case Officer's Report

**DEA:** Comber

**Committee Interest:** A local development application "called-in" to the Planning Committee by a member of that Committee – Ald McDowell – for the following reasons

1. The application may not be contrary to Paragraph 6.73 of the SPPS and Planning Policy Statement 21, Policy CTY10, as these pertain to demonstrating a six-year duration of agricultural activity associated with a Business ID.
2. The proposal may not be contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside and Policies CTY1, 10, 13 and 14 as this is an outline planning application and will take due consideration of all sustainability requirements at full application stage.

**Proposal:** Dwelling

**Site Location:** approximately 70m East of No.18 Hillsborough Road, Comber

**Recommendation:** Refusal

The officer explained that the application was before Members as it was a local development application "called-in" to the Planning Committee by Alderman McDowell for the reasons set out above.

Members were asked to note that there had been no objections from Consultees with DfI Roads content. No representations had been received either in support of or objecting to the proposal. The site formed part of a larger agricultural field and located immediately adjacent to No.18 Hillsborough Road, which was owned by the applicant.

It was proposed that the site would be accessed via a new laneway which was 278 metres in length traversing flat land from the public road to the north. There was an area of existing trees along the rear and eastern boundaries of the site, however the front northern boundary was undefined. Hedging and post and wire fencing defined the remaining site boundary.

The proposed laneway did not follow the existing site boundaries cutting through the middle of the fields to access the site.

In terms of the Local Development Plan, the site was located within the countryside as defined in the Ards and Down Area Plan 2015. No designation or zoning affects the site, so the relevant policy is the SPPS and PPS 21 'Sustainable Development in the Countryside'.

This application was a proposal for a dwelling on a farm.

In terms of CTY 10 criterion (a) which stated that the farm business should be currently active and had been established for at least 6 years - in this case, the applicant had submitted a farm business ID which related to a farm business at 58 Glenstall Road, Ballymoney. The farm business was established at 58 Glenstall Road, Ballymoney on 14 March 2012.

However, and critically important to this application and to the Planning Department's opinion to refuse, this farm business only took ownership of the land at this site on Hillsborough Road in Comber in April 2022.

Members were also asked to note that the applicant had confirmed that the farm in Ballymoney, which consisted of a non-residential shed and yard, was sold in 2021. Therefore, the applicant could not meet the key six-year policy test under criterion (a) for the land at Hillsborough Road. In fact, this could not be met until 2028.

It was evident that the applicant did not have evidence of an active and established farm business at this Hillsborough Road address.

This was the same position that was taken by the Planning Appeals Commission. The Principal Planner referred to Appeal 2016/0047, which was relevant. An extract of this appeal decision was shown on the next slide which contained PAC Appeals 2016/0047 & 2021/A0133.

Members were asked to note that both of the appeal decisions were dismissed. These appeals were for very similar situations with the most recent appeal decision in June 2023 particularly current. In both instances the appeal site was added to an existing Farm Business ID where the farm itself was in an entirely different location. For example, in the 2016 appeal, the appeal site was in Belfast and added to the farm ID in May 2015 with the Farm Business in Seaforde, Co Down before then. In the 2021 appeal, the appeal site was added to the farm business in 2019, and the Commissioner made it clear that the appeal site could not have been a part of an active and established farm business for at least 6 years as required by policy. In this current application the farm business ID was from Ballymoney with this site bought in 2022 on Hillsborough Road. It was clear that the application site had not been part of an active and established far business for at least 6 years as required by criterion (a) of policy CTY 10.

Criterion (c) indicated that wherever possible, access to a new dwelling should be obtained from an existing lane. However, the applicant was proposing the construction of a new lane measuring 278m long. This was despite an existing lane accessing No.18 Hillsborough Road, which was immediately adjacent to the site and owned by the applicant.

Criterion (d) of policy CTY 13 stated that a new building would be unacceptable where its ancillary works did not integrate with their surroundings. Paragraph 5.72 of the Justification and Amplification to the policy, as was shown on the next slide, advised that for a new access, if it could not be provided via an existing lane, should as far as practicable run unobtrusively alongside existing hedgerows. However, the proposed lane would cut through the middle of the open field to the application site.

The proposed access lane did not integrate into the landscape and would be a prominent feature. Furthermore, the ancillary works would result in a detrimental change and erode the rural character of the area, subsequently failing to comply with policy CTY 14 of PPS 21 on 'Rural Character'.

In conclusion, the officer recommended refusal of the application.

Councillor Cathcart understood the six-year refusal reason and asked if the other three were based on the laneway as this was only at outline application stage. The officer explained that the proposed site location plan was for the access lane to go through existing fields rather than run unobtrusively, hence the decision to look at other elements of refusal.

Alderman McDowell summarised the issues as interpretation of the business and CTY regulations regarding the laneway. He believed there was some difficulty in making a decision based on how the six-year rule was interpreted especially in circumstances where a farm buys land but cannot transfer operating history to include the new land. The officer explained that, ultimately, outcomes were based on PAC decisions. The argument was not that a farm ID existed for six years, but that the farm was based in Ballymoney, not Comber and that the land could not be shown as part of an active farm for six years, hence it did not meet criterion (a) of CTY10. Alderman McDowell suggested similar issues must have occurred in the past and if Officers' interpretation of the policy was the actual intent of it or a proposed intent. The Director of Prosperity advised that it was not for the Planning team to establish intent but to base any assessment upon most recent appeal decisions which set precedent. The same situation had been debated at the Planning Committee in the past whereby a farm in Lisburn bought land in Ards and North Down. In that instance, it was determined that a field would not be classed as having a six-year active business history based on purchase and the new owner's history; a judgement that the PAC had come to in another case. Unless such PAC decisions had been challenged, as established by Wm Orbinson KC, those decisions were material, and if the Committee changed direction with the current application, it could cause difficulties moving forward.

Councillor McCollum asked if it were the case that the proposed laneway was too long and if she was right that the report stipulated that an existing laneway could have been used as an alternative route. The officer agreed, stating that from roadside to the site was fairly open and that the proposal did not carry alongside existing boundaries which in turn meant it did not integrate into the countryside setting. The applicants had proposed to use a new lane as opposed to the existing one.

Mrs Lestas (applicant) and Mr Scott Caithness (agent) joined the Committee from the public gallery to speak whilst being reminded that she had five minutes to speak.

Mrs Lestas explained that she, as applicant, had been questioned on purchasing land in 2022 that could not be part of a six-year portfolio, a position she wished to counter. The appeal cases that had been mentioned were irrelevant and CTY12 was referenced, not CTY10 that was in the current application. Mrs Lestas referred to



other cases relating to CTY applications; one being from Stewartstown that had an active farm I.D. of 13 years but had only acquired the appeal site two years before their application. In this instance, the PAC agreed to the six-year rule and granted planning. The second case was for an Antrim farm where CTY10 was applied to the farm business and not in regard to land ownership. The Officer had questioned the active status of the farm given no single payment grants had been claimed. Mrs Lestas had provided DAERA documents which showed a 2014 farm I.D. for farm land in Ballymoney. As for active farming, DAERA had set out categories 1 to 3 for farming. The category 2 I.D. had been transferred from Ballymoney to Hillsborough Road in 2022 and changed from category 2 to category 1 with over £17k woodland scheme resulting in 2100 trees that covered the proposed laneway. They had provided documentation of category history dating back to 2014. Quoting DAERA that, 'farming is defined as enjoying the decision making power, benefits and financial risks in relation to agricultural activity taking place on the land declared,' Mrs Lestas explained that they had been operating in such a way since 2014.

The agent, Mr Scott Caithness, in relation to items 2-4 in the policy, explained that PPS21 and CTY10 were satisfied as the site was linked and sited to a cluster as confirmed in the report, set back 270m from the Hillsborough. A roadside entrance was already existing, so no works were required at the roadside. The area was of low elevation in the landscape and as such was sympathetic to the landscape and its character. The proposed site was lower than existing buildings and would be sympathetic to PPS21. As had been previously mentioned, 2100 trees had been planted over 1.5 hectares in the field between the road and field which would cover the laneway. These would mature and transform the landscape and habitat whilst screening the proposed dwelling and lane. Ancillary works were not highlighted in discussions during the planning process as a concern until receipt of this evening's report. The design would reference department guidance for the countryside and all consultees were satisfied with no objections raised.

Alderman Smith referenced planting of trees which would screen the proposed laneway but queried why the applicant would not use the laneway that already existed. Mrs Lestas explained that planting trees meant the lane would be more attractive and that whilst the existing lane did pass by the proposed dwelling site, they were never asked to reconsider the laneway but regardless, tree planting should negate any issues.

The meeting was brought to recess at 21:01, recommencing at 21:18.

Alderman McDowell questioned the examples of PAC decisions made by the Officer and Applicants. Mrs Lestas advised that there were two cases in the Officer's report, one of which she was not aware of until this evening's meeting. Her own examples consisted of Stewartstown where it went to appeal for the same issue despite having a farm I.D. for 13 years and only owning the site for two years before applying for planning. The PAC ruled in favour of the applicant advising that the farm business holding being active was the main concern as opposed to land ownership. In the Antrim case, the PAC ruled that CTY10 applied to the farm business and was also not concerned with land ownership.

Mrs Lestas provided references for both cases; 2014-A0269 Stewartstown and 2018-A0210 Antrim. She believed decisions on these matters were important to all farmers across the country in relation to planning permission and farm I.D. Both she and the agent returned to the public gallery.

Alderman McDowell asked which cases were most applicable in terms of their judgement. The Director of Prosperity explained that the Planning Department based decisions on the most recent PAC outcomes. Whilst the applicant had quoted a 2014 case, the most recent case the PAC was involved in was for June 2023, Gransha Road South. In relation to the 2018 case quoted by the applicant, it was an application for a dwelling on a farm that had been refused. The PAC decision had been in 2019, stating that the applicant owned the land and that CTY10 related to the business, not land ownership and though this was not fatal to the proposal, it referenced self-assessment tax returns and land rented out from 2012. In that case, it was about maintaining land in good agricultural activity which the landowner had done for the renter as well as invoices that were supplied but not beyond 2017.

Alderman McDowell believed it was difficult to reach an informed decision until the PAC outcomes had been reviewed. In discussion with the Chair (Alderman McIlveen), Alderman McDowell came to the conclusion that a deferral for one month would allow for the four PAC cases mentioned to be investigated further. The Director of Prosperity added that Officers should also bring forth other relevant cases to provide as accurate a report as possible in terms of PAC decisions.

Proposed by Alderman McDowell, seconded by Councillor McCollum, that the decision be deferred for one month to await a report on related PAC outcomes.

Councillor McCollum as seconder believed it was unfair for the Director of Prosperity to sift through PAC outcomes during the meeting and that Members would be better placed to make a decision when they had full oversight of related PAC outcomes.

Councillor Wray asked if there was any way for such information to be assessed earlier to which the Director of Prosperity advised she was unaware if the PAC decisions referred to had been included in the speaking notes provided before the meeting. The Chair (Alderman McIlveen) advised that a mechanism was in place to allow for Committee to ask for more time or information as required.

**RESOLVED, on the proposal of Alderman McDowell, seconded by Councillor McCollum, that that a decision be postponed, and that LA06/2023/1573/O be deferred for one month to await a report on past PAC decisions.**

**4.3 LA06/2022/0930/F - Infill dwelling, garage, and associated site works (in substitution for approvals LA06/2018/1123/O and LA06/2023/1878/RM), Lands 70m south of No. 38 Springvale Road, Ballywalter**

PREVIOUSLY CIRCULATED:- Case Officer's Report

DEA: Ards Peninsula

**Committee Interest:** A local development application "called-in" to the Planning Committee by a member of that Committee – Cllr Kerr –

The main reason is the road safety aspect, which is still of concern to objectors given the speed of the road.

Also raised is the consultation response from Environment, Marine and Fisheries Group

'Marine Conservation Branch has reviewed the additional information provided by the applicant and would note that our concerns regarding the potential impact of coastal erosion on the site, highlighted in our previous consultation response (dated 20th October 2022, remain).

After assessing the recently concluded Northern Ireland Historical Shoreline Analysis Survey we understand that this section of coastline has been historically eroding at a rate of between '0.01 and 0.03m' per year. As was stated in our previous response, dated 20th October 2022, we would advise that erosional issues faced at this site may be exacerbated with climate change and sea level rise further increasing the risk.

In addition, the results of the 'Coastal Bedrock Geology' project, which was undertaken by GNSI, indicate that the bedrock geology found along this section of coastline consists of 'wacke and mudstone' which is soft and therefore may be susceptible to the impacts of erosion.

Given this evidence we would advise that this section of coastline may be vulnerable to the impacts of erosion in the future, especially under climate change scenarios, and consequently we would have significant concerns should planning permission be granted.

'If this development, as well as the adjacent proposed development (LA06/2022/0928F) are allowed to progress, this will likely restrict the potential for this section of coastline to naturally adapt to climate change, increasing the pressure on this largely rural area and therefore may increase the need for future sea defences, which are not guaranteed, in this location to protect this application. Furthermore, as stated in our previous consultation response (dated 20th October 2022) this proposal will alter the use from agricultural to domestic therefore increasing the development along a section of relatively undeveloped coast which is contrary to SPPS Section 6.35.'

**Proposal:** Infill dwelling, garage, and associated site works (in substitution for approvals LA06/2018/1123/O and LA06/2023/1878/RM)

**Site Location:** Lands 70m south of No. 38 Springvale Road, Ballywalter

**Recommendation:** Approval

The Officer advised that the application was before Members as it was a local development application "called-in" to the Planning Committee by Councillor Kerr; he reasons being that objections had been raised regarding road safety given the speed of the road, and the potential impact of coastal erosion on the site, through concerns raised by the Marine Conservation Branch consultation response.

Members were asked to note that DfI Roads had no objections to the proposal subject to conditions. With the exception of NIEA Marines and Fisheries section, the remaining consultees had no objections to the proposal. The Marines and Fisheries division considered the application should be refused.

Members were also asked to note that three letters of objection were received from two separate addresses. The main points of objection related to road safety and



flooding. In regard to flooding, it should be noted that in the DfI Rivers consultation response, it stated that the Coastal Floodplain was not applicable to this site and as such they had no specific reason to object to the proposal.

The application site was located on land between Nos. 38 and 40 Springvale Road, Ballywalter. The site formed part of an existing agricultural field, which was relatively flat by the road frontage and then sloped down towards the coast to the south. The site history was particularly relevant and a material consideration regarding this proposal. Whilst the NIEA Marine and Fisheries Division considered the application should be refused, Members were asked to consider this against the principle of development which had been already established on this site. As per slides shown, Members could see that there was an extant approval under LA06/2023/1878/RM following Outline Planning Permission granted under LA06/2018/1123/O. This Reserved Matters was only very recently granted on 1 September 2023. The Marine and Fisheries division did not offer any objection to the Reserved Matters application in its consultation response dated 28 June 2023.

The legal fall-back through this extant Reserved Matters remained in place on the site until 2025. Given this, the principle of the dwelling remained appropriate, and the proposal was considered to be in general compliance with the SPPS. As such, the Planning Department had to set aside these comments from Marine and Fisheries, as the applicant could proceed to build a new dwelling in practically the same siting under the granted Reserved Matters. The main change in terms of siting was the repositioning of the driveway to facilitate a separate access to the adjacent site, also approved under a separate reserved matters application.

DfI Roads was consulted and had no objection to the proposed change in access layout. As per the Reserved Matters the current proposal included a garage, car port and space for two in-curtilage parking spaces. The driveway slope was also deemed acceptable. Objections related to the 60mph speed of the road and potential for serious accidents, however, as per the granted Reserved Matters, DfI Roads considered the proposed access safe. The proposed design of the dwelling included use of high-quality materials to enhance the rural character. The proposed terraces and balconies, as also included in the previous approved scheme did not have an adverse impact on neighbouring residential amenity.

The current application proposed a minor increase in ridge height to 6.8 metres from 6.49m granted under the Reserved Matters, a change of 31 centimetres. Furthermore, there was a change to the rear of the site with between the approved and proposed dwelling in that the ground level at the rear of the site was to be raised by 900mm.

As outlined previously, DfI Rivers stated that the site lay outside the coastal floodplain and as such there was no adverse impact on the change to the ground levels, which could impact flooding.

Based on the information presented and taking account of the reasons for this application to be called-in to the Planning Committee, approval of the application was recommended.

Mr Andy Stephens (agent) joined the Committee from the public gallery to speak in support of the application whilst being reminded of the 5 minute time limit. Mr Stephens advised Members that the subject site and adjacent lands had a detailed planning history as had been presented in the report before Members. The net effect of this history was that extant planning permission had been granted on site until 31 August 2025 with the applicant having a legal fallback position which meant that only net differences between the outlying and reserve matters application and that which was in the current full application could be assessed. The differences between the extant permission and proposal were an amalgamation of existing access serving No. 38 and the access under reserved matters approval. The proposal sought to provide a single access regress to serve No. 38 and the application site alongside the adjacent, approved dwelling; something that would reduce the number of accesses onto the Springfield Road to what had previously been approved. The position and access of the egress would constitute as an enhancement as it provided better visibility toward Ballyhalbert due to being located further from the bend. Some changes had also taken place with regard to house design in reserved matters as the Officer had outlined. The Department for Infrastructure had no objections and no objections had been received from third parties. The Department for Infrastructure also had no objections to previous outlying or reserved matters applications or the three applications on adjacent lands. NIEA Fisheries may have objected to this application, but it was noteworthy that they had not objected to the outlying application on the site or the reserved matters. Mr Stephens fully supported the Officer's recommendation and all elements considered within the report.

Proposed by Councillor McRandal, seconded by Councillor Wray, that the recommendation be adopted, and that planning permission be granted.

Councillor McRandal noted NIEA Marine and Fisheries recommendation of refusal but given the factor of extant planning was in place, he was willing to propose.

Councillor Wray agreed, stating the two main concerns were road safety which had been addressed by the consultee.

Councillor Kerr asked for concerns to be noted of coastal erosion in the area of 0.1-0.3m per year and as such could not support the proposal.

In a vote of 14 FOR, 1 AGAINST and 1 ABSTAINING, the proposal was passed, and the planning approval was granted.

**RESOLVED, on the proposal of Alderman McRandal, seconded by Councillor Wray, and a vote of 14 FOR, 1 AGAINST and 1 ABSTAINING that the recommendation be adopted, and that planning permission be granted.**

**4.4 LA06/2023/2012/F - Dwelling (change of house type from approval W/2011/0015/RM) Land between 3 and 4 Sheridan Grove, Helen's Bay**

Item 4.4 was deferred to a later Planning Committee meeting.

**4.5 LA06/2023/1946/F - Lighting, planting and renewal of street furniture, Kircubbin Promenade, (to include land immediately adjacent to**

**Strangford Lough and to rear of 1-15 Main Street, the Village Green Carpark, Kircubbin Presbyterian Church and Kircubbin Playpark).**

PREVIOUSLY CIRCULATED:- Case Officer's Report

**DEA:** Ards Peninsula

**Committee Interest:** An application made by the Council.

**Proposal:** Lighting, planting and renewal of street furniture.

**Site Location:** Kircubbin Promenade, (to include land immediately adjacent to Strangford Lough and to rear of 1-15 Main Street, the Village Green Carpark, Kircubbin Presbyterian Church and Kircubbin Playpark).

**Recommendation:** Approval

The officer advised that the application was before Members as it was an application made by the Council.

This proposal related to land at Kircubbin Promenade, primarily to the rear of 1-15 Main Street, Kircubbin Presbyterian Church and Kircubbin Playpark. The existing site was a mix of car parking, public walkways, benches, playpark and informal open space. The proposal complied with the Ards and Down Area Plan 2015 and there was no adverse visual impact on Strangford and Lecale Area of Outstanding Natural Beauty.

There was no impact on existing areas of parking or vehicular accesses. DfI Roads and Environmental Health had no objections to the proposal.

In terms of residential amenity, one objection was received regarding 4m high lighting columns, which were part of the existing scheme. These had been subsequently changed to low-level bollard lighting adjacent to the rear of the residential property. No further objections were subsequently received and the amended lighting within the scheme would not adversely impact neighbouring residential amenity.

There were no objections from NIEA and Shared Environmental Service was also content.

Given the existing area had been used as a promenade for many years and the scheme was for environmental improvements including updating street furniture and lighting, it was not expected that users would experience any additional consequences of flooding and climate change as a result of the development.

Based on the above, the officer recommended approval of the application.

Proposed by Councillor Kerr, seconded by Councillor Kendall, that the recommendation be adopted, and that planning permission be granted.

Councillor Kerr welcomed the work for Kircubbin whilst Councillor Wray noted the report mentioning the promenade not being frequented regularly, but with new works as well as a new playpark and multi-use facility, he believed it would be an attraction for visitors.

**RESOLVED, on the proposal of Councillor Kerr, seconded by Councillor Wray, that the recommendation be adopted, and that planning permission be granted.**

## **5. SERVICE PLAN**

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity outlined as follows:

Since 17/18 Service Plans had been produced by each Service in accordance with the Council's Performance Management policy.

Plans were intended to:

- Encourage compliance with the new legal, audit and operational context;
- Provide focus on direction;
- Facilitate alignment between Corporate, Service and Individual plans and activities;
- Motivate and develop staff;
- Promote performance improvement, encourage innovation and share good practice;
- Encourage transparency of performance outcomes;
- Better enable us to recognise success and address underperformance.

A draft plan for 2024-25 is attached, which had been developed to align with objectives of The Big Plan for Ards and North Down 2017-2032; the draft Corporate Plan 2024-2028 and the draft Annual Performance Improvement Plan (PIP). The Plan would also support delivery of the ITRDS. The agreement of the plan would also aid toward achievement of the Council's performance improvement duties under the Local Government Act (NI) 2014.

The Service Plan highlighted where the service contributed to the Corporate Plan and, where this was the case, sets out the objectives of the service for the 2024-25 year. It further identified the key performance indicators used to illustrate the level of achievement of each objective, and the targets that the Service would try to attain along with key actions required to do so.

The plan had been developed in conjunction with staff, officers and management and in consultation with key stakeholders where relevant.

The plan was based on the agreed budget. It should be noted that, should there be significant changes in-year (e.g. due to Council decisions, budget revisions or changes to the PIP) the plan may need to be revised.

The Committee would be provided with update reports on performance against the agreed plan.

**RECOMMENDED** that Council adopts the attached Planning Service plan.

The Director of Prosperity explained that all committees received annual service plans for units which set out business for the upcoming year. There was not much change to last year as key performance indicators for Planning are set in legislation. An additional area included was carrying out recommendations from the NI Public Ombudsman regarding trees reported to previous meetings of Planning Committee.

Councillor Cathcart referred to page 17 and the figure of 15.8 believing Council were under the target and asked for any additional information as well as updates on staff turnover and whether the ability existed for prioritisation of issues with regeneration abilities above other applications. The Director of Prosperity explained that 15.8 weeks was the most up to date figure that could be supplied as statistics were published at the end of Q3. Year to date was 17.2. With regard to staff turnover, there had been issues of staff shortages due to sickness and staff taking up secondments or moving to other jobs. The same difficulties existed across councils with retention and attraction of workers with the correct skillsets. With more resources and new staff trained up, it was hoped to use some overtime to tackle the backlog potentially with a specialised team who could work on it without distraction. It was an issue to balance the management of many cases with new cases that needed acting upon within the timeframe whilst also awaiting information on older cases as to not miss overall targets. The Department did prioritise those cases and by way of example, a Special Planning Committee was held last month for social housing or those subject to grant funding and the National Museums application was brought forth due to their own funding deadlines. Any case that contained regenerative capabilities or economic benefits was prioritised subject to how front-loaded they were and consultee responses.

Councillor McRandal asked for more information regarding comments on page 8 of 93 weeks average processing on major applications and page 11's mention of weaknesses/challenges for the years ahead and protocol with Building Control. The Director of Prosperity explained that, though it may not look good on paper, if Members drew their attention to Q3 statistics where the Department received 3 majors and decided 2 with 93.2 weeks processing though the target was 30 weeks. That consisted of the Ulster Folk and Transport Museum, which was determined in 25.3 weeks, but the other was Phase 3 of the Rivenwood development on Movilla Road, Newtownards, which required an amendment to the previous Section 76 agreement with Fraser Houses in terms of the land and phasing of development. Within Phases 1 and 2, he had an approval that NI Water would honour with regard to a connection to sewers but as phase 3 was coming in, both he and other developers of other pieces of land were required to put in ring sewer which required much negotiation in the background with other landowners and developers and have the Council's legal team amend the legal agreement. This led to 139 weeks of processing which skewed the average processing times across the board. Statistics stated it was a median calculation though this would likely have meant a slightly lower figure. With regard to the second query, an Officer in the Enforcement Section had access to the Building Control database to view new applications coming in. This was to investigate where some people have planning approval for something but applied to Building Control for something different. It was hoped that the department could be proactive and notice these differences before building began. The Enforcement Officer would look for applications at the address to look for



inconsistencies. The Building Control application forms had been edited to notify members of the public that enforcement checks were in place, but it had not proven to be overly successful and as such, the decision was made to stop and allow the Officer to focus on Enforcement cases. However, it could be revisited again in the future if needs be.

Councillor McKee referred to page 7, factors against effectiveness and asked of legalities of TPOs (Tree Protection Orders). The Director of Prosperity advised that around 150 TPOs were transferred from the historic DoE where Officers were unable to discern if issues existed due to data loss during transfer or because of old record keeping. When a provisional order was put on land, it required one signature and if modified after six months or confirmed, a second signature would be added. A few of these cases did not have a second signature meaning the TPO may not necessarily be legal and as such, the team were working through such issues and re-serving where necessary. Unfortunately during the drafting of tree regulations by the historic DoE, Councils had not been granted power to revoke TPOs served by the previous planning authority. This was flagged under the review of the Planning Act, discussed at professional officers' group and was being raised with the Department.

Councillor Wray, in regard to the performance table on page asked how they could manage or evaluate effectiveness if the average processing time information for Enforcement was not available. The Director of Prosperity advised that the statutory enforcement indicator for enforcement cases was that 70% of cases were concluded within 39 weeks. Concluded meant that if a retrospective planning application was submitted, or a court summons or notice issued, the issue had been migration from the previous planning portal system so the statistics branch were unable to extract data, instead manually investigating individual cases in an attempt to put closure dates in to extract information; an issue since the new system's inception in 2022. It was hoped that, following discussions, the information may be fully available for the past year in July. There were weekly and monthly reports regarding target processing times, and they were dealt with as soon as possible, especially priority #1 cases where unauthorised works were being carried out to trees or buildings or resulted in environmental harm.

Alderman McDowell asked if, in relation to Building Control, the public were advised that plans could be checked, and spot checks were carried out as not finding any issues in recent checks might show that the public were understanding of warnings. Historically there had been issues of plans being approved that did not match the completed build and there had been few cases where planners had asked for buildings to be taken down. The Director of Prosperity advised that no reference had been made to not finding issues, but that it was a resource intensive task with the number of applications Building Control received and their various stages. Plans may be received, be looked at on the ground and not match the plans but be approved if it matched building regulations. As an example, HMRC had informed the department of a tax rebate on a disabled dwelling where planning permission had been passed for a single storey dwelling but the application to Building Control was for a two-storey dwelling. In respect of the comment regarding planners not asking for buildings to be removed, decisions were made by Council, not through single Officer determinations. Sometimes, applications that were reviewed did involve enforcement notices being served and the development to be removed, and the Planning Appeals

Commission had upheld such Notices requiring demolition. The Director reminded Members of a current situation whereby the Planning Service had been seeking demolition of a dwelling that was not in the correct location for some considerable time.

**RESOLVED, on the proposal of Councillor McRandal, seconded by Alderman Graham, that the report be noted, and the Service Plan be adopted.**

## **6. UPDATE ON FUNDING FOR LIVING WITH WATER PROGRAMME**

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity outlined as follows:

### **Background**

When it became clear that the drainage infrastructure across Belfast was unable to meet the requirements expected of it, the Northern Ireland Executive approved the development of a Strategic Drainage Infrastructure Plan (SDIP) for Belfast to:

- **protect against flooding** by managing the flow of water through a catchment from source to sea;
- **enhance the environment** through effective wastewater management and the provision of enhanced blue/green spaces to benefit local communities; and
- **grow the economy** by providing the necessary capacity in our drainage and wastewater management systems to facilitate new development projects including house building.

“Living With Water in Belfast”, WAS the Strategic Drainage Infrastructure Plan for Belfast £1.4bn 12-year investment plan approved by the NI Executive and published by DfI Minister November 2021.

The Plan aimed to address the increasing demands on the city’s wastewater and drainage network caused by population growth and increase in commerce, as well as the more frequent extreme weather events resulting from climate change.

The Plan can be viewed here <https://www.infrastructure-ni.gov.uk/topics/living-water-programme/living-water-belfast>.

### **Combined Sewer Overflows (CSOs)**

CSOs WERE a growing public concern across UK - being informed by the increased level of information that was being made publicly from ‘Event Duration Monitors’ (EDMs)

NIW had advised that Greater Belfast was much worse than any part of UK due to decades of under investment. Its predecessor organisations were forced to create overflows to reduce out of sewer flooding of homes and businesses, which resulted

in bacteria contaminating watercourses and sea, and the unsightly Sewage Related Debris (SRD) found along watercourses after rainfall, with tons accumulating in certain coastal locations.

Of 270 CSOs, the Northern Ireland Environment Agency had determined that 80% are unsatisfactory – five times the average for England.

In order to grow the economy, we needed necessary capacity in our drainage and wastewater management systems to facilitate new development projects, including house building.

To fully ease constraints NIW had advised that sustained investment was required over 12 years of the Living with Water Programme (and may extend further due funding constraints).

Inflationary costs in the construction industry since November 2021, along with some changes to project scope, had impacted programme costs.

### Infrastructure Committee

Upon return of the Executive, at a recent meeting of the Infrastructure Committee, the Chief Executive of NIW, alongside NIW's Director of Finance, addressed the Committee. They set out that its Price Control 21 (PC21) six-year investment plan was designed to reduce pollution and facilitate continued connections to NIW's network. However, NIW was at a crossroads, whereby the agreed plan was at risk. Budget constraints had been introduced in the current financial year, and further constraints were being discussed, meaning that the LWWP may be put on pause for a number of years.

**Implementation of the LWWP Belfast Plan would facilitate economic growth by:**

- Relieving development constraints;
- Reducing flood risk;
- Improvement in water quality; and
- Shellfish industry increases production – further improving water quality.

**Deferral of investment** in the LWWP Belfast Plan will have the resultant impact of:

- Non-compliance forcing further development constraints;
- Further flooding;
- Further water quality deterioration;
- Potential collapse of the shellfish industry;
- Potential infraction proceedings;
- Further marked deterioration in water quality; and
- Economic and reputational damage – whereby recovery requires further increased investment & operational expenditure.

### Impact on ANDBC

A major upgrade to Kinnegar Wastewater Treatment Works was proposed, whereby submitted its Proposal of Application Notice in December 2023. Submission of the



planning application was imminent; however, potential deferral of investment would put the delivery of this vital upgrade at significant risk.

NIW senior officials highlighted to the Infrastructure Committee how the infrastructure and services it provided had a pivotal role in protecting the environment and enabling economic growth, alongside the stark message that Northern Ireland's waste water system was simply not fit for purpose. It was undersized and could not meet the new environmental standards that the public demanded.

NIW had recognised the situation and had done the preparatory work of completing the designs and studies and putting in place a supply chain, on the basis that commitment was given when it entered the PC21 period but since December 2023 NIW's shareholder (DFI) had signalled a move away from that enabling plan – for which the resulting impact would be widespread and felt across Northern Ireland.

### **Conclusion**

It was considered that it would be appropriate for the Council to write to the Minister for Infrastructure highlighting the impact such withdrawal of funding would have on our Borough as a whole in terms of enabling investment, impact on our economy and tourism industry and meeting environmental regulations.

RECOMMENDED that the Council notes the content of this report, and the attached minutes of the Infrastructure Committee meeting of 21 February 2024, and writes to the Minister for Infrastructure seeking assurances that the monies committed to NIW for infrastructure projects, particularly the planned upgrade of Kinnegar Wastewater Treatment Works, will be reinstated forthwith.

The Director of Prosperity explained how the Minister was considering the issue of NI Water the previous day at the Executive regarding its inability to raise money to cover historical underinvestment since its takeover in 2007. With regard to the application submitted for Kinnegar Wastewater Treatment Works south of the MoD site, monies had been approved as part of the Living with Water program and design team/contractors in place subject to achieving planning approval (the application having just been submitted) and the potential suspending of that funding for three years would put it at severe risk of being delivered. With regard to upgrading of combined sewers, there were issues relating to mussel beds in Belfast Lough and related economic drivers. Council had written to the Minister before the NI Assembly fell asking for NI Water to receive proper funding or ability to take on appropriate loans to make upgrades. Members were aware of the Council imposing negative conditions on planning approvals to allow builders to negotiate with banks for money to assist with sewerage works for their sites and on that basis, the recommendation included writing to ask for assurances that monies be made available.

Proposed by Councillor McRandal, seconded by Councillor Martin, that the recommendation be adopted, the report be noted and write a letter to the Minister for Infrastructure.

Councillor McRandal spoke of the importance in upgrading Kinnegar and that pressure should be applied to get it delivered given the various economic and environmental impacts of not doing so. Councillor Martin shared the same sentiments.

**RESOLVED, on the proposal of Alderman McRandal, seconded by Councillor Martin, that the recommendation be adopted, the report be noted and to write a letter to the Minister for Infrastructure.**

## **7. UPDATE ON RESOURCING ISSUES WITHIN DFI ROADS**

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity detailing the undernoted:

### **Background**

Members would have been aware that the Council was required to consult with DFI Roads as a statutory consultee in relation to a large volume of planning applications. In addition, there was recognition through the Public Accounts Committee Report on Planning in Northern Ireland that resourcing and capability within a number of statutory consultees was causing a considerable negative impact on the processing of such applications. This, alongside a number of other issues, led to the implementation of the Regional Planning Improvement Programme, being delivered collaboratively between councils and the Department for Infrastructure under the new Minister.

### **Detail**

The responsible Divisional Roads Office serving the Ards and North Down area was Southern Division, based in Rathkeltair House, Downpatrick, which also served the Newry, Mourne and Down council area.

Further to writing to one of its senior officers recently in respect of delays being experienced on a significant major application, and seeking expedition accordingly, it was confirmed that the Divisional Office had extremely limited resources.

Its senior officer advised that budgetary pressures over the last two years and the associated Departmental cost savings measures required, had prohibited the recruitment of the multiple staff resource required to meet the Development Management agreed staff structure. As such, its Development Management service was still operating with high staff vacancy levels (despite recent recruitment exercises) as were other sections within DFI Roads that provided indirect inputs into planning application consultations, such as Traffic and Section Offices.

Additionally, it was understood that DFI Roads had withdrawn from responding to any Pre-Application Discussion requests in order to focus resource on planning applications.

Senior officers within Planning would be meeting with DFI Roads officials to discuss how we could request prioritisation of particular applications; however, the current situation was untenable and required urgent intervention, via correspondence to the Minister for Infrastructure in respect of appropriate resourcing, if the Regional Planning Improvement Programme was to succeed in respect of speeding up the planning process.

**RECOMMENDED** that the Council notes this report and writes to the Minister for Infrastructure seeking urgent attention to the matter of resourcing in the Department's Southern Division Office and other related offices with responsibility for planning responses.

The Director of Prosperity advised Members of the 2019 John Irvine report about the effectiveness of statutory consultees in the planning process. It had highlighted that prior to RPA a Voluntary Exit Scheme occurred where a lot of experience and knowledge was lost particularly in respect of the department hosting Roads and Rivers. A Public Accounts Committee report into Planning in March 2022 identified that there were still resourcing issues. More recently it had been determined that the divisional roads office that processes the borough's applications, based in Downpatrick and part of the Southern division, was refusing to take part in pre-application discussions for which applicants found useful to see what they needed to be aware of before submitting a major planning application. They were prompted recently in regard to a school application at Redburn as it had been 13 months without a substantive response. Their senior officer advised of staffing issues which led to asking approval to write to the Minister of the Department for Infrastructure.

**RESOLVED**, on the proposal of Councillor Martin, seconded by Councillor McCollum, that the recommendation be adopted, the report be noted and to write a letter to the Minister for Infrastructure.

## **8. UPDATE ON PLANNING APPEALS**

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity detailing the undernoted:

### **Appeal Decisions**

1. The following appeal was determined on 25 March 2024 with the Enforcement Notice being upheld by the Commission.

PAC Ref	2023/E0011
Enf Case ref	LA06/2020/0130/CA
Appellant	Eddie Lennie
Subject of Appeal	Service of Enforcement Notice alleging: <ol style="list-style-type: none"> <li>i. Unauthorised change of use of land and vehicle access to serve private golf range;</li> <li>ii. Unauthorised erection of 5.5m high safety netting;</li> </ol>



	iii. Unauthorised erection of two floodlight columns; iv. Unauthorised metal shed erected; and v. Unauthorised erection of unauthorised polytunnel
Location	Lands north of 60 Ballyrogan Road, Newtownards

An appeal against an Enforcement Notice could be brought on any of the following grounds:

- a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- b) that those matters have not occurred;
- c) that those matters (if they occurred) do not constitute a breach of planning control;
- d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- e) that copies of the enforcement notice were not served as required by the relevant section of the Planning Act;
- f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- g) that any period specified in the notice falls short of what should reasonably be allowed.

This appeal was brought on grounds (a), (c), (d) and (f).

Ground (c) of the appeal related to the access only. The appellant referenced two planning applications (X/2008/1069/F & X/2007/0517/F), which showed the vehicular access referenced as an existing farm access on land outlined in blue on associated drawings. It was found that whilst this demonstrated that there may have been an existing farm access at the location at time of the planning applications, this did not demonstrate that the lane in itself had planning permission. As such the Ground (c) appeal failed as it could not be demonstrated that the matter did not constitute a breach of planning control.

In relation to ground (d) the Commissioner concluded that the private golf range element (excluding the floodlighting and netting) was constructed in May 2013. It was also considered that the above access was a composite part, which had been used in connection with the private golf range for a similar period of time. Therefore, both the private golf range (excluding the netting and floodlighting) and access were immune from enforcement action and the appeal succeeded under Ground (d) to that extent.

Ground (a) relates to the Deemed Planning Application. The remaining issues considered under this ground were the floodlighting columns, the netting, a metal shed and the erection of a polytunnel.

The above development was compliant with the policies of the extant Ards and Down Area Plan 2015. As there were no conflict between the SPPS and the retained policies, PPS 21, PPS 2 and PPS 8 (as the netting and floodlight columns are ancillary development associated with the immune private golf range) applied.

During the hearing the Council advised of no objection to the granting of permission for the metal shed and polytunnel subject to specific conditions. As such the appeal succeeded under ground (a) in respect of these two elements subject to specific conditions.

The Commissioner concluded that the 5.5m high safety netting was acceptable on planning merits.

In terms of the floodlighting, it was located within 50 metres of a tree and hedgerows where there had been bat roosts present. The Commissioner was not satisfied that it was demonstrated that the floodlights would not cause less than 1 lux of light spill onto these features. Policy OS3 of PPS 8 and policies NH2 and NH5 of PPS 2 stated that development should not have an adverse impact on features of importance to nature conservation and the impact on bats in their status as a statutory protected species. It was concluded that the appellant could not demonstrate that the floodlights were not likely to harm the local bat population and the Council's reason succeeds in this regard.

Finally, the Commissioner concluded that the floodlighting columns did not have any adverse impact on neighbouring residential amenity given that the nearest residential properties were around 80 metres to the southwest and 120 metres to the west. As such the council's objection in this regard concerning the floodlights was not sustained.

To conclude the metal shed, polytunnel and netting were considered acceptable and deemed planning permission granted subject to conditions. However, the two floodlighting columns did not succeed under ground (a) on the basis that it could not be demonstrated that there was no significant adverse impact on the local bat population. As such planning permission was not granted for this development and the Enforcement Notice was upheld on this breach of planning control only.

Ground (f) was an administrative ground which states that the steps required by the Notice exceeded what is necessary to remedy the breach of planning control. The only element that remained were the two floodlighting columns. It was concluded that the ground did not need to be restored to the condition before the breach took place and therefore the PAC had amended the remedy in this regard to the following – "Remove two floodlight columns (edged in orange on the accompanying map)."

2. The following appeal was allowed on 06 March 2024.

PAC Ref	2022/A0123
Application ref	LA06/2021/1451/F
Appellant	John Furnie
Subject of Appeal	Refusal of planning permission for an attic conversion to incorporate new dormer window
Location	82 Ward Avenue, Bangor

The Council refused planning permission on 20 June 2022 for the following reason:

- The proposal was contrary to Policy ATC 2 'New Development in an Area of Townscape Character' of PPS 6 Addendum, in that it failed to maintain or enhance the character of the Bangor East Area of Townscape Character.

Given that the Bangor East Area of Townscape Character (ATC) was only a draft designation within the Belfast Metropolitan Area Plan 2015 (BMAP) the quashing of its adoption in 2017, the Commissioner considered that Policy ATC 2 was not relevant to the appeal proposal as it only refers to designated ATCs.

The Council considered that draft BMAP was a material consideration given that no objections had been submitted in relation to its proposed designation, therefore it would likely be confirmed in any lawfully adopted BMAP. Notwithstanding the Commissioner's conclusions in respect of Policy ATC2 of APPS6, the potential impact of the appeal development on the proposed ATC designation remained a material consideration in this appeal.

The Commissioner considered that the proposed dormer did not present as an obtrusive feature in the row in opposition to the existing street scene. Rather, she found the elevated and prominent row to be of diverse character, including modern flat roof designs which 2343 part of its appearance. The proposal respect3e the built form of the area and is contextually appropriate as viewed from Seacliff Road.

As such the appeal was upheld, and the decision was appended to this report.

### **New Appeals Lodged**

3. The following appeal was lodged on 15 March 2024.

PAC Ref	2023/A0109
Application ref	LA06/2023/2156/O
Appellant	Mr Horner
Subject of Appeal	Refusal of Outline Planning Permission for 2No. Dwellings.
Location	Between 2A and 4 Coach Road, Ballyloughan, Comber

Details of appeal decisions, new appeals and scheduled hearings could be viewed at [www.pacni.gov.uk](http://www.pacni.gov.uk).



RECOMMENDED that Council notes the report and attachments.

The Principal Planner advised of two decisions since the last meeting; one relating to an appeal against the serving of an Enforcement notice and the other was relating to a planning application. The first related to alleged unauthorised private golf range with netting, floodlighting columns, metal shed, access and polytunnel. The PAC upheld that the directional changes to floodlighting columns be removed, the private range excluding the netting, floodlighting and associated access were immune from enforcement action. The netting, polytunnel and metal shed subsequently received planning permission. The second issue was with regard to a dormer window where it was considered that the dormer did not present an obtrusive feature in the street given the diverse character of roof designs in area and it also respected build form. Finally, one new appeal had been lodged.

**RESOLVED, on the proposal of Alderman Graham, seconded by Councillor Kerr, that the recommendation be adopted, and that the report be noted.**

## **9. PUBLICATION OF NI PLANNING STATISTICS 2023/2024 THIRD QUARTERLY BULLETIN**

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity detailing the undernoted:

On 28 March 2024 the Department published its report on the volume of planning applications received and decisions issued in the third quarter of 2023/24. This bulletin reported on activity and performance following the transfer of planning powers to councils in April 2015.

The bulletin had been attached, and the press release and detailed tables could be viewed on the Department's website here <https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2023>.

RECOMMENDED that the Council notes this report and attachment.

The Director of Prosperity apologised that Committee should have received a report that month which reported on the second half of the year in respect of the current Service Unit Plan but would be presented next month.

In detailing the highlights from Quarter 3 as detailed in the latest statistics, in Q3, 3 majors had been received, totalling 5 to date with 2 decided. 93.2 weeks was the average processing time, affected by the major applications mentioned earlier in the meeting. 181 local apps had been received with 187 decided. The target was 15 weeks, the third quarter processing times was 17.2 weeks with the year to date figure being 15.7, down 47 applications on the same period as last year. The same trend has been noted in other Council areas and was perhaps due to NI Water issues and the rising costs of construction.

**RESOLVED, on the proposal of Councillor Martin, seconded by Councillor Kerr, that the recommendation be adopted, and that the report be noted.**

**TERMINATION OF MEETING**

The meeting terminated at 22:16



Unclassified

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**ITEM 4.1****Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	19 April 2024
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	19 April 2024
File Reference	
Legislation	
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Consideration of Planning Appeals Commission decisions in respect of applications considered under Policy CTY 10 - 'Dwelling on a Farm' of Planning Policy Statement 21 entitled 'Sustainable Development in the Countryside'
Attachments	Item 4.1a - Case Officer Report Item 4.1b - Synopsis of PAC decision 2014 - present Item 4.1c - 2021/A0133 Item 4.1d - Extract of minutes of PC meeting Oct 2021 Item 4.1e - 2014/A0269 Item 4.1f - 2018/A0210 Item 4.1g - 2016/A0197 Item 4.1h - 2015/A0062 Item 4.1i - 2016/A0047

Not Applicable

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**Background****Ref: LA06/2023/1573/O****Proposal: Dwelling on a farm****Location: Land approximately 70m east of No. 18 Hillsborough Road, Comber**

The above application was presented to Committee at its meeting of 09 April 2024 with a recommendation to Refuse on the following basis:

- i. The proposal is contrary to Paragraph 6.73 of the SPPS and Planning Policy Statement 21, Policy CTY10 in that it has not been demonstrated that the agricultural holding has been active and established for six years and the development visually integrates into the local landscape.
- ii. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY1, in that there are no overriding reasons why that development is essential, and also in that the development has not been sited and designed to integrate sympathetically with its rural surroundings.
- iii. The proposal is contrary to Paragraph 6.70 of the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policies CTY 10 and CTY13, in that the ancillary works do not integrate with their surroundings and therefore would not visually integrate into the surrounding landscape.
- iv. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY14, in that the impact of the ancillary works would damage rural character and would therefore result in a detrimental change to and further erode the rural character of the countryside.

The application was deferred by Members to enable officers to bring back a report on appeal decisions relating to Policy CTY 10 – Dwelling on a Farm.

**Objectives of PPS 21 – Sustainable Development in the Countryside**

The objectives of PPS 21 are:

- to manage growth in the countryside to achieve appropriate and sustainable patterns of development that meet the essential needs of a vibrant rural community;
- to conserve the landscape and natural resources of the rural area and to protect it from excessive, inappropriate or obtrusive development and from the actual or potential effects of pollution;
- to facilitate development necessary to achieve a sustainable rural economy; including appropriate farm diversification and other economic activity; and
- to promote high standards in the design, siting and landscaping of development in the countryside.

Not Applicable

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**Policy CTY 1 of PPS 21** sets out that there are a range of types of development which in principle are considered to be acceptable in the countryside and will contribute to the aims of sustainability. One of these is for an individual dwelling on a farm in accordance with **Policy CTY 10 – Dwellings on Farms**.

### **Policy CTY 10 – Dwellings on Farms**

Planning permission will be granted for a dwelling house on a farm where all of the following criteria can be met:

- (a) the farm business is currently active and has been established for at least 6 years;
- (b) no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. This provision will only apply from 25 November 2008; and
- (c) the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane. Exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm, and where there are either:
  - demonstrable health and safety reasons; or
  - verifiable plans to expand the farm business at the existing building group(s).

In such circumstances the proposed site must also meet the requirements of CTY 13(a-f), CTY 14 and CTY 16.

Planning permission granted under this policy will only be forthcoming once every 10 years.

A proposal for a dwelling by those involved in the keeping and breeding of horses for commercial purposes will also be assessed under the criteria set out in this policy.

The Planning Service has recommended the application for refusal on the basis that it does not consider that the proposal accords with criterion (a) – that the farm business is currently active and has been established for at least 6 years.

Whilst the applicant has submitted that a Farm Business ID was allocated on 14 March 2012 and is a Category 2 business, this was associated with land at 58 Glenstall Road, Ballymoney, and which planning officers were advised consisted of a shed and yard. No detail of what farming took place at the Ballymoney site was submitted. It was confirmed that the site in Ballymoney was sold in 2021.

Not Applicable

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The current site was purchased in April 2022, and the dwelling at no. 18 Hillsborough Road, which is being taken as the farm dwelling for the purposes of this Policy, was granted as a replacement dwelling under planning approval granted on 27 October 2014 under X/2014/0341/F.

Members were concerned with the intention of the policy in relation to interpretation of criterion (a) in respect of the 'farm business' being established and currently active', specifically in the context where land is added to the business.

Determination of the application was deferred for a period of one month for officers to return a report detailing the approach of the Planning Appeals Commission (PAC) in respect of application of and interpretation of Policy CTY 10 to date.

### **The Precedent Value of PAC Decisions**

Also referred to at the April Planning Committee was the precedent value of PAC decisions.

In the ABO Wind NI judgment [2021] NIQB 96, Humphreys, J made reference to the publication 'Planning Appeals Principles' (2020) by William Orbinson QC in which Mr Orbinson concludes that the decisions of the PAC "must either be accepted or respected, or be challenged through the courts".

### **Planning Appeals Commission Decisions**

It is on this basis that officers specifically made reference to PAC decision dated June 2023, dismissing an appeal against refusal of outline planning permission.

Appeal decision 2021/A0133 concerned an application on the basis of a farm business located within two local government boundaries – the initial in Lisburn and Castlereagh City Council area, and Ards and North Down Borough Council area.

This Council and the PAC agreed that as the appeal site in Bangor had only been brought into the farm business in 2019, it could not possibly be part of an active and established farm business for at least 6 years as required by policy. This decision, issued less than one year ago, has not been challenged, and in the view of the Planning Service represents the latest view of the Commission in respect of land being added to the farm business, or in this particular application's case, the land associated with the business being completed replaced in another location.

### **Spreadsheet of PAC Decisions 2014 – present**

The attached document at Item 4.1b sets out a synopsis of PAC decisions decided between 2014 and present specifically in relation to Policy CTY 10 – Dwellings on Farms. Those considered by the Planning Service as most relevant are set out below, and the PAC reports attached for Members' information. Those appeal

Not Applicable

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decisions referenced by the applicant on the evening of April's Planning Committee are also set out below and attached for information.



Not Applicable

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**PAC DECISION NO. 1**

<b>Appeal Reference:</b>	2021/A0133
<b>Appeals by:</b>	Mr Wallace Magowan
<b>Appeals against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Proposed site for dwelling on an active and established farm business
<b>Location:</b>	Lands approx. 30m NE of no. 31 Gransha Road South, Bangor
<b>Planning Authority:</b>	Ards and North Down Borough Council
<b>Application Reference:</b>	LA06/2020/1169/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 5 <sup>th</sup> April 2023
<b>Decisions by:</b>	Commissioner Kevin Gillespie, dated 26 <sup>th</sup> June 2023

1. The above appeal concerned a refusal by ANDBC for a dwelling on a farm.
2. The planning application was discussed and determined by the Planning Committee at its meeting of 05 October 2021, where Members voted 8 For, 3 against, the officer's recommendation to refuse.
3. The extract from the minutes of that meeting where this particular application was discussed and determined is attached for Member's information at Item 4.1d.
4. In this case Farm Business ID 624777 is allocated to the appellant, Mr Wallace Magowan. The Commissioner noted that the appellant had stated that his farm business was established in 2005, whereas DAERA had stated in its consultation response that the Farm Business ID was allocated in November 1991.
5. Paragraph 11 of the Commissioner's report records that the appellant's farm business comprised some 17.30 hectares of land as shown on his 2020 farm maps. It was split between two locations, one at Moneycrumog, Ballinderry Road, Upper Ballinderry Road, Lisburn, which comprises some 7.85 hectares of land, and the other at Gransha Road South, which comprises some 9.45 hectares of land including the appeal site.
6. Paragraph 5.38 of the justification and amplification text to Policy CTY 10 states that 'new houses on farms will not be acceptable unless the existing farming business is both established and active. The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period'. (emphasis added)
7. The Commissioner considered that the word 'established' meant more than mere existence; it has the connotation of being set up and settled on a firm or permanent basis. He continued that having regard to Policy CTY 10 of PPS 21 therefore, it was reasonable to interpret 'established' by reference to active farming over a period of at least six years.

## Not Applicable

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8. He noted that it was indisputable that the appellant held farm business ID 624777. In addition, he noted that the DAERA consultation response dated January 2021 stated that the farm business had claimed payments through the Basic Payment Scheme or Agri Environment scheme in each of the last six years and that the application site was on land for which payments were currently being claimed by the farm business.
9. Accordingly, the Commissioner was satisfied that the farm business was currently active.
10. The appellant stated that the appeal site (at Gransha Road South, Bangor) was purchased in 2019 prior to which DAERA has advised that it was included on land associated with other farm businesses. It was for this reason that the Council considered that the appeal site had not been part of the established farm business for at least 6 years such that it failed to meet criterion (a) of Policy CTY 10 of PPS 21.
11. The appellant asserted that the policy does not state that all of the land within a farm business must have been owned or farmed for a 6 year period.
12. The Commissioner considered that a farm holding comprises the extent/quantum of the land owned. As such, he considered it indisputable that the farm holding detailed previously was intrinsically linked to the appellant's farm business. Whilst the farm business ID number itself has not changed; the composition of the holding has because the appeal site was added to it in 2019. For this reason, he considered the appellant's farm business had been amended from that date.
13. Whilst the Commissioner concurred with the appellant that a business can expand and contract, in the particular circumstances of this case, as the appeal site was only brought into the farm business in 2019, it could not possibly be part of an active and established farm business for at least 6 years as required by policy.
14. The appeal was dismissed.
15. The appeal decision is attached as Item 4.1c

Not Applicable

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**PAC DECISION NO. 2**

**Appeal Reference:** 2014/A0269  
**Appeal by:** Mr. F. Gallagher against the refusal of full planning permission  
**Subject of Appeal:** Dwelling and Garage on a Farm  
**Location:** 40m north of 3 Killycolpy Road, Stewartstown  
**Planning Authority:** Department of the Environment  
**Application Reference:** I/2013/0141/O  
**Procedure:** Written Representations and Accompanied Site Visit on 3<sup>rd</sup> September 2015  
**Decision by:** Commissioner Helen Fitzsimons 14<sup>th</sup> September 2015

1. This appeal was referenced by the applicant on the evening of April's Planning Committee meeting.
2. The above appeal concerned a refusal of planning permission by the Department of the Environment, dated 10 November 2014, on the basis that it hadn't been demonstrated that the farm business was currently active and established for at least six years and the proposed building is visually linked (or sited to cluster) with an established group of buildings on the farm.
3. One of the reasons was based on the fact that the application was submitted in 2013 and it had been confirmed that Mr Gallagher had only joined the farm business in 2009 (only four years before).
4. The Commissioner considered a background paper which included minutes of a meeting between DARD representatives and the then planning authority to establish the extent of the appellant's farm business. Those minutes established that the farm was set up in 2002 by a Mr Lagan, and Mr Gallagher (appellant) joined the business in 2009; the appeal site is part of a larger holding. (emphasis added)
5. The Commissioner gave weight to this background paper noting that the policy test is that the overall farm holding is active and established for six years, not when individual fields were acquired, concluding then that the farm business was active and established for six years.
6. The appeal was upheld and planning permission granted and the appeal decision is attached as Item 4.1e.

**To Note**

This appeal decision **dated 2015** was referred to by the appellant of appeal 2021/A0133 (PAC Decision No. 1) at Gransha Road South – **dated 2023**, but the Commissioner referred to the fact that '*each case must be determined on its own merits and in its own evidence base*', and the fact that in this case determining weight was given to a background paper. The Commissioner also notably stated '! also note that other factors that applied in that case are not replicated in this appeal'.(emphasis added)

Not Applicable

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**PAC DECISION NO. 3**

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**Appeal Reference:** 2018/A0210  
**Appeal by:** Mr N Hannan  
**Appeal against:** The refusal of outline planning permission  
**Proposed Development:** Single dwelling and garage on farm  
**Location:** 73 Crosskeen Road, Antrim  
**Planning Authority:** Antrim and Newtownabbey Borough Council  
**Application Reference:** LA03/2018/1020/O  
**Procedure:** Written representations and accompanied site visit on 12 June 2019  
**Decision by:** Commissioner D McShane, dated 19 July 2019.

1. This appeal was referenced by the applicant on the evening of April's Planning Committee meeting.
2. In this case, it was considered that whilst the land was owned by the Appellant's farm business, subsidies were being claimed by a third party under a separate Business ID number and as such the Commissioner did not accept this as proving that the Appellant's farm business was currently active.
3. Furthermore the appellant was unable to provide any up-to-date invoices or other evidence relating to his farm business to cover the period 2017 to the present (2019), which reinforced the conclusion that the business was not currently active.
4. The appeal was dismissed.
5. The appeal decision is attached as Item 4.1f.

Not Applicable

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**PAC DECISION NO. 4**

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**Appeal Reference:** 2016/A0197  
**Appeal by:** Mr Edward Ryan  
**Appeal against:** The refusal of outline planning permission  
**Proposed Development:** Site for dwelling  
**Location:** 15 Ryanstown Road, Newry  
**Planning Authority:** Newry, Mourne & Down District Council  
**Application Reference:** P/2014/0972/O  
**Procedure:** Hearing on 25 May 2017  
**Decision by:** Commissioner Pamela O'Donnell, dated 28 June 2017.

1. In this case it was accepted that the farm business was currently active and that the business was set up in 2007; however, there was a gap in farming activity from October 2014 to June 2016, and because of that hiatus, Newry, Mourne & Down District Council did not accept that continuous or active farming had taken place over the required period.
2. Medical evidence was submitted which indicated that the appellant's wife was ill during the gap in farming referred to; as such the Commissioner considered that it was a reasonable proposition that the appellant had other priorities during this time period. Additionally, photographic evidence of late 2014/early 2015 was submitted showing the land in good agricultural and environmental condition.
3. The Commissioner noted that a gap in activity of 15 or 20 months over a period of some ten years, given the circumstances, did not mean that the policy requirement was not fulfilled. (emphasis added)
4. In this current planning application case (LA06/2023/1573/O) there is a complete break between the shed and the yard in Ballymoney being sold in 2021 and this current planning application site being purchased in April 2022.



Not Applicable

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**PAC DECISION NO. 5**

**Appeal Reference:** 2015/A0062  
**Appeal by:** Bernard Mooney  
**Subject of Appeal:** The refusal of full planning permission  
**Proposed Development:** Dwelling with a detached garage on a farm  
**Location:** Approximately 100 metres south east of 20 Barrons Hill, Bessbrook  
**Planning Authority:** Department of the Environment  
**Application Reference:** P/2012/0770/F  
**Procedure:** Hearing on 21 October 2015  
**Decision by:** Commissioner Rosemary Daly, dated 29 February 2016

1. Paragraph 7 of this report is set out as follows:

- Criterion (a) requires that a farm business is currently active and established for at least 6 years.
- Whilst paragraph 5.38 of the justification and amplification of the policy CTY10 states that "*the applicant will therefore be required to provide a farm's DARD business ID number along with other evidence to prove active farming over the required period*", this is not a requirement stipulated by the head note of Policy CTY10.
- Clearly the provision of a Farm Business ID number is a non disputed way of demonstrating compliance with criterion (a) of Policy CTY10, however as noted by appeal 2014/A0065 there may be certain instances in the absence of the appellant having a farm business ID number, where other evidence is provided to demonstrate that there is an active and established farm business.
- The appellant provided evidence of other appeal decisions and DoE decisions, relating to the absence of a farm business ID number. However each case has to be considered in its own evidential context.
- As such the test of policy is not whether a farm business number has been in existence for 6 years but that the farm business is currently active and has been established for at least 6 years. (emphasis added)

The Commissioner concluded that she had insufficient information before her to demonstrate that the appellant's farm business is currently active and established.

The appeal was dismissed.

The appeal decision is attached as Item 4.1g to this report.

Planning appeal decision 2015/A0212 appears similar in this respect.

Not Applicable

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**PAC DECISION NO. 6**

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**Appeal Reference:** 2016/A0047  
**Appeal by:** Ms V Lillis  
**Appeal against:** The refusal of outline planning permission  
**Proposed Development:** Dwelling on a farm  
**Location:** Lands located 100m northwest of the junction between Tornagrough Road and Rusheyhill Road, Budore, Belfast  
**Planning Authority:** Lisburn and Castlereagh City Council  
**Application Reference:** LA05/2015/0124/O  
**Procedure:** Informal Hearing on 19 October 2016  
**Decision by:** Commissioner D McShane, dated 9 November 2016

In this case the appellant submitted a (then) DARD Business ID number and map relating to a farm at Seaforde (in Newry, Mourne & Down District), and DARD confirmed it was active and established. However, the appeal site, in Belfast (IN Lisburn and Castlereagh City Council area), was added to the appellant's Business ID in 2015, therefore the Commissioner stated that the 6 year test was NOT met.

The appeal was dismissed.

The PAC report is attached as Item 4.1g to this report.

Not Applicable

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## Conclusion

The Planning Service remains of the professional planning judgement that the application proposal fails criterion (a) of Policy CTY 10 due to the following:

- No evidence has been submitted to demonstrate that there has been active farming over the past six years;
- There is a break between the shed and yard associated with the Business ID in Ballymoney being sold and the current planning application site being purchased;
- Streetview imagery appears to show the shed and yard for rent as 'a commercial trade counter unit' (see below);
- Whilst the Business ID number itself has not changed, the composition of the holding has because the original site in Ballymoney was sold, and a year later, the site at Hillsborough Road was purchased. Thus, in line with the position of the Commissioner in PAC Decision No. 1 referred to earlier, the applicant's farm business had been amended from that date – i.e. 2021 when Ballymoney site sold.



It is the view of the Planning Service that this application should be viewed in the context of the PAC Decision No. 1 (2021/A0133) in which the Commissioner, whilst concurring that a business can expand and contract, considered that a site brought into a farm business (or in this case replacing a site) cannot possibly be part of an active and established business for at least six years as required by policy.

Previously the Planning Service had considered that the proposal would comply with criterion (b) of Policy CTY 10 which requires that no dwellings or development opportunities have been sold off (or 'transferred' as added by the SPPS) from the 'farm holding' within 10 years of the date of the application.

This planning application under consideration was submitted on 14 March 2023. If Members consider that the land at 18 Hillsborough Road forms part of the holding for the purpose of the policy, then contrary to what was stated in the Case Officer Report, Planning Service considers that criterion (b) is not met as the dwelling forming the main 'farm house' was approved as a replacement dwelling granted on 27 October 2014 under X/2014/0341/F, within 10 years of the date of the application. In this respect Members' attention is drawn to the PAC decisions at Item 4.1b (ref criterion B) relating to development opportunities being sold off/transferred.

## Not Applicable

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In respect of criterion (c) of Policy CTY 10 which requires the proposed dwelling to visually link or be sited to cluster with an established group of buildings on the farm, it has come to the attention of the Planning Service that the shed being relied upon does not have the benefit of planning permission, nor is there a Certificate of Lawfulness in place to provide evidence of its immunity from enforcement action.

As such, it is therefore considered that the proposal fails criterion (c) of Policy CTY 10, as there would only be one building (the dwelling at 18 Hillsborough Road) available to visually link/cluster with – contrary to policy and the Lamont JR judgment.

In respect of the debate at Planning Committee considering the refusal reason in respect of the proposed new lane to the site – this matter has been considered by Planning Service. The applicant/agent on the evening of April's Planning Committee meeting made reference to the planting of c2100 trees which would eventually mature and screen the proposed dwelling and laneway; however, no explanation was provided as to why the policy reference to 'where possible access to a new building should be taken from an existing laneway' was not/could not be adhered to – rather referencing that the proposed line of the laneway would eventually be screened by trees already planted. No demonstrable reasons were provided as to why the existing access could not be utilised.

Criterion (d) of Policy CTY 13 states permission will be refused for a dwelling in the countryside if ancillary works do not integrate with their surroundings. Paragraphs 5.71 to 5.74 of the amplification text to Policy CTY13 of PPS21 deal specifically with proposed accesses and other ancillary works. In particular, paragraph 5.72 requires that where possible access to a new building should be taken from an existing laneway, which echoes a preference of Policy CTY10. It goes on to state that a new access drive should, as far as practicable, run unobtrusively alongside existing hedgerows or wall lines. As the proposed dwelling would be set back off the road some 278m, a significant length of laneway is required to access it and the route of the laneway will cut across a flat, open and exposed roadside field. This creates a suburban emphasis which paragraph 5.72 considers unacceptable. This will cause a significant impact on the appearance of the area by a significant lack of integration – regardless of reference to the planting of trees on the site which have yet to mature. Given the exposed nature of the route for the laneway and in the context that an existing access laneway could potentially be used in this case, it is considered that the proposed access is contrary to criterion (c) of Policy CTY 10 and also criterion (d) of Policy CTY13 of PPS21.

To conclude the Planning Service is of the professional planning opinion that planning permission should be REFUSED for the following reasons:

1. The proposal is contrary to Paragraph 6.73 of the SPPS and Planning Policy Statement 21, Policy CTY10 in that it has not been demonstrated that the agricultural holding has been active and established for six years and the development visually integrates into the local landscape, and that no dwellings or development opportunities have been sold off from the farm holding within 10 years of the date of the application, and that the proposed

**Not Applicable**

dwelling is visually linked or sited to cluster with an established group of buildings on the farm.

2. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY1, in that there are no overriding reasons why that development is essential, and also in that the development has not been sited to integrate sympathetically with its rural surroundings.
3. The proposal is contrary to Paragraph 6.70 of the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policies CTY 10 and CTY13, in that the proposed ancillary works do not integrate with their surroundings and therefore would not visually integrate into the surrounding landscape.
4. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY14, in that the impact of the proposed ancillary works would damage rural character and would therefore result in a detrimental change to and further erode the rural character of the countryside.



## Development Management Case Officer Report



<b>Reference:</b>	LA06/2023/1573/O	<b>DEA:</b> Comber
<b>Proposal:</b>	Dwelling	
<b>Location:</b>	approximately 70m East of No.18 Hillsborough Road, Comber	
<b>Applicant:</b>	Nick & Michelle Lestas	
<b>Date valid:</b>	14.03.2023	<b>EIA Screening Required:</b> No
<b>Date last advertised:</b>	06.04.2023	<b>Date last neighbour notified:</b> 24.03.2023
<b>Letters of Support:</b> 0	<b>Letters of Objection:</b> 0	<b>Petitions:</b> 0
<b>Consultations – synopsis of responses:</b>		
DfI Roads	No objections.	
HED	Content.	
NI Water	No objections.	
Environmental Health	No objection with informative.	
DAERA	<p>The farm business ID identified on the P1C has been in existence for more than 6 years. Allocated 14/03/2012. Category 2.</p> <p>The farm business has NOT claimed payments through the Basic Payment Scheme or Agri Environment scheme in each of the last 6 years. A Small Woodland grant applied for in 2022.</p> <p>The application site is on land for which payments are currently being claimed by the farm business. The site located in FSN 1/086/026 field 113 is under the control of the farm business identified on the P1C Form.</p>	
<b>Summary of main issues considered:</b>		
<ul style="list-style-type: none"> <li>• Principle of development</li> <li>• Design, integration and impact on rural character</li> </ul>		
<b>Recommendation: Refuse Planning Permission</b>		
<b>Report Agreed by Authorised Officer</b>		
<p>Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal <a href="https://epicpublic.planningni.gov.uk/publicaccess/">https://epicpublic.planningni.gov.uk/publicaccess/</a></p>		

## 1. Site and Surrounding Area

The site consists of part of a large agricultural field located just outside Comber. The site is positioned immediately adjacent to the east of an existing dwelling at 18 Hillsborough Road which is within the ownership of the applicants. The site is proposed to be accessed from Hillsborough Road via a new lane which will be approximately 278m in length from the road. The proposed lane will go through the existing field and is therefore undefined at present. The site is defined by post and wire fencing with hedging on the east, south and western boundaries. The northern boundary is undefined as it makes up part of the larger field. An area of tree planting is within the site along the eastern and southern boundaries.

The site lies outside any designated settlement limit as per the Ards and Down Area Plan 2015. It is not within a special designation such as an AONB. Hillsborough Road is not a protected route.



Figure 1 Photograph of the site taken from 18 Hillborough Road



Figure 2 Photograph of the site taken from the lane to 18 Hillsborough Road

## 2. Site Location Plan



Figure 3 Site location plan and aerial image of the site

## 3. Relevant Planning History

X/2014/0341/F - 380m South of 17 Hillsborough Road, Comber- Proposed replacement dwelling and integrated garage in substitution for previously approved X/2013/0438/F – Approved.

X/2013/0438/F - 380m South of 17 Hillsborough Road Comber - Proposed replacement dwelling and garage with the retention of the existing building as a granny flat – Approved.

X/2008/1102/F - 380m South of 17 Hillsborough Road, Comber - Proposed replacement dwelling with existing dwelling retained as granny flat (Amended Proposal Description) – Approved.

The above applications are the permissions associated with 18 Hillsborough Road which is the dwelling located immediately adjacent to the site and in the ownership of the applicant.

## 4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015 (ADAP)
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 2: Natural Heritage (PPS 2)
- Planning Policy Statement 3: Access, Movement and Parking
- Planning Policy Statement 6: Planning, Archaeology and The Built Heritage
- Planning Policy Statement 21: Sustainable Development in the Countryside

#### Planning Guidance:

- Building on Tradition: A Sustainable Design Guide for the NI Countryside

### Principle of Development

The Ards and Down Area Plan 2015 sets out the land use proposals that will be used to guide development within the area. The site is located outside any settlement and within the countryside as designated in the Ards and Down Area Plan 2015 and does not contain any designation or zoning affecting the site.

Regional planning policies of relevance are set out in the SPPS and other retained policies.

Paragraph 6.70 of the SPPS states that all development in the countryside must integrate into its setting, respect rural character and be appropriately designed. Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) is amongst the retained documents. Policy CTY1 thereof lists types of development which are considered acceptable in principle in the countryside. It states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for drainage, access and road safety. It goes on to say that access arrangements must be in accordance with the Department's published guidance.

Policy CTY10, in line with the provisions of the SPPS, states that permission will be granted for a dwelling on a farm where certain criteria are met.

Criterion (a) requires that the farm business is currently active and has been established for at least six years. The P1C Form states that the farm business ID number was allocated on 14 March 2012 and is a Category 2 business and has recently been upgraded to Category 1. DAERA has confirmed that the business has not claimed payments through the Basic Payment Scheme or Agri Environment Scheme in each of the last six years and the only record is an application for a small woodland grant in 2022. The Business ID 656566 took ownership of the application site in April 2022. Previously the business ID was associated with land at 58 Glenstall Road, Ballymoney. Although the Business ID has been in existence for more than six years, the site has not formed part of that business until it was purchased in 2022 and there is no justification for allowing development on lands purchased less than six years ago. The lands at which the site are located would not support an application under CTY10 until they have formed part of the holding for six years (2028). This assessment is in line with Appeal Decision 2022/A0001 which related to a new agricultural shed on



Coolagh Road, Greysteel, whereby the appellant in that case purchased lands less than six years prior to when the application was submitted and like in this case the Business ID was in existence for more than six years at an alternative location. This appeal was dismissed on the basis that despite the required period of agricultural activity being met, the appeal site did not form part of their farming activities until their purchase and that there was no justification for allowing development on lands purchased less than six years ago. Although that proposal was for an agricultural shed and not a dwelling, the policy test is the same for assessing if the business and holding are active and established for 6 years. The proposed development fails in the first instance to meet the requirement of being part of an active and established agricultural holding as per Policy CTY 10. Policy would only allow a dwelling on the holding within which the site is located from 2028 onwards.

Criterion (b) of Policy CTY 10 requires that no dwellings or development opportunities have been sold off from the farm holding within 10 years of the date of application. The current address associated with the Business ID is at 18 Hillsborough Road which was purchased in 2022 and prior to this the address associated with the Business ID was 58 Glenstall Road, Ballymoney, since 14 March 2012 when the Business ID was first allocated. The applicant has advised that the farm in Ballymoney consisted of a non-residential shed and yard with no dwelling. This was sold in 2021. Given the current holding is at Hillsborough Road, the 10 year period only applies to this holding and therefore the sale of the shed and yard in Ballymoney cannot be counted as they are associated with a previous holding. The holding on Hillsborough Road was only purchased in 2022 and no dwellings or development opportunities have been sold off from the holding from its purchase in 2022.

Criterion (c) requires that the new building must be visually linked or sited to cluster with an established group of buildings on the farm and where practicable access to the dwelling should be obtained from an existing lane. The proposed site is located immediately adjacent to the existing dwelling owned by the applicant at No.18 Hillsborough Road. To the rear of the site there is a yard with a shed that is used for storage purposes. A new dwelling on the site would be visually linked with the existing dwelling at No.18 and sited to cluster with the shed to the rear and therefore the proposal meets this part of the policy test. An existing lane serves No.18, and this is not proposed to be used to serve the proposed dwelling but instead a new lane is proposed to cut through the front field.

In addition to Criterion (c) of Policy CTY 10, Criterion (d) of Policy CTY 13 states permission will be refused for a dwelling in the countryside if ancillary works do not integrate with their surroundings. Paragraphs 5.71 to 5.74 of the amplification text to Policy CTY13 of PPS21 deal specifically with proposed accesses and other ancillary works.. In particular, paragraph 5.72 requires that where possible access to a new building should be taken from an existing laneway, which echoes a fundamental requirement of Policy CTY10. It goes on to say that a new access drive should, as far as practicable, run unobtrusively alongside existing hedgerows or wall lines. As the proposed dwelling would be set back off the road some 278m, a significant length of laneway is required to access it and the route of the laneway will cut across a flat, open and exposed roadside field. This creates a suburban emphasis which paragraph 5.72 considers unacceptable. This will cause a significant impact on the appearance of the area by a significant lack of integration. Given the exposed nature of the route for the



laneway and in the context that an existing access laneway could potentially be used in this case, it is considered that the access is contrary to criterion (c) of Policy CTY 10 and also criterion (d) of Policy CTY13 of PPS21.

### **Integration**

No detailed plans have been provided as this in an outline application. The proposed site is located adjacent to the dwelling at 18 Hillsborough Road to the west of the site and to the north of a shed used for storage purposes. A dwelling on the proposed site would be read with the existing dwelling at 18 Hillsborough Road and is sited to cluster with the existing shed in the adjacent yard. A dwelling on the site would be visible from Hillsborough Road albeit set back some 278m. Trees have been planted along both sides of the larger field and once established these will provide screening for the proposed dwelling and therefore it would not be visually prominent in the landscape. However as already discussed in this report the proposed new laneway would not be integrated into the landscape and would be a prominent feature in the landscape. Paragraph 5.72 of Policy CTY13 states that new laneways should wherever possible, be taken from an existing lane-way and should, as far as practicable, be run unobtrusively alongside existing hedgerows or wall lines and accompanied by landscaping measures. The proposed laneway cuts through an exposed roadside field and would not integrate into the surrounding rural landscape. The proposal fails PART (d) of Policy CTY 13.

### **Rural Character**

Policy CTY 14 'Rural Character' says that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. New buildings will be unacceptable in five circumstances. Criterion (e) states that the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character. The proposed new access would attract views to the proposed dwelling and draw undue attention to it, resulting in it appearing as a prominent feature in the landscape which would be detrimental to rural character. The proposal fails part (e) of Policy CTY 14.

### **Residential amenity**

There are no dwellings in the immediate locality that will be subjected to a loss of amenity as a direct result of this proposed dwelling.

### **Access and Roads Safety**

The proposal has been assessed against PPS 3 Access Movement and Parking. The proposed site is to be served by a new laneway coming off the existing laneway. DfI Roads has been consulted and offered no objections.

### **Designated Sites and Natural Heritage**

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.)

Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites. The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites. A Biodiversity checklist was completed and no further information is deemed necessary.

### **Sewage disposal**

The location of the septic tank has not yet been identified on the plans. There are sufficient lands surrounding the application site to facilitate non-mains sewage facilities.

### **Historic Environment**

HED Historic Monuments has assessed the proposal and on the basis of the information provided, it is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

## **5. Representations**

No representations have been received.

## **6. Recommendation**

### **Refuse Planning Permission**

## **7. Refusal Reasons**

1. The proposal is contrary to Paragraph 6.73 of the SPPS and Planning Policy Statement 21, Policy CTY10 in that it has not been demonstrated that the agricultural holding has been active and established for six years and the development visually integrates into the local landscape.
2. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY1, in that there are no overriding reasons why that development is essential, and also in that the development has not been sited and designed to integrate sympathetically with its rural surroundings.
3. The proposal is contrary to Paragraph 6.70 of the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policies CTY 10 and CTY13, in that the ancillary works do not integrate with their surroundings and therefore would not visually integrate into the surrounding landscape.
4. The proposal is contrary to the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside, Policy CTY14, in that the impact of the ancillary works would damage rural character and would therefore result in a detrimental change to and further erode the rural character of the countryside.

<b>Case Officer Signature:</b>		<b>Date:</b>	
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## Item 4.1b – Synopsis of PAC Decisions

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	Decision	Decsn Date	Commentary from PAC Report	Contrary to/Meets Criterion of CTY 10
2013/A0131	Allowed	03/03/2014	Proposed dwelling can visually link therefore complies with criterion (c)	C
2013/A0149	Allowed	25/03/2014	Proposed dwelling can visually link therefore complies with criterion (c)	C
2013/A0154	Dismissed	03/04/2014	There is no dispute that the appellant owns the appeal site incorporating a total area of 2.42ha, including the dwelling house and its curtilage. <u>The critical issue in this appeal is whether or not the appeal site forms part of a farm business which is currently active and has been established for at least 6 years.</u> Insufficient evidence to show appellant had farmed land for 6 years	A
2013/A0187	Dismissed	16/04/2014	Visual break evident so proposal fails criterion (c)	C
2013/A0194	Dismissed	08/04/2014	from the period 2002 to 2010 when the appellant acquired the land it had formed part of another farm business i.e. the Kennedy Farm and <u>the appeal holding in the appellant's ownership has not been established for six years.</u> Evidence submitted insufficient to show 6 years on appeal site	A
2013/A0205	Dismissed	06/06/2014	failure to own land on a farm is not a stated instance for allowing a dwelling under the exceptional test in Policy CTY10. Other sites available so exception test not engaged	C
2013/A0221	Allowed	02/06/2014	Submitted Flood Risk Assessment accepted - dwelling passes PPS 15	-
2013/A0238	Allowed	16/07/2014	Amended site at appeal can cluster with group of buildings on farm therefore meets criterion (c)	C
2013/A0258	Dismissed	27/08/2014	Business ID issued June 2009 but no certainty that appeal site formed part of business. Also no buildings to cluster with	A & C
2014/A0014	Dismissed	24/11/2014	No evidence of lands having been farmed by appellant - evidence unclear, contradictory and inconclusive	A
2014/A0017	Dismissed	15/10/2015	dwelling and garage represent two buildings side by side and not a 'group', no functional relationship to the farm, and founds do not form a building. Fails CTY 13 & 14	C
2014/A0037	Dismissed	03/11/2014	As the amended appellant's farm business – which now includes the appeal site - <u>appears to only be registered from 2014 it could not possibly be part of an active and established farm business for at least 6 years as required by policy.</u> There is no conacre agreement and the site appears to have been re-amalgamated for the purposes of achieving planning permission	A
2014/A0045	Dismissed	07/10/2014	Policy CTY 10 is framed to enable an applicant to apply for a dwelling on a farm based on activities of the person conducting and operating the farm business on which the application site is situated. No evidence of field being part of a farm business, and buildings on it are not related to farm business.	A & C
2014/A0088	Dismissed	24/02/2015	Development opportunity sold off - fails (b)	B

## Item 4.1b – Synopsis of PAC Decisions

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2014/A0116	Dismissed	27/04/2015	Contrary to PPS 3 and would mar distinction - contrary to CTY 15	-
2014/A0174	Dismissed	22/06/2015	At the time of the appeal the farm maps associated with the appellant's farm business show his brother as the farmer of the land and I note that he now claims the Single Farm Payment on the land. It is only reasonable to conclude that the appellant's farm has been transferred to Mr Desmond Morrow. In these circumstances it is Mr Desmond Morrow's farm business which I need to make my assessment. The information provided is inconclusive on whether he has farmed the land for at least 6 years. I am therefore not in a position to conclude if the farm meets criterion (a) of Policy CTY10	A
2014/A0217	Allowed	25/06/2015	Alternative site outside floodplain accords with exception test under (c )	C
2014/A0227	Dismissed	30/11/2015	No Business ID at time of application processing and no evidence of 6 years	A
2014/A0249	Dismissed	18/01/2016	Dwelling not clustered with existing buildings	C
2014/A0255	Allowed	26/10/2015	Dwelling will visually link	C
2014/A0270	Allowed	12/08/2015	Dwelling will visually link	C
2014/A0273	Dismissed	12/10/2015	Appeal site purchased 2008 and some evidence of farming, but only appeared on DARD's system in 2014 and had no knowledge of it having been part of another farm business before that date.	A
2015/A0009	Dismissed	05/10/2015	I conclude that while the appellants now have an active farm business which includes the appeal site and that the appeal site has been farmed for more than 6 years, <u>they have not demonstrated that this farm business has been established, in its own right, for the period required under Policy CTY 10</u>	A
2015/A0048	Dismissed	11/11/2015	Appellant claimed his nephew farmed the land since 2006, but his Business ID allocated in 2014. Whilst the farm business number may not have to be in existence for the 6 year period, it has not been demonstrated that the farm business (my emphasis) in question has been in existence for the past 6 years.	A
2015/A0062	Dismissed	29/02/2016	As such the test of policy is not whether a farm business number has been in existence for 6 years <u>but that the farm business is currently active and has been established for at least 6 years.</u> Information presented did not evidence 6 years for the appellant	A
2015/A0075	Dismissed	10/02/2016	any farming activity undertaken on the land must have been undertaken by those other farm businesses and not the appellant's. Given that no details of the two farm businesses have been submitted, I am unable to determine whether the farm businesses are currently active, have been established for more than 6 years	A
2015/A0109	Allowed	25/01/2016	Council made no comment in respect of proposed development	-



## Item 4.1b – Synopsis of PAC Decisions

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2015/A0117	Dismissed	07/07/2016	Criterion (a) refers in the definitive article to the farm business (my emphasis) and the policy is framed in such a way that it enables an applicant to apply for a dwelling on a farm based on the activities of the person <u>conducting and operating the farm business on which the application site is situated</u> . Whilst these lands are owned by the appellant's farm business, the payment of subsidy to third parties does not support his contention that his farm business is currently active and has been established for at least 6 years.	A
2015/A0124	Dismissed	17/02/2016	Cannot group with single building, other sites available on farm, no H&S reasons submitted, no verifiable evidence of deposit paid for construction of approved AD 3 years previous - fails (c ) and exception test	C
2015/A0144	Dismissed	09/05/2016	No group of buildings to link/cluster with - fails (c )	C
2015/A0187	Dismissed	27/06/2016	Cannot group with buildings on an adjacent farm - fails (c )	C
2015/A0193	Dismissed	27/06/2016	Policy CTY 10 relates to a dwelling on an area of land operating as a farm business. Appeal was in relation to change of House Type to dwelling previously approved, but no evidence of commencement of previous approval.	-
2015/A0195	Dismissed	08/06/2016	Business ID issued 31 March 2014 - no evidence of farm business	A
2015/A0212	Dismissed	06/06/2016	<u>The test of policy is not whether a farm business number has been in existence for 6 years but that the farm business is currently active and has been established for at least 6 years.</u> the final position is that evidence from DARD dated 5th November 2015 states that currently farm business ID 651916 does not have any land or stock and does not appear to be actively farming. Even though the appellant claims that this relates solely to grants which are not materially significant to the appellant, policy CTY 10 requires the farms DARD business ID number <u>along with other evidence</u> to prove active farming over the required period. <u>The appellant cannot rely on his business ID number to demonstrate that the farm business is currently active and has been established for at least 6 years</u>	A
2015/A0222	Dismissed	13/06/2016	On the basis of the evidence presented I accept that the land comprising Mr Mc Sorley's holding has been actively farmed, and that the farming activities exceed the six-year period. However, the active farmer was Mr Mellon and the farming activities formed part and parcel of his farm business, the totality for which he claimed farm subsidies. Therefore, none of the appellants' arguments regarding farming activity are sufficient to persuade me that they or Mr Mc Sorley (Snr) operated a farm business in their own right.	A
2015/A0246	Dismissed	03/08/2016	Whilst the land has clearly been farmed for some time, remains in good agricultural condition, and I accept the Appellant is engaged in farming activity, <u>the evidence is that until late 2011 the land was farmed under a separate farm business</u>	A
2016/A0009	Dismissed	08/08/2016	Proposed dwelling cannot visually link or cluster	C

## Item 4.1b – Synopsis of PAC Decisions

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2016/A0047	Dismissed	09/11/2016	DARD confirmed that in May 2015 field nos. 1, 2, and 3 at Tornagrough Road were added to the Appellant's farm business ID number and SFP claimed. <u>However, if added in May 2015, the 6 year test is not met.</u> Farm business confirmed at Seaforde operating for more than 6 years, but the appeal site is in Belfast and cannot prove 6 years	A
2016/A0130	Dismissed	16/02/2017	Dwelling cannot cluster with single buiding	C
2016/A0147	Dismissed	20/03/2017	Land let out and no evidence of active farming over 6 years	A
2016/A0135	Dismissed	19/06/2016	Dwelling owned by daughter is not building on farm for purposes of policy so cannot comply with criterion (c)	C
2016/A0151	Dismissed	24/04/2017	Dwelling opportunity sold off during ten years - fails (b)	B
2016/A0158	Dismissed	25/07/2017	Health and safety reasons, including children, submitted do not justify alternative site - doesnot represent exception under criterion (c )	C
2016/A0166	Dismissed	30/11/2017	Land farmed by son under his Business ID. Policy requires that other evidence is submitted to prove active farming over the last 6 years	A
2016/A0186	Dismissed	15/06/2017	Fields owned by appellant belong to another farmer's Business ID - so no proof of active and established business	A
2016/A0197	Dismissed	28/06/2017	A gap in activity of 15 or 20 months over a period of some ten years, <u>given the circumstances</u> , does not mean that the policy requirement is not fulfilled, but appeal fails Policy CTY 14	A
2016/A0204	Dismissed	28/09/2017	No conclusive evidence that the land was farmed over the 6 year period	A
2016/A0215	Dismissed	12/06/2017	development opportunity sold off - fails CTY 10 (b) and cannot comply with (c )	B & C
2016/A0217	Dismissed	10/07/2017	No buildings to cluster with and no H&S reasons presented for alternative site	C
2016/A0233	Dismissed	09/08/2017	Not demonstrated that equine activities amount to business	A
2017/A0133	Dismissed	15/02/2018	Access onto protected route unacceptable and lack of integration of access	-
2017/A0080	Dismissed	22/12/2018	No visual linkage so fails criterion (c )	C
2017/A0177	Dismissed	13/03/2018	Cannot integrate and contrary to CTY 13, 14 & AONB	C
2017/A0223	Dismissed	06/08/2018	U/a building cannot contribute to building group, and other building with lean-to did not constitute separate buildings - therefore failed criterion (c)	C
2017/A0252	Allowed	30/07/2018	Appellant provided evidence of growing/harvesting silage for sale to other farmers - therefore considered met criertion (a). 'Established group of buidings on the farm' does not specify that they must be in use with the farm business, therefore met criterion (c)	A & C
2018/A0009	Dismissed	16/08/2018	Development opportunity sold off after farm merged - fails criterion (b)	B

## Item 4.1b – Synopsis of PAC Decisions

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2018/A0117	Dismissed	13/03/2019	The appellants are not engaged in any activities other than maintaining the woodland on the holding. The appellants argued that the farm business has been long established and that the ongoing maintenance of the woodland is agricultural activity. All of the appellants' holding is planted in woodland and is not ancillary to the farming of land for other agricultural purposes. This is not agriculture and there is no active farm	A
2018/A0130	Dismissed	08/05/2019	Cannot cluster with u/a building but other building immune, but one building cannot form 'group' so fails CTY 10 (c) & CTY 8,13 & 14	C
2018/A0184	Dismissed	29/07/2019	site is not visually linked or sited to cluster with an established group of buildings on the farm and there are sites available at the farm group. No persuasive evidence submitted regarding CTY 6 (domestic circumstances)	C
2018/A0192	Allowed	15/05/2019	The farm business reached 6 years between refusal and appeal lodged	A
2018/A0194	Allowed	05/08/2019	Whilst the appellant owns the land, Policy CTY 10 applies to the farm business and is not concerned with land ownership. Policy does not make particular reference to the role of a leasee farmer or the possibility of the sharing of responsibility for actively farming the land between the landowner and the leasee on a partnership basis.	A
2018/A0222	Allowed	04/07/2019	Dwelling would be sufficiently enclosed and none of buildings have frontage therefore doesn't offend CTY 13 or CTY 8	C
2019/A0245	Dismissed	02/12/2020	Dwelling offends CTY 13 & 14 and also BoT. Permission by DOE does not bind Council	
2020/A0001	Dismissed	15/02/2021	SPPS introduces 'transferred' to the policy, and appellant cannot rely on verbal agreement prior to 10 years before. Fails CTY 10 (b). Access refusal reason not sustained as brother owns land for splays and negative condition would have dealt with	B
2020/A0020	Dismissed	19/02/2021	Unauthorised building cannot contribute to group and one building does not constitute group. Fails CTY 10 (c) and requirements of CTY 6 not met	C
2020/A0030	Dismissed	08/07/2021	Site cannot visually link or cluster with established group of buildings on farm - rather relies on residential development. No H&S reasons provided for alternative location. Fails CTY 8, 13 & 14 also	C
2020/A0056	Dismissed	27/04/2021	Appeal site and holding associated with another farm business and no detail provided of tenant farm's business	A
2020/A0130	Allowed	26/11/2021	The test posed by Criterion (a) of Policy CTY10 is not whether the applicant is an active farmer over this period but whether the farm business is active and established for at least 6 years. However for the appellant to satisfy the requirements of criterion (a) the justification and amplification text at paragraph 5.38 states 'new houses on farms will not be acceptable unless the <u>existing</u> (my emphasis) farm business is both established and active'. The appellant's business is therefore the existing farm business on this land.	A

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			For the purpose of the policy it is this business singular that must be considered. <u>By time appeal determined, the 6 year test was met.</u>	
2020/A0155	Dismissed	25/11/2021	No established group of buildings at the out farm where appeal site located. Ability to locate at main farm as no H&S reasons presented. Also fails Policy CTY 13 & 14 and PPS 2 re AONB and PPS 6 re cairn	C
2021/A0023	Dismissed	26/05/2023	It is indisputable that the appellant holds farm business ID 664716. However, as the farm business was only established in September 2019, this time period is less than the required 6 years. Additionally, the appellant has not provided any other evidence to prove active farming. For these reasons, the policy requirement is not met.	A
2021/A0027	Dismissed	09/03/2022	conditions imposed re location and curtilage - argument about negative impact on connectivity and farm management that may accrue would be minimal and not sufficient to outweigh policy requirements.	C
2021/A0028	Dismissed	18/02/2022	the replacement dwelling site was transferred from the farm holding to a family member who was not involved in the farm business associated with the farm holding. The recent addition of the appellant to the farm business does not overcome this	B
2021/A0035	Dismissed	01/12/2023	Policy CTY10 is not self-contained, and neither is Policy CTY1, and as Policies CTY13 and CTY14 of PPS21 apply to new buildings in the countryside, they are material considerations in this appeal despite the approach taken in decision 2012/A0270. Despite Policy CTY10 providing for dwellings on farms which are visually linked or sited to cluster with an established group of buildings on a farm, this does not permit the creation or extension of a ribbon of development. In any event, other potential development opportunities exist elsewhere on the appellant's farm holding despite the alleged health and safety risks and the 75 metres separation distance that the appellant raises. The appeal proposal offends Policy CTY8	C
2021/A0083	Allowed	31/05/2022	Council fails to prove non-compliance with CTY 10 (c) and dwg will not be seen in landscape	C
2021/A0087	Allowed	23/12/2022	The policy does not indicate any standards for how the evidence of agricultural activity is demonstrated, the type or variety of that evidence or the frequency of the activities undertaken to support the evidence. That is a matter of judgement. IN this case the Commissioner (and Council conceded) that the owner farmer's activities demonstrated agricultural activity (whilst let out in conacre)	A
2021/A0112	Dismissed	06/10/2022	An unauthorised building and a lean-to restored to the side of a shed cannot be counted as 'group of buildings' required by policy and fails CTY 13	C

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2021/A0133	Dismissed	27/06/2023	Farm business split between two LGDs. "I consider that the word 'established' means more than mere existence; it has the connotation of being set up and settled on a firm or permanent basis. Having regard to Policy CTY 10 of PPS 21 therefore, it is reasonable to interpret 'established' by reference to active farming over a period of at least six years". <u>Whilst the farm business ID number itself has not changed; the composition of the holding has because the appeal site was added to it in 2019. For this reason, I consider the appellant's farm business has been amended from that date.</u> Whilst I concur with the appellant that a business can expand and contract, in the particular circumstances of this case, as the appeal site was only brought into the farm business in 2019, it could not possibly be part of an active and established farm business for at least 6 years as required by policy. A decision on an application at Moneycrumog, Lisburn would fall within the jurisdiction of the Lisburn and Castlereagh City Council and not Ards and North Down Borough Council.	A
2021/A0150	Dismissed	18/08/2023	Proposed dwg cannot cluster/visually link with two buildings some distance away, and another building is in different ownership so not associated with the farm. Fails CTY 14, CTY 8 and AMP 3	A & C
2021/A0166	Dismissed	13/02/2023	Policy CTY 10 does not indicate how agricultural activity is to be demonstrated or the type of evidence to be considered and sets a low threshold in respect of demonstrating agricultural activity. Evidence submitted accepted but fails criterion (c) as no buildings to group with and no exceptional circumstances applied, and fails CTY 13	A & C
2021/A0179		No decsn at 22/04		
2021/A0215	Dismissed	18/04/2023	Dwelling cannot cluster/visual link with a group of buildings which are not part of farm holding. Also fails on CTY 13 & 14	C
2021/A0238		No decsn at 22/04		
2022/A0034	Allowed	24/10/2023	'New houses on farms will not be acceptable unless the existing farming business is <u>both established and active</u> '. The applicant will therefore be required to provide the farm's DARD business ID number <u>along with other evidence to prove active farming over the required period</u> . The storage of machinery is suggestive that the appellant remains involved in agriculture but does not demonstrate agricultural activity at the holding. However, I also observed that the land and hedgerows at Causanagh Road within the holding were being maintained in good agricultural and environmental condition. This suggests to me that some level of agricultural activity is still taking place on the appellant's holding. All in all, taking the above evidence in the round along with the relatively low threshold for what constitutes 'active farming', I am satisfied that the appellant has demonstrated active farming for the required period of 6 years and has fully met criterion (a) of Policy CTY10 of PPS21.	A



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2022/A0036	Dismissed	31/01/2023	development opportunity sold off - fails CTY 10 (b)	B
2022/A0078		No decsn at 22/04	Refused on basis that appeal site is not part of farm holding, as prior to 2021 the appeal site was on land associated with another farm business. No planning history for the sheds proposed to be clustered with	A & C
2022/A0082		No decsn at 22/04	Refused on basis that no evidence submitted related to the application site to prove 6 years active and established farm business, and a development opportunity had been sold off from the 'holding'.	A & B
2022/A0111		No decsn at 22/04	Refused on basis that equine business appeared more as a hobby than commercial business - evidence submitted not commensurate with active farming	A
2022/A0114		No decsn at 22/04	Refused on basis of CTY 8 ribbon development, and would affect rural character	-
2022/A0131		No decsn at 22/04	Refused on basis that site is on land associated with another farm business; evidence submitted not verifiable in respect of activity required over 6 years	A
2022/A0143		No decsn at 22/04	Refused on basis that it has not been demonstrated that the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm	C
2022/A0150		No decsn at 22/04	Refused on basis that whilst Business ID in existence for more than 6 years, insufficient evidence submitted to prove active farming over the period; also cannot cluster/visually link to just one building	A & C
2022/A0169		No decsn at 22/04	Refused on basis of queries over evidence submitted relating to legitimacy of maintenance claimed; unable to determine if development opportunities sold off; and unable to cluster with just a single building	A, B & C
2022/A0203		No decsn at 22/04	Refused on basis of inability to group with buildings as foundations do not constitute a building, and would not integrate	C
2023/A0016		No decsn at 22/04	Refused as considered that a development opportunity had been sold off	B
2023/A0027		No decsn at 22/04	Refused as not proven that other sites do not exist elsewhere on the farm to visually link with and no H&S reasons provided	C
2023/A0034		No decsn at 22/04	Refused as not proven that development opportunities hadn't been disposed off, and unable to cluster	B & C
2023/A0046	Dismissed	27/03/2024	Fails CTY 10 (c) as only one building to cluster with. No H&S reasons for alternative sites not being feasible. Also fails equivalent policies of CTY 13,14 & 15 of Plan Strategy	C
2023/A0053		No decsn at 22/04	Refused on basis of development opportunities having been disposed off and cannot cluster	B & C
2023/A0089		No decsn at 22/04	refused on basis of not being able to be visually linked and would create ribbon of development	C

## Item 4.1b – Synopsis of PAC Decisions



# Appeal Decision

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<b>Appeal Reference:</b>	2021/A0133
<b>Appeals by:</b>	Mr Wallace Magowan
<b>Appeals against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Proposed site for dwelling on an active and established farm business
<b>Location:</b>	Lands approx. 30m NE of no. 31 Gransha Road South, Bangor
<b>Planning Authority:</b>	Ards and North Down Borough Council
<b>Application Reference:</b>	LA06/2020/1169/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 5 <sup>th</sup> April 2023
<b>Decisions by:</b>	Commissioner Kevin Gillespie, dated 26 <sup>th</sup> June 2023

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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The decision notice issued by the Council on 15<sup>th</sup> October 2021 contained four reasons for refusal. In the evidence, the Council confirmed that the third and fourth reasons for refusal no longer applied. The appeal will therefore only be assessed in respect of the first and second reasons for refusal.

## Reasons

3. The main issue in this appeal is whether the proposal would be acceptable in principle in the countryside.
4. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
5. The adopted Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal on 18th May 2017. The Ards and Down Area Plan 2015 (ADAP) therefore operates as the LDP for the area wherein the appeal site is located. In the ADAP, the appeal site lies in the Green Belt. As the rural policies in the plan are now outdated, having been overtaken by a succession of regional policies for rural development, limited weight can be attached to them. The

Gransha Road South (A48) is designated as a protected route in the ADAP but there are no policies within ADAP pertaining to the road. The appeal site also lies within a designated Area of Constraint on Mineral Developments but as the proposal is not for such development, policy COU 8 is not applicable. There are no other provisions in the operating LDP that are material to the determination of the appeal.

6. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. As no Plan Strategy has been adopted for the Ards and North Down Borough Council area, both the SPPS and other regional policies apply. During the transitional period, the SPPS retains certain existing Planning Policy Statements including Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21). As there is no conflict between the provisions of the SPPS and the retained policies on the issues raised in this appeal, in line with the transitional arrangements of the SPPS, the appeal should be determined in accordance with retained policy within PPS 21.
7. Policy CTY 1 of PPS 21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. One of these allows for a dwelling on a farm in accordance with Policy CTY 10 of PPS 21. It follows that if the development satisfies Policy CTY 10 of PPS 21, it will also satisfy Policy CTY 1 of PPS 21.
8. The appeal site comprises an irregular shaped portion of a larger agricultural field located on the western side of Gransha Road South. It is accessed from an existing concrete lane that serves No. 31, a single storey detached dwelling, and a yard containing a number of agricultural buildings. The appeal site slopes gently from east to west. Its north-eastern and north-western boundaries are defined mainly by mature hedging. Its south-eastern boundary is undefined and its south-western boundary is defined mainly by the aforementioned access lane. Immediately to the north of the access lane, a post and wire fence some 1 metre in height defines the southern extent of the host agricultural field.
9. Policy CTY 10 of PPS 21 indicates that planning permission will be granted for a dwelling house on a farm subject to several criteria. The Council's sole objection relates to criterion (a) of the policy in so far as it considered that the appeal proposal is not part of an established farm business for at least 6 years.
10. Farm business ID 624777 is allocated to the appellant. Whilst the appellant states on Form P1C 'Planning application for a dwelling on a farm' that the farm business was established in 2005, I note that the Department of Agriculture, Environment and Rural Affairs (DAERA) stated in its consultation response dated January 2021 that the farm business ID was allocated in November 1991.
11. The appellant's farm business comprises some 17.30 hectares of land as shown on his 2020 farm maps. It is split between two locations, one at Moneycrumog, Ballinderry Road, Upper Ballinderry Road, Lisburn which comprises some 7.85 hectares of land and the other at Gransha Road South, which comprises some 9.45 hectares of land including the appeal site.



12. Paragraph 5.38 of the justification and amplification text to Policy CTY 10 states that 'new houses on farms will not be acceptable unless the existing farming business is both established and active. The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period'.
13. I consider that the word 'established' means more than mere existence; it has the connotation of being set up and settled on a firm or permanent basis. Having regard to Policy CTY 10 of PPS 21 therefore, it is reasonable to interpret 'established' by reference to active farming over a period of at least six years.
14. It is indisputable that the appellant holds farm business ID 624777. In addition, I note that the DEARA consultation response dated January 2021 stated that the farm business had claimed payments through the Basic Payment Scheme or Agri Environment scheme in each of the last six years and that the application site is on land for which payments are currently being claimed by the farm business. Accordingly, I am satisfied that the farm business is currently active.
15. The appellant stated that the appeal site was purchased in 2019 prior to which DAERA has advised that it was included on land associated with other farm businesses. For this reason, the Council consider that the appeal site has not been part of the established farm business for at least 6 years such that it fails to meet criterion (a) of Policy CTY 10 of PPS 21.
16. The appellant's position is that the policy wording of criterion (a) of Policy CTY 10 refers to active and established 'farm business' (emphasis added); it does not mention 'holding' other than in the context of potential opportunities which may have been sold off in criterion (b) of the policy. Moreover, the appellant asserts that the policy does not state that all of the land within a farm business must have been owned or farmed for a 6 year period. Both parties referred me to a number of planning appeal cases to support their respective positions.
17. I consider that a farm holding comprises the extent/quantum of the land owned. As such, I consider it indisputable that the farm holding detailed previously is intrinsically linked to the appellant's farm business. Whilst the farm business ID number itself has not changed; the composition of the holding has because the appeal site was added to it in 2019. For this reason, I consider the appellant's farm business has been amended from that date. Whilst I concur with the appellant that a business can expand and contract, in the particular circumstances of this case, as the appeal site was only brought into the farm business in 2019, it could not possibly be part of an active and established farm business for at least 6 years as required by policy.
18. The appellant referred me to appeals 2014/A0269 and 2018/A0210. Each case must be assessed on its own merits and in its own evidence base. In planning appeal 2014/A0269, determining weight was given to a background paper. The appellant did not provide a copy of this paper in his evidence. I also note that other factors that applied in that case are not replicated in this appeal. In respect of planning appeal 2018/A0210, it was concluded that the farm business was not currently active, and that appeal was actually dismissed. I consider that both appeals are distinguishable from the particular circumstances of the current appeal.



19. The appellant contended that the Council accepted that he would meet the policy requirement for a dwelling under Policy CTY 10 of PPS 21 at the other location within the farm business at Moneycrumog, Lisburn. As such, and as PPS 21 applied to Northern Ireland as a whole, the appellant argued that the end result would be inconsequential and that there would be no adverse planning consequences and no demonstrable harm if the 'one in 10 year dwelling would be sited near Bangor instead of Ballinderry'.
20. A decision on an application at Moneycrumog, Lisburn would fall within the jurisdiction of the Lisburn and Castlereagh City Council and not Ards and North Down Borough Council. In any event, this is not the appeal which is currently before me. This proposition does not therefore assist the appellant's case.
21. For all the reasoning given above, I conclude that the appeal proposal has not been part of an established farm business for at least 6 years. As a result, it does not meet criterion (a) of Policy CTY 10 of PPS 21 nor the policy when read as a whole. There are no overriding reasons why the appeal proposal is essential and could not be located in a settlement. Accordingly, Policy CTY 1 of PPS 21 is not met.
22. As the Council has sustained its first and second reasons for refusal, the appeal must fail.

This decision is based on the following drawings:

Drawing No.	Title	Scale	Received by the Commission
	Site Location Plan	1:1250	5 <sup>th</sup> November 2021
P05 Rev. E	Visibility Splays	1:500	5 <sup>th</sup> November 2021
C101	Proposed Visibility Splays	1:250, 1:500 @ A1	5 <sup>th</sup> November 2021

**COMMISSIONER KEVIN GILLESPIE**

**List of Documents****Planning Authority:-****“A1” Lisburn and Castlereagh City Council -  
Statement of Case****“A2” Lisburn and Castlereagh City Council -  
Rebuttal Statement****Appellant(s):-****“B1” Donaldson Planning (Agent)  
Statement of Case****“B2” Donaldson Planning (Agent)  
Rebuttal Statement**

**ARDS AND NORTH DOWN BOROUGH COUNCIL**

A meeting of the Planning Committee was held virtually on Tuesday, 5 October 2021 at 7.00 pm via Zoom.

**PRESENT:**

**In the Chair:** Councillor Cathcart

**Aldermen:** Gibson Keery  
McDowell McIlveen

**Councillors:** Adair (7.01pm) McKee  
Kennedy Smith, P  
McAlpine (7.01pm) Thompson  
McClean (7.01pm) Walker

**Officers:** Director of Regeneration, Development and Planning (S McCullough), Head of Planning (A McCullough), Senior Professional & Technical Officer (P Kerr), Principal Professional and Technical Officer (L Maginn) and Democratic Services Officers (M McElveen & P Foster)

**Also in** David Donaldson – Donaldson Planning

**Attendance:** Donna Coffey – Resident

Michael Colwell – Agent

**WELCOME**

The Chairman (Councillor Cathcart) welcomed everyone to the meeting.

**1. APOLOGIES**

Apologies for inability to attend were received from Councillors Brooks and McRandal.

NOTED.

**2. DECLARATIONS OF INTEREST**

The Chairman sought Declarations of Interest and none were notified.

NOTED.

**3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE MEETING OF 7 SEPTEMBER 2021**

PREVIOUSLY CIRCULATED:- Copy of the above.

**RESOLVED, on the proposal of Councillor Thompson, seconded by Councillor McClean, that the minutes be noted.**

#### **4. PLANNING APPLICATIONS**

##### **4.1 LA06/2020/1169/O – SITE FOR DWELLING ON ACTIVE AND ESTABLISHED FARM – LANDS APPROX. 30M NE OF 31 GRANSHA ROAD SOUTH, BANGOR**

(Appendix I)

**DEA:** Bangor Central

**Committee Interest:** Called in by Councillor Adair from delegated list w/c 1 August 2021

**Proposal:** Site for dwelling on active and established farm

**Site Location:** Lands approx. 30m NE of 31 Gransha Road South, Bangor

**DEA:** Bangor Central

**Recommendation:** Refusal

**PREVIOUSLY CIRCULATED:-** Case Officer's Report and Addendum.

The Planning Officer (P Kerr) outlined the detail of the application.

The proposal was for a site for a dwelling on an active and established farm, located at Lands approx. 30m NE of 31 Gransha Road South, Bangor. This proposal was being presented at Committee as it was called in by Councillor Adair.

The initial proposal submitted was for a site for a two-storey dwelling. After the proposal appeared on the delegated list an amended P1 form came in on 18 August 2021 amending the description to a dwelling on a farm removing the reference to a two storey dwelling. As per the circulated addendum, due to this description change refusal reasons 3 and 4 in the case officer's report no longer applied due to the fact an appropriate ridge height condition could be attached to any permission through delegated powers. The proposal was in conformity with the Ards and Down Area Plan 2015.

Turning to policy, the proposal satisfied PPS 2 Natural heritage and PPS 3 Access movement and parking.

With regard to the principle of development under PPS21, the proposal failed to meet the requirements of CTY10 in that it had not been demonstrated that the site was part of an active and established farm business for a minimum of six years. The Council received a consultation response from DAERA and although it confirmed that the farm business ID had been existence for more than six years and had claimed payments through the basic payment scheme or agri environment scheme in each of the last six years, it also confirmed that this site, prior to 2019, was associated with other farm businesses and not the business ID that had been in existence for more than six years. It was accepted that the farm business was active and established for more than six years however this site had not been part of the farm holding associated with that business for the requisite amount of time.

The farm business ID and the land were inextricably linked. In consideration of this proposal the following Planning Appeal decisions should be noted:  
2016/A0047 site between Tornagrough Road and Rushey Hill Road Budore, Belfast-DARD confirmed that in May 2015 three fields were added to the appellant's farm ID number and SFP claimed, however the commissioner stated that if added to the business ID in May 2015 then the six year test was not met. The Appeal was dismissed.

2014/A0037 at Drumgavlin Road, Ballynahinch-this appeal stated that the onus was on the appellant to demonstrate that there was an established farm holding of which the appeal site was an integral part. The key distinction was that the site and business must be established for the requisite time period. The commissioner then went on to say that it could not be demonstrated that the appeal site was part of a farm business which was currently active and had been established for at least six years (failed criterion a) The appeal was dismissed.

2014/A0273 site at Ballykeel Road, Lisburn stated that it was clear from evidence that it was not included in the farm business until November 2014 at the earliest and it had therefore not been part of an active farm business established for at least six years.(fails criterion a) The appeal was dismissed.

The following appeal related to farm buildings however made reference to an active and established farm:

PAC appeal reference 2017/A0010 which was for an agricultural building at Eglinton in the Derry & Strabane Council area – the Commissioner stated that the SPSS " provides clarity in respect of the reference to an "active and established...holding" The Commissioner went on to explain– "I cannot ignore the fact that it (i.e. – the holding) was not in his possession until the Autumn of 2014. Policy CTY 12 requires consideration of the holding that has been in existence for six or more years".

Where the proposal failed was in relation to the farm holding -in other words, the application site did not consist of a holding that had been active for six years. The proposal failed to meet criterion (a) of CTY10 and therefore failed to meet CTY1. Notwithstanding the fact that the principle of development could not be established under CTY1 and CTY10 in assessing the proposal under CTY13 and CTY14, due to the amended description, they could be met through a ridge height condition.

The logic of this interpretation of the policy was to ensure that all land within farm holdings that had potential to accommodate a farm dwelling had been part of the established farm for the full six years otherwise this could lead to the encouragement of fields being bought into existing farm ID numbers away from the main farm holding.

Turning to the Planning Advice Note for Implementation of Strategic Planning Policy on Development in the Countryside published in August of this year, this PAN offered no clarification as to what constituted an active and established farm holding. The part of the PAN relating to farm dwellings however gave added emphasis on new development being visually linked which this proposal was.



In conclusion the proposal failed to meet the policy requirements of CTY1 and CTY10 criterion (a) in that the site had not had the benefit of being part of an active and established farm under the business ID for the minimum required of six years and therefore refusal was recommended.

The Chairman thanked the Officer for her presentation and sought questions from Members.

Referring to Slide 2, Councillor Walker enquired if no. 31 was a new part of the farm. He recognised the importance of the six year rule for this land and queried if that was to prevent people moving about the countryside and constructing houses by using their farm number.

The Planning Officer confirmed that no. 31 was now a component of this farm. She advised that along with the purchase of a farm dwelling, it was also possible to gain a first agricultural building at that part of the holding and further develop. That six year rule would discourage such additional countryside buildings.

Councillor P Smith required verification that an application in 2025 would be acceptable.

The Planning Officer concurred that they would have the option to wait for the full six years until that part of the holding was an established active business but at this point in time, it remained contrary to policy.

At this stage, the Chairman asked that Mr Donaldson – Donaldson Planning, to be brought into the meeting.

Mr Donaldson (Agent) addressed the meeting and thanked the Committee for the opportunity to speak and the Planning Officers for putting together such a detailed report.

There were four refusal reasons but those revolved around two key issues – policy for houses on farms; and landscape integration.

Landscape Integration – the site was clustered with farm buildings; it was at a lower level than the road and it was surrounded by mature trees. The Officer's report confirmed that 'a one and a half storey dwelling would be likely to be acceptable to mitigate this matter' and 'I consider the site may have capacity to accommodate a dwelling with a ridge height capped at six metres.' To address that aspect, the 'two storey' element was removed from the description of the proposal. Conditions could address that matter.

Policy for Houses on Farms – in relation to the Farm Business the Officers accepted that there was an active farm business; the business had been established for more than six years; no houses had been sold off from the farm and the site clustered with buildings on the farm.

Mr Donaldson confirmed that the land at Gransha Road was added to the existing farm business in 2019. The Officers were interpreting the policy as requiring all land, including the application site, to have been actively farmed by the business for six years. He disagreed with the Officer's interpretation for the following reasons:

- i) the policy headnote referred to 'a dwelling house on a farm'. This site was clearly 'on a farm'
- ii) the established and active requirement related to 'the farm business'. A farm business was an entity which existed for a particular purpose. Farm businesses, like any other business, could expand, contract etc but the business entity remained the same. The business entity in this case had been established for over 30 years
- iii) Planning appeal decisions could provide useful pointers but appeals were determined on the evidential context of each case. No two cases were ever identical. Every planning application must be considered on its own particular merits and with regard to the material considerations
- iv) Reference could be made to appeals which support interpretation: eg 2018/A0210 and 2014/A0269: 'Policy CTY10 applies to the farm business and is not concerned with land ownership' and 'the policy test is that the overall business holding is active and established for at least six years, and not when individual fields were acquired'
- v) Significantly, the officers accepted that this established farm business should be able to get a new dwelling on its land at Ballinderry but they argued that that could not be built in Bangor
- vi) That interpretation was illogical and it served no planning purpose. PPS21 applied to NI as a whole. How could there possibly be any planning reason to allow the 1 in 10 year house to be built in Ballinderry but not in Bangor? The end result was the same as a house would be built somewhere in the NI countryside
- vii) Furthermore, if this dwelling was approved, this farm business would not be eligible for another house for at least 10 years, at either location

The SPSS indicated that the planning system should unlock development potential, support job creation, and aid economic recovery. The Officer's interpretation would result in this investment being diverted to Ballinderry, instead of Bangor. Policy which applied at a Regional level could not possibly have been intended to create such a nonsensical situation.

In conclusion the only real issue was where should this farm dwelling be located. It was highly material that this applicant met the criteria for a dwelling on his farm, and that the site selected met the criteria for clustering etc. The Committee must give substantial weight to those important material considerations. Crucially, it must ask itself how could harm possibly be caused by allowing the applicant to build his one in ten year house in Bangor, as opposed to Ballinderry. The Committee was requested to grant permission.

Ahead of Members' questions, the Chairman wished to understand the argument being put forward. He believed that Mr Donaldson's stance was that the main farm was located in Ballinderry but as the Bangor site was acquired in 2019, should it matter what piece of land the dwelling was built on when the farmer was in possession of all of it. He questioned hypothetically that if he knew a farmer had no

need for a dwelling for 10 years, could he perhaps purchase agricultural land in Bangor, place a new property on it and sell it as a means for additional money or a favour. Was it perhaps an interpretation of how Mr Donaldson viewed that particular policy.

Mr Donaldson stressed that the fundamental principle of the policy was that the farm business must be active with a DAERA business number and include six years of established farm activity. The owner was effectively limited to building a house every 10 years. Therefore, it did not have a bearing as to where he chose to locate that house because he was only entitled to one new dwelling every 10 years anywhere in Northern Ireland. Under the policy, he was of the belief that it should not matter where the construction took place in this instance, as the farm business was established in Ballinderry and Bangor. Hence, should the owner select the Bangor holding, he would not be allowed to build on the Ballinderry site for another 10 years.

The Chairman observed that PAC decisions had been quoted and wondered if there were examples of similar circumstances in other Council areas.

Mr Donaldson said that he was unaware of any but did note that each Council interpreted the policy in a slightly different way. With regard to the current application, this Committee had to examine the material considerations and as it was agreed that he was entitled to build in Northern Ireland and in Ballinderry, what harm would be caused in respect of rural policy, countryside integration or policy objections if the site in Bangor was deemed acceptable. It would be the only house constructed in the Northern Ireland countryside by this applicant within the next 10 years.

Alderman McIlveen wished for clarification that the applicant's main farm was in Ballinderry and if that was a single field or were farm buildings included.

In response, Mr Donaldson explained that the farm business comprised 17 hectares. The longer established section in Ballinderry was seven hectares and in 2019, the farmer purchased the 10 hectare farm in Bangor. He contended that the key aspect was that the farm business was established and active and not how long the land was under ownership. He was mindful that CTY10 alluded to an active business.

Alderman McIlveen highlighted the marked fields displayed on the drawings and remarked if the adjacent buildings were part of the applicant's farm. Under part C of CYT10, Alderman McIlveen wanted to ensure that they were associated with the farm.

Mr Donaldson indicated that those were purchased to add to the existing farm business.

Councillor Walker recapped that in 2019 the applicant bought the farm in Bangor and enquired if he had also submitted the initial application which was refused.

Mr Donaldson corroborated that the original application for a replacement dwelling had been refused as Officers were not content with the siting or scale. Thus, the application had been reviewed and an application was submitted for a dwelling on the farm.

Councillor Walker voiced a degree of concern that the land appeared to have been purchased very quickly for the application of a dwelling of some sort.

On a point of clarity, Councillor P Smith questioned Mr Donaldson's logic in the interpretation of the policy. Should a farmer own a farm in Lisburn and purchased land in Bangor, Holywood or Comber, he could choose where to build a house on the basis of his preference and as long as the farm had been active for six years as per the policy. In essence, he could procure plots of agricultural land and decide where to build one house in that timescale of 10 years.

Mr Donaldson concurred emphasising that the criteria asserted that the farm must be an active and established business for six years, with nothing sold off in the past 10 years and it had to cluster with other buildings on the farm. Those were the policy tests to ensure that if a dwelling was built on a farm it was sustainable and met policy objectives. He reiterated the farmer's entitlement to construct one dwelling in 10 years and he should have the ability to choose where on his land. He pointed out where was the detriment if one house build was allowed in the Northern Ireland countryside which met relevant criteria. Why could it not be in Ballinderry or Bangor as there was no mention about the holdings within the policy; rather it was the farm business in its entirety.

As there were no further enquiries for Mr Donaldson, the Chairman requested Officers to return him to the virtual public gallery. He then asked if Members had queries for the Planning Officer.

Councillor P Smith brought attention to how Mr Donaldson's interpretation was contrary to that of the Planning Officer, as he had challenged the six years farming a portion of land. To that end, he articulated his disquiet that a farmer in Fermanagh could purchase a field on the outskirts of Belfast and construct a nice house on a very lucrative site. He was unsure if that was the correct interpretation of the policy.

In concurrence with the Member, the Planning Officer underscored that the idea of the policy was that the land and farm were inextricably linked as held up by PAC appeals. One appeal had mentioned that the farm business was not concerned with land ownership and she interpreted that as someone renting a farm in conacre could apply for a farm building. It was contradictory to the intention of policy such as PPS21 and SPPS.

Councillor Walker appreciated that if someone built a house on a farm and sold it, they could not build another one for 10 years. However, he highlighted that should they buy a farm and build a house, what would stop them from selling that farm and starting over or would they have to wait 10 years.

The Planning Officer clarified that he would have his one house in that 10 years but the person purchasing his farm with his separate business ID could benefit and build a dwelling if they had not done so in the past 10 years.

Alderman Gibson thought the Officer had raised an important point as the farm under discussion in the Bangor area had been a business for many years. He pondered if

the owner had gained permission for a house somewhere else on his land during the past 10 years. He also referred to conacre letting but felt it was not the same as owning it. This land was farmed for many years and the applicant had farmed in Ballinderry for more than six years, so were Officers aware if that particular farmer had a site or holding somewhere else.

The Planning Officer verified that the applicant had not constructed a dwelling in the last 10 year period but she did not know who the site owner was prior to 2019.

Alderman Gibson recalled that those points had been broached several years previously when the Committee had attempted to approve an application which was part of an established farm business. The crux of the matter was that the current application was also part of one established farm business. Even though PAC appeals demonstrated that it was opposed to such applications, a long debate had taken place at that time.

At this stage, the Head of Planning interjected and substantiated that that application was in relation to a farm building and not a dwelling. She noted that it was the same context as a piece of land had been purchased by the applicant and added into his father's farm. She recollected that the Committee did approve the application contrary to the recommendation.

Following on, Alderman McIlveen maintained there had been other circumstances surrounding the referred to case such as the material consideration of animal health. Presently, the situation was that a farm business was split between two separate Council areas and the difficulty was how to police that issue and undertake a cross check over the next ten years if the business was the predominant factor rather than holdings.

The Planning Officer explained that Officers could do so by checking farm maps utilising the business ID from DAERA to ascertain on public access as well as extensive land registry searches.

Alderman McIlveen probed if it be the remit of this Council to initiate that action given the fact that we only knew Ballinderry as being the main farm. Could there perhaps be a third holding that we were not aware of.

In reply, the Planning Officer described how the Case Officer had carried out a search before the report had been written to ensure it met that test. Farm maps were presented to them but in all likelihood, Officers would be unaware if there was a third holding or another section of land elsewhere.

Alderman McIlveen was conscious that they were being asked to judge the application on the business and not the holdings. He expressed unease as without knowing the full extent of those they could not appropriately assess against policy.

The Planning Officer affirmed that only the farm maps presented with the application had been checked and no other supplementary information was disclosed.



Alderman Keery conjectured if there was a loophole with this particular farm and enquired if it would be possible for the original owner in Bangor who sold his farm to the farmer in Ballinderry to repurchase the business once a house had been built.

The Planning Officer commented that theoretically that was a possibility but she remained doubtful that it would happen.

Proposed by Councillor Walker, seconded by Councillor P Smith that the recommendation be adopted and that planning permission be refused.

Councillor Walker referred to the six year test suggesting that it was in place for a valid reason in that it would protect the integrity of all rural areas. Moreover, it would allow farmers to develop land and their holdings whilst keeping their families on site but not to put themselves in jeopardy from a commercial viewpoint. Should the applicant submit a further application in four years, he felt the Committee would look at it favourably and he was happy to approve the recommendation.

As seconder, Councillor P Smith explained that it was a timing issue for him and was content to accept the guidance and interpretation of Planning Officers.

Alderman McIlveen detailed that he would not be voting in favour of the recommendation and his earlier views on the Colville case tallied with the comments made by David Donaldson about businesses and holdings. He echoed his previous concerns about businesses spread across multiple areas other than our own Council area. He hoped the new planning portal would facilitate cross checking for potential abuse of the 10 year policy but could not support the recommendation.

On being put to the meeting with 8 voting FOR, 3 voting AGAINST, 2 ABSTAINING and 3 ABSENT, the recommendation was declared CARRIED. A recorded vote resulted as follows:

<b>FOR (8)</b>	<b>AGAINST (3)</b>	<b>ABSTAINING (2)</b>	<b>ABSENT (3)</b>
<b>Aldermen</b>	<b>Alderman</b>	<b>Alderman</b>	<b>Councillors</b>
Keery	McIlveen	Gibson	Brooks
McDowell	<b>Councillors</b>	<b>Councillor</b>	Cooper
<b>Councillors</b>	Adair	Cathcart	McRandal
McAlpine	Kennedy		
McClellan			
McKee			
Smith, P			
Thompson			
Walker			

**RESOLVED**, on the proposal of Councillor Walker, seconded by Councillor P Smith, that the recommendation be adopted, and that planning permission be refused.



# Appeal Decision

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<b>Appeal Reference:</b>	2014/A0269
<b>Appeal by:</b>	Mr. F. Gallagher against the refusal of full planning permission
<b>Subject of Appeal:</b>	Dwelling and Garage on a Farm
<b>Location:</b>	40m north of 3 Killycolpy Road, Stewartstown
<b>Planning Authority:</b>	Department of the Environment
<b>Application Reference:</b>	I/2013/0141/O
<b>Procedure:</b>	Written Representations and Accompanied Site Visit on 3 <sup>rd</sup> September 2015
<b>Decision by:</b>	Commissioner Helen Fitzsimons 14 <sup>th</sup> September 2015

## Decision

1. The appeal is allowed subject to the conditions set out below.

## Reasons

2. The main issue in this appeal is whether proposed development is acceptable in principle in the countryside.
3. The proposed development lies in the open countryside as designated by the Cookstown Area Plan 2010, and is outside any specific policy area. The Plan offers no policy or guidance in respect of the proposal before me. Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) is a material consideration in this appeal. Policy CTY 1 of PPS 21 states that there are a range of types of developments which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is development in accordance with Policy CTY10 'Dwellings on Farms.
4. Policy CTY 10 allows for the development of a dwelling on a farm provided three stated criteria are met. The Planning Authority raised objections under criteria (a) and (c). Criterion (a) requires that the farm business is currently active and has been established for at least six years. Paragraph 5.38 of the justification and amplification text states that the applicant will be required to provide the DARD business ID number along with other evidence to prove active farming over the required period. The appellant provided a DARD Business ID number and farm map showing the appeal site to be a farm holding owned by himself and a business partner. The Planning Authority argued that the appeal site had belonged to a Mr Canavan who in 2009 requested that it be removed from the DARD mapping system and that it was subsequently transferred to the appellant and his partner in May 2013.

5. The appellant's evidence is that the farm business was established in 2002 and various documents from DARD relating to herd movements and herd numbers were submitted in support of this. In addition the background papers to this appeal contained minutes, dated January 2014, of a meeting held between DARD representatives and the Planning Authority to establish the extent of the appellant's farm business. Minutes of that meeting identify that the farm business was set up in 2002 by a Mr Lagan; Mr Gallagher joined the business in 2009; the appeal site is part of a larger holding comprising some 53.97 Ha declared hectares some of which are taken in conacre. Single Farm Payments (SFP) are claimed in respect of the land taken in conacre. The remainder of the land is declared for farming but no SFP is claimed in respect of them. The policy test is that the overall farm business holding is active and established for six years, not when individual fields were acquired, and I give this background paper determining weight and conclude that the farm business has been active and established for six years. Criterion (a) is met
6. Criterion (c) of Policy CTY 10 requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm. Immediately adjacent to the appeal site is a dwelling, garage and storage shed. It is the appellant's residence and has been the address associated with the farm business for many years. As the policy only requires linkage with established buildings on a farm not the main farm complex the appeal proposal meets the requirements of the policy. Criterion (c) is met.
7. As the proposal meets both criteria (a) and (c) of policy CTY 10 of PPS 21 the Planning Authority has not sustained its only reason for refusal.
8. The appeal site is large and a curtilage restriction is necessary in the interests of the visual amenities of the countryside. Visibility splays are required in the interests of road safety. The retention and addition of new landscaping will assist in further integration into the landscape.

### Conditions

1. The dwelling, garage and curtilage shall be located within the area hatched black on attached annotated drawing PAC 1.
2. Prior to the commencement of buildings works visibility splays of 2m x 4.5m shall be laid out at the junction of the access with Killycolpy Road and thereafter be permanently retained.
3. No development shall take place until there has been submitted to and approved by the Planning Authority a landscaping scheme showing the retention and augmentation of the existing vegetation along the appeal site boundaries, and new native species planting between points A and B and C and D as noted on PAC 1 during the first planting season after the commencement of the development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Planning Authority gives written consent to any variation.

4. Application for approval of the reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.
5. The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

This decision is based on the 1:2500 scale site location plan.

**COMMISSIONER HELEN FITZSIMONS**

**2014/A0269****List of Appearances**

Planning Authority: Emma Mc Cullagh

Appellant: Mr C Cassidy  
Mr F Gallagher

**List of Documents**

Authority: - PA 1 Written Statement

Appellant: A 1 Written Statement  
A 2 Comments





# Appeal Decision

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<b>Appeal Reference:</b>	2018/A0210
<b>Appeal by:</b>	Mr N Hannan
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Single dwelling and garage on farm
<b>Location:</b>	73 Crosskeenan Road, Antrim
<b>Planning Authority:</b>	Antrim and Newtownabbey Borough Council
<b>Application Reference:</b>	LA03/2018/1020/O
<b>Procedure:</b>	Written representations and accompanied site visit on 12 June 2019
<b>Decision by:</b>	Commissioner D McShane, dated 19 July 2019.

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether:
  - the development is acceptable in principle;
  - its impact on visual amenity; and
  - its impact on archaeological remains.
3. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. The Antrim Area Plan 1984-2001 (AAP) operates as a LDP. The appeal site is located outside any settlement development limit designated in the plan and is in the open countryside. The plan does not contain specific provisions pertinent to the appeal development.
4. The relevant policy context is provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21), which is identified by the Strategic Planning Policy Statement for NI (SPPS) as a retained policy document. Planning Policy Statement 6: Planning Archaeology and the Built Heritage (PPS 6) is also pertinent, given the presence of an archaeological enclosure in the vicinity.
5. The SPPS points out that provision should be made for a dwelling house on an active and established farm business. The farm business must be currently active and have been established for a minimum of 6 years. Policy CTY 1 of PPS 21 lists 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. The circumstances wherein planning permission will be granted for an individual dwelling house are outlined. This includes a dwelling on a farm in

accordance with Policy CTY 10. This policy states that planning permission will be granted where three criteria are met. Criteria (a) and (c) are in dispute.

6. Criterion (a) requires that *the* (my emphasis) farm business is currently active and has been established for at least 6 years. This statement is reiterated in Paragraph 5.38 of the Justification and Amplification text, which goes on to state that the applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.
7. The Appellant submitted a DARD business ID number and farm map that relate to a 1.19 ha farm business (Field No.1/B) located at 73 Crosskeenan Road, Antrim. The Department for Agriculture, Environment and Rural Affairs (DAERA) confirms that the business ID number was issued in 2011. The dispute between the parties relates to the Appellant's claim that his business is currently active and has been active for the required period of time.
8. The Appellant owns the land; however Policy CTY 10 applies to the farm business and is not concerned with land ownership. No Single Farm Payments (SFPs) or other subsidies have been claimed under the farm business number submitted by the Appellant. This in itself is not fatal to the proposal. A reference was made to the Appellant's submission of a self assessment tax return relating to income from con acre. The Appellant indicates that the land has been rented in con acre each year since 2012 by a third party who grazes sheep and cattle on it, rolls, fertilizes and tops it to ensure it is maintained in good agricultural condition. DAERA confirms that SFPs have been claimed by the third party under his DARD business ID number. His dwelling and farm buildings are located approximately 1.5 miles from the appeal site.
9. Paragraph 5.39 states that for the purposes of Policy CTY 10, agricultural activity refers to, among other things, maintaining land in good agricultural and environmental condition. Policy does not require a high level of activity, but evidence must be provided to demonstrate even a minor level. The Appellant states that he renewed all the perimeter fencing and gates since the farm business was established and planted native species hedging and trees while additional fencing was installed to protect hedgerows from livestock. He indicates that he strims and spot sprays weeds, carries out maintenance such as cutting hedges and clearing drains. To support this and demonstrate that his farm business is currently active and has been active for the required period, he submitted five invoices. The dates on the invoices range from 2012 to 2016 and relate to: the erection of sheep fencing, erection of gates and supply and planting of bare root hornbeam hedging (2012); erection of barbed wire fencing and supply and planting of hornbeam hedging (2015); and an electric fence energiser, electric fence poly-wire and electric fence post stakes (2016). Hornbeam hedging has been planted, including to the rear of the visibility splays and along the boundary of No.73. There is evidence of fencing around the perimeter of the field and gates are in situ. However, no invoices or any other evidence was submitted to show an active farm business from 2017 to the current time.
10. The land is in good agricultural and environmental condition; however in itself this is not indicative of the Appellant's farm business satisfying Criterion (a) of Policy CTY 10. The land is owned by the Appellant's farm business; but the payment of

subsidy to a third party under a separate business ID number does not support the contention that the Appellant's farm business is currently active. The failure to provide any up-to-date invoices or other evidence relating to the Appellant's farm business to cover the period 2017 to the present reinforces the conclusion that it is not currently active. Accordingly, the Council has sustained its objection in respect of Criterion (a) of Policy CTY 10.

11. Criterion (c) of Policy CTY 10 requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm. Travelling along Crosskeenan Road from the south east, there would be a glimpsed view of the proposed dwelling from the entrance to No.74. Thereafter, it would come into view at the entrance gates to No.73 and across the site frontage. From these viewpoints the appeal development would appear visually linked with the buildings at No.73; a dwelling and garage. Travelling in the opposite direction, the proposed development would come into view at the entrance to No.73a, given undulating topography and roadside vegetation. Through intervening vegetation and against a mature backdrop of vegetation, the proposed development would be visually linked with the existing buildings at No.73 and there would be little appreciation of the separation distance between the two properties. Accordingly, the Council has failed to sustain its objection based upon Criterion (c) of Policy CTY 10.
12. The Appellant refers to his desire to erect a passive dwelling suitable for his retirement. However, no persuasive evidence was submitted to indicate that there are overriding reasons why the development is essential and could not be located in a settlement. The Appellant has not provided evidence to demonstrate that the dwelling would fall within other types of development that are acceptable in principle in the countryside or justified under other policies within PPS 21. The Appellant referred to a previous appeal 2009/A0297 wherein approval for a dwelling on the farm dwelling was granted on the basis of SFPs being claimed by an independent Third Party under a separate Farm Business ID number. In that instance the Planning Authority, the Department of Environment (DOE), did not dispute the evidence provided to demonstrate active farming for 11 years. That appeal was decided on the evidence of the case. In this instance, the evidence does not point to a 6 year period of active farming. Approval in that instance does not justify approval of the appeal development, which is contrary to policy. Accordingly, the appeal proposal is unacceptable in principle and the LPA has sustained its reasons for refusal based upon Policy CTY 1 and Criterion (a) of Policy CTY 10.
13. Paragraph 6.70 of the SPPS points out that all development in the countryside must integrate into its setting. Criterion (b) of Policy CTY 13 states that a new building will be unacceptable where the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape. Policy CTY 14 states that a building will be unacceptable where it is unduly prominent in the landscape.
14. The appeal site is located to the rear of a roadside field. From the identified transient viewpoints on Crosskeenan Road, notwithstanding the absence of boundaries to the south east and south west, a visual backdrop of mature 10-12m high forest vegetation and rising land to the north and east would provide a suitable degree of enclosure. Notwithstanding a slight rise in topography from the road to the north east, an 1800sq ft dwelling with a ridge height of 5.5m above

finished floor level would not appear as a prominent feature in the landscape, given the mature vegetation and rising land to the rear. Accordingly, the Council has failed to sustain its second reason for refusal in so far as it relates to Policies CTY 13 and 14.

15. The Historic Environment Division indicates that the appeal site is in the vicinity of archaeological enclosure (ANT 044:046). There is no visible evidence of this on site. Visible evidence was last recorded in the 1980s; the above ground remains having been substantially destroyed by modern farming practices. The indication is that the majority of the monument is located in the adjacent field, to the rear of a dwelling that is currently being constructed. As such there is some uncertainty with regard to whether the proposed development would have any impact on it. In the event that the appeal development had been found to be acceptable in principle, this is a matter that could be addressed by the imposition of a condition requiring the completion of an Archaeological Evaluation in line with Policy BH 3 of PPS 6 prior to the commencement of development. Accordingly, the Council's third reason for refusal is not sustained.
16. Visibility splays of 2.4m by 120m in both directions are achievable as confirmed by the Department for Infrastructure – Roads. The Objector's concern about whether the proposed visibility splays would impact upon his property is a civil matter between him and the Appellant.

This decision is based on the following drawings date stamped refused 22/1/2019:-

- LPA Drwg No.01/2: Site Location Plan (Scale 1:2500)
- LPA Drwg No.02/2: Proposed Site (Scale 1: 1000)

**COMMISSIONER D MCSHANE**

**List of Appearances**

Planning Authority:- Mr G Kelly  
Ms M Poots (Observing)

Appellant:- Mr N Hannan

Third Party:- Mr M Currie

**List of Documents**

Planning Authority:- "LPA 1" Statement of Case and Appendices

"LPA 2" Rebuttal Statement

Appellant:- "APP 1" Statement of Case and Appendices

"APP 2" Rebuttal Statement

Third Party:- "TPO 1" Statement of Case





# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0197
<b>Appeal by:</b>	Mr Edward Ryan
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Site for dwelling
<b>Location:</b>	15 Ryanstown Road, Newry
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	P/2014/0972/O
<b>Procedure:</b>	Hearing on 25 May 2017
<b>Decision by:</b>	Commissioner Pamela O'Donnell, dated 28 June 2017.

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## Decision

1. The appeal is dismissed.

## Reasoning

2. The main issues in this appeal are whether the proposal is acceptable in principle in the countryside and whether it would detrimentally impact on the rural character of the area.
3. The Planning Act (Northern Ireland) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) operates as the local development plan for the area where the appeal site is located. The BNMAP places the appeal site outside any settlement limit and within the countryside and it contains no material policies for the type of development proposed. There are, however, relevant regional policies and these are considered below.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area and it retains certain existing planning policy statements. Amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21). Taking into account the transitional arrangements of the SPPS, the retained PPS21 provides the relevant policy context for the appeal proposal. Policy CTY1 thereof indicates that there are types of development acceptable in principle in the countryside. These include a dwelling based on special personal or domestic circumstances in accordance with Policy CTY6 and a dwelling on a farm in accordance with Policy CTY10. If the proposal accords with either policy, it is therefore acceptable in principle.

5. The Council argues that the proposal does not comply with criterion (a) of Policy CTY10. This requires that the farm business is currently active and that it has been established for at least 6 years. Paragraph 5.38 of the Justification and Amplification to Policy CTY10 states that the applicant will therefore be required to provide the farm's Department of Agriculture and Rural Development's (DARD) Business ID number along with other evidence to prove active farming over the required period.
6. In this case, I was informed that the Appellant has a category 3 farm Business ID number (649900) and that in such circumstances DARD subsidy payments are not made. Therefore, because no payments are made, DARD does not issue farm maps. The Council accepted these points and acknowledged that in such cases no farm maps are available. The Appellant therefore submitted land registry information to show the land he owns. The folio relates solely to the appeal site on Ryanstown Road (some 0.35 Hectares). However, other land was taken in conacre. Information provided indicates that three fields were previously taken in conacre by the Appellant and details of the farm survey numbers of the fields were supplied. This information was accepted by the Council. At the Hearing, the Council accepted that the farm business ID number is valid, that the farm is currently active and that the business was set up in 2007. It was not disputed that there was farming activity from 2007 to 2014. However, the Council argue that there was a gap in activity from October 2014 to June 2016 and because of this hiatus the Council does not accept that continuous or active farming took place over the required period.
7. The Appellant has provided evidence in relation to the movement of animals from 2007-2014 and, as outlined above, the farm is considered to be currently active. I have been provided with evidence that three sheep were purchased by the Appellant in June 2016 and additional post hearing evidence demonstrating that the Appellant purchased three animals in January 2016 and four animals in January 2017. Photographs taken during the case officer's site visit around the end of 2014/early 2015 show the land at No 15 Ryanstown Road to be fenced off and in good condition. The photographs also show a hay manger and two water feeders for animals.
8. The evidence indicates that there was farming activity for seven years and seven months from March 2007 to October 2014. From then, there is a gap in activity until January 2016 when animals were purchased. Since then, there is evidence of other animals being purchased in June 2016 and in January 2017. The medical evidence indicates that the Appellant's wife suffered from vascular dementia in November 2011 when farming activity was ongoing. Nevertheless, I was told that the aforementioned gap in farming activity coincided with the time when the Appellant's wife was quite ill. The medical evidence was not disputed in this regard and the details provided broadly corroborate this. I consider it a reasonable proposition that the Appellant would have had other priorities during this time period, hence the break in farming activity. I also note the photographic evidence of late 2014/early 2015 showing the land in good agricultural and environmental condition. The policy does not refer to continuous farming. Rather, when read as a whole, it seeks evidence in addition to that from DARD, if available, to prove that active farming has taken place for at least six years. In the evidential context before me, I am satisfied that there has been activity since 2007 albeit intermittent at times from October 2014 and, as outlined above, the Council is satisfied that the farm is currently active. A gap in activity of 15 or 20 months over a period of some ten years, given the circumstances, does not mean that the policy requirement is not fulfilled. Even in

the absence of the post hearing evidence describing some additional animal purchases, I would be broadly content that the proposal satisfies the policy criterion. All in all, I find the proposal to be acceptable in principle. Accordingly, the first, second and third reasons for refusal are not sustained.

9. Policy CTY14 of PPS21 relates to the impact of a proposal on the rural character of an area. It was argued that the proposal would result in suburban style build-up and that it would fail to reflect the traditional settlement pattern of the area. Paragraph 5.78 of the Justification and Amplification to the policy states that in assessing the cumulative impact of a building on rural character the matters taken into consideration include the intervisibility of the proposed building with existing and approved development and the siting, scale and design of the proposed development.
10. The site is restricted in size and comprises part of a field to the rear of No 15 Ryanstown Road. The proposed dwelling would be sited behind No 15 and this would result in a tandem style spatial relationship with the existing dwelling. This sort of settlement pattern is not typical of the area. While there are some instances of additional buildings positioned to the rear of dwellings in the locale, they are generally ancillary in nature and do not form a separate residential unit. No detailed information was provided by the Appellant to demonstrate that any new dwellings were approved to the rear of another, thus directly comparable to the appeal proposal. On approach to the site from the south and particularly around the frontage of No 15, one would clearly appreciate the tandem style, back-land nature of the proposal. Despite the sloping topography, the proposal would read with No 15 and the other buildings to the north at Nos 11 and 13, resulting in a suburban style build up of development. Whilst there has been some erosion of rural character to date, that does not justify approving another development that would further erode and cause a detrimental impact on the remaining rural character of the area.
11. In support of his case, the Appellant drew attention to Policy CTY10 which stipulates that new buildings should visually link or cluster with an established group of buildings on the farm. He contended that the proposal would satisfy this policy test and that this factor should be weighed in favour of the proposal. That particular requirement however, relates to the visual integration of proposals for farm dwellings which is distinct to the tests relating to rural character. I am reinforced in this view by paragraph 5.62 of PPS21. It indicates that a group of existing buildings, such as a farm complex may also provide an opportunity to sensitively integrate a new building provided this does not adversely impact on rural character. I see nothing in PPS21 that endorses suburban style build up. Appeal decision 2016/A0036 does not assist the Appellant's case as that proposal was also found to be contrary to Policy CTY14. Even though the farm buildings are located at No 15 Ryanstown Road, that does not justify approving a proposal contrary to policy. For the reasons stated the fourth reason for refusal is sustained.
12. The Appellant also put forward personal circumstances for consideration. Policy CTY6 of PPS21 states that planning permission will be granted for a dwelling in the countryside for the long term needs of the applicant where there are compelling and site specific reasons for this related to the applicant's personal or domestic circumstances. The policy requires two criteria to be met. Criterion (a): that the applicant can provide satisfactory evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship



- would be caused if planning permission were refused; and Criterion (b): there are no alternative solutions to meeting the particular circumstances of the case, such as an extension or annex attached to the existing dwelling or the conversion or reuse of another building within the curtilage of the property.
13. As previously indicated the Appellant's wife suffers from dementia. Accordingly she requires supervision and assistance. The letter from the Southern Health and Social Care Trust states that Mrs Ryan depends heavily on input from her daughter. However, the Appellant's daughter works full time in Warrenpoint, some 4 miles away. At the Hearing, she indicated that she attends her mother in the evenings mostly and some occasional mornings. Her husband works until 2 o'clock in the afternoon and he sometimes works nightshifts. It is argued that the proposal would enable the daughter to provide onsite care when she finishes her employment and her husband could assist during the day. In respect of the latter proposed arrangement, I fail to see how one can rest and provide an adequate amount of care at the same time. In any event, I note that the Appellant helps with care and supervision and although he is around 70 years old, his caring for his wife is not dependant on a new dwelling. Furthermore, his son lives in No15. Whilst, he may not cope well with his mother's condition, he still resides in the same house and could respond or at least alert others to any immediate medical problems.
  14. Neither the Appellant's daughter nor her husband has had to curtail their working arrangements to provide care since the Appellant's wife was diagnosed over six years ago. There is no evidence that his daughter would have to leave her current employment to provide full time care. In any event, she and her husband reside in Newry, which is located some 30 minutes away, at most, by car. They do not live in a remote location or very far from No 15 so either could be on hand in reasonable time to assist if a medical emergency arose. If such an emergency arose during working hours, the Appellant's daughter could be there in around ten minutes by car. I acknowledge the pressure on the Appellant's daughter in juggling full time employment with caring for her sick mother and that it would be more convenient to reside nearby, but there is no compelling evidence that the current circumstances are so unacceptable that genuine hardship would result without a new dwelling.
  15. In addition to the above, there are alternative solutions that could be explored. For instance, there is an outbuilding that could be converted and extended within the curtilage of No15. This could be refurbished and weatherproofed to make it suitable for occupation. Given that this is an independent building separate from No 15, I am satisfied that such works would not unacceptably disrupt the Appellant's wife routine or constitute major building works. While this building may be presently used to store farm machinery, there is enough space around No15 to erect another store, if required. The use of a mobile home, of reasonable size, for a temporary period could also be explored and the timeframe could be extended, if the circumstances were to warrant it. For the reasons stated, the personal circumstances do not satisfy policy and they do not outweigh or justify setting aside the environmental objections to the proposal.
  16. I acknowledge that the proposal is acceptable in principle. However, this combined with the personal circumstances advanced do not outweigh the failure of the proposal to meet Policy CTY14 and overcome the stated detrimental impact the proposal would have on the rural character of the area.

17. The fourth reason for refusal is sustained and is determining. The arguments advanced in respect of Policy CTY6 do not overcome this. The appeal must therefore fail.

This decision is based on the site location plan @ 1:2500 stamped refused by the Council on 28 November 2016.

**COMMISSIONER PAMELA O'DONNELL**



**List of Appearances**

Planning Authority:-	Mr G Murtugh (Newry, Mourne & Down Council)
Appellant(s):-	Mr C O'Callaghan (Agent) Mr & Mrs Larkin (Representing Appellant) Ms S Hanna (Agent)
Third Parties:-	None

**List of Documents**

Planning Authority:-	"A" Statement of Case "C" Post Hearing Evidence
Appellant(s):-	"B" Statement of Case "D" Post-Hearing Evidence
Third Parties:-	N/A



# Appeal Decision

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<b>Appeal Reference:</b>	2015/A0062
<b>Appeal by:</b>	Bernard Mooney
<b>Subject of Appeal:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Dwelling with a detached garage on a farm
<b>Location:</b>	Approximately 100 metres south east of 20 Barrons Hill, Bessbrook
<b>Planning Authority:</b>	Department of the Environment
<b>Application Reference:</b>	P/2012/0770/F
<b>Procedure:</b>	Hearing on 21 October 2015
<b>Decision by:</b>	Commissioner Rosemary Daly, dated 29 February 2016

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is the principle of a new dwelling and garage in the countryside.
3. The appeal site is located in the rural area, outside any settlement development limit, as designated by the extant Banbridge, Newry and Mourne Area Plan 2015 (BNMAP). The BNMAP does not contain any specific policies for single dwellings in the countryside that are material to this appeal.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS), which came into effect in September 2015, is material to all decisions on individual planning applications and appeals. There is no policy conflict or change in direction between the provisions of the SPPS and Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21) regarding dwellings on farms. Notwithstanding the appellant's evidence relating to questions to the Minister of the Environment and evidence relating to internal DoE policy interpretation of policies for the countryside, the SPPS is the most recent expression of policy which retains policy for the countryside within existing planning policy documents until a new plan strategy for the whole Council area has been adopted. Accordingly the operational requirements of the policies contained in PPS21 are what should be considered as they are material to the assessment of the appeal proposal.
5. Policy CTY1 of PPS21 sets out the range of types of development which in principle are considered acceptable in the countryside. One such type of development relates to a dwelling on a farm in accordance with Policy CTY10.

- Another type of development relates to the special personal and domestic circumstances in accordance with Policy CTY6. Should the development comply with Policy CTY6 or Policy CTY10 it then falls within the remit of acceptable development in the countryside as set out within Policy CTY1. It also states that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located within a settlement.
6. Policy CTY10 sets out three criteria that dwellings on farms must satisfy. The Planning Authority's concern is that the proposal fails to meet criterion (a) that the farm business is currently active and has been established for at least 6 years; and criterion (c) that the new building is visually linked or sited to cluster with an established group of buildings on the farm.
  7. Criterion (a) requires that a farm business is currently active and established for at least 6 years. Whilst paragraph 5.38 of the justification and amplification of the policy CTY10 states that "*the applicant will therefore be required to provide a farm's DARD business ID number along with other evidence to prove active farming over the required period*", this is not a requirement stipulated by the head note of Policy CTY10. Clearly the provision of a Farm Business ID number is a non disputed way of demonstrating compliance with criterion (a) of Policy CTY10, however as noted by appeal 2014/A0065 there may be certain instances in the absence of the appellant having a farm business ID number, where other evidence is provided to demonstrate that there is an active and established farm business. The appellant provided evidence of other appeal decisions and DoE decisions, relating to the absence of a farm business ID number. However each case has to be considered in its own evidential context. As such the test of policy is not whether a farm business number has been in existence for 6 years but that the farm business is currently active and has been established for at least 6 years.
  8. The appellant lives in Bessbrook and owns the 2.04 hectares holding at Barrons Hill. The Department of Agricultural and Rural Development (DARD) consultation response to the Planning Authority stated that the farm business has not been in existence for more than 6 years and that a Single Farm Payment (SFP) or other subsidies have not been claimed. According to the Planning Authority case officer report the appellant's DARD business reference was registered in August 2012, however correspondence (email on the Planning Authority file from Mr Mooney to the Planning Authority dated 29 April 2013) states this is a Client reference number (238293) and he was unable to claim the single farm payment because he had no entitlements. At the appeal hearing the appellant stated that a Farm Business ID 657286 for Category 3 farming is now in place.
  9. Correspondence from Mr O'Callaghan, signed on 22 October 2011, stated that he rented the appellant's land for silage cutting from January 2001. Mrs Josephine O'Callaghan's farm map dated 26 February 2005 including their Farm Business ID (611602) was provided showing the appellant's land within this farm business at that time. A more recent farm map, dated 3 August 2012, was provided showing the appellant's holding (Client Number 238293) indicating that the land was no longer part of Mr and Mrs O'Callaghan's farm. Further correspondence from Mr O'Callaghan dated 5 April 2013 stated that he formally takes the land in conacre and that he uses the land for cutting silage, or grazing cattle (to allow his own land to replenish itself). Mr O'Callaghan also stated that as part of the letting

arrangement is that the appellant was "responsible for maintaining the land i.e provision of stock proof fencing, maintaining hedges, fertilising the ground, drainage and so on". Additionally he also stated that he no longer claims Single Farm Payment Subsidies for this land, as the appellant had indicated that he was considering applying for a Farm Business ID to claim the subsidy. No evidence was provided relating to any subsidy claim on behalf of the appellant's farm business. The Planning Authority stated at the hearing that this conacre agreement came to end in 2013 following Mr O'Callaghan's death. This was not disputed by the appellant. No further evidence relating to the conacre agreement was provided. The information presented in relation to the appellant's farm business ID does not allow me to conclude that the farm business is currently active and has been established for a period of at least 6 years.

10. Other evidence provided by the appellant related to a letter from R Patterson Contracts (Agricultural Contractor) in support of the appellant farming activity. The letter stated that Mr Patterson had undertaken various farm activities for Mr Mooney at Barrons Hill. The activities listed by the letter relate to spreading slurry, sowing fertiliser, cutting and baling silage from a period March – September 2006 – until April – August 2013. This time period relates to the same time that Mr O'Callaghan rented the land. Some of the activities such as cutting silage appear to overlap the activities that Mr O'Callaghan was permitted to do as part of the conacre agreement. To my mind this casts some doubt over the reliability of this information. The photograph dated 2 July 2003 showing grass cut and hay bales stacked on the land demonstrates agricultural activity, but it does not directly attribute this activity to the appellant's farm business. Other receipts and statements were provided showing the purchase of fencing from Forum Building Supplies, Belfast in May 2006 and various weed killer, posts and fertilizers from Mackin's Animal Feeds and Hardware Ltd over the period from 2006 – 2013. The receipts do indicate purchase of such products during this time period but their purchase and use is not specifically related to the land at Barrons Hill. I accept the appellant does not own other farm land and whilst the purchase of such products may indicated the land at Barrons Hill was being maintained in good condition, I note this to be part of the conacre agreement with Mr O'Callaghan. This of itself, does not conclusively demonstrate that a farm business is currently active and has been established for at least six years.
11. The appellant also provided a copy of a flock list including flock number 782690 dated 1 November 2013. The listed related to 15 sheep (including animal number) with an 'in date' on 28 October 2013. No reference to where the sheep were being kept was on the flock list. The list provides no information to directly link the flock to the appellant's land at Barrons Hill, it relates to one event in 2013 and no further evidence was presented of any subsequent flock movement on land that you would expect to see for an active and established farm business. This evidence does not demonstrate that the appellant's farm business is currently active and established for at least 6 years.
12. On balance considering all of the information presented in support of the appeal, which I appreciate was presented in good faith, the evidence before me is insufficient to allow me to conclude that the appellant's farm is currently active and has been established for at least 6 years. In respect of the appellant's arguments relating to precedent, limited information was provided to allow a direct comparison of the evidential circumstances in each case. Nonetheless I consider



- the circumstances in this case is therefore not directly comparable to those referred to in other appeal decisions and Planning Authority decisions where the evidential context was different and a dwelling was sought on the basis of a farm business undertaken by currently active and established farmers. Accordingly the proposal before me does not justify a new dwelling on a farm in accordance with criterion (a) of Policy CTY10.
13. Whilst the Planning Authority raised no objection in respect of criterion (b) of Policy CTY10. At the appeal hearing the Planning Authority advised that Mr O'Callaghan had obtained planning permission for a dwelling on land adjacent to 17 Barrons Hill on 20 August 2012, on the basis of his Farm Business ID number (611602). However, on the 3 August 2012 I note the appellant's land did not form part of Mr & Mrs O'Callaghan's farm business.
  14. Criterion (c) of Policy CTY10 requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable access to the dwelling should be obtained from an existing lane. The appellant's land comprises three fields alongside and set back from Barrons Hill. A laneway leading from Barrons Hill through field 1 and 2 provides access to the remains of a derelict building and a rectangular concrete base. The appellant provided photographs dated 16 March 2004 showing an agricultural building located on the site. This building is no longer on the site. The appellant stated that the sub floor of an agricultural building has been laid, as the appellant intended to replace the former building but did not seek planning permission for the replacement shed. Irrespective of the existing remains of a building and the presence of a concrete base these do not constitute an established group of buildings on the farm. The DoE guidance on Policy CTY10 criterion (c) as referred to by the appellant is withdrawn and it does not provide a rational pertinent to this case. This advice is not contained within the policy requirements or justification and amplification of the policy nor does it provide a reason to override the policy requirements of criterion (c) of Policy CTY10. No persuasive evidence was presented to demonstrate how the proposal fell within the exceptions specified in Criterion (c) of Policy CTY10. Accordingly the appeal proposal fails to meet criterion (c) of Policy CTY10.
  15. The personal and domestic circumstances presented by the appellant relate to Mrs Mooney's (appellants wife) medical condition where she would benefit from having housing on one level. The evidence presented does not demonstrate a site specific compelling need for the appellant's wife to live at the appeal site. No persuasive evidence was presented to demonstrate that the refusal of the proposal would cause a genuine hardship to the appellant or what alternatives were considered to accommodate Mrs Mooney's requirements. The appeal proposal fails to meet the criteria set out in Policy CTY6.
  16. The proposals failure to meet criteria (a) and (c) of Policy CTY10 and the criteria specified for Policy CTY6 means the Planning Authority's objections in respect of these policies are sustained. It has not been demonstrated that there are overriding reasons why the development is essential and could not be located in a settlement. As the proposal does not fall within the range of types of development which in principle are considered to be acceptable in the countryside, it also fails to meet the requirements of Policy CTY1 of PPS21. Having considered all the evidence presented I am not persuaded that a decision to refuse this appeal is



administratively unfair. The failure of the proposal to meet the policy requirements as stated above is determining in this case. Accordingly the Planning Authority's reasons for refusal are sustained.

This decision is based on the following drawings:-

Drawing 01 Area Planning Office received 2 Oct 2012

Drawing 02/1 Area Planning Office received 9 Dec 2013

Drawing 03 Area Planning Office received 2 Oct 2012

Drawing 04 Area Planning Office received 2 Oct 2012

Drawing 05 Area Planning Office received 2 Oct 2012

**COMMISSIONER ROSEMARY DALY**

**List of Appearances**

Planning Authority:- Patricia Manely, Newry, Mourne & Down District Council  
Ashley Donaldson, Newry, Mourne & Down District Council

Appellant:- Colin O'Callaghan, O'Callaghan Planning

**List of Documents**

Planning Authority:- "A" Newry, Mourne and Down Statement of Case  
Copy of File Documents provided at the Appeal  
Hearing  
Letter from Mr F O'Callaghan dated 5 April 2013  
Coloured Farm Map relating to Mr B Mooney dated  
3/08/2012  
Coloured Farm Map relating to Mrs J O'Callaghan  
dated 26/02/2015

Appellant:- "B" O'Callaghan Planning Statement of Case and  
Appendices  
Review into operations of PPS21 dated 16 July 2013



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0047
<b>Appeal by:</b>	Ms V Lillis
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Dwelling on a farm
<b>Location:</b>	Lands located 100m northwest of the junction between Tornagrough Road and Rusheyhill Road, Budore, Belfast
<b>Planning Authority:</b>	Lisburn and Castlereagh City Council
<b>Application Reference:</b>	LA05/2015/0124/O
<b>Procedure:</b>	Informal Hearing on 19 October 2016
<b>Decision by:</b>	Commissioner D McShane, dated 9 November 2016

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposed development would be
  - acceptable in principle in the countryside; and
  - visually linked or sited to cluster with an established group of buildings on the farm.
3. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. In the Belfast Metropolitan Area Plan 2015 (BMAP), the appeal site is located outside the settlement development limit in the countryside. BMAP contains no specific policies or designations that are of assistance in the determination of this appeal. The relevant policy context is therefore provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21), which is identified by the Strategic Planning Policy Statement for NI (SPPS) as a retained policy document.
4. Policy CTY 1 of PPS 21 lists 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. The circumstances wherein planning permission will be granted for an individual dwelling house are outlined. This includes a dwelling on a farm in accordance with Policy CTY 10. This policy is expressed permissively stating that planning permission will be granted where three criteria are met. The parties dispute Criteria (a) and (c).
5. Criterion (a) requires that *the* (my emphasis) farm business is currently active and has been established for at least 6 years. This statement is reiterated in paragraph 5.38 of the Justification and Amplification text, which goes on to state

- that the applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period. The provision of a DARD business ID number is therefore the recommended means of demonstrating compliance with Criterion (a) as it enables an applicant to demonstrate that the farm business is active and has been established for 6 years and that the application site is on land attributed to the farm's DARD business ID number.
6. The Appellant submitted a DARD business ID number and farm map that relate to a 2.34 ha farm business located at Tannaghmore Road, Seaforde, Co Down (Business ID 642007). DARD confirms that it is active and has been established for 6 years. The dispute between the parties relates to the Appellant's claim that field nos. 1-10 at Tournagrough Road, Belfast (as shown on the field boundary map submitted) are part of the Seaforde farm business.
  7. The Appellant owns the Tornagrough lands along with her siblings; however Policy CTY 10 applies to the farm business and is not concerned with land ownership. DARD confirmed that in May 2015 field nos. 1, 2, and 3 at Tornagrough Road were added to the Appellant's farm business ID number and SFP claimed. However, if added in May 2015, the 6 year test is not met. Indeed, field nos. 1, 2, and 3 were taken in con acre and SFP was claimed under a third party's DARD business ID No between 2006 and 2013. In any event, the 1 ha appeal site comprises part of field no. 4a and 4b, 5 and 8, which are separated from field nos.1, 2 and 3 by Tornagrough Road. The grazing of horses, a general receipt for agricultural services provided, NIE wayleave payment statements and public liability insurance documents pertaining to 40 acres of land at 8 Tornagrough Road are not sufficient to persuade me that the Tornagrough lands, including the appeal site, form part of the Appellant's established farm business at Seaforde. There is no persuasive evidence to indicate that at any point the appeal site has been attributable to the DARD business number associated with Seaforde. Accordingly, the proposal fails to meet Criterion (a). The family circumstances, which it is claimed caused poor administration and record keeping in respect of the Tornagrough lands are not sufficient to override the failure of the proposal to meet Criterion (a) of Policy CTY 10.
  8. Criterion (c) requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm. It is proposed to site the appeal dwelling in the south west corner of field no.8. Notwithstanding that a dwelling sited as proposed would be sensitively positioned with a group of buildings adjacent to the south, Paragraph 5.41 states that it will not be acceptable to position a new dwelling with buildings which are on a neighbouring farm. In other words, the proposed dwelling must be positioned sensitively with buildings on *the* (my emphasis) farm. It has not been demonstrated that the appeal site or the buildings located on it are part of the Appellant's farm business as identified by the DARD business ID number submitted; therefore it does not constitute an out-farm. As such, the proposal fails to comply with Criterion (c) of Policy CTY 10.
  9. No persuasive evidence was submitted to indicate that there are overriding reasons why the development is essential. Accordingly, the Planning Authority has sustained its reason for refusal based upon Policies CTY 1 and CTY 10 of PPS 21.

This decision is based on the following drawings:-

- LCCC Drwg No.01: Site Location Plan (Scale1:2500)
- LCCC Drwg No.02: Proposed Farm Dwelling (Scale 1:500)
- PAC Drwg No.01: Proposed Siting and Curtilage – Received at Hearing

**COMMISSIONER D MCSHANE**



**List of Appearances**

Planning Authority:- Mr M Hanvey, Lisburn and Castlereagh City Council  
Appellant:- Mr A Stephens, Matrix Planning Consultancy

**List of Documents**


Planning Authority:- "1" Statement of Case and Appendices  
Appellant:- "2" Statement of Case and Appendices  
Received at Hearing Drwg PAC No.01: Proposed Siting and Curtilage restriction

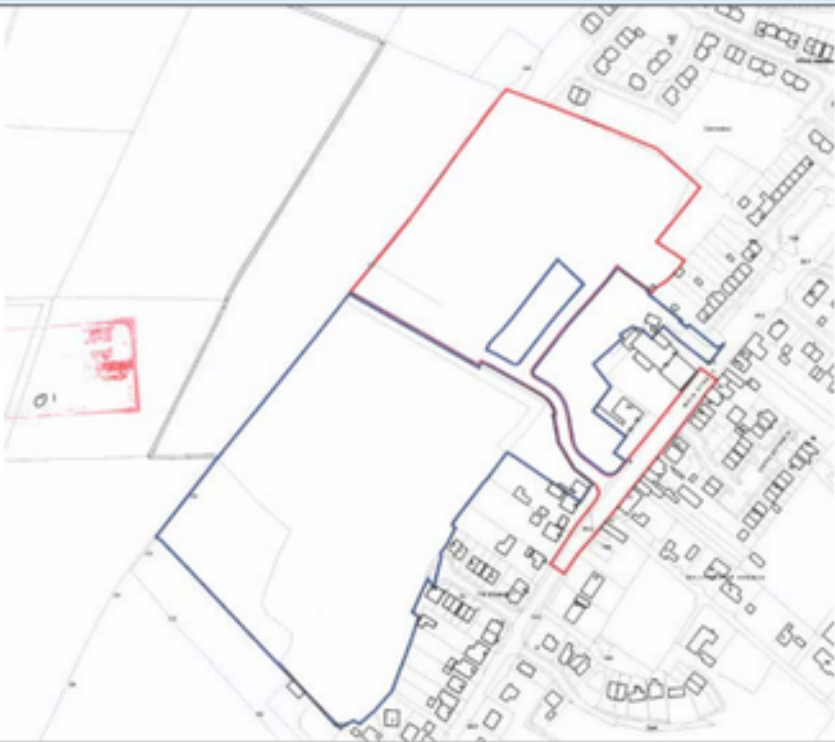
## ITEM 4.2

## Ards and North Down Borough Council

Application Ref	LA06/2022/1076/F
Proposal	63 dwellings, open space, landscaping, parking and access.
Location	50 Main Street and lands to rear of 38-48 Main Street, Carrowdore
Committee Interest	An application which falls within the major category of development
Validated	20/10/2022
Summary	<ul style="list-style-type: none"> <li>• Major application and the Pre-Application Community Consultation statutory process carried out.</li> <li>• Seeks approval for Phase 2 at the site. Phase 1 granted under LA06/2022/0881/F for 25No. Dwellings (11No. detached and 14No. semi-detached), open space, landscaping, parking and all other associated site and access works, on 10 November 2023.</li> <li>• Principle of development on site granted under X/2009/0470/F – and commencement of development previously certified</li> <li>• No representations received</li> <li>• Consultees - no objections subject to conditions</li> <li>• Site located on NW side of Main Street on vacant brownfield site within Carrowdore settlement limit.</li> <li>• Principle of development already established on the site</li> <li>• Proposed design is policy compliant under policy LC1 APPS 7 in that the density per hectare (dph) and average plot sizes are in keeping with the character of the surrounding area.</li> <li>• Proposed public open space equates to 12.5% of overall site, which includes the Phase 1 and 2 development - compliant with Policy OS 2 'Public Open Space in New Residential Development' of PPS 8 which requires 10%</li> <li>• Given the proposed separation distances, which comply with the standards set out in Creating Places, the fact that there is no inter-visibility between dwellings, no overlooking, loss of light or overshadowing there is no impact on residential amenity. A condition will be attached</li> </ul>

	<p>requiring obscure glazing of bathroom windows as detailed in case officer report.</p> <ul style="list-style-type: none"> <li>• Access road to be adopted by DfI Roads; no objections from DfI Roads. Parking both in-curtilage and spaces for visitors throughout the development accords with Parking Standards.</li> <li>• The proposal complies with policy QD1 of PPS 7.</li> <li>• NED - no objection subject to negative condition requiring HRA</li> <li>• Proposal complies with PPS 15 'Flood Risk'</li> <li>• Given previous use of site for Ards Building Products Ltd yard and current use of adjacent land for a petrol station, Environmental Health further considered the submitted documentation for the Phase 1 development under LA06/2022/0881/F. No objections raised subject to conditions requiring a verification report to be submitted and should any unexpected contamination be encountered during site works.</li> </ul>
Recommendation	<b>Approval</b>
Attachment	Item 4.2a – Case Officer Report

<b>Development Management Case Officer Report</b>		 <b>Ards and North Down</b> Borough Council	
<b>Reference:</b>	LA06/2022/1076/F	<b>DEA:</b> Ards Peninsula	
<b>Proposal:</b>	63 dwellings, open space, landscaping, parking and access	<b>Location:</b>	50 Main Street and lands to rear of 38-48 Main Street Carrowdore
<b>Applicant:</b>	JHT (Carrowdore) Ltd		
<b>Date valid:</b>	20/10/2022	<b>EIA Screening Required:</b>	Yes
<b>Date last advertised:</b>	2/11/2022	<b>Date last neighbour notified:</b>	12/04/2024
<b>Consultations – synopsis of responses:</b>			
DFI Roads	No objection subject to conditions		
DAERA Natural Environment Division	No objection subject to condition		
Water Management Unit	No objection if the WWTW and associated sewer network can take the additional load		
NI Water	No objection. NI Water has confirmed that there is available capacity at the WWTW and there is a public foul sewer within 20m of the proposed development boundary which can adequately service these proposals		
Environmental Health	No objection subject to conditions		
Rivers Agency	No objection subject to condition		
Northern Ireland Electricity Networks	No objection however applicant to make contact prior to construction stage to apply for an alteration to the overhead line to maintain safety clearances		
<b>Letters of Support</b>	<b>0</b>	<b>Letters of Objection</b>	<b>0</b>
<b>Petitions</b>	<b>0</b>		
<b>Summary of main issues considered:</b>			
<ul style="list-style-type: none"> <li>• Principle of development</li> <li>• Design, Visual Impact and Impact on Character of the Area</li> <li>• Public Open Space/Private Amenity Space</li> <li>• Impact on Residential Amenity</li> <li>• Access, Road Safety and Car Parking</li> <li>• Archaeology and Built Environment</li> <li>• Security from Crime</li> <li>• Designated Sites/Other Natural Heritage Interests</li> <li>• Other Planning Matters</li> </ul>			

<b>Recommendation: Grant Planning Permission</b>
<b>Report Agreed by Authorised Officer</b>
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal <a href="https://epicpublic.planningni.gov.uk/publicaccess/">https://epicpublic.planningni.gov.uk/publicaccess/</a>
<b>1. Site and Surrounding Area</b>
<p>The application site is located on the north-western side of Main Street, Carrowdore. The site is a brownfield site (c. 3.6ha), former Ards Building Products Ltd yard. The site is now vacant and has been disused for some time. The groundcover is dominated by hard standing and vegetation. The site accesses onto Main Street on the southern corner of the site.</p> <p>The site is located within an urban development surrounded by agricultural land and existing and approved residential development.</p> <p>The site is within the settlement of Carrowdore and is not zoned for a particular use in the Ards and Down Area Plan 2015.</p>
<b>2. Site Location Plan</b>




### 3. Relevant Planning History

X/2009/0470/F - Former Ards Building Site, 50 Main Street & lands to the rear of 38-48 & 52-68a Main Street, Carrowdore - Residential development of 98 No. dwellings, comprising detached, semi-detached, townhouses, garages, car ports, access, landscaping, open space and associated site works – Permission granted 4/7/2012  
 Condition 2 discharged – submission of a written remediation scheme  
 Condition 3 discharged – additional risk assessment and remediation strategy agreed  
 Condition 16 discharged – street lighting

LA06/2018/0050/LDE - Former Ards Building Site, 50 Main Street and lands to the rear of 38-48 and 52-68a Main Street, Carrowdore - Commencement of development through the construction of foundations on sites 1, 2 and 3 in accordance with planning permission X/2009/0470/F – Consent granted 12/04/2018

LA06/2019/1012/F - Lands adjacent to 26 Main Street, west and to the rear of 38-40 Main Street, Carrowdore - Residential development comprising 9 No. dwellings (7 detached and 2 semi-detached), garages, car parking, landscaping including landscape buffer, and all other associated site works - change of house type (amendment to extant permission X/2009/0470/F) – Permission granted 18/11/2020

LA06/2022/0336/PAN – Former Ards Building Site, 50 Main Street and lands to the rear of nos. 38-48 and 52-68a Main Street Carrowdore - Residential development of circa 90no. dwellings, including site access, open space, landscaping and all other associated infrastructure works.

The application falls within the major category of development. Section 27 of the Planning Act (NI) 2011 places a statutory duty on developers to carry out a Pre-application Community Consultation (PACC) on major development proposals. The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations 2020 (as amended) suspended the requirement for a PACC public event. In accordance with temporary statutory provisions during the emergency period the Applicant put in place alternative arrangements to engage with the public at pre-application stage.

The PAN was submitted to the Council on 30 March 2022 and the application was received on 20 October 2022. The PAN was submitted more than 12 weeks in advance of the submission of this application.

The PAN was reviewed by the Council and was considered to meet the minimal statutory requirements.

A Public Information Notice was placed in the Newtownards Chronicle on 5 May 2022 to engage with the community at pre-application stage. A leaflet drop to residential properties within a 200m radius of the application site took place on the 16 May 2022.

Having reviewed the Pre-Community Consultation Report, I am satisfied that all statutory pre-application requirements have been fulfilled.

From analysis of feedback and those material planning considerations raised, there has been a mixed reception to the proposals, with a majority of respondents (residents and elected representatives) expressing support for the proposals.

Whilst a PAN was submitted for 90 dwellings, two separate planning applications were submitted to the Council for determination. An application for 25 dwellings (Phase 1) was granted planning permission on 10 November 2023 (LA06/2022/0881/F). The current application constitutes Phase 2 of the development.

#### 4. Planning Assessment

**The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:**

- Ards and Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement & Parking
- Planning Policy Statement 7: Quality Residential Environments
- Addendum to PPS 7: Safeguarding the Character of Established Residential Areas
- Planning Policy Statement 8: Open Space, Sport and Recreation
- Planning Policy Statement 12: Housing in Settlements
- Planning Policy Statement 15: Revised Planning and Flood Risk

Planning Guidance:

- Creating Places
- DCAN 8 – Housing in Existing Urban Areas
- DCAN 15 – Vehicular Access Standards

#### Principle of Development

The site is within the settlement of Carrowdore and is the former Ards Building Products Ltd yard. The land is not zoned for a particular use in the Ards and Down Area Plan

2015. The principle of development has been established by the planning history of the site.

The SPPS states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

### **Design, Visual Impact and Impact on Character of the Area**

The proposal is for the erection of 63 No. dwellings units within an urban context. The density of the proposed development would equate to approximately 17.5 dwellings per hectare (dph). The wider Established Residential Area (ERA) for the purposes of this assessment is considered to include residential development in Quarry Court, Manse Court, The Stables and McBriar Meadow. The area is characterised by medium density terrace, semi-detached and detached dwellings with varying amenity areas. The Stables and McBriar Meadow have a density of approx. 36dph whereas Quarry Court has a lower density of 15dph. The density of the application site is therefore not considered to be out of character with the area or significantly higher than that found in the area.

It is considered that the pattern of development is consistent with that exhibited in the area. The average plot size of the application site is 0.057ha which is comparable to other residential plots in the area which range from approximately to 0.027 to 0.06ha. All dwellings comply with the space standards set out in Annex A of the Addendum to PPS 7.

In my professional planning opinion the proposal complies with policy LC1 of the Addendum to PPS 7.

The 63 dwellings will comprise of 13 No. detached (house types P05, P06 & P07) and 50 No. semi-detached (P01, P02, P03, P04 & P09). All dwellings are 2 storey and will be finished in brick.

The dwellings in the immediate area are finished mainly in render and pebble dash with some brick. There is a vast variety of house types in the area including bungalows, 1 ½ storey and 2-storey. The adjacent Phase 1 development incorporates similar house types to that currently proposed. The proposed dwellings are not considered to be out of scale with the development in the local area nor will they be out of character since there is such a vast variety of house types and finishes.

Spot levels have been provided throughout the site and the finished floor levels of the proposed dwellings respect the topography of the site.

I am satisfied that the design, layout, scale and massing of the proposed dwellings will respect the topography of the land and the character of the area in accordance with PPS 7 Policy QD 1..

### **Public Open Space/Private Amenity Space**

An average of 100sqm of private amenity space is provided to the rear of each dwelling and will be enclosed by fencing, boundary walls and landscaping.

Policy OS 2: Public Open Space in New Residential Development from PPS 8 requires new residential development of 25 or more units, or on sites of one hectare or more, to have public open space provided as an integral part of the development. 10% of the site area is normally expected. The overall site area for Phases 1 and 2 is 3.64ha with open space provision totalling 0.445ha which equates to 12.5%. The minimum threshold of 10% has been met. It is recommended that any approval of the application is subject to planning conditions to ensure the open space is provided and subsequently retained and maintained for the benefit of future residents.

Local neighbourhood facilities are not required due to the scale of the proposal.

### **Impact on Residential Amenity**

Policy QD1 (h) states that design and layout should not conflict with adjacent land uses and there should be no unacceptable adverse effect on existing or proposed properties in terms of over-looking, loss of light, overshadowing, noise or other disturbance.

The site is relatively flat with a gentle slope away from Main Street towards the rear in a north-west direction.

The dwellings potentially affected by the proposed development will be considered below.





Phase 1 and Phase 2 Master Layout

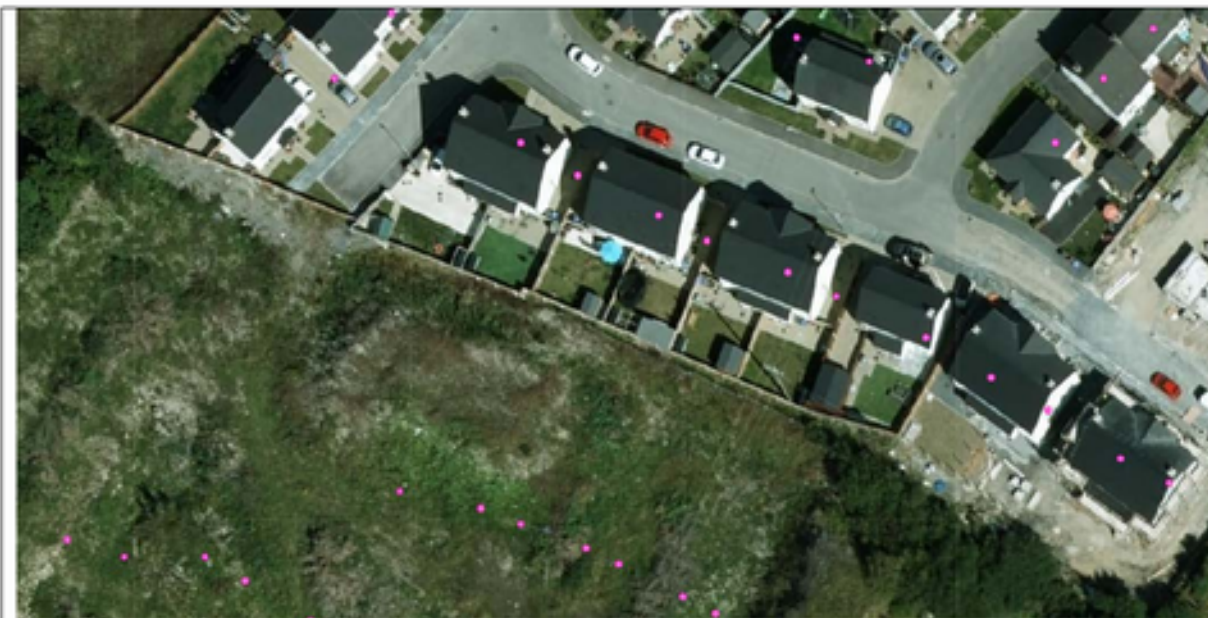
The dwellings approved in phase 1 back onto sites 63 to 71 and are also west of site 76. There is a 25m back to back separation distance which meets the guidance recommended in creating Places. The separation distance between the dwelling approved on site 77 and that proposed at site 76 is consistent with the rest of the layout. There will be no intervisibility between the dwellings. The phase 2 application is located further away from the noise sources and taking into consideration the glazing requirements for the dwellings in the LA06/2022/0881/F application, Environmental Health requested that glazing and ventilation systems in units 14-16 will have a similar sound reduction requirement to the units (11-13, phase 1 as per Figure D of the Lester Acoustics report). It is accepted that this can be achieved by a standard double-glazing system and a proprietary acoustic slot ventilator. I am content that there will be no adverse impact on the residential amenity of the future residents in phase 1.

52-58 Main Street are located north-west of the petrol filling station and whilst they front onto Main Street, they will abut the application site along their rear boundaries. The existing terrace dwellings have 30m long rear gardens with various ancillary structures located along the rear boundary. Site 14 abuts their rear boundaries and will be constructed as house type P05. This house type has a first-floor window proposed on the gable elevation which serves the internal stairwell. Due to the separation distance



and the window not serving a main habitable room, I have no concerns with overlooking. The separation distance and intervening outbuildings will also protect the amenity of the dwellings fronting Main Street. Due to the proposed separation distance, there is also no concern with loss of light or over-shadowing.

18-38 McBriar Park and 65 McBriar Meadow are recently constructed new dwellings located along the north-eastern boundary.



McBriar development at top and site layout on bottom

The dwellings in McBriar Meadow have 10m long rear gardens and the proposed dwellings adjacent to the boundary have a minimum of 10m rear gardens so the recommended back-to-back relationship of 20m (as stated in Creating Places) can be provided. This will ensure that an adverse impact is not caused on either the existing

or proposed dwellings by either loss of light or overlooking. The rear first floor windows serve bedrooms, and this is a typical relationship in any urban area.

I have also considered residential amenity for the proposed residents and noted that the proposed first floor gable windows have been designed so that stairwell windows look towards en-suite/bathroom windows. This layout prevents intervisibility between the dwellings. The bathroom windows on the gable elevations will be conditioned accordingly to be retained permanently with obscure glazing.

I am satisfied that the overall layout will not create an adverse impact on residential amenity for future occupants of the proposed dwellings. Adequate separation is proposed between each unit to prevent overshadowing and loss of light and the level of amenity space provided is in accordance with recommended standards.

Having weighed up the potential impact of the proposed development, I am content that there will not be a significant adverse impact on the existing, approved or proposed dwellings.

#### **Access, Road Safety and Car Parking**

The proposed site will be accessed from Main Street. The access road into the development will be adopted by DfI Roads and Private Streets Determination drawings have been submitted.

DfI Roads considered the proposal and offered no objections subject to conditions.

Each dwelling will have two car parking spaces as standard within the curtilage. There are 42 3-bed semi-detached, 10 3-bed detached, 8 4-bed semi-detached and 3 4-bed detached dwellings. In addition to the 2 in-curtilage parking spaces provided per dwelling (106 spaces), 37.5 visitor parking spaces are also required in accordance with the Parking Standards document. A total of 38 visitor parking spaces are indicated on Drawing 05A which meets the recommended guidance.

The proposal is therefore not considered to prejudice road safety or significantly inconvenience the flow of traffic.

#### **Archaeology and Built Heritage**

There are no archaeological, built heritage or landscape features to protect or integrate into the overall design and layout of the development.

#### **Security from Crime**

The layout has been designed to deter crime as the back gardens will be enclosed by 1.8m high fencing or walls and back onto each other. The dwellings will look onto the proposed roadway and the area of open space will be overlooked by the front of dwellings proposed on sites 17, 18, 22-26, 48 and 49. I am content that maximum surveillance is provided within the development which will provide a feeling of security and a sense of vitality in all parts of the layout.

### **Designated Sites/Other Natural Heritage Interests**

The Natural Environment Division (NED) was consulted on the proposal. As with NEDs consultation response to the Phase 1 application, NED consider the submitted Outline Habitat Management Plan (oHMP) to lack site specific detail, specifically sections 2.10, 2.12, 2.13, 2.15, and 2.16, based on finalised plans for the development. For example, Landscaping Drawing No.08 shows areas of wildflower planting, however this does not correlate with Figure 4: Habitat Management Plan (HMP) – Habitat Creation/Management Areas (oHMP, Page 10) and lacks information regarding the location of the proposed invertebrate habitat boxes.

NED therefore require the submission of a Final Habitat Management Plan, prior to works commencing on site. This can be secured via a pre-commencement condition on the decision notice. The final HMP must expand on those sections noted above and provide site specific mitigation/compensation based on finalised plans for Phase 2 of the proposal. The final HMP should also provide more specific details on an appropriate management regime to ensure the compensatory measures proposed within, function as needed.

During the survey to inform the Preliminary Ecological Appraisal (NI Biodiversity Checklist– Preliminary Ecological Appraisal [PEA], Main Street, Carrowdore, Co. Down [Phase 2], Gareth Grindle Associates, January 2023), badger activity was identified by the ecologist with trails evident along the north, north-west, west and south-western boundaries of the application site, however no setts were identified by the ecologist. Badgers are protected species under the Wildlife (NI) Order 1985. Should, during construction works, further evidence of badger activity or setts be identified, it will be the responsibility of the developer to ensure their protection and further advice can be sought from NIEA's Wildlife Team if necessary.

Subject to the recommended condition, NED are content with the proposal.

### **Flooding and Drainage**

FLD 3 - Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains.

A Drainage Assessment by Elliott Design Solutions has been submitted in support of the proposal. The Drainage Assessment has demonstrated that the design and construction of a suitable drainage network is feasible. It indicates that the 1 in 100 year event could be contained through the addition of an underground online attenuation system, when discharging at existing green field runoff rate, and therefore there will be no exceedance flows during this event. Further assessment of the drainage network will be made by NI Water prior to adoption.

In order to ensure compliance with PPS 15, DfI Rivers requests that the potential flood risk from exceedance of the network, in the 1 in 100 year event, is managed by way of a condition.

### **Contaminated Land**

The proposed development is located on land which may be contaminated due to previous historical use. (quarry/ builders' yard). The current use of adjacent land as a petrol filling station is also noted. It is therefore possible that this current and previous land use could pose a risk to human health.

It was noted by the Environmental Health Department (EHD) that no information had been submitted in relation to contamination however they considered the documentation submitted with the Phase 1 application LA06/2022/0881/F.

EHD considered a letter dated 15 October 2019 from ATG group which described initial works undertaken as recommended in the Remediation Strategy prepared by RPS referenced IBR0937 and dated January 2017 to address conditions of the granted planning permission (X/2009/0470/F).

This 2017 strategy outlined measures to be taken in respect of soils, groundwater and ground gas. The soils were impacted by PAHs, Metals (Arsenic) and Asbestos. Elevated levels of metals and PAHs were recorded in groundwater across the site and assumed to be leeching from the made ground. Hydrocarbons were also recorded around the location of a former diesel source and assumed to be due to a former diesel leakage spill. Asbestos was detected and the RPS strategy required that it was removed and disposed of off-site. It is also noted that this remedial strategy categorised the site as Characteristic Situation 2. It was reported that there were elevated levels of ground gas with the source being the made ground) and that potentially volatile vapours also could be present (BH16-04).

The 2017 report outlined source removal – excavation and disposal of the impacted areas and the installation of gas protection measures. It was recommended that the excavated material would be stockpiled, and additional testing undertaken to ascertain the suitability of re-use on site.



The 2019 ATG report outlines the removal of the 4 hotspots previously identified TP16-04, TP505, BH16-02 and BH16-04. Each hotspot was excavated in a 2.5m x 2.5m square. Stockpile testing confirmed suitability for re-use as general backfill beneath roads, buildings, hardstanding. The analysis of the base and sidewalls indicated exceedances of a number of PAH GACs. The RPS remedial strategy had proposed that the areas of PAH contamination would be removed and disposed off-site.

ATG propose an alternative remedial strategy. It is now proposed that a suitable capping layer be implemented in areas of soft landscaping where reduced quality soils/exceedances of the GAC remain. TP16 -04 and BH16-04 are located beneath building foundations and driveways. TP505 and BH16-02 are located in the gardens. ATGs latest results indicate that exceedances of GAC only remain at TP16-04 and TP505 which have been demonstrated to be outside the shallow groundwater plume and that infiltration will also be reduced by the development confirming that the reduced quality ground does therefore not pose a risk to the shallow groundwater on site. The previous RPS report proposed that CS2 gas protection measures were installed into the development.

At the request of EHD, ATG provided a further updated response on 16 March 2023 which agreed with the previous assessment by RPS in relation to the characterisation of the site as a Characteristic Situation 2, with the requirement for gas protection measures in line with CIRIA C665.

To achieve the appropriate level of protection, consideration should be given to BS8485:2015 'Code of Practice for the Design of Protective Measures for Methane and Carbon Dioxide Ground Gases for New Buildings'. This indicates, for a Characteristic 2, type A building, the gas protection measures should provide a solution score total of 3.5. ATG has been advised that the proposed gas protections measures designed for the site meet the minimum solution score required- 3.5. EHD has provided recommended conditions relating to the submission of a Verification Report and the recommended steps to take if unexpected contamination and/or buried wastes be encountered during the construction phase.

## 5. Representations

No letters of representation have been received.

## 6 Recommendation

**Grant Planning Permission**

## 7 Conditions



1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

2. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.  
The Council hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 20C.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

3. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.  
No development hereby permitted shall be commenced until the works necessary for the improvement of a public road have been completed in accordance with the details outlined in blue on drawing No. 23B of LA06/2022/0881/F. The Council hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out.

4. The visibility splays at the junction of the proposed access with the public road, shall be provided in accordance with Drawing No. 20C prior to the commencement of development and shall be retained and kept clear thereafter.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

5. The dwellings hereby approved shall not be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of the development.

Reason: To ensure the orderly development of the site and the road works necessary to provide satisfactory access to each dwelling.

6. The development hereby permitted shall not be commenced until any highway structure, retaining wall, culvert requiring Technical Approval, as specified in the Roads (NI) Order 1993, has been approved and constructed in accordance CG300 of the Design Manual for Roads and Bridges.

Reason: To ensure that the structure is designed and constructed in accordance with CG300 of the Design Manual for Roads and Bridges.

7. The dwellings hereby approved shall not be occupied until provision has been made within the curtilage of each dwelling for the parking of private cars at the rate of 2 spaces. In-curtilage parking areas shall be permanently retained thereafter and shall not be used for any purpose other than the parking and turning of vehicles and shall remain free of obstruction for such use at all times.

Reason: To ensure adequate (in-curtilage) parking in the interests of road safety and the convenience of road users.

8. Glazing and ventilation systems capable of providing a sound reduction of at least 18dB  $R_{Tra}$  or greater shall be incorporated into the dwellings located on site numbers 14-16 as shown on Drawing No. 03A prior to occupation and be permanently retained thereafter.

Reason: To protect the amenity of future residents from noise.

9. Prior to the occupation of the proposed development, a Verification Report shall be submitted to and agreed in writing by the Council. This report shall demonstrate the successful completion of remediation works and demonstrate that the site is now fit for end-use, including details of:

a) Capping system

- The report shall demonstrate that an appropriate capping system has been installed within the garden and landscaped areas. This must comprise a 600mm capping system with a minimum of 200mm crushed stone capillary break in the base overlain with 400mm of clean material above subsoil and topsoil. The report must include details of the methodology and programme of the capping system.
- Photographs and records of any excavation works within the source area including photographs showing depths to accommodate the capping layer.
- Records and photographs of the clean material being used and placed on the source area, also showing depths being placed.
- Details of the materials that were used for the capping system along with laboratory certificates and results which confirm that the materials are suitable for use.

b) Gas Protection measures

- The measures must demonstrate compliance with the requirements of CS2 as prescribed in guidance within CIRIA C665 and attain a gas protection score of at least 3.5 with the report including.
- Final designs of building gas protection measures
- Details of any specific products used.
- Records from the installation process including photographic records of:
  - The installation of the under-floor void
  - The construction of the concrete floor
  - Membrane installation works
 and
- Records of inspection of installed gas protection measures

Reason: Protection of human health.

10. If during the development works, new contamination or risks are encountered which have not previously been identified, works shall cease and the Council shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Council in writing, and subsequently implemented and verified to its satisfaction.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

11. No development activity, including ground preparation or vegetation clearance, shall take place until a final Habitat Management Plan (HMP) has been submitted to and approved in writing by the Council. The approved HMP shall be implemented in accordance with the approved details, and all works on site shall conform to the approved HMP, unless otherwise agreed in writing by the Council. The HMP shall include the following:
- a) Clear aims and objectives of proposed habitat management;
  - b) Description of pre-construction, baseline habitat conditions;
  - c) Appropriate maps, clearly identifying habitat management areas;
  - d) Detailed methodology and prescriptions of habitat management measures, including timescales, and with defined criteria for the success of the measures;
  - e) Details of the prohibition of habitat damaging activities;
  - f) Details of the regular monitoring of the effectiveness of habitat management and restoration measures using appropriate methodology (e.g. habitat surveys, vegetation quadrats, fixed point photography) in the 5 years after construction;
  - g) Details of the production of regular monitoring reports which shall be submitted to the Council within 6 months of the end of each monitoring year and

which shall include details of contingency measures should monitoring reveal unfavourable results.

Reason: To compensate for the loss of Northern Ireland Priority Habitat and to mitigate for impacts to protected and priority species.

12. Prior to the construction of the drainage network, a Drainage Assessment, compliant with FLD 3 & Annex D of PPS 15, shall be submitted to and agreed in writing by the Council which demonstrates the safe management of any out of sewer flooding emanating from the surface water drainage network, agreed under Article 161, in a 1 in 100 year event. The Drainage network shall be implemented as approved.

Reason: In order to safeguard against surface water flood risk.

13. All hard and soft landscape works shall be carried out in accordance with the approved plan Drawing No. 19A and the appropriate British Standard or other recognised Codes of Practice.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

14. Prior to the occupation of any dwelling, details of the proposed phased implementation of hard and soft landscaping works must be submitted to and agreed in writing by the Council. The hard and soft landscaping works shall be implemented in accordance with the details and timings agreed in the approved phasing plan. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

15. If within a period of 5 years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

16. No more than 20 of the dwellings hereby approved shall be occupied on site until the communal open space as indicated on Drawing No. 19A has been provided

in accordance with the details shown on the plan. The open space areas shall be permanently retained and shall not be used for any purpose other than as open space.

Reason: To ensure the provision and maintenance of public open space within the site.

17. The Landscape Management Plan dated 4 November 2022 shall be permanently carried out in accordance with the approved details during the operational phase of the development to the reasonable satisfaction of the Council.

Reason: To ensure the provision and maintenance of public open space within the site.

18. The long-term management and maintenance of the open space, as indicated on Drawing No. 19A, shall be undertaken by a management company commissioned by the developer. Details of the arrangements to be put in place to establish the management company and details of the alternative measures which will take effect in the event that the management arrangements break down, shall be submitted to and agreed in writing with the Council prior to the occupation of any dwelling hereby approved.

Reason: To ensure the provision and maintenance of public open space within the site.

19. The first-floor gable windows as indicated in blue on the approved drawings, shall be finished with obscure glass and be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. These windows shall be installed prior to the occupation of each dwelling unit and permanently retained thereafter.

Reason: In order to preserve the amenity of the adjoining properties.

#### **Informative**

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.








Sample House type - Detached (P06)

## ITEM 4.3

## Ards and North Down Borough Council

Application Ref	LA06/2022/1262/F
Proposal	Demolition of existing ancillary residential accommodation, garage and workshop and erection of replacement residential accommodation, detached garage and workshop ancillary to existing dwelling at 225 Millisle Road, Donaghadee
Location	The property known as 225A Millisle Road, Donaghadee.
Committee Interest	A local development application attracting six or more separate individual objections which are contrary to the officer's recommendation; and approval requires a legal agreement
Validated	23/01/2023
Summary	<ul style="list-style-type: none"> <li>• Please note paragraph highlighted bright blue in unredacted version is that blocked out in the redacted version, which is that published online. Both versions are attached. Unredacted version included a paragraph with information not for public view.</li> <li>• Site is located in the countryside, outside Donaghadee</li> <li>• 10 objections from 6 separate addresses - detailed and fully addressed in Case Officer Report.</li> <li>• LA06/2020/0762/LDE is a material consideration which certified the use of a detached building to rear of main dwellinghouse as ancillary living accommodation.</li> <li>• Ancillary accommodation proposal is assessed under Addendum to PPS 7 Residential Extensions and Alterations.</li> <li>• Principle of development acceptable taking account of planning history.</li> <li>• Proposal complies with APPS 7 Policy EXT 1 with no adverse impact on neighbouring private amenity</li> <li>• DfI Roads and Environmental Health - no objections</li> <li>• Ancillary building for residential accommodation is acceptable in size, siting and design.</li> <li>• To prevent the selling off the accommodation as a separate dwelling in this countryside location the applicant has agreed to enter into a section 76 agreement.</li> </ul>
Recommendation	<b>Approval</b>
Attachment	Item 4.3a – Case Officer Report – Redacted Item 4.3b – Case Officer Report – Unredacted (not for public view)

<b>Development Management Case Officer Report</b>		 <b>Ards and North Down</b> Borough Council	
<b>Reference:</b>	LA06/2022/1262/F	<b>DEA:</b> Ards Peninsula	
<b>Proposal:</b>	Demolition of existing ancillary residential accommodation, garage and workshop and erection of replacement residential accommodation, detached garage and workshop ancillary to existing dwelling at 225 Millisle Road, Donaghadee	<b>Location:</b>	The property known as 225A Millisle Road, Donaghadee
<b>Applicant:</b>	Ian Craig		
<b>Date valid:</b>	14.12.2022	<b>EIA Screening Required:</b>	No
<b>Date last advertised:</b>	09.03.2023	<b>Date last neighbour notified:</b>	21.02.2023
<b>Consultations – synopsis of responses:</b>			
Environmental Health		No objection – subject to condition	
DFI Roads		No objection	
<b>Letters of Support</b>	6	<b>Letters of Objection</b>	10 (6 addresses)
<b>Petitions</b>	0		
<b>Summary of main issues considered:</b>			
<ul style="list-style-type: none"> <li>• Principle of development</li> <li>• Design and Appearance</li> <li>• Impact on privacy or amenity of neighbouring properties</li> <li>• Impact on the character and appearance of the area</li> <li>• Impact on landscape features and environmental quality</li> <li>• Biodiversity</li> <li>• Impact on amenity and recreational space</li> </ul>			
<b>Recommendation: Grant Planning Permission</b>			
<b>Report Agreed by Authorised Officer</b>			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal <a href="https://www.planningportal.gov.uk">Northern Ireland Public Register (planningsystemni.gov.uk)</a> using Public Access]			

## 1. Site and Surrounding Area

The site is located just south of the settlement of Donaghadee.

The site comprises a two-storey dwelling, domestic garage, ancillary accommodation and associated garden. The host dwelling is semi-detached and finished in render and dark roof slates. The vehicular access to the dwelling is shared with the adjoining property.

The dwelling is positioned within a row of properties located between the Millilse Road and coast to the east and the open countryside to the west.

While the site is outside of the settlement of Donaghadee the area retains a strong degree of urban character on account of the linear pattern of development along this part of the Millilse Road.

## 2. Site Location Plan





### 3. Relevant Planning History

LA06/2016/0722/F – 225 Millisle Road, Donaghadee - Demolition of existing 2 storey rear return and proposed replacement 2 storey rear return, proposed 2 storey front bay extension, attic conversion with internal alterations and alterations to existing raised front patio to include balustrade and access steps – Permission Granted – 29.11.2016.

LA06/2017/0993/F - 225 Millisle road, Donaghadee - Proposed new dwelling with raised front patio to include balustrade and access steps – Permission granted – 13.04.2018.

LA06/2020/0762/LDE - The property known as 225A Millisle Road, Donaghadee - Self-contained accommodation ancillary to the main dwelling known as 225 Millisle Road, Donaghadee. – Consent – 03.11.2020

The existing dwelling was demolished during construction works that followed the grant of planning permission to extend the property. An application for a replacement dwelling was subsequently granted planning permission.

There is also a Certificate of Lawfulness for the use of a detached building to the rear of the house as self-contained ancillary accommodation (area shaded yellow below).



The main dwelling is No.225 Millisle Road. The Certificate refers to the ancillary building as 'the property known as 225a' and this site address has been used for the current application. The proposed application seeks to replace the existing ancillary structure and garage.

### 4. Planning Assessment

**The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:**

- Ards and Down Area Plan (ADAP) 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage

- Planning Policy Statement 7: Addendum – Residential Extensions & Alterations
- Planning Policy Statement 18: Renewable Energy
- Planning Policy Statement 21: Sustainable Development in the Countryside

Supplementary Planning Guidance

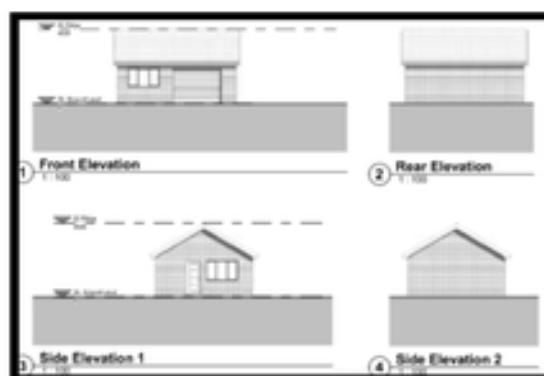
- Building On Tradition

**The Proposed Development**

The proposed ancillary building will be constructed in a central position within the rear garden and away from the immediate rear of the dwelling. The proposed garage will also be built away from the rear of the house and will be built along the party boundary to north (see layout plan below). The ancillary accommodation building is to be 5.1m high, 10.0m wide and 12.0m long. The garage/workshop is to be 4.5m high, 10.0m wide and 7.4m long.



*Proposed ancillary accommodation.*



*Proposed workshop/garage.*



*Proposed layout showing ancillary building in centre of rear garden and workshop/garage built along northern boundary.*

## Principle of Development

ADAP currently acts as the LDP for this area. Under ADAP, the site is outside any settlement. As there are no material provisions in the Plan that are pertinent to the proposal, the determination will be based on prevailing regional policies and all other material considerations.

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

Policy CTY1 of PPS21 'Sustainable Development in the Countryside' lists the types of development acceptable in principle the countryside. This includes an extension to a dwelling in accordance with the policy provisions contained within the Addendum to PPS7.

Planning policy makes provision for ancillary accommodation to provide additional living space. Ancillary accommodation must be subordinate to the main dwelling and its function supplementary to the use of the existing residence. Such ancillary accommodation should normally be attached to the existing property and be internally accessible from it.

What is considered ancillary is a matter of planning judgment based on the specific circumstances of each application and any other material considerations. The planning history of the site is an important material consideration. A Certificate of Existing Lawful Use and Development certifies that an existing building adjacent to the main dwelling can be lawfully occupied as ancillary accommodation.

The proposed ancillary building is larger than the existing ancillary building to be replaced and is located in an alternative location within the existing residential curtilage. However, I consider the proposal presents similar characteristics to that of the building approved as ancillary accommodation in appeal decision 2015/E0053.

The Planning Appeals Commission (PAC) gave weight to a number of key factors in determining whether the building in question could be considered ancillary accommodation. The Appeal building was not physically attached to the main dwelling, however the Commissioner noted that its siting to the rear of the dwelling (with little space between it and the dwelling) makes it unlikely that this building could function as an independent dwelling.

Similar to the ancillary building referenced in appeal decision, there is no physical boundary between the application building and the dwelling, resulting in freedom of movement between both. The garden, parking facilities and access would all be shared between the proposed building and the host dwelling. This would further persuade me that a subdivision of the planning unit would not be practical. The level of accommodation proposed is also similar to the appeal building. The proposed building contains a living room/kitchen dinner, w/c and store, two bedrooms and a bathroom. Appeal decision 2015/E0053 granted permission for ancillary accommodation which included three rooms on the bottom floor (kitchen, hallway and

living room) and three rooms on the first floor (bathroom and two bedrooms). The current proposal would provide a similar level of accommodation, although in this instance all accommodation will be on the ground floor.

[REDACTED]

Nevertheless, having regard to the aforementioned PAC decision as well as other material factors including the planning history of the wider site, the physical arrangement of the buildings within the site, and the scale of the proposed ancillary building, I am satisfied that the development would function as ancillary accommodation to the main dwelling at No.225 Millisle Road and is acceptable in principle.

Any approval of ancillary accommodation must be subject to a suitable mechanism to ensure that the development remains ancillary to the host dwelling and cannot be occupied as a separate independent unit in the future. Normally this can be secured through planning conditions. However, in this case, the Applicant has expressed a desire to retain a separate address for the ancillary accommodation. In light of a potential degree of administrative independence between the proposed ancillary building and the host dwelling it is considered that planning conditions to prevent the proposed dwelling operating as an independent dwelling may be difficult to enforce.

Section 76 of the 2011 Planning Act enables the council to enter into a Planning Agreement with any person who has an estate in land. A Planning Agreement is a legally binding agreement between the council and a person (or persons) with an estate in land i.e. the landowner and / or developer. A Planning Agreement can play a meaningful role in the development management process as a valuable mechanism for securing planning matters arising from a development proposal.

Having discussed the matter with the Council's legal representative, it is considered that a Section 76 Planning Agreement would represent an appropriate solution to guarantee that the use of the subject building remains ancillary to the host dwelling.

The Planning Agreement would be placed on the Statutory Charges Register as per the requirement in Section 245 of the 2011 Act which amends the Land Registration Act (NI) 1970. This will make the agreement a matter of public record and enforceable against successive owners of the site.

### **Design and Impact on the Character of the Area.**

The design of the development and impact on the character of the area has been considered in the context of the Addendum to PPS 7 and PPS21 Policy CTY13 and Policy CTY14. The site is located outside any settlement limit; however, as previously indicated there is an existing suburban style build-up of development in this location.

There will be no material views of the proposal from the Millisle Road given the location to the rear of the host dwelling at No.225 and the adjacent dwellings. The



proposed buildings will therefore not be prominent in the landscape. The site is domestic and there are property boundaries either side of the rear garden area where the buildings are to be located. These boundaries include a timber fence along the northern and western boundaries and a mature hedge along the southern boundary. The boundaries will provide some degree of enclosure and interrupt any clear and unobstructed views from neighbouring properties.



*Northern boundary towards No.223*



*Southern and western boundaries*

The garage is to be finished in brick and the accommodation in timber cladding. The buildings will remain subordinate in size, scale and massing to the host dwelling. Whilst there will be an increase in floorspace from that which is to be replaced, I do not consider this to be detrimental to the character of the local area or the appearance of the main dwelling. Many of the dwellings within the row have detached buildings in the rear gardens albeit varying in size, orientation, and use. The proposed layout is therefore not out of character with the pattern of development which exists in the immediate area.

### **Impact on Privacy and Amenity of Neighbouring Residents**

The Council considers it important that the amenity of all residents is protected from 'unneighborly' extensions which may cause problems through overshadowing/loss of light, dominance and loss of privacy. The SPPS also makes good neighbourliness a yardstick with which to judge proposed developments.



*There are dwellings to the north and south of the site.  
To the north is no.223 and to the south no. 227.*

Given the nature of the proposed development, its scale and its relationship to the adjacent dwellings, I am satisfied that the proposal could not result in any unacceptable adverse impact on existing residential amenity in terms of overlooking,



loss of light or other disturbance. The replacement accommodation is considered to be ancillary to the host dwelling at no.225 and, any planning approval will be subject to a Planning Agreement to ensure that the use remains ancillary.

The buildings proposed are both single storey with low pitched roofs. They are located to the rear and set back from the dwellings either side of the host property.

The proposed garage/workshop will be located along the party boundary with No.223 (adjacent and north). It will be located next to the outbuilding at said neighbour and is similar in footprint to same. The outbuilding at No.223 has a flat roof and is located within 0.5m from the shared boundary, the proposed garage/workshop will also be within 0.5m of the shared boundary. Due to the location of the proposed garage/workshop and the orientation of the adjacent dwelling at No.223, no unacceptable adverse harm to residential amenity will occur as a result of the proposed development.



*No.223 has corrugated plastic roofing from the rear single-storey return to the boundary wall, covering all ground floor windows. The ground floor windows are already overshadowed by the occupants' own structure. Taking into account the scale and location of the proposed buildings, I do not consider that they will further exasperate any loss of light.*



*The proposed garage/workshop will be located next to No.223's flat roof outbuilding, where the applicant's green house is located.*

The only opening on the eastern elevation of the proposed ancillary accommodation facing towards the applicant's dwelling will be a single door. No window opening will directly face the main living accommodation of adjacent dwellings.

The dwellings on either side of the site are positioned at a slightly lower level to where proposed building will be constructed. An existing shiplap fence along the northern boundary of the site will minimise views towards the rear amenity space associated with No.223. There are intervening buildings and boundaries between the proposed ancillary structure and the neighbouring properties, and these will further reduce any sense of overlooking and loss of privacy.

There will be no unreasonable dominant outlook from adjacent dwellings created by the proposed development. There will only be oblique views from adjacent properties, which will be interrupted by existing boundaries.

**Impact on Trees/Landscape Features**

No landscape features are to be affected by the proposal. The site not associated with a Tree Preservation Order.

**Impact on Access, Parking and Amenity Space**

Parking and access will not be affected. During the course of the application, the applicant sought to make alterations to the existing access. DFI Roads was consulted and raised a number of concerns in relation to this aspect of the development. Following these comments, the Applicant removed this element of the proposal. DFI Roads was reconsulted was no objections being raised (no objections on basis the Council considered the development to be ancillary). I am satisfied that no intensification of use of the existing access will occur as a result of the proposed ancillary accommodation.

Ample private amenity space will remain to the rear (530sqm).

**Impact on Designated Sites/Natural Heritage Interests**

The development will have no impact on any nationally or internationally designated sites. The site is located 93m from the designations associated with the nearby coastline. The 'buffer' between where the proposed construction will take place and the shore includes the main road, the driveway/garden, and the house itself. With no direct hydrological link to any environmental receptors, it is not considered there to be any reasonable prospect of run-off or pollutants reaching the shore. Therefore, the potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has therefore been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

In terms of protected and priority species, Part 2 of the Checklist was referred to and *did not* identify a scenario where further consideration or surveys are necessary.

**Other Planning Matters**

The proposed elevations show a heat pump along the northern elevation of the ancillary building and solar panels on its roof. The installation of solar panels on the roof of any building within a dwelling house is permitted development subject to the criteria included in Part 2 of The Planning (General Permitted Development) Order 2015. A heat pump within the curtilage of a dwelling house is permitted development subject to The Planning (General Permitted Development) (Amendment) Order 2023.

In accordance with the SPPS and PPS18, renewable energy proposals will be supported unless they would have unacceptable adverse effects which are not outweighed by the local and wider environmental, economic and social benefits of the development which should be attributed appropriate weight.

I am satisfied that due to the small domestic scale of these renewable energy installations, there would be no unacceptable adverse impact on existing residential amenity, visual amenity or landscape character or other environmental interests. The Council's Environmental Health Department was consulted and has provided no objection subject to a negative condition requiring prior approval of the heat pump specification.

An annotation on the drawing indicates that the heat pump and solar panels are shown for illustrative purposes only. Therefore, I consider it is appropriate to ensure any approval of the application is subject to a condition to ensure the final details of both the heat pump and solar panels are agreed prior to the commencement of development.

## 5. Representations

The Council has received a number of representations: 10 objections (from 6 addresses); 6 letters of support; and 2 non-committal. Many of the issues raised, including use of the proposed buildings, intensification of access and impact on residential amenity, have already been considered in the main body of this report. Other matters raised are summarized below:

### **Use of the ancillary accommodation at No.225a and lack of neighbour notification in respect of CLUDE.**

The existing building has a Certificate of Lawfulness for its use as self-contained accommodation ancillary to the main dwelling known as 225 Millisle Road, Donaghadee.

There is no procedural requirement to notify neighbours in respect of Certificates of Lawfulness. The subject building and its use were deemed lawful based on the evidence provided.

### **Concern that the building to be replaced gained permission through "the back door" and now it is not fit for purpose.**

The buildings use was deemed to be in existence for over 5 years and therefore immune from planning enforcement. Notwithstanding the objector's view regarding the quality of the existing accommodation, the planning history of the site remains a material planning consideration in the consideration of the current planning application.

### **As the existing building never had planning permission, (a certificate of use is not planning permission) therefore a relocation cannot take place.**

The applicant has submitted an application for planning permission, and the Council is required to determine the application as presented. The planning history of the site is a material consideration. It is considered the proposed location is acceptable in terms on impact on the appearance of the main dwelling, the character of the area, and the residential amenity of neighbours.



**Makes more financial sense to improve the existing building at 225A rather than building a new one and that Planning must take into account the 3 Rs – Reduce, reuse, recycle to help fight climate change.**

What makes for better financial sense to an applicant is not a material planning consideration. Whilst the Council encourages sustainability, it is recognised householders will often require extension or new buildings within their curtilage and there is broad support in policy for such actions. Given the modest scale of the proposal, I do not consider objector concerns relating to climate change to be determining.

#### **Flood Risk and need for a hydrology assessment.**

I have reviewed DFI's Flood Maps and note that the site is not located within either the present day or climate change floodplain and there is no record of surface water flooding on the site. Given the scale and nature of the development, I do not consider any further assessment is required. PPS15 makes it clear that even in circumstances where a Drainage Assessment is not required as part of the planning process, it remains the responsibility of the applicant (or other suitably qualified person with demonstrable experience in flood risk assessments) to assess the flood risk and drainage impact of the proposed development and to mitigate the risk to their development and that beyond the site.

**CAD graphic does not show the surroundings to scale and site inspection is required.**

A site inspection has been carried out as part of the assessment of this application.

#### **Site context and precedent for detached rear buildings**

After considering an aerial photo of the immediate area along Millisle Road, I conclude that there are several dwellings along Millisle Road with detached buildings to the rear.



*These buildings all vary in size, scale and massing as do the size of the gardens to the rear of the dwellings.*

### **Integration and impact on rural character**

The proposed buildings will be read with the larger houses along the Millisle Road and would have no detrimental impact on the rural character of the area. The immediate area appears urban given the extent of the row of houses along this stretch of road and I do not consider the single-storey buildings within the existing curtilage will appear unduly prominent in the landscape.

### **Loss of rural view**

The loss of a view is not a material planning consideration.

### **The addition of a wind turbine**

The original proposal included a wind turbine, but this was since removed and no longer forms part of the application.

## **6. Recommendation**

**Grant Planning Permission**



## 7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

2. The construction of the buildings hereby permitted, including the clearing of topsoil, shall not commence until the existing buildings, coloured green on the approved Drawing No. 11B, are demolished, all rubble and foundations have been removed and the site restored in accordance with the details on the approved plans.

Reason: To preserve the amenity of the area and to prevent an accumulation of dwellings on the site.

3. Prior to commencement of development, the final details of the specification and location of any heat pump and solar panels within the site shall be submitted to and approved in writing by the Council. Any heat pump and solar panels within the site shall be in accordance with the approved details.

Reason: In the interests of residential and visual amenity.

4. The building, hereby permitted, shaded yellow on Drawing No.11B, shall not be occupied at any time other than for the purposes ancillary to the residential use of the dwelling known as No.225 Millisle Road.

Reason: To prevent the creation of additional dwelling units.

5. The garage shaded blue on the Drawing No.11B, shall not be occupied at any time other than for the purposes incidental to the residential use of the dwelling known as No.225 Millisle Road.

Reason: To control the use of the use of the buildings within the site.

6. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (or any order revoking and/or re-enacting that order with or without modification), no extensions to the buildings hereby approved shall be constructed without express planning permission.

Reason: Any further extension requires further consideration to safeguard the amenities of the area.

7. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (or any order revoking and/or re-enacting that order with or without modification), no fences, gates, walls or

other built means of enclosure shall be erected between the rear of the house and the buildings hereby approved.

Reason: To ensure there is no physical separation of the planning unit.

**Informative**

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.

### Annex



Figure 1 Site location plan

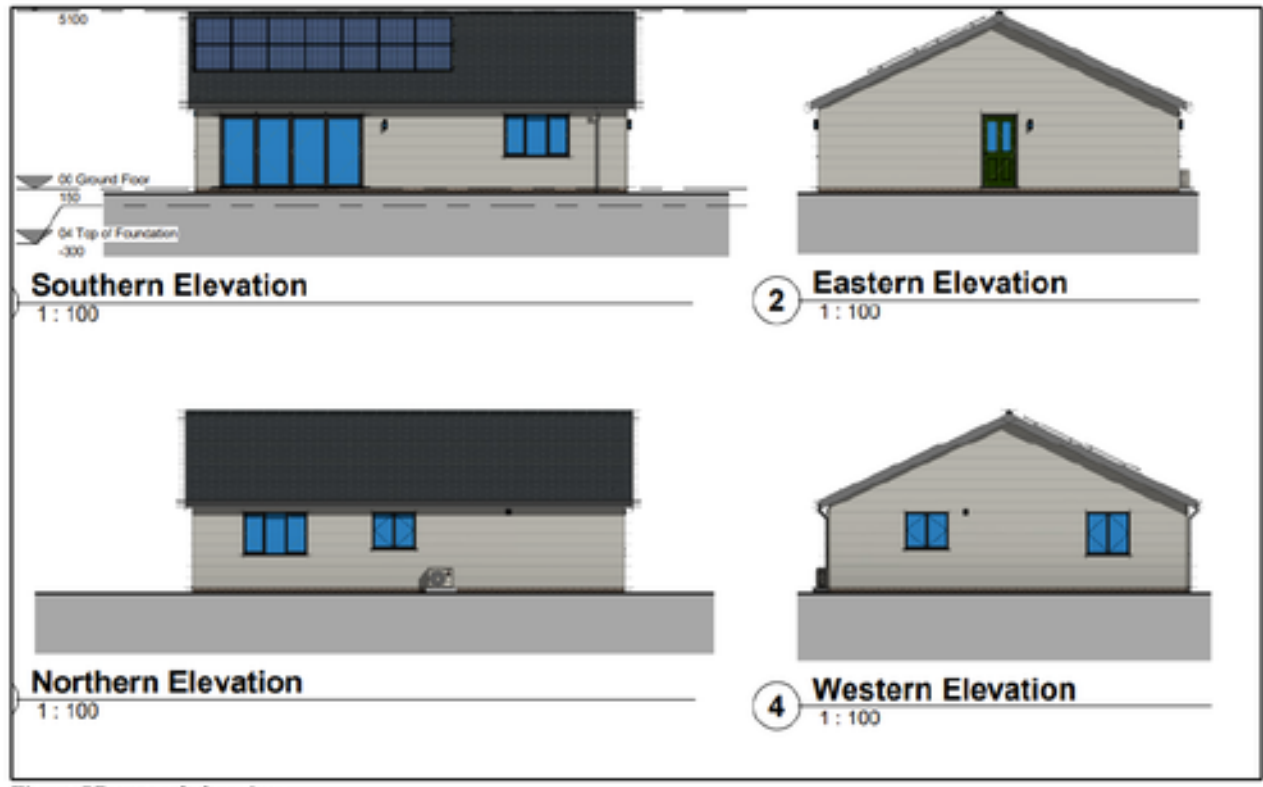


Figure 2 Proposed elevations.

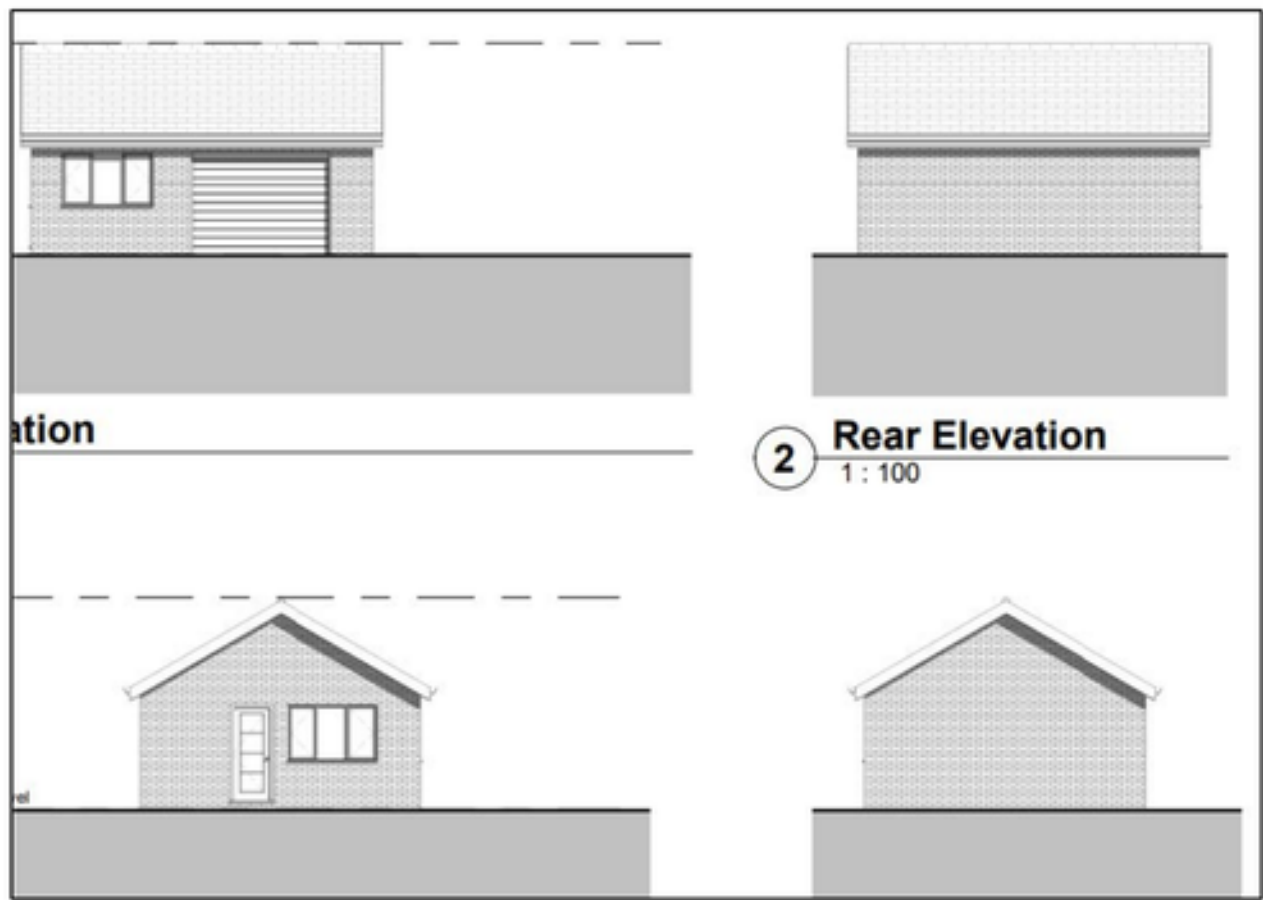


Figure 3 Proposed garage elevations.



Figure 4 Proposed block plan



Figure 5 Proposed 3d image



Unclassified

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## ITEM 5

## Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	Click or tap to enter a date.
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	19 April 2024
File Reference	N/A
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below: Not applicable
Subject	Review of Scheme of Delegation and Planning Committee Performance
Attachments	Item 5a - Current Planning Scheme of Delegation Item 5b - Committee Statistics 2019-2024

## Background

1. There are a small number of application types that must by statute be determined by the Planning Committee:
  - All Major planning applications;
  - Applications made by the council or an elected member; and
  - Applications that relate to land in which the council has an estate.
2. For all 'local' application types, the Council must operate a Scheme of Delegation which delegates planning decisions-making authority from the Planning Committee to planning officials for chosen categories. This Council's Scheme of Delegation is attached as Item 5a to this report.

Not Applicable

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3. The Council is required to review its Scheme of Delegation regularly. This Council's scheme was last updated in 2020, so it is timely to review its effectiveness, reflecting on performance over the past five years and in line with the observations and recommendations made by the Northern Ireland Audit Office.

#### **Northern Ireland Audit Office Report on Planning in Northern Ireland**

4. The report into Planning in Northern Ireland by the NI Audit Office (NIAO), published February 2022, then followed by the report by the then Public Accounts Committee (PAC) shortly after, made a number of observations and recommendations in relation to the Planning system in Northern Ireland. Its report is available here [Planning in Northern Ireland | Northern Ireland Audit Office \(niauditoffice.gov.uk\)](https://niauditoffice.gov.uk).
5. Part Three of the NIAO Report entitled 'Variance in Decision-Making Processes' dealt with the following items in respect of delegation of planning applications:
  - a) Delegation as an essential part of an effective development management process;
  - b) Not all Schemes of Delegation ensure that decisions are taken at the appropriate level;
  - c) The types of applications being considered by committees are not always appropriate
  - d) One in eight decisions made by planning committees goes against the recommendation of planning officials

#### **Delegation as an essential part of effective development management process**

6. The NIAO Report notes that 'given that councillors are not typically professional planners, the sharing of decision-making roles and responsibilities between planning committee members and officials can make a critical contribution to the efficiency and effectiveness of decision-making processes within an individual council'.

#### **Not all Schemes of Delegation ensure that decisions are taken at the appropriate level**

7. Departmental guidance, published in 2015, recommended that over time council should aim to have between 90 and 95 per cent of applications dealt with under a scheme of delegation. The NIAO Report reiterated Departmental guidance that councils should ensure that applications are not unnecessarily referred to the Planning Committee as this will contribute to inefficiency and delay. It further referenced a benchmarking exercise carried out in England in 2012 which highlighted that there are significantly higher administrative demands and costs associated with applications heard by planning committee as opposed to those decided by officials.

## Not Applicable

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8. The NIAO Report recommended that in instances where delegation rates fall below 90% councils should review their processes to ensure that they represent the best use of council resources.
9. Officers have reviewed the performance of Planning Committee over the past five years, 2019/20 to 2023/24. The detail is tabulated in Item 5b to this Report.
10. Members will note that the delegation rate for this Council is 94%, well within the 90-95% bracket recommended by the Department, and well above the 90% figure that NIAO was concerned with.

**The types of applications being considered by committees are not always appropriate**

11. The NIAO reported widespread concerns that the applications coming to committee either under the Scheme of Delegation or by referral, were not always the most significant and complex applications. In this regard it particularly raised concern regarding planning applications for single dwellings in the countryside, which it considered are rarely the most complex, and representing a disproportionate use of committee time.
12. Members will view in Item 5a attached the different categories of applications determined by the Committee over the past five years. The largest number of applications at 43% considered by Committee related to one of the mandatory categories of development to be determined by Committee – i.e. applications made by Council or an elected member, or related to land in which the council had an interest.
13. The highest numbers of applications referred to Committee by the Scheme of Delegation were as follows:
  - Local applications attracting six or more objections, from separate addresses, contrary to the officer's recommendation – accounting for just over 26%; and
  - Call-ins to Committee from the weekly delegated list by Members of that committee – accounting for nearly 17%.

**One in eight decisions made by planning committees goes against the recommendation of planning officials**

14. The NIAO Report notes that divergences of opinion between committees and officials are to be expected where planning issues are finely balanced, highlighting that decisions against officer recommendations must always be supported by clear planning reasons.
15. NIAO records concern regarding its review of data between 2018 and 2020 whereby just under one in eight applications decided by committee was made contrary to official advice.

Not Applicable

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16. Members will note from the table at Item 5b that the figure for Ards and North Down over the past five years is six out of 266 applications determined, representing a 4.92% overturn rate, well below the 12.5% rate that NIAO was concerned about.

### **Conclusion**

17. It is considered that the current Scheme of Delegation is operating appropriately, cognisant that delegation is an essential part of an effective development management process, and that significantly higher administrative demands and costs are associated with applications heard by planning committee as opposed to those decided by officials.
18. It is recommended that Members review the data within the table at Item 5b and the current Scheme of Delegation for the non-mandatory categories of development, to ensure no changes are considered necessary.
19. Subject to the Committee being content, and subsequent ratification by Council, the version control will be updated for the Scheme having been reviewed accordingly in line with the requirements of legislation.

### **RECOMMENDATION**

It is recommended that Council notes the content of this report and the attachments and determines that it is content with the current Scheme of Delegation for Planning.

## **Scheme of Delegation for Ards and North Down Borough Council**

### **Part A – Mandatory applications for determination by Planning Committee**

By statute certain types of application must be determined by the Planning Committee and therefore cannot be delegated to officers:

- Applications which fall within the Major category of development as specified within the Planning (Development Management) Regulations (NI) 2015;
- Applications where the application is made by the Council or an elected member of the Council;
- Applications relating to land in which the Council has an estate.

### **Part B – Non-Mandatory applications for determination by Planning Committee**

- A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation, and where a material planning matter has been raised.

In determining if the threshold of six or more separate objections is met, the following clarification shall apply for the purposes of the calculation:

- Multiple letters of objection from one individual person (or body including any corporate entity) will constitute one objection;
  - Multiple letters of objection from one address (whether by one individual or more) will constitute one objection;
  - Pro-forma objection letters will constitute one objection;
  - Petitions will constitute one objection.
- A Local development application which is a significant departure from the Local Development Plan which is recommended for approval (the Head of Planning to adjudicate on this where necessary in liaison with the Chair).
  - A Local development application called-in to Planning Committee by the Head of Planning;
  - A Local development application called-in to Planning Committee from the delegated list<sup>1</sup> as set out in the Council's Protocol for the Operation of the Planning Committee by a member of that Committee – a sound material planning reason having been given for such a referral;

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<sup>1</sup> Paragraph 25 of the Protocol for the Operation of the Planning Committee



- A Local development application called-in by any Councillor within 25 working days<sup>2</sup> of the application being validated – a sound material planning reason having been given for such a referral (as set out in the Council's Protocol for the Operation of the Planning Committee);
- A planning (legal) agreement or modification to a legal agreement is required.

### **Part C – Delegated Applications**

The appointed officer is the Head of Planning within the Council and any officer nominated by the Head of Planning, who will be responsible for determining the following:

- All Local development applications whether for approval or refusal, with the exceptions listed at Part B above.

### **Part D – Enforcement and Determination of Other Planning Matters**

In relation to other planning responsibilities, the following matters are delegated to the appointed officer:

- All investigation of breaches of planning control and decisions on enforcement to include:
  - Service of an Enforcement Notice;
  - Service of a Listed Building Enforcement Notice;
  - Service of Hazardous Substances Contravention Notice;
  - Service of a Stop Notice;
  - Service of a Temporary Stop Notice;
  - Service of a Breach of Condition Notice;
  - Service of Tree Replanting Notice;
  - Withdrawal/modification of any of the Notices specified above, as appropriate;
  - Service of Warning Letters and Planning Contravention Notices;
  - Determination of applications for Certificates of Lawfulness of Existing Use or Development;
  - Service of a Fixed Penalty Notice, except in circumstances where the person appointed considers the breach of planning control could result in immediate public danger or development which may result in permanent damage to the environment. Examples include: the demolition of, or works to, a listed building; the felling of protected trees; the demolition of a building in a conservation area; or the commencement of building operations without permission;
  - Service of a Discontinuance Order;

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<sup>2</sup> Paragraph 24 of The Protocol for the Operation of the Planning Committee

- The instigation of court proceedings e.g. prosecution for non-compliance with a statutory notice or injunction proceedings.

Other planning matters to include:

- The determination of applications for Certificates of Lawfulness of Proposed Use or Development;
- The serving/affixing of a Building Preservation Notice;
- The withdrawal of a Building Preservation Notice;
- The making and serving of a provisional Tree Preservation Order;
- The making and serving of a Tree Preservation Order;
- Revocation of a Tree Preservation Order;
- Determination of any application to carry out works to a protected tree (i.e. a tree the subject of a Tree Preservation Order or within a Conservation Area);
- Determination as to appropriate replanting in relation to tree(s) the subject of a Tree Preservation Order or within a Conservation Area;
- Determination of non-material change applications to planning permissions;
- Determination of any application for Conservation Area consent;
- Determination of any application for advertisement consent;
- Determination of any application for listed building consent;
- Determination of any application for hazardous substances consent;
- Revocation or modification of any of the above consents;
- Issuance of Urgent Works Notice;
- The screening of and determination decisions on development proposals required under the Environmental Impact Assessment or Habitats Regulations;
- Discharge of planning conditions;
- Determination of any application for variation or removal of condition(s) previously attached to permission to develop land;
- Drafting of legal agreements.

### **Part E – Legal Challenge**

The Council provides delegated authority to the Head of Planning to instigate or defend judicial review proceedings on behalf of the Council, and instruct such Counsel or experts in association with the Council's solicitor deemed necessary to defend any decision of the Council, or a challenge to such a decision, the Head of Planning sees fit in the interests of the Council.

### **Part F – Publicity**

The Council has made a copy of this Scheme of Delegation available on the Council's website at [www.ardsandnorthdown.gov.uk](http://www.ardsandnorthdown.gov.uk) and it is also available on request at the Council's offices at 2 Church Street, Newtownards, BT23 4AP.

## Committee Statistics 2019 - 2024

Year	Decisions determined	No. Overturned	Category of Overturn (Committee Decision)	% of Total	Total No. Determined by Council	% Delegated	Majors	Application made by Council /elected Member /and in which Council has estate	>= 6 objs *	Call in by PC Member from delegated list	Call in by HoP	Significant departure from LDP	Legal agreement required / amended	Local associated with previous Major or previous O/L
2019-2020	61	2	Call in by HoP (Approval)	3.3%	801	92.39%	4	21	12	12	7	2	-	3
2020-2021	60	1	Call in (Approval)	1.7%	797	92.75%	2	39	7	9	0	0	2	1
2021-22	47	1	>=6 objs (Refusal)	2.1%	1020	95.40%	3	19	14	9	0	0	1	1
2022-23	53	1	Call in (Approval)	1.89%	991	94.65%	3	25	17	8	0	0	0	0
2023-24	45	1	>=6 objs (Refusal)	2.2%	844	94.67%	7	10	20	7	0	0	1	0
<b>Total</b>	<b>266</b>	<b>6</b>		<b>4.92%</b>	<b>4453</b>	<b>94%</b>	<b>19</b>	<b>114</b>	<b>70</b>	<b>45</b>	<b>7</b>	<b>2</b>	<b>4</b>	<b>5</b>
					<b>% of overall total</b>		<b>7.1%</b>	<b>42.9%</b>	<b>26.3%</b>	<b>16.9%</b>	<b>2.6%</b>	<b>0.75%</b>	<b>1.5%</b>	<b>1.88%</b>

>= 6 objs means local applications where six or more separate objections contrary to the officer's recommendation have been received

Unclassified

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## ITEM 6

## Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 May 2024
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	19 April 2024
File Reference	N/A
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Not applicable
Subject	Proposed amendment to Protocol for the Operation of the Planning Committee
Attachments	Item 6a - Current Protocol for the Operation of the Planning Committee

## Background

1. Members will be aware that the purpose of the protocol is to outline practical handling arrangements for the operation of the Planning Committee. Paragraph 91 of the Protocol states that it "will be monitored and procedures reviewed as necessary to ensure that they remain current and relevant to the operational needs of the Ards and North Down Borough Council Planning Committee".
2. With regard to the Development Management function, the main role of the Planning Committee is to consider planning applications made to the Council as the local planning authority and decide whether or not they should be approved.

Not Applicable

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**Current Protocol for the Operation of the Planning Committee**

- Paragraph 16 of the Protocol for the Operation of the Planning Committee (copy attached at Item 6a) refers to Section 31 of the Planning Act (NI) 2011 which requires the Council to produce a Scheme of Delegation for operation in its area. A Scheme of Delegation is where decision-making for local applications is delegated to an appointed officer rather than the Planning Committee, thereby enabling speedier decisions and improved efficiency. Members are reviewing the current Scheme of Delegation under Item 6.

**Locals Processing Times**

- Members' attention is drawn to table below which sets out the processing times for applications in the local category of development over the past five years 2019/20 to 2023/24.
- Members shall be aware that the statutory performance indicator for processing of local applications is 15 weeks.

Year	Locals			% cases processed <= 15 wks
	Applications received	Decided	Average Processing Time (wks)	
2019/20	897	798	15.8	48.8%
2020/21	1000	790	16.8	46.2%
2021/22	1078	1014	22.4	31.9%
2022/23	937	988	19.9	41.2%
2023/24	782	838	16.0	48.6%

**Weekly Delegated List**

- The weekly delegated list sets out those applications delegated initially to appointed officers. Members of the Committee then have 48 hours in which to determine if a call-in to full Committee is appropriate.
- Within the current Protocol, applications in the householder category of development which are recommended for approval and have attracted no objections are excluded from the delegated list.
- This process provides efficiency in issuing of householder decisions, contributing to the Council meeting its 15 week target, as if a report is not ready at the precise time the delegated list is issued to Committee Members, it could be a further two weeks before a decision is issued, subject to no call-in. – as if not ready from the Monday afternoon, after the delegated list has issued, it must wait until the following week's list, plus 48 hours, and then once confirmed as no call-in, arrangements made to generate the decision notice for checking and signature.



Not Applicable

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**Proposal for Consideration**

9. Taking cognisance of the Planning Improvement Programme stemming from the various recommendations set out within the NI Audit Office's and Public Accounts Committee Reports referred to in Item 6, officers have reviewed the types of applications in the local category of development currently included on the weekly delegated list. It is considered that some additional proposals could be excluded from the delegated list, similar to the householder applications.
10. Taking into account that any local application which currently receives six separate material objections contrary to a recommendation to 'Approve' will be referred automatically to Planning Committee, the following list sets out those types of local applications for consideration by Planning Committee to be excluded from the weekly delegated list:
- a) All Householder applications
  - b) Applications for Advertising Consents
  - c) Reserved Matters (where not associated with a major category of development approval)
  - d) Renewal of Outline approvals (subject to no change in policy framework).
  - e) Change of House Type applications
  - f) Listed Building Consents
11. By excluding the above list of local applications from the weekly delegated planning application list, in addition to improving processing times, this move would also take account of findings by the Northern Ireland Audit Office's Report on Planning in Northern Ireland, published February 2022, with regard to Recommendation 2 which states:

"We recommend that the Department and councils continue to put an enhanced focus on improving the performance of the most important planning applications.

12. To assist Members with consideration of this proposal, the following details the applications called in from the delegated lists over the past 12 months:

Delegated Month	Type of Proposal
January 2023	1. Access point and driveway to dwelling, to include pillars and walls 2. Change of use from garage to short term holiday let (retrospective)
April 2023	3. Erection of agricultural shed (proposed) and creation of laneway (retrospective)
September 2023	4. Dwelling and garage on farm 5. Proposed dwelling and garage
October 2023	6. Dwelling and shed ( addition of retrospective shed and minor alteration to site boundary to previous approval)
November 2023	7. Farm dwelling and garage

Not Applicable

February 2024	<ol style="list-style-type: none"> <li>8. Erection of dwelling and conversion of three existing outbuildings for incidental usage (in substitution for previous approval)</li> <li>9. Infill dwelling, garage and associated site works (in substitution for previous approvals)</li> <li>10. Dwelling on a farm</li> </ol>
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**RECOMMENDATION**

It is recommended that Council agrees to the recommendation to remove the categories of local applications detailed at paragraph 10 from the weekly list of delegated planning applications in the interests of contributing to quicker processing times.

# Protocol for the Operation of the Planning Committee

December 2021



**Ards and  
North Down**  
Borough Council

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## PURPOSE OF THE PROTOCOL

1. The purpose of this protocol is to outline practical handling arrangements for the operation of Ards and North Down Borough Council's Planning Committee.
2. The protocol should be read in conjunction with the Council's agreed Standing Orders and the Code of Conduct for Councillors. It is not intended to replace either document. It should also be read alongside the Protocol for the Operation of Virtual Planning Committee, when such meetings are held virtually, such as during a national pandemic.

## REMIT OF THE PLANNING COMMITTEE

### *Development Management*

3. The main role of the Planning Committee is to consider planning applications made to the Council as the local planning authority and decide whether or not they should be approved. To this end, the Planning Committee of Ards and North Down Borough Council has full delegated authority, meaning that the decisions of the Committee, in respect of planning applications, will not go to the full Council for ratification.

### *Development Plan*

4. Ards and North Down Borough Council is required by Section 8 of the Planning Act (NI) 2011 to prepare a plan for its district. This plan forms the basis for public and private investment decisions, providing a degree of certainty as to how land will be developed. In law, planning applications must be determined in accordance with the development plan unless other material considerations indicate otherwise. This means that where land is zoned for a particular use, the Planning Committee should ensure it is reserved for that use: for example, an application for housing in an area zoned for housing should be approved unless the design and layout fails in terms of the environmental, open space and access standards, or its design and layout has a detrimental impact on the character of the area or neighbouring amenity.



5. The Planning Committee's role in relation to the Local Development Plan is to contribute to the development of and approve the Local Development Plan before it is passed by resolution of the Council. The Planning Committee should also ensure that the Local Development Plan is monitored annually, particularly in terms of the availability of housing and economic development land, and that it is reviewed every five years, giving consideration to whether there is a need to change the Plan Strategy, or the zonings, designations and policies as contained in the Local Policies Plan.

### ***Development Plan Transition Arrangements***

6. Until such time as Ards and North Down Borough Council has adopted its Plan Strategy the local development plans for the Council area will be taken to be the extant Departmental development plans, namely, the North Down and Ards Area Plan 1984-1995 and the Ards and Down Area Plan 2015, with the draft Belfast Metropolitan Area Plan 2015 being a material consideration.
7. When the Council's Plan Strategy is formally adopted, the Local Development Plan will be the Council's adopted Plan Strategy and the extant Departmental development plans, namely the North Down and Ards Area Plan 1984-1995 and the Ards and Down Area Plan 2015, read together, with the draft Belfast Metropolitan Area Plan 2015 being a material consideration. If there is a conflict between the Council's Plan Strategy and the extant Departmental development plan(s) the conflict shall be settled in favour of the Council's adopted Plan Strategy.
8. When the Council has adopted its Local Policies Plan, the Local Development Plan will be the Council's adopted Plan Strategy and Local Policies Plan as defined in Section 6 of the 2011 Act.

### ***Enforcement***

9. The enforcement of planning controls is delegated to appointed officers with the Planning Committee receiving regular reports on the progress of enforcement activities.

## SIZE OF THE PLANNING COMMITTEE

10. Ards and North Down Borough Council Planning Committee comprises of 16 Members with no substitutions being permitted.
11. The quorum for the Planning Committee will be six (6) Members present and eligible to vote. Where there are less than six Members present eligible to debate an application and vote, the Committee shall be inquorate and the planning application cannot be determined. The application should therefore be withdrawn from the agenda and returned to the next Planning Committee meeting.
12. Where the Planning Committee becomes inquorate, not due to Committee Members being absent but due to Committee Members declaring an interest, the planning application concerned should be deferred to the next Planning Committee meeting to allow each Member to seek advice as to whether their interest of concern is in fact an interest which would prevent them considering and voting upon the planning application. In the event that a Member or Members, on receipt of advice, are comfortable that there is in fact no interest to prevent them considering and voting upon the application, the reasoning for such a position should be so recorded in the minutes of the next Planning Committee meeting.
13. In the event of Planning Committee still being inquorate, due to Members declaring an interest, the Council is deemed to not be able to determine the application, which is then referred to the Department.
14. The Head of Planning will normally attend all Planning Committee meetings in addition to planning officers presenting application reports and recommendations.

## FREQUENCY OF MEETINGS

15. In accordance with the Council's Standing Orders, Committees will be held on a monthly basis. The Planning Committee of Ards and North Down Borough Council will meet on the first Tuesday in every month at 7pm in the Council Chamber at 2 Church Street, Newtownards. In exceptional circumstances the Committee shall from time to time fix

its own day and hour of meeting and notify the Council. Committee meeting dates and times will be published monthly on the Council's website in advance of each meeting.

## SCHEME OF DELEGATION

16. Section 31 of the Planning Act (NI) 2011 requires the Council to produce a Scheme of Delegation for operation in its area. A Scheme of Delegation is where decision-making for local applications is delegated to an appointed officer rather than the Planning Committee, thereby enabling speedier decisions and improved efficiency.
17. The Council's Scheme of Delegation relates only to those applications that fall within the definition of Regulation 2 of the Planning (Development Management) Regulations (NI) 2015. Certain statutory restrictions that apply to the Council's scheme prevent particular types of application from being delegated to officers, thereby requiring them to be determined by the Planning Committee. The Scheme of Delegation agreed by Ards and North Down Borough Council reflects these restrictions and can be viewed on the Council's website.

## ENFORCEMENT

18. In accordance with the Planning Committee's Scheme of Delegation, the enforcement of planning controls is delegated to appointed officers. The Planning Committee will be informed of progress on cases and can request a report from officers to the Committee on any enforcement matter.
19. The Head of Planning will prepare a quarterly report on enforcement including the progress of formal enforcement cases which will be circulated to Planning Committee Members, detailing the number of live cases, details of notices issued, prosecutions and any other information deemed relevant.
20. An Enforcement Strategy detailing how enforcement action will be dealt with has been agreed by the Planning Committee and can be viewed on the Council's website.

## REFERRAL OF DELEGATED APPLICATIONS TO THE PLANNING COMMITTEE

21. A weekly list of validated applications will be prepared and circulated to all 40 elected Members and will be published on the Council website.
22. Elected Members of the Council can request that a delegated application be referred ('called-in') to the Planning Committee.
23. In such cases, Members must notify the Head of Planning of requests in writing or by email stating clearly the reason(s) for such requests. Valid planning reasons must be provided for all applications 'called-in'. Requests must be made within 25 working days of the application being made valid; however, Members should be aware that applications can be determined after the expiration of 14 days from the date the application is first advertised, neighbour notified or first published on the Council's website, whichever date is the later or latest.
24. In addition, where applications have been delegated to officers, Planning Committee Members will be notified by email, usually on a Monday (or next appropriate day taking account of public/bank holidays) of a list of delegated decisions made, but not yet issued, which will detail the reference number, proposal, location, decision, number of objections, and a hyperlink to connect to the relevant part of the Planning Portal to enable Planning Committee Members to view more details about the application. If considered appropriate, Planning Committee Members can then request that applications are 'called-in'. Such requests must be received via the [planning@ardsandnorthdown.gov.uk](mailto:planning@ardsandnorthdown.gov.uk) email inbox (marked as 'Call-In' in the subject line) by the specified time 48 hours later. It should be noted that applications for householder development which have not attracted objections and which are recommended for approval will not be included in the weekly delegated list, but the decisions issued immediately.
25. In either of the above circumstances an authorised senior officer will then liaise with the Chairperson or Vice Chairperson (as appropriate) to determine whether the reasons which have been set out constitute valid planning reasons so as to merit referral to the Planning Committee. The requesting Member will be advised if the request has been



successful or alternatively, if the reasons do not constitute valid planning reasons and the request rejected.

26. The agenda for the next appropriate meeting will be amended as soon as possible to reflect those applications that have been 'called-in' from the delegated list.
27. The Head of Planning may also consider it prudent to refer a delegated application to the Planning Committee for determination.
28. Members of the public, MLAs or MPs **cannot** directly request that an application be referred to the Planning Committee.
29. The number and nature of delegated applications referred to the Planning Committee will be reviewed on a regular basis.

#### **PUBLICATION OF SCHEDULE OF APPLICATIONS TO BE DETERMINED BY PLANNING COMMITTEE**

30. The schedule of those applications to be determined at the Planning Committee meeting will be published on the Council's planning website pages ten working days before that Planning Committee meeting.

#### **SUBMISSION OF INFORMATION**

31. In the interests of efficient and timely decision-making on those applications being presented to the Planning Committee with a recommendation, it is imperative that **all relevant and appropriate information** as required has been received by planning officers, whether in support of or in opposition to proposals. To this effect **no additional information** will be accepted by the Council after 5pm on the Tuesday *prior* to the Planning Committee meeting scheduled to hear that application (one full week prior).
32. In addition, **no documentation** should be circulated at the meeting at any time to Members by speakers.



## FORMAT OF PLANNING COMMITTEE MEETINGS

33. Ards and North Down Borough Council will operate its Planning Committee in line with its approved Standing Orders.

### *Standard Items*

34. The agenda will allow for the inclusion of the following items:

- Notice of Meeting
- Apologies
- Declarations of Interests
- Matters arising from the minutes of the previous meeting
- Schedule of Planning Applications
- Development Plan Issues
- Enforcement Matters
- Budgetary Matters
- Performance Management Matters

### *Committee Papers*

35. All Planning Committee Members will be sent an agenda one week in advance of the committee meeting. The following papers (where appropriate) will also be provided:

- Minutes of the previous meeting;
- Details of Development Plan issues;
- Details of relevant Enforcement matters;
- Details of proposed pre-determination hearings;
- Details of non-delegated applications (including those brought back following deferral) for consideration by the Planning Committee;
- Details of applications of regional significance with an impact upon the Council area in response of which the Council is a statutory consultee or where it may wish to make representations;

- Performance Management Reports.

36. When considered appropriate two sets of the detailed drawings will be made available in the Members' Room in both Church Street, Newtownards and in The Castle, Bangor, for inspection from the Thursday before and each day up to and including the day of the scheduled Planning Committee meeting.

37. The Chairperson and Vice Chairperson of the Planning Committee along with the Head of Planning (or authorised senior officer) will hold a briefing session with planning officers on each application to be considered in advance of the Planning Committee meeting.

38. Where necessary, planning officers will prepare an addendum before 10.30am on the day of the Planning Committee meeting to report any updates since the agenda was issued.

39. Planning Committee meetings will be open to the public.

### ***Declarations of Interests***

40. At the beginning of **every** meeting, Members will be asked to declare an interest in any item on the agenda and must leave the Council Chamber (including the Public Gallery) for that item. Once the item has been determined (or deferred), Members will be invited to return.

## **PUBLIC SPEAKING**

### ***Procedures for Public Speaking***

41. The following procedures will apply to Ards and North Down Borough Council Planning Committee meetings:

- Requests to speak should be received by the Planning Department (in writing or by email) at least 5 working days prior to the scheduled Planning Committee meeting.

Late requests will not be accommodated. The request must set out the material planning issues that the speaker wishes to raise.

- Requests to speak can only be submitted once the Schedule of applications to be heard has been published. The Planning Department will not accept requests made via representations (either in letters of support or objections) submitted in relation to any planning application.
- Written requests should be addressed to Ards and North Down Borough Council Planning Department and highlighted "Request to Speak"; Email requests should be sent to [planning@ardsandnorthdown.gov.uk](mailto:planning@ardsandnorthdown.gov.uk) and specify "Request to Speak" in the subject line.
- When a speaking request has been accepted, registered speakers must submit a copy of their speaking note to the Planning Department by 10.30am on the Friday prior to the scheduled meeting. Failure to provide by the specified time will result in cancellation of the speaking rights.
- Members, whether or not on the Planning Committee, may speak in opposition or support of a proposal – in the case of a Member of the Planning Committee, that Member must declare an interest and be excluded from any discussion and decision on the application;
- There is **only one 5-minute slot** for those speaking in opposition to an application, and **only one 5-minute slot** for those speaking in support of an application. Where there is more than one request to speak, the 5 minutes will be shared or one person can be appointed to speak;
- Members of the public (including agents/representatives) may wish to appoint an elected Member, or an MLA/MP to speak on their behalf or alongside them – regardless, the 5-minute limit will still apply.
- Members of the public seeking to speak will be expected to have organised themselves in advance of the Planning Committee meeting and informed the

Planning Department of details of those individuals intending to share the time or of an appointed speaker (and have submitted a copy of the speaking note by the time prescribed);

- The Planning Committee can seek clarification from those who have spoken but must not enter into a debate on any issue raised;
- No documentation should be circulated at the meeting to any Members by speakers;
- Audio/visual presentations will not be permitted;
- The exhibition of models and displays will not be permitted;
- Applications where there will be speakers from the public will be taken first, where possible;
- Planning officers can address any issues raised.

42. Where an application has been debated by Planning Committee but no decision made and it is then deferred for any reason, when it is returned to a subsequent Planning Committee meeting there shall be a further exercise of speaking rights, **only to those who registered in the first instance**, of 3 minutes only, (and providing a copy of speaking notes was submitted within the specified time frame) limited by the Chair to particular issues. A copy of the speaking notes must also be provided to the Planning Department by 10.30am on the Friday prior to the Planning Committee meeting where the application is being heard again. Failure to provide by the specified time will result in cancellation of speaking rights.

#### **AUDIO RECORDING OF COMMITTEE MEETINGS**

43. From April 2019 audio recordings of each meeting will be made by the Council, with the exception of items discussed 'In Committee'. These recordings will be posted on the Council's webpages after the minutes of the meeting have been ratified at full Council. Interested parties should listen to both the recording of the Planning Committee meeting

and that of full Council, as items heard at Committee which relate to matters for which Planning Committee does not have delegated powers are subject to ratification by full Council. All comments made by speakers appearing before the Committee, whether elected representatives, planning agents or members of the public will be included within the recording.

## **RUNNING ORDER**

44. Details of the running order for discussion of planning applications is included as Appendix 1 to this Protocol.

## **COMMITTEE DECISIONS**

45. The main role of the Planning Committee is to consider applications made to the Council as the local planning authority and determine whether planning permission should be approved or refused.

46. A Planning Officer will prepare a Case Officer report containing a professional planning recommendation which will be circulated in advance. Members will be expected to appraise themselves of any relevant drawings/plans and other relevant information available to them on the Planning Portal. The application will be presented with a recommendation on whether the application should be approved, approved with conditions or refused. Plans and photographs may be shown as appropriate.

47. After the Planning Officer presents the report, Members will have an opportunity to ask questions of the Planning Officer relating to the proposed development, those speaking for or against the proposal, and debate the case.

### ***Committee Decision Making Options***

48. The Planning Committee will discuss applications presented to it during the Planning Committee meeting before taking a vote on one of the following options:

- Approve the application with conditions as recommended;



- Approve the application with amended conditions;
- Refuse the application for the reasons recommended;
- Refuse the application with additional or different reasons recommended;
- 'Minded to' approve or refuse the application in contrast to the officer recommendation;
- Defer the application to allow additional information/clarification to be provided or a site visit to be arranged.

49. Any appropriate conditions/reasons for refusal must be proposed and seconded before being voted on by Members.

50. The Committee Chairperson has a casting vote.

51. A recorded vote will be taken where a motion is not unanimous whereby the names of Members voting for and against the proposal will be recorded manually and entered into the minutes.

52. Planning Committee Members can add, amend or remove conditions to an approval, (or add, amend or remove reasons for refusal) but they cannot amend the application itself (for example, by allowing a one-bedroom flat if the application is for a two-bedroom flat). Members will therefore seek guidance from the relevant planning officer as to the appropriateness of the proposal to add, amend, or remove a condition or reason for refusal. Any additional conditions should be proposed and seconded before being voted on by Members. Members should be aware that conditions can be tested at appeal and based on planning case law there are a number of requirements that they should therefore meet, namely that they should be necessary, relevant to planning and the development under consideration, enforceable, precise and reasonable in all other respects. An applicant also has a right of appeal to the Planning Appeals Commission in respect of all reasons for refusal.

### ***Decisions Contrary to Officer Recommendation***

53. The Planning Committee has to reach its own decision. Planning Officers offer advice and make a recommendation. Planning Officers' views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the Planning Committee or its Members. There should always be scope for Members to express a different view from Planning Officers in appropriate circumstances.
54. The Planning Committee can accept, reject or place a different interpretation on, or give different weight to, the various arguments and material planning considerations.
55. Planning Committee decisions contrary to Planning Officer recommendation may be subject to appeal or to legal challenge. Members should therefore ensure that the planning reasons for the decision are set out and based on proper planning reasons prior to any resolution being made and voted upon thereafter. The Planning Officer should always be given the opportunity to explain the implications of the Planning Committee's decision.
56. If the Committee votes to overturn the recommendation of the Planning Officer by way of a "minded to approve or refuse the planning application" motion, the Member proposing the motion to overturn the recommendation must outline the reasoning and material planning considerations relied upon for reaching such a decision. Such reasoning should explain, as and when appropriate, why it is proposed to depart from the development plan, the departure from policy or policy interpretation relied upon and/or what material planning considerations are being attributed determining weight. The receipt of the reasoning and material planning considerations from the Member proposing the motion will ensure that the Committee is fully aware of the reasoning and material planning considerations upon which such a motion is based and allow the Planning Department to prepare a note of the reasoning, accompanied by either draft reasons for refusal or draft reasons for approval with draft conditions. This report will be presented at the next Planning Committee meeting to allow the Committee to consider its content. As a consequence of the tabling of the "minded to" motion, the planning application will be deferred to the next Planning Committee meeting to permit the Planning Department to prepare this report. As part of the deferral of the application

the Committee, Chair of the Committee, or Head of Planning, may seek legal advice on the robustness of the reasons for refusal or the reasoning and conditions of approval. Any such advice will be provided to the Committee in advance of the resumption of the consideration of the planning application to allow them to consider same.

57. No additional speaking rights will be afforded to any person unless at the Chairperson's discretion he/she authorises same. Such speaking rights will be a maximum of 3 minutes.
58. In the event that a Member tables a motion contrary to the recommendation of the Planning Department seeking to approve or refuse the planning application (other than a "minded to" motion) the Member proposing the motion to overturn the recommendation must set out the reasoning and material planning considerations relied upon for reaching such a decision prior to tabling the motion and the Committee voting on same. Such reasoning should explain, as and when appropriate, why it is proposed to depart from the development plan and/or the departure from policy or policy interpretation relied upon and/or what material planning considerations are to be attributed determining weight.
59. Decisions contrary to a Planning Officer's recommendation, and full details of the Members' reasoning for attaching differing weight to material considerations or departing from planning policy or the development plan, must be formally recorded in the Planning Committee minutes, ratified at the next Planning Committee meeting and a copy placed on the planning application file / electronic record.
60. The Planning Committee and Members tabling motions to overturn recommendations of the Planning Department should be mindful of the ability to seek costs on appeal to the Planning Appeals Commission or potential costs liability that may arise through any legal challenge brought against such a contrary decision.

#### ***Appeal Contrary to Officer Recommendation***

61. In the event of an appeal against a refusal of planning permission contrary to a Planning Officer's recommendation, planning consultants or different planning officers than those

who made the original recommendation may be appointed to represent the Council at appeal.

### ***Decisions Contrary to Local Development Plans***

62. Planning decisions should be taken in accordance with the Local Development Plan (in so far as it is relevant to the application) unless material considerations indicate otherwise.
63. Should a Planning Committee Member propose, second or support a decision contrary to the local development plan, they will need to clearly identify and understand the planning reasons for doing so, and clearly demonstrate how these reasons justify overruling the local development plan.
64. The reasons for any decisions which are made contrary to the development plan must be formally recorded in the minutes and a copy placed on the planning application file / electronic record.
65. All decisions, whether taken by the Council's appointed Planning Officer, or by the Planning Committee, are decisions made by Ards and North Down Borough Council and may be subject to challenge either by judicial review or appeal.

### **LEGAL ADVISER**

66. Ards and North Down Borough Council will have access to legal advice to support the planning function. Members may require the Legal Adviser to provide legal advice on an issue which arises during the course of a meeting of the Planning Committee. The Director of Regeneration, Development and Planning, and the Head of Planning, shall each also have the ability to exercise discretion regarding the requirement for attendance of the Legal Adviser at Planning Committee. In such circumstances, the Committee shall meet 'in Committee' with only Members of the Planning Committee, presiding officials and the legal adviser(s) remaining in the room. For the avoidance of doubt, all councillors who are not Members of the Planning Committee and Members of the said Committee who have chosen to speak as a supporter or objector to an

application, will be required to withdraw from the room while the legal advice is provided on the matter arising.

## DEFERRALS

67. The Planning Committee can decide to defer consideration of an application to the next Planning Committee meeting to:

- allow additional information/clarification to be provided (including provision of legal advice);
- allow a site visit to be arranged; or
- enable consideration of a 'minded to approve or refuse the planning application' reasoning.

Such a decision should be proposed, seconded and subject to a majority vote.

68. Members of the Planning Committee should be aware that deferrals will inevitably have an adverse effect on processing times and will prolong future meetings, and therefore should be used as an exception. Members should therefore restrict themselves, where possible, to one deferral only per application. In addition, there should be clear reasons why a deferral is necessary.

69. Members should not seek to defer an application in order to seek to re-design or negotiate amendments to an application. The Committee must determine the proposal as presented before it.

### ***Minutes of Planning Committee Meetings***

70. Written minutes will be recorded at all Planning Committee meetings which will be published on the Council's website. All minutes taken at Planning Committee meetings, although not verbatim, must reflect the discussions and decisions taken during the meetings as these could be used as evidence should any complaints be made about how decisions were taken, or a decision appealed to the Planning Appeals Commission.



## SITE VISITS

71. Planning Committee site visits can be useful to identify very important features of a proposal that may be impossible to convey in a written report or by photographs, video, plans and drawings. Site visits can cause delay and should only be used where the expected benefit is substantial.
72. Planning Committee visits will normally be arranged by the Head of Planning, in consultation with the Chairperson, where in their judgement the substantial benefit test applies, i.e.
- The impact of the proposed development is difficult/impossible to visualise from the officer's report, photographs, video, plans, drawings and any other supporting material;
  - There is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing;
  - The proposal is particularly contentious;
  - Non-visual considerations such as noise and smell are key issues on which the application will be determined.
73. If Planning Committee Members defer consideration of an application for a site visit this should only follow a formal proposal, the substantial benefit test and the vote being taken. The reason for deferral for a Planning Committee site visit shall be minuted.
74. The purpose of the Planning Committee site visit is a fact-finding exercise and therefore public rights of attendance/speaking do not apply. The purpose is not to make a decision on the application.
75. Where a site visit is agreed, the planning case officer will contact the applicant/agent to arrange access to the site. Invitations will then be sent to Members of the Planning Committee.
76. At the site visit the merits of application should not be discussed. The purpose of any

discussion is to direct Planning Committee Members to the matters they have come to view or experience. Neither the applicant/agent, objectors, supporters, the Council nor any other Member of the public, will be permitted to address Planning Committee Members, either individually or as a group. It is a function of the Chairperson of the Planning Committee, but also of any officer present and the Planning Committee Members themselves, to make this clear at the visit or beforehand if a member of the public enquires.

77. Members of the Planning Committee should not carry out their own unaccompanied site visits as there may be issues relating to permission for access to land, they will not have the information provided by the Planning Officer, and, in some circumstances (e.g. where an elected Member is seen with applicant or objector) it might lead to allegations of bias.

78. Site visits must not be requested in any of the following cases:

- To consider boundary or neighbour disputes;
- To consider objections raised on competition grounds;
- To consider objections raised on the grounds of loss of property values;
- To consider any other issues which are not material planning considerations;
- Where Members of the Planning Committee have already visited a site within the last year, except in exceptional circumstances; or
- To consider representations from friends, neighbours or relatives.

### ***Site Visit Procedure***

79. The Chairperson/Vice Chairperson of the Planning Committee will oversee the conduct of site visits. They will start promptly at the time notified to Members and planning officers. At the request of the Planning Committee Chairperson/Vice Chairperson, the planning officer may be invited to describe the proposal to Members. Whilst Planning Committee Members will be expected to be familiar with the planning officer's report, plans/drawings may be used where necessary.

80. The planning officer may indicate matters of fact in relation to the proposal and surrounding land which Members can take account of. Through the Planning

Committee Chairperson/Vice Chairperson, Members may ask the planning officer for factual clarification on any planning matter relating to the proposal or surrounding land, such as distances to adjoining properties or the location of proposed car parking.

81. At no time during the site visit should Members debate the merits of the planning application. To do so outwith the Planning Committee meeting might imply that Members had made their mind up.
82. In order to assist Members to retain their objectivity, they should keep together in one group with the Chairperson/Vice Chairperson and the planning officer and should avoid breaking away into smaller groups. Once a site visit is concluded, Members should leave the site promptly.

### ***Record Keeping***

83. The planning officer will keep a record of Members' attendance at the site visit and will pass this information to Democratic Services for minute purposes. The planning officer will also prepare a written report on the site visit. This report will be presented at the next meeting of the Planning Committee scheduled to discuss the particular application.

### **PRE-DETERMINATION HEARINGS**

84. In order to enhance scrutiny of applications for major development which may raise issues with particular sensitivity for a local area, Regulation 7 of the Planning (Development Management) Regulations (NI) 2015 sets out a **mandatory** requirement for pre-determination hearings for those major developments which have been subject to notification (i.e. referred to the Department for call-in consideration, but that have been returned to a Council for determination). In such cases Ards and North Down Borough Council's Planning Committee will hold a hearing prior to the application being determined.
85. In addition, the Planning Committee may also hold pre-determination hearings, at its discretion, when considered necessary, to take on board local community views, as well as those in support of the development. The intention is to give applicants and those who have submitted relevant representations the opportunity to be heard by the

Planning Committee before it takes a decision. This will make the application process for major development more inclusive and transparent.

86. Any hearing should take place after the expiry of the period for making representations on the application but before the Planning Committee decides the application. It will be for the Planning Committee to decide whether it wishes to have a hearing on the same day as the related planning application is determined by the Planning Committee or to hold a separate hearing on a different day. The scale and complexity of the planning issues will have to be considered. In holding a hearing, the Planning Committee procedures can be the same as for the normal Planning Committee meetings. The Planning Officer will produce a report detailing the processing of the application to date and the planning issues to be considered. If the Planning Committee decides to hold the hearing on the same day as it wishes to determine the application the report to elected Members should also contain a recommendation.
87. Whilst the Planning Committee will endeavour to hold its pre-determination hearings outwith the Planning Committee meeting at which the application will be considered, it is recognised that this may not always be possible.

## TRAINING

88. It is recommended that participating Planning Committee Members continue to attend relevant training on planning matters as required and/or provided in association with the Head of Planning.

## NETWORK

89. It is anticipated that a network of Planning Committee Chairpersons will be established and that Members should meet regularly to discuss items of common interest. Ards and North Down Borough Council will contribute to this network once established.

## REVIEW OF DECISIONS

90. On an annual basis Members of the Planning Committee should inspect a sample of

implemented planning decisions in order to assess the quality of decision-making. This should include a sample of decisions delegated to officers to give assurance that the scheme of delegation is operating effectively and in line with the Council's views. Procedures will be prepared to assist with this review.

## REVIEW OF PROTOCOL

91. This protocol will be monitored and procedures reviewed as necessary to ensure that they remain current and relevant to the operational needs of the Ards and North Down Borough Council Planning Committee.



## APPENDIX 1: RUNNING ORDER FOR PLANNING APPLICATIONS

<b>1. Presentation of Application</b>		
a.	<b>Oral update if required to report any updates since agenda was issued</b>	Planning Officer
b.	<p><b>Presentation of application</b> Officers' reports will have been available on the NI Planning Portal and have been circulated to Planning Committee Members in advance.</p> <p>The officer will detail the following:</p> <ul style="list-style-type: none"> <li>• Application Number</li> <li>• District Electoral Area</li> <li>• Committee Interest (why before Planning Committee)</li> <li>• Proposal</li> <li>• Site/Location</li> <li>• Any other facts considered necessary for the information of the Planning Committee</li> </ul> <p>The officer will provide clarification on any issue raised by Planning Committee Members.</p>	Planning Officer
<b>2. Speaking Arrangements</b>		
a.	<p><b>Person(s) speaking in opposition of the application (including elected members/MPs/MLAs) ('Against')</b></p> <p>5-minute allocation</p>	Chairperson
b.	<p><b>Person(s) speaking in support of the application (including elected members/MPs/MLAs) ('For')</b></p> <p>5-minute allocation</p>	Chairperson
<p>The same procedure will be used for each speaker:</p> <ul style="list-style-type: none"> <li>• Welcome by the Chairperson, including reminder to keep to planning issues and stating time limit.</li> <li>• Clarification questions from Planning Committee Members through the Chairperson – these should be points of fact, policy or other technical aspects and only refer to issues raised by the speakers</li> <li>• Speaker asked to return to Public Gallery</li> <li>• Clarification on any points from Planning Officer</li> </ul>		

<b>3. Debate</b>		
a.	<b>Indication of Members who wish to speak</b> An initial indication to ensure all Planning Committee Members are able to speak or ask for additional information/clarification. Does not preclude another Member speaking later during the debate.	Chairperson
b.	<b>Debate (Planning Committee Members, through Chairperson, support from officers)</b> Member debate on the planning issues for the application. To be framed by (but not restricted to) the issues identified in the officer report and the resulting recommendation. Clarification available from officers.	Chairperson/ Planning Committee Members /Officers
c.	<b>Invite proposing and seconding of the recommendation/alternative recommendation (if applicable based on debate)</b> If the debate appears to be contrary to the officer recommendations (i.e. decision to overturn or revision to conditions etc.) then the Chairperson should invite a proposal for alternative recommendation or deferral. If the debate appears to support a vote in line with officer recommendation, no action is required.	Chairperson
<b>4. Vote</b>		
a.	<b>Checking that Planning Committee is ready to vote</b> The Chair will ascertain if the Planning Committee as a whole whether it feels it is now ready to vote on the application, leaving a pause for any Member to either request that the debate should continue or to seek clarification on a matter of fact, policy or other technical aspect.	Chairperson
b.	<b>Summing up</b> Short conclusion, returning to the main issues raised by the officer report, the way in which Members have explored these and other issues. Clear reminder of the motion and the implication of a vote in either direction.	Chairperson/Officers
c.	<b>Vote</b> Clear show of hands raised above the head and held in place until the Director/Democratic Services acknowledges the count. Voting first in favour of the motion, then against, then for abstentions. Anyone not voting is subsequently deemed to have abstained.	Director/Democratic Services
d.	<b>Recording of Decision</b> Director/Democratic Services to announce the number of votes in each direction. Individual Member voting to be recorded where not unanimous. Chair to clearly announce the decision and to be included in the minutes.	Director/Democratic Services/Chairperson

Unclassified

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## ITEM 7

## Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 May 2024
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	11 April 2024
File Reference	N/A
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Not applicable
Subject	Update on Planning Appeals
Attachments	Item 7a - 2022/E0044 PAC decision Item 7b - 2022/A0127 PAC decision

## Appeal Decisions

1. The following appeal against service of an Enforcement Notice was determined on 10 April 2024 with the Council's Enforcement Notice being upheld by the Commission.

PAC Ref	2022/E0044
Enf Case ref	EN/2022/0118
Appellant	Jonathan Hamilton
Subject of Appeal	Service of Enforcement Notice alleging: <ul style="list-style-type: none"> <li>i. Unauthorised extension to domestic curtilage;</li> <li>ii. Area of gravel hardstanding and new access;</li> <li>iii. Erection of 4no. polytunnels;</li> <li>iv. Erection of roadside timber boundary fence</li> </ul>
Location	Land SW of 70 Ballygowan Road, Comber

## Not Applicable

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An appeal against an Enforcement Notice can be brought on any of the following grounds:

- a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- b) that those matters have not occurred;
- c) that those matters (if they occurred) do not constitute a breach of planning control;
- d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- e) that copies of the enforcement notice were not served as required by the relevant section of the Planning Act;
- f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- g) that any period specified in the notice falls short of what should reasonably be allowed.

This appeal was brought on grounds (a), (b), (c), (d), (f) and (g). As they did not pay the fee the Ground (a) appeal was later dropped and the appeal was heard on the remaining grounds.

**Ground (b)** that the matters alleged in the notice have not occurred – This ground failed. The Commissioner contended that at the time the EN was served the land was not being used for the purposes of ‘forestry’ and set out various definitions. She also accepted that the domestic curtilage had been extended.

**Ground (c)** that those matters (if they occurred) do not constitute a breach of planning control – This ground failed as it had not been demonstrated that the matters described do not constitute a breach.

**Ground (d)** that any breach of planning control is immune from enforcement action. This ground failed.

**Ground (f)** in relation to the steps required by the notice not being adequate also failed whilst the appeal under **Ground (g)** regarding timeframes succeeded and the time was varied to 12 months.

2. The following appeal was dismissed on 29 March 2024.

PAC Ref	2022/A0127
Application ref	LA06/2021/1451/F
Appellant	Adam Clint



## Not Applicable

Subject of Appeal	Refusal of planning permission for 1no. dwelling with detached garage, using existing site entrance
Location	Site 30m SW of 9a Quarter Road, Cloughey

The Council refused planning permission on 2 September 2022 for the following reasons:

- i. The proposal is contrary to Policy CTY 8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition to ribbon development along Quarter Road.
- ii. The proposal is contrary to Policy CTY 2a of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no cluster of development as it is not associated with a focal point or located at a crossroads.
- iii. The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- iv. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the dwelling would, if permitted, result in a detrimental change to the rural character of the countryside by adding to a ribbon of development.

The site was assessed against Policy CTY 2a 'New Development in Existing Clusters'. The Commissioner found that the first two criteria in this policy were met in that there are more than four qualifying buildings in the immediate area, which lie outside a farm and appear as a visual entity in the landscape (Nos. 7c, 9, 11, 48 and 46a Quarter Road). However, the Commissioner concluded that the subject group is not associated with a focal point or located at a crossroads. Whilst there is a crossroads approximately 325m north-west of the appeal site, there are intervening fields, and the group of buildings are therefore not sited at this required location. The applicant argued that a pigeon club prefabricated building in an adjacent field is a community focal point; however, as this is an unlawful structure it cannot be considered. As such the third criterion of Policy CTY 2a is not met and the group of buildings are not considered to constitute a cluster. The policy is not met and refusal reason 2 is sustained.

The PAC determined that Policy CTY 8 does not apply to plural road frontages as the Quarter Road is bisected by the laneway that serves two dwellings at Nos 9a and 9b Quarter Road. As there is no substantial and continuously built-up frontage there can be no gap site for the purposes of Policy CTY8. Additionally, it was concluded that the gap does not represent a "small gap site" as it would be able to accommodate more than two dwellings.

As such the erection of a dwelling on this site would further result in the creation of a ribbon of development failing to meet this policy and criterion (b) of Policy CTY 14.



## Not Applicable

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As there are no overriding reason why the appeal development is essential in this countryside location the site fails to also meet policy CTY 1.

The PAC concluded that as the Council's reasons for refusal were sustained the appeal had to fail.

**New Appeals Lodged**

1. The following appeal was lodged on 01 April 2024.

PAC Ref	2024/A0001
Application ref	LA06/2021/1493/O
Appellant	Peter Knight
Subject of Appeal	Refusal of Outline Planning Permission for 1no. detached dwelling with associated site works
Location	Lands approx. 40m north of 194 Church Road, Hollywood

Details of appeal decisions, new appeals and scheduled hearings can be viewed at [www.pacni.gov.uk](http://www.pacni.gov.uk).

**RECOMMENDATION**

It is recommended that Council notes the report and attachments.



# Enforcement Appeal Decision

Planning Appeals Commission  
4<sup>th</sup> Floor  
92 Ann Street  
Belfast  
BT1 3HH  
T: 028 9024 4710  
E: info@pacni.gov.uk

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<b>Appeal Reference:</b>	2022/E0044
<b>Appeal by:</b>	Mr. Jonathan Hamilton
<b>Appeal against:</b>	An enforcement notice dated 17 <sup>th</sup> June 2022
<b>Alleged Breach of Planning Control:</b>	<ol style="list-style-type: none"> <li>1. Unauthorised extension to domestic curtilage</li> <li>2. Area of gravel hardstanding and new access</li> <li>3. Erection of four polytunnels</li> <li>4. Erection of roadside timber boundary fence</li> </ol>
<b>Location:</b>	Land SW of 70 Ballygowan Road, Comber, Down
<b>Planning Authority:</b>	Ards and North Down Borough Council
<b>Authority's Reference:</b>	EN/2022/0118
<b>Procedure:</b>	Informal Hearing on 16 <sup>th</sup> January 2024
<b>Decision by:</b>	Commissioner Trudy Harbinson, dated 10 <sup>th</sup> April 2024

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## Grounds of Appeal

1. The appeal was brought on Grounds (a), (b), (c), (d), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). No deemed application fee was paid and the ground (a) appeal has lapsed. As such, the remaining Grounds of appeal are (b), (c), (d), (f) and (g).

### Ground (b) - that the matters alleged in the Notice have not occurred.

2. Ground (b) of the appeal is argued in respect of the alleged unauthorised extension to domestic curtilage. Under this ground of appeal, the onus is on the Appellant to demonstrate that the matters alleged in the enforcement notice (EN) had not occurred when the EN was issued.
3. The Appellant queried the reference to a new access on the EN. The Council clarified that it was the new access to the hardstanding adjacent to the access to the dwelling at the main gates. Despite the argument presented by the Appellant they were aware of the works they had carried out on the site when the EN was issued.
4. The Appellant stated that what had occurred at the site was a change of use from agriculture to forestry. They stated that on the date the EN was served the site was in forestry use, not domestic use, and as such there had been no unauthorised extension of domestic curtilage.

5. The EN site lies to the south of a dwelling and outbuildings at 70 Ballygowan Road. The notice site is accessed directly from number 70 Ballygowan Road.
6. According to the Appellant he has owned the property for 10 years. He is a landscaper who grows trees as a hobby. He began doing so 7 years ago. There is no current income derived from the activity on the EN site. In the long term he hopes to progress the hobby to a business however it would take 10 years to grow the plants to an adequate height (10 to 12 foot) for sale. I was advised that the best way to grow trees is via a polytunnel. Seeds are grown in trays and transplanted into individual pots when grown. There are a range of species grown on the notice site, including oak, silverbirch, liquid amber, laurels and agapanthas. There are between 70,000 to 80,000 plants and as they grew more polytunnels were required. The seeds mainly come in the post or are collected so there are no deliveries to the EN site. The seeds are planted by the Appellant or family members. In summer months plants are taken out of the polytunnels and placed on the hardstanding. The hardstanding area is used for irrigation. A raft foundation has been used in the construction of the polytunnels which are attached to the ground.
7. The Appellant stated that the notice lands were in forestry use with the polytunnels containing tree and forestry products when the EN was served. They stated that since then a few thousand trees have been planted. They stated that as there is no threshold test within the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) which allows a certain level of forestry, that they are entitled to benefit from forestry permitted development rights. They point to the absence of any definition of forestry in planning legislation. They also reference a previous Appeal decision (2020/E0018) where the interpretation provided in the Forestry Act NI 2010 was relied upon.
8. In the Forestry Act "forest", "forestry", "forestry land" and "forest products" have the meanings given by section 1(3). "Forest" includes woodland. "Forestry" includes - (a) the production and supply of forest products and the maintenance of adequate reserves of growing trees; (b) the management and development of forests so as to contribute to the protection of the environment, biodiversity and the mitigation of, or adaptation to, climate change. "Forestry land" means any land held by the Department for the purposes of any of its functions under the Act. "Forest products" means timber and other products derived from, or produced in the course of, forestry.
9. The Council referenced a decision involving MJM Forestry and Land Clearance LTF and Seven Parks District Council, where it was noted that although the term forestry is not defined by statute, it is generally recognised as the science of caring for or cultivating forests or large areas of trees. However, a full copy of that decision was not provided. With respect to the Forestry Act, the Council consider that the Notice site does not presently produce and supply forest products and as such fails to satisfy the initial requirement at section 1(3)(a). They also indicate that when the Notice was issued the level of planting at the site did not equate to an 'adequate reserve of growing trees', as at that time the Appellant only intended to carry out an afforestation program but had not yet done so. In order to provide clarity on the definition of a forest they reference the UK Forestry Standard 4<sup>th</sup> Edition guidance (UKFS):

'The UK Forestry Standard states that the term Forest is used to describe land predominately covered in trees (defined as land under stands of trees with a canopy cover of at least 20%), whether in large tract (generally called forests) or smaller areas known by a variety of terms (including woods, copses, spinneys or shelterbelts). The alternative term 'woodland' has local nuances of meaning so it is used in the text where it is more appropriate, but for the purposes of the UKFS the meaning is synonymous with forest. Forestry is the science and art of planting, managing and caring for forests.'

10. The Council, using the above definition, consider that section 1(3)(b) of the Forestry Act is not met because what was on the site when the EN was issued was not a forest as per the UK Forestry Standard, which they state is supplementary guidance used by DAERA. They further state that the evidence in front of them at the time of issuing the EN was indicative of a tree nursery.
11. Appeal 2020/E0018 was concerned with whether an area, which both parties to that appeal accepted was woodland, fell within the definition of forestry. The Forestry Act provides clarity that any reference to a forest within the Act includes woodland. As such it was concluded that the site did fall within the definition of forest and the matter to be considered was whether the proposed building was necessary for the purposes of forestry. Whilst I note that the Forestry Act provided some direction in consideration of that specific matter in Appeal 2020/E0018, the circumstances in that case are distinguishable to this appeal in that the site comprised an area of land of which 0.5ha was planted out in a mix of trees and there was no dispute it was a woodland.
12. An application for a Certificate of Lawfulness of Existing use or Development (CLEUD) was submitted to the Council on 31<sup>st</sup> January 2022 for the "*retention of existing polytunnels used for growing trees on site and retention of hardstanding area and new boundary treatments*" (LA06/2022/0092/LDE). A Supporting Statement which accompanied it stated that permitted development rights had been used to construct several polytunnels on the site to grow trees inside and once the trees reach the required height and age the aim is to carry out an afforestation program and plant them out on the land to the south of the polytunnels. That application for a CLEUD was refused on 31<sup>st</sup> May 2022.
13. There was no dispute that forestry is not development. Section 23(3) of the Planning Act (Northern Ireland) 2011 sets out operations or uses of land that shall not be taken for the purposes of the Act to involve development of land. Section 23(3)(d) thereof includes the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used. To my mind, it is reasonable to expect that a forest and the use of land for the purposes of forestry would comprise of land planted with trees. At the time the EN was served by the Council on the EN site there was no evidence of trees planted. Turning to the definition as contained in the Forestry Act, I concur with the Council that there was no production *and* supply of forest products *and* the maintenance of adequate reserves of growing trees on the notice site when the EN was issued. Notwithstanding that it was the Appellant's stated intention to carry out afforestation, there was no forest being managed and developed at the key time.



14. The polytunnels may provide an environment that aids in the early stage of seed growth. However, for the reasons stated above I am not persuaded that they, together with the associated hardstanding, amount to the use of land for the purposes of forestry. The Appellant advised they have since carried out planting in the field, however at the date the EN was issued this was not the case.
15. The Appellant disputes the alleged unauthorised extension to domestic curtilage. The Appellant pointed to the residential dwelling having private amenity space. They said the domestic boundary remained undefined and that there had been no substantial change to its curtilage.
16. An aerial photograph provided by the Council dated 16<sup>th</sup> August 2016 shows that there was a boundary of vegetation in place separating the notice site from the dwelling at 70 Ballygowan Road. Another photograph taken by the Council from the front of the entrance gates to 70 Ballygowan Road dated 25<sup>th</sup> May 2016 also shows an established vegetated boundary adjoining the concrete wall at the southern side of the gate and extending along the south of a polytunnel which was within the residential boundary. An aerial photograph dated 7<sup>th</sup> May 2017 shows this boundary removed and a later aerial photograph dated 17<sup>th</sup> July 2017 shows a new boundary further south of the previous boundary. However, by 24<sup>th</sup> April 2021 this new boundary has also been removed and the domestic boundary has extended further south again. This 2021 aerial image also shows that the polytunnel which had been contained within the residential boundary of 70 Ballygowan Road in 2016 had been moved from its original position.
17. Site photographs taken by the Council dated 7<sup>th</sup> March 2022 also show the vegetated boundary as shown on the 25<sup>th</sup> May 2016 photograph is no longer in place. They show the side garage doors of 70 Ballygowan Road opening onto the area of hardstanding on the EN site, together with openings between the dwelling's amenity space and the alleged unauthorised hardstanding. These photographs also show the access off the entrance at the main gates into the alleged unauthorised hardstanding where the previous vegetated boundary was removed. I noted at my site visit that there is now a fence in place separating the garages from the polytunnels. The photographic evidence presented clearly demonstrates that the southern boundary of the dwelling at 70 Ballygowan Road was removed and that the domestic curtilage was extended.
18. I have already concluded above that when the EN was issued the land was not used for forestry. Notwithstanding the Appellant's position that what was on the site was beyond what can be considered a hobby, I was advised that he plants trees as a hobby, it generates no income, involves family members only and that he has a full-time job. As such I consider that at the time the EN was issued the domestic curtilage had been extended.
19. Accordingly, I am satisfied that the matters as alleged in the EN had occurred. Ground (b) of appeal has not been made out.



**Ground (c) - that those matters (if they occurred) do not constitute a breach of planning control.**

20. Ground (c) relates to whether the alleged breach of control constitutes 'development' and if so, is planning permission required. Ground (c) is argued in respect of the gravel hardstanding, access, polytunnels and roadside timber boundary fence.
21. The Appellant considered that the alleged unauthorised gravel hardstanding, access and polytunnels is permitted under Part 8 – Forestry Buildings and Operations – Class A of the GPDO and does not constitute development requiring planning permission. Development is permitted under Part 8 Class A (A) for the carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes (my emphasis).
22. The Appellant stated that the debate is the definition of forestry of which there is no definition in planning legislation or policy. They stated that there is no doubt of their involvement in the production of trees and their activity is as per the definition of forestry contained in the Forestry Act. Whilst the Council highlighted what Planning Policy Statement 21 Policy CTY10 says about an active forest, the Appellant stated that this is not required in legislation and there does not have to be an active forest to benefit from forestry permitted development under the GPDO.
23. In order to benefit from permitted development under Part 8 the land must already be in use for the purposes of forestry. Given I have concluded above that the land was not being used for the purposes of forestry then the matters alleged in the EN could not have benefitted from permitted development rights under Part 8 of the GPDO.
24. The Appellant had originally intended to plead ground (a) with respect to the alleged unauthorised roadside timber boundary fence however at the hearing they stated that they considered it was permitted development under Part 3 Minor Operations of the GPDO. I was told at the hearing that the fence is 1.9m. However, I note on a drawing that accompanied the application for a CLEUD it states that the height is 2m. The Appellant stated that the alleged unauthorised timber fence is permitted development as it is set back from and does not abut the road and there is a 1m high fence with hedge behind separating it from the roadside.
25. Part 3 Minor Operations Class A allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development however is not permitted under this class if the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a road used or designed to be used by vehicular traffic exceeds 1 metre above ground level; or the height of any other gate, fence, wall or means of enclosure erected or constructed exceeds 2 metres above ground level.
26. The subject roadside timber boundary fence lies along part of the site's western boundary with the Ballygowan Road. Whilst there is a fabric mesh netting held in place by a series of timber posts along the grass roadside verge with vegetation behind, the timber close boarded fence is also part of this boundary. The elements all read as being erected or constructed adjacent to the Ballygowan Road. The presence of the netting of a lesser height and vegetation in front of the close

boarded timber fence does not detract from its position adjacent to the road. As the fence is constructed adjacent to a road used by vehicular traffic and exceeds 1 metre above ground level it is not permitted development under Part 3 Minor Operations Class A as it does not comply with part A1.

27. It has not been demonstrated that the matters described in the EN do not constitute a breach of planning control. Consequently, the appeal on ground (c) fails.

**Ground (d) - that any breach of planning control is immune from enforcement action.**

28. Section 132(1) of the Planning Act (Northern Ireland) 2011 sets out that where there has been a breach of planning control in relation to building, engineering, mining, or other operations in, on, over or under land, no enforcement action can be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed. Section 132 (3) sets out that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. The EN is dated 17<sup>th</sup> June 2022. The key date for immunity is 17<sup>th</sup> June 2017.
29. The onus is on the Appellant to demonstrate, on the balance of probabilities, that no action could be taken in respect of the matters alleged in the notice at the time it was issued. Only the breach in respect of the area of gravel hardstanding was contested under ground (d) of appeal.
30. The Council state that at a site visit carried out on 25<sup>th</sup> May 2016, for a previous enforcement case, the southwest boundary was clearly defined with a dense vegetated boundary and one polytunnel was in place. At a further site visit on 27<sup>th</sup> February 2017, in connection with that other case, no further breaches were noted. They include an aerial photograph dated 7<sup>th</sup> May 2017 which show that the vegetated boundary has been removed from the southwest boundary, with ground clearance works taking place on the EN site, though work was not complete. An aerial photograph dated 17<sup>th</sup> July 2017 shows the gravel hardstanding in place with a new southwest boundary. In the absence of any other evidence immunity would therefore have been gained for this by 17<sup>th</sup> July 2022. A later aerial photograph dated 24<sup>th</sup> April 2021 shows the southwest boundary removed and a further extension into the agricultural field.
31. The Council referred to the CLEUD submitted by the Appellant and the absence of any grounds of immunity in that. It was refused on 31<sup>st</sup> May 2022. The Appellant however stated that no evidence had been put forward at that stage as it was not immune at the time that application was made. They stated that they realised the hardstanding was immune when the EN was served.
32. At the hearing Mr Hamilton stated that he had started to lay the gravel hardstanding in early May 2017 and that it was in place shortly afterwards and before 17<sup>th</sup> June 2017. However, I was not provided with definitive dates, the time period it had taken or any further details. He said he had receipts for gravel and for plants that were put in place in that area at the same time. I was given an invoice made out to him at his address of 70 Ballygowan Road. It is dated 13<sup>th</sup> March 2017 and is for the supply of 30 *Alnus glutinosa* trees (6-8cm). Whilst this is evidence of

the purchase of trees by the Appellant it is dated prior to May 2017, which is the month I was told that the laying of the hardstanding had begun. Even if the invoice had a date in May 2017 it does not demonstrate that works in respect of the gravel hardstanding had been undertaken.

33. The Appellant stated that the test to be applied is that of the balance of probability. They stated that it was clear that the gravel hardstanding was laid between the two dates of the aerial photographs (7<sup>th</sup> May and 17<sup>th</sup> July 2017) and that the gravel on the aerial photograph dated 17<sup>th</sup> July does not look new, appearing to have been there for a period. They stated that the appearance of the gravel hardstanding on the later aerial photograph taken together with the personal statement given at the hearing as to when the hardstanding was laid, on the balance of probability it was likely that the gravel hardstanding was immune at the date the EN was served.
34. It is evident that the hardstanding was put in place some time between 7<sup>th</sup> May and 17<sup>th</sup> July. The 7<sup>th</sup> May aerial photograph clearly shows site clearance works. However, the aerial photograph dated 17<sup>th</sup> July is not of such a high standard of resolution that the gravel hardstanding can be readily discerned. I can not be sure that it was in place by 17<sup>th</sup> June 2017.
35. Whilst the Appellant put forward verbal arguments at the hearing, other than reference to a general time period, there is a lack of clarity on the precise dates of when the gravel hardstanding was laid. I was not provided with any specific details as to what was involved in laying the hardstanding and whilst I was told there were receipts for the gravel, these were not provided. The personal statement is not persuasive, even when taken together with the aerial photographs and the invoice, and the Appellant has not demonstrated that, on the balance of probabilities, the alleged unauthorised hardstanding was in place prior to the key date of 17<sup>th</sup> June 2017 and had gained immunity from enforcement action.
36. Accordingly, in the evidential context provided, I conclude that the gravel hardstanding is not immune from enforcement action and consequently the appeal under ground (d) fails.

**Ground (f) - that the steps required by the notice, or the activities required to cease, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity caused by any such breach.**

37. Section 140 of the Planning Act requires an EN to specify the steps required to be taken or the activities required to cease in order to achieve, wholly or partly, certain stated purposes. These purposes include remedying the breach of planning control by restoring the land to its condition before the breach took place or remedying any injury to amenity caused by the breach.
38. The steps which the Appellant is required to take are: -
  - cease the use of the land as an unauthorised extension to domestic curtilage and permanently block up access;
  - remove the unauthorised area of gravel hardstanding and return the land to its condition before the breach took place;
  - remove the unauthorised polytunnels; and
  - remove the roadside timber fence.

39. The matter to assess under ground (f) is whether the steps required by the notice exceed what is necessary to remedy the breach. Whilst the Appellant has pleaded that the steps are excessive, his substantive argument under ground (f) is that the land is not being used as an extension to the domestic curtilage, the gravel hardstanding is immune from enforcement action, the access does not prejudice road safety or inconvenience the flow of traffic; and the roadside fence is a means of enclosure that causes no demonstrable harm.
40. I have already considered under grounds (b) and (d) above that at the date the EN was served an unauthorised extension to domestic curtilage had taken place, and that the gravel hardstanding is not immune from enforcement action. I also considered the alleged breaches under ground (c) and found that they are development. Repetition of the arguments from the aforementioned legal grounds of appeal does not assist the Appellant in respect of whether the steps are excessive. I cannot consider the planning merits of the access or the roadside fence as there is no ground (a) appeal before me.
41. The Appellant queried the requirement to block up the access and how they would access their land. The Council confirmed that there was no issue with the agricultural access gate to the land. It was further clarified that the main access could continue to serve the dwelling. The access referred to in the EN is that which was created by the removal of the original vegetated southwestern boundary. It facilitated the extension of the curtilage into the adjacent field. In order to cease the use of the land as an unauthorised extension to the domestic curtilage it is necessary to block up that access. I find the step necessary to remedy the breach and that it is not excessive.
42. With respect to the removal of the unauthorised gravel hardstanding and returning the land to its original state the Appellant stated that there were financial implications to this. They stated that the land had been in a poor condition previously, and that the gravel hardstanding was causing no harm. Again, I cannot examine the planning merits of the case as there is no ground (a) appeal before me. There was no dispute that the land had previously been agricultural and this is further evidenced in the aerial photographs provided. I was not presented with any evidence of it having previously been in a particularly poor state. I am not persuaded that the removal of the hardstanding is excessive. Restoring the land to its condition prior to the breach is compliant with Section 140 (4) of the Planning Act. Any lesser step would not remedy the breach.
43. The Appellant offered no persuasive arguments as to why the steps required exceed what is necessary to remedy the breach of planning control. Accordingly, the appeal on ground (f) fails and the steps required by the Enforcement Notice are upheld.

**Ground (g) - that any period for compliance specified in the notice falls short of what should reasonably be allowed.**

44. The EN requires that all the steps required to remedy the alleged breaches are carried out within 60 days from the date the notice takes effect.
45. The Appellant stated that the polytunnels can be dismantled quickly, as can the fence. The issue however is finding a source for the contents of the polytunnels.

Removal of the polytunnels and fence would leave the site and saplings exposed. There is also a financial cost in removing the gravel hardstanding.

46. The Appellant stated that they had spent in excess of £80,000 on growing the saplings on the site. They have nowhere else to store the saplings for which they must source a buyer. They could sell to a garden centre however to remove them from the site in the time period specified in the EN would amount to them giving them away at 50pence to £1 each as everything is too young. They stated that the saplings in the polytunnels are approximately 6 years old and 3 to 4 feet high and that a 12 month period would allow them to grow to a level that would recoup financial loss. The saplings are in trays and pots within the polytunnels and on the hardstanding. These must be rehoused before the polytunnels and hardstanding can be removed along with the access to them and the fence which provides security and screening. The Council had no objection to an extension of the time period to 12 months in respect of all the steps.
47. Given the Council's acceptance of an extension to 12 months for compliance, I consider that a period of 12 months from the date of this appeal decision would be appropriate. The appeal under Ground (g) succeeds.

## Decision

The decision is as follows:-

- The appeal on Ground (b) fails;
- The appeal on Ground (c) fails;
- The appeal on Ground (d) fails;
- The appeal on Ground (f) fails;
- The appeal on Ground (g) succeeds and the period for compliance is varied to 12 months; and

The enforcement notice as varied is upheld.

**COMMISSIONER TRUDY HARBINSON**



**List of Appearances**

Planning Authority:- Wendy Murray, Ards and North Down Borough Council

Appellant:- Declan Rooney, Planning Permission Experts  
Jonathan Hamilton, Appellant

Chris McClean (observing)

**List of Documents**

Planning Authority:- Ards and North Down Borough Council  
Statement of Case  
Post Hearing Comments

Appellant: - Appeal Decision reference 2020/E0018  
Invoice  
(both submitted at hearing by Appellant)



# Appeal Decision

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<b>Appeal Reference:</b>	2022/A0127
<b>Appeal by:</b>	Adam Clint
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	1 no. dwelling with detached garage using existing site entrance
<b>Location:</b>	Site 30m SW of 9a Quarter Road, Cloughey
<b>Planning Authority:</b>	Ards and North Down Borough Council
<b>Application Reference:</b>	LA06/2022/0078/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 16 <sup>th</sup> February 2024
<b>Decision by:</b>	Commissioner Cathy McKeary, dated 29 <sup>th</sup> March 2024

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposal is acceptable in principle in the countryside and if it would result in a detrimental change to the rural character of the area.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP) so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Ards and Down Area Plan 2015 (ADAP) operates as the relevant LDP where the appeal site is located. In it, the site is in the countryside and outside any designations. As the rural policies set out in the plan are now outdated having been overtaken by a succession of regional policies, no determining weight can be attached to them. I now turn to consider regional policy.
5. The SPPS sets out transitional arrangements that will operate until a Plan Strategy for the Council area is adopted. During the transitional period, the SPPS retains certain existing Planning Policy Statements (PPSs) including PPS21 – 'Sustainable Development in the Countryside' (PPS21). The SPPS sets out the transitional arrangements to be followed in the event of a conflict between it and retained policy. Any conflict between the SPPS and any policy retained under the

transitional arrangements must be resolved in favour of the provisions of the SPPS. No such conflict arises in this instance, so the retained PPS21 applies.

6. Policy CTY1 of PPS21 states that 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. The appellant considers that the proposal complies with Policy CTY1 in that it accords with Policy CTY2a which is titled 'New dwellings in existing clusters' and Policy CTY8 which is titled 'Ribbon Development'.
7. The site comprises a roadside field. There are two dwellings at 9a and 9b to the northeast of the site which are accessed by a private laneway. There are other dwellings with associated garages and outbuildings at Nos 9, 7b, 7c and 7d. These lie to the southeast of the site and are separated from the site by the private laneway serving No. 9a and 9b. There is a prefabricated hut used as a pigeon clubhouse located in the field which abuts the northwestern boundary of the site. A dwelling at No. 11 lies approximately 60m to the northwest of the site. Dwellings at 46a and 48 are on the opposite side of the Quarter Road from the appeal site, approximately 50m south and 28m west respectively. The appeal site contains a pair of decorative brick wing walls, some 1m in height which flank two slightly taller pillars. One of the pillars has a sign for 9a fixed to it, denoting the historical entrance to the dwelling at 9a. The appeal site has some mature vegetation on the northwestern boundary and a line of mature conifers to the north eastern rear boundary. The topography is broadly flat notwithstanding any overgrown mounds of soil on the site.
8. Policy CTY2a indicates that planning permission will be granted for a dwelling at an existing cluster of development provided six criteria are met. From the evidence before me, the only criterion in dispute is the third one which requires that the 'cluster' be associated with a focal point such as a social/community building/facility or is located at a cross-roads.
9. There is no justification or amplification text in Policy CTY2a to define what can constitute a 'cluster' of development. However, the first three criteria therein give an indication of the intended meaning. The first criterion requires that *"the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings."* This suggests that an existing 'cluster' of development is to be formed by buildings. The first clause in criterion three further supports this proposition as the 'cluster' must be associated with a focal point such as a social / community building / facility (if not located at a crossroads) (my emphasis). Additionally, the requirement that the 'cluster' appears as a visual entity in the second criterion, suggests that the grouping of buildings has a distinct physical expression in the local landscape, again reinforcing the interpretation of a 'cluster' of development being formed by buildings.
10. There are more than four qualifying buildings in the immediate area and these lie outside of a farm, namely the dwellings at Nos. 7c, 9, 11, 48 and 46a. This grouping of buildings also appears as a visual entity in the landscape when

travelling in both directions along Quarter Road. Hence the first two criteria of Policy CTY2a are satisfied.

11. As outlined above, the dispute hinges on the third criterion which requires that the cluster is associated with a focal point or located at cross-roads. Whilst there are cross-roads located some 325m to the northwest of the appeal site, there are intervening fields between it and the grouping of buildings. Accordingly, the subject grouping is not located at a crossroads.
12. The appellant considers that the grouping is associated with a community building, namely the prefabricated building which is used as a pigeon club. The Council have indicated that this building is unlawful. Even though the owners are in the process of submitting a planning application, in the absence of evidence of such permission or a certificate of lawful development, I can only conclude that it remains unlawful, regardless of the number of years it may have been on the site. As such, this building cannot be counted as a focal point. As there is no focal point and for the reasons given in the preceding paragraph, the third criterion of Policy CTY2a is not met. There is no dispute regarding the remaining three criteria of Policy CTY2a. However, because the proposal fails to meet the third criterion, it is not in a cluster and thus fails to meet the requirements of the policy read as a whole.
13. Policy CTY8 is titled 'Ribbon Development' and it indicates that planning permission will be refused for a building which creates or adds to a ribbon of development. However, an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage, and provided this respects the existing development pattern along the frontage in terms of size, scale, siting, and plot size and meets other planning and environmental requirements. For the purpose of this policy the definition of a substantial and built-up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.
14. Both parties are of the opinion that there is a substantial and continuously built-up frontage comprising of the dwellings at 7c, 9 and 11 Quarter Road. However, the exception in Policy CTY8 applies to development along a frontage, road or lane, (my emphasis). It does not apply to frontages (plural). To achieve the policy requirement of three or more buildings, the appellant must rely on development along two frontages because the Quarter Road is bisected by the laneway that serves the two dwellings at Nos 9a and 9b Quarter Road. Accordingly, I consider that there is no substantial and continuously built up frontage along this section of Quarter Road for the purposes of this element of Policy CTY8.
15. Because there is no substantial and continuously built up frontage there can be no gap site for the purposes of Policy CTY8. Notwithstanding this, even if there were a substantial and continuously built up frontage, the gap would fail to comply with Policy CTY8 in that it would not represent a "small gap site" because the gap (between the buildings at Nos 9 and 11) would accommodate more than two dwellings given the surrounding development pattern. For the reasons given above, the pigeon club building cannot be taken into account as it is not a lawful building.

16. In addition to my findings above, the proposal would share a common frontage with No. 11 and would visually link with Nos. 9 and 11. This means it would add to the existing ribbon of development along Quarter Road when travelling in either direction and fails to meet Policy CTY8 and criterion (d) of Policy CTY14.
17. The impact on rural character in accordance with Policy CTY14 - 'Rural Character' (PPS14) must be considered in the here and now and cannot be assessed in an historical context which no longer exists. The extension to the ribbon of development along this section of the road would be detrimental to the rural character of the area because it would remove some much-needed greenfield relief in what is a built-up area. The visual linkage described above, between the proposal and the existing buildings, even with the proposed planting scheme, would also add to the suburban style build up when travelling in both directions along Quarter Road which is contrary to criterion (b) of Policy CTY14. Overall, the proposal therefore fails to meet both policies CTY8 and CTY14 of PPS21.
18. The proposal does not represent one of the types of development which are considered acceptable in the countryside. Whilst I note the appellant does not own land in the settlement limits, this does not represent an overriding reason why the appeal development is essential. Overall, the proposal is contrary to policies CTY1, CTY2a, CTY8 and CTY14 of PPS21 and the related provisions of the SPPS. The Council's refusal reasons are sustained and the appeals must fail.

This decision is based on the following drawings:-

- 01, scale 1:1250, stamped received by Ards and North Down Borough Council on 27<sup>th</sup> January 2022
- 02, scale 1:500 stamped received by Ards and North Down Borough Council on 27<sup>th</sup> January 2022

**COMMISSIONER CATHY MCKEARY**



**List of Documents**

Planning Authority:- Statement of case by Ards and North Down Borough Council  
Rebuttal by Ards and North Down Borough Council

Appellant:- Statement of case by Adam Clint  
Rebuttal by Adam Clint