ARDS AND NORTH DOWN BOROUGH COUNCIL

25 March 2025

Dear Sir/Madam

You are hereby invited to attend a hybrid meeting (in person and via Zoom) of the Planning Committee of Ards and North Down Borough Council which will be held in the Council Chamber, 2 Church Street, Newtownards, on **Tuesday 01 April,** commencing at **7.00pm.**

Yours faithfully

Susie McCullough
Chief Executive
Ards and North Down Borough Council

A G E N D A

1. Apologies

2. Declarations of Interest

3. Matters arising from the Planning Committee minutes of 04 March 2025

4. Planning Applications

4.1	LA06/2024/0381/F	Retention of extension to building providing separate unit used as a gym, retention of associated car parking, and proposed subdivision and part change of use of existing storage unit to provide extension to gym. 110m SE of No 73 Green Road, Bangor
4.2	LA06/2023/2406/F	Demolition of the existing dwelling, construction of a replacement, part single storey, part storey and a half dwelling linked with a new garage via a single storey car port, a new single storey garden room and associated site works (Amended Elevations) 5 Tarawood, Holywood
4.3	LA06/2022/0265/F	Demolition of existing garage workshop and erection of 1.5 storey dwelling with parking 31a Sheridan Drive, Bangor

4.4	LA06/2021/1477/F	Demolition of Royal Hotel and Windsor Bar to accommodate a mixed-use development comprising of 35No. apartments, 2No. restaurant units, and 1No. retail unit, car parking and associated site and access works Royal Hotel and Windsor Bar, Nos. 22-28 Quay Street, Bangor

Reports for Noting

5. Update on Planning Appeals (report attached)

6. Statutory Consultations Annual Performance – response from DfI (report attached)

7. Court Judgments update (report attached)

MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)

Councillor Cathcart	Cllr McCollum
Alderman Graham	Alderman McDowell
Councillor Harbinson	Alderman McIlveen (Chair)
Councillor Hennessy	Councillor McKee
Councillor Kendall	Cllr Morgan
Councillor Kerr	Cllr Smart
Councillor McBurney	Alderman Smith
Councillor McClean	Councillor Wray (Vice Chair)

ARDS AND NORTH DOWN BOROUGH COUNCIL

A hybrid meeting (in person and via Zoom) of the Planning Committee was held in the Council Chamber, Church Street, Newtownards on Tuesday 4 March 2025 at 7.00 pm.

PRESENT:

In the Chair: Alderman McIlveen

Aldermen: Graham
McDowell
Smith

Councillors:

Harbinson	McClean (7.01 pm)
Kendall (7.15 pm)	McKee (zoom)
Kerr	Morgan
Hennessy	Smart
McBurney (zoom)	Wray
McCollum	

Officers: Director of Prosperity (A McCullough), Head of Planning (G Kerr), Senior Professional and Technical Officers (A Todd and C Rodgers) and Democratic Services Officer (J Glasgow)

1. APOLOGIES

An apology for inability to attend was received from the Mayor (Councillor Cathcart).

2. DECLARATIONS OF INTEREST

Councillor McCollum declared an interest in Item 4.1 - LA06/2022/0827/F - Lands approximately 250m SW of 240 Scrabo Road, Newtownards.

Councillor Morgan declared an interest in Item 4.2 - LA06/2024/0438/O - 100m south of 35 Ballymaleddy Road, Comber.

Councillor Harbinson declared an interest in Item 4.3 - LA06/2024/0726/F - 15A Morningside, Ballyholme, Bangor.

3. MATTERS ARISING FROM THE PLANNING COMMITTEE MINUTES OF 04 FEBRUARY 2025

PREVIOUSLY CIRCULATED:- Copy of the above minutes.

AGREED, that the minutes be noted.

4. PLANNING APPLICATIONS

4.1 LA06/2022/0827/F - Lands approximately 250m SW of 240 Scrabo Road, Newtownards - Stable building and associated hayshed/tack room and equipment store

(Appendices I- III)

PREVIOUSLY CIRCULATED:- Case Officer's report, addendum report and note of site meeting.

DEA: Newtownards
Committee Interest: A local development application "called-in" to the Planning Committee by a member of that committee (Councillor Cathcart)
Proposal: Stable building and associated hayshed/tack room and equipment store
Site Location: Lands approximately 250m SW of 240 Scrabo Road, Newtownards
Recommendation: Refuse Planning Permission

Having declared an interest in the item, Councillor McCollum withdrew from the meeting.

The Head of Planning (G Kerr) outlined the detail of the application.

Councillor Hennessy brought to the attention of the Committee that the Members present on Zoom could not hear the meeting. A short break was taken to allow the matter to be rectified.

The Head of Planning recalled to Members that the application was previously presented to the Planning Committee on 3 December 2024 where the proposal was deferred for a site meeting in line with paragraph 67 of the Protocol for the Operation of the Planning Committee. The reasoning for the site visit was that the proposed development was difficult to visualise from the case officer's report, photographs and drawings.

As the application was presented in detail at the December meeting, the Head of Planning did not present the application afresh or reiterate details already discussed.

Referring to pictures of the site, the Head of Planning stated that a site visit was convened by herself and took at the site on Monday 20 January 2025 at 9.30am. The meeting point was the car park at Killynether Country Park from where members walked to the site assessing various viewpoints along the way. Those in attendance were Alderman Graham, Councillors Morgan, Wray, and Smart, Head of Planning (G Kerr) and Senior Professional and Technical Officer (A Todd). The site location plan and associated photographs of the application site from main viewpoints had been circulated for members' convenience which provided a context for the viewpoints to be assessed. All vantage points were viewed by walking to different points to view the site. The group walked to the entrance of the car park to the Scrabo Road to assess the wider landscape in order to gain an appreciation of where the proposed development would be located. It was explained that the site

was located in an Area of Outstanding Natural Beauty (AONB) characterised by open farmland with wide ranging views. Any development in the area was characterised by small clusters of buildings set with well-established mature landscaping. The group walked west along the Scrabo Road to view the site from a further distance – the site was visible by the presence of a tractor on the site with an extension. The group then walked back along the Scrabo Road towards the site turning into the access lane. The area was marked by high hedges with parts of the site not being visible from the road at this point. The access to the road was along the access lane at which point the group accessed the site. The site of where the proposed two structures were to be located was roughly marked out. While all were present on the site – it was explained that the site had characteristics of hedgerows and undulating landscape with views of Scrabo Tower to the north and views of Strangford Lough as the group traversed east across the site. There were some matters of clarification from members regarding potential views from the dual carriageway – it was explained that any views would be that long ranging they would be fleeting. There would also be views of the site at parts along the Moat Road which ran from the Scrabo Road to the Comber – Newtownards dual carriageway. Those in attendance made their way back to the car park and the site visit ended at 10.30am.

Given that the site visit had now taken place, the Head of Planning stated that the recommendation remained to refuse planning permission for the proposal for the reasons listed in the case officer's report. There had been considerable debate over the application and a decision needed to be made by the Committee in the interests of all parties.

As there were no questions for the Head of Planning, the Chair invited Mr David Donaldson (Agent) and Mr Gareth Metcalfe (Applicant) to come forward who were speaking in support of the application.

Mr Donaldson stated that the application related to a four horse stable and small barn for an established breeder of thoroughbred racehorses. The application was now two and a half years old. It had already been thoroughly debated at Committee, and Members had been to visit the site. Mr Donaldson reinforced some key points:-

- The report stated that 'need' was not a material consideration because the policy did not require 'need' to be demonstrated. That interpretation was wrong in law. DMPN 16 advised that material considerations in land use planning included 'the development plan; policy; planning history; need; existing site uses and features' etc. The Committee was of course entitled to weigh the Applicant's need to provide facilities for his horses in the overall planning balance. Indeed, information on his business was requested by Officers in September 2024 on the basis that 'this information would be helpful to the Committee to consider on balance with the concern regarding visual impact.'

- Regardless of need, the policy allowed for the development of stables in the countryside. Over 40 stable applications had been approved in this Borough since 2015 including several within AONBs and at least one other within this LLPA.

- Neither AONB nor LLPA designations prohibited development. Stables, barns and farmyards were already a characteristic of this area. There were at least 140 buildings within the Scrabo LLPA – those were not a 'precedent' to allow further development –their presence simply demonstrated that this was a living and working countryside.

- Members who had been to the site would have seen that it was located several hundred metres from Scrabo Road, it was set at least 10m below the high point of the applicant's land and was well integrated by hedges and by the rolling landscape. The proposal did not rely on additional landscaping for integration. Members would have noted how inconsequential this proposal was within this extensive landscape. Mr Donaldson questioned how something could be considered prominent or lacking in integration when it was not adjacent to the road and the views, particularly from the dual carriageway, were even described in the site meeting note as long ranging and fleeting.

Mr Donaldson stated that the application remained a modest proposal for an established equestrian business. Similar equestrian facilities were common throughout the rural area and indeed within this LLPA. Permission should be granted unless there was clear evidence of harm. Mr Donaldson questioned if this modest proposal would give rise to such demonstrable harm that the Applicant's ability to maintain his established horse breeding business and ensure the welfare of his animals was not met.

The Chair invited questions from Members for Mr Donaldson and Mr Metcalfe.

Alderman Graham asked for an explanation as to why the site was chosen for the facility bearing in mind it was within an AONB. Mr Donaldson explained that Mr Metcalfe had 12 acres on which he breeds his horses. That 12 acre holding had no building or facilities for the horses and in the winter months the horses were being stabled in Ballymena. Mr Metcalfe needed the facility on his land to look after the horses for veterinary, breeding and welfare. Mr Donaldson highlighted that the site that had been selected was at the very lowest point on the applicant's holding.

(Councillor Kendall entered the meeting – 7.15 pm)

The buildings would be in the lowest corner of the land, bounded to the south by an existing hedge and to the west by the existing hedge and laneway. Therefore, Mr Donaldson stated that it was the best location within the holding for the proposed buildings.

There were no further questions for Mr Donaldson and Mr Metcalfe and they returned to the public gallery.

Proposed by Councillor Morgan, that the recommendation be adopted, that planning permission be refused. The proposal did not receive a seconder.

Alderman Smith wished to ask a question of the Head of Planning. In the applicant's address the matter of the requirement for need was emphasised. The

report stated that need was not a requirement whilst Mr Donaldson argued that it categorically was, and he sought clarity in that regard.

The Head of Planning stated that what was quoted by Mr Donaldson was guidance not policy. She clarified that the application was not being refused on the basis of need. Refusal was being recommended on the basis of the visual aspects and its integration into the landscape, the application had been assessed in that regard.

Alderman Graham noted that Mr Donaldson had referred to examples of such proposals in the Borough and he asked if it would acceptable anywhere to build stable blocks for anyone who owned horses in the countryside providing it was not within an AONB. The Head of Planning acknowledged that the Borough was an equestrian area with examples of many stables. However, as Members were aware, each application was assessed on its own merits and a blanket response could not be provided. The particular area was a sensitive landscape, characterised by big open views, any buildings were existing clusters with mature vegetation surrounding to integrate. The proposal was for two buildings within a totally green site. It was the view, in terms of visual and integration, that refusal was recommended.

Councillor Wray raised a question regarding the potential implications for future development in the area if the application was approved.

The Head of Planning was cautious in her response as the Planning Committee had to consider the application and the information what was before them. To provide guidance, she stated that for any future applications that may be submitted, the policy required the grouping with buildings (plural).

As there were no further questions, the Chair invited Members to make a proposal.

Proposed by Councillor Morgan, seconded by Councillor Harbinson, that the recommendation be adopted, that planning permission be refused.

Councillor Morgan thanked the Planning Officers for organising the site visit which she felt had been useful. The proposal for the buildings would adversely affect the environment and the landscape was open particularly from Scrabo. Councillor Morgan accepted that the applicant had placed the proposal in the best location however it remained that would have a significant adverse impact on that environment.

Councillor Harbinson stated that he was on the fence regarding the application however on balance he was content with the recommendation of refusal.

Councillor Smart thanked the Planning Officers for organising the site meeting. He felt it was unusual not to have the opportunity to discuss the application with the applicant on site however viewed the site visit as having been useful. The focus of the matter was integration, and the policy was relativity clear in that regard. Though he felt it was disappointing that the same weight was not given in terms of need and animal welfare.

On being put to the meeting, with voting 8 FOR, 0 AGAINST, 6 ABSTAINING and 2 ABSENT, the proposal was declared CARRIED. The vote resulted as follows:

FOR (8)	AGAINST (0)	ABSTAINED (6)	ABSENT (2)
Alderman		**Aldermen**	
McIlveen		Graham	
Smith		McDowell	
Councillors		**Councillors**	**Councillors**
Harbinson		Kerr	Cathcart
Hennessy		McClean	McCollum
Kendall		Smart	
McBurney		Wray	
McKee			
Morgan			

RESOLVED, on the proposal of Councillor Morgan, seconded by Councillor Harbinson, that the recommendation be adopted, that planning permission be refused.

(Councillor McCollum re-entered the meeting)

4.2 LA06/2024/0438/O - 100m south of 35 Ballymaleddy Road, Comber - Erection of shed for the storage and maintenance of agricultural machinery, yard and re-location of access
(Appendix IV, V)

PREVIOUSLY CIRCULATED:- Case Officer's report and addendum

DEA: Comber
Committee Interest: A local development application "called-in" to the Planning Committee by a member of that committee (Alderman McIlveen).
Proposal: Erection of shed for the storage and maintenance of agricultural machinery, yard and re-location of access
Site Location: 100m south of 35 Ballymaleddy Road, Comber
Recommendation: Refuse Planning Permission

Having previously declared an interest in the item, Councillor Morgan withdrew from the meeting.

The Head of Planning (G Kerr) outlined the detail of the application. She reminded Members that as it was an outline planning application, detailed drawings were not required to be submitted. There had been three letters of objections from one address and there had been a late submission received earlier that day in support of the application from a relation of the applicant.

There was material planning history associated with the application site under planning ref: X/2011/0165/F. That was for a single storey farm dwelling within the same field as the proposed shed but not in the same part of the field. The site location, site layout and proposed elevations for a dwelling which was refused were displayed to the Committee.

One of the refusal reasons was: That the proposal was contrary to Policies CTY1 and CTY10 of the Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it had not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm. The refusal was appealed and the case also dismissed by the Planning Appeals Commission – appeal ref 2011/A0265.

Members could see that the Ballymaleddy Road was in the countryside with agricultural fields and farm buildings in the local vicinity. The site was located in a triangular shaped field bounded by Ballyalloly Road on the east and Gransha Close to the south and south west boundary and a lane to the north. The plans submitted indicated a small portion of hedge to be removed to provide site access and the planting of new hedgerows. The sloping topography of the surrounding land meant the site was very visible, particularly when travelling south to north along the Ballyalloly Road. Critical viewpoints were also from Ballymaleddy Road to the north and Gransha Close.

In relation to the policy - CTY12 stated that planning permission would be granted for development on an active and established agricultural holding where it was demonstrated that it met several criteria. In determining what was an active and established business, paragraph 5.56 of PPS21 referred to criteria set out in CTY 10, that was, the farm business was currently active and had been established for at least six years. The Head of Planning stated that it was accepted that the applicant did have an active and established agricultural holding therefore it followed that there was a criterion to be met in the assessment of this proposal, namely that the development was necessary for the efficient use of the agricultural holding or forestry enterprise.

In relation to the information submitted to show the proposal was essential for the efficient functioning of the business to fulfil the exceptional test in CTY12 – it was. cited that the shed was necessary which was mainly for the storage and protection of machinery and a list of machinery currently stored outside was provided. The applicant had stated that the storage of machinery at 35 Ballymaleddy Road was no longer an option as there was a section 54 application submitted to remove the agricultural occupancy condition for letting purposes. The applicant's address was 37 Ballymaleddy Road where he resides with his parents. The applicant had also stated that from 2014-2021 the holding was 30 acres and 10 acres were lost following the death of his grandmother and also the use of her drive and garage.

In supporting information provided, the applicant stated that he owned several pieces of land:-

- one field in Comber (the application site)
- remaining fields in Comber are rented in conacre
- the size of the holding was 20 Acres - 13 Acres owned - 7 Rented
- the only other owned land was within Newry, Mourne and Down District Council Area and the Applicant had no desire to build at this land.

For these reasons the applicant was of the opinion there are no other alternative sites within the Comber area where the applicant owns the land. The applicant had given no reason why the shed must be located within the Comber area rather than within Newry, Mourne and Down other than proximity to his home address. Recent information submitted by the applicant regarding possible siting in Newry, Mourne and Down assumed that elected members would not want a shed in an AONB and he would not want to locate there.

The applicant's address was however listed as 37 Ballymaleddy Road on the submitted P1 form and the applicant had confirmed on the P1C form that the active farm business was 'completely owned by applicant'. Number 37 was listed as the applicant's home address at which the applicant also appeared to reside. There was also a separate business number under the parents' names connected to number 37.

At the time of a site inspection the case officer noted a number of pieces of machinery stored in a field adjacent to number 37 (applicant's address/parent's dwelling) in fields which were not included within the business's farm maps. As this machinery was located on land outside of the applicant's farm business, it was concluded that they must be associated with another business. No other farm equipment was evident within the applicant's holding at the time of inspection.

Although a shed may provide storage and a safe work area for the established farm business, the submitted information was not considered to sway the opinion to being necessary in this particular location. The policy then goes on to state that in cases where a new building is proposed, applicants would also need to provide sufficient information to confirm all of the following:

- there are no suitable existing buildings on the holding or enterprise that can be used;
- the design and materials to be used are sympathetic to the locality and adjacent buildings; and
- the proposal is sited beside existing farm or forestry buildings.

From review of the evidence submitted that there are no suitable buildings on the farm holding (i.e. the application site), this would be the first farm building. The applicant's address on the application form is No 37, he lives with his parents, but he does not own No 37. This was an outline planning application and materials and final design of the building would be considered in depth at reserved matters stage.

Crucially, as was shown in the orthophotography, the proposal was not sited beside existing farm buildings (there were no other farm buildings on the farm).

The policy stated that, exceptionally, consideration may be given to an alternative site away from existing farm or forestry buildings, provided there were no other sites available at another group of buildings on the holding, and where it was essential for the efficient functioning of the business; or there were demonstrable health and safety reasons.

- The applicant had not confirmed in the submission where the machinery was currently stored (only that it is outside),
- No evidence had been submitted why he could not rent accommodation nearby.
- The applicant had advised that while the farm business address is registered as No. 37 and he lives at this address, he does not own the property as it is his parents' house, therefore it did not constitute an existing building on the holding.
- The applicant had also advised that there was no possibility of erecting a shed within the curtilage of No 37. In an email received 10/10/24 the applicant included photos of his parents' house which he felt demonstrated how his mother had invested in the garden and stated, 'It seems unreasonable that I could be criticised for not bulldozing part of this.'

On consideration of this information, the Head of Planning stated that the financial investment in landscaping a garden area could not be considered as a material planning consideration and not a sufficient reason for the proposal to be on an alternative site away from the farm buildings.

The reasoning provided to justify this application site was that it was the only one in ownership of the applicant within this Borough and that the PAC had considered the previous application of a dwelling on this site would have no impact on character or integration.

The Head of Planning did not consider that the reasons above demonstrated that development in this location was necessary for the efficient use of the agricultural holding. The total evidence presented did not persuade Planning Service that the proposed building was essential for the efficient functioning of the business and the exceptionality test in CTY 12 was not met. By permitting this proposal it would have the potential in setting a precedent in allowing development where insufficient information had been submitted to demonstrate policy compliance.

Members were reminded that previous applications for farm sheds had appeared before Committee and refused planning permission for cases considered more pressing, such as housing of livestock.

This was a small holding and the requirement for a shed as this location was considered to be excessive for the requirements of the applicant – for example, a pit underneath where repairs were to be carried out seemed more akin to a machinery business rather than simply for storage of machinery.

Given the relatively small-scale operation of the farm business it would surely be more efficient for the applicant to once or twice yearly hire a contractor to cut hay or silage rather than the expense of constructing a shed for storage.

The previous refusal for a farm dwelling was a material consideration for this proposal – the applicant had raised the issue that the proposal was not found to be prominent on the site - that was irrelevant , the proposal was for a different part of the site and was found to be unacceptable in principle.

Members were reminded that for agricultural purposes, it was the first shed only that requires planning permission with additional agricultural buildings being considered to be permitted development -with the precedent being set.

In addition, the recommendation for refusal of planning permission which may be endorsed by members of the Planning Committee is not the end of the road as it were for the applicant but the right of appeal still remained a viable option.

As there were no questions for the Planning Officer at this stage, the Chair invited Ms Kerri Hampton to be admitted to the meeting who was present via Zoom to speak in opposition to the application.

Ms Hampton outlined that she objected to this application for the following reasons:

Prominence and the failure to integrate the proposed building. This proposal was clearly contrary to criteria a, b, c, d and f of Policy CTY 13 of PPS 21 as the shed would be most prominent in this rural setting and lacked long-established natural boundaries. The existing natural boundaries were unable to provide suitable enclosure to integrate the building into the landscape and it seemed that the proposal was far too dependent on new landscaping for integration. The proposed building would appear to jar with its context, in that it fails to blend with the surrounding landscape & features.

Damage to the rural context – contrary to Policy CTY 14 of PPS 21. Such facilities, and related ancillary works, tend to blight rural settings with discarded machinery, equipment etc. left to rust, rot and deteriorate in adjacent yards and hardstanding areas, or even in the nearby field.

Detrimental to the overall context – while the case officer had stated the following: 'With regards to the shape of the red line and the shape of the remainder of said field this is not considered to be of planning concern and the applicant is entitled to submit whatever red line they consider to be appropriate', she wished to highlighted that the main characteristic of the Irish countryside was the irregular grid pattern of the fields - mostly square or rectangular fields creating a diverse richness of trees, hedgerows and fields, united as a cohesive and structured whole. Ms Hampton pointed out that this proposal severely jarred with the ordered rural grid pattern of the broader setting and countryside context, with a good field being essentially 'butchered' and drastically contorted, unnaturally, into two most irregular parts.

The proposal was unnecessary, and risk to road safety – contrary to Policy CTY 12 of PPS 21. With the case officer's report confirming that the proposal basically appeared unnecessary '*for the efficient use of the agriculture holding*' she highlighted the obvious risk of unnecessary additional farm traffic / machinery moving in and out of the application site on narrow country roads.

Other sites appear to be available - contrary to Policy CTY 12 of PPS 21. The farm maps submitted for the application indicated other lands available to the applicant. It also seemed that there was already a suitable shed at the applicant's own residence. This existing shed could be extended if required. Alternatively by siting the proposed shed on other lands, it would be much less prominent by being further away from

neighbouring roads. Also, if the shed were located on other lands there would be no need for a new access to be created – this would significantly reduce risk from traffic movement as the existing lane and access could be used.

The proposed shed is not sited beside existing farm buildings - contrary to Policy CTY 12 of PPS 21. This policy states: *'where a new building is proposed applicants will also need to provide sufficient information to confirm the proposal is sited beside existing farm or forestry buildings.'* However she noted, there was an 'exception' clause to this policy whereby a building could be permitted if there were no other sites available, it was essential for the functioning of the business and there were demonstrable health and safety reasons.

There were no questions for Ms Hampton and she was returned to the virtual public gallery.

The Chair then invited Mr Gary Thompson (Agent) and Mr Ryan Doherty (Applicant) to come forward who were speaking in support of the application.

Mr Doherty commenced by referring to extracts of PAC decisions and outlined that he could not build on his parents' holding and had produced evidence in that regard. Mr Doherty emphasised that the shed was essential for the efficient functioning of his holding and should be considered. As the business maintained and repaired its own machinery, a dedicated work area was essential for the efficient functioning of the business both financially and operationally. Mr Doherty used an example to highlight the need for improved facilities. He was of the view that the Planning report oversimplified the matter by stating that machinery should be taken to someone else for fixing or to simply sell all the machinery. Doing the repairs himself reduced his business overheads and he had submitted a health and safety report. The works undertaken were not minor servicing works and the planning report falsely stated that. With regards to site availability, Mr Doherty stated that the garden presented legal and ownership impediments, as he did not own that site and the joint owners (his mother and father) refused to permit such a development. He had sent an email at the end of last year and he believed that had not been considered which presented the amenity value of his mother's garden which he highlighted she took great pride in.

Mr Thompson referred to the four refusal reasons. Mr Doherty had stated how the business was essential and a requirement for the ongoing sustainability of the farm. With regards to integration, Mr Thompson felt that was not issue as the PAC decision stated that there was no problem with integration or road access. Taken all the factors into consideration, with the topography of the ground there was no prominence and was well integrated.

The Chair invited questions from Members.

Alderman Graham referred to the suggestion that Mr Doherty could get contractors to undertake the work, and he asked if Mr Doherty could explain to the Committee why that was not always a straightforward option. Mr Doherty stated that was a possibility, that he could sell his machinery and outsource the work and even further let the land. However, it was a small business that benefited him by providing him

with an occupation. He commenced the business in 2014, whilst it was not particularly profitable, by being able to do the work to the machinery himself made it viable. He wished to make it clear that he never stated that he was storing machinery at No 35. The machines needed to be stored, and he did not feel that what he required to be excessive.

At this stage there was no detailed plan of what was proposed however Alderman Graham asked Mr Doherty to provide an indication of the size and scale and if the machinery would be kept indoors. Mr Doherty advised that although the application was outline, he had included elevations and a plan. He recognised that the proposal would need designed by a professional; however, what was proposed was a 7.2m (W) x 17.5 m (L). That would contain his machinery and a mezzanine.

Councillor McCollum asked the nature of the business and raised questions in respect his machinery. Mr Doherty advised that it was a farm business, and he would consider himself as an agricultural labourer. He produced haylage and fodder for livestock consumption. The tipping trailer would not be put in the shed, it would be located possibly to the north of the building to be hidden. The other machinery would be included.

There were no further questions for Mr Doherty and Mr Thompson, and they returned to the public gallery.

The Chair invited questions from Members.

Councillor Kendall asked for more information in respect of the essential test. The Head of Planning stated that it was dependent on each case. It was a high bar to be met, and a proliferation of sheds did not want to be seen in the countryside with a need for those to be clustered with existing buildings. The proposal was not deemed to be essential with too many disparities.

Alderman Smith felt the key focus was prominence and the lack of integration and asked if the applicant could do anything in that regard to enhance the case. The Head of Planning wished to clarify that the previous refusal was in the same field but at a different part. There was nothing which could be done in terms of integration and the proposal failed the first test of being essential. If it had been deemed essential, she believed integration would have been an issue with the site being very visible. Additional planting should be not relied upon to make a proposal integrate.

Alderman Graham asked where the ideal location would be. The Head of Planning explained that under policy buildings were to be linked.

Proposed by Councillor Wray, seconded by Councillor Harbinson, that the recommendation be adopted, that planning permission be refused.

Councillor Wray sympathised with the applicant and hoped that the decision was not the end of the road. He did not feel the suggestion of hiring contractors to undertake the work was one for Planning to recommend. However, the proposal was not compliant with policy CTY1, 12, 13 and 14 and therefore he accepted the Officer’s recommendation.

Councillor Harbinson was not convinced that the high bar had been passed in this case.

Alderman Graham did not feel Members had a full understanding of the situation. It was a small enterprise with Mr Doherty referring to himself as farm labourer rather than a farmer. He felt it would be impossible to operate a small business and purchase expensive equipment that did not require maintenance. It was all part of the small-scale agricultural function. To maintain equipment, shelter from the elements was needed. Alderman Graham felt Mr Doherty had made a good case and the Committee should try and facilitate Mr Doherty rather than put obstacles in the way.

Councillor McCollum was satisfied that the applicant had laid out an adequate case for the building being essential to the business. She recognised the issue of integration and felt it was regrettable. She hoped there was scope for Mr Doherty to engage with the Planning Department on an alternative site and wished Mr Doherty well.

Councillor Kendall was not convinced and felt the decision was difficult. She hoped the matter could be worked upon further.

Alderman Smith accepted that there was a business, and Mr Doherty was trying to develop that. The challenge was around its location, prominence and integration into the wider area.

On being put to the meeting, with voting 10 FOR, 2 AGAINST, 2 ABSTAINING and 2 ABSENT, the proposal was declared CARRIED. The vote resulted as follows:

FOR (10)	**AGAINST (2)**	**ABSTAINED (2)**	**ABSENT (2)**
Alderman	**Alderman**	**Alderman**	
McDowell	Graham	McIlveen	
Smith			
Councillors	**Councillors**	**Councillor**	**Councillors**
Harbinson	Kerr	Kendall	Cathcart
Hennessy			Morgan
McBurney			
McCollum			
McKee			
McClean			
Smart			
Wray			

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

4.3 LA06/2024/0726/F - 15A Morningside, Ballyholme, Bangor - Replacement 2 storey dwelling (Change of house type from approved ref. LA06/2021/0433/F)
(Appendix VI)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Bangor Central
Committee Interest: A local development application attracting six or more separate individual objections which are contrary to the case officer's report.
Proposal: Replacement 2 storey dwelling (Change of house type from approved ref. LA06/2021/0433/F)
Site Location: 15A Morningside, Ballyholme, Bangor
Recommendation: Grant Planning Permission

The Senior Professional and Technical Officer (C Rodgers) outlined the detail of the application. The site was located adjacent to the coast with vehicular access from Morningside. The area was characterised predominantly by larger detached and semi-detached properties in generous plots with the application site occupying one of the larger plots in the area.

Members were asked to recall that Planning Committee voted to approve a replacement dwelling on this site at its meeting in June 2023. The current application sought amendments to the previously approved design. This planning permission remained extant and represented an important material consideration that should be afforded considerable weight in the determination of the current application.

Objections had been received from nine separate addresses. The main matters raised related to the potential impact of the proposed design changes on the residential amenity of No.17 Morningside located to the east of the site (particularly in terms of overlooking, loss of light and dominance) as well as the potential impact on the character of the area.

The Case Officer's Report provided a full description and detailed assessment of the proposed design amendments. Overall, the Officer stated that it was considered that the changes were fairly minor in the context of the extant permission and approval was therefore recommended.

The Officer showed Members a series of slides with recent photographs of the site demonstrating that construction was ongoing. Members were also shown a comparison of the previously approved and proposed elevations.

The Officer highlighted that the main change to the design was the omission of the lower ground floor. This would help reduce the perceived scale and massing of the front coastal facing elevation. The omission of the curved glass around the raised patio area would further simplify the design. The previously approved first floor cladding was to be replaced by a render finish which was characteristic of the wider area.

To compensate for the loss of the lower ground floor, the first-floor level was to be increased to the rear of the dwelling to accommodate a fourth bedroom. This was

considered to be a minor increase in the overall scale of the dwelling and considered to not cause any unacceptable harm to the character and appearance of the area.

The previously approved carport would now be an enclosed garage – but with no change to the footprint or height previously approved.

The approved design included an external chimney breast opposite the side porch of the objector's property. The omission of this feature on the amended design would help reduce the perceived scale of this portion of the building from the neighbouring property.

The occupant of No.17 Morningside had expressed concern that the increased width of the proposed corner stairwell window may result in an unacceptable level of overlooking towards their property. The width of the glazing on each elevation would increase by only 10cm. This was a minor increase to a window which would not serve a main room. The Case Officer Report for the original approval clarified that the *stairwell window is located in approximately the same location as an existing bedroom window and due to the existing boundary treatment, it was considered that there will be no additional adverse overlooking to the rear or side of No,17.* This factor remained material to the assessment.

When comparing the site plans the Officer highlighted that it was evident that the footprint remained consistent with the previous approval. The neighbour had expressed concern that the dwelling would be positioned further forward on the site. As stated in the Case Officer's Report – that was only by 10cm, and it was considered that this would not result in any material impacts in relation to the character of the area or residential amenity.

A further slide showed that only minor changes to the landscaping plan were proposed and the sloping terraced garden area would remain a feature of the development.

The officer showed that there would only be a small increase in the scale of the first floor (projecting a further 2.3m) – the extent was as indicated in red. The neighbour had expressed concern in relation to loss of light – particularly in terms of their rear patio area. The officer referred to guidance which stated that overshadowing to a garden area will rarely constitute grounds to justify a refusal of planning permission. The extended first floor comfortably met the light test when measured from the patio doors on the neighbouring property. It was set well back from the party boundary (by approximately 8m) and was not considered to result in any unacceptable harm in terms of loss of light, overshadowing or dominance. In addition, the hipped roof design would help reduce the overall massing of the building.

The officer summarised that Planning Committee had recently approved a similar replacement dwelling on this site. It was considered that the proposed design changes were relatively minor and would cause no harm to existing residential amenity or the character of the area. Having taken into account all material planning considerations, it was recommended that planning permission should be granted.

The Chair invited questions from Members.

Councillor Morgan referred to visuals and the red line The Planning Officer explained that that represented the light test which was well within the 45 degree angle.

Councillor McClean noted that he was not on the Committee when the previous application was considered. He referred to the ground plans and felt it was hard to get a like for like. The Officer referred to the site plans, an enforcement case had been opened, and an enforcement officer had visited the site to check the measurements. Planning Service was satisfied that what was being constructed was in accordance with the plans. The footprint was consistent with the previous approval except for the 10cm forward from the approved building line.

Councillor McClean noted the chimney was being removed, there were chimneys elsewhere in the area, he felt that would affect the visual amenity and it would be better to have the chimney.

The Officer stated that there were a wide variety of house types in the area. She did not believe a refusal could be sustained on a loss of a chimney on design grounds. The overall form and massing were very similar to what had already been approved. The biggest changes were the removal of the basement area and the addition of the glazing balcony area.

Councillor McClean felt it was a mistake to remove the chimney. He referred to the definition of dominance outlined in page 12 of the Case Officer's Report and questioned how dominance was considered.

The Officer explained that the particular part of the first-floor window was 8m back from the boundary to the neighbour's property. The outlook had an open aspect and in the context of the overall scale, and in her professional opinion, she did not consider an overbearing or dominant affect to the neighbouring property from the rear.

In response to a further question from Councillor McClean, the Officer stated that there was guidance that stated when there was no unacceptable loss of light it was unlikely that dominance would occur. There should be sufficient distance to prevent any dominant affect.

(Councillor Harbinson realised that he had a conflict of interest and withdrew from the meeting at this stage).

The Chair invited Ms Muriel Ryan (Neighbour) and Ms Emma Sutherland (Ms Ryan's daughter) to come forward who were speaking in opposition to the application.

Ms Ryan stated that as the first-floor extension was almost built, it was clear to her the effect it would have on her home, in particular, her rear patio and garden. She was aware of the separation distance but the existence of a building in this space instead of open sky was of course going to adversely impact her amenity and add to the overall loss of light, overshadowing and dominance already caused. Ms Ryan felt it would be helpful for the Committee to visit the site to see the scale and mass of the proposed development adjacent to her home. The additional first floor

accommodation was unacceptable to Ms Ryan, and she considered that unfair. The approved scheme sited the two-storey building 7.6m forward of the original No 15a thereby impacting adversely on the front, sea facing amenity of her home (comprising a sitting out area and sun porch) in terms of loss of light, overshadowing and dominance. The one small comfort, if it could be called that, was the reduction in the two-storey element adjacent to the private amenity space to the rear of her home. Now, however, even that was to be taken away. The proposed (almost built) additional extension of the first floor element would result in the loss of that reduction. If it were to be approved, it would result in further impact on her residential amenity. The addition of the first floor extension meant that the whole west facing side of her home, including front and back amenities, was blocked from the sun because of the position of No 15a. It was as if the original house had not been demolished but had 7.6, now 7.7m, extended to the front. The mass and scale were now evident and the impact on her amenity was unacceptable highlighting that No 15a had such a dominant effect on her property.

The removal of the open aspect to the west had detrimentally impacted the living conditions she had enjoyed for 47 years. As building work progressed each day, she described that she felt more ‘closed in’ from the west, with loss of light, overshadowing and dominance now evident. From her west facing windows – living room, landing and sun porch (all of which the 25 degree light test found to be breached), she was now looking into a brick wall, but the Planning officers had previously decided that that was ‘not unacceptable’. She added that she was now trying to prevent her rear patio and garden from being adversely impacted in any way. She wanted to hold on to as much of the remaining amount of light that surrounded her home as she could. A refusal to permit No 15a to extend to the rear would help to achieve this and that was her request to the Committee – to require amended plans with the first floor extension removed. Now that she could see the gap for the stairwell corner window and considering the increase in its width, she asked that some obscuring be reconsidered in regards to overlooking.

Ms Ryan highlighted that she also had concerns about proposed condition number 3 regarding the height of planting to screen the boundary. For one small section – the front of her sun porch to the top of the steps, and she viewed 1.8m was too high as it would cause further light loss and overshadowing to her front sitting out area, sun porch and her north facing kitchen window (which the 45 degree light test found to be breached). Shrubs in this position previously were approximately 1.4m which created a balance between privacy and light. A reduction in height would further conserve the amount. Ms Ryan expected the house and gardens at No 15a would be beautiful when completed but unfortunately, it had resulted in significant harm to her living conditions. She stated that the whole process and outcome so far had caused her much stress and upset.

There were no questions for Ms Ryan or Ms Sutherland and they returned to the public gallery.

The Chair invited Mr Andy Stephens (Matrix Planning), David Wilson (Project Architect) and Emma Rayner (Landscape Architect) to come forward who were speaking in support of the application.

Mr Stephens commenced by thanked the Planning Officers for their comprehensive report and subsequent addendum. A significant amount of time and resources had been spent on the change of house type application and the previous application. The report before the Committee confirmed that the proposal met the relevant required planning policies and that all material considerations including third party objections had been considered. Some Members would recall the previous application which came before Committee in June 2023 when the recommendation to grant planning permission was unanimously endorsed. The application had been submitted as, post-demolition further analysis was undertaken in respect of the existing ground conditions to accommodate the lower basement element, which was arguably the most controversial element of the previous permission. Several other changes had been made to the design which, in his opinion, had reduced the development from that previously permitted. There were no changes to the overall site layout, footprint or position with the changes being outlined in paragraph 5 of the Case Officer's report. The planning history of the site was a significant material consideration in the determination of this change of house type application. The previous consent provided a benchmark of acceptability in respect of the principle of demolition, redevelopment, scale, massing and the relationship with the existing built environment. The consideration in this case only extended to the net differences between the extant permission and the proposal. The extant permission was until 20 June 2028 and therefore there was a fall-back position. Therefore, the applicant could build out the earlier permission until it expired, and that must be weighed in the balance in the determination. The fallback concept was fact specific and the judgment in Gambone v Secretary of State for Communities and Local Government (2014) EWHC 952 (Admin), was the most recent authority on the doctrine of fallback. The correct approach was to initially consider if there was a greater than theoretical possibility that the previous permission could take place prior to expiry. Factors to be weighed in the balancing exercise were the materiality of the differences and the scale of the harm, which could arise. Other factors such as the legal principle of legitimate expectation would be engaged given the legislative requirement for the orderly and consistent development of land and buildings, as per Paragraph 1, Section 1 of the Planning Act (Northern Ireland) 2011. It was also a general principle of administrative law, well established in the planning context, that decision-makers must act consistently unless there was good reason not to do so. In this fact-specific situation there was an extant permission which formed a genuine fallback for the applicant. It must be given significant and determining weight, as it would be both perverse and irrational to reach any other conclusion, when considering the chronology and circumstances, weighed against the presumption to grant permission. The consideration in this case only extended to the net differences between the extant permission and the current proposal and if they were material. The basis of forming a judgement on materiality was always the original planning permission and the development as a whole. As detailed, the changes were minor, both individually and cumulatively, and therefore were not of significance, of substance and of consequence when considering the fallback position open to the applicant under the previous permission. There were no objections from any of the statutory consultees to the proposal on traffic/parking, environmental impact, flooding, built heritage or residential amenity grounds. There had been no evidence presented to the contrary of those opinions. Mr Stephens appreciated that such changes were not always well received, however believed the objector had been afforded significant opportunity to express their concerns through the planning

process and engagement with the building contractors and project team. The concerns had been thoroughly examined in the Case Officer's Report and addendum and were considered at length through the previous application. In respect of the concerns, Mr Stephens wished to reiterate that the day light tests were not applied to non-habitable rooms or rooms less 13sqm as per the BRE guidelines 2011. Likewise, the 45 degree light test was respected in relation to the new 2.3m first floor extension.

The planning system did not exist to protect the private interests of one person against the activities of another. The legislation required that planning decisions were taken consistently; likewise, case law required that decision-makers must act consistently, unless there was good reason not to do so.

In this case the applicant had a legal fallback position established under the earlier permission and the change of house type results in lesser form of development overall than that already permitted. Mr Stephens fully supported the recommendation, and he asked that the Committee endorsed the grant of planning permission for the high-quality residential development.

The Chair invited questions from Members.

Councillor Morgan questioned if the application had already been built making it retrospective. Mr Stephens stated that the applicant had built out the permission but in addition had removed the lower basement element and increased the first floor extension of 2.3m. As detailed. the variety of changes were stated in the Case Officer's report, some of those were omissions; for example, the chimney had been removed and glazing along with some enhancements. In his professional opinion, the fallback position granted more development for what now was being built with the most significant change being the 2.3m extension towards Morningside.

Councillor McCollum referred to the various changes reducing the scale of the development and questioned what was meant by scale. Mr Stephens stated that the consideration was the materiality of those changes for the whole development. Some elements had been removed with the only addition being the 2.3m first floor extension above the garage in place of the accommodation that was going to be put in the ground. The ground conditions and viability meant the lower basement element had been removed.

Councillor McCollum clarified that Mr Stephens was saying there was net reduction in the overall scale of the development. Mr Stephens confirmed in his opinion that was correct.

Councillor McCollum noted that was a subjective opinion. In relation to the basement and the controversial nature of that she clarified if the issues in that regard were with the Planning Department or residents, noting that she was not a member of the Committee when the application was first considered. Mr Stephens explained that the basement element had been deemed to be controversial from both the Planning Department and residents. Planning had considered there would be impacts on what was considered a draft ATC and concerns existed in respect of the character on what was visually prominent along Ballyholme esplanade. From the neighbour's

perspective, there had been concerns in relation to the prospect of piling. Mr Stephens therefore considered this application to be a significant improvement in both aspects.

Councillor McCollum raised a question if the basement protected the amenity of the neighbouring property whereas Members had heard the first-floor extension would not. Mr Stephens did not believe there to be an impact nor did the Planning Officers as it respected the 45-degree light test.

There were no further questions, and the representatives returned to the public gallery.

The Chair then invited questions from Members for the Planning Officer.

Councillor Morgan asked the Planning Officer to confirm if the stairwell had been changed. The Planning Officer stated there had been a very minor change with the glazing appearing to be 10cm wider.

Alderman Smith appreciated that a development next to someone's house was potentially an ordeal. However, the key issue was the extant permission that already existed, the case officer considered that the change of house type would not result in any issues in relation to loss of light, overshadowing or dominance. Alderman Smith believed that there was limited impact from the changes and, on that basis, he was content to accept the recommendation.

Councillor Morgan stated that such decisions were difficult however she believed the changes were minor.

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

Councillor McClean took the point in relation to the extant permission; however, having seen the original approval he would have struggled to approve that. He highlighted the issues in respect of amenity, dominance and the impact on the residential amenity in the area. Councillor McClean did not believe the proposal to be acceptable and he could not support it.

On being put to the meeting, with voting 10 FOR, 3 AGAINST, 1 ABSTAINING and 2 ABSENT, the proposal was declared CARRIED. The vote resulted as follows:

FOR (10)	**AGAINST (3)**	**ABSTAINED (1)**	**ABSENT (2)**
Aldermen	**Alderman**	**Alderman**	
Graham		McIlveen	
Smith			
McDowell			
Councillors	**Councillors**		**Councillors**
Kerr	Kendall		Cathcart
Hennessy	McCollum		Harbinson
McBurney	McClean		
McKee			

Morgan
Smart
Wray

RESOLVED, on the proposal of Alderman Smith, seconded by Councillor Morgan, that the recommendation be adopted, that planning permission be granted.

(Councillor Morgan withdrew from the meeting – 8.52 pm)

(Councillor Harbinson re-entered the meeting – 8.52 pm)

4.4 LA06/2023/2073/F - 32-36 Prospect Road, Bangor - Demolition of existing dwellings and erection of 9 apartments with associated car parking
(Appendix VII)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Bangor Central
Committee Interest: A local development application attracting six or more separate individual objections which are contrary to the case officer's report.
Proposal: Demolition of existing dwellings and erection of 9 apartments with associated car parking
Site Location: 32-36 Prospect Road, Bangor
Recommendation: Grant Planning Permission

The Senior Professional and Technical Officer (A Todd) outlined the detail of the application. The site was located on the eastern side of Prospect Road within a primarily residential area of central Bangor consisting mainly of two and two and a half storey terraces. The site was located within the proposed Bangor Central ATC and just outside of the town centre as set out in Draft BMAP. The Officer displayed some views of the site from Prospect Road. The four existing terraced dwellings which occupied the site and were proposed for demolition were two storey in height. Due to extensive fire damage, the central unit at No. 34 had partially collapsed with the roof had been completely destroyed. The buildings were not considered to make any material contribution to the overall appearance of the proposed ATC and therefore the principle of demolition was acceptable in this instance. The entrance to the rear of the site was via an existing private right of way situated between Nos. 36 and 38c.

(Councillor Morgan re-entered the meeting – 8.54 pm)

To the rear of the existing dwellings the remainder of the site comprised the overgrown linear garden plots associated with each dwelling. The Officer displayed photographs to show the views of the site from the car park of Hamilton Road Presbyterian Church halls which were located to the immediate rear of the site.

Displaying the proposed site layout for the development, the Officer explained that the apartment building would be positioned at the front of the site on the footprint of the existing buildings. 14 in-curtilage parking spaces were proposed to the rear in

line with the recommended parking standards set out in the Creating Places Guidelines. A 240sqm area of communal amenity space would also be provided to the rear in line with the standards set out in Creating Places. Within this area bin and cycle storage would also be provided. Access would be from Prospect Road via the existing right of way which would be widened and would also incorporate a footpath.

The Officer showed the proposed existing and proposed Prospect Road contextual elevations. As could be seen the overall height and massing of the proposal was very similar to the original buildings on the site and the placement of fenestration on the front façade very much reflects the pattern and rhythm of the existing terrace.

The Officer further displayed visuals of the gable and rear elevations and the floor plans of the apartments which comprised two 2 bed apartments and one 1 bed apartment on each floor with a central entrance and stairwell located to the rear. While the density of the development would be higher than that originally on the site, it would not be higher than that found within the wider context. There were numerous examples of other apartment developments within close proximity to the site including those at the junction of Donaghadee Road and Hamilton Road, Holborn Avenue and new development at Broadway. Given the edge of centre location, the site was considered to be ideally suited to higher density apartment development with the SPPS advising that higher density housing developments should be promoted in town and city centres and in other locations that benefit from high accessibility to public transport facilities.

A total of 10 objections from seven separate addresses had been received throughout the processing of the application. The main concerns raised included:

- The safety of the access and potential obstructed visibility onto Prospect Road.
- Loss of hedges and vegetation
- Bin storage provision
- Lack of parking

All of those issues had been considered in detail in the planning report. Dfl Roads had been consulted and no concerns had been raised with regard to road safety. The improvements proposed to the existing access would enhance visibility for all users through the provision of 2m x 43m visibility splays on the LHS emerging. While particular concerns had been raised by Robinson Goldsmiths with regard to parked vehicles obstructing visibility on the right had side emerging from the access, Dfl Roads had confirmed that this would not be a road safety concern due to the one way flow of traffic along Prospect Road. The access lane itself would also be widened from 3.2m to 5m for the first 10m and the safety of pedestrians would be improved through the widening of the existing footpath to 2m across the frontage of the site.

While an element of site clearance would be involved to make way for the new development, the site was largely derelict and had become significantly overgrown and unkempt. The site contained no significant trees which make any contribution to the character of the area or that would be worthy of protection. The new development would also incorporate a grassed amenity area with tree and shrub planting to replace the existing vegetation. As also shown on submitted plans, a sizeable, covered bin store was to be constructed within the boundary of the site.

While bin collection would result in additional bins appearing kerbside, as was typical in most residential areas, that was generally of a temporary and short term nature.

In summary, the Officer stated that the proposal for 9no. apartments at this edge of centre location was considered to be acceptable in the context of both the Development Plan and the relevant policies contained within PPS7. The development would see the removal of the existing derelict buildings and would greatly enhance this part of the Prospect Road with a sympathetically designed scheme. All of the statutory consultees were content with the proposal and all representations had been carefully considered. On this basis it was recommended that full planning permission should be granted subject to the conditions set out in the case officer's report.

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

Alderman Smith noted the improvements that the proposal would bring to the site which was currently in a poor state. Issues had been raised in respect of parking and access, and he was satisfied that those had been clarified.

Councillor Harbinson was pleased with the design which he felt was sympathetic to the area and would like to see more of such. He noted the concerns and felt that those had been addressed.

RESOLVED, on the proposal of Alderman Smith, seconded by Councillor Wray, that the recommendation be adopted, that planning permission be granted.

RECESS

The meeting went into recess at 9 pm and resumed at 9.15 pm

4.5 LA06/2021/1476/F - Lands to the NW of Kiltonga Industrial Estate, SW of Belfast Road and South of Milecross Road, Newtownards - Residential development comprising 29 No. dwellings (comprising 25no. detached and 4no. semi-detached dwellings), including garages, open space, and landscaping, access, internal road network and all other associate site and access works
(Appendix VIII)

PREVIOUSLY CIRCULATED:- Case Officer's report and addendum.

DEA: Newtownards
Committee Interest: An application falling within the major category of development.
Proposal: Residential development comprising 29 No. dwellings (comprising 25no. detached and 4no. semi-detached dwellings), including garages, open space, and landscaping, access, internal road network and all other associate site and access works

Site Location: Lands to the NW of Kiltonga Industrial Estate, SW of Belfast Road and South of Milecross Road, Newtownards
Recommendation: Grant Planning Permission

The Senior Planning and Technical Officer (C Rodgers) outlined the detail of the application. The site was located within the western periphery of Newtownards and was zoned for industry in the Ards and Down Area Plan under Zoning NS32.

The Officer showed a number of slides to the Members, showing images of the site, view of the site from the Belfast Road Junction with Kiltonga Industrial Estate, and view across the site from the Belfast Road and Milecross Road Junction.

In turning to the planning history of the site, the Officer highlighted that the principle of non-industrial development had already been established on this zoning through its planning history.

A nursing home was approved on the north-western portion of the site in 2012 with access from the Kiltonga Industrial Estate. It had been established through a Certificate of Lawfulness that the nursing home approval remained extant and could be built out at any time.

On the remaining southeastern portion of the site, planning permission was granted for 20 retirement dwellings by Planning Committee at its meeting in September 2019. The extant nursing home approval was a key factor in the Council's decision.

The Officer showed Members an extract from the Planning Use Classes Order – explaining that the Council had determined that the dwellings fell under Use Class C3 'Residential Institutions' – in that they offered care for people in need of care which could be supported by the adjacent nursing home facility. As such, approval was subject to a condition to restrict occupation until the nursing home was constructed and operational.

However, this condition was successfully appealed to the Planning Appeals Commission (PAC) with the condition being removed.

In its decision, the PAC was very clear that the approved accommodation did not fall under Use Class C3, rather the dwellings were Use Class C1 – being free-standing dwelling houses. Case law had established that decisions by the PAC must either be accepted and respected or challenged through the courts. This decision was not challenged by the Council. The site was subsequently sold to the current applicant with extant planning permission for C1 dwelling houses.

The principle for non-industrial development had now been established across the entire NS32 zoning and the PAC determined that occupation of the free-standing dwelling houses should not be dependent on the construction and operation of the nursing home. Having regard to the planning history of the site, it was considered that the proposed departure from the development plan was acceptable.

In addition, the Applicant had submitted a 'Demand Viability Report', prepared by O'Kane Commercial Property Consultants which specialised in the care home sector.

The report concluded that it was highly unlikely that the site would be developed as a care home - pointing to available capacity in Newtownards, both within existing facilities and in the recently constructed care home at Castlebawn. The report also referred to unsuccessful marketing of the site with extant permission for a nursing home.

Moving to the proposed site layout plan, the Officer advised that the proposal was for a relatively low-density development with significant open space provided in excess of policy requirements.

Existing landscape features would be protected and incorporated into the overall layout. A large pond would form a central landscaped feature. A further large area of open space was proposed to the west of the site. Existing mature vegetation would be retained and augmented providing a landscaped buffer adjacent to the Belfast Road. In addition, substantial new planting throughout the site would soften the built form and contribute towards an attractive residential environment.

Ample private amenity space was to be provided for each dwelling in accordance with recommended standards. The site would be separated from the closest existing dwelling by Milecross Road and an area of open space which would prevent any harm to existing residential amenity.

In terms of adjacent land uses, the development would be separated from the industrial estate by the existing access road and a landscape buffer to the south-east of the site.

Further slides showed a selection of the house types proposed – finishes included red brick with stone detailing and dark grey slate tile.

The Shared Environmental Service had provided no objection in terms of impact on designated sites subject to conditions to secure implementation of a final Construction Environmental Management Plan and to ensure that any land contamination was remediated. Natural Environment Division had provided no objection subject to conditions to prevent harm to protected species.

All proposed development would be located beyond the 1 in 100-year floodplain, and DfI Rivers had provided no objection in terms of flood risk or drainage subject to the approval and implementation of a Final Drainage Assessment. A condition was recommended to ensure that the method of sewerage disposal was agreed with the appropriate authority prior to the commencement of development.

The Council's Environmental Health Department provided no objection to the application subject to planning conditions to secure appropriate noise mitigation and remediation of any contamination within the site.

The Officer then turned to the Private Streets Layout, advising that as per the previous approval, vehicular and pedestrian access to the development was to be taken from an existing right hand turning lane into the Kiltonga Industrial Estate – the access was to be upgraded to provide for two marked out lanes exiting onto the Belfast Road. A new footpath was proposed along the Belfast Road to the north of

the site. The dwellings would benefit from at least two in-curtilage parking spaces with additional visitor parking in accordance with recommended standards.

DfI Roads had provided no objection in terms of roads safety subject to recommended planning conditions.

Objections had been received from three separate addresses. Issues raised related mainly to access and parking, flood risk and drainage and impact on natural heritage interests. All of these matters had been considered in detail in the Case Officer Report and no objections had been received from the statutory consultees.

In concluding, the Officer advised that the planning history of this particular zoning had established the principle of non-industrial development. It was considered that the layout would provide a high-quality residential development with substantial landscaping and areas of open space. Having considered all material planning considerations it was recommended that planning permission was granted.

The Chair wished to ask some questions of clarification. He recalled that when the development had previously been passed it was going to be essentially a retirement village linked to the nursing home with over 55's living in the houses. That had been put forward by the then owners as the plan for the site. Almost immediately after the Planning Committee, they had appealed that condition. Alderman McIlveen recalled the discussion that previously occurred at the Committee with the land having been zoned for industrial land and the exception had been made due to the recognised need. The Chair sought clarity on how that could now not be taken into consideration.

The Senior Planning Officer explained that the condition had been successfully appealed to the PAC changing the Use Class of the proposed dwellings. Case law had established that PAC decisions must be accepted and respected or challenged through the courts. That decision had not been challenged by the Council and what was detailed was the established planning history for the zoning.

The Chair stated that the previous planning permission was applied given as the Committee were told there was a shortage of that type of accommodation and asked if that could be given consideration. The Officer stated that the PAC had deemed the Use Class to be a misconception and the relevant use class should be C1: dwelling houses. The nursing home was to be built first and a level of care within the houses could be provided. The developer could now choose not to build out the nursing home and proceed only with the C1 dwelling houses. The argument for the need for over 55 accommodation to rely on the facilities of the adjacent nursing home had therefore been removed.

There had previously been a condition in relation to over 55 accommodation and the Chair asked if that need was now being ignored and was that now not a material consideration. The Officer stated that without the nursing home she was unsure if the land would be the best location to have over 55 dwellings given that there was no easily accessible shops or services in the vicinity. Consideration now had to be given to what was before the Committee as opposed to what was preferred.

The Chair expressed his disappointment that the good will of the Committee was treated in the way it was, and the Council had been left in the position. The land had been zoned as industrial land and would not have been changed only for the argument for the nursing home and over 55's accommodation.

The Head of Planning commented that she fully appreciated the frustration, but that unfortunately, there was now the need take as a material consideration the findings of the PAC. To rely on that over 55's condition would not be recommended now that there was a perceived lack of need for the build out of the nursing home. The Head of Planning stated that there were several options for the Committee to look at the matter further.

Alderman McDowell expressed his disappointment and concern that more industrial zoned land was being lost to housing across the Borough. In referring to the noise from the industrial estate, he noticed there were proposed conditions in that regard and noted there had been complaints from residents in respect of noise over the years and he was worried that noise complaints would put pressure on businesses within the industrial estate. Alderman McDowell was also concerned regarding the safety of the pond, with young families moving into the area and asked if that had been given consideration. He also referred to the flood risk and asked if the extra development in the area would cause problems in Braeside which was very low lying. He expressed a number of serious concerns about the development, and noted that there had been similar applications in Newtownards for nursing homes and he wondered if the same ploy was occurring.

The Officer stated that in terms of the noise, a noise assessment was submitted as part of the application, noise monitoring had been carried out in a number of locations around the site and it was determined that the primary noise was as a result of the road. There were conditions in relation to the upgrade of windows and ventilation which would not be uncommon for a residential development within a settlement limit. There was fencing proposed to mitigate any outside noise. The Council's Environmental Health Department had provided no objection to the application.

Alderman McDowell was surprised by the response and noted over the years there had been numerous smell and noise complaints in relation to the industrial estate and questioned if the correct information had been received.

The Officer reiterated that a noise assessment had been carried out for this and the previous application and was not deemed to be unacceptable by Environmental Health.

Alderman McDowell felt that matter needed be checked further. In relation to the safety of the pond, the Officer stated that it was not uncommon to see bodies of water in areas of open space. There had to be personal and parental responsibility and referred to Rivenwood and Rathgael as examples of residential developments with ponds.

Councillor Kendall noted that the history of the site was a material planning consideration however questioned how that applied to the zoning. In terms of the

planning balance, the Officer explained that the Planning Act required Officers make a determination in accordance with the development plan unless material planning considerations dictated otherwise. The PAC decision and the extant permission for a nursing home would be very significant material planning considerations which should attract substantial weight.

The extant development plan had zoned the land for industrial use and Councillor Kendall questioned if that was not as significant as a planning decision. The Committee had made an exception previously taking into account the land was zoned for industrial use. Councillor Kendall wondered why the Committee could not go back and stated that the zoning was a significant issue.

The Head of Planning clarified that the area was zoned in the development plan however given the subsequent permission that was granted that was deemed to be a significant material consideration. She urged caution and noted the fall-back position.

Councillor McCollum expressed concern regarding the apparent de-zoning. The case was made for a nursing home with evidence she imagined was produced at that time.

The Officer stated that the previous planning permission was granted on 5 September 2019.

Councillor McCollum noted the pressing need for industrial land and stated that the demand for over 55 accommodation and nursing homes had not disappeared. She could not understand what had occurred.

The Officer stated that the change was due to the planning history as a result of the PAC decision. The dwellings were no longer deemed as Class C3 residential institutional dwellings and no longer fell under the same class as nursing home. The PAC removed the condition requiring the nursing home to be built out before the dwelling houses. The hotel was not approved on the basis of need by the DoE. A hotel had previously been approved for the site noting the long planning history of the site for non-industrial uses. The consideration was not solely based on the demand viability report, and the Officer noted the unsuccessful marketing of the nursing home for the site and the nursing homes in the locality were also factors.

Councillor McCollum was not persuaded that there was not a need for greater nursing care provision in the area. She questioned the weight attached. The demand viability report was not independent, and she wondered if it should be investigated. The Officer explained that non-compliance with the plan had been established by the principle of development by both the C3 nursing home use and the C1 dwelling houses. Whilst the demand viability report was a factor to be considered amongst others, the fact there was a long planning history on the site for non-industrial zonings she believed was the key consideration.

Councillor McCollum remained concerned.

Councillor Smart shared the concerns and found it frustrating that the PAC had such a significant role, and the decision had been changed so soon after the Committee meeting was concerning and disappointing. Referring to the need that had been highlighted, the Borough had an ageing population and asked if a long view could taken in that regard. Had the Council not been impacted by PAC decision, Councillor Smart felt the wider consideration of the site and the noise complaints that he had been involved would be a challenge for the properties and the businesses.

The Officer stated that there was no mechanism within the planning permission for the dwelling homes that required the nursing home to ever to be built. There was nothing to compel any developer to build out the nursing home. Consideration needed to be given what could be sustained at appeal given the planning history on the site.

Councillor Smart appreciated that the Council could not impose the building out of the nursing home but felt it could still decide what ground was left to be developed.

The Officer stated that if the Council were to insist on an industrial use at this stage, vehicles would need to drive through a residential development to gain access. The majority of the site had now been given up for residential development.

For additional clarification, the Head of Planning urged caution as general housing had been approved.

The Chair referred to the conditions and the reasons were outlined, and he would like a legal opinion on what remained of that permission (relating to the original housing approval for which the condition relating to the nursing home had been appealed).

Councillor Morgan sought clarity in relation to the permission and noted that single storey dwellings were good for older people or for those that did not want to live with stairs.

The Officer stated that the Committee was required to make a determination based on all material factors. She referred to condition 2 in relation to over 55 accommodation and viewed the condition as hard to enforce.

Councillor Wray stated that there was clear there was a lot of concern, and he suggested that legal opinion be sought, and engagement occur with the PAC.

The Chair did not feel engagement could occur with PAC regarding the issue as its decision had been made some time ago.

Proposed by Councillor Kendall, seconded by Councillor McCollum, that the application be deferred to consider the matters that had been raised.

Following a discussion, the Chair suggested that the meeting be adjourned to allow Members to confer.

ADJOURNED

The meeting was adjourned for 5 minutes.

Proposed by Councillor Kendall, seconded by Councillor McCollum, that the application be deferred for legal advice to be obtained on the concerns raised by members the Committee, including

1. the age-related condition and the implications of that and the PAC decision,
2. and options open to the committee

as well as further information from environmental health in respect of the potential noise and smell issues reported by local residents from the nearby industrial estate, and the pond safety issues.

Alderman Graham was opposed to the proposal to defer and felt money and time was being wasted. The condition of the original proposal was removed and the opportunity had been missed to challenge the matter in court. Alderman Graham stated that people's commercial activities could not be dictated and it could not be presumed that what had occurred was a tactic to obtain planning permission. People had to operate their business based on commercial realities. Alderman Graham felt the proposal was an interesting development. There were ponds in other developments and he was concerned in relation to the 1/100 flood risk however the relevant authorities had reviewed the matter.

Alderman Smith shared the views of Alderman Graham.

Alderman McDowell felt it was important to take time to investigate the matters and reiterated his concerns. The pond was a safety issue. In relation to the noise and the smell and caused the residents in the area a lot of problems which should be considered. Alderman McDowell expressed frustration regarding development plan zonings if Members were being asked to make decisions ignoring those, continuing that the Committee had a scrutiny role and that should be undertaken to the best of members' ability.

Councillor Smart asked if it would be foreseen that the legal advice would look at the future implications of using the over 55's criteria.

The Chair stated that the proposal was looking at the specifics of this application.

The Head of Planning stated that it was dependent on the applications and there was the option of legal agreements to bolster conditions.

The Chair felt it was important to understand where the land lay given the concern before a decision was made.

On being put to the meeting, with voting 12 FOR, 1 AGAINST, 2 ABSTAINING and 1 ABSENT, the proposal was declared CARRIED. The vote resulted as follows:

FOR (12)	**AGAINST (1)**	**ABSTAINED (2)**	**ABSENT (1)**
Aldermen	**Alderman**	**Alderman**	
McDowell	Graham	Smith	
McIlveen			

Councillors	**Councillor**	**Councillor**
Harbinson	Kerr	Cathcart
Hennessy		
Kendall		
McBurney		
McClean		
McCollum		
McKee		
Morgan		
Smart		
Wray		

Mr Tom Stokes (Director – TSA Planning) and David Simpson (Applicant) were admitted to the meeting who were in attendance in the virtual public gallery.

The Chair confirmed with the representatives the decision that had just been made to defer the application, and given that the representatives had not used their speaking rights, the full five minutes would be available when the application came back to Committee. The application would come back to Committee at a later date.

Mr Stokes noted the decision to defer and the representatives withdrew from the meeting.

RESOLVED, on the proposal of Councillor Kendall, seconded by Councillor McCollum, that the application be deferred for legal advice to be obtained on the concerns raised by members the Committee, including

1. **the age-related condition and the implications of that and the PAC decision,**
2. **and options open to the committee**

as well as further information from environmental health in respect of the potential noise and smell issues reported by local residents from the nearby industrial estate, and the pond safety issues.

4.6 LA06/2023/2471/O - Site immediately adjacent to the rear boundary of 14 Dixon Road, Bangor - 1no. Single storey detached dwelling with detached garage
(Appendices IX, X)

PREVIOUSLY CIRCULATED:- Case Officer's report and addendum.

DEA: Bangor East and Donaghadee
Committee Interest: A local development application attracting six or more separate individual objections which are contrary to the case officer's report.
Proposal: Site immediately adjacent to the rear boundary of 14 Dixon Road, Bangor
Site Location: 1no. Single storey detached dwelling with detached garage
Recommendation: Grant Planning Permission

The Senior Professional and Technical Officer (A Todd) outlined the detail of the application. The site was located in an established residential area within the development limits of Bangor to the rear of 14 Dixon Road which was just off the East Circular Road.

There were no development plan zonings or designations applicable to the site. 14 Dixon Road was a 1½ storey dwelling. It was proposed to access the site to the rear along the eastern boundary of No. 14. In terms of the wider context, neighbouring houses on Dixon Road were predominantly detached single storey and 1½ storey dwellings.

To the rear of the site to the east are two storey townhouses within Towerview Gardens and to the immediate south of the site is Towerview Church. To the south west are the one and a half storey dwellings within Alandale. To the immediate west of the site there was also a single storey detached dwelling located to the rear of 12 Dixon Road.

Displaying photographs of the site itself, the Officer detailed that the site measured approximately 18m wide and 36.5m long. The site was relatively overgrown and the topography falling from No. 14 towards the southern boundary of the site. The boundaries of the site were defined by relatively mature hedgerows and there were also several small trees within the site.

The application as originally submitted was for two residential units. The Planning Department advised the agent that this proposal was unacceptable due to overdevelopment of the site and potential adverse impact on neighbouring properties. The agent then submitted the current amended scheme for a single dwelling. The Planning Department considered this reduced proposal to be acceptable, meeting all of the relevant planning policy requirements as set out in Planning Policy Statement 7 Quality Residential Environments. The proposed plot size and density were both very much in keeping with the existing development in the surrounding area. It was also considered that the proposal would cause no harm to the overall character of the area. The area was already characterised by medium to high density development with a precedent for backland development already established at a number of other locations in the immediate vicinity including sites to the rear of Nos. 10 and 12 Dixon Road. Both the existing dwelling at No. 14 and the proposed dwelling would have adequate in curtilage parking and private amenity space in line with the guidelines contained within Creating Places.

While the application was for outline permission, sections had been submitted by the agent to indicate the proposed finished floor level and height of the dwelling which would be modest at 4.8m to the ridge. The sections demonstrated that the dwelling would not be dominant in the context of the existing adjacent dwellings. To ensure that the privacy of the adjacent dwellings was also maintained, approval had been recommended subject to a number of conditions including retention of existing boundary hedgerows at a minimum height of 1.8m and the withdrawal of permitted development rights to prevent any additional openings being formed or any extensions or buildings being erected within the dwelling's curtilage.

A number of objections to the proposed development had however been received. At the time of drafting the planning report, a total of 10 letters of objection from six separate addresses had been received throughout the processing of the application. A further objection from an additional address was then received on 18 February bringing the total number of objections to 11 from seven separate addresses. A short addendum to the planning report was drafted to consider this late objection and circulated to members however no new material considerations were raised. It was worth noting that seven of the overall 11 representations were submitted in relation to the original superseded proposal for two dwellings therefore it was only the remaining four representations that related to the current proposal for a single dwelling. The main concerns raised included:

- Potential loss of light and privacy
- Overbearing impact on rear of houses at Towerview Gardens.
- The safety of the proposed access.
- The impact on trees

These issues had all been considered in detail in the Case Officer's Report.
In terms of the impact on trees, there were several small trees within the site as shown on the aerial view and photo. Those to the rear of the site shown in the photo, would be removed to accommodate the proposed development however the two trees to the front of the site as indicated on the site layout plan, would be retained along with the hedgerows to the eastern and western boundaries.
The Planning Department did not consider that the trees proposed for removal would be worthy of protection under a Tree Preservation Order. In order for trees to be deemed worthy of protection they were required to be of high amenity value, meaning that they would normally be highly visible and make a significant contribution to the local environment, be of some historical importance or be of a particularly rare species. The trees in question do not possess any of those characteristics and were not considered to be of high amenity value given the very restricted public views from one point along Towerview Gardens. With regard to access, DfI Roads had been consulted and had raised no concerns with regard to the safety of the proposed access.

As already outlined, the impact of the development on the existing adjacent properties had been considered in detail. Residents of the properties at Towerview Gardens which back onto the site were particularly concerned about the dominant impact of the development and potential loss of light. The separation distance from the rear of the existing dwellings to the gable of the proposed dwelling would be approx.10.8m. The 25-degree light test had been used as a tool to assess the potential dominant impact and loss of light to the rear windows of these dwellings. As could be seen on the slide, the green line indicating the 25 degrees and taken from the ground floor windows of the existing dwellings, did not dissect the proposed dwelling. Therefore, it could be concluded that there would be no unacceptable impact on the rear windows of those dwellings by way of loss of light. Given the modest single storey height of the dwelling, it was also not considered that there would be any unacceptable dominant impact. Conditions ensuring the proposal was of the height indicated on the submitted sections and positioned on the application site in conformity with the submitted site layout plan had been recommended.

In summary, the Officer detailed that the proposal was considered to comply with the development plan and all the relevant policy requirements of PPS7 Quality Residential Environments. The proposal would cause no demonstrable harm to the character or appearance of the area, the proposed density of development would be comparable to that already prevalent in the area, adequate private amenity space and parking would be provided for both the existing and proposed dwelling and there would be no unacceptable adverse impact on the amenity of adjacent properties. On that basis it was recommended that outline planning permission should be granted subject to the recommended conditions.

As there were no questions for the Planning Officer, the Chair invited Mr John Harkness (ADA Architects) to come forward who was speaking in support of the application.

Mr Harkness wished to reemphasise the approval reasons:-

- The various statutory bodies had all been satisfied and that the proposal simply matched what had already been approved in neighbouring sites. Issues raised during the planning application process had been thoroughly addressed in terms of levels and boundary issues, with provision of site sections and revised site plans.

- The proposed single storey dwelling would not be unduly prominent in its context, having a ridge height comparable to that of the existing, adjacent, dwelling at 12A Dixon Road. Overall, the proposal was very similar to the dwellings approved at 10 and 12A Dixon Road. The proposal was not adding to the density of housing in the area as confirmed in the Case Officer's Report.

- It was important that the site was developed to make efficient use of land available within Bangor's Settlement Development Limit - *The principle of a dwelling is acceptable in the context of the LDP*. This proposal would help to reduce urban sprawl, reduce overall traffic movement with residents being closer to the town (work, shops, facilities etc.) and stopped land being wasted. Neighbouring properties should benefit in terms of safety and security, from the proposal, in that having an additional neighbouring dwelling provided more vigilance overlooking and avoided having waste ground which could be misused for loitering etc. That was in accordance with item (i) of QD1 of PPS7 – '*to deter crime and promote personal safety'*.

- Impact on residential Amenity - The proposed dwelling was located adjacent to the rear of dwellings within Towerview Gardens. The separation distances were acceptable and the 25-degree light test had been met.

- Private Amenity Space – Adequate amenity space had been provided to the rear of the dwelling. Existing private amenity space for the dwelling at number 14 would be unaffected by the development.

- Design, Visual Impact and Impact on the Character of the Established Residential Area - Paragraph 4.26 of the SPPS stated that design was an

important material consideration in the assessment of all proposals. With this being an outline application full details were not available for the proposed dwelling, however appropriate design parameters could be, and have been, established, such as the height, footprint and position of the proposed dwelling. These basic and fundamental provisions ensure control of the design, visual impact and impact on the Character of the Established Residential Area.

- Policy Compliant - The proposal was compliant Policy LC1 of PPS7 and Policy QD1 of PPS7.

There were no questions for Mr Harkness and he returned to the public gallery.

RESOLVED, on the proposal of Alderman Smith, seconded by Councillor McCollum, that the recommendation be adopted, that planning permission be granted.

4.7 LA06/2024/0665/F - Lands at Existing NI Water Clanbrassil WwPS, Farmhill Road, Holywood, BT18 0AD (circa 40metres South West of No.1a Clanbrassil Terrace, Holywood) - Proposed Upgrade to Existing Wastewater Pumping Station (WwPS), Including Extension of Existing Underground Chamber, Addition of Screen to Emergency Overflow, New Access Points and Path to Roof, and Boulders, Sand and Grass Banking (Appendix XI)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Holywood and Clandeboye
Committee Interest: Application relating to land in which the Council has an interest.
Proposal: Proposed Upgrade to Existing Wastewater Pumping Station (WwPS), Including Extension of Existing Underground Chamber, Addition of Screen to Emergency Overflow, New Access Points and Path to Roof, and Boulders, Sand and Grass Banking
Site Location: Lands at Existing NI Water Clanbrassil WwPS, Farmhill Road, Holywood, BT18 0AD (circa 40metres South West of No.1a Clanbrassil Terrace, Holywood)
Recommendation: Grant Planning Permission

The Head of Planning (G Kerr) outlined the detail of the application, highlighting that the Applicant was NI Water and there were representatives in attendance should Members have any clarification. The site was located at the end of Farmhill Road adjacent to the shore of Belfast Lough. The site was located within Seapark (an area of open space), with the site containing grass areas, tarmac paths and sand adjacent to the shore. The site itself comprised of an underground tank within an existing area of open space.

Farmhill Road formed the boundary of Seapark, beyond which was the listed Clanbrassil Terrace which was located at a higher level. At the end of the lane the

coastal path continued along the shore to the east and followed a narrow path with a small strip of sand leading to the water.

The area was within the development limit of Holywood as stated in the North Down and Ards Area Plan 1984-1995 and the Draft Belfast Metropolitan Area Plan 2015. Within the draft BMAP the site was within the proposed Cultra, Marino and Craigavad Area of Townscape Character (HD 12). Part of the site was also located in the Belfast Metropolitan Area Coastal Area and was within an area of land zoned for Open Space. It was also within a Local Landscape Policy Area (HD 20).

Members were advised that the WwPS already existed and would only be subject to minor changes to provide upgrades and a small extension to it, the principle of development had already been established at this location. NI Water had stated that the works were required to improve NI Water's operations at this facility and increase the storage capacity to reduce the risk of pollution to Belfast Lough.

The proposed development involved an upgrade to this existing Wastewater Pumping Station (WwPS), including extension of existing underground chamber, additional screen to emergency overflow, new access points and path to roof, and boulders, sand, and grass banking. The Head of Planning referred to visuals which showed the proposed site layout and plans/sections.

During the works - A temporary construction compound, along with temporary pedestrian path, would be provided during the construction phase to ensure that all works were contained within the site, whilst also protecting accessibility for users of the surrounding open space area and coastal path. The location of the temporary construction compound/working area and temporary path were shown in Case Officer's report. There would be no harm to setting with a LLPA and an ATC and no loss of open space. The proposed upgrades would be concealed within the existing underground WwPS chamber and along with the extension which was also underground any visual impact would be minimal. Regrading and reprofiling of ground above the proposed extension chamber would be sloped to match the existing adjacent ground profile concealing the extension from view. The temporary path required for any works would be conditioned to be removed after completion of works HED was consulted due to the application sites proximity listed structures. Environmental Health had requested hours of operation of works to be conditioned Given the application sites proximity to Belfast Lough which had environmental designations, both NED and SES were consulted with both having no objections stating that '*the proposed development will not have any impact upon protected species and is therefore compliant with Policy NH2 of PPS2. It is unlikely to have an adverse effect on the integrity of Sites of Nature Conservation Importance - National, I.e., Belfast Lough ASSI and is therefore compliant with Policy NH3 of PPS2.'*

The Head of Planning stated that in summary, as the proposed development was policy compliant, with no objections from consultees and was considered to be essential infrastructure thereby reducing the risk of pollution to Belfast Lough by increasing the storage capacity of the existing WwPS, the grant of planning permission was recommended.

As there were no questions for the Head of Planning, the Chair invited Mr Michael Graham (Chartered Town Planner and Director of Tetra Tech) and Mr Paul Cooke (Director of Tetra Tech's Water team), who were in attendance on behalf of NI Water to come forward who were speaking in support of the application.

Mr Graham was pleased Council's Planning Department had recommended approval and thanked the Planning Officers for their efforts in progressing this to a positive recommendation.

Mr Graham stated that the proposed development involved an upgrade to the existing Wastewater pumping station, including extension of existing underground chamber, additional screen to emergency overflow, new access points and path to roof, and boulders, sand, and grass banking. It was required to improve NI Water's operations at this facility and increase the storage capacity to reduce the risk of pollution to Belfast Lough.

The existing underground facility comprised a WwPS with emergency storage and a high-level overflow to the sea. Under normal operating conditions, the facility received flows from a gravity pipeline and pumped that forward via a pressure pipeline for treatment at a wastewater treatment works. The storage and high-level overflow were there to make sure that, in emergency conditions, e.g. excess flows entering the facility or equipment failure, flows could be stored safely before eventually overflowing to the sea.

The proposed upgrade works would provide supplementary storage and screening to the existing underground facility. That would allow more flow to be stored, and a longer time to elapse, before emergency discharge occurs. It would also allow solid matter to be screened out of the emergency overflow prior to discharge. The additional storage and associated screening would therefore represent a clear, demonstrable benefit to the environment.

The proposed works utilise materials and finishes that accord with that of the existing underground WwPS. Its appearance would therefore be minimally altered from its present state, resulting in no adverse impact on the overall character of the area. It also involved regrading and reprofiling of the ground above the proposed extension chamber to be sloped to match the existing adjacent ground profile thereby concealing the extension from public view.

Overall, Mr Graham explained that the works would help integrate the development into the landscape and would also assist in maintaining the character, whilst also respecting the built form of the area.

A temporary construction compound, along with temporary pedestrian path, would be provided during the construction phase to ensure that all works were contained within the site, whilst also protecting accessibility for users of the open space area and coastal path.

Consultations were undertaken with NIE, Environmental Health, NIEA Natural Environment Division, and Water Management Unit, Shared Environmental Service, DfI Rivers, and Historic Environment Division and all were content with no

objections. No third-party representations were received. Council's Planning Department had considered the planning history, requirements of the North Down and Ards Area Plan 1984-1995, Draft Belfast Metropolitan Area Plan 2015, SPPS, PPS2, PPS6, PPS6 Addendum, PPS8, PPS11 and PPS15. Mr Graham had reviewed the Planning Department's suggested conditions and was content with same.

The Chair invited questions from Members.

Councillor McCollum was familiar with the area and asked how long the construction works would last. Mr Cooke envisaged those would last 8-10 weeks.

Councillor McCollum further raised questions in relation to operational matters including noise disturbance and construction vehicles. Mr Cooke advised that there would be a period that contractors would need to break through from the existing to the new facility and that work would last no more than a couple of days and be during working works. Rock was not expected to be broken through, and excavation should be reasonably quiet. A temporary compound would be established for the construction works in the vicinity of the existing facility within the Seapark site.

Mr Graham added that in terms of noise disturbance a condition was attached to the application restricting the hours of construction to during the daytime.

Councillor McCollum referred to the flood risk assessment and noted that there a flood at the area almost every time there was heavy rainfall. The area was in the verges of the marine flood plain. The structure was contained therefore no risk of egress. The works would make permanent improvements with addition screening and storage providing lasting benefits for the environment.

Councillor Kendall asked the time of the year the works would take place conscious that the area was busy during the summer period. Mr Cooke advised that effort would be made to aim to undertake the works before the summer period. One of the final stages before construction could begin was the production of a Construction Environmental Management Plan which needed to be agreed, and engagement had commenced with SES and Water Management Unit in that regard.

As there were no further questions, the representatives returned to the public gallery.

Proposed by Councillor McCollum, seconded by Councillor Morgan, that the recommendation be adopted, that planning permission be granted.

Councillor McCollum and Councillor Morgan welcomed the improvement works.

RESOLVED, on the proposal of Councillor McCollum, seconded by Councillor Morgan, that the recommendation be adopted, that planning permission be granted.

4.8 LA06/2024/0913/F - Land between 12-35 Queen's Parade, Bangor - Proposed 1 year temporary car park for public use (scheme composed of 97 new car parking spaces, 6 of which are disabled parking spaces & 20 motorcycle spaces)
(Appendix XII)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Bangor Central
Committee Interest: An application made by the Council
Proposal: Proposed 1 year temporary car park for public use (scheme composed of 97 new car parking spaces, 6 of which are disabled parking spaces & 20 motorcycle spaces)
Site Location: Land between 12-35 Queen's Parade, Bangor
Recommendation: Grant Planning Permission

The Head of Planning (G Kerr) outlined the detail of the application. The application was made by the Council, was for a temporary car park on land owned by the Department for Communities. If approved, its development and directional/information signage had been approved under the DfC Urban Regeneration Programme budget.

Members would be fully aware of the proposals for the redevelopment of the wider area of Queen's Parade for a major mixed use regeneration scheme, comprising of residential, hotel, retailing, food and beverage, open space and leisure and significant public realm.

Given that work was due to commence on the Marine Gardens side of the scheme in the first instance, there was opportunity to utilise the existing site at The Vennel on the land side of Queen's Parade as a car park for a temporary period. That would assist the city centre in the immediate term when car parking spaces at Marine Gardens were removed to develop the stretch of public realm. The works were relatively minor in nature and involve bitmacing the site and marking out spaces alongside some low level lighting.

(Councillor Kendall withdrew from the meeting – 10.45 pm)

The site would provide some 97 new car parking spaces, 6 of which were disabled parking spaces and 20 motorcycle spaces. Statutory consultees were content, given the context of the site which was to be redeveloped in totality under an extant planning approval.

Only one objection was received which considered that use of this site as a car park would hamper redevelopment works and the programme for redevelopment, and that other car parks nearby should be signposted accordingly. As set out in the Case Officer's report, the proposal was not considered to hamper the overall redevelopment, the developer was aware of the scheme, and the proposal was temporary in nature. As reported to the Place and Prosperity Committee at its meeting in October 2024, whilst the development works at Queen's Parade were the responsibility of the developer, who would have a visible presence on site throughout

the build, the Council needed to proactively assist with the challenges brought about by the loss of the spaces in Marine Gardens as the first phase of the wider scheme. In addition to this proposal, officers would introduce measures to manage the movement of the public between car parks and deliver a communications and awareness campaign to help residents and businesses prepare for change.

The recommendation was to grant planning permission for a temporary period of one year.

Councillor Morgan asked why there was no cycling parking included. The Head of Planning advised that no cycling parking had been included as part of the proposal and the Planning Department was not required to ask for such.

Councillor Morgan viewed that as very disappointing.

Proposed by Alderman Smith, seconded by Alderman Graham, that the recommendation be adopted, that planning permission be granted.

The Chair noted that parking was being removed as part of the overall Queen's Parade development, yet the proposal sought to provide parking for only one year.

(Councillor Kendall re-entered the meeting – 10.47 pm)

The Chair viewed that as a waste of money.

RESOLVED, on the proposal of Alderman Smith, seconded by Alderman Graham, that the recommendation be adopted, that planning permission be granted.

4.9 LA06/2024/0960/A - Land 27m south of 7 Portaferry Road, Cloughey - Village Sign
(Appendix XIII)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Ards Peninsula
Committee Interest: Council Application
Proposal: Village Sign
Site Location: Land 27m south of 7 Portaferry Road, Cloughey
Recommendation: Consent

The Head of Planning (G Kerr) outlined the detail of the application. The sign was similar to previously approved signs as part of the Council's ongoing signage for towns and villages in the Borough with a distinctive design for each to mark the local identity of a settlement. The site was located just outside the settlement limit of Cloughey approximately nine metres south of the settlement limit. Dfl Roads was consulted and had no objection. A visual of the proposed sign was shown, the local beach was well known and was reflected within the sign and it was recommended that consent was granted.

Proposed by Councillor Wray, seconded by Councillor Kerr, that the recommendation be adopted, that consent is granted.

Councillor Wray welcomed the design and the location, whilst Councillor Kerr welcomed the signage for Cloughey.

RESOLVED, on the proposal of Councillor Wray, seconded by Councillor Kerr, that the recommendation be adopted, that consent be granted.

5. SERVICE UNIT PLAN 2025/2026

(Appendix XIV)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching Planning Service Plan 2025/26 for approval. The report detailed that Members would be aware that Council was required, under the Local Government Act 2014, to have in place arrangements to secure continuous improvement in the exercise of its functions. To fulfil this requirement Council approved the Performance Management Policy and Handbook in October 2015. The Performance Management Handbook outlines the approach to the Performance Planning and Management process as:

- Community Plan – published every 10-15 years
- Corporate Plan – published every 4 years (Corporate Plan 2024 - 2028 in operation)
- Performance Improvement Plan (PIP) – published annually
- Service Plan – developed annually

The Council's 18 Service Plans outlined how each respective Service would contribute to the achievement of the corporate objectives including, but not limited to, any relevant actions identified in the PIP.

The 2025-26 Service Plan for Planning in accordance with the Council's Performance Management Policy and Handbook.

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.

The attached Plan:

- Had been developed to align with the objectives of the Big Plan (2017 – 2032) and the Corporate Plan 2024 – 2028 and had been developed in conjunction with staff, officers and management, and in consultation with key stakeholders where relevant.

- Sets out the objectives for the Service for 2025-26 and 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.
- Is 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.
- Would be reported to Committee on a six-monthly basis as undernoted.

Reference	Period	Reporting Month
Quarter 1 and Q2	April – September	December
Q3 and Q4	October – March	June

RECOMMENDED that Council approves the attached Service Plan for Planning.

The Head of Planning spoke to the report outlining the detail to Members.

AGREED TO RECOMMEND, on the proposal of Alderman Graham, seconded by Councillor Smart, that the recommendation be adopted.

6. PLANNING APPEALS UPDATE

(Appendices XV, XVI)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching Item 6a Appeal decision - 2023/L0007 and Appeal decision - 2023/A0109. The report detailed the undernoted:-

Appeal Decisions

1. The following appeal was dismissed on 22 January 2025.

PAC Ref	2023/L0007
Council Ref	LA06/2022/1295/CLOPUD
Appellant	Dr Stephen Glover
Subject of Appeal	Erection of Shed
Location	40 Ballymacreely Road, Killinchy

The Council refused the above application for a Certificate of Lawfulness of a Proposed Use or Development on 3 August 2023 in relation to a proposed shed as it was not considered to meet the requirements of The Planning (General Permitted Development) Order (NI) 2015 – i.e. development not requiring express planning permission.

The main issue in this appeal related to whether the proposed shed would be lawful.

Section 170 of the Planning Act (Northern Ireland) 2011 made provision for the issuing of a certificate of lawfulness for a proposed use or development. Section 170(1) stated that if any person wished to ascertain whether any proposed use of buildings or other land or any operations proposed to be carried out in, on, over or

under land, would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question.

Part 1 of the Schedule to the Order related to development within a residential curtilage with Class D making provision for any building for a purpose incidental to the enjoyment of the dwelling house.

The Council considered that the development would not meet Class D criterion (b) which stated that development is not permitted if any part of the building is situated on land forward of a wall which (i) faces into a road; and (ii) forms either the principal elevation or a side elevation of the original dwellinghouse

Claims were made of contradictions in the Council's approach to the CLOPUD application; however, the Commissioner determined that the submitted statement of case is taken as the Council's final position on the matter.

There was no concern in relation to the height of the proposed building and the impact of the appellant's proposed shed on visual amenity.

Information regarding the surveillance system and pergola on the appellant's property were outside the remit of the appeal and any reference to Scottish and English planning system's permitted development rights, Scotland's Guidance on Householder Permitted Development Rights raised by the appellant, including any reference to claims in relation to support for the proposal by other councils within this jurisdiction, did not have determining weight in this case. A letter to the appellant from DfI dated 6th March 2023 was not official guidance with no such considerations contained within the legislation.

The side elevation of the appellant's dwellinghouse faces onto Ballymacreely Road with the proposed shed forward of this wall. Given that the proposed building would be forward of a wall which faces into a road and forms a side elevation of the original dwelling house it therefore sits outside the provisions of Part 1 Class D(b) of the GDPO and therefore was not permitted development.

The appeal was dismissed.

2. The following appeal was dismissed on 11 February 2025

PAC Ref	2023/A0109
Council Ref	LA06/2023/2156/O
Appellant	Mr Gareth Horner
Subject of Appeal	Refusal of planning permission for 2no. dwellings
Location	Between No. 2A and No. 4 Coach Road, Comber

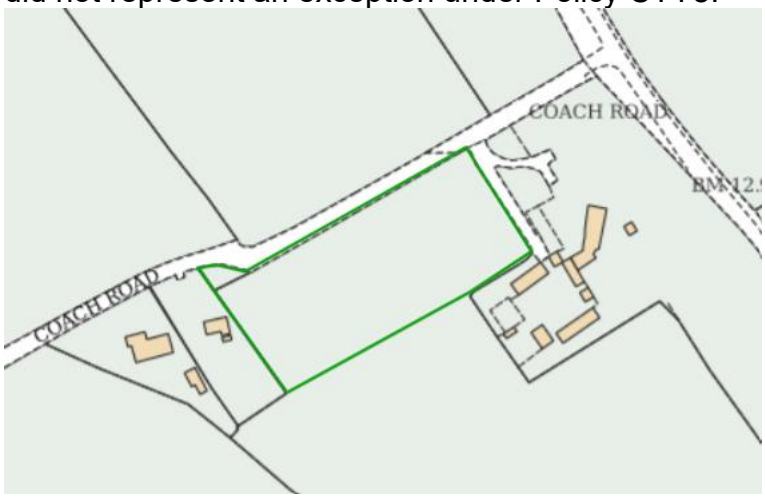
The above planning application was refused on 01 March 2024 for the following reasons:

- 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 creation of ribbon development along Coach Road.

- The proposal is contrary to Policy CTY 1 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.

- The proposal is contrary to Policy CTY 14 of Planning Policy 21 – Sustainable Development in the Countryside in that the dwellings would, if permitted, result in a detrimental change to the rural character of the countryside by creating a ribbon of development.

Whilst the Commissioner agreed with the Council that there was a substantial and continuously built up frontage (consisting of three or more buildings), the gap site would be suitable to accommodate more than two dwellings. As such the appeal site did not represent an exception under Policy CTY8.



The appellant's reference to Building on Tradition Guidance and other gap site frontages which were deemed acceptable within the Council district was not considered to assist their case given the policy requirement for the proposal to respect the existing development pattern along the frontage (emphasis added). It followed that what was acceptable on one frontage may not be acceptable on another and in any event each proposal must be assessed on its individual merits.

The Council's reasons for refusal were upheld, with the exception of concerns regarding removal of hedgerow to facilitate sight splays which the Commissioner considered could be conditioned on any approval.

New Appeals Lodged

The following appeal against an Enforcement Notice was lodged on 04 February 2025.

PAC Ref	2024/E0044
Council Ref	LA06/2021/0144/CA
Appellant	Mr William & Mrs Helen Wylie

Subject of Appeal	Alleged unauthorised: • ancillary building; • wooden pergola; • extension of domestic curtilage which includes concrete path; • building; • building; • shelter; • laying of hardstanding laneway.
Location	Lands at 107 Comber Road, Newtownards

The following appeal was lodged on 28 January 2025.

PAC Ref	2024/A0114
Council Ref	LA06/2023/2149/O
Appellant	Alexis Clarke
Subject of Appeal	Refusal of planning permission for 2 No. in-fill dwellings with domestic garages
Location	40a and 42 Deer Park Road, Newtownards, BT22 1PN
Proposal	2 No. in-fill dwellings with domestic garages

Details of appeal decisions, new appeals and scheduled hearings could be viewed at www.pacni.gov.uk.

RECOMMENDED that Council notes the report and attachments.

The Head of Planning spoke to the report outlining the detail to Members.

The Chair was mindful regarding the discussion earlier in the meeting regards the PAC decision in relation to the Kiltonga application. He wondered if there was a concern from Officers in relation to a decision from PAC, would a commentary be provided. If PAC decisions were not challenged and became binding the Chair wondered if at a point those decisions should be challenged.

The Director explained that the PAC decisions were not caselaw, they formed a material consideration which were given a substantial weight. It was delegated to Planning's authorised officer to take legal cases and that had occurred previously, in respect of previous challenges to PAC decisions, however, Officers were mindful of that and noted the costs associated, but would certainly advise Members accordingly.

AGREED TO RECOMMEND, on the proposal of Alderman Smith, seconded by Alderman Graham, that the recommendation be adopted.

7. QUARTER 2 2024/2025 STATISTICS

(Appendix XVII)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching Statistical Bulletin. The report detailed that the Department's Analysis, Statistics and Research Branch published provisional statistics for Planning activity on 12 December 2025 for Quarter 2 (July – September) of 2024/25.

Members could view the full statistical tables at :https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-july-september-2024

Local Applications

The Council determined 160 residential applications in Quarter 2 of 2024/25 compared to 140 such applications in the same period of the year before.
The majority of applications received in Quarter 2 were in the residential category at 68% (118 out of 174).

The average processing time for applications in the local category of development in Quarter 2 was 18.6 weeks, higher than the statutory performance indicator of 15 weeks but lower than Quarter 1 at 19 weeks.

Major Applications

Recorded in the statistics was one application determined in the major category of development with an average processing time of 85.8 weeks against the statutory performance target of 30 weeks.

This application related to the redevelopment of the former Redburn Primary School site in Holywood for a post-primary school with car park, bus drop-off area and playing pitches with floodlighting.

Further information on majors and locals was contained in Tables 3.1 and 4.1 respectively of the Statistical Tables.

Enforcement

The Planning Service opened 50 new enforcement cases in the second quarter of 2024/2025, whilst 121 cases were concluded resulting in a conclusion time of 53.7% against the target of 70%.

122 cases were closed with the reasons as follows:

Closure Reason	**Number**
Remedied/Resolved	48
Planning permission granted	3
Not expedient	24
No breach	39
Immune from enforcement action	8
Enforcement appeal upheld i.e. planning permission granted under ground (a) appeal	0

Householder Applications

During Quarter 2 the Planning Service processed 111 applications within the householder category of development.

53 of these were processed within the internal performance target of 8 weeks (48%), with 83 being processed within the 15-week statutory performance indicator (75%).

Additional Activity

Additional activity details the "non-application" workload of the Planning Service, and includes Discharge of Conditions, Certificates of Lawfulness (Proposed & Existing), and applications for Non-Material Changes.

Type	No. Received	No. Processed
Discharge of Conditions	15	11
Certificates of Lawfulness (Existing/Proposed)	18	14
Non-Material Changes	11	10
Pre-Application Discussions (PADs)	4	2
Proposal of Application Notice (PANs)	3	1
Consent to carry out tree works	11	16

The Planning Service continued to work with a significant number of vacancies at a variety of levels within Development Management, for which ongoing recruitment was continuing, as well as suffering a number of long-term sick absences and resultant file reallocations, which continued to have impacts on case processing times.

RECOMMENDED that the Council notes the content of this report and attachment.

AGREED TO RECOMMEND, on the proposal of Alderman Smith, seconded by Councillor Kerr, that the recommendation be adopted.

8. BUDGETARY CONTROL REPORT

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity detailing that the Planning Service's Budgetary Control Report covering the 9-month period 1 April to 31 December 2024. The net cost of the Service was showing an underspend of £7k (0.6%).

Explanation of Variance

The Planning Service's budget performance was further analysed on page 2 into 3 key areas:

Report	Type	Variance	Page
Report 2	Payroll Expenditure	£183k favourable	**2**

Report 3	Goods & Services Expenditure	£37k favourable	**2**
Report 4	Income	£214k adverse	**2**

Explanation of Variance

The Planning Service's overall variance could be summarised by the following table:

Type	Variance £'000	Comment
Payroll	(183)	A number of vacancies due to resignations and resultant backfilling, where possible, exist – some recruitment exercises have been unsuccessful and are continuing. Agency staff employed where available to backfill lower posts.
Goods & Services	(37)	Range of small underspends (advertising, planning portal, tree services etc.)
Income	214	Mainly planning application fees. Limited major applications received to date.

REPORT 1	BUDGETARY CONTROL REPORT					
		Period 9 - December 2024				
		Year to Date Actual	Year to Date Budget	Variance	Annual Budget	Variance
		£	£	£	£	%
	Planning					
730	Planning	1,228,339	1,235,300	(6,961)	1,740,400	(0.6)
	Total	**1,228,339**	**1,235,300**	**A (6,961)**	**1,740,400**	**(0.6)**
REPORT 2	**PAYROLL REPORT**					
		£	£	£	£	%
	Planning - Payroll					
730	Planning	1,708,352	1,891,800	(183,448)	2,522,500	(9.7)
	Total	**1,708,352**	**1,891,800**	**(183,448)**	**2,522,500**	**(9.7)**
REPORT 3	**GOODS & SERVICES REPORT**					
		£	£	£	£	%
	Planning - Goods & Services					
730	Planning	173,318	210,700	(37,382)	367,500	(17.7)
	Total	**173,318**	**210,700**	**(37,382)**	**367,500**	**(17.7)**
REPORT 4	**INCOME REPORT**					
		£	£	£	£	%
	Planning - Income					
730	Planning	(653,331)	(867,200)	213,869	(1,149,600)	24.7
	Totals	**(653,331)**	**(867,200)**	**213,869**	**(1,149,600)**	**24.7**

RECOMMENDED that Council notes this report.

The Head of Planning provided an overview of the report.

AGREED TO RECOMMEND, on the proposal of Alderman Smith, seconded by Councillor McCollum, that the recommendation be adopted.

9. UPDATE ON TREE PRESERVATION ORDER AND WORKS

(Appendix XVIII)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching figures from the date of the last report to Committee. The report provided a quarterly update to Planning Committee regarding detail relating to Tree Preservation Orders served and applications for consent to carry out works to protected trees. The update provided information from 16 August 2024 (date of previous report) to 14 November 2024.

RECOMMENDED that Council notes the content of this report.

The Principal Professional and Technical Officer (C Barker) was in attendance via Zoom to present the report.

She advised that one provisional TPO had been served at Lands at Nos. 1, 2, 2a, 3, 4, 5 and 6 The Grange and Nos. 7-12 Carnesure Mews, Comber. There had been one consent for works protected trees decision at 160 High Street, Holywood. That application sought to fell two trees, carry out works to 39 trees which involved crown cleaning, removal of dead wood and ivy. All the work to the protected trees were in line with Council's health and condition report. The two trees recommended for felling were roadside ash trees which had showed significant ash dieback and deterioration, as such the Council had no objection to their removal subject to a replanting condition on a one to one basis on the roadside boundary.

In relation to the recent storm and areas where there were tree preservation orders, Councillor McCollum wondered if there was requirement on residents to notify that trees had fallen in the storm. The Officer stated that there was no obligation, any tree that was considered dangerous would be considered exempt from protection. It was good practice to notify Planning of the trees that had fallen and that those had fallen as a result of the storm as the onus would be on those residents from an enforcement perspective to provide that evidence.

Councillor Kendall thanked the Officer (C Barker) for the recent workshop she had organised in respect of tree preservation orders.

AGREED TO RECOMMEND, on the proposal of Councillor Kendall, seconded by Councillor Morgan, that the recommendation be adopted.

10. UPDATE ON PLANNING IMPROVEMENT PLAN

(Appendix XIX)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching correspondence from Permanent Secretary of DfI to Council Chief Executives, Minutes of Interim Commission meeting and copy of presentation by PAC to the Commission. The report detailed that Members would be aware of the Planning Improvement Programme (PIP) following publication of a report by the Northern Ireland Audit Office on Planning in Northern Ireland and followed by the report by the Public Accounts Committee in February and March 2022, respectively.

The Permanent Secretary of DfI had written to Council Chief Executives to advise on collective progress achieved to date which included:

- delivery of legislation to enable councils to produce local validation checklists which will improve the quality of applications and performance (reported to Committee in November 2024)

- work through the Planning Statutory Consultee Forum with 80% of statutory consultations responded to within the statutory target. (Council still awaiting breakdown of statistics re DFI consultations as requested by Committee in October 2024)

- delivery of training to statutory consultees and planning staff on of Environmental Impact Assessment, as part of the Department's Environmental Governance Work Programme.

The next phase would focus on specific areas of collective action and initiatives across the 12 planning authorities to support the long-term sustainability of the system; as well as improving overall performance with the objective of reducing bureaucracy and improving efficiencies of processes

The next phase of the programme would include:

- completing a Review of the Planning (Development Management) Regulations (NI) 2015
- streamline the planning application process
- facilitating and encouraging greater participation in the process
- collaborative work and actions to improve effectiveness and efficiencies
- effective enforcement with the Department will continuing to work with councils to ensure regional compliance with environmental obligations
- working to review and improve the efficiency of the implementation of the local development plan process
- addressing financial sustainability of the system

The importance of addressing issues and weaknesses in processes was recognised while also focusing on capacity and capability to ensure that planning resources were fit for purpose and able to deliver a good planning service.

The Department would explore ways to improve the skills of staff across the 12 planning authorities through a collective training and development programme with both graduate trainee and apprentice schemes for planners and ensuring succession planning for the future.

The approach advocated by DfI was focused on outcomes, rather than actions. The achievement of that would require the establishment of a new Planning Performance & Improvement Framework (PPIF) for all 12 planning authorities (including DFI) as agreed in the initial phase of planning improvement.

RECOMMENDED that Council notes the report and attachments.

The Head of Planning spoke to the report outlining the next phase of the programme.

Councillor Kendall asked if there had been any progress in relation to statutory consultees responding quicker to planning applications.

The Head of Planning detailed that whilst the report stated that 80% of statutory consultees responded on target, the Ards and North Down Borough had not received adequate response times. Efforts had progressed with DfI Roads, with an Officer from DfI Roads now meeting with the Planning team each month to discuss applications. The onus was on Officers to be clear on what was being asked of statutory consultees and go back and challenge if responses were not of quality. Challenges remained with NIEA, applications were not being prioritised, and a pilot

was being undertaken in an aim to address that matter. All Councils did not experience the same delays.

In response to a question from Councillor Morgan, the Head of Planning stated that Members were aware of the delays experienced. Councillor Morgan had previously requested a breakdown of statistics in relation to statutory consultees and that would be provided at the next Planning Committee meeting.

AGREED TO RECOMMEND, on the proposal Councillor Kendall, seconded by Councillor Smart, that the recommendation be adopted.

EXCLUSION OF PUBLIC/PRESS

AGREED, on the proposal of Councillor Wray, seconded by Alderman Graham, that the public/press be excluded during the discussion of the undernoted items of confidential business.

11. UPDATE ON PLANNING ENFORCEMENT CASE

(Appendix XX)

*****IN CONFIDENCE*****

NOT FOR PUBLICATION

SCHEDULE 6:3 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

This report is presented in confidence to Members under Part 1 of Schedule 6 of the Local Government (Northern Ireland) Act 2014, Exemption 6a – Information which reveals that the council proposes to give under any statutory provision a notice by virtue of which requirements are imposed on a person.

12. QUARTERLY UPDATE ON ENFORCEMENT MATTERS

(Appendix XX)

*****IN CONFIDENCE*****

NOT FOR PUBLICATION

SCHEDULE 6:3 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

This report is presented in confidence to Members under Part 1 of Schedule 6 of the Local Government (Northern Ireland) Act 2014, Exemption 6a – Information which reveals that the council proposes to give under any statutory provision a notice by virtue of which requirements are imposed on a person.

RE-ADMITTANCE OF PUBLIC/PRESS

AGREED, on the proposal of Councillor McClean, seconded by Councillor Harbinson, that the public/press be re-admitted to the meeting.

TERMINATION OF MEETING

The meeting terminated at 11.22 pm.

Development Management Case Officer Report			
Reference:	LA06/2024/0381/F	**DEA:** Bangor Central	
Proposal:	Retention of extension to building providing separate unit used as a gym, retention of associated car parking, and proposed subdivision and part change of use of existing storage unit to provide extension to gym.	**Location:**	110 metres south-east of No 73 Green Road, Bangor
Applicant:	Wallace Magowan		

Date valid:	24.04.2024	**EIA Screening Required:**	No
Date last advertised:	10.10.2024	**Date last neighbour notified:**	26.09.2024

Consultations – synopsis of responses:	
DFI Roads	No objection with conditions
EH	No objection
DFI Rivers	

Letters of Support	0	**Letters of Objection**	0	**Petitions**	0

Summary of main issues considered:

- Principle of development
- Impact on the character and appearance of the area.
- Biodiversity
- Impact on residential amenity

Recommendation: Refuse Planning Permission

Report Agreed by Authorised Officer

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 Northern Ireland Public Register (planningsystemni.gov.uk) using Public Access

1. Site and Surrounding Area

The site is located 110 metres south-east of No 73 Green Road, Bangor. The site is accessed off Green Road, via a laneway which travels south-west towards a group of agricultural buildings surrounded by concrete hard standing. There are agricultural fields to the east, south and west of the site. The site and surrounding area are generally flat in topography. The buildings on site are finished in corrugated green metal and the most southern building used as a gym, which was in operation on the day of my site inspection.

The site is located within the Countryside as designated within North Down & Ards Area Plan 1984-1995 and DRAFT Belfast Metropolitan Area Plan 2015.

2. Site Location Plan

3. Relevant Planning History

LA06/2024/0012/CA - 110 metres south-east of No 73 Green Road, Bangor – Alleged unauthorised erection of building and subsequent use as a gym

W/2011/0469/F – Lands 75m southeast of 73 Green Road, Bangor – Change of use from sheds to light industrial (Class B2) and storage (Class B4) uses – Approved – 23.05.2012

W/2011/0198/F – Lands approx 80m south of 73 Green Road, Bangor – Alteration and extension of vacant farm building (Approved for storage and distribution use) and use for light industrial purposes (class B2)– Approved – 08.09.2011

W/2008/0069/F – Lands approx 50m to the South of 73 Green Road, Bangor. – Change of use from agricultural buildings to class B4 (storage/distribution).
– Approved – 20.08.2009

W/2007/0948/F – 69 Green Road, Conlig, Bangor. – Replacement farm house – Approved – 27.02.2008

W/2003/1001/F – Adj to 73 Green Road, Ballygrainey, Bangor. – Proposed replacement of existing commercial buildings and new access. – Approved on appeal – 02.07.2005

The application under consideration has been submitted further to the planning enforcement team investigations under LA06/2024/00112/CA. On site a new unit has been constructed onto the end of two existing units which have planning permission for use as class B4 (storage/distribution). On the day of my site visit the unit which has been constructed was being used as a gym. It was filled with gym equipment and there were approximately four people present. Six cars were parked in the area which has been concreted. The unit to which the gym is attached to is separate and not internally accessible to the best of my knowledge

4. Planning Assessment

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

- North Down & Ards Area Plan 1984-1995
- DRAFT Belfast Metropolitan Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- 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

Principle of Development

Section 45 (1) of the Planning Act (Northern Ireland) 2011 states that regard must be had to the LDP, so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The site is located within the Countryside as designated within the North Down & Ards Area Plan 1984-1995 and DRAFT Belfast Metropolitan Area Plan 2015.

Strategic Planning Policy Statement (SPPS)

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. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

There are no environmental, architectural or archaeological designations relating to the site. The proposal is subject to the relevant policy considerations below.

Within this context, PPS2, PPS3 and PPS21 are retained and are of relevance to this assessment.

Appeal 2021/A0046 confirms that PPS4 is not the correct policy to apply for a gym.

"For the purposes of PPS 4, economic development uses comprise industrial, business and storage and distribution uses, as currently defined in Part B 'Industrial and Business Uses' of the Planning (Use Classes) Order (Northern Ireland) 2015 (UCO). ***It is stated in PPS 4 that, except for a limited number of specific policy references, mainly relating to acceptable alternative uses, the PPS does not provide policy for other stated uses including leisure, which are dealt with in other policies. A gymnasium is a sui generis leisure use and is not defined in Part B of the UCO. It is therefore not an economic development use for the purposes of PPS 4.*** *It is stated in PPS 4 that the policy approach and associated guidance contained within this document may be useful in assessing proposals for other sui generis employment uses.* ***However, as PPS 4 specifies that it does not provide leisure policy, the appeal proposal is not one of the 'other' sui generis employment uses that the PPS 4 policy approach would assist in assessing.*** *I conclude therefore that the provisions of PPS 4 including Policy PED 3 are not material to consideration of the proposal and provide no support to it."*

The supporting statement for this proposal claims that the development of a gym is an extension of an existing unit in the countryside (retrospective) and that there is to be a subdivision of an existing unit in association with the gym. The Council would disagree with this statement and would argue that the application includes the retention of an additional unit to provide the gym along with associated car parking, landscaping and site works (retrospective) and it is proposed to sub-divide an additional unit to provide further space for the gym.

The applicant has constructed a new unit without permission and uses this unit as a commercial gym. This new unit is to be extended into the existing unit it is physically joined to. The existing unit has permission for use as light industry (Class B2) and storage (Class B4) with ancillary parking as per planning permission W/2011/0469/F.

The agent has supplied an extensive supporting statement to outline how the proposed development meets this policy and is relatable to a recent appeal decision.

However, in assessing the application, it is not an established economic development use at this location to which the proposed redevelopment relates. The applicant has constructed a new unit without permission and used this unit as a gym. This new unit is proposed to be extended into the existing unit which has permission for use as light industry (Class B2) and storage (Class B4) with ancillary parking as per planning permission W/2011/0469/F.

The supporting information for this application is misplaced and as per the appeal referred to, PPS4 and therefore PED4 is not applicable for the reasons stated.

None of the PPS4 policies are applicable as the gym is a leisure use which PPS4 makes clear in the preamble does not fall to be considered under PPS4.

Regional planning policies of relevance are set out in the SPPS and other retained policies, specifically PPS 21. The SPPS seeks to secure town centres first approach for future retailing and other main town centre uses. It states that applications for retail and main town centre uses will adopt a sequential approach when decision making. Where it is established that an alternative sequentially preferable site or sites exist within a proposal's whole catchment, an application which proposes development on a less sequentially preferred site should be refused.

The definition of a main town centre use as set out in the SPPS includes leisure, therefore as the gym is a leisure use, it would fall to be considered under the SPPS's requirement for a town centres first approach for the location of future retailing and other main town centre uses.

In accordance with the transitional arrangements set out in the SPPS, the principle of the development should be determined in accordance with the retained policies of PPS 21.

Policy CTY1 of PPS 21 identifies a range of types of development which in principle are considered to be acceptable in the countryside and which will contribute to the aims of sustainable development.

There are a range of other types of non-residential development that may be acceptable in principle in the countryside, e.g. certain utilities or telecommunications development. Proposals for such development will continue to be considered in accordance with existing published planning policies.

CTY1 makes provision for outdoor sport and recreation uses in accordance with PPS 8. Policy OS3 of PPS8 provides for outdoor recreational use in the countryside

subject to several criteria. The development under consideration is not for outdoor use as the development is for the use of a unit to be used as an indoor gym.

As the gym use is not covered by any of the ranges of development acceptable in principle in the countryside under CTY1, it must then be considered if there are any other overriding reasons why the development is essential and could not be located in a settlement. The agent has not provided this.

The SPPS states:
6.280 A sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to date LDP. Where it is established that an alternative sequentially preferable site or sites exist within a proposal's whole catchment, an application which proposes development on a less sequentially preferred site should be refused.

6.281 Planning authorities will require applications for main town centre uses to be considered in the following order of preference (and consider all of the proposal's catchment):
- primary retail core;
- town centres;
- edge of centre; and
- out of centre locations, only where sites are accessible by a choice of good public transport modes.

The applicant has failed to submit a sequential test or any evidence or supporting information to demonstrate how the proposal meets the requirements of the SPPS. However, it is considered that there are numerous vacant retail units located within Bangor settlement limit including the Primary Retail Core which could be used as an alternative to the application site. As such, the application site is considered less sequentially preferred and contrary to policy. As set out in policy, an application which proposes development on a less sequentially preferred site should be refused.

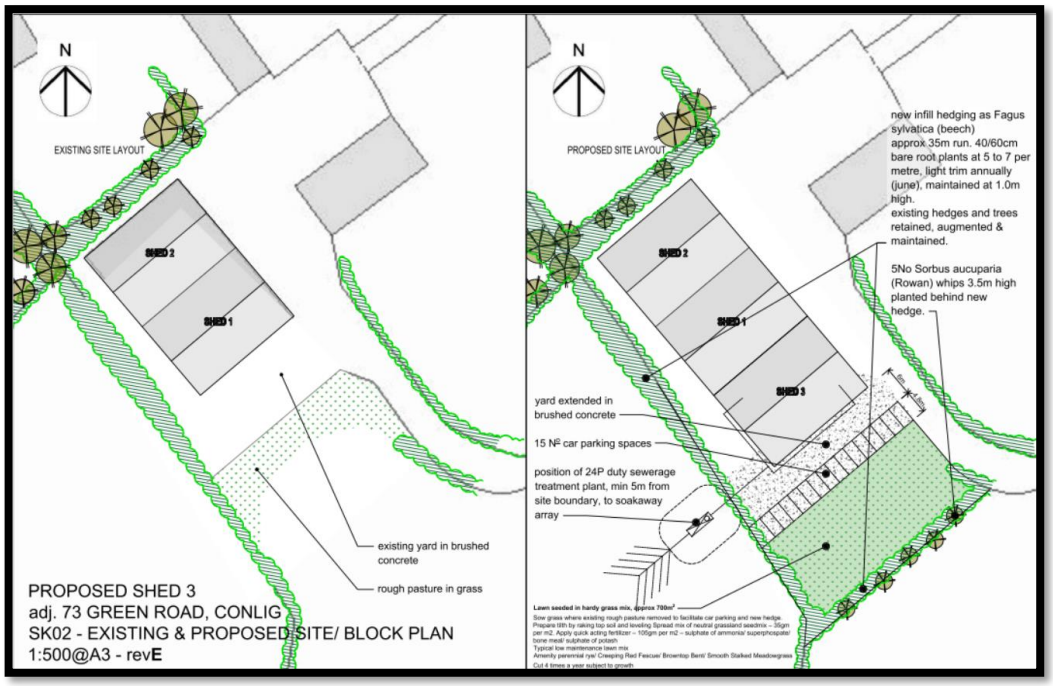
Planning permission will be granted for retail development in all town and city centres. The Primary Retail Cores will be the preferred location for new comparison and mixed retail development.

Outside designated Primary Retail Cores, planning permission will only be granted for comparison and mixed retail development where it can be demonstrated that there is no suitable site within the Primary Retail Core.

The application is contrary to this policy as the site is located within the Countryside and falls outside the settlement limit and Primary Retail Core. It has not been demonstrated by the agent that there is no alternative suitable site within the Bangor's Primary Retail Core to accommodate the business.

Proposal

The proposal includes the retention of an extension to building providing separate unit used as a gym, retention of associated car parking, and proposed subdivision and part change of use of existing storage unit to provide extension to gym.



The area which is currently laid in concrete.

View of shed under consideration

Visual Impact

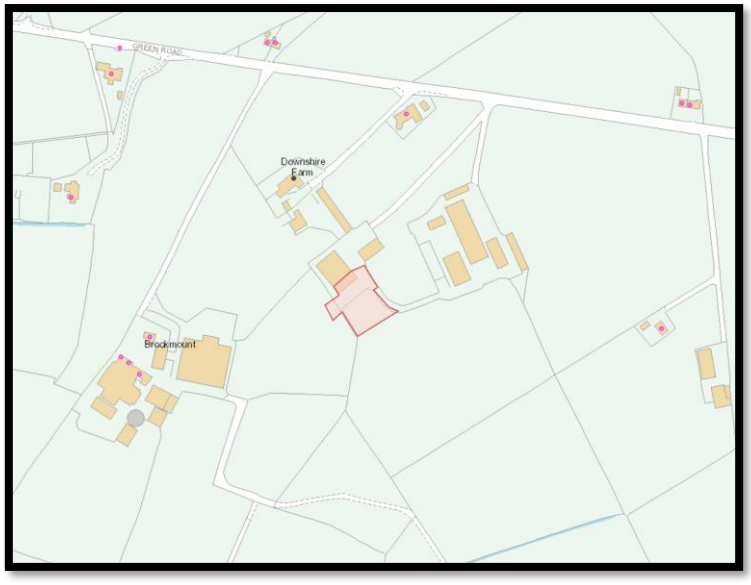
The site is located within the countryside amongst agricultural fields. There are only short passing views of the site and these are limited due to the distance of the site from the road which passes the site.

View from site towards the road.

It is my planning judgment that the development under consideration has no detrimental visual impact on the character of the area.

Residential Impact

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 no dwellings in close proximity to the site.

With all things considered it is my planning judgement that the proposed development will have no impact upon the adjacent properties.

Natural Heritage
The potential impact of this proposal on Special Areas of Conservation, 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 NI Biodiversity checklist has been referred to and indicates that there are no ecological assessments required.

Access, Movement and Parking
The proposal will not involve the modification of an access. The area of existing parking on the site has been built over and a new area of parking south of the new unit has been laid in concrete. DFI Roads were consulted and have no objection to the proposal with the inclusion of conditions.

Water supply and disposal.
The building is connected to the mains water supply. Surface water is disposed of via soakaways and the foul sewage is disposed of through a package treatment plant. The hard standing which has been constructed is approximately 560sqm and so a drainage assessment is not required.

5. Representations

None

6. Recommendation

Refuse Planning Permission

7. Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 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.

2. The proposal is contrary to Paragraph 6.280 of the Strategic Planning Policy Statement for Northern Ireland in that it has not been demonstrated that a sequential test has been applied for the proposed main town centre use and that no sequentially preferable sites exist in existing centres within the catchment area of the site.

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.

Development Management Case Officer Report			
Reference:	LA06/2023/2406/F	**DEA:** Holywood & Clandeboye	
Proposal:	Demolition of the existing dwelling, construction of a replacement, part single storey, part storey and a half dwelling linked with a new garage via a single storey car port, a new single storey garden room and associated site works		
Location:	5 Tarawood, Holywood		
Applicant:	Malcolm and Philippa Crone		
Date valid:	14.11.2023	**EIA Screening Required:**	No
Date last advertised:	30.11.2023	**Date last neighbour notified:**	16.12.2024

Letters of Support: 0	**Letters of Objection:** 16 (from 6 separate addresses)	**Petitions:** 0

Consultations – synopsis of responses:	
NI Water	No objection
Ards and North Down Borough Council – Environmental Health	No objection
NIEA – Water Management Unit	No objection
NIEA – Natural Environment	No objection

Summary of main issues considered:

- Principle of development
- Design and impact on character and appearance of the area
- Impact on proposed Area of Townscape Character
- Impact on residential amenity
- Access and parking
- Impact on trees
- Impact on biodiversity

Recommendation: Grant Planning Permission

Report Agreed by Authorised Officer

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.

1. Site and Surrounding Area

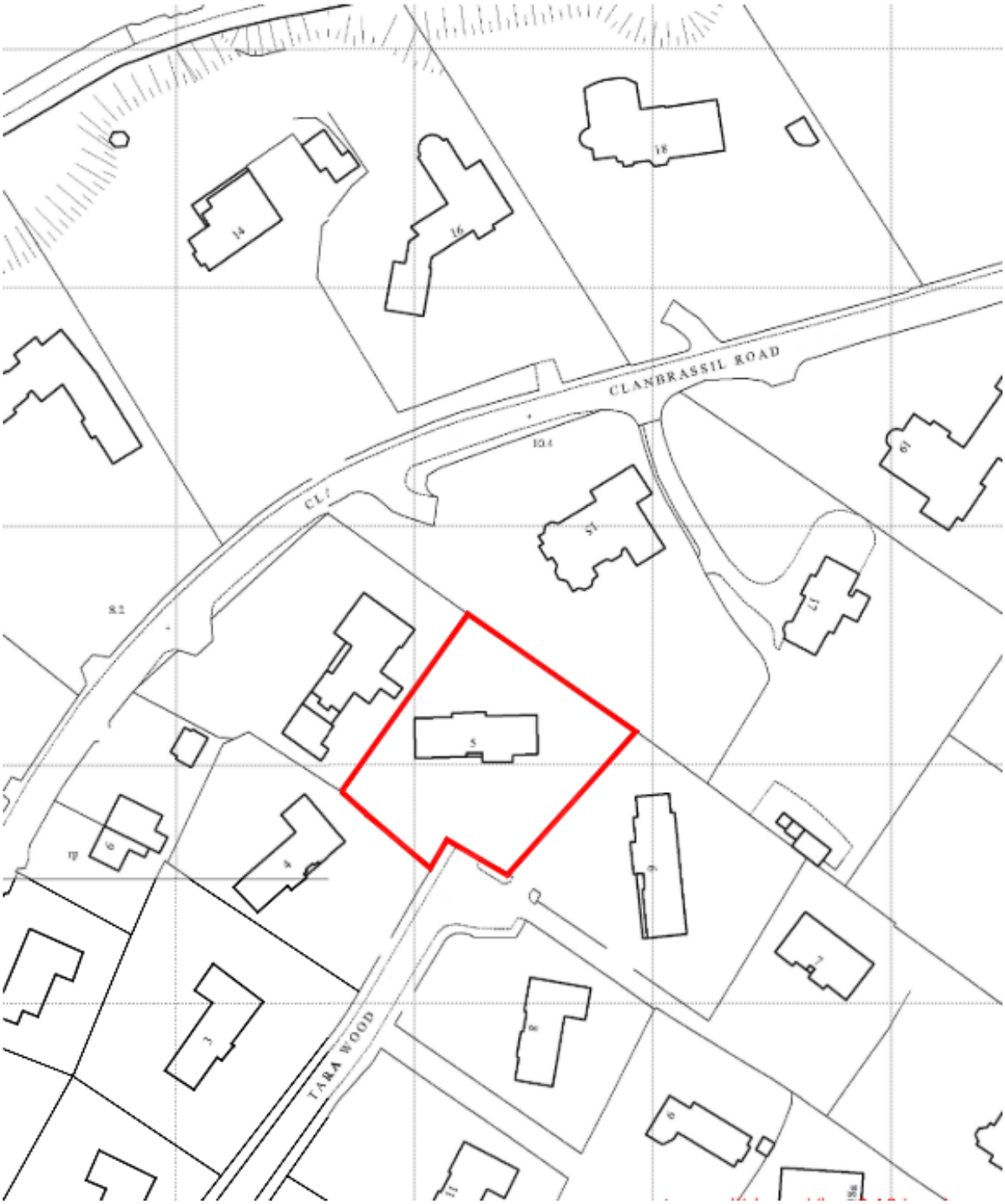
The site is located at the end of Tarawood cul–de-sac, a residential area which is accessed from Farmhill Road. A single storey dwelling currently occupies the relatively flat site with a garden laid out in lawn and vehicular access provided by a tarmac driveway. The site is bounded by mature trees and shrubbery.

The existing dwelling has a pitched roof and render finish. The area is characterised by single dwellings on relatively large plots and there is a wide variety in form and scale.

The area is within the settlement limit of Holywood as designated in the North Down and Ards Area Plan 1984-1995 and draft Belfast Metropolitan Area Plan 2015 and also within the proposed Marino, Cultra and Craigavad Area of Townscape Character.

Figure 1: Orthophotography of application site.

2. Site Location Plan



3. Relevant Planning History

No relevant planning history.

4. Planning Assessment

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

- North Down and Ards Area Plan 1984-1995
- Draft Belfast Metropolitan Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2 - Natural Heritage
- Planning Policy Statement 3 - Access, Movement and Parking
- Planning Policy Statement 7 - Quality Residential Environments
- Addendum to Planning Policy Statement 7 - Safeguarding the Character of Established Residential Areas
- Planning Policy Statement 12 - Housing in Settlements

Planning Guidance:

- Creating Places
- DCAN 8: Housing in Existing Urban Areas
- Parking Standards

Principle of Development

Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

The application site is located within the settlement development limit of Holywood as designated in both the extant and draft Plan. Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgment in the Court of Appeal delivered on 18th May 2017. As a consequence of this, the North Down and Ards Area Plan 1984-1995 (NDAAP) is now the statutory development plan for the area. A further consequence of the judgment is that draft BMAP published in 2004, is a material consideration in the determination of this application. Pursuant to the Ministerial Statement of June 2012, which accompanied the release of the Planning Appeals Commission's Report on the BMAP Public Inquiry, a decision on a development proposal can be based on draft plan provisions that will not be changed as a result of the Commission's recommendations.

Work on the adoption of BMAP has not been abandoned and the Chief Planner clarified in his update to Councils on 25 November 2019 that the draft BMAP remains an emerging plan and, as such, the draft plan, along with representations received to the

draft plan and PAC Inquiry Reports, remain as material considerations to be weighed by the decision-maker.

The site is situated within the proposed Marino, Cultra and Craigavad Area of Townscape Character (ATC) in draft BMAP. The Planning Appeals Commission considered objections to the proposed ATC designation within its report on the BMAP public inquiry. The Commission recommended no change to the ATC. Therefore, it is likely, that if and when BMAP is lawfully adopted, a Marino, Cultra and Craigavad Area of Townscape Character designation will be included. Consequently, the proposed ATC designation in draft BMAP is a material consideration relevant to this application.

The Commission also considered objections to the general policy for the control of development in ATCs which is contained in draft BMAP. It is recommended that the policy be deleted and that a detailed character analysis be undertaken, and a design guide produced for each individual ATC. It would be wrong to make any assumptions as to whether these recommendations will be reflected in any lawfully adopted BMAP or as to whether the text relating to the key features of the Marino, Cultra and Craigavad ATC will be repeated. As of now, it is unclear how the area will be characterised in any lawfully adopted BMAP. However, the impact of the proposal on the proposed ATC remains a material consideration and can be objectively assessed**.**

Regional planning policies of relevance are set out in the SPPS and other retained policies, specifically PPS 7 – Quality Residential Environments, PPS 3 - Access, Movement and Parking.

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.

As the site is currently in residential use, the principle of a replacement dwelling is acceptable in the context of the LDP subject to assessment of the potential impact on the proposed ATC and compliance with the relevant regional planning policies.

Design, Visual Impact and Impact on the Character of the Established Residential Area and on the overall appearance of the proposed ATC

The application seeks the demolition of the existing dwelling and the erection of a replacement dwelling sited within the established residential curtilage of 5 Tarawood, as shown on the existing and proposed site layout plans in Figure 2 below.

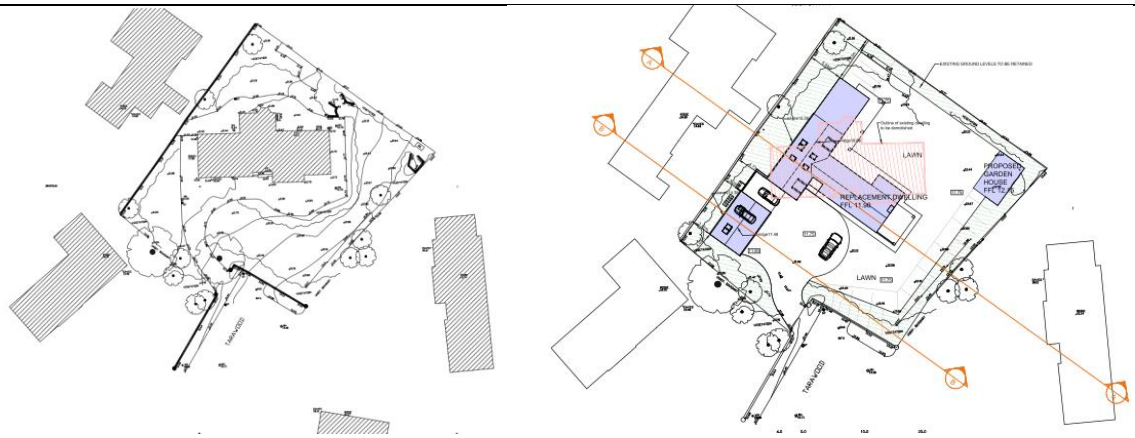


Figure 2: Existing and proposed site plans.

Paragraph 4.26 of the SPPS states that design is an important material consideration in the assessment of all proposals. It goes on to state that particular weight should be given to the impact of development on existing buildings, especially listed buildings, monuments in state care and scheduled monuments, and on the character of areas recognised for their landscape or townscape value, including ATCs. Paragraph 6.21 of the SPPS states that in managing development within ATCs designated through the LDP process the council should only permit new development where this will maintain or enhance the overall character of the area and respect its built form. Paragraph 6.22 goes on to state that the demolition of an unlisted building in an ATC should only be permitted where the building makes no material contribution to the distinctive character of the area and subject to appropriate arrangements for the redevelopment of the site.

The proposed Marino, Cultra, Craigavad Area of Townscape Character covers a large area west of Holywood town and north of the railway line. Within this area there is a wide variety of built form. In the immediate area, the built form is characterised by detached dwellings on large plots. The site is located south west of the 'centre' of the proposed designation. Draft BMAP does not divide the proposed ATC into separate character areas, therefore it is the impact on the ATC as a whole which must be considered.

Internal advice from the Council's Conservation officer has stated:

The character of Marino, Cultra and Craigavad proposed ATC derives from the historic legacy of large Victorian and Edwardian estates with their associated demesnes and landscaped grounds. Meandering roads, often without footpaths impart a semi-rural ambiance to the area. Draft BMAP notes the key features of the ATC including late Edwardian and Victorian villas, numerous listed buildings, several demesnes of historical importance and tall hedges, trees and rubble stone walls. It is the combination of these unique and high-quality features that led to the proposed designation of the area as an ATC in draft BMAP.

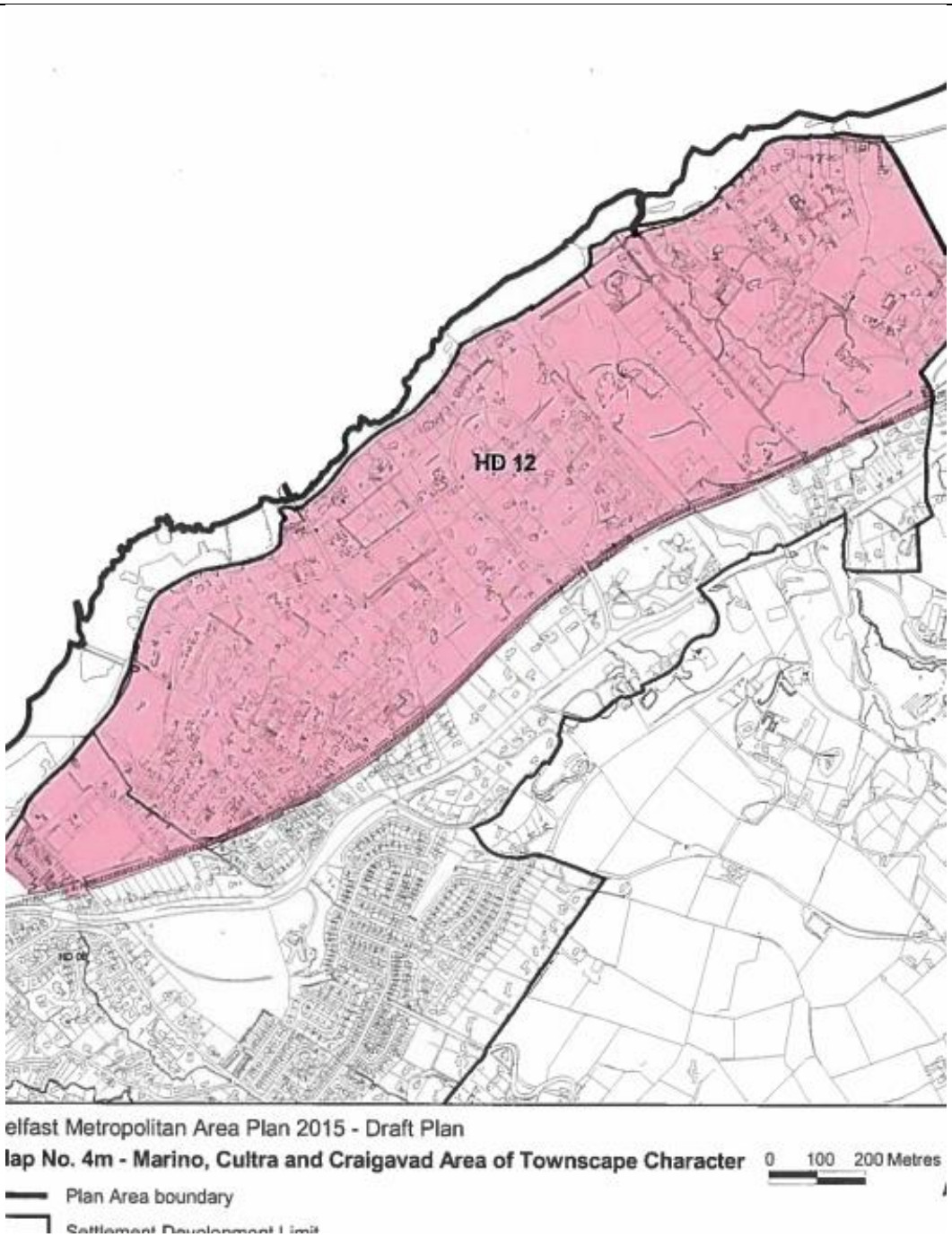


Figure 3: Extract from Draft BMAP

Tarawood is one a number of higher density housing developments that began to be introduced to the area in the 1950s and '60s. The cul-de-sac of 10 detached bungalows was built in the mid '70s on the former extensive grounds of two large, detached villas – Farmhill at 41 Farmhill Road (which is a listed building) and Tara at 45 Farmhill Road. The buildings in Tarawood are typically suburban in form and design with render finish, brick plinth, bow windows, tiled roofs and integral garages. Whilst they do form a component of the incremental development of the area over time, they do not exhibit the key features which form the basis of the ATC designation for the area. Their visual impact is also limited due to the cul-de-sac location and the mature landscaping.

In consideration of the above, it is my professional opinion that no. 5 Tarawood does not make a material contribution to the character and appearance of the draft ATC. It is located in a pleasant cul-de-sac with buildings well integrated into the sloped and well wooded landscape, but the period of construction is outside the timeframe of dwellings that are specifically highlighted as key features of the proposed ATC. I am however, of the opinion that the mature trees and landscaping do make a contribution to the overall semi-woodland ambience of Cultra, and these should be integrated into any proposed replacement scheme.

With regard to the proposed demolition, while the existing building fits comfortably within its context by way of its size and form, it is not considered to make any material contribution to the established built form or appearance of the area. It has no particular design merits and makes little, if any, contribution to the appearance of the proposed ATC (Figure 4). As such, on balance, it is my planning judgement that the demolition of the building will cause no harm to the overall appearance of the proposed ATC.

The policies within PPS6 and the related provisions of the SPPS refer to designated ATCs. No reference is made to draft/proposed ATCs, which do not have the same status or legal standing as a designated ATC. Therefore, Policies ATC1 and ATC2 of APPS6 and the aforementioned provisions of the SPPS are not applicable to the consideration of the development.

Policy QD1 of PPS7 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. The policy goes on to state that in Conservation Areas and Areas of Townscape Character housing proposals will be required to maintain or enhance their distinctive character and appearance. Again, as the policy refers to designated ATCs, but no reference is made to draft ATCs, this element of Policy QD1 is not applicable to the development. Notwithstanding these conclusions, the potential impact of the development on the proposed ATC remains a material consideration.


Figure 4: Existing dwelling to be replaced

Turning to the development of the proposed replacement dwelling itself, paragraph 4.27 of the SPPS states that where the design of proposed development is consistent with relevant LDP policies and/or supplementary design guidance, planning authorities should not refuse permission on design grounds, unless there are exceptional circumstances. It goes on to state that planning authorities will reject poor designs, particularly proposals that are inappropriate to their context, including schemes that are

clearly out of scale, or incompatible with their surroundings, or not in accordance with the LDP or local design guidance.

Criterion (a) of Policy QD1 of PPS7 requires that the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas. Criterion (g) requires that the design of the development draws upon the best local traditions of form, materials and detailing. The provisions of this policy must also be considered in conjunction with policy LC1 of PPS7 Addendum – Safeguarding the Character of Established Residential Areas. The addendum provides additional planning policies on the protection of local character, environmental quality and residential amenity within established residential areas, villages and smaller settlements.

With regard to development within ATCs, policy QD1 requires that in Conservation Areas and Areas of Townscape Character housing proposals will be required to maintain or enhance their distinctive character and appearance. In the primarily residential parts of these designated areas proposals involving intensification of site usage or site coverage will only be permitted in exceptional circumstances. As the proposal is for a replacement dwelling and will not involve any significant increase in site coverage, it is considered to comply with this aspect of the policy.

The original proposal submitted was considered by the Planning Service to be unacceptable in terms of impact on the residential amenity of no. 13 Clanbrassil Road and concerns that the close proximity of the proposal to the vegetation along the boundary would impact on its likelihood of survival. Amended plans were sought to increase the distance to the boundary to reduce any impact. An amended design was also requested as the large expanse of flat roof and materials would appear incongruous in the street scene. Inaccuracies were highlighted in representations received. The agent submitted amended plans, and these are what will be considered in this planning report.

A cover letter dated 31st January 2024 listed the changes made from the original submission which included:

- The level of the existing patio/private amenity area of no.13 Clanbrassil Road has been accurately surveyed and is now shown correctly on our proposed site plan and section drawing.
- The quantity and height of the existing vegetation along the boundary between no. 5 Tarawood and no. 13 Clanbrassil Road has been corrected.
- The proposed site plan and section have been amended to reflect the accurate level of the site to the rear of the proposed dwelling. This is the existing site level which will be retained, meaning that there will now be steps up to the back door of the proposed dwelling into the utility room.
- The overall levels of the garden have been clearly annotated on the proposed site plan drawing along with the gentle slopes to the boundaries that are being created.
- Also on the proposed site plan drawing, we have highlighted the extent of the area where the existing site levels will be retained.

Further amendments, moving the proposed dwelling 2.5m further away from the boundary with number 13 and lowering the ffl by 0.25m alongside design changes, 'pitched roof added' were submitted In May 2024. These are the plans that are considered within the rest of this planning report.

Figure 5: Originally submitted site plan

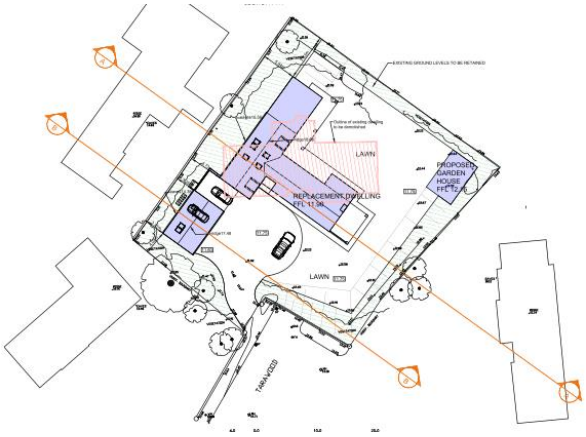


Figure 6: Amended site plan

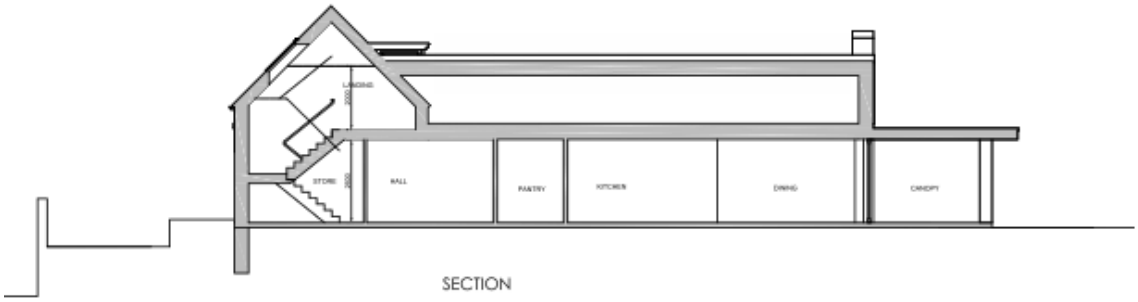


Figure 7: Proposed section to be considered.

Figure 8: Proposed elevations to be considered.

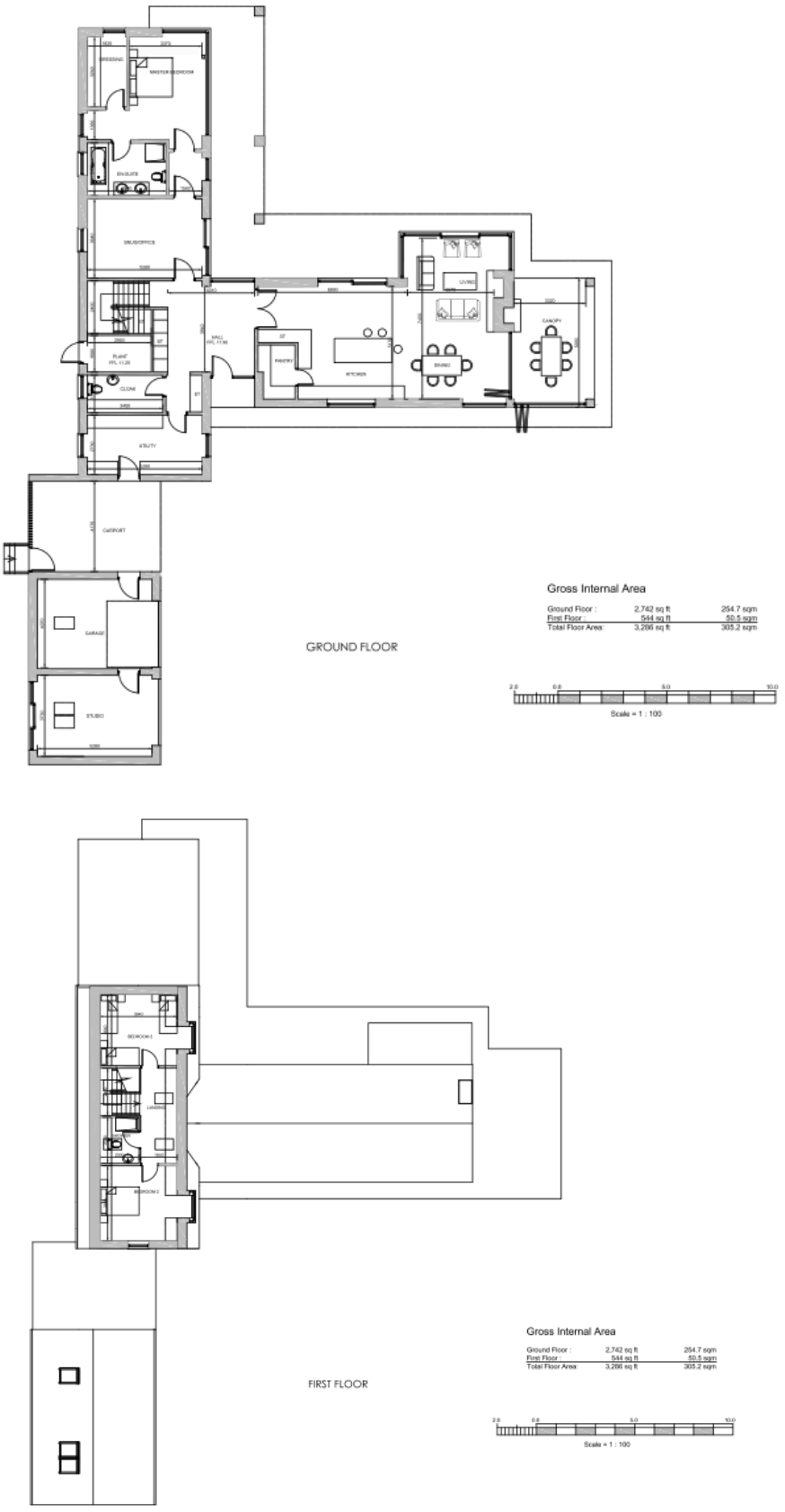


Figure 9: Proposed ground and first floor plans

The main public view of the replacement dwelling would be from within the existing cul de sac, Tarawood. The proposed dwelling has a 'T' form which the agent has highlighted is similar to that which has been approved at no. 1 Tarawood (LA06/2022/0277/F). The dwelling is part single storey/part storey and a half with the use of dormer windows. Dormer windows are a feature in Tarawood at both numbers 1 and 14 (see image below).

Fig 10: Dormer window at number 14 Tarawood.

Proposed finishes are indicated to be, natural slate roof, sand colour brick facing with timber cladding, aluminium coated black windows and cast aluminium black rainwater goods.

Following the submission of a physical sample of the proposed brick, it is considered that the finishes will integrate into the streetscape and will not detract from the character and appearance of the area. Given the mix of finishes in the area, the proposed materials will not be out of keeping. The garage associated with number 14 Tarawood sits adjacent to Farmhill road and has used a similar brick which can be seen in fig 10 above. No. 1 Tarawood has also incorporated a mixture of render, brick and natural stone, natural slate, timber cladding and zinc. Therefore, it is my planning judgement that the proposed finishes are not considered to be incongruous in the street scene and nor will they detrimentally impact on the proposed ATC.

Policy QD1 of PPS 7 seeks to achieve residential developments which promote quality and sustainability in their design and layout, and which respect the character, appearance, and residential amenity of the local area.

The proposal will not damage the quality of the local area as the site is within the settlement limit of Holywood, within a cul de sac of residential development and is replacing an existing dwelling on the site.

The layout, scale and massing of the proposal will respect the topography of the site and the character of the area. The proposed dwelling is sited 'overlapping' the footprint of the original dwelling. It is acknowledged the proposed dwelling sits more parallel to the boundary with no.13 Clanbrassil Road than the existing dwelling. Concerns have been raised in representations regarding the re positioning of the dwelling on the application site and its impact on the building line. However, as can be viewed on the site location plan and ariel photography there does not appear to be a rigid established building line as majority of the dwellings sit at angles within their retrospective sites. The corner site and mature vegetation ensure that views of the proposal from Tarawood are softened. These boundaries will be subject to condition for retention. Plans indicate

that the site levels at the rear of the site will not be altered.

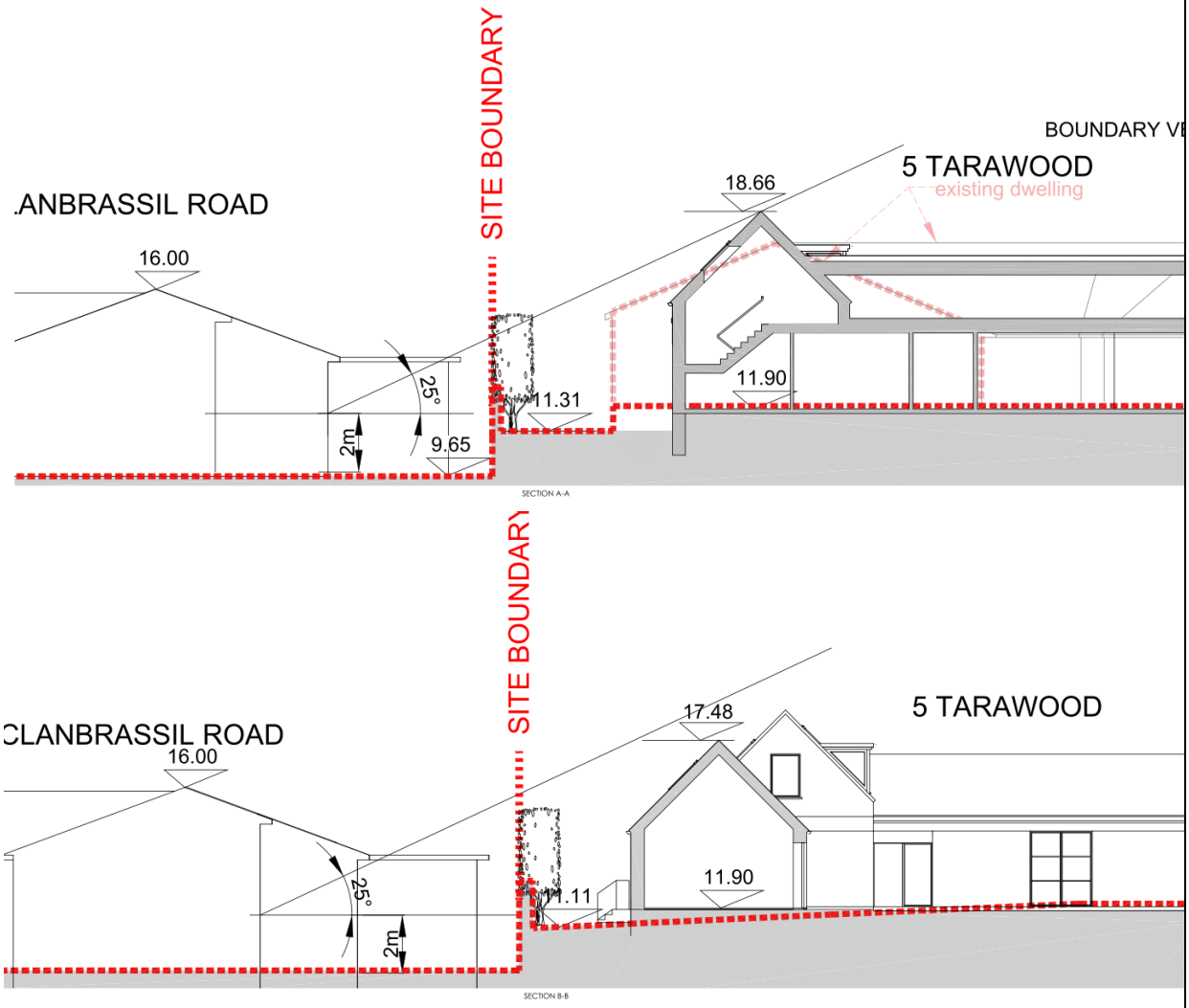


Figure 11: Sections showing existing and proposed dwelling outline and neighbouring building, 13 Clanbrassil Road.

The separation distance between the proposed replacement dwelling and the site boundary with 13 Clanbrassil Road is between 5.84m (main portion of the dwelling) and 3.35m (garage and car port). The existing dwelling has a height of approx. 6.0m to the ridge and approx. 3.9m to the eaves. The proposed dwelling has a ridge height of approx. 7.2m, meaning an increase in height of approx. 1.2metres. The existing dwelling at 5 Tarawood sits approx. 1.6metres higher than the ridge of 13 Clanbrassil Road. The proposed dwelling will be an additional 0.9m approx. above the ridge of number 13 Clanbrassil Road.

Therefore, although it is recognised the proposal is of contemporary design it will not have a significantly greater impact on the street scene due to its location at the end of the cul de sac and landscaping and is not considered to adversely impact the character of the area or the proposed ATC.

The existing natural boundaries of the site and garden areas will be retained and supplemented to further aid integration.

The replacement of one dwelling with one dwelling ensures the density (dph) remains the same as the existing. It is therefore considered that the proposal will respect the pattern of development in the area and will have no unacceptable adverse impacts on the character of the surrounding area. The proposal is considered to comply with parts (a) and (g) of Policy QD1 of PPS 7, policy LC1 of the Addendum to PPS 7 and all relevant guidance.

Private Amenity Space

Sufficient amenity space will be provided within the development site. The plot is adequate to ensure that sufficient provision is made for private amenity space well above the average space standard for the development, providing a greater than 70m² amenity space as recommended in Creating Places. The proposal is therefore considered to comply with part (c) of Policy QD1 of PPS 7 and all relevant guidance.

Impact on Residential Amenity

Several representations have been received regarding the potential impact of the proposal on the residential amenity of neighbouring dwellings and particularly no.13 Clanbrassil Road. These issues will be considered under this section of the report.

Representations assert that rear elevation windows and current private rear amenity space serving 13 Clanbrassil road will be detrimentally impacted by the proposed development by way of loss of light to windows on the rear elevation and to the rear private amenity space. Fig 12 below shows some photographs that were taken from the rear of no 13 Clanbrassil Road during a site inspection. These show the paved 'sitting out areas', retaining wall, existing vegetation and the existing dwelling (subject to this application) beyond.

Figure 12: Photographs from rear garden area of No. 13 Clanbrassil Road looking towards application site.

The photographs show parts of the garden and sitting out areas cast in some degree of shadow at the time of the site visit. The Addendum to Planning Policy Statement 7, Residential extensions and alterations states, 'Overshadowing to a garden area on its own will rarely constitute sufficient grounds to justify a refusal of permission'. It is also noted that daylight to the rear amenity space is already impeded to a degree by the existing retaining wall and boundary vegetation.

To help to assess potential loss of light to the rear windows of the neighbouring property at No. 13 Clanbrassil Road, the 25-degree light test has been employed. A light test has been conducted by the agent and verified by the case officer. While the proposed dwelling is slightly higher than the ridge of the existing dwelling on the site, as demonstrated in figure 13 below, the proposal satisfies the 25-degree light test.

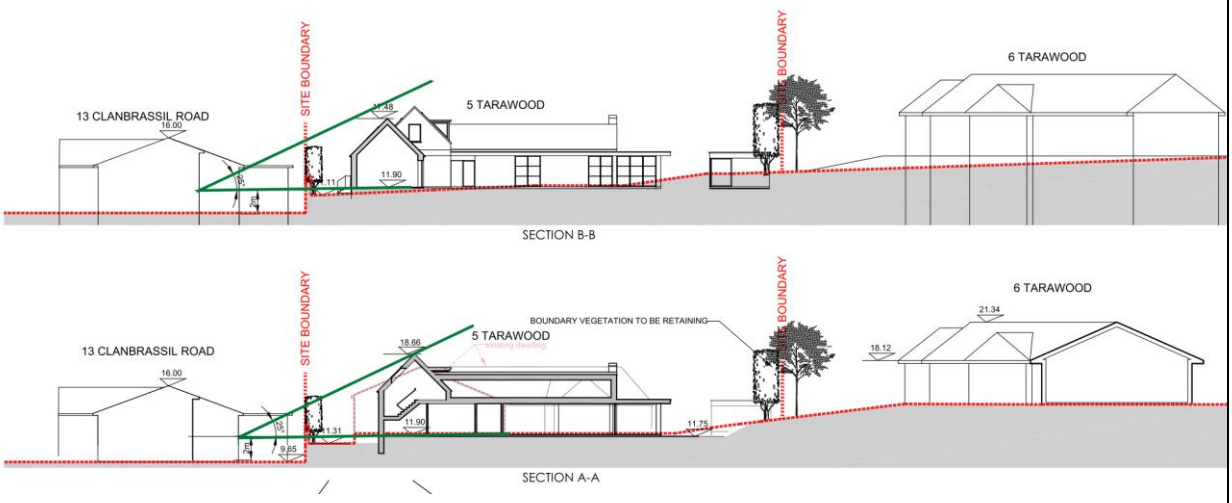


Fig 13: Proposed sections showing 25-degree light test in green

When considering the impact to 13 Clanbrassil Road, the BRE Guide states that where a new development falls beneath a 25 degree angle, taken from a point two metres above ground level (which generally corresponds with the head of the ground floor windows), then there will be no material impact on daylight and no further analysis is required. The proposal clearly complies with these guidelines, and it considered that the proposal will have no unacceptable adverse impact on daylight to the rear windows of the dwelling.

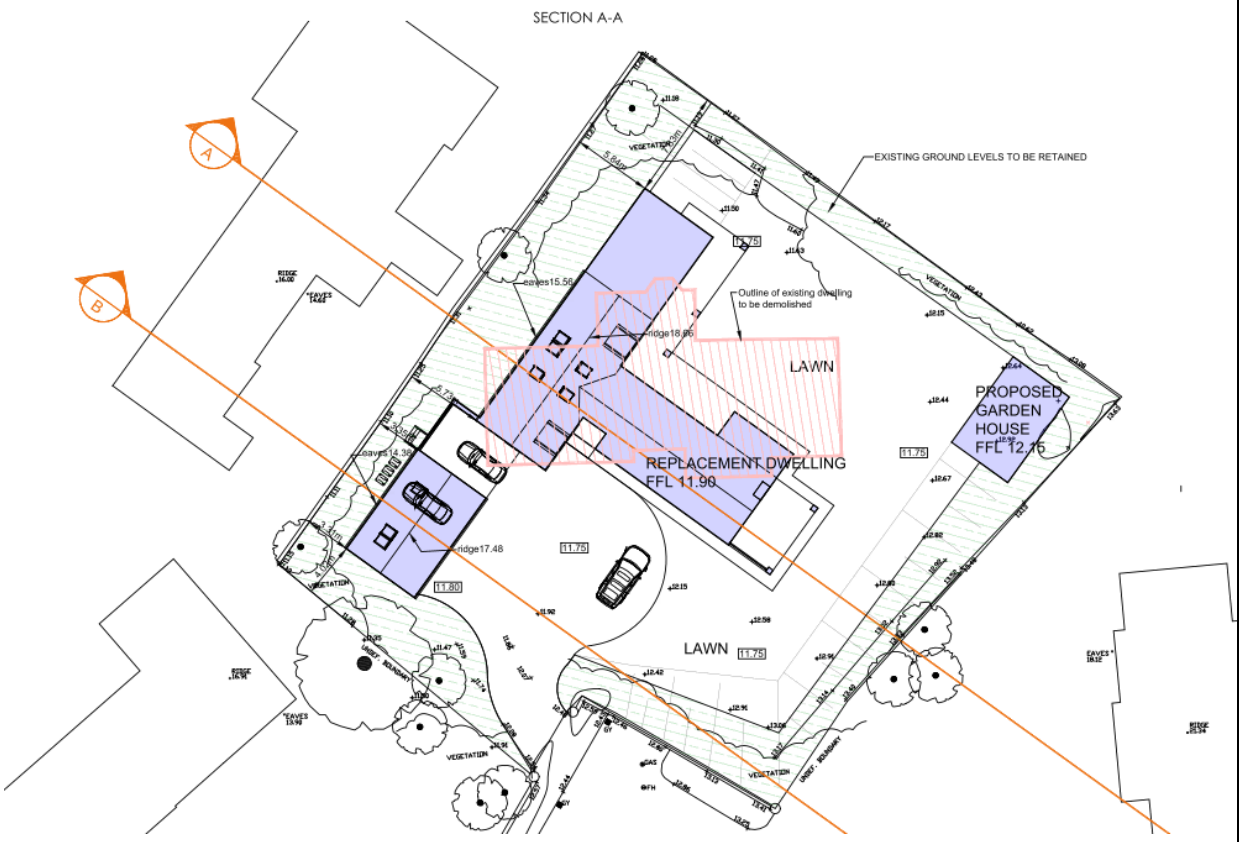


Figure 14: Proposed site layout

The proposed replacement dwelling overlaps the footprint of the original dwelling to a degree however the rear wall will now run parallel to the boundary with number 13 Clanbrassil Road. The garage/car port element is 3.35 m to the boundary and the main portion of the dwelling is 5.73–5.84 metres from the boundary with number 13 Clanbrassil Road. The separation distance between the rear elevation of No. 13 and the rear elevation of the proposed dwelling varies and would be between 7.6m and 13.7m. It is acknowledged that these separation distances are less than the recommended separation distances set out in Creating Places (10m from the rear elevation to rear party boundary and 20m 'back-to-back' between rear opposing first floor windows). However, the proposed dwelling has ground floor windows only on the rear elevation facing No. 13, therefore there is no potential overlooking from first floor windows at a higher level.

There would be 6 windows in total at ground floor level. Floor plans show these windows will serve, a master bedroom, ensuite, snug/office, cloakroom, utility and studio (see figures 16 and 17 below). There are also two external access doors to the carport (via some steps) and to the plant room. Concerns have been raised in representations regarding overlooking from these windows towards number 13 Clanbrassil road. Concern was also raised regarding potential overlooking from the area to the rear of the property and making a comparison to an elongated balcony which could potentially overlook. Currently any persons could stand or sit in this area within the curtilage of the existing dwelling, ground levels are not raised from existing.

It is however acknowledged that as the finished floor level of the proposed dwelling would sit approximately 2m above that of No. 13, there may be some potential for views from the proposed dwelling's ground floor windows towards number 13. While the existing vegetation along the party boundary would provide a degree of screening and would be subject to a condition requiring its retention, there are some gaps in places as can be seen in the photographs in figure 15 below which may allow partial view towards No. 13. Determining weight must however be afforded to the fact that under permitted development rights, the existing dwelling could erect a single storey extension or ancillary building to the rear with windows in a similar position to that proposed. It would therefore be unreasonable to refuse planning permission on the basis of impact on privacy or to insist that all of these windows are finished with obscure glazing. Windows serving the ensuite and WC can be conditioned to be glazed with obscure glazing however I do not consider it necessary to condition the small bedroom and office windows to also have obscure glazing given what could be developed at present under permitted development. I also do not consider that there would be any unacceptable degree of overlooking from the proposed plant room door or small utility room window given that neither of these serve habitable rooms. The proposed window to the studio is however a larger window and located closer to the party boundary and as the same permitted development rights would not apply to the existing dwelling in this position to the front of the dwelling, I am of the opinion that this window should be subject to a condition requiring obscure glazing as the 'studio' could be used for a variety of incidental domestic purposes. The proposed modest velux windows serve the studio, garage and first floor landing. They are small in scale and will not cause unacceptable overlooking and subsequent loss of privacy towards the neighbouring dwelling.

Figure 15: Photographs of existing vegetation along boundary with No. 13 Clanbrassil

Figure 16: North West elevation of proposed dwelling

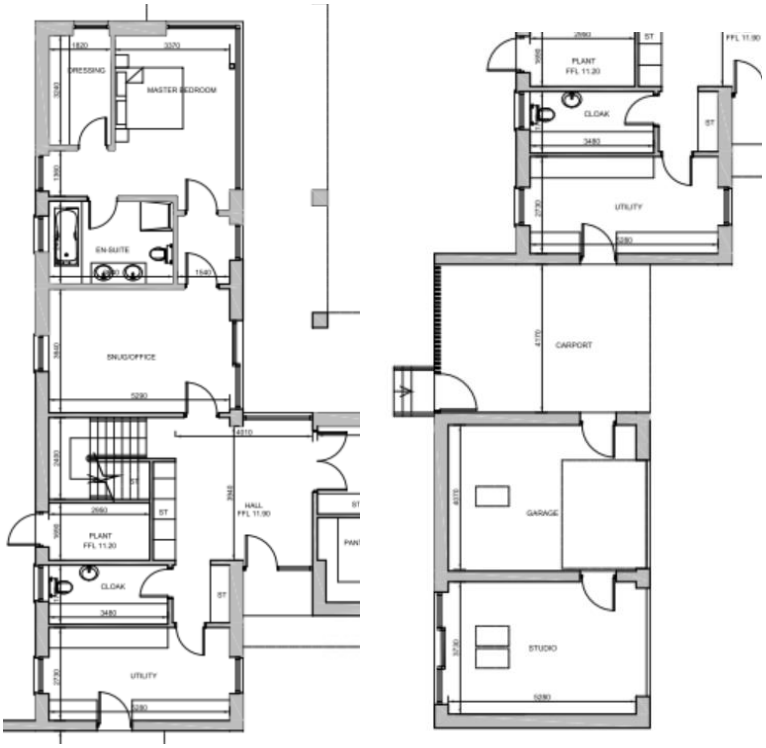


Figure 17: Proposed Ground Floor Plans

The proposed replacement dwelling would be situated in excess of 20 metres from the front elevation of 6 Tarawood. The separation distance is considered adequate to ensure there will be no negative impact on the residential amenity of this property. The proposed garden room located adjacent to the boundary with number 6 Tarawood is small scale with a flat roof and is orientated to look towards the garden and of the application site. The siting and window positions of the proposed replacement dwelling ensure there will be no unacceptable overlooking impact towards adjacent properties.

With regard to dominance of the proposed replacement dwelling or overbearing impact. It is recognised that the neighbouring property at number 13 Clanbrassil sits at a lower level than the application site. However, the existing retaining boundary wall, landscaping and the separation distance from the proposed dwelling to the boundary help to ensure outward views from ground floor windows of the neighbouring property 13 Clanbrassil Road do not appear to be large and overbearing. The fact that the proposed replacement dwelling is designed as both single and 1.5 storey also helps to alleviate any perceived dominant impact.

I am therefore satisfied that the proposed dwelling will have no unacceptable adverse impact on the privacy of neighboring properties due to overlooking impact, nor will it result in any unacceptable loss of light or overshadowing to the rear windows of no.13 Clanbrassil Road. As an additional safeguard to ensure the amenity of No. 13 will be maintained, it is recommended that a condition is included to withdraw permitted development rights.

Representations raised concerns regarding potential adverse impact on the outlook of neighbouring dwellings within Tarawood. Given the proposal is to replace an existing dwelling with 1 no dwelling and the retention of garden space and boundaries and the separation distances to neighbouring properties, it is my planning judgement that, the outlook from neighbouring properties will not be harmed.

It is therefore considered that the proposal complies with part (h) of Policy QD 1 of PPS 7 and all relevant guidance.

Access, Roads Safety and Car Parking

Development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to the published standards or any reduction provided for in an area of parking restraint designated in a development plan. Proposals should not prejudice road safety or significantly inconvenience the flow of traffic.

Parking should be provided in accordance with Creating Places standards - three bedroom, detached dwellings require three spaces per dwelling. The proposed site layout plan indicates that there will be ample room for parking spaces (2.4m x4.8m) within the boundaries of the application site and an additional space is provided within the garage.

As DfI Roads offer no objections, it is considered that the proposal will not prejudice road safety or significantly inconvenience the flow of traffic. The proposal complies with Policies AMP 2 and AMP 7 of PPS 3 and part (f) of Policy QD1 of PPS 7 and all relevant

guidance.

Archaeology and Built Heritage
There are no features of archaeology or built heritage to protect and integrate into the overall design and layout of the development.

It is therefore considered that the proposal complies with archaeological policy within PPS 6, part (b) of Policy QD1 of PPS 7 and all relevant guidance.

Security from Crime
The layout has been designed to deter crime and promote safety as the building will front the cul de sac, the parking area will be located to the front and overlooked by the proposed dwelling for surveillance and the boundaries will be enclosed.

It is therefore considered that the proposal complies with part (i) of Policy QD1 of PPS 7 and all relevant guidance.

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.

Part 1 of NIEA's Biodiversity Checklist was employed as a guide to identify any potential adverse impacts on designated sites. No such scenario was identified. 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 a bat roost potential survey was carried out by a qualify ecologist, the result of the survey is that the bat roost potential is 'none' and that no further survey work was required. NED have been consulted and have no objections.

It is therefore considered that the proposal is not likely to adversely impact any designated site, protected or priority species or habitats and the proposal complies with Policies NH1, NH2 and NH5 of PPS 2.

Trees and Landscaping.

Trees within the application site are not protected, however trees located on neighbouring sites of 4 Tarawood and 13 and 15 Clanbrassil Road are protected by the following Tree preservation Orders (TPOs)

TPO/2010/0005 – Lands at Cultra Avenue, Old Cultra Road, Cultra Lane, Cultra Terrace, Farmhill Road, Farmhill Lane, The Orchard, Orchard Way, Tarawood, Clanbrassil Road, Ailsa Road, Seafront Road and Ben Vista Park, Cultra.

TPO/2018/0042/LA06 – Lands at 15, 17 and 19 Clanbrassil Road, Cultra, Holywood

Concerns have been raised in representations regarding the potential for the development to negatively impact upon protected trees in proximity to the application site. Following extensive consultation with the tree officer, it has been concluded that the proposal is acceptable in terms of impact on protected trees subject to planning conditions relating to erection of protection fences and ground measures and use of a pile system for the proposed garage in accordance with the submitted details.

A detailed landscaping plan for the remainder of the application site has not been submitted with the planning application. However, it is my opinion that a condition requiring the retention of the site vegetation around the site boundaries would be sufficient to protect the visual amenity of the site and to aid integration.

Drainage and Sewerage Infrastructure

NI Water have advised they have no objections to the application. The submitted P1 form indicates that the water supply will be via mains and surface water and foul sewerage will be disposed of via mains. NIW also advise that the plans indicate the proposed garage appears to be very close or on traversing foul sewer. It is the developer's responsibility to know what infrastructure is within the site. An application to erect a building over or near a public sewer will be required.

5. Representations

16 letters of representation have been received to date, all are objections and are from 6 separate addresses.

Following the initial advertisement of the proposal, objections received referred to inaccuracies with the submitted plans. The agent responded by submitting 'accurate plans' on 02/02/2024. Amended plans were submitted on 24/05/2024 showing the dwelling design changed and repositioning on the site. Extensive consultation regarding trees lead to numerous site plans with drawing 07B being the most resent.

No objections have been withdrawn following the submission of amendments and the majority of issues raised by objections relate to the potential impact of the proposal on number 13 Clanbrassil Road. The main points raised in the representations have been summarised below and the majority of the issues raised have been considered in the above report.

- Proposed replacement dwelling not in keeping with existing character and style of Tarawood or the proposed ATC.

The impact of the development on the character of the established area has been assessed in detail above.

- The Lease expresses the requirement that the design of any such redevelopment must be by consent and approval of the Lessors, J B Law & Co

(Para 6 of the covenant therein).

Any covenants on the application site or surrounding area are a civil/legal matter between parties involved and are not a material planning consideration.

- Scale and massing
- Studio/garage impinges on roots of mature conifer belonging to number 4 Tarawood
- Loss of privacy to No 6 via overlooking
- Form, scale, massing, orientation and position will have a demonstrably negative impact on 13 Clanbrassil Road and impact quality of private amenity areas.
- Quality and extent of natural daylight and sunlight on private amenity areas of no 13 Clanbrassil impacting negatively on quality of life.
- Overbearing impact
- Inaccuracies and misrepresentations within submitted drawing package (site plan and site section)
- Illustrated vegetation as submitted is shown to be more than double the height of the existing vegetation on the site.
- Inaccurate levels
- Negative impact upon root protection areas.

All of these concerns have been considered in detail in the above report.

- Consideration not been given as to how a dwelling in this location could be safely constructed within the constraints of the site.

During the construction phase the contractor would implement measures in accordance with Health and Safety at Work legislation, and best practice to avoid/prevent any significant risk of accident.

- Impact of positioning dwelling relative to the retaining boundary wall. Potential increase of hydrostatic loading to the rear of the retaining structure.

It is the responsibility of the applicant to ensure any works which could potentially impact the retaining wall are appropriate. *The applicant is referred to the relevant British Standard 8002:2015 'Code of Practice for Earth Retaining Structures' and is advised to seek advice from an appropriately qualified structural engineer. To ensure the stability of adjacent lands and the proposed works.*

- Demolition of building does not represent a sustainable re use of existing structures
- Proposal fails the 25-degree test set out by BRE which identifies a detrimental effect to daylighting within 13 Clanbrassil Road and private amenity areas.
- Detrimental effect on outlook of 6,8 and 11 Tarawood.
- Proposed dwelling would be dominant, overbearing and oppressive. The 2-storey section is located adjacent to the two principal parts of the garden/patio area of 13 Clanbrassil Road.
- Dominant impact on rooms at the rear of 13 Clanbrassil Road and overbearing and oppressive outlook - 'hemmed in '
- Development is not appropriate to the topography of the site

- Irrespective of 25-degree text the physical presence of the proposed development will result in significant overshadowing to the rear elevation and garden/patio areas of 13 Clanbrassil Road.
- Overlooking from Velux windows proposed on rear roof pitch
- No details of proper screening
- Service area akin to an elongated balcony overlooking the garden/patio areas and rear elevation of 13 Clanbrassil Road.
- Siting in relation to 13 Clanbrassil Road is contrary to Creating Places.

Creating Places is a guidance document and not planning policy. An extension or shed within permitted development could be erected at a height of 3m to the eaves within 2m of the boundary which is a material consideration. The proposal has been considered in detail in the context of the creating Places Guidelines as set out in the above report.

- Potential noise disturbance from 'plant room' and 'covered external seating area'.

This would be for plant, for example an oil-fired heating boiler associated with any residential use. Environmental health has been consulted on this application and have raised no objections.

- The demolition of the existing dwelling would destroy the architectural integrity and coherence of the composition of Tarawood.
- ATC's are not 'proposed' all ATC's are designated whether in adopted plans or the dBMAP. ATC's are not described by reference to either adopted or draft plans in the dBMAP as the draft plan and throughout all the relevant planning provisions. Policies ATC 1 and ATC 2 respectively are policies to which significant weight should be attached, whether as policies in and of themselves or as material considerations.

Policies ATC1, 2 and 3 in the addendum to PPS6 and also the related provisions of the SPPS refer to ATCs. No reference is made to draft ATCs, therefore they do not have the same status or legal standing as a designated ATC. This means that these policies do not apply to a draft ATC. Regardless of this, the potential impact of the development on the overall appearance of the proposed ATC has been assessed in the above report.

- Previous approvals highlighted in the D&AS must be considered on their own merits and therefore they do not provided support for this application.

A Design and access statement explains the design thinking behind a planning application and is required by legislation to accompany applications in designated areas. It is not a document which would be referred to in a decision notice. The agent has included references to previous approvals as they consider these to be relevant.

- Difference in relationship between existing and proposed dwellings and respective relationship to boundary line and precise setting out dimensions of the proposed dwelling in relation to the boundary require to be provided.
- Levels of ridge line and eaves of garage have not been provided

I am satisfied that adequate detail has been submitted to enable the full assessment of

the proposal and its potential impact. All drawings are to scale.

- Removal of the chimney does not offset the harm caused by the part of the proposal which does offend against the 25-degree light test.
- Software and methodology used to seek to quantify the existing incidence of sunlight and daylight at various times of the year has not been carried out with best practice requirements and therefore must be viewed as deeply inaccurate.
- Vegetation along the boundary with number 5 Tarawood is not dense, nor does it provided a solid barrier through which sunlight and daylight cannot pass.

These images submitted by the agent are illustrative and although useful are not given determining weight. The proposal satisfies the 25-degree light test as detailed in the assessment above.

- Moving the proposal 2.5m from the boundary with 13 Clanbrassil Road and lowering the ffl by 0.25m will not in any way reduce the impact of the proposed new dwelling on 13 Clanbrassil Road.
- Impact cannot be softened by any screen planting.
- Changes including lowering of ridge and ground floor by 250mm and moving the dwelling back from the boundary are de minimis in terms of reducing dominance, overlooking and overshadowing of 13 Clanbrassil Road
- Agent reliance on certain aspects of the redevelopment of No 1 Tarawood is misconceived. The work at 1 Tarawood is consistent with many other alterations which have been undertaken previously to dwellings in Tarawood. None of which required the complete demolition of the existing dwelling. Where demolition has been permitted previously such buildings have been one off buildings, and not an integral part of the development in which properties all have similar characteristics. Examples LA06/2015/0737/F (17 Clanbrassil Road) and LA06/2020/1231/F (26 Clanbrassil Road)
- Precise details of boundary treatment at 5 Tarawood has not been provided.
- Dominating impact on the rooms situated in the rear elevation and on the garden/patio areas of 13 Clanbrassil road.
- Overbearing and oppressive outlook and feeling of being ‘hemmed in’
- Agent’s 25-degree light test has is flawed and cannot be relied upon. A significant amount of quality light permeates the trees and vegetation at all times of the year.

As already outlined, the potential impact of the development on No. 13 Clanbrassil Road has been considered in detail in the above report and subject to the recommended planning conditions, it is my professional planning judgement that the development will not result in any unacceptable adverse impact.

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. 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 extension, garage, shed, outbuilding, wall, fence or other built structures of any kind (other than those forming part of the development hereby permitted) shall be erected without express planning permission.

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

3. 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 additional windows, doors or openings shall be formed on the north-western elevation or roof of the dwelling hereby approved without express planning permission.

Reason: Any further openings require detailed consideration to safeguard the privacy of adjacent properties.

4. The proposed windows on the dwelling hereby approved, shaded BLUE on Drawing Number 03D shall be fitted with obscure glazing prior to occupation and this shall be permanently retained thereafter.

Reason: To protect the private amenity of neighbouring properties.

5. The existing natural screenings, as indicated in GREEN on Drawing No. 07B, shall be retained at a minimum height of 2 metres unless removal is necessary to prevent danger to the public in which case a full explanation shall be given to the Council in writing within 28 days.

Reason: To ensure the maintenance of screening to the site.

6. Any existing trees, plants or hedgerows indicated on the approved plans which, within a period of five years from the date of commencement of development, die, are removed or become seriously damaged, diseased or dying shall be replaced during the next planting season with other trees or plants of a location, species and size, details of which shall have first been submitted to and approved in writing by the Council.

Reason: To ensure the maintenance of screening to the site.

7. A detailed landscaping and boundary treatment scheme shall be submitted to the Council for approval prior to the commencement of development. Such a scheme shall provide for species, siting and planting. It shall include indications of all existing trees and hedgerows on the land together with details of any to be retained and measures for their protection during the course of development. The landscaping shall be carried out as approved and completed during the first available planting season following the occupation of the dwelling hereby approved and shall be permanently retained thereafter.

Reason: In the interests of the visual amenity of the area.

8. 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 landscaping.

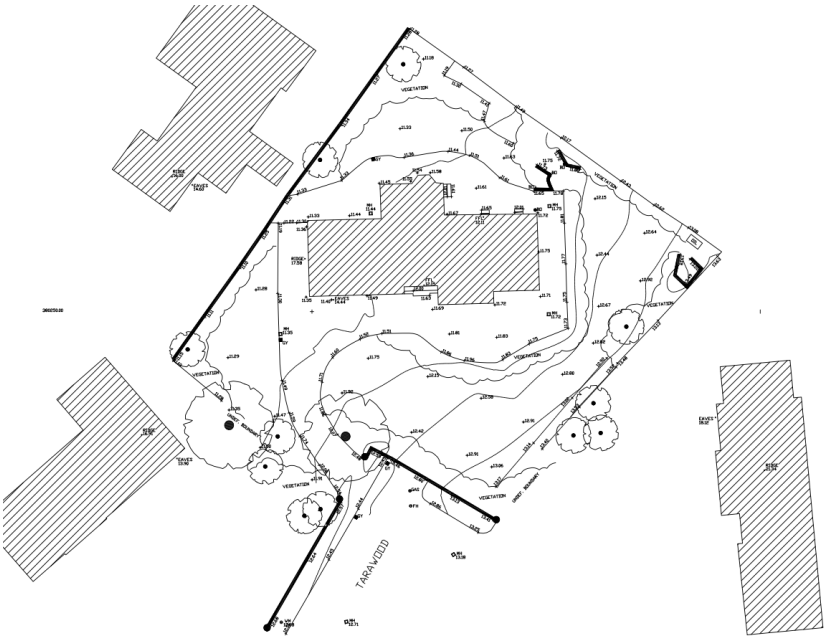
9. The dwelling shall not be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of private cars at the rate of 2 space per dwelling.

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

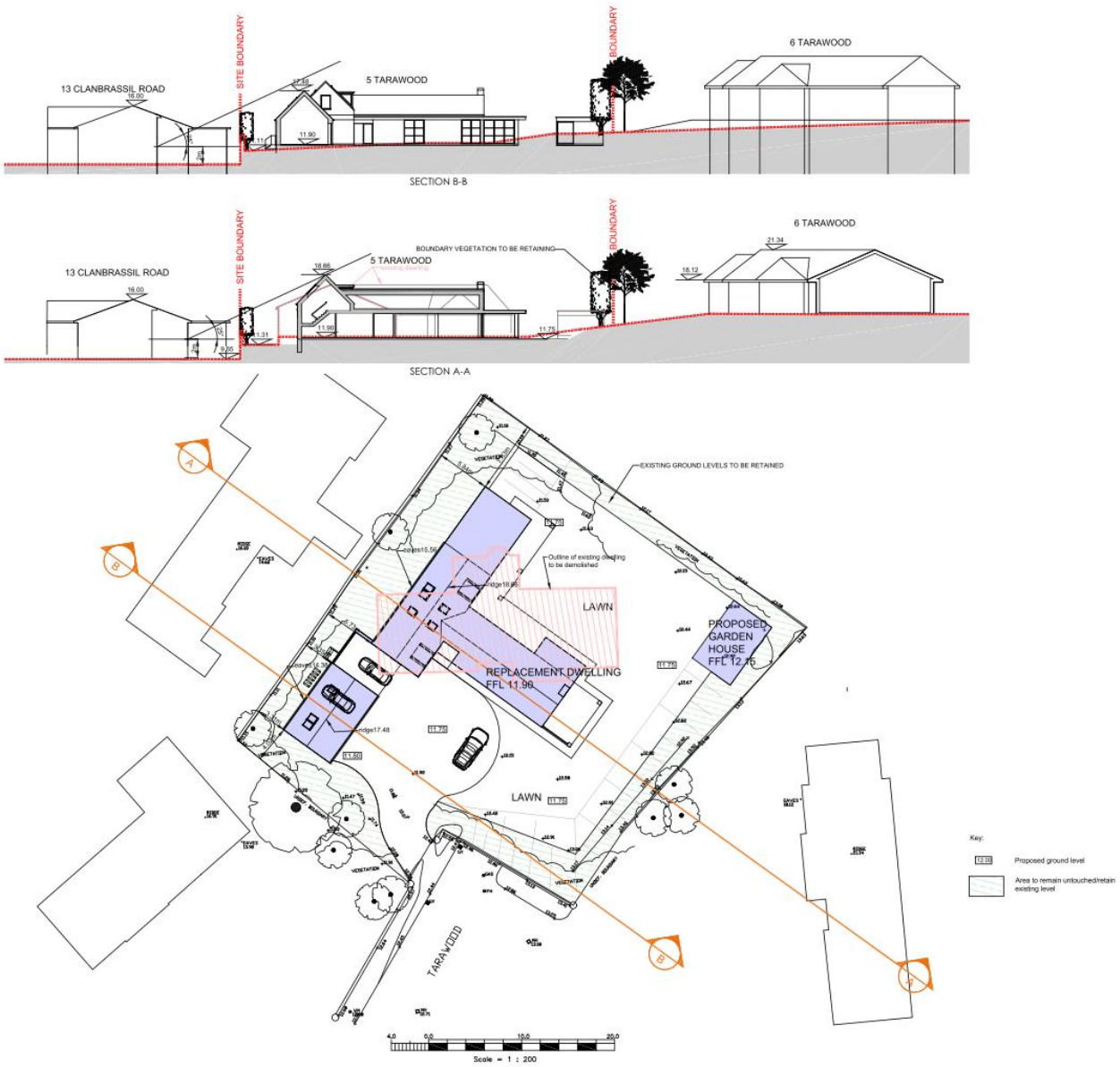
Informatives:
This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees,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

Appendix 1: Plans

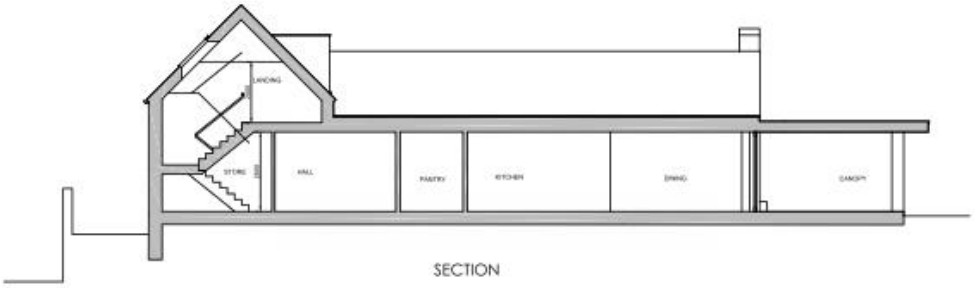
Site location plan



Existing Site Plan



Proposed Site Plan and Sections



SECTION

SOUTH-EAST ELEVATION

NORTH-WEST ELEVATION

SOUTH-WEST ELEVATION

NORTH-EAST ELEVATION

Materials

Roof:	Natural slates
Walls :	Sand colour brick facing, timber cladding colour tan
Windows:	Casement and sliding aluminium coated colour black
Doors:	Hardwood sheeted painted black
	Coated aluminium colour black
Rain Water Goods:	Cast aluminium ogee colour black

2.0 0.0 5.0 10.0

Scale = 1 : 100

Rev	Date	Description	By
C	12.12.24	Glazing note added	AD
B	21.02.24	Amended layouts & levels	RT
A	19.01.24	Amended elevations & section	RT

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CLIENT
MR & MRS MALCOLM & PHILLIPA CRONE

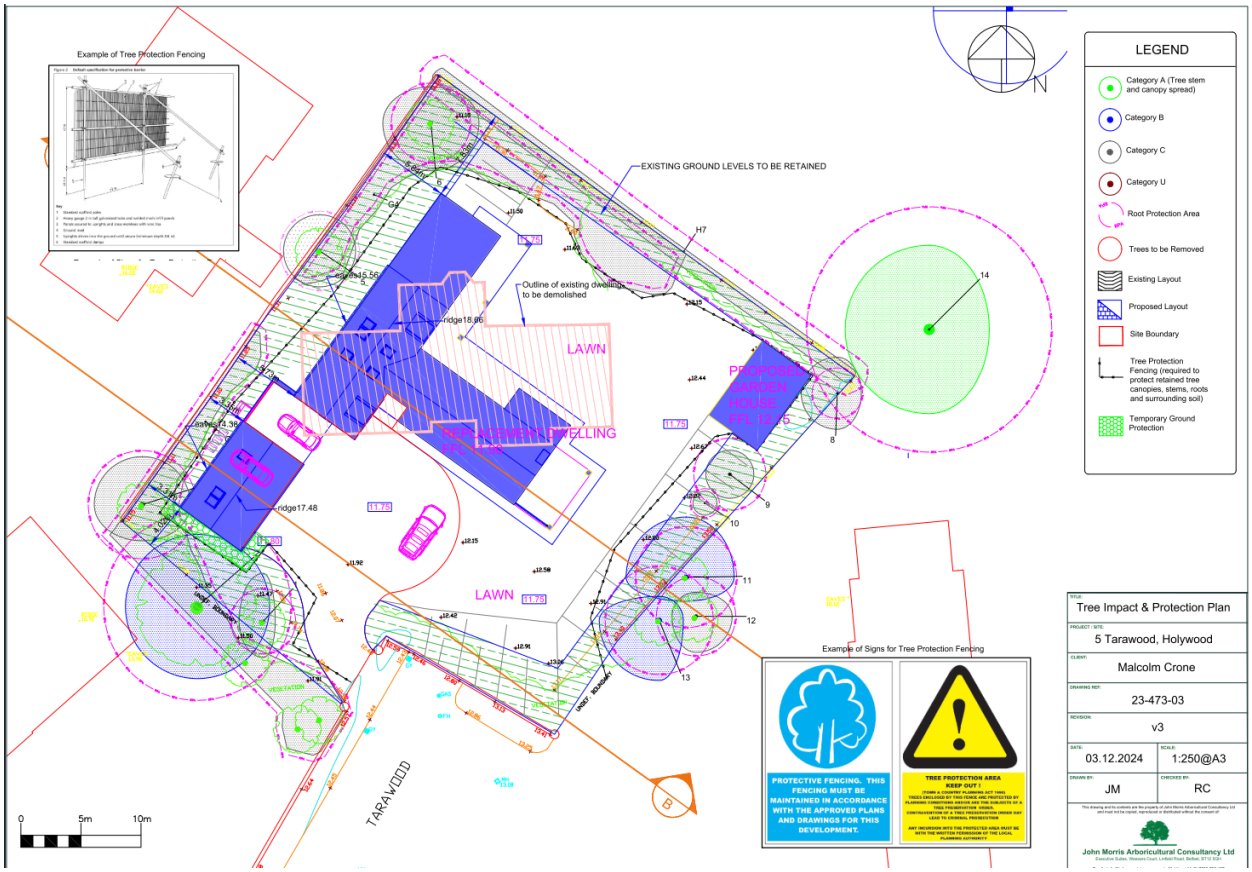
PROJECT
REPLACEMENT DWELLING
5 TARAWOOD
HOLYWOOD
BT18 0HS

TITLE
PROPOSED ELEVATIONS

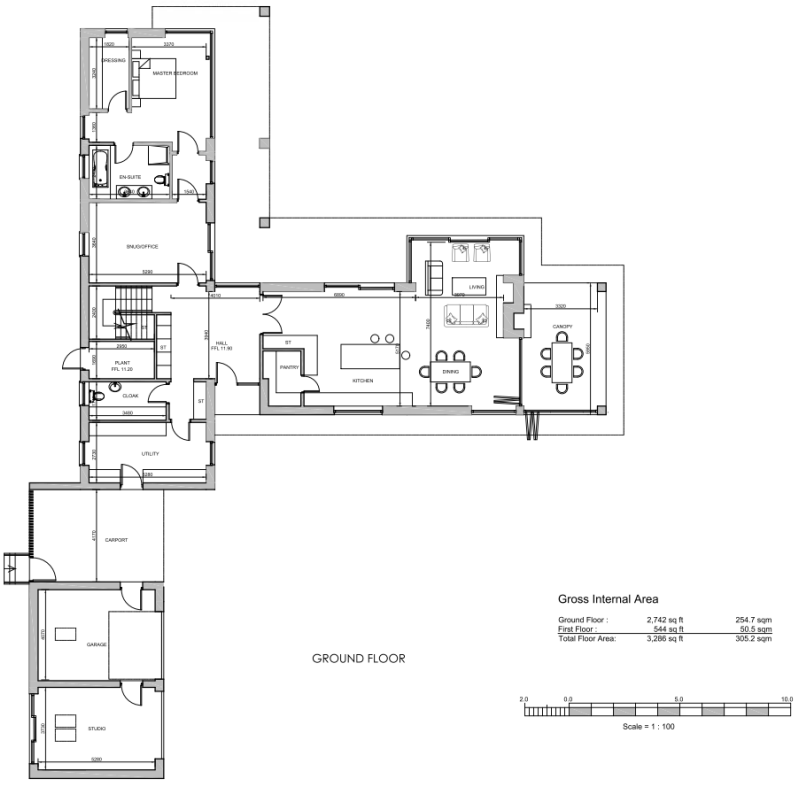
Drawn by: KT	Sheet size: A2
Date: 12/10/2023	Scales: 1:100

DRAWING No. 22-42-05 Rev C

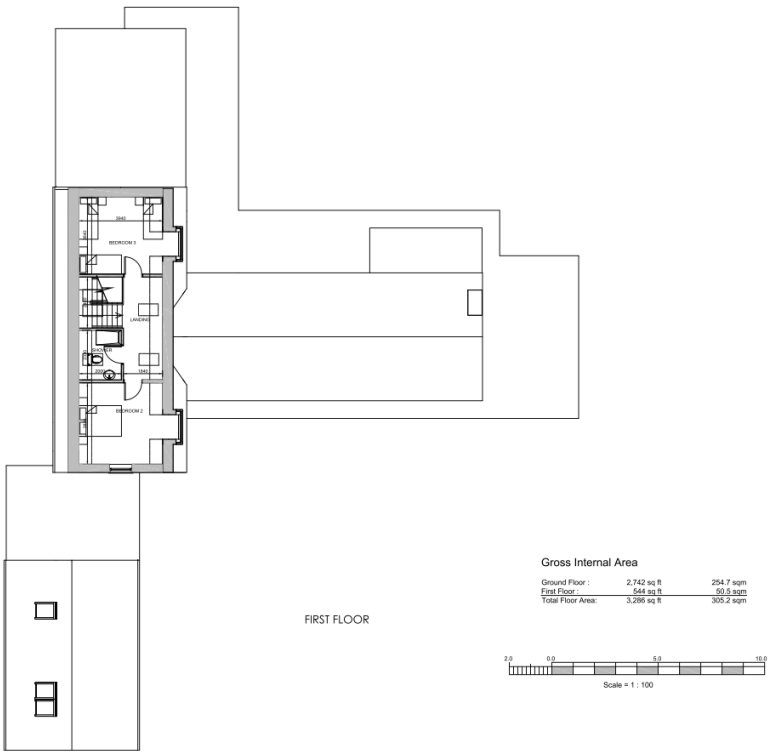
Proposed Elevations



Tree Impact and Protection Plan



Proposed Ground Floor Plan



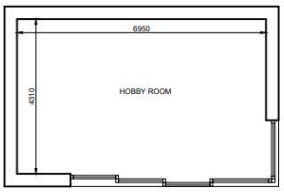
Proposed First Floor Plan

NORTH-WEST ELEVATION

SOUTH-WEST ELEVATION

SOUTH-EAST ELEVATION

NORTH-EAST ELEVATION



LAYOUT

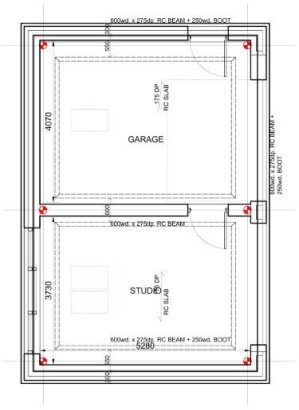
Materials

Roof:	Flat - Trocal membrane
Walls :	Timber flamed, render painted off-white
Doors:	Sliding aluminium colour black

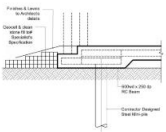
Gross Internal Area

Total Floor Area:	323 sq ft	30.0 sqm

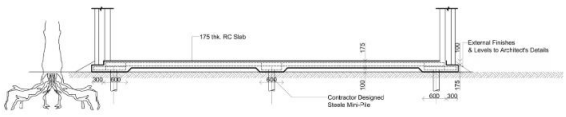
Garden Room



FOUNDATION LAYOUT (1:50)



TYPICAL DETAIL AT GARAGE
(1:25)



SECTION A-A (1:50)

Garage Foundations

Appendix 2: Site Photographs

Front of existing dwelling

Existing dwelling viewed from Cul-de Sac

Existing driveway showing No. 13 Clanbrassil Road to rear

Existing garden

Rear garden

Front Garden

Development Management Case Officer Report	Ards and North Down Borough Council

Reference:	LA06/2022/0265/F	**DEA:** Bangor Central	
Proposal:	Demolition of existing garage workshop and erection of 1.5 storey dwelling with parking.		
Location:	31a Sheridan Drive, Bangor		
Applicant:	Robert Foreman		
Date valid:	15/03/2022	**EIA Screening Required:**	No
Date last advertised:	02/03/2023	**Date last neighbour notified:**	21/03/2023

Letters of Support: 0	**Letters of Objection:** 9 (from 6 separate addresses)	**Petitions: 0**

Consultations – synopsis of responses:	
NI Water	Advice & guidance
DFI Roads	No Objections
Environmental Health	No Objections subject to conditions

Summary of main issues considered:

- Principle of development
- Parking and Access
- Impact on Residential Amenity
- Visual impact
- Impact on Biodiversity
- Impact on ATC
- Sewage Infrastructure

Recommendation: Grant Planning Permission

Report Agreed by Authorised Officer

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

1. Site and Surrounding Area

The application site is located at 31a Sheridan Drive, Bangor. The site consists of a small plot with an existing workshop building as seen below. The building has a pitched iron corrugated roof and has a painted blue roller door. Other finishes include hardwood windows, pvc rainwater goods and roughcast rendered walls. There is a small yard/car parking area to the front elevation, which is open to the laneway. Access to the site is via Sheridan Court which is a private laneway off Sheridan Drive.

The immediate area is predominantly characterised by residential dwellings and apartments. There are a range of house finishes and architectural styles within this area of Ballyholme.

2. Site Location Plan

3. Relevant Planning History

The existing building has no planning history associated with it; therefore, the workshop use is not lawful. However, Google Maps images indicate that the building has been used a vehicle repair workshop.

4. Planning Assessment

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

- North Down and Ards Area Plan 1984-1995 (NDAAP)
- Draft Belfast Metropolitan Area Plan 2015 (dBMAP)
- 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 (Addendum): Areas of Townscape Character
- Planning Policy Statement 7: Quality Residential Environments
- Planning Policy Statement 7: Addendum – Safeguarding the Character of Established Residential Areas
- Planning Policy Statement 12: Housing in Settlements

Planning Guidance:

- Creating Places
- Parking Standards

Principle of Development

The site described is located within the development limit of Bangor as defined in Draft BMAP and the North Down and Ards Area Plan 1984-1995 (NDAAP). The site lies within the proposed Bangor East Area of Townscape Character.

The SPPS states that proposals in an Area of Townscape Character will be assessed against key design criteria including building height, density, landscape quality, uniformity of design/layout, townscape quality/detailing and historic buildings. A design and access statement has been submitted with the application.

Para 6.137 of the SPPS states that *'the use of greenfield land for housing should be reduced and more urban housing accommodated through the recycling of land and buildings and the encouragement of compact town and village forms.'* As this application is for the redevelopment of an existing brownfield site, it is in line with the aims of SPPS.

Design, Visual Impact and Impact on Character of the proposed ATC

Recent planning appeal decisions have clarified that the policies within PPS6 and PPS7 relating to ATCs apply to designated ATCs and not proposed ATCs. Nevertheless, the impact on the proposed ATC remains a material planning consideration and can be objectively assessed.

The proposal is for the demolition of the existing building on site, which will be replaced with a one-and-a-half storey dwelling. The existing workshop is no longer used for a car repair workshop. The Applicant has advised that the use ceased in 2021 and has provided evidence to show that commercial rates for the building are still being paid.

The site is accessed from a laneway which links Sheridan Drive to Lyle Road, providing both pedestrian and vehicular access to the rear of the dwellings that front Sheridan Drive, Sandhurst Park and Groomsport Road. The access also provides exclusive access to No. 33 Sheridan Drive which is a bungalow. As the site is to the rear of Sheridan Drive, there will be limited public views of the proposed dwelling. The view from Sheridan Drive can be viewed in Image 1. I do not consider a dwelling in this position would appear dominant in the context of the surrounding area.

Image 1: View of site from Sheridan Drive

The proposed dwelling will have a slighter smaller footprint than the existing building, as can be viewed in Figures 1 and 2 below. The total floorspace over two floors will amount to approximately 70sqm which will accommodate an open plan kitchen/living area and bathroom on the ground floor, along with a loft bedroom to the first floor. This meets the space standards set out in Annex A on Addendum to PPS7.

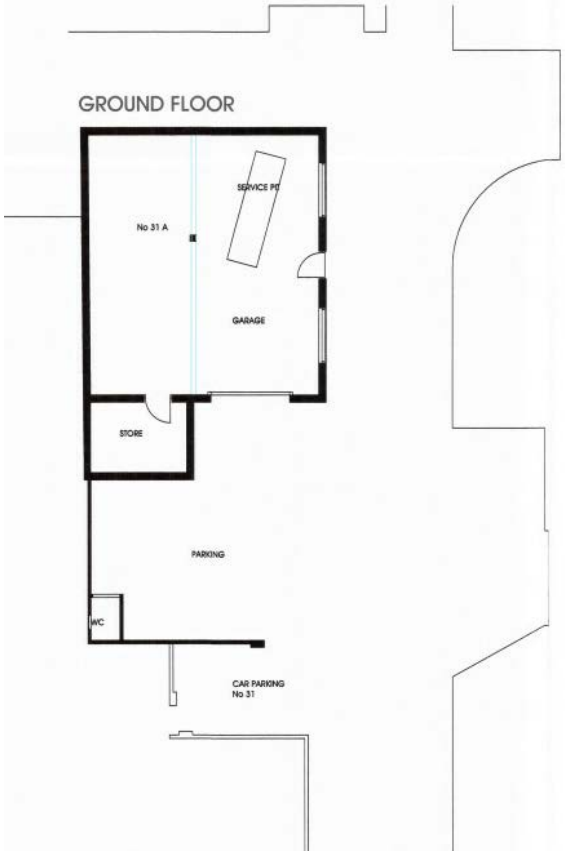


Figure 1: Existing Site/Floor Plan

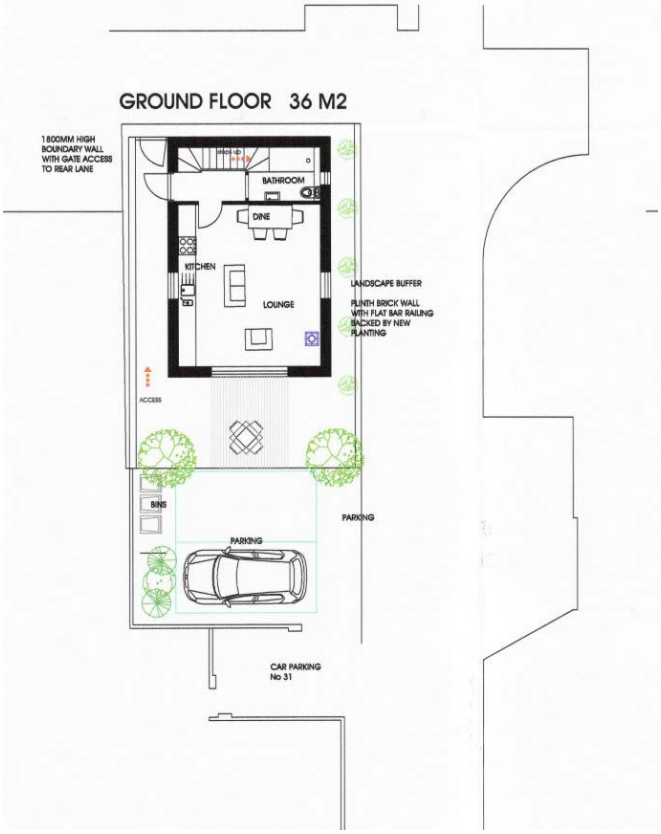


Figure 2: Proposed Site/Floor Plan

The proposed footprint of the dwelling would be smaller than the surrounding dwellings. Whilst the plot size is additionally quite small in nature, the built form to open space ratio of the site will be comparable to several others within the surrounding area including the apartments within Sheridan Court and 1A and 1B Sandhurst Park 9 (as viewed in Figure 3).

Figure 3: Comparable Plot Sizes

The proposed site is approximately 0.01 hectares, measuring roughly 8.4m in width and 20m in depth. The density of the proposed development will be 100 dwellings per hectare. Whilst there is a lower density in the surrounding area, there are numerous examples of other dwellings within the immediate area which have a similar or higher density than this. These include the following examples:

- 1A & 1B Sandhurst Park – 67dph
- 4, 5, 6 & 7 Sheridan Court – 134 dph

The proposal involves the demolition of this existing building to the rear of Sheridan Drive. As the site is to the rear of Sheridan Drive, there are limited public views of the building. It is a single-storey building with a pitched metal roof and finished in rough-cast render. I am of the opinion that the building makes no material contribution to the distinctive character of the proposed ATC therefore its demolition is considered acceptable.

It is recognised that there are a number of dwellings that have been erected or converted within rear garden spaces of Ballyholme e.g. Lyle Road and Sandhurst Drive. It is stated within para 4.8 of Policy QD1 that *'proposals do not significantly erode the character and amenity of existing areas, for example through inappropriate design or over development*.' The proposed dwelling is replacing an existing building which adds no character to the surrounding area. The existing building is not within the established curtilage of any existing dwelling. It's replacement with a single

dwelling is viewed as a betterment in terms of its visual impact. Moreover, the proposed residential use is compatible with surrounding residential development.

The proposed dwelling will have a pitched roof design, with its ridge height measuring approximately 5.55m. The agent stated that the design of the dwelling is based around a contemporary Mews dwelling, with a limited pallet of materials including vertical cladding, standing seam profiled roofing and colour coated aluminium window frames. Please see Figure 4 which shows the proposed elevations of the dwelling.

Figure 1: Proposed Elevations

Draft BMAP sets out the key features of the proposed ATC to be taken into account when assessing development proposals. Bangor East ATC is a large designation covering the Ballyholme Area. A number of the features listed which are located within this area include '*Good quality pre-First World War and inter-war two-storey semi-detached and detached housing along the roads leading from Ballyholme Esplanade to Groomsport Road'*. The proposed dwelling will largely be hidden from public views therefore it will have a limited material impact upon local street scenes and frontages within this proposed ATC.

The design of the dwelling respects the design of the surrounding built form including the rear detached garages/domestic outbuildings located along this laneway. Please see the images below of other buildings with similar designs and finishes.

Images 2 & 3: Garages/outbuildings located along the laneway

Residential Amenity

As the proposed dwelling is replacing an existing building, it is important to compare the size and height of both buildings. The new dwelling has a smaller footprint however the ridge height measures approximately 1.25m higher than the existing ridge height of the workshop. I do not consider that this increase in height will have any significant impact on dominance or overshadowing in relation to the surrounding

properties. As the proposed dwelling is stepped in from the boundary, it will be 0.46m further away from No. 33 Sheridan Drive. I am therefore content there will be no increase in loss of light/overshadowing caused to this property.

In relation to overlooking, there are no first-floor windows proposed to the front and rear elevations. On each gable side, one roof light will provide views from the 1st floor bedroom. The window along the north elevation will be directed towards the rear portions of the gardens of the adjacent properties. The guidance in PPS 7 Addendum (Residential Extensions and Alterations) states that the *'overlooking of gardens may be unacceptable where it would result in an intrusive, direct and uninterrupted view from a main room to the most private area of the garden, which is often the main sitting out area adjacent to the property, of your neighbours'* house. Given the orientation and position of the proposed dwelling, the window will not provide any direct overlooking of any windows to the rear of these properties, nor the first 3-4m of these private gardens. There is over 20m of separation distance between the window along the southern elevation and the rear elevations of Nos 107, 109 & 111 Groomsport Road. I am therefore satisfied that there will be no unacceptable overlooking or loss of privacy.

As the application site is within close proximity to other dwellings, a condition will also be required to remove permitted development rights to prevent the erection of any extension or alteration to either to the proposed converted dwelling or its roof without the benefit of planning permission. This is to ensure no first-floor windows, extensions or roof level windows are added at a future stage without a planning application having to be submitted which may harm the amenity of the neighbouring properties. Any noise will be during the construction phase only.

The dwelling will overlook the existing shared access, and I am satisfied that the development is designed to deter crime and promote personal safety.

Private Amenity Space

Creating Places guidance states that on-greenfield sites an in lower density developments all houses should have an area of private open space behind the building line (minimum 40sqm). The proposal is for a small one-bedroom dwelling on a brown field site within an urban area which includes medium-to high density development. Creating Places guidance states that in the case of 1- and 2-bedroom houses on small urban infill sites, private communal open space will be acceptable in the form of landscaped areas, court yards or roof gardens and that these should range from a minimum of 10sqm per unit to around 30sqm per unit. An area to the sides and front of the dwelling will accommodate a garden area. New 1.8m high boundary walls will be provided to the side and rear boundaries, along with a new 1.6m approximately high brick plinth wall with railing along much of Sheridan Drive. A landscape buffer will be planted to the rear of this wall/railing to provide screening for the site. The total area amounts to just over 40sqm of amenity space. Whilst there may be some potential for public views towards the side amenity space from the shared laneway, it is considered that the proposed landscape buffer will still provide a degree of privacy for future occupants. The site in close proximity to Ballyholme Beach and other public parks. Therefore, having weighed all material considerations, it is considered that the level of proposed amenity space is adequate to serve the proposed one-bedroom dwelling.

Access and Roads Safety

Access to the site is via a private laneway off Sheridan Drive. A total of 2 in-curtilage spaces are provided for the proposed dwelling. DFI Roads was consulted and offered no objections to the proposal subject to there being not intensification of the access.

The agent was therefore asked to consider intensification of use of the access.

Image 4: Google Image from July 2012

Google Image from May 2019

The agent submitted photo evidence and stated that 21 properties would potentially use the access, with wide gates, garage doors and parking spaces to the rear/front of their properties. It was therefore determined that the addition of 2 parking spaces would not lead to any intensification of this access. In DCAN 15 it is stated that intensification is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more. With the additional unit, the overall increase would amount to 4.8% when calculating the existing units.

The laneway can be accessed from both Sheridan Drive and Lyle Road but there are no physical restrictions to prevent access from either side. Whilst the laneway is narrow in nature, cars can freely move in both directions to access the garages, gardens and properties along it.

There is no planning history or Certificate of Lawful development associated with the existing building or its use. In accordance with the 2011 Planning Act, no enforcement action may be taken beyond a period of 5 years. Given the passage of time, it is clear the building itself would be immune from planning enforcement action. A google image from July 2012 shows the workshop in operation with two cars parked on site, along with a further car parked in the workshop (Image 4). A Google Streetview image from May 2019 shows a vehicle within the building and a second vehicle in the yard area. Signage associated with the previous workshop use is evident on the building in both images. Records relating to the opening hours and name of the vehicular workshop business at this address are available to view online. Based on the evidence, on balance, I am satisfied that the building had operated as a vehicle workshop in excess of 5 years. The building is currently not in use as a workshop; whilst the sign is not currently displayed on the building, no other physical deterioration of the building is evident. The Applicant has submitted information to demonstrate that commercial rates and water charges continue to be paid for this building. It appears that the period of non-use has been for a relatively short duration of time and the building does not appear to have been used for any other purpose within the intervening time period. On this basis I consider that existing immune use rights have not been lost. Given the Applicant continues to pay commercial rates, I consider that there is a realistic prospect that the previous use of this building could come back into operation.

Taking into account the definition of intensification provided in DCAN 15, given the existing use of the access and the fall-back position associated with the previous use of the building, it is considered that its replacement with a modest one-bedroom dwelling would not result in any intensification of the existing access.

Designated Sites and Natural Heritage

Part 1 of NIEA's Biodiversity Checklist was employed as a guide to identify any potential adverse impacts on designated sites. No such scenario was identified. 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 survey information may reasonably be required.

Contamination

A Contamination Assessment Report was submitted to the Council as the proposal includes the demolition of an existing workshop building. Environmental Health was consulted on the report and provided the summary of the findings:

'Following the initial PRA, it was considered that the anticipated presence of made ground (of unknown quality) and the former on-site vehicle repair garage (including inspection / maintenance could potentially pose a risk at the site. Intrusive works comprised the drilling of 3 boreholes (BH1-BH3) each to a depth of 5.0mbgl. Soil samples were retrieved from all boreholes. In addition, representative groundwater samples were retrieved from BH1 and BH3. Gas monitoring was undertaken at the installed boreholes (BH1-BH3) 6 occasions over 3 months.

The concentrations of all of the potential contaminants within the 3 soil samples analysed fell below the relevant GAC. It is therefore considered that soils at the site are not of reduced quality with regard to the proposed residential with homegrown produce end use. In addition, none of the potentially volatile contaminants of concern were detected in the samples of groundwater retrieved and was therefore considered that groundwater at the site does not pose an unacceptable risk to future site residents through the release and subsequent inhalation of vapours.

The ground gas regime across the site is categorised as Characteristic Situation (CS) 1 – Very low risk. Although a marginally elevated concentration of carbon dioxide was recorded on one occasion at one of the boreholes (BH2), this Service accepts that considering of all lines of evidence, gas at the site does not pose any unacceptable risks to future site residents and no gas protection measures are required.

Environmental Health has no objections subject to conditions which will be included below.

5. Representations

A total of 9 objections were received from 6 addresses - 23, 27, 29 & 31 Sheridan Drive, along with 109 & 111 Groomsport Road. Those material planning matters raised in submitted representations are summarised below:

Design, Visual Impact and Impact on Character of the Area

- It was stated that the proposed dwelling will be out of proportion with the surrounding buildings, with its proposed height adversely dominating the skyline with the building having little in common with the visual characteristics, proportion, aspect and orientation of surrounding buildings and local setting.
- One neighbour stated that the visual impact is not in keeping with the character of the local setting and at odds with the local historic street pattern, in particular to the row of 10 terrace houses, over 100 years old, running from 13 -31 Sheridan Drive.
- It was stated that the size of the building plot is small relative to the size and height of the proposed dwelling.

Response

- These matters have been addressed above under 'Design, Visual Impact and Impact on Character of the proposed ATC'. Whilst it is considered that the proposed plot is small in nature and the proposed design is not in-keeping with the existing dwellings along Sheridan Drive, the replacement of the existing building is viewed as a betterment in terms of its visual impact.

Impact on Residential Amenity:

- It was stated by various objectors that the proposed dwelling will overlook several properties along Sheridan Drive and properties along Groomsport Road. Specific mention was made in relation to the first-floor windows overlooking rear garden and patio areas.
- In addition, it was stated that the new build is considerably higher than the existing building therefore would appear dominant and increase 'intrusion'.

Response

- The above matters have been addressed in detail under 'Residential Amenity' within the main assessment. I do not consider there will be any unacceptable overlooking from the two 1st floor windows given the separation distances and angle at which these sit in relation to neighbouring properties. The increase in the overall height is minimal, therefore I do not believe there will be any detrimental impact in relation to dominance, loss of light or overshadowing.

Private Amenity Space

- One objector stated that the proposed private amenity space is inadequate and further pointed out, that the introduction of the buffer zone with low railings and walls would not provide usable amenity space and would impact upon car parking on the site.

Response

- The above matters have been addressed in detail under 'Private Amenity Space' within the main assessment. It is considered that this is a unique site and that the proposed landscape buffer of laurel hedging would help offer a degree of privacy for the outdoor amenity space of future residents. It must be noted that this is a private laneway which provides access to one dwelling along with access to the rear garages of the properties along Sheridan Drive. DFI Roads offered no objections to the parking. The area to the front of the car parking spaces will be left open to the laneway.

Traffic & Parking

- It was stated that on street parking nearby is increasingly difficult due to proximity to shops and is currently insufficient to meet the needs of existing householders. As a result, householders have to access secondary parking at the rear of their houses via the lane between 31 Sheridan Drive and Sheridan Court. It was further stated that it is highly probable that the proposed dwelling would exacerbate this situation and give rise to increased car traffic in the lane.
- One neighbour stated that as the site proposes to have 2 car parking spaces, this will result in the blocking of the lane and more pressure on on-street parking on Sheridan Drive.
- One objection compared the current and proposed parking and traffic, stating that the commercial garage workshop consisted of a sole trader mechanic with one or two customers per day. It was further elaborated that it was open only during office hours, Monday to Friday, so generated no vehicular use in the evenings, weekends or holidays. The objector stated that it ceased trading as a workshop in March 2020 therefore they believe the proposed dwelling would be highly likely to generate more traffic than the workshop did.
- It was mentioned that the statement submitted that the properties on Sheridan Drive and Sandhurst Park only use the Lyle Road entrance.

Response

- These matters have been addressed above under 'Access & Road Safety'. It is not considered that the proposal for a small one-bedroom dwelling would result in any intensification of the use of the existing access. I am satisfied that adequate in-curtilage parking will be provided in accordance with current standards. DFI Roads was consulted on the proposal and offered no concerns in relation to road safety or parking provision.
- The existing site has two car parking spaces therefore there will be no additional spaces provided within this proposal.
- The Council appreciate vehicles can travel in both directions along this private laneway. The garages/access points along this laneway can therefore be accessed when travelling in both directions. The agent submitted a map showing the properties with rear access points (including garages) which can be seen below:

It must be noted that a further 5 access points were counted in addition to the 16 shown above.

Sewage and water

- One objector stated that the proposal would put additional strain on sewage/water services and the construction/occupation of the dwelling could have an adverse impact on No. 31 in particular. It was further stated significant issues with the existing sewage system have been experienced by residents of the Sheridan Drive terrace.

Response

- Consultation has been carried out with NI Water. An assessment has indicated network capacity issues. This establishes significant risks of detrimental effect to the environment and detrimental impact on existing properties. A condition is

recommended to prevent commencement of development until a solution is formally agreed. This condition will prevent any harm arising.

Construction & Demolition

- One objector stated that the feasibility of achieving demolition and construction on the space available, without significant disruption to access in and out of the lane for neighbouring users, is contested.
- It was further stated that there is no capacity for short term parking of service/supply vehicles in the lane during demolition, construction or beyond.
- An objector stated that the proposed application site is opposite their rear access and are concerned at the effect building works in this area will cause them.

Response

- Any traffic, noise or dust associated with this proposed development will be temporary. It is the responsibly of the developer to ensure there are no safety issues during construction and to ensure the laneway isn't blocked for residents.

Precedent

- The issue of the development setting a precedent was highlighted by objectors, with it stated that the site in question has been in its current form and use for over 50 years and as such is a settled part of the local built environment. It was further stated that there is no comparable development off the comparable neighbourhood streets which run at right angles to the Esplanade, namely Sheridan Drive, Sandringham Drive, Godfrey Avenue and Waverley Drive, therefore, to allow this one would create an undesirable precedent and intensify the residential density in a saturated area.
- It was also stated that the design and access statement is misleading as the illustrations described as a similar pattern of development are all accessed via Lyle Road which is not a relevant comparison. It was highlighted that Lyle Road, running parallel to the Esplanade, is a fully adopted road with greater width, two-way traffic, proper signage, road markings, street lights and tarmac surface. Therefore, it was mentioned that this is not equivalent to the access conditions or characteristics relevant to this application.

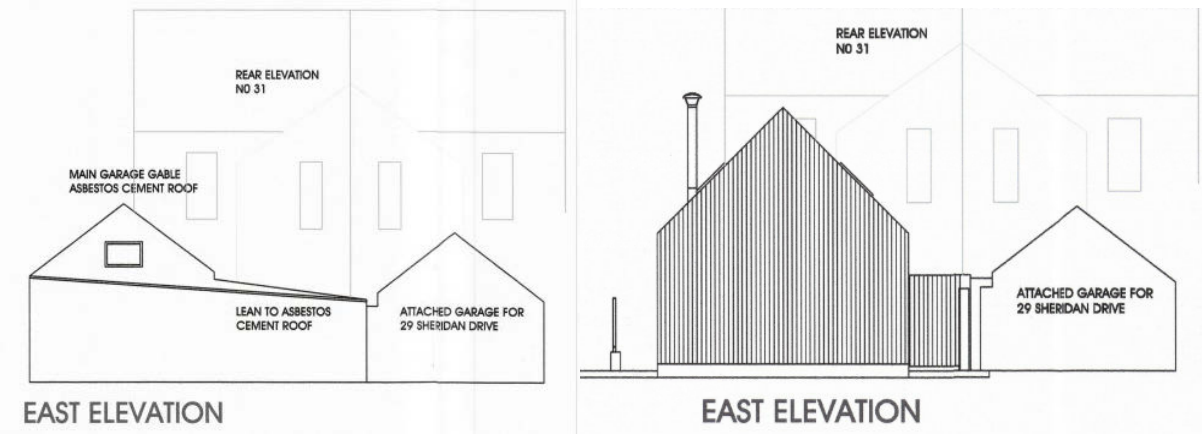
Response

- It is not considered that, if this proposed development were to be permitted, it would set any precedent for back land development within this area. This is a unique site in that the proposed dwelling is replacing an existing building which adds no character to the surrounding area. The redevelopment of this site is considered as a betterment in terms of the overall visual impact and the residential use. This proposal is not for a subdivision of an existing plot therefore it will not create any precedent in relation to this.

Other Points Made

- One objector stated that the proposed accommodation is highly unlikely to be suitable for disabled or elderly people. Within the design and access statement the agent has stated that there will be level access to the principal elevation therefore this has been considered.

- Points were made in relation to the existing laneway not being maintained. This is a private laneway which is not adopted therefore it is the responsibility of the landowner/s to maintain this laneway.
- One objector stated that the roof of the property to be demolished is asbestos and asked how it would be correctly and safely disposed of. This matter cannot be afforded material weight and can be managed outside of the planning process.
- The neighbour at No. 29 Sheridan Drive stated that the plans make reference to the to the demolition and replacement of a boundary wall at their property. As the existing workshop building runs along this boundary, this exterior wall will be removed and replaced with a new boundary wall as shown below. Any issues relating to land ownership, boundary disputes or access to third party land are civil matters to be dealt with by the relevant parties outside of the planning process.



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. 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 extension, garage, shed, outbuilding, wall, fence or other built structures of any kind (other than those forming part of the development hereby permitted) shall be erected without express planning permission.

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

3. 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 enlargement, improvement or other alteration of a dwellinghouse consisting of an addition or alteration to its roof shall be carried out without express planning permission.

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

4. All hard and soft landscape works shall be carried out in accordance with DRG 02B: Proposed Plans & Elevations. The works shall be carried out during the first available planting season after the occupation of any part of the dwelling.

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

5. The 2m high new boundary wall as shown in orange on DRG 02B: Proposed Plans & Elevations shall be permanently retained.

   Reason: In the interests of privacy and amenity.

6. The proposed laurel hedging as shown in DRG 02B: Proposed Plans & Elevations shall be allowed to grow to a minimum height of 1 metre and shall be retained thereafter at minimum height of 1 metre.

   Reason: In the interests of privacy and amenity.

7. 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.

8. 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 UK technical framework as outlined in the Land Contamination: Risk Management (LCRM) guidance available at http://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks. In the event of unacceptable risks being identified, a remediation strategy shall be submitted to and agreed by the Council in writing, and subsequently implemented and verified to its satisfaction.

Reason: Protection of public health to ensure the site is suitable for use.

9. After completing the remediation works under Condition 7; and prior to occupation of the development, a verification report must be submitted to and agreed in writing by Council. This report shall be completed by competent persons in accordance with the UK technical framework as outlined in the Land Contamination: Risk Management (LCRM) guidance. The verification report shall present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

   Reason: Protection of public health to ensure the site is suitable for use.

10. No development shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water or a Consent to discharge has been granted under the terms of the Water (Northern Ireland) Order 1999 by the relevant authority.

    Reason: To ensure no adverse effect on the water environment.

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.

Appendix 1: Plans

Figure 1: Site Location Plan

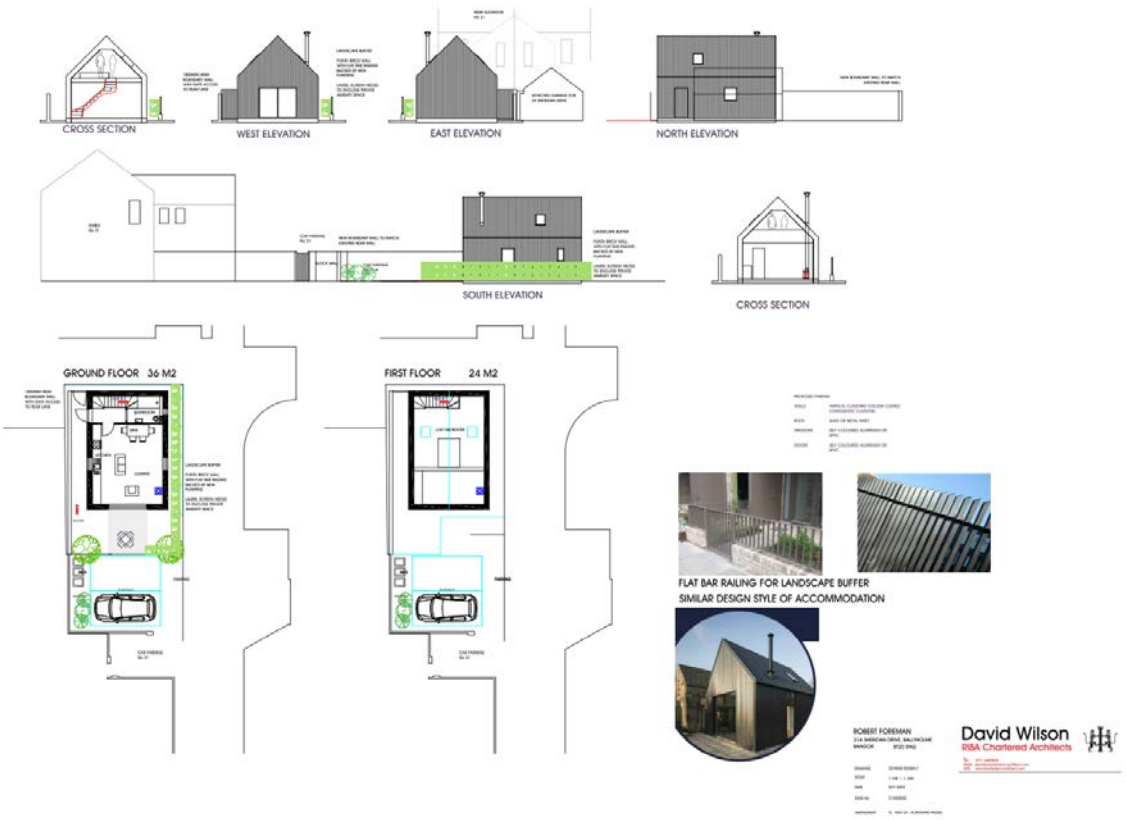


Figure 2: Proposed Plans

Appendix 2: Photographs

Images 1 and 2: Views of the site from Sheridan Drive

Images 3 and 4: Workshop Building and yard area to front

Image 5 and 6: Views of laneway from both directions

Item 4.3a

Addendum to Case Officer Report

Application Reference: LA06/2022/0265/F

Date 13/03/2025.

This Addendum has been prepared to address issues raised in a late objection to the application received 3 February 2025 and should be read in conjunction with the main Case Officer Report (COR). Matters raised relate to NI Water capacity issues; the established use of the site; and the intensification of use of the existing access.

NI Water Capacity Issues

This application was one of a large number of planning applications that has been affected by the on-going NI Water network capacity issues within the Ards and North Down Council area. A consultation response from NI Water (NIW) dated 12 May 2022 stated that whilst there is available capacity at the receiving Wastewater Treatment Works, a high-level assessment indicated that the site has the potential to be affected by network capacity issues.

The Council's Planning Department previously liaised with its legal representatives in relation to NI Water capacity issues affecting development in the borough. In order to achieve a pragmatic way forward and to prevent the environmental harm that may arise in the absence of a solution to the NI Water capacity issues, it is considered that any approval of planning applications affected by NI Water capacity issues should be subject to the following condition.

No development shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a consent to discharge has been granted under the terms of the Water (NI) Order 1999.

Reason: To ensure a practical solution to sewage disposal is possible at this site.

As outlined in the original Case Officer Report (COR) the recommendation to approve this application was subject to the above condition. Given the negative construction of the condition, it provides the appropriate safeguards to avoid environmental harm that could be caused if the development was simply allowed to proceed without restriction. Absent a satisfactory solution, development cannot lawfully commence.

Since the publication of the COR, NIW has updated its consultation response providing no objection to the application (30 January 2025). I am satisfied that a suitable solution to the disposal and treatment of wastewater can be achieved and that the proposed development will not cause any environmental harm.

Existing Use of the Building

Since the publication of the COR, the Council received an application to certify the lawful use of the existing building as a commercial garage workshop under ref. LA06/2025/0106/CLUED. The Certificate of Existing Lawful Use and Development (CLEUD) was approved on 18 February. See extract from report below:

'Taking all the evidence into consideration the Council is satisfied that the building and the use of the commercial garage workshop has been ongoing for a period exceeding five years. The Council is content that adequate evidence has been provided to demonstrate that this would now be immune from any enforcement proceedings in line with Section 132 of the Planning Act (Northern Ireland) 2011 and as such it is recommended that the CLEUD is granted.'

Intensification of Use of Existing Access

The objection letter expressed concern that the proposed development could result in the intensification of use of the existing access when considering the number of existing properties that can obtain vehicular access via the laneway.

Guidance within Development Control Advice Note (DCAN) 15 states that intensification of an access is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more.

It has been established, through the CLEUD, that the use of the existing commercial vehicular repair workshop building on-site is lawful. The vehicular repair workshop represents a valid fallback position for the Applicant if planning permission is refused for the proposed one-bedroom dwelling. Given its nature, the fall-back for commercial vehicular repair workshop use has the potential to generate a greater number of trips than that of the proposed one-bedroom dwelling.

DFI Roads has been re-consulted following approval of the CLEUD. The consultation response from DFI Roads states the following: *'in the absence of any information to the contrary, DFI Roads would consider that the extra unit would not cause a greater intensification than an existing established commercial garage workshop and would therefore consider it to create less than 5% intensification over that already existing.'*

The COR states that the lane provides vehicular access to 21 properties. The objector contends that this number should be 17. Having conducted a further site visit, I acknowledge that a number of the previously counted accesses have been blocked up and are no longer accessible. Nevertheless, I am satisfied that this lane does provide access to 18 properties (not including the application site). Even taking into account the lower figure suggested by the objector, I am satisfied that the existing use of the access to serve other residential properties along this laneway would further reduce the potential for intensification of the access to occur as a result of the proposal.

Recommendation

The issues raised within the objection have been considered and the recommendation to approve the proposal remains.

Figure 1: Properties with vehicular access along laneway (not including existing commercial workshop building) Site Visit conducted March 2025

Development Management Case Officer Report	Ards and North Down Borough Council

Reference:	LA06/2021/1477/F	**DEA:** Bangor Central	
Proposal:	Demolition of Royal Hotel and Windsor Bar to accommodate a mixed-use development comprising of 35No. apartments, 2No. restaurant units, and 1No. retail unit, car parking and associated site and access works	**Location:**	Royal Hotel and Windsor Bar, Nos. 22-28 Quay Street, Bangor
Applicant:	Expedia Capital ltd		

Date valid:	22/12/2021	**EIA Screening Required:**	No
Date last advertised:	03/08/2023	**Date last neighbour notified:**	24/07/2023

Consultations – synopsis of responses:	
DFI Roads	No objection subject to conditions
DAERA Natural Environment Division	No objection
Marine and Fisheries Division	No objection
Water Management Unit	No objection if the WWTW and associated sewer network can take the additional load
Regulation Unit, Land and Groundwater Team	No objection subject to conditions
NI Water	No objection subject to condition
Environmental Health	No objection subject to conditions
DfI Rivers Directorate	No objection subject to condition
Historic Environment Division	No objection subject to conditions
Shared Environmental Service	No objection subject to conditions

Letters of Support	1	**Letters of Objection**	0	**Petitions**	0

Summary of main issues considered:

- Principle of development
- Design, Visual Impact and Impact on Character of the Area
- Public Open Space/Private Amenity Space
- Impact on Residential Amenity
- Access, Road Safety and Car Parking
- Archaeology and Built Environment

- Security from Crime
- Designated Sites/Other Natural Heritage Interests
- Other Planning Matters

Recommendation: Grant Planning Permission

Report Agreed by Authorised Officer

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 https://planningregister.planningsystemni.gov.uk/

1. Site and Surrounding Area

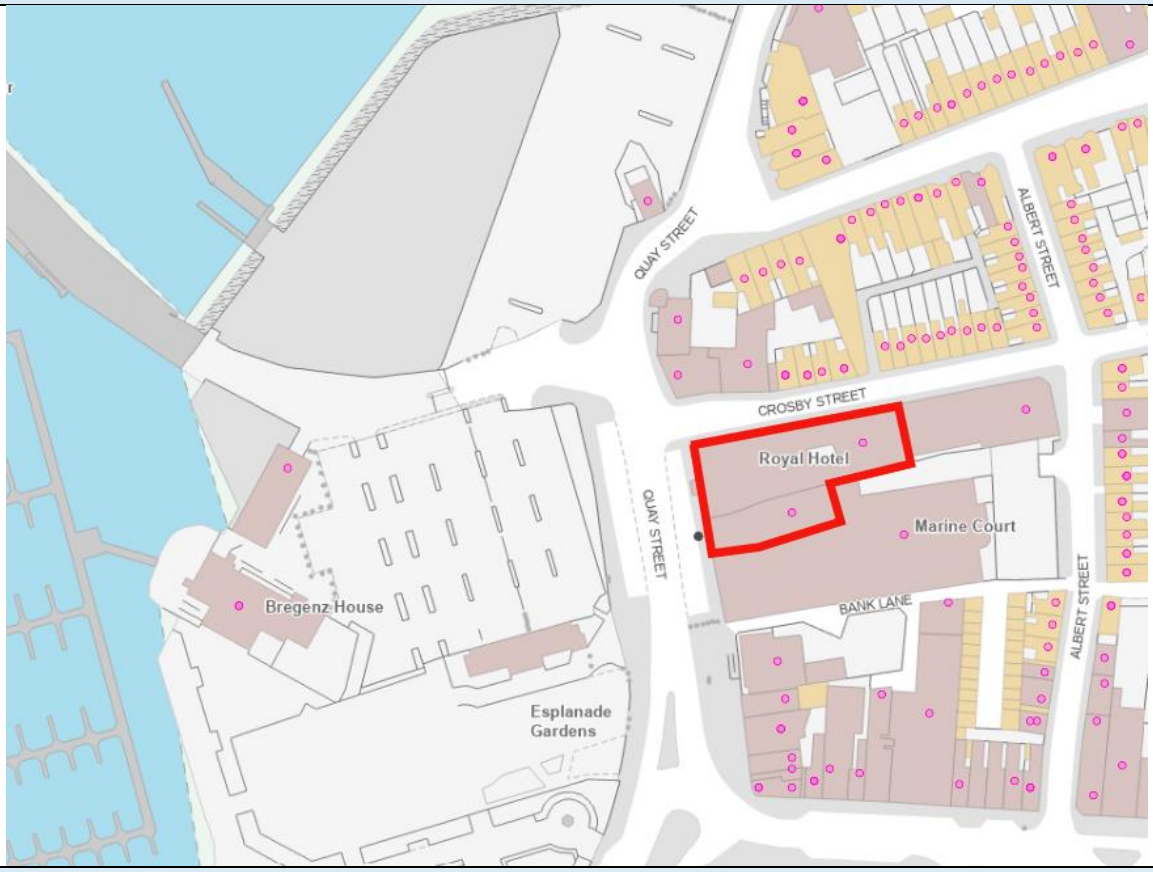
The application site is located within Bangor Town Centre on the corner of Quay Street and Crosby Street. The existing buildings on the application site comprise the vacant Royal Hotel and Windsor Bar. This is a 5 storey rendered building with 6 bays and 6 storey turret at the corner and giant pilasters with Art Deco ornamentation between each bay. The hotel was originally established in 1841; however, the present building dates from 1931 and continued to operate as a hotel until its closure in 2014.

The application site is adjacent to the Marine Court Hotel and is opposite the Bangor Marina and a public car park. The existing building is 5-storeys in height along its frontage with Quay Street, stepping down to 3-storeys in height along Crosby Street.

The site is within the settlement of Bangor and is located within the proposed Bangor Central Area of Townscape Character and an Area of Archaeological Potential for Bangor in the draft Belfast Metropolitan Area Plan 2015. The site is shown as whiteland in the plan.

The surrounding area is characterised by a variety of town centre uses including the adjoining hotel, nearby bars and restaurants, tourism, retail and residential.

2. Site Location Plan



3. Relevant Planning History

W/2008/0456/F – The Royal Hotel and Windsor Bar, 22-28 Quay Street - Demolition of existing Royal Hotel and Windsor Bar and erection of replacement 52 room hotel with bar / restaurant, roof top restaurant, 33 apartments, viewing terrace, car parking, amenity space and ancillary accommodation – Permission granted 13/05/2011

LA06/2017/1209/F - Royal Hotel and Windsor Bar, Nos 22-28 Quay Street - Proposed mixed-use development of 21 no. apartment units, comprising 12 no. apartments as part of the partial conversion and retention of the Royal Hotel and Windsor Bar building, partial demolition and 9 no. new build apartments within rear extension to Crosby Street, change of use of ground floor from hotel and public house to 4 no. new restaurant/café units, site access, car parking and all associated site works – Permission granted 12/10/2018

LA06/2020/0452/DC - Royal Hotel and Windsor Bar, Nos 22-28 Quay Street - Discharge of Condition 10 of approval LA06/2017/1209/F which states,
No site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and

programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Council. The programme should provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.
Condition not discharged – programme of works to be implemented on site by a licensed archaeologist and a final report detailing the results of the archaeological investigation to be submitted and approved by HED (Historic Monuments).

4. Planning Assessment

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

- North Down and Ards Area Plan 1984 – 1995
- Draft Belfast Metropolitan 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 6: Planning, Archaeology and the Built Environment
- Planning Policy Statement 6 (Addendum): Areas of Townscape Character
- Planning Policy Statement 7: Quality Residential Environments
- 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 located within the settlement of Bangor. It is also within Bangor town centre, the proposed Bangor Central Area of Townscape Character (ATC) and Bangor town centre Area of Parking Restraint (APR).

The principle of development has been established by the planning history of the site. Planning permission was previously granted on 12 October 2018 for a mixed-use development of 21 no. apartment units, comprising 12 no. apartments as part of the partial conversion and retention of the Royal Hotel and Windsor Bar building, partial demolition and 9 no. new build apartments within rear extension to Crosby Street,

change of use of ground floor from hotel and public house to 4 no. new restaurant/café units, site access, car parking and all associated site works.

The current proposal is to now demolish the Royal Hotel and Windsor Bar to accommodate the mixed-use development which comprises of 35 No. apartments (increase in 14 apartments), 2 No. restaurant units, and 1 No. retail unit, car parking and associated site and access works.

The SPPS, in paragraph 6.269, states that *'It is important that planning supports the role of town centres and contributes to their success. The SPPS seeks to encourage development at an appropriate scale in order to enhance the attractiveness of town centres, helping to reduce travel demand.'*

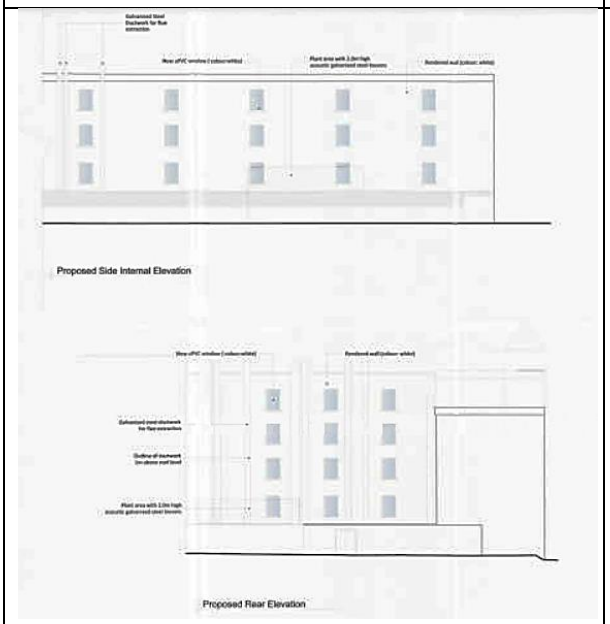
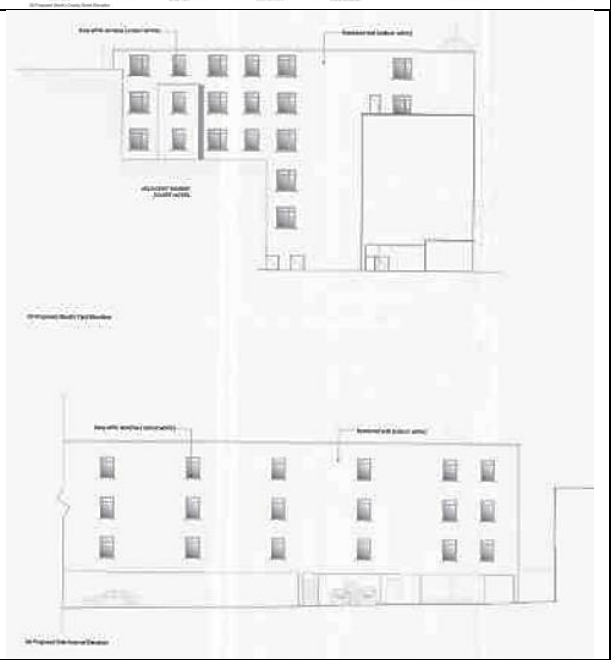
The SPPS also states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The application site lies outside of the Primary Retail Core designated in Draft BMAP and whilst Policy R1: Retailing in City and Town Centres in Draft BMAP states that outside designated primary retail cores and within city and town centres, retail development will only be granted planning permission where it can be demonstrated that there is no suitable site for the proposed development within the Primary Retail Core. The PAC Report recommendation as accepted in the Adoption Statement amended the wording slightly to also include proposals for comparison goods. Given the small scale of the retail unit (47sqm) it is considered that it will not harm the vitality and viability of the primary retail core. In addition, the proposed development will assist the regeneration of Bangor Town Centre.

I am satisfied that the proposed restaurant and retail units will complement the existing retail provision within the town centre and will contribute to the evening economy.

Design, Visual Impact and Impact on Character of the Area

The current design replicates the original design with some alterations. It is of high quality and is sympathetic to the original design.

Approved design	Proposed Design
	
	

The proposed development continues to respect the established building line along Quay Street and Crosby Street. Whilst the proposal now involves the demolition of the existing Royal Hotel and Windsor Bar, the front and side facades are to be rebuilt to match the existing and will have a palette of colours and materials that complement the adjacent buildings with the front and side facades rendered in white with white windows. The ground floor will be rendered in black. The apartments fronting onto Quay Street are dual aspect and new bay windows along Crosby Street will provide views of the Marina. The existing 5 storey elevation adjacent to the Marine Court Hotel, on Quay Street, is a landmark within Bangor town centre. The side elevation along Crosby Street

steps down in height from Quay Street to the eastern boundary of the application site to respect the neighbouring development. I am satisfied that the proposed building is reflective of the general character of the locality.

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

In draft BMAP, the site is located within the proposed Bangor Central Area of Townscape Character (BR 42). A Design and Access Statement has been submitted in accordance with Article 6 of The Planning (General Development Procedure) Order (Northern Ireland) 2015. This document explains the design principles and concepts applied to the development, the steps taken to appraise the context of the site and how the design takes the context into account as well as the access to the site, disabled access and environmental sustainability.

The Planning Appeals Commission considered objections to the proposed ATC designation within its report on the BMAP public inquiry and recommended no change to the proposed ATC. Therefore, it is likely, that if and when BMAP is lawfully adopted, a Bangor Central Area of Townscape Character designation will be included. Consequently, the proposed ATC designation in draft BMAP is a material consideration relevant to this application. The Commission also considered objections to the general policy (UE 3) for the control of development in ATCs which is contained in draft BMAP. It is recommended that Policy UE3 be deleted and that a detailed character analysis be undertaken and a design guide produced for each individual ATC. As yet these design guides have not been published.

It would be wrong to make any assumptions as to whether these recommendations will be reflected in any lawfully adopted BMAP or as to whether the text relating to the key features of Bangor Central ATC will be repeated. As of now, it is unclear how the area will be characterised in any lawfully adopted BMAP. However, the impact of the proposal on the proposed ATC remains a material consideration and can be objectively assessed.

The ‘Victorian, Edwardian and inter-war buildings in Quay Street including the former Belfast Bank, Windsor Bar and Royal Hotel’ are noted as key features of the proposed Area of Townscape Character, which must be taken into account when assessing development proposals.

There is an extant approval on the site for 21 apartments and 4 ground floor retail units under reference LA06/2017/1039/F. In this case, the existing front façade of the Royal Hotel was to be retained as an integral part of the development and incorporated into the new building. The replacement building is to replicate the existing façade, but it will be an entirely new construction.

The Addendum to Planning Policy 6: Areas of Townscape Character (APPS6) provides the relevant policy content for demolition of existing buildings and new development within an Area of Townscape Character. However, recent appeals have clarified that policies in APPS6 apply to designated ATCs and not proposed ATCs (21/A0227). Notwithstanding the above conclusions, the Commissioner determined that the potential impact of the appeal development on the proposed ATC remained a material consideration and can be objectively assessed.

In terms of the impact of the proposed demolition of the existing building, the Supporting Statement refers to the 2008 planning permission granted on the site for the complete demolition of the building and then the subsequent 2017 approval for part retention and conversion of the existing buildings fronting onto Quay Street.

This application now proposes complete demolition of the building and rebuild. This includes the façade which is to be rebuilt on a like for like basis, to replicate the original. It has been asserted that the reason for this change in approach to the redevelopment of the site has been prompted by the discovery of severe corrosion to steel columns supporting the building.

The Council commissioned a report by Albert Fry Associates to consider options that would not necessitate complete demolition, and a technique called 'Cathodic Protection' was put forward as a remedial solution for the corroded columns as well as the installation of additional new steel columns on the inside of the building. This option has been rejected by the applicant's agent and Structural Engineer as not being feasible for this particular situation – their submissions dated 24 August 2023 suggest that the Cathodic Protection method is only suitable where corrosion is detected early and the extended foundations and vibration disturbance that would be required for the installation of new columns would destabilise the existing front façade.

Planning Officers raised concern that once demolition is granted there is no going back, and the ultimate success of any reinstatement scheme is not guaranteed. Given the relatively recent date of this building and its generally sharp and angular appearance, it may however lend itself more readily to reproduction than a building that is older, less precise and more vernacular. The building is not listed, and it has to be taken into account that the Area of Townscape Character is only draft. A legal agreement has been prepared to ensure the replica façade rebuild takes place as currently proposed.

Taking into account the above factors it is considered that the planning agreement will ensure that there will be no harm to the character and appearance of the area. It is recommended that the Council enters into a planning agreement with the developer under Section 76 of the 2011 Planning Act. This is to ensure that any future applications lodged with respect to the site must seek approval or retention of a building which encompasses and mirrors the approved façade and that a building can only be erected

on the site which is consistent and mirrors the approved façade. This gives the Council assurance that the design of any future building on this site will replicate the façade currently fronting onto Quay Street.

Policy ATC 2, New Development in an Area of Townscape Character, states that the development should maintain or enhance the overall character and respect the built form of the area. The proposal will maintain the overall character of the area and will respect the local built form. The new build will replicate the existing façade which fronts onto Quay Street with a subordinate elevation onto Crosby Street which is stepped down in height from Quay Street. Materials and finishes will be in-keeping with existing buildings in the vicinity of the site. The external walls will be finished in black render at ground floor and white render on the upper floors. White coloured uPVC windows are proposed which matches the existing window finishes.

Public Open Space/Private Amenity Space

There is no requirement for the provision of public open space and given the urban location of this corner site, landscaping has not been considered necessary. The site layout includes a storage area at the ground floor for the apartment bins and a separate area for the storage of the bins associated with the restaurant units. Due to the proximity of the site to the waterfront and town centre parks there will be open space available within walking distance which negates the requirement for private amenity space under this application. An area is also set aside at ground floor level for cycle storage.

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 proposed development is compatible with the surrounding town centre uses. The elevation onto Crosby Street is in keeping with the scale and form of the surrounding buildings. The proposed elevation along Crosby Street does extend approx. 8m closer to the Salvation Army building at 6-10 Crosby Street. I have no concerns with regards to the impact on the Salvation Army building. I am satisfied that there will be no unacceptable adverse impact on the existing residential properties on Crosby Street in terms of over-looking. The main living areas of the proposed apartments have projecting oriel windows with views directed towards the eastern end of Crosby Street and towards Quay Street. The existing side elevation already has window openings, and this particular design was incorporated into the previous approval.

Impact of sound for future residents

In the assessment of the original approval, the Inward Sound Level Impact Assessment confirmed four principal concerns in relation to sound level impact firstly external break-in via façade due to road traffic, the operation of the Marine Court Hotel, Rabbit Rooms Public House and the Salvation Army at 7 Crosby Street. The second is sound transfer from the proposed ground floor commercial units to the residential above, thirdly sound transfer from the Marine Court Hotel through potential transmission via the party wall and fourthly, impact from mechanical services plant.

The demolition proposed in this latest application has two main implications in relation to the acoustic assessment– it will allow a new structure to be built independently of the Marine Court Hotel building and the revised layout results in apartment bedrooms windows overlooking the courtyard area. The planning application was accompanied by a new Inward Sound Level Impact Assessment was prepared by Lester Acoustics. The report concludes that in order to achieve the required sound level within the apartments noise mitigation measures (upgraded glazing/ acoustic ventilation systems, upgraded floor insulation and acoustic doors) are required to be incorporated into the development. The Council's Environmental Health Department (EHD) has provided no objection to the proposal subject to conditions to secure the proposed mitigation.

Impact of odours on future residents

Due to the proposal including a restaurant, EHD has recommended conditions which relate to ventilation and odour control. This will ensure that the amenity of the future occupants is not adversely affected by restaurant odours.

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 or proposed residents.

Access, Road Safety and Car Parking

Draft BMAP 2015 designates the site within the Bangor Town Centre Area of Parking Restraint (BR 40).

Car parking standards within the designated Area of Parking Restraint will be assessed in accordance with Policy TRAN 1 in Part 3, Volume 1 of the draft plan. This applies a standard of 1 space per dwelling and for non-residential parking, 1 space per 50 square metres of non-operational and 1 space per 930 square metres for operational space.

25 No. parking spaces are provided within the curtilage of the site. 35 apartments are proposed so 35 No. spaces would be required to meet the policy requirement in the plan. This represents a shortfall of 10 spaces for the apartments. A Travel Plan has been submitted in support of the application and includes measures to promote

sustainable travel. Mitigation includes a free travel card to the first occupant of 10 apartments for a period of three years.

The site is located within the town centre and an area of parking restraint where there is a desire to move away from a transportation system dominated by a private car to a more balanced and integrated system, in which public transport together with cycling and walking would play a greater role. The town centre location renders it close to transport links (bus and rail) and within walking distance of amenities, ensuring that future residents would not be relying on the car as the sole mode of transport. Cycling routes are located within 70m of the site. The former use of the building would have attracted visitors on foot and the proposed retail and restaurant elements are main town centre uses and are likely to attract many customers from the existing footfall within the town centre.

Given the town centre location and the mitigation offered within the Travel Plan, I am satisfied that the level of parking is adequate to serve the proposed development. The Travel Card can be secured through the Planning Agreement.

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

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

Archaeology and Built Heritage

The proposed scheme is within the Area of Archaeological Potential for Bangor. This is the area in which is known to contain both upstanding and below ground archaeological remains of the historic settlement. HED (Historic Monuments) was consulted on the proposal, and it is content that the proposal satisfies Policy BH 4 of PPS 6, subject to conditions for the agreement and implementation of a developer-funded programme of archaeological works. This is to identify and record any archaeological remains in advance of new construction, or to provide for their preservation in situ.

The site is in close proximity to the following listed buildings which are of special architectural and historic importance and is protected by Section 80 of the Planning Act (NI) 2011.
HB23 05 012 The Tower House, 34 Quay Street. Bangor (Grade B1)
HB23 05 023 Boat House steps & piers, 1a Seacliff Rd, Bangor (Grade B2)
HB23 05 011 Former Petty Sessions Court, Quay Street, Bangor (Grade B2)
HB23 05 010 McKee Clock Tower, Esplanade. Bangor (Grade B1)
HB23 05 013A-D 2, 4, 6 & 8 Victoria Road, Bangor (Grade B2)

HED (Historic Buildings) was consulted on the proposal, and it considers that the proposal satisfies the requirements of paragraph 6.12 (setting) of the SPPS and Policy BH11 (Development affecting the Setting of a Listed Building) of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6).

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 proposed development will bring the existing vacant building back into use. Secure parking will be provided, the apartments will be accessed via a secure central entrance and windows look onto all areas of the site.

Designated Sites/Other Natural Heritage Interests

Shared Environmental Service was consulted on the proposal and a Habitats Regulations Assessment (HRA) was completed on behalf of the Council. The Council under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), and in accordance with its duty under Regulation 43, has adopted the HRA report, and conclusions therein, prepared by Shared Environmental Service. This found that the project would not have an adverse effect on the integrity of any European site.

In terms of protected and priority species, an updated Bat Emergence Survey was submitted in support of the application. NIEA Natural Environment Division (NED) was consulted on the proposal, and it noted that the updated bat survey for the present application used the same classification as the previous survey, i.e. low Bat Roost Potential (BRP). NED usually requires ecological information to be completed within two years of being submitted as the ecology of a site may have changed in that time. NED has assessed the building from online mapping software and is content on this occasion to accept the present survey as the building appears to contain a low BRP. No bats were observed to emerge from the building and therefore, NED has no concerns regarding the proposed development having a significant impact on bats.

NED noted that the Bat Emergence survey reported that there was little swift activity in the area and that no swifts were seen to emerge from or enter the buildings. Given that the previous application also noted a limited potential for the buildings to contain roosting or nesting Swifts NED is content that the proposal is unlikely to have a significant impact on the local swift population from the proposed development.

Flooding and Drainage

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

A Drainage Assessment by Elliott Design Solutions and a subsequent Addendum have been submitted in support of the proposal.

The latest Statutory Planning Consultation from NI Water confirms there is capacity for the development in their foul sewer within 20m of the site. The surface water sewer will require requisition from the marina car park.

Foul water from the proposed redevelopment shall be collected in a separate system from surface water and gravitate into an external foul water drainage network. Surface water will discharge to a requisitioned NI Water sewer.

The Drainage Assessment Addendum has demonstrated that the design and construction of a suitable drainage network is feasible.

In order to ensure compliance with PPS 15, DfI Rivers requests that prior to the construction of the drainage network, the applicant shall submit a Drainage Assessment, compliant with FLD 3 & Annex D of PPS 15, to be agreed with the Council which demonstrates the safe management of any out of sewer flooding emanating from the surface water drainage network, in a 1 in 100 year event with an additional allowance for climate change.

Contaminated Land

A Preliminary Risk Assessment was reviewed during the assessment of the previous approval. It determined that potential on site sources of contamination are limited to the storage of hydrocarbons and potentially reduced quality made ground and off-site contamination associated with reduced quality made ground, an ESS and former industrial activities. Following completion of a risk evaluation for the potential pollutant linkages it has been concluded that there is low risk from onsite and offsite sources and no further assessment was required.

An updated Preliminary Risk Assessment, Royal Hotel, 22- 28 Quay Street, Bangor, prepared by RSK, referenced 604923-R1(00) and dated October 2023 was submitted for the application. RSK has stated that as the Royal Hotel and Windsor Bar has remained vacant since the last walkover and that the site is essentially unchanged since 2017. However, considering the time elapse and that this proposal is amended from the previous planning application (LA06/2017/1209/F), site conditions may have changed. This application proposes to demolish and re-develop the entire site. Such additional extensive ground works affords the opportunity to undertake further site investigation and assessment following demolition of the existing structures. NIEA Regulation Unit and the Council's Environmental Health Department (EHD) have therefore requested for a number of conditions to be added to the decision notice for

the submission of further intrusive site investigations and Quantitative Risk Assessment following demolition and site clearance works.

5. Representations

One letter of support was received in relation to the proposal. The redevelopment is seen as a wonderful opportunity to see the rebirth of an iconic seafront building. The supporter particularly likes that the proposal consolidates the levels of the former Windsor and Royal buildings and that the aesthetics are greatly enhanced by the uniform alignment of the window apertures to the front and side elevations. It is considered that the new build will greatly improve the internal functionality of the space and will help inspire others moving forward, restoring confidence in the seaside city.

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 vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No. 02C and 10B prior to the commencement of any development hereby permitted.

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

3. The area within the visibility splays and any forward sight line shall be cleared prior to the commencement of development to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays 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.

4. The access gradient to the development hereby permitted shall not exceed 8% (1 in 12.5) over the first 5 m outside the road boundary. Where the vehicular

access crosses the footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

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

5. No development shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a consent to discharge has been granted under the terms of the Water (NI) Order 1999.

Reason: To ensure there will be no adverse impact on the environment.

6. 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, in a 1 in 100 year event with an additional allowance for climate change.

Reason: To safeguard against flood risk to the development and from the development to elsewhere.

7. All sound reduction / insulation measures as stipulated in the Lester Acoustics report referenced MRL/1192/L02 and dated 11th November 2021 shall be incorporated into the development. In particular:
   • A void of at least 100mm shall be created between the party wall of the Marine Court Hotel and the proposed development, with no structural connection between the buildings above ground floor slab level and with a movement joint gap at the Quay Street façade.

Reason: To ensure the occupiers of the residential premises are not adversely affected by noise.

8. The restaurants shall not remain open for business, and deliveries shall not be made to or from the site prior to 07:00 and after 23:00hrs.

Reason: To ensure the occupiers of the residential premises are not adversely affected by noise.

9. Prior to commencement of any tenant fit-out, for the restaurant units full details and specifications of extract ventilation and odour control shall be submitted to and approved by the Council in writing prior to installation. All installations shall be completed and commissioned in accordance with the approved details prior

to occupation/commencement of use and are to be retained throughout the tenancy. No changes shall be made to the occupancy or ventilation provision without the prior written approval of the Council.

Reason: To ensure the occupiers of the residential premises are not adversely affected by cooking odours.

10. Following demolition and site clearance works, no development shall commence until the Council has received in writing and agreed that suitable risk assessments and supporting site data have been provided which identify all unacceptable risks to health and the water environment. The investigations should include but not be restricted to:

    • identifying all potential contaminant sources within the red line boundary of the site.
    • a detailed site investigation and groundwater monitoring to be designed and implemented in accordance with British Standard BS 10175:2011+A2:2017 Code of Practice for Investigation of Potentially Contaminated Land Sites to identify the contamination risks associated with the potentially contaminating activities which took place at the site. Any ground gas investigations shall be conducted in line with BS 8576:2013 and BS 8485:2015+A1:2019.
    • A satisfactory assessment of the risks (including an updated Conceptual Site Model), conducted in line with current Environment Agency guidance. Gas assessment shall be undertaken in accordance with CIRIA C665 - Assessing risks posed by hazardous ground gases to buildings.
    • risk assessment(s) in accordance with the Land Contamination: Risk Management (LCRM) guidance, to identify all unacceptable risks to health and the water environment and provide remedial criteria to be met through the remedial strategy.

    These works are required ensure the land will be in a condition suitable for the proposed development.

Reason: Protection of environmental receptors to ensure the site is suitable for use and protection of human health.

11. As part of site clearance works, all remaining fuel storage tanks and associated infrastructure on the site shall be fully decommissioned in line with Guidance on Pollution Prevention No. 2 (GPP2) and should contamination be identified the requirements of Condition 10 will apply.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

12. 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 Land Contamination: Risk Management (LCRM) guidance available at: https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks

    In the event of unacceptable risks being identified, a remediation strategy shall be submitted to and agreed in writing with the Council and subsequently implemented and verified to its satisfaction. This Strategy shall demonstrate how the identified pollutant linkages are to be demonstrably broken and no longer pose a potential risk to human health.

Reason: Protection of environmental receptors to ensure the site is suitable for use and protection of human health.

13. After completing any remediation works under Condition 12, and prior to occupation of the development, a verification report shall be submitted to and agreed in writing with the Council. This report shall be completed by competent persons in accordance with the Land Contamination: Risk Management (LCRM) guidance available at: https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks.

    The verification report shall present all the remediation, waste management and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and wastes in achieving the remedial objectives.

Reason: Protection of environmental receptors to ensure the site is suitable for use and protection of human health.

14. No site works of any nature or development shall take place until a programme of archaeological work (POW) has been prepared by a qualified archaeologist, submitted to and agreed in writing by the Council. The POW shall provide for:
    - The identification and evaluation of archaeological remains within the site;
    - Mitigation of the impacts of development through licensed excavation recording or
    - by preservation of remains in-situ;
    - Post-excavation analysis sufficient to prepare an archaeological report, to publication standard if necessary; and
    - Preparation of the digital, documentary and material archive for deposition.

Reason: To ensure that archaeological remains within the application site are properly identified and protected or appropriately recorded.

15. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 14.

Reason: To ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

16. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 14. These measures shall be implemented, and a final archaeological report shall be submitted to the Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with the Council.

Reason: To ensure that the results of archaeological works are appropriately analysed and disseminated, and the excavation archive is prepared to a suitable standard for deposition.

17. No residential unit shall be occupied until hard surfaced areas have been constructed in accordance with Drawing No. 02C, in order to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

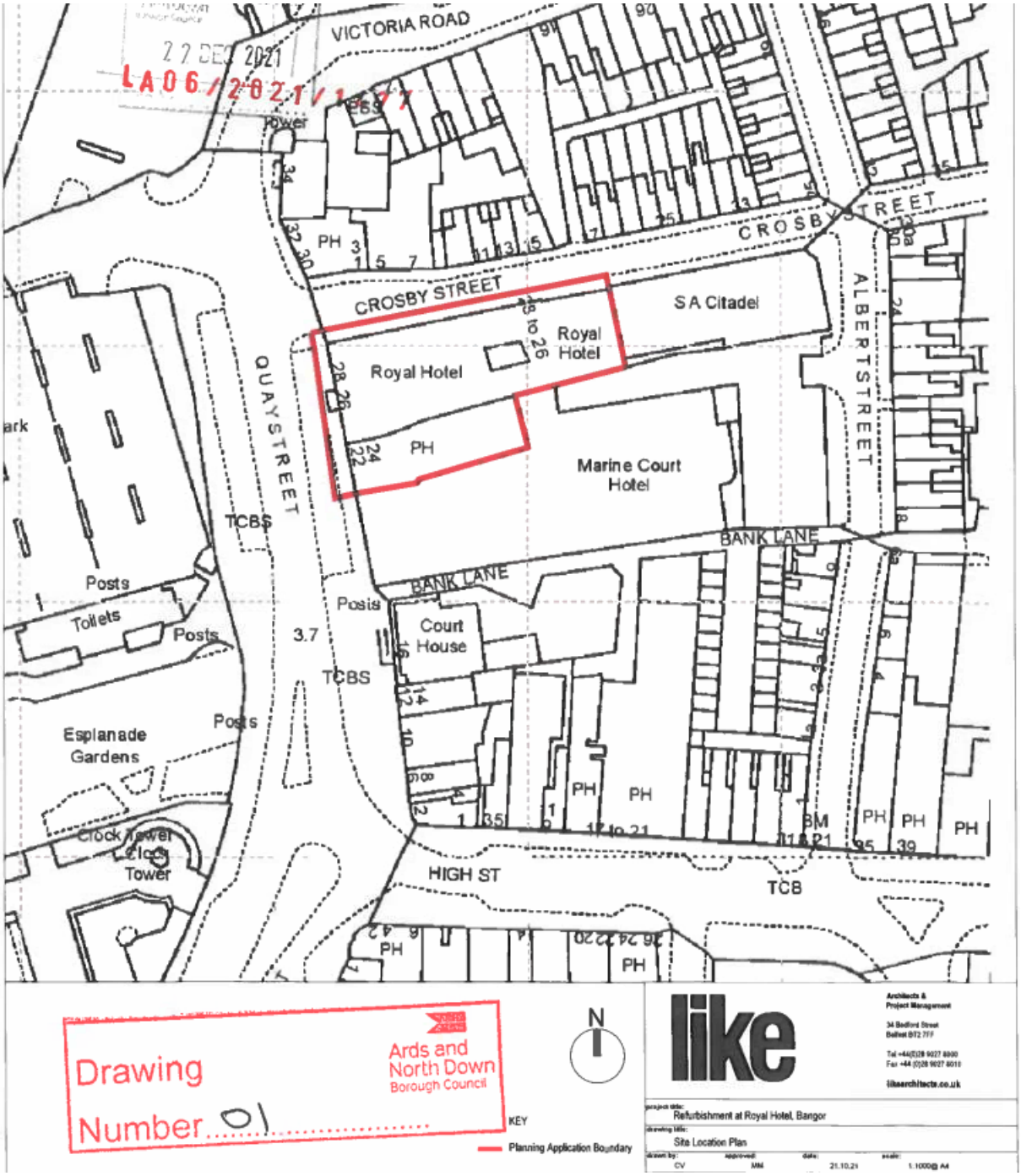
Reason: To ensure that adequate provision has been made for the parking, servicing and traffic circulation within the site.

Informative

1. 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.

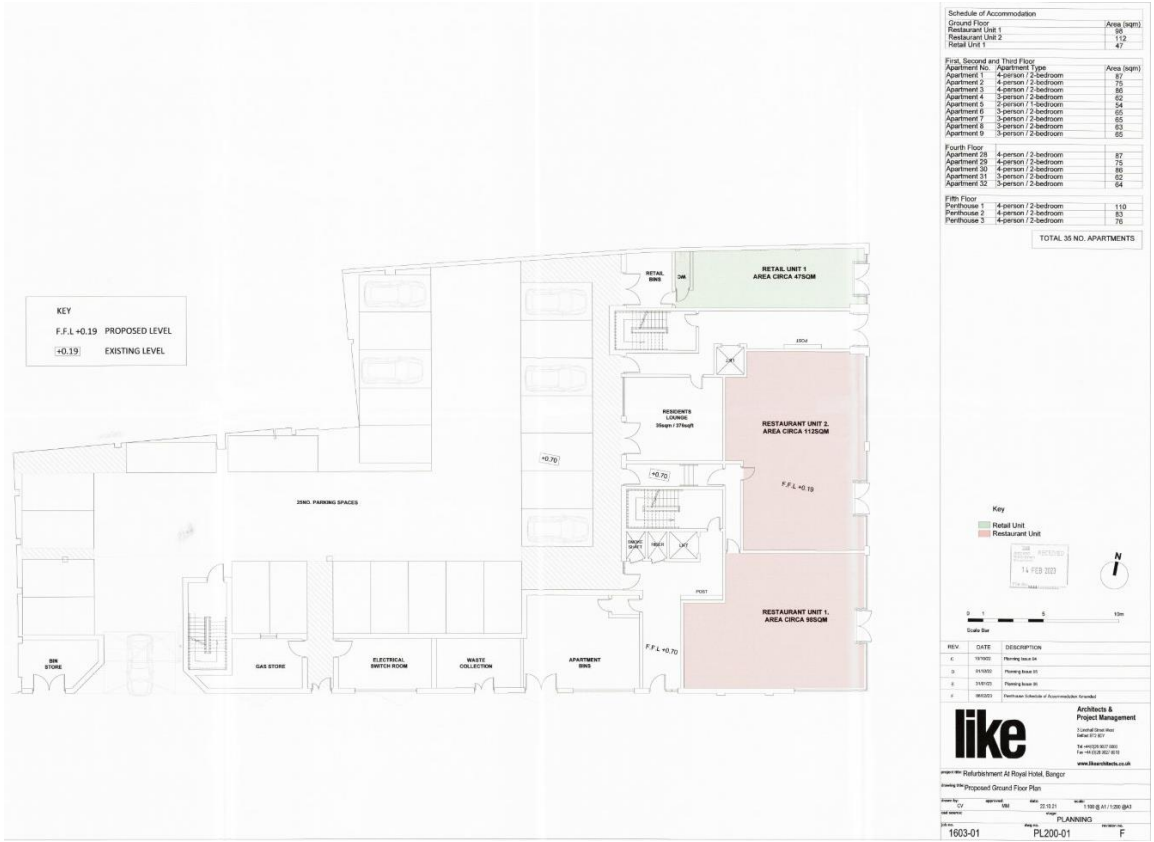
2. This approval is subject to a Planning Agreement prepared under Section 76 of the Planning Act (Northern Ireland) 2011.

Site location



Proposed Layout

Proposed Ground Floor Plan



Proposed First, Second and Third Floor Plan

Schedule of Accommodation

Ground Floor	Area (sqm)
Restaurant Unit 1	98
Restaurant Unit 2	112
Retail Unit 1	47

First, Second and Third Floor		
Apartment No.	Apartment Type	Area (sqm)
Apartment 1	4-person / 2-bedroom	87
Apartment 2	4-person / 2-bedroom	75
Apartment 3	4-person / 2-bedroom	86
Apartment 4	3-person / 2-bedroom	62
Apartment 5	2-person / 1-bedroom	54
Apartment 6	3-person / 2-bedroom	65
Apartment 7	3-person / 2-bedroom	65
Apartment 8	3-person / 2-bedroom	63
Apartment 9	3-person / 2-bedroom	65

Fourth Floor		
Apartment 28	4-person / 2-bedroom	87
Apartment 29	4-person / 2-bedroom	75
Apartment 30	4-person / 2-bedroom	86
Apartment 31	3-person / 2-bedroom	62
Apartment 32	3-person / 2-bedroom	64

Fifth Floor		
Penthouse 1	4-person / 2-bedroom	110
Penthouse 2	4-person / 2-bedroom	83
Penthouse 3	4-person / 2-bedroom	76

TOTAL 35 NO. APARTMENTS

14 FEB 2023

Key

1 Bedroom Apartment

2 Bedroom Apartment

N

Scale Bar 0 1 5 10

REV.	DATE	DESCRIPTION
C	17/10/22	Planning Issue 04
D	25/10/22	Planning Issue 05
E	31/01/23	Planning Issue 06
F	09/02/23	Penthouse Schedule of Accommodation Amended

like

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www.likearchitects.co.uk

Refurbishment At Royal Hotel, Bangor

Proposed First, Second & Third Floor Plans

CY | MM | 22.10.21 | 1:100 @ A1 | 1:200 @ A3

PLANNING

1603-01 | PL-200-02 | F

Proposed Fourth Floor Plan

Schedule of Accommodation

Ground Floor	Area (sqm)
Restaurant Unit 1	98
Restaurant Unit 2	112
Retail Unit 1	47

First, Second and Third Floor		
Apartment No.	Apartment Type	Area (sqm)
Apartment 1	4-person / 2-bedroom	87
Apartment 2	4-person / 2-bedroom	75
Apartment 3	4-person / 2-bedroom	86
Apartment 4	3-person / 2-bedroom	62
Apartment 5	2-person / 1-bedroom	54
Apartment 6	3-person / 2-bedroom	65
Apartment 7	3-person / 2-bedroom	65
Apartment 8	3-person / 2-bedroom	63
Apartment 9	3-person / 2-bedroom	65

Fourth Floor		
Apartment 28	4-person / 2-bedroom	87
Apartment 29	4-person / 2-bedroom	75
Apartment 30	4-person / 2-bedroom	86
Apartment 31	3-person / 2-bedroom	62
Apartment 32	3-person / 2-bedroom	64

Fifth Floor		
Penthouse 1	4-person / 2-bedroom	110
Penthouse 2	4-person / 2-bedroom	83
Penthouse 3	4-person / 2-bedroom	76

TOTAL 35 NO. APARTMENTS

14 FEB 2023

Key

2 Bedroom Apartment

N

Scale Bar 0 1 5 10

REV.	DATE	DESCRIPTION
C	17/10/22	Planning Issue 04
D	25/10/22	Planning Issue 05
E	31/01/23	Penthouse Schedule of Accommodation Amended

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Refurbishment At Royal Hotel, Bangor

Proposed Fourth Floor Plan

CY | MM | 22.10.21 | 1:100 @ A1 | 1:200 @ A3

PLANNING

1603-01 | PL-200-03 | E

Proposed Fifth Floor Plan

Elevations


New uPVC window (colour:white)
Rendered wall (colour: white)
ADJACENT MARINE COURT HOTEL
03 Proposed (South) Yard Elevation
New uPVC window (colour:white)
Rendered wall (colour: white)
04 Proposed Side Internal Elevation
0 1 5 10m
Scale Bar
REV. DATE DESCRIPTION
A 03/11/21 Planning Issue 02
B 31.01.23 PLANNING ISSUE
like
Architects & Project Management
Refurbishent At Royal Hotel, Bangor
Proposed Elevations - Sheet 2
1603-01
PL-300-03
B

ITEM 5

Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	01 April 2025
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	12 March 2025
File Reference	N/A
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes ☐ No ☐ Other ☒ If other, please add comment below: Not applicable
Subject	Update on Planning Appeals
Attachments	Item 5a - PAC decision 2024 - A0057 Item 5b - PAC decision 2024 - A0019

Appeal Decisions

1. The following appeal was dismissed on 28 February 2025.

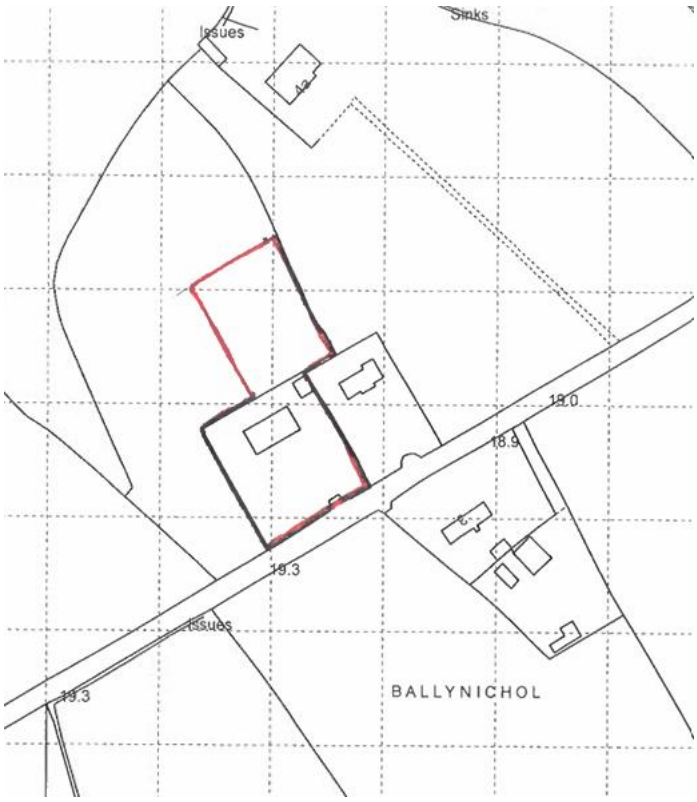
PAC Ref	2024/A0057
Council Ref	LA06/2022/1258/F
Appellant	Mr Peter Kelly
Subject of Appeal	Refusal of planning permission for Farm shed for the storage of fodder and machinery (retrospective)
Location	2B Ballyblack Road, Portaferry, BT22 1PY

The above application was refused by the Council on 16 May 2024 for the following reasons:

a) The proposal is contrary to the SPPS (para 6.73), Policy CTY 1 and Policy CTY 12 of PPS 21 – Sustainable Development in the Countryside in that there are no overriding reasons why the development is essential at this location.
b) The proposal is contrary to SPPS (para 6.73) and Policy CTY 12 of PPS 21 – Sustainable Development in the Countryside in that:

- It has not been demonstrated that the shed is necessary for the efficient use of the agricultural holding;
- It has not been demonstrated that there are no suitable existing buildings on the holding that can be used;
- The shed would not be sited beside existing farm buildings;
- It does not merit being considered as an exceptional case as it has not been demonstrated that there are no other sites available at another group of buildings on the holding, health and safety reasons exist to justify an alternative site away from existing farm buildings or that the alternative site away from the existing farm buildings is essential for the efficient functioning of the business.

c) The proposal is contrary to the SPPS and Policy CTY 12 of PPS 21 – Sustainable Development in the Countryside in that the development, if permitted, would result in a detrimental impact on the amenity of existing residential properties outside of the holding by reason of noise, smell and pollution.



Not Applicable

There was no dispute between the parties that the appeal site relates to an active and established agricultural holding and that No. 2B Ballyblack Road, was the Appellant's farm dwelling.
Policy CTY12 requires that the proposal is sited beside existing farm buildings (emphasis added). However, the Commissioner found that there was only one qualifying building, for the purposes of the Policy, at the appeal site, that being the dwelling at 2B Ballyblack Road, whereas the applicant was relying on his domestic garage to count towards the 'farm buildings', which the Commissioner did not accept.

At the accompanied site visit the Appellant sought to also reply on another building which did not have planning permission or a Certificate of Lawfulness.

The Appellant argued that the proposed farm shed is sited beside existing farm buildings which include the dwelling and an outbuilding at No. 2B Ballyblack Road. During the site visit the appellant pointed to an agricultural building found directly southwest of the proposed farm shed, within the southeastern corner of a separate field to that of the appeal site. The Council advised that this structure was not raised by the Appellant within his evidence as submitted to the appeal. The Council also advised that the structure is not lawful and does not benefit from a lawful development certificate (LDC). The Appellant informed that, following an inspection by the Council, an application for an LDC had been submitted recently but was yet to be decided.

The Commissioner did not accept that the building within the domestic curtilage formed an agricultural building, rather it was a domestic garage. Given that the unauthorised building could not count, alongside the fact that the Commissioner found that the other building was not agricultural, there were no buildings (plural) for the proposed building to be sited beside, as required by policy.

The appellant contended that the retention of the proposed farm shed was essential to allow for efficient use of the agricultural holding. The Commissioner was not provided with evidence of why the assortment of agricultural buildings within the holding could not be utilised, or why a new farm shed could not be accommodated on those lands.

Whilst recognising that the location of the farm shed was convenient to the Appellant's dwelling at No. 2B Ballyblack Road, and that the location of the proposed farm shed may result in a reduction of agricultural traffic movements between the two locations, the Commissioner was not persuaded that agricultural machinery, and fodder cannot be transported efficiently across this distance to and from the farmlands associated with the appeal site. As such, it was not considered that the location of the shed was essential for the function of the business.

The appeal was dismissed, and the report is attached to this report.

The above appeal decision is noteworthy in respect of comments raised by Members at March's Planning Committee meeting in respect of LA06/2024/0438/O for Erection of shed for the storage and maintenance of agricultural machinery, yard and re-location of access at Ballymaleddy Road, Comber, which was refused.

2. The following appeal was dismissed on 11 March 2025:

PAC Ref	2024/A0019
Council Ref	LA06/2019/0722/O
Appellant	Mr Michael Cleland
Subject of Appeal	Refusal of planning permission for erection of 2no. dwellings
Location	Between 31 and 39 Florida Road, Ballymacashen, Killinchy

The above planning application was refused by the Council on X for the following reasons:

a) The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and 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.

b) The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal does not constitute a small gap sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage, and would, if permitted, result in the creation of ribbon development along Florida Road.

c) The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwellings would, if permitted be a prominent feature in the landscape and would rely on additional landscaping to integrate into the surrounding landscape.

d) The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwellings would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and create a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.

The Commissioner upheld Council's refusal reasons a), b) and d).

It was established that there was a substantial and continuously built up frontage, thus fulfilling the first part of the policy exception. However, paragraph 5.34 of Policy CTY8 indicates that it is the gap between buildings that should be considered. Taking account of the average plot sizes, more than two plots of similar sizes could be accommodated within the 96 metre gap between buildings, and consequently, the

proposal would result in a more dispersed layout and settlement pattern than that exhibited within the local area. As such the appeal site does not represent an exception under Policy CTY8.

In rejecting refusal reason c), the Commissioner considered that if the appeal development were restricted to single storey and sited adjacent to the roadside, which could be secured by condition in the event of an approval, the landform rising to the rear of the site and beyond would provide sufficient backdrop to ensure that the appeal development would not appear as prominent in the local landscape.

The appeal was dismissed, and the report is attached to this report.

New Appeals Lodged

3. The following appeal was lodged on 11 March 2025.

PAC Ref	2024/E0049
Council Ref	LA06/2023/0607/CA
Appellant	Claire Kelly
Subject of Appeal	Alleged unauthorised pigeon loft
Location	12 Island View Gardens, Greyabbey

Performance over 2024/2025

As set out in the table below, at the date of this report, the Council has attained 100% success in appeals lodged against:

Not Applicable

- Refusal of Planning Permission
- Enforcement Notices
- Refusal of Certificate of Lawfulness of Proposed Use/Development

PAC Ref	Policy Engaged	Appeal Type	PAC Decision	Decsn Date
2022/E0044		Enforcement Notice	EN Upheld	10/04/2024
2022/A0161	CTY 10 - Dwelling on a Farm	Refusal of PP	Dismissed	12/04/2024
2023/A0056	CTY 8 - Ribbon Development & NH 6 - AONB	Refusal of PP	Dismissed	24/04/2024
2023/E0018		Enforcement Notice	EN Upheld	20/05/2024
2023/E0006		Enforcement Notice	EN Upheld	22/05/2024
2022/A0192	CTY 8 - Ribbon Development	Refusal of PP	Dismissed	25/06/2024
2023/L0012		CLOPUD Refusal	Dismissed	09/08/2024
2024/A0001	CTY 6 - Personal and Domestic Circumstances & CTY 8 - Ribbon Development	Refusal of PP	Dismissed	17/09/2024
2022/A0073	CTY 8 - Ribbon Development	Refusal of PP	Dismissed	15/10/2024
2023/L0007		CLOPUD Refusal	Dismissed	22/01/2025
2023/A0109	CTY 8 - Ribbon Development	Refusal of PP	Dismissed	11/02/2025
2024/A0057	CTY 12 - Agriculture & Forestry Development	Refusal of PP	Dismissed	27/02/2025
2024/A0019	CTY 8 - Ribbon Development	Refusal of PP	Dismissed	11/03/2025

Details of appeal decisions, new appeals and scheduled hearings can be viewed at www.pacni.gov.uk.

RECOMMENDATION

It is recommended that Council notes the report and attachments.

Planning Appeals Commission

Appeal Decision

Planning Appeals Commission
4th Floor
92 Ann Street
Belfast
BT1 3HH
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2024/A0057
Appeal by:	Mr Peter Kelly
Appeal against:	Refusal of full planning permission
Proposed Development:	Farm shed for the storage of fodder and machinery (retrospective)
Location:	2B Ballyblack Road, Portaferry, BT22 1PY
Planning Authority:	Ards and North Down Borough Council
Application Reference:	LA06/2022/1258/F
Procedure:	Written Representations with an accompanied site visit 26th November 2024
Decision by:	Commissioner Gareth McCallion, dated 27th February 2025

Decision

1. The appeal is dismissed.

Reasons

2. The main issue is whether the proposal would be acceptable in principle in the countryside.

3. Section 45(1) of the Planning Act (Northern Ireland) 2011 indicates that in dealing with an appeal, regard must be had 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 requires that regard must be had to the LDP unless material considerations indicate otherwise.

4. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area in which the appeal site is located. In it, the appeal site is within the countryside and the Strangford and Lecale Area of Outstanding Natural Beauty. The LDP directs that Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) will take precedence over the plan with regards to development in the countryside. Therefore, the rural policies of the LDP are outdated and no determining weight can be given to them.

5. 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 (PS) for their council area. No PS has been adopted for this Council area. During the transitional period, the SPPS retains certain existing Planning

Policy Statements including PPS21 and Planning Policy Statement 2 'Natural Heritage' PPS2. There is no conflict between the provisions of the SPPS and those of the retained policy documents, PPS21 and PPS2, regarding issues relevant to this appeal. In line with the transitional arrangements, as set out in the SPPS, retained policies found within the PPS's provide the relevant policy context for determining this appeal.

6. In PPS21, Policy CTY1 'Development in the Countryside' (CTY1) 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 Policy continues that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan. One type of development considered to be acceptable in the countryside is Agricultural and Forestry Development in accordance with Policy CTY 12. It follows that, if the development complies with Policy CTY12, it will satisfy Policy CTY1 of PPS21.

7. Policy CTY12 'Agricultural and Forestry Development' states that planning permission will be granted for development on an active and established agricultural or forestry holding where it is demonstrated that: (a) it is necessary for the efficient use of the agricultural holding; (b) in terms of character and scale it is appropriate to its location; (c) it visually integrates into the local landscape and additional landscaping is provided as necessary; (d) it will not have an adverse impact on the natural or built heritage; and (e) it will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.

8. Policy CTY12 also advises that, in cases where a new building is proposed, applicants will also need to provide sufficient information to confirm the following:
    - There are no suitable existing buildings on the holding or enterprise that can be used;
    - The design and materials used are sympathetic to the locality and adjacent buildings; and
    - The proposal is sited beside existing farm buildings.

9. The Policy continues that, exceptionally, consideration may be given to an alternative site away from existing farm or forestry buildings, provided there are no other sites available at another group of buildings on the holding, and where:
    - it is essential for the efficient functioning of the business; or
    - there are demonstrable health and safety reasons.

10. The Council contend that it has not been demonstrated that there are no suitable existing buildings on the holding for the storage of fodder and machinery and that the proposal has not been sited beside existing farm buildings. Furthermore, the Council say that no information regarding the exception for an alternative site away from the existing farm has been presented to demonstrate that the farm shed is essential for the efficient functioning of the business or for demonstrable health and safety reasons.

11. The appeal site, as outlined in red, comprises the existing dwelling at No. 2B Ballyblack Road and a portion of the agricultural lands behind it. The proposed farm shed has been constructed in the southeastern corner of the appeal site, to the rear of the neighbouring property at No. 2A Ballyblack Road. There is no dispute between the parties that the appeal site relates to an active and established agricultural holding and that No. 2B Ballyblack Road, is the Appellant's farm dwelling. At the time of the accompanied site visit (ASV), I observed that the proposed farm shed is agricultural in appearance, with concrete walls, enclosing it on three sides, a corrugated metal roof and its western facing elevation left largely open. At this time, it was being used to store fodder and agricultural machinery.

12. The Appellant argues that the proposed farm shed is sited beside existing farm buildings which include the dwelling and an outbuilding at No. 2B Ballyblack Road. Additionally, during the ASV, he also pointed to an agricultural building found directly southwest of the proposed farm shed, within the southeastern corner of a separate field to that of the appeal site. The Council advised that this structure was not raised by the Appellant within his evidence as submitted to the appeal. They also advised that the structure is not lawful and does not benefit from a lawful development certificate (LDC). The Appellant informed that, following an inspection by the Council, an application for an LDC had been submitted recently but was yet to be decided.

13. By comparison to the appeal building, this structure, which has been built on a wooden frame and with a roof and three sides enclosed with green painted corrugated metal, is much smaller in scale. The Appellant has advised that it is used for winter farming of livestock. Nevertheless, in the absence of a permitted LDC for this structure, I cannot take it into consideration as a qualifying building in the assessment of the appeal proposal. In any event, given the distance between it and the proposed new farm shed, they are not sited beside each other, nor is it positioned beside the existing farm dwelling at No. 2B Ballyblack Road. Consequently, this structure is not a qualifying building for the purposes of the policy.

14. Regarding the building, found within the curtilage of No. 2B, the Council cited an enforcement case LA06/2023/0388/CA which confirmed that the building was been used for domestic purposes and was not a farm building. Details of this enforcement case were not appended to the Council's evidence and an interpretation of its relevance to the appeal before me was not provided by the Council at the ASV. Therefore, its citation is of little assistance to the Council.

15. Although there is no disagreement between the parties that the dwelling at 2B Ballyblack Road qualifies as a farm building, I observed that the building found within its curtilage resembles a domestic garage in terms of size, scale and design, with external materials and finishings matching that of the host dwelling. Internally, while a tractor was parked within it, this vehicle was small, compact and had no cabin or canopy and, therefore, could comfortably fit within the building. Furthermore, I observed that the surrounding furnishings and items, including a tool station, child's bicycles and domestic sized garden equipment, were also held within the building. These items are conventionally found within a domestic garage and not an agricultural building. Thus, I conclude that this is a domestic garage, associated with the dwelling at 2B and is not a farm building for the

purposes of Policy CTY12. Policy CTY12 requires that the proposal is sited beside existing farm ***buildings*** (my emphasis). However, I find that there is only one qualifying building, for the purposes of the Policy, at the appeal site.

16. As confirmed at the ASV, the established agricultural holding, which is located beside the dwelling at No. 4 Ballyblack Road, is located approximately 700metres (m) as the crow flies from the appeal site. A range of farm buildings serve the established agricultural holding. As the Council has advised, and the Appellant has shown on a 'scheme table' plan submitted by him, the appeal site is located within an overall farm holding of approximately 83 hectares. The main farm holding and dwelling, where another family member, also involved in the farm business resides, is accessed via a separate private lane, taken from the Ballyblack Road. At the ASV, the Appellant advised that there is an ongoing dispute with this family member which is why the farm shed has been built away from the established group of buildings on the farm. Due to ongoing legal proceedings, he was unable to provide further information in relation to this dispute and why it has resulted in the development of the farm shed at the appeal site.

17. The Appellant contends that the retention of the proposed farm shed is essential to allow for efficient use of the agricultural holding. The farm shed allows him to park and store machinery securely at the end of the working day. It also stores fodder for feeding wintering cattle in the surrounding fields, without having to return to the main farm holding. The location of the farm shed also results in less agricultural vehicle movements along the public roads during the winter, with mud from the fields not being deposited on them.

18. As noted above, there are an assortment of agricultural buildings within the established agricultural holding. From my onsite observations, some of these buildings housed livestock. However, there were others with both fodder and agricultural machinery stored in them. I observed that these buildings had additional capacity to accommodate fodder, agricultural equipment and vehicles. As illustrated on the 'scheme table' plan, the farm holding includes lands which adjoin the established agricultural holding. Whilst the dispute between the family members involved in the farm business maybe sensitive, I have not been provided with cogent evidence demonstrating why, exceptionally, no sites are available at this existing group of buildings and a new farm shed could not be accommodated on these lands.

19. I recognise that the location of the farm shed is convenient to the Appellant's dwelling at No. 2B Ballyblack Road. However, less than a mile of road and laneway separates the appeal site and the established agricultural holding. I acknowledge that the location of the proposed farm shed may result in a reduction of agricultural traffic movements between the two locations. Even so, I am not persuaded that agricultural machinery, and fodder cannot be transported efficiently across this distance to and from the farmlands associated with the appeal site. Thus, I am not convinced that the location of the shed is essential for the function of the business. Regarding the spillover of mud from fields onto the road, there is a duty of care placed on all farm holdings to ensure that the local public highways are kept free from mud and debris associated with agricultural operations.

20. For the reasons provided above, I find that it has not been demonstrated that the proposed farm shed at its current location is essential for the efficient functioning of the business. As established above, the proposed shed has not been sited beside existing farm buildings. Furthermore, no cogent evidence has been presented by the Appellant to demonstrate why, exceptionally, consideration has been given to the alternative site away from the existing farm. Therefore, the Council's concerns in relation to those matters, as stated, are well founded. Consequently, its second reason for refusal is sustained.

21. Turning to criterion (e) of Policy CTY12, the Council's concerns regarding noise, smell and general nuisance arising, and impacts on the neighbouring dwelling at No. 2A Ballyblack Road, all relate to the shed being used to house livestock. However, the Appellant's evidence clarifies that the farm shed would be used only for the storage of fodder and machinery, as per the project description. At the ASV, the Council advised that restricting the use of the farm shed, so that livestock are not kept within it, would address their concerns in respect to criterion (e). There was no disagreement between the parties that, if planning permission were to be granted, a condition could be attached limiting the use of the shed to the storage of fodder and agricultural machinery only. Thus, the Council's third reason for refusal has not been sustained.

22. I acknowledge the Appellant's evidence refers to Policies CTY13 and CTY14 of PPS21 regarding the 'Integration and Design of Buildings in the Countryside' and 'Rural Character' respectively. I also recognise that the shed is visually integrated into the landscape and that its design would not be out of character in the rural area. Furthermore, the Appellant advises that, in relation to PPS2, no adverse impacts on natural heritage interests have been identified which would preclude the retention of the shed. Whilst I agree that the shed is not visually obtrusive and is of a design which is appropriate within the countryside, these details do not outweigh the objections sustained under Policy CTY12, as set out above.

23. As it has not been demonstrated why the farm building could not be sited to cluster with the established group of buildings on the farm and there is no persuasive evidence that it is essential for the efficient use of the agricultural holding and functioning of the business, the proposal is therefore contrary to CTY12 of PPS21. No overriding reasons or evidence has been presented as to why the development is essential in the countryside. Therefore, the proposal does not comply with CTY1 of PPS21 and the Council's first reason for refusal is sustained. Thus, as the Council's first and second reasons for refusal are sustained and are determining in this case, the appeal must fail.

The decision relates to the following plans:

- Site Location Plan, 1:1250, received by the Council on 7th December 2022;
- Site Layout Plan, 1:500, received by the Council on 7th December 2022;
- Floor Plan, 1:100, received by the Council on 7th December 2022;
- Elevations Sheet 1, 1:100, received by the Council on 7th December 2022; and
- Elevations Sheet 2, 1:100, received by the Council on 7th December 2022.

COMMISSIONER GARETH McCALLION

List of Appearances

Planning Authority: -	Ms N Kiezer, Ards and Down Borough Council Ms C Rodgers, Ards and Down Borough Council
Appellant: -	Mr G Tumelty, Tumelty Planning Mr P Kelly, Applicant

List of Documents

Planning Authority: -	Statement of Case, Ards and Down Borough Council Rebuttal Statement, Ards and Down Borough Council
Appellant: -	Statement of Case, Tumelty Planning Rebuttal Statement, Tumelty Planning

Planning Appeals Commission

Appeal Decision

Planning Appeals Commission
4th Floor
92 Ann Street
Belfast
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

Appeal Reference:	2024/A0019
Appeal by:	Mr Michael Cleland
Appeal against:	The refusal of outline permission.
Proposed Development:	Erection of 2 No. Dwellings.
Location:	Between 31 and 39 Florida Road, Ballymacashen, Killinchy, Co. Down.
Planning Authority:	Ards and North Down Borough Council.
Application Reference:	LA06/2019/0722/O
Procedure:	Written representations and Commissioner's site visit on 3rd March 2025.
Decision by:	Commissioner Jacqueline McParland, dated 11th March 2025.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposal would:
   - be acceptable in principle in the countryside;
   - integrate into the rural landscape; and
   - be detrimental to rural character.

3. Section 45(1) of the Planning Act (Northern Ireland) 2011 requires the Commission when 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) requires 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 LDP for the area wherein the appeal site is located. In the ADAP, the appeal site is in the countryside. The LDP directs that the final Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) will take precedence over the plan with regards to single houses in the countryside. Therefore, the rural policies of the LDP are outdated and no determining weight can be given to them. There are no other policies material in the ADAP.

5. Transitional arrangements are set out in the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). Those

arrangements are in operation until a Plan Strategy (PS) for each of the Council areas is adopted. As there is no adopted PS for this area, the SPPS retains certain Planning Policy Statements (PPSs) including PPS21. There is no conflict or change in policy direction between the provisions of the SPPS and PPS21 insofar as they relate to the issues that arise in this appeal. In accordance with the transitional arrangements, the retained policies provide the policy context for assessing the proposal. Supplementary planning guidance is contained in 'Building on Tradition – A Sustainable Design Guide for the Northern Ireland Countryside' (BoT).

6. Policy CTY1 of PPS21 is entitled 'Development in the Countryside'. It sets out 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 development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY8 'Ribbon Development' is one of those types of development. The appeal is made under this policy and underpins my consideration of the proposal as set out below.

7. Policy CTY8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Notwithstanding the presumption against ribbon development, the policy permits under the exception test, 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. The policy defines a substantial and built-up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear.

8. The appeal site is rectangular in shape and comprises of the front, roadside portion of a larger agricultural field. The roadside (southeastern) boundary is defined by a line of trees which are approximately 5 metres tall. A 1.5 - 2 metre grass verge is located between the trees and the public road. The appeal site's boundary to the agricultural shed directly adjacent to the southwest is demarcated by a 1 metre post and wire fence. The agricultural shed has an area of hardstanding located to its northeast and southeast with an access onto Florida Road. Whilst the Council stated that no planning permission or Certificate of Lawful Development had been granted for the agricultural shed, it accepted that it was lawful by the passage of time and was an established building with frontage to Florida Road. No. 39, a dwelling house located southwest of the agricultural shed and set within its own curtilage, fronts onto Florida Road.

9. A laneway is located to the northeast of the appeal site, which is bounded by a cropped hedgerow approximately 2 metres in height. The boundary to the northwest is undefined to the remainder of the agricultural field and the topography of the appeal site rises gradually from the roadside to the northwest. A single storey stone building is located to the northeast of the appeal site beyond the lane and fronts directly onto the public road. Directly adjacent and northeast of this stone building lies No. 31 Florida Road, a single storey dwelling located on the roadside. A dwelling and garage (No. 29) are located to the northwest of No. 31 and are situated behind a grassed area with its access taken from Florida Road. The Council have included the approved plans for No. 29 (LA06/2017/0289/F)

which show a flagged shaped site with only its access point adjoining Florida Road. Therefore, given the curtilage of that site as was granted planning permission and the presence of the grassed area to the roadside, No. 29 does not have a frontage onto Florida Road. Accordingly, as the appeal site is located between four buildings of No. 39, the agricultural shed, the stone building and No. 31, it comprises a gap site within a substantially and continuously built up frontage along Florida Road.

10. The second element of the infill exception is that there is a small gap site, sufficient only to accommodate up to a maximum of two houses. Paragraph 5.34 of Policy CTY8 indicates that it is the gap between buildings that should be considered. From the side elevation of the agricultural shed to the side elevation of the stone building is around 96 metres. The parties disagree in relation to the average plot width. However, even if the average plot width is around 35 metres and the largest plot frontage is no more than 40 metres as the appellant suggests, more than two plots of similar sizes could be accommodated within the 96 metre gap. Consequently, the proposal would result in a more dispersed layout and settlement pattern than that exhibited within the local area. As such the appeal site does not represent an exception under Policy CTY8.

11. The appellant's reference to BoT and other gap site frontages which were deemed acceptable within this Council district and other council districts do not assist their case given the policy requirement for the proposal to respect *the existing development pattern along the frontage* (my emphasis). It follows that what is acceptable on one frontage may not be acceptable on another and in any event each proposal must be assessed on its individual merits.

12. The Council did not put forward its consideration of how the proposal would create ribbon development. However, the appellant stated that ribbon development was the predominant settlement pattern that existed along Florida Road. PPS21 does not provide a comprehensive definition of ribbon development, however paragraph 5.33 of Policy CTY8 indicates that it does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development if they have a common frontage or they are visually linked. The appeal proposal would be visually linked with No. 39 Florida Road and the agricultural building when travelling northeast along Florida Road creating a ribbon of development. The proposal would also be visually linked with Nos. 29 and 31 Florida Road and the stone building adjacent to No. 31 when travelling in a southwest direction along Florida Road, which would also create a ribbon of development. For the reasons given above the proposal is contrary to CTY8 of PPS21. The Council's second reason for refusal is sustained.

13. Policy CTY14 of PPS21 states 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. I have already found that the proposal would create a ribbon of development, thus the appeal development does not meet criterion (d) of Policy CTY14. The proposal would also lead to a suburban style of built-up development as the resultant two dwellings would be read together with the buildings at Nos. 39, 31 and 29 Florida Road, the agricultural building and the stone building adjacent to No.31 when travelling in a southwest and northeast

direction as described above, contrary to criterion (b) of Policy CTY14. The Council's fourth reason for refusal is sustained.

14. CTY13 'Integration of buildings in the Countryside' states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It goes on to list seven criteria in which a new building will be unacceptable. The Council argue that the appeal development fails to meet two of those criteria, namely (a) and (c). Criterion (a) states that a new building will be unacceptable where is a prominent feature on the landscape. The topography of the site and beyond rises to the northwest. If the appeal development was restricted to be single storey and sited adjacent to the roadside, which could be secured by condition in the event of an approval, the landform rising to the rear of the site and beyond would provide sufficient backdrop to ensure that the appeal development would not appear as prominent in the local landscape.

15. Criterion (c) of Policy CTY13 states that a new building will be unacceptable where it relies primarily on the use of new landscaping for integration. Whilst the Council consider the concept plan submitted indicates new planting, this is an outline application, and the retention of vegetation can be conditioned if required in the event of an approval. The Department of Infrastructure (DfI) Roads have indicated that splays of 2.4 metres by 70 metres would be required to provide a safe access. The Council have not explicitly stated how much of the roadside boundary would have to be removed to achieve the required splays. The trees along the roadside boundary are sited around 1.5 - 2 metres back from the roadside. I agree with the appellant that as the roadside verge is wide, this would result in the removal of only around 10 metres of trees to accommodate the required splays. Accordingly, the majority of the roadside tree line could be retained by condition in the event of an approval. The existing hedgerow to the northwest is around 2 metres in height and would also provide sufficient existing integration to the appeal proposal. Consequently, given the rising topography of the site and beyond and the existing vegetation surrounding the site, I consider that the proposal would comply with criteria (a) and (c) of Policy CTY13 of PPS21. The Council has not sustained its third reason for refusal.

16. I have concluded that the proposal does not represent one of the types of development that are considered to be acceptable in principle in the countryside, and no overriding reasons were presented to demonstrate how the appeal development is essential and could not be located in a settlement. It is, therefore, also contrary to Policy CTY1 of PPS21. The Council's first reason for refusal is sustained.

17. For the reasons given above, the Council's first, second and fourth reasons for refusal have been sustained and are determining. The appeal must fail.

This decision is based on the following drawings:-

Drawing Number 01, Site Location Map, Scale 1:2500, date stamped 10th July 2019; and

Drawing Number 02, Proposed Site Layout, Scale 1:500, date stamped 10th July 2019.

COMMISSIONER JACQUELINE MCPARLAND

List of Documents

Planning Authority:-	"A1" Statement of Case "A2" Rebuttal
Appellant:-	"B1" Statement of Case (G.T. Design) "B2" Rebuttal (G.T. Design)

ITEM 6

Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	01 April 2024
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	14 March 2025
File Reference	N/A
Legislation	The Planning (Northern Ireland) Act 2011 The Planning (General Development Procedure) Order (Northern Ireland) 2015 as amended
Section 75 Compliant	Yes ☒ No ☐ Other ☐ If other, please add comment below:
Subject	Statutory Consultations Annual Performance Report- response from DFI
Attachments	Item 6a - Response from DFI Item 6b - Council correspondence to DFI Item 6c - Statutory consultations Annual Performance Report Item 6d - Paper presented at 01 October 2024 Planning Committee meeting (Item 6)

1. Members will recall the paper presented on 01 October meeting (attached Item 6d) informing members of the annual performance report prepared by the Department for Infrastructure (DfI) which sets out the performance of statutory consultees in the planning process.

Not Applicable

2. The report detailed of the volume of statutory consultation that has taken place during 2023/34 with comparative information for earlier years and was the first annual report to be produced for statutory consultation since introduction of both Planning Portals (that is for Mid Ulster, and that is for the remaining 11 planning authorities, which includes DFI). Members were made aware that the figures contained in the report should not be considered as official statistics and therefore should not be quoted as such.

3. Given that the statistics presented for Ards and North Down did not reflect the performance of Divisional Offices which are known to be experiencing resourcing issues members voted for correspondence to be issued to DFI.

4. By way of summary, the response from DFI explains that:

    - the Department is not yet in a position to provide the specific information requested but is keen to enhance the statistical information available and is continuing to work with statisticians in that regard.
    - a 'deep dive' of information is taking place and will be shared when Council officials meet with DFI representatives (DFI currently visiting Council offices to gain an insight and to discuss planning matters)
    - the performance and number of on-time consultee responses for major applications has been and remains an area of focus for the Planning Statutory Consultee Forum
    - DFI Roads colleagues have advised that the Southern Division (which includes Craigavon as well as the Downpatrick office) receives more consultation requests (local and major) than any other Divisional office.
    - performance has been affected by the level of vacancies.
    - the number and quality of applications and consultations received is impacting their response times.
    - legislation is now in place to enable the introduction of statutory local validation checklists, which should improve the quality of applications entering the development management system.
    - steps to improve performance include, overtime working, a bid to the Interim Public Sector Transformation Board which includes proposals to support and enhance the Department's statutory consultees.

5. Members should also be made aware that recently DfI Roads have taken a positive step and have reorganised their resources to provide a dedicated team to deal solely with Ards and North Down Council applications and meet with planning officials monthly to discuss applications.

RECOMMENDATION

It is recommended that Council notes the content of this report and attachments.

Regional Planning, Governance & Legislation Directorate

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

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Head of Planning (acting)
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Email: Fiona.mcgrady@infrastructure-ni.gov.uk

Your ref: COR 2024-228

Our ref: DFIPG 024/25

12 February 2025

Dear Gail

Statutory Consultations Annual Report 2023-24

Thank you for your letter dated 20 January 2025 in which you requested further details around the performance of DfI Roads in respect of major application consultation responses.

In terms of the data provided in the quarterly and annual consultation performance reports, the Department is keen to enhance these and is continuing to work with our statisticians in that regard. Unfortunately, for a number of reasons, we are not yet in a position to provide the specific information you have asked for at this time. That said, we have conducted a 'deep dive' analysis into the data around the consultation process within the planning system for all councils and will be in a position to present you with additional data for your council when we meet in the near future, which I hope will be of benefit to you and your Planning Committee.

In terms of major applications, you will no doubt be aware that the lower percentage consultee response rate reflects the greater complexity of the applications; and in many instances the quality of the applications being submitted into the system. Performance can also be impacted by the larger number of consultations that are normally required by such applications. For example, on average there are c.10 consultations per major application compared with 2 for local applications. Notwithstanding, the performance and number of on-time consultee responses for major applications has been and remains an area of focus for the Planning Statutory Consultee Forum on which your council is currently represented.

In relation to their statutory consultation performance, Roads colleagues have advised that the Southern Division (which includes Craigavon as well as the Downpatrick office) receives more consultation requests (local and major) than any other Divisional office; and whilst they acknowledge that performance has been affected by the level of vacancies, they also consider that the number and quality of applications and consultations received is impacting their response times. You will of course be aware that the legislation is now in place to enable the introduction of statutory local validation checklists, which should improve the quality of applications entering the development management system, and hopefully reduce the volume of consultations and reconsultations in the process.

DfI Roads has also advised that they have taken steps to improve performance, and this has included some overtime working. In addition, a bid has been made to the Interim Public Sector Transformation Board which includes proposals to support and enhance the Department's statutory consultees. We also understand that DfI Roads have reorganised their resources to provide a dedicated team to deal solely with Ards North Down Council applications and have recently agreed to meetings with Council staff to discuss consultation responses.

I hope this addresses some of your councils concerns and we will be keen to discuss these issues further with you at our forthcoming meeting.

Yours sincerely

Fiona McGrady

Fiona McGrady

cc DfI Roads

Our Ref: COR -2024-228
Your Ref:

Ards and North Down Borough Council

Planning Department
2 Church Street
Newtownards
BT 23 4AP

Via e-mail only -

Fiona.McGrady@infrastructure-ni.gov.uk

20 January 2025

Dear Fiona

Statutory Consultations Annual Performance Report 2023/24

With regard to the above annual performance report prepared by the Department for Infrastructure (DfI) which sets out the performance of statutory consultees in the planning process. I can advise that the report was presented to elected members of the Planning committee at a recent meeting.

It is noted that the report details of the volume of statutory consultation that has taken place during 2023/34 with comparative information for earlier years and that this is the first annual report to be produced for statutory consultation since introduction of both Planning Portals (that is for Mid Ulster, and that is for the remaining 11 planning authorities, which includes DFI).

While members of the Planning Committee welcomed access to the available figures, concern was expressed for statistics in relation to the Ards and North Down Borough with the statutory consultee response rate for major applications being only 37% within the statutory target, the lowest of any of the 11 Council areas, (Table 4e, page 11 of the report), with a figure of 72% for local applications (only DFI Planning had a lower response rate).

In particular, while Tables 4c and 4f do not break down DFI Roads into Divisional Offices, elected members are aware of resourcing issues within DFI Roads Southern Division, serving Ards and North Down and Newry Mourne and Down Council areas which is more borne out in Table 4e in respect of 'On Time' for AND at the aforementioned 37% for major applications.

Our Ref: COR -2024-228
Your Ref:

Ards and North Down Borough Council

Given the disappointing figures, elected members voted in favour of correspondence to be issued to DFI with a request for the following information to be provided:

- *A breakdown of the consultations issued on major applications in 23/24 for Ards and North Down (table 4e – 37% on time) and;*
- *A request for an explanation from the consultees on what can be done to improve the situation alongside a breakdown of performance of the DFI divisions.*

It would be appreciated if consideration could be given to the above request. In line with the ongoing review of the planning system, by providing a further level of detail with regard to consultee performance at a divisional level it will enable this Council to proactively work with statutory consultees in order to address current delays in the system.

Your sincerely

GE Kerr
Head of Planning (Acting)
(issued electronically without signature)

Ards and North Down Borough Council
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Stephen Reid
Chief Executive

2024

Department for Infrastructur
An Roinn Bonneagair
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Statutory Consultations Annual Performance Report

This is the fourth annual performance report highlighting the performance of statutory consultees in the planning process. This report provides details of the volume of statutory consultation that has taken place during 2023/24 with comparative information for earlier years. The figures contained in this report are extracted from the Planning Portals, are management information, and should not be treated or considered as official statistics.

*****THE INFORMATION IN THIS REPORT IS NOT CONSIDERED OFFICIAL STATISTICS AND SHOULD NOT BE QUOTED AS SUCH*****

Department for Infrastructure
Statutory Consultations Annual Performance Report 2023/24
August 2024

Contents

Planning Statutory Consultations 2023/24

Statutory consultations, for the purposes of this report, are *consultations marked as 'Statutory' for application types 'full', 'outline' and 'reserved matters' on the Planning Portals*

Statutory consultations raised

Number of statutory consultations raised

22,224 statutory consultations were raised in 2023/24. Of these:

20,776 (93%) were on local applications

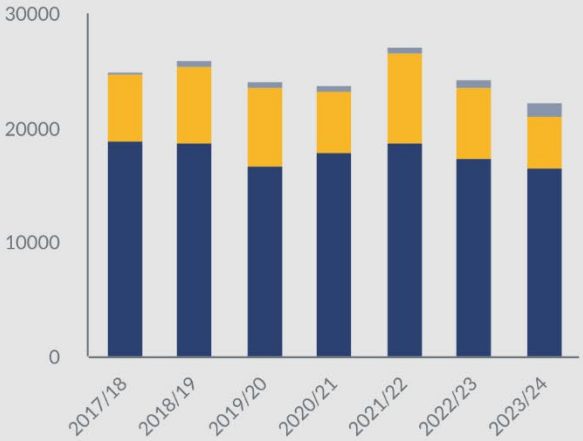
1,437 (6%) were on major applications

11 (<0.1%) were on regional applications

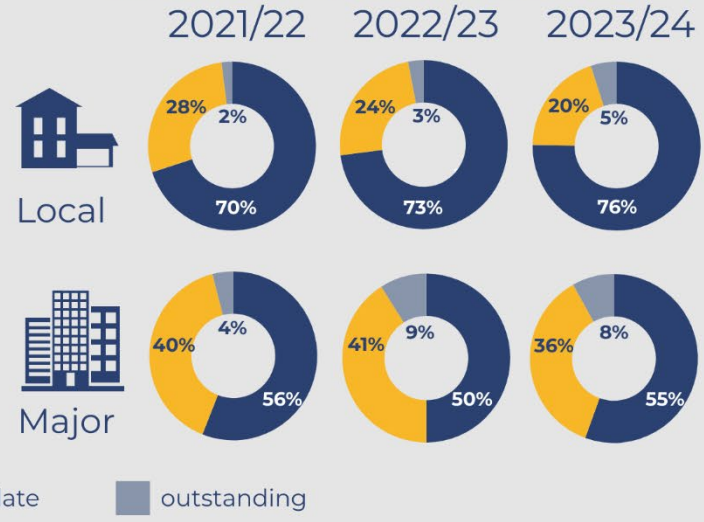
Statutory consultations response times

74% **of statutory consultations in 2023/24 were responded to on time** (i.e. within the 21-day response target or the extended target)

Number of responses to statutory consultations received by status

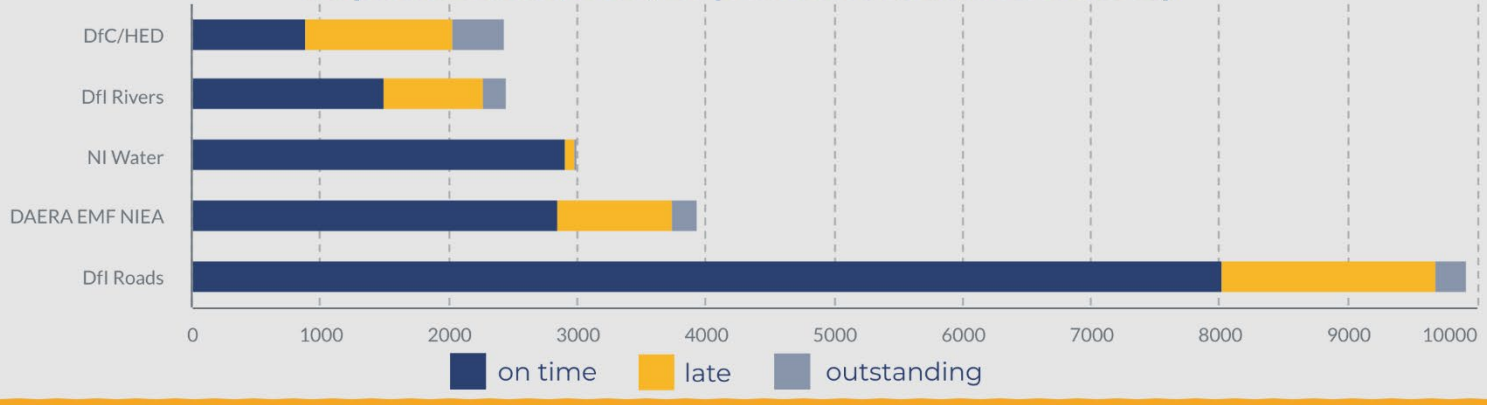


Responses to statutory consultations received by application type and status (%)



Statutory consultees

Number of responses to statutory consultations received by *statutory consultee and response status, 2023/24 (5 most common consultees)*



The information in this report is not considered official statistics and should not be quoted as such

Statutory Consultations Annual Performance Report – 2023/24

Introduction

This is the fourth annual performance report highlighting the performance of statutory consultees in the planning process. This report provides details of the volume of statutory consultation that has taken place during 2023/24 with comparative data from earlier years.

This is the first annual report to be produced for statutory consultation since the introduction of the two new Planning Portals. It is important therefore to note that finalised data for 2022/23 is presented in this report.

The Planning Portals were introduced in June (Mid Ulster) and December 2022 (all other planning authorities) and will have had some impact on the quality of the data for level of consultation and the management of consultation responses. This impact whilst considered to be minimal may cause some changes at lower levels of data disaggregation. This should be borne in mind when using data from 2022/23.

The figures contained in this report are extracted from the Planning Portals, are management information, and should not be treated as official statistics.

Statutory consultations

During 2023/24 (1 April 2023 to 31 March 2024) there were 39,975 consultations/advice queries raised with 73% (29,051) of these consultations sent to key statutory consultees[1]. Of the 29,051 consultations/advice queries raised with statutory consultees, 76% (22,224) were deemed to be statutory consultations[2], with the remainder largely made up of consultations on full applications (2,313), discharge of conditions (1,316), pre application discussions (1,135), listed building consents (625), advertising (571) and outline applications (443).

The number of statutory consultations raised by application type is reported in Table 1. The series is available from 2017/18.

Table 1 below shows the number of statutory consultations sent to key statutory consultees annually from 2017/18. In 2019/20 and 2020/21 the level of consultations was lower when compared with 2018/19. It is likely that some of the decrease recorded in late 2019/20 and continuing into early 2020/21 related to the reduction in the number of planning applications received over the same period, because of the coronavirus (COVID-19) pandemic.

Over the data series available, the level of statutory consultation was greatest in 2021/22 with 27,191 statutory consultations sent to key statutory consultees. Since this peak the level of statutory consultation has declined with the 22,224 consultations recorded in 2023/24. This marks the lowest number of consultations received annually over the last seven years. See Table 1 and Chart 1 for further information.

[1] See User Guidance for a list of key statutory consultees.
[2] A statutory consultation for the purpose of this report is a consultation marked as 'Statutory' for application types 'full', 'outline' and 'reserved matters' for the statutory consultees listed in the User Guidance section.

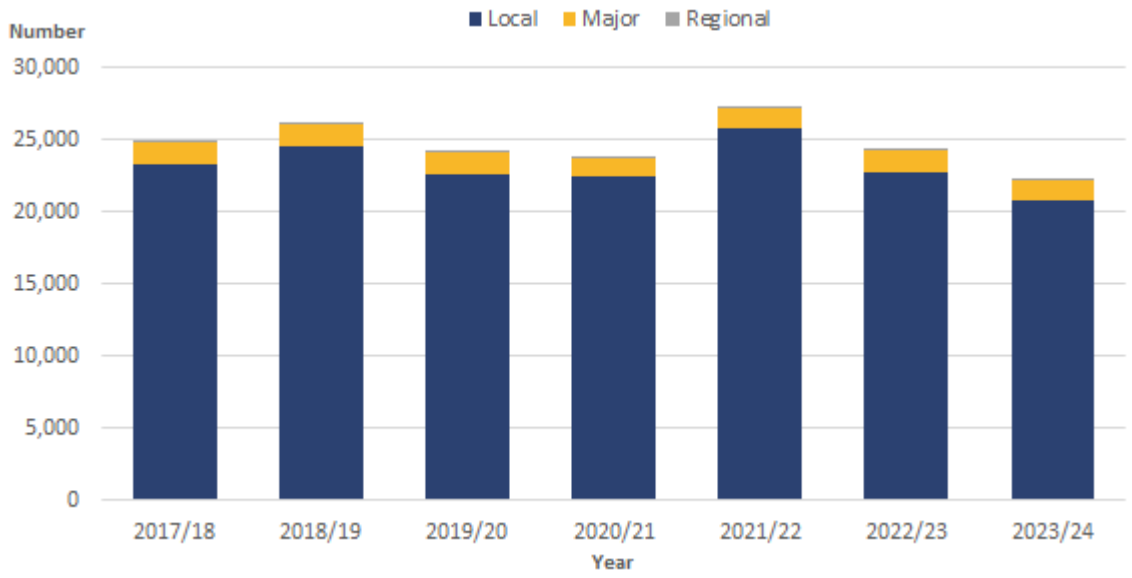
Table 1: ***Number of statutory consultations raised by planning application type***

Year	Local	Major	Regional	Total
2017/18	23,368	1,506	21	24,895
2018/19	24,570	1,477	2	26,049
2019/20	22,603	1,479	8	24,090
2020/21	22,402	1,308	11	23,721
2021/22	25,825	1,364	2	27,191
2022/23	22,776	1,487	26	24,289
2023/24	20,776	1,437	11	22,224

Note: A statutory consultation for the purpose of this report is a consultation marked as 'Statutory' for application types 'full', 'outline' and 'reserved matters' for the statutory consultees listed in the User Guidance section.

Ninety-three percent of statutory consultations raised in 2023/24 related to local planning applications. This was similar to the previous year.

Chart 1: ***Number of statutory consultations raised by planning application type***



Planning Applications Received

The number of planning applications received between 2017/18 and 2020/21 by the twelve planning authorities was relatively stable, with 99% of all planning applications received being local applications. In 2021/22 there was an increase with 13,600 applications received, the highest annual number since 2011/12. This was followed with a decline to 11,217 planning applications in 2022/23 and a further decline in 2023/24 to 10,025. The number of planning applications received in 2023/24 was the lowest since records began in 2002/03.

Table 2: ***Number of planning applications received by planning application type***

Year	Local	Major	Regional	Total
2017/18	12,770	161	2	12,933
2018/19	12,404	137	0	12,541
2019/20	12,058	149	0	12,207
2020/21	12,709	123	1	12,833
2021/22	13,454	145	1	13,600
2022/23	11,072	144	1	11,217
2023/24	9,870	154	1	10,025

Source: Dfl Northern Ireland Planning Statistics

The ratio of all planning applications received against all statutory consultations issued is 1 to 2. Focussing on major and regionally significant, the ratio is 1 to 10 based on the last five years of data. See Table 3 below for more detail.

Table 3: ***Ratio of planning applications received against statutory consultations raised[3] within each financial year by planning application type***

Year	Local	Major/Regionally Significant	Combined Overall Ratio
2017/18	2	9	2
2018/19	2	11	2
2019/20	2	10	2
2020/21	2	11	2
2021/22	2	9	2
2022/23	2	10	2
2023/24	2	10	2

[3] Some consultations within each financial year will relate to planning applications that have been received in an earlier financial year. Although the counts of planning applications received, and statutory consultations raised within a given period are not directly related it provides an indicative picture of the level of statutory consultation taking place on planning applications.

Statutory consultations response times

During 2023/24 the proportion of statutory consultations responded to on-time[4] was 74%, this rate increased from the 72% recorded on-time in 2022/23. Over the series reported, response rates on-time were highest in 2017/18 with 76% reporting on-time and lowest in 2021/22 (69%). It is noteworthy that a much higher level of statutory consultation was carried out in 2021/22 (27,191) when compared to other years in the series and the overall response rate was 69%. Chart 2 below shows the number of responses to statutory consultations by response status.

Chart 2: *Number of responses to statutory consultations received by response status*

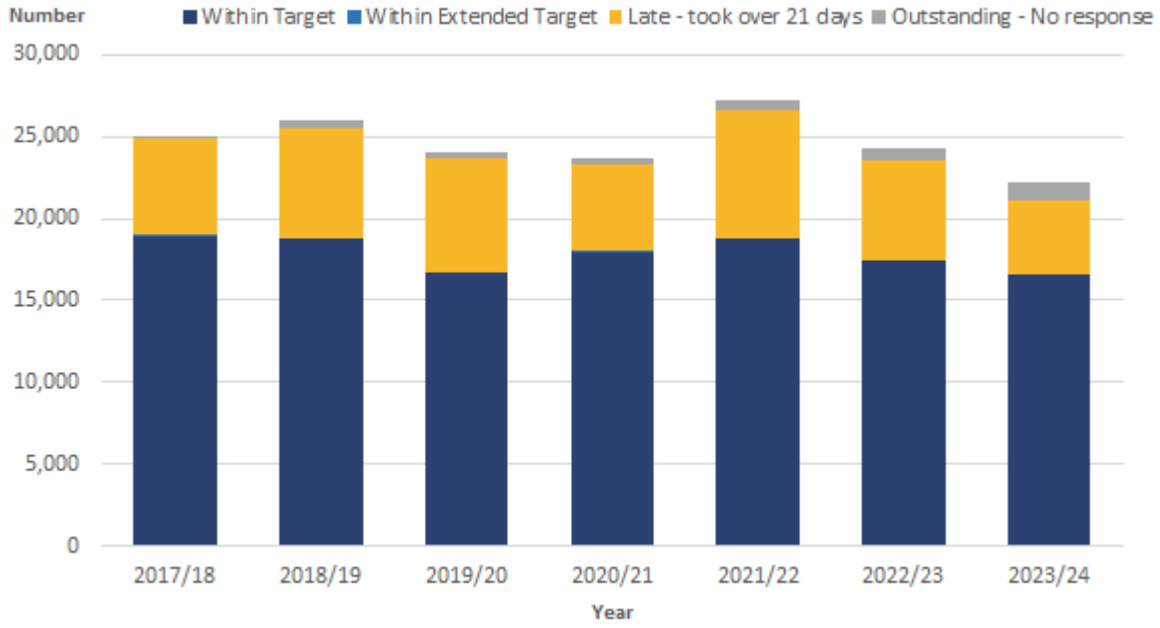
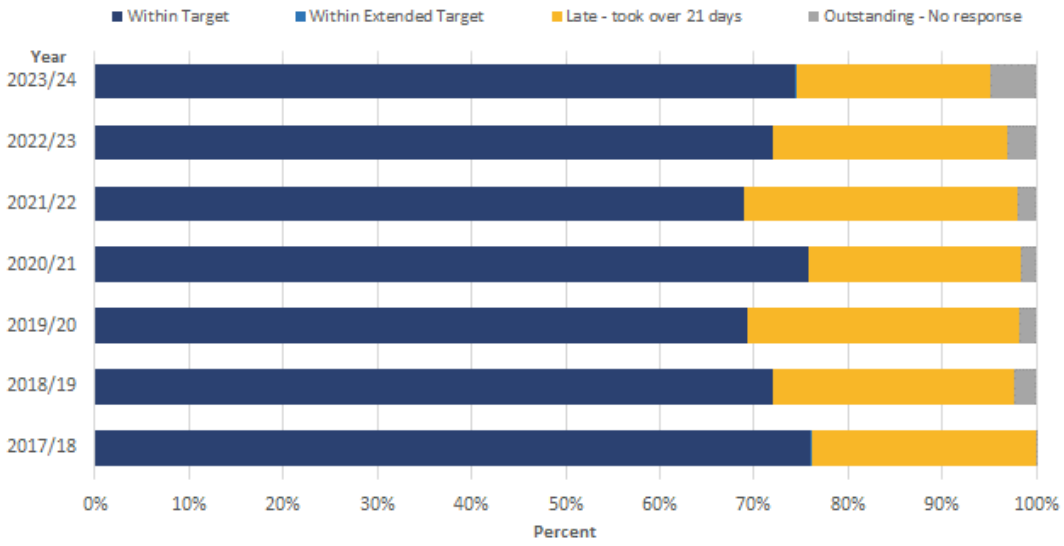


Chart 3: *Responses to statutory consultations received by response status (proportions)*



[4] Includes those responded to within the 21-day target and the extended target, where applicable.

The response rate for statutory consultations responded to on-time[5] varies from year to year. In broad terms the annual response rate on-time over the last seven years ranged between 69-76% for all statutory consultations. For consultations related to local planning applications the response rate on-time ranged between 70-77%, and for consultations related to major planning applications ranging between 50-65%.

In 2023/24 74% of responses to statutory consultations were on-time, with locals reported at 76%, majors at 55% and regionally significant at 27%. See Charts 4a, 4b and 4c for detail of annual performance.

Chart 4a: ***Responses to statutory consultations received for local planning applications by response status (proportions)***

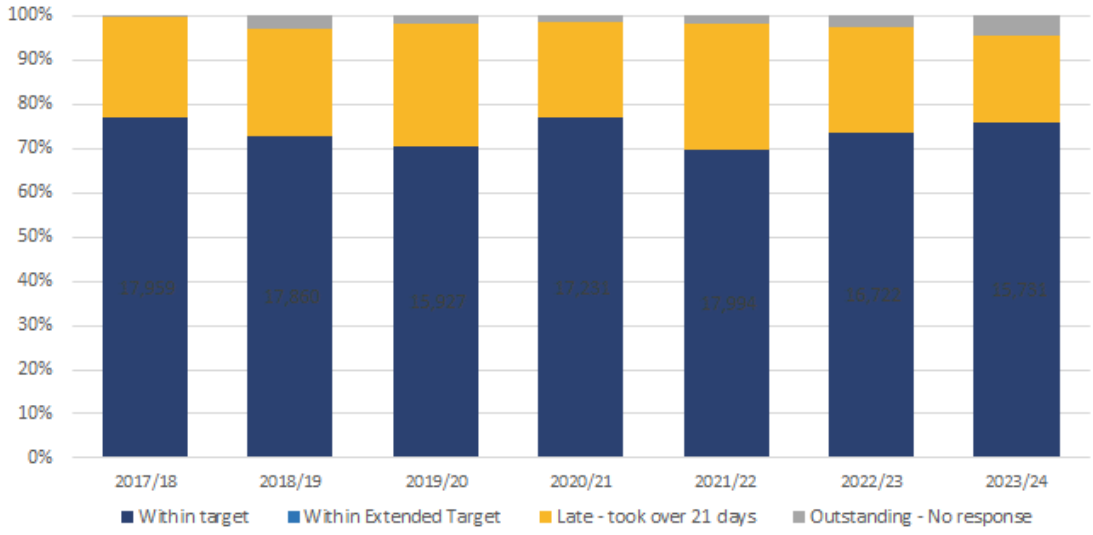
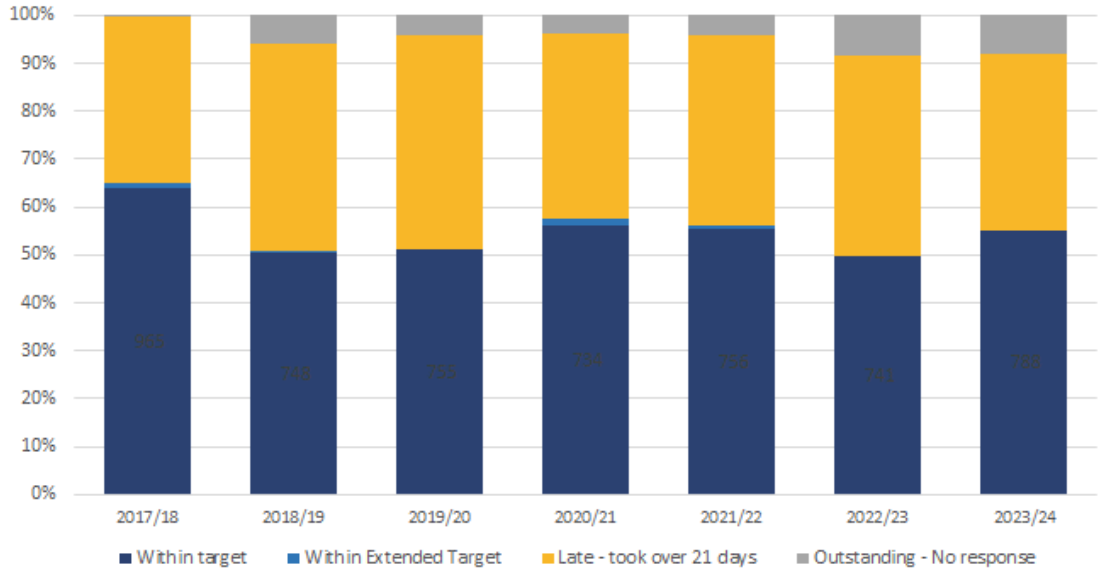
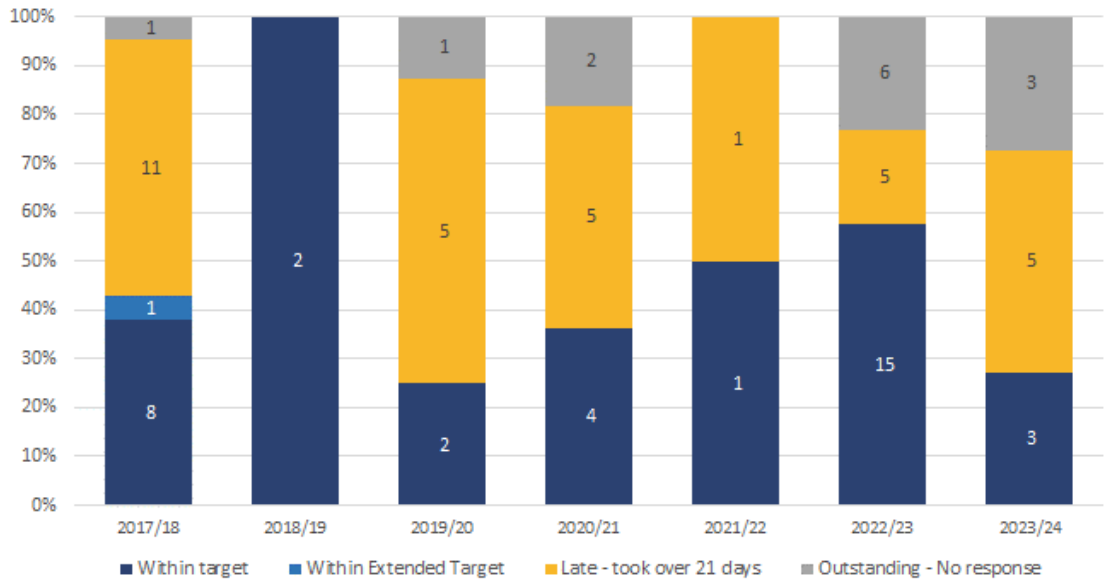


Chart 4b: ***Responses to statutory consultations received for major planning applications by response status (proportions)***



[5] Includes those responded to within the 21-day target and the extended target, where applicable.

Chart 4c: ***Responses to statutory consultations received for regionally significant planning applications by response status (proportions)***



Note: due to the small numbers of responses to statutory consultations on regionally significant ('regional') applications, associated proportions reported in the above chart should be treated with caution; the numbers of such responses have been included as data labels.

Tables 4 (a-c) below provides an annual breakdown for 2023/24 by statutory consultee and planning application type. For each statutory consultee the tables 4(a-c) report the number of statutory consultations received by statutory consultees for regionally significant, major and local planning applications respectively and the percentage responded to on-time alongside response status counts.

Table 4a: ***Statutory consultation on regionally significant planning applications 2023/24***

Statutory Consultee	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
DfI Roads	0	0	1	0	1	0%
DAERA EMF NIEA	1	0	1	2	4	25%
DfI Rivers	0	0	1	1	2	0%
DfC/HED	0	0	1	0	1	0%
HSENI	1	0	0	0	1	100%
Belfast International Airport	0	0	1	0	1	0%
Belfast City Airport	1	0	0	0	1	100%
Regionally Significant Total	**3**	**0**	**5**	**3**	**11**	**27%**

Table 4b: ***Statutory consultation on major planning applications 2023/24***

Statutory Consultee	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
DfI Roads	302	1	135	33	471	64%
DAERA EMF NIEA	106	0	182	30	318	33%
DfI Rivers	151	8	96	24	279	57%
NI Water	146	0	8	1	155	94%
DfC/HED	40	0	89	25	154	26%
HSENI	4	0	6	3	13	31%
DfE/GSNI	12	0	3	1	16	75%
Belfast International Airport	16	0	3	0	19	84%
Belfast City Airport	2	0	0	0	2	100%
NIHE	9	0	1	0	10	90%
Major Total	**788**	**9**	**523**	**117**	**1,437**	**55%**

Table 4c: ***Statutory consultation on local planning applications 2023/24***

Statutory Consultee	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
DfI Roads	7,714	5	1,531	211	9,461	82%
DAERA EMF NIEA	2,745	1	706	171	3,623	76%
DfI Rivers	1,324	11	679	158	2,172	61%
NI Water	2,772	0	58	22	2,852	97%
DfC/HED	850	0	1,061	372	2,283	37%
HSENI	47	0	11	9	67	70%
DfE/GSNI	41	0	12	1	54	76%
Belfast International Airport	124	0	16	1	141	88%
Belfast City Airport	50	0	0	1	51	98%
City of Derry Airport	28	0	0	0	28	100%
NIHE	36	0	8	0	44	82%
Local Total	**15,731**	**17**	**4,082**	**946**	**20,776**	**76%**

Tables 4 (d-f) below provides an annual breakdown for 2023/24 on consultations issued (by application type) from each planning authority to the statutory consultee and reports both the consultation percentage returned on-time to the planning authority and response status counts.

Table 4d: ***Planning Authority statutory consultations issued on regionally significant planning applications 2023/24***

Planning Authority	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
LA03 - Antrim and Newtownabbey	1	0	1	0	2	50%
LA12 - DFI Strategic Planning Division	2	0	4	3	9	22%
Total	**3**	**0**	**5**	**3**	**11**	**27%**

Table 4e: ***Planning Authority statutory consultations issued on major planning applications 2023/24***

Planning Authority	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
LA01 - Causeway Coast and Glens	79	1	29	7	116	69%
LA02 - Mid and East Antrim	62	2	34	2	100	64%
LA03 - Antrim and Newtownabbey	99	0	52	3	154	64%
LA04 - Belfast	111	2	68	24	205	55%
LA05 - Lisburn and Castlereagh	49	0	38	16	103	48%
LA06 - Ards and North Down	43	2	60	16	121	37%
LA07 - Newry, Mourne and Down	55	1	57	9	122	46%
LA08 - Armagh, Banbridge and Craigavon	50	0	34	13	97	52%
LA09 - Mid Ulster	66	0	54	17	137	48%
LA10 - Fermanagh and Omagh	57	0	35	9	101	56%
LA11 - Derry and Strabane	116	1	59	1	177	66%
LA12 - DFI Strategic Planning Division	1	0	3	0	4	25%
Total	**788**	**9**	**523**	**117**	**1,437**	**55%**

Table 4f: ***Planning Authority statutory consultations issued on local planning applications 2023/24***

Planning Authority	Within Target	Within Extended Target	Late - took over 21 days	Outstanding - No response	Total	% on-time
LA01 - Causeway Coast and Glens	2,725	2	360	123	3,210	85%
LA02 - Mid and East Antrim	849	0	114	34	997	85%
LA03 - Antrim and Newtownabbey	1,072	1	240	41	1,354	79%
LA04 - Belfast	758	1	226	66	1,051	72%
LA05 - Lisburn and Castlereagh	1,352	1	377	138	1,868	72%
LA06 - Ards and North Down	979	0	316	70	1,365	72%
LA07 - Newry, Mourne and Down	2,326	10	673	188	3,197	73%
LA08 - Armagh, Banbridge and Craigavon	2,073	0	600	112	2,785	74%
LA09 - Mid Ulster	1,227	0	597	89	1,913	64%
LA10 - Fermanagh and Omagh	873	1	279	45	1,198	73%
LA11 - Derry and Strabane	1,496	1	300	40	1,837	81%
LA12 - DFI Strategic Planning Division	1	0	0	0	1	100%
Total	**15,731**	**17**	**4,082**	**946**	**20,776**	**76%**

2023/24 in more detail – statutory consultee analysis

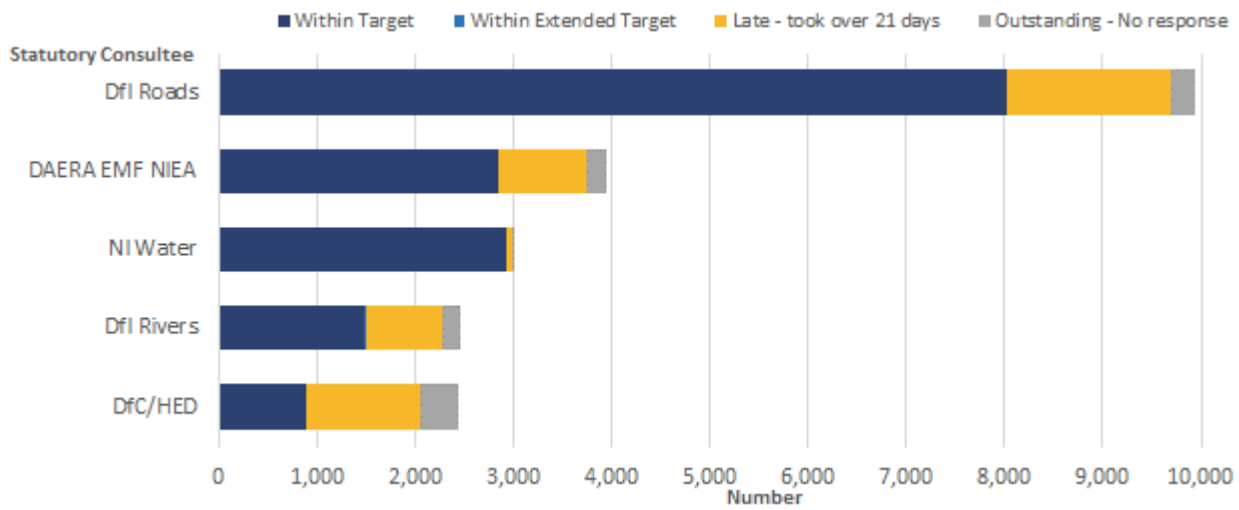
Statutory consultations received by statutory consultees for the last seven years are presented in Table 1[6]. During 2023/24 there were 24,224 statutory consultations received by statutory consultees, the lowest annual level recorded since records began in 2017/18. This reduction is most likely driven by the reduction in planning applications received over the same period.

Of the 22,224 statutory consultations received in 2023/24, DfI Roads received 45%, DAERA EMF NIEA 18%, NI Water 14%, DfI Rivers 11% and DfC / HED 11%. Together these five consultees accounted for 98% of the statutory consultations raised during the year (See Chart 6).[7] This is like previous years.

[6] Note: the number of statutory consultations raised by planning authorities in a given period will equal the number of statutory consultations received by statutory consultees in the same period. In effect, these terms are interchangeable.

[7] See User Guidance for a full list of key statutory consultees.

Chart 6: ***Number of responses to statutory consultations received by statutory consultee and response status, 2023/24*** ***(5 most common consultees)***



During the year across all statutory consultees the proportion of responses received on-time[8] ranged from 37% – 100%. In all, 74% of statutory consultations were responded on-time during 2023/24.

Table 5 below reports the percentage of statutory consultations received that were responded to on-time by statutory consultees over the last seven years.

Table 5: ***Proportion of responses on-time[9] 2017/18 to 2023/24***

Statutory Consultee	2017/18 % on-time	2018/19 % on-time	2019/20 % on-time	2020/21 % on-time	2021/22 % on-time	2022/23 % on-time	2023/24 % on-time
DfI Roads	70%	76%	72%	77%	69%	78%	81%
DAERA EMF NIEA	87%	72%	70%	68%	63%	59%	72%
NI Water	87%	79%	85%	88%	97%	92%	97%
DfC /HED	78%	74%	72%	76%	65%	54%	37%
DfI Rivers	65%	30%	30%	64%	40%	56%	61%
HSENI	68%	69%	60%	70%	86%	69%	64%
DfE / GSNI	73%	79%	81%	88%	94%	78%	76%
NIHE	93%	63%	59%	84%	79%	68%	83%
Belfast International Airport	83%	60%	77%	79%	99%	88%	87%
Belfast City Airport	96%	100%	99%	100%	100%	98%	98%
City of Derry Airport	86%	73%	93%	94%	100%	100%	100%
Overall Total	**76%**	**71%**	**69%**	**76%**	**69%**	**72%**	**74%**

Over the last year statutory consultees have recorded mixed performance with some improvement over the year. A fuller breakdown of individual statutory consultee responses and proportion returned on-time over the past seven years (2017/18 – 2023/24) is presented in Table 6 below.

[8] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 6: ***Number of responses to statutory consultations received by statutory consultee, 2017/18–2023/24***

Statutory Consultee	Year	On-time[9]	Total	% on-time
DfI Roads	2017/18	8,248	11,724	70%
	2018/19	9,067	11,880	76%
	2019/20	7,952	11,063	72%
	2020/21	8,442	10,907	77%
	2021/22	8,144	11,862	69%
	2022/23	8,303	10,628	78%
	2023/24	8,022	9,933	81%
DAERA EMF NIEA	2017/18	3,935	4,504	87%
	2018/19	3,541	4,911	72%
	2019/20	2,984	4,279	70%
	2020/21	2,563	3,795	68%
	2021/22	2,810	4,440	63%
	2022/23	2,501	4,267	59%
	2023/24	2,853	3,945	72%
NI Water	2017/18	3,021	3,487	87%
	2018/19	2,648	3,340	79%
	2019/20	2,651	3,118	85%
	2020/21	2,967	3,388	88%
	2021/22	3,940	4,062	97%
	2022/23	3,398	3,679	92%
	2023/24	2,918	3,007	97%
DfC /HED	2017/18	2,226	2,866	78%
	2018/19	2,426	3,269	74%
	2019/20	2,089	2,912	72%
	2020/21	2,223	2,925	76%
	2021/22	2,274	3,500	65%
	2022/23	1,487	2,761	54%
	2023/24	890	2,438	37%
DfI Rivers	2017/18	1,295	1,981	65%
	2018/19	681	2,291	30%
	2019/20	696	2,300	30%
	2020/21	1,460	2,293	64%
	2021/22	1,137	2,838	40%
	2022/23	1,396	2,476	56%
	2023/24	1,494	2,453	61%
HSENI	2017/18	72	106	68%
	2018/19	61	89	69%
	2019/20	55	92	60%
	2020/21	78	111	70%
	2021/22	108	125	86%
	2022/23	72	104	69%
	2023/24	52	81	64%

[9] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 6 continued:

Statutory Consultee	Year	On-time[10]	Total	% on-time
DfE / GSNI	2017/18	68	93	73%
	2018/19	81	103	79%
	2019/20	87	107	81%
	2020/21	71	81	88%
	2021/22	85	90	94%
	2022/23	71	91	78%
	2023/24	53	70	76%
NIHE	2017/18	13	14	93%
	2018/19	20	32	63%
	2019/20	16	27	59%
	2020/21	26	31	84%
	2021/22	33	42	79%
	2022/23	15	22	68%
	2023/24	45	54	83%
Belfast International Airport	2017/18	74	89	83%
	2018/19	55	92	60%
	2019/20	82	107	77%
	2020/21	81	102	79%
	2021/22	138	140	99%
	2022/23	122	138	88%
	2023/24	140	161	87%
Belfast City Airport	2017/18	23	24	96%
	2018/19	31	31	100%
	2019/20	69	70	99%
	2020/21	72	72	100%
	2021/22	82	82	100%
	2022/23	103	105	98%
	2023/24	53	54	98%
City of Derry Airport	2017/18	6	7	86%
	2018/19	8	11	73%
	2019/20	14	15	93%
	2020/21	15	16	94%
	2021/22	10	10	100%
	2022/23	18	18	100%
	2023/24	28	28	100%
Overall Totals	**2017/18**	**18,981**	**24,895**	**76%**
	2018/19	**18,619**	**26,049**	**71%**
	2019/20	**16,695**	**24,090**	**69%**
	2020/21	**17,998**	**23,721**	**76%**
	2021/22	**18,761**	**27,191**	**69%**
	2022/23	**17,486**	**24,289**	**72%**
	2023/24	**16,548**	**22,224**	**74%**

[10] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 7: ***Number of responses to statutory consultations received by statutory consultees, 2023-24 Q1-Q4***

Statutory Consultee	Quarter 2023/24	On-time[11]	Total	% on-time
DfI Roads	Apr-Jun	2,217	2,779	80%
	Jul-Sep	1,944	2,328	84%
	Oct-Dec	1,753	2,238	78%
	Jan-Mar	2,108	2,588	81%
	2023/24	8,022	9,933	81%
DAERA EMF NIEA	Apr-Jun	723	1,029	70%
	Jul-Sep	695	897	77%
	Oct-Dec	696	927	75%
	Jan-Mar	739	1,092	68%
	2023/24	2,853	3,945	72%
DfI Rivers	Apr-Jun	483	747	65%
	Jul-Sep	355	529	67%
	Oct-Dec	293	519	56%
	Jan-Mar	363	658	55%
	2023/24	1,494	2,453	61%
NI Water	Apr-Jun	807	834	97%
	Jul-Sep	597	637	94%
	Oct-Dec	610	614	99%
	Jan-Mar	904	922	98%
	2023/24	2,918	3,007	97%
DfC / HED	Apr-Jun	230	693	33%
	Jul-Sep	158	537	29%
	Oct-Dec	259	533	49%
	Jan-Mar	243	675	36%
	2023/24	890	2,438	37%
HSENI	Apr-Jun	19	28	68%
	Jul-Sep	12	17	71%
	Oct-Dec	4	9	44%
	Jan-Mar	17	27	63%
	2023/24	52	81	64%
DfE / GSNI	Apr-Jun	16	21	76%
	Jul-Sep	13	15	87%
	Oct-Dec	8	13	62%
	Jan-Mar	16	21	76%
	2023/24	53	70	76%
Belfast International Airport	Apr-Jun	47	55	85%
	Jul-Sep	29	38	76%
	Oct-Dec	38	40	95%
	Jan-Mar	26	28	93%
	2023/24	140	161	87%
Belfast City Airport	Apr-Jun	22	23	96%
	Jul-Sep	15	15	100%
	Oct-Dec	5	5	100%
	Jan-Mar	11	11	100%
	2023/24	53	54	98%
City of Derry Airport	Apr-Jun	9	9	100%
	Jul-Sep	2	2	100%
	Oct-Dec	6	6	100%
	Jan-Mar	11	11	100%
	2023/24	28	28	100%
NIHE	Apr-Jun	6	7	86%
	Jul-Sep	7	9	78%
	Oct-Dec	17	21	81%
	Jan-Mar	15	17	88%
	2023/24	45	54	83%
Overall Totals	**Apr-Jun**	**4,579**	**6,225**	**74%**
	Jul-Sep	**3,827**	**5,024**	**76%**
	Oct-Dec	**3,689**	**4,925**	**75%**
	Jan-Mar	**4,453**	**6,050**	**74%**
	2023/24	**16,548**	**22,224**	**74%**

[11] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 8: ***Number of responses to statutory consultations received by statutory consultees, 2022-23 Q1-Q4***

Statutory Consultee	Quarter 2022/23	On-time[12]	Total	% on-time
DfI Roads	Apr-Jun	2,322	2,925	79%
	Jul-Sep	2,161	2,634	82%
	Oct-Dec	1,621	2,179	74%
	Jan-Mar	2,199	2,890	76%
	2022/23	8,303	10,628	78%
DAERA EMF NIEA	Apr-Jun	531	998	53%
	Jul-Sep	561	1,049	53%
	Oct-Dec	592	969	61%
	Jan-Mar	817	1,251	65%
	2022/23	2,501	4,267	59%
DfI Rivers	Apr-Jun	432	640	68%
	Jul-Sep	264	570	46%
	Oct-Dec	228	515	44%
	Jan-Mar	472	751	63%
	2022/23	1,396	2,476	56%
NI Water	Apr-Jun	1,012	1,075	94%
	Jul-Sep	905	962	94%
	Oct-Dec	703	773	91%
	Jan-Mar	778	869	90%
	2022/23	3,398	3,679	92%
DfC/HED	Apr-Jun	574	805	71%
	Jul-Sep	479	727	66%
	Oct-Dec	256	542	47%
	Jan-Mar	178	687	26%
	2022/23	1,487	2,761	54%
HSENI	Apr-Jun	28	40	70%
	Jul-Sep	20	25	80%
	Oct-Dec	10	20	50%
	Jan-Mar	14	19	74%
	2022/23	72	104	69%
DfE / GSNI	Apr-Jun	17	19	89%
	Jul-Sep	29	36	81%
	Oct-Dec	13	17	76%
	Jan-Mar	12	19	63%
	2022/23	71	91	78%
Belfast International Airport	Apr-Jun	24	28	86%
	Jul-Sep	40	40	100%
	Oct-Dec	27	29	93%
	Jan-Mar	31	41	76%
	2022/23	122	138	88%
Belfast City Airport	Apr-Jun	18	18	100%
	Jul-Sep	45	45	100%
	Oct-Dec	19	20	95%
	Jan-Mar	21	22	95%
	2022/23	103	105	98%
City of Derry Airport	Apr-Jun	4	4	100%
	Jul-Sep	6	6	100%
	Oct-Dec	3	3	100%
	Jan-Mar	5	5	100%
	2022/23	18	18	100%
NIHE	Apr-Jun	4	7	57%
	Jul-Sep	2	5	40%
	Oct-Dec	3	3	100%
	Jan-Mar	6	7	86%
	2022/23	15	22	68%
Overall Totals	**Apr-Jun**	**4,966**	**6,559**	**76%**
	Jul-Sep	**4,512**	**6,099**	**74%**
	Oct-Dec	**3,475**	**5,070**	**69%**
	Jan-Mar	**4,533**	**6,561**	**69%**
	2022/23	**17,486**	**24,289**	**72%**

[12] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 9 below gives a quarterly breakdown by statutory consultee for 2021/22.

Table 9: ***Number of responses to statutory consultations received by statutory consultee, 2021/22 Q1-Q4***

Statutory Consultee	Year	On-time[13]	Total	% on-time
DfI Roads	Apr-Jun	2,282	3,265	70%
	Jul-Sep	1,931	3,086	63%
	Oct-Dec	1,846	2,803	66%
	Jan-Mar	2,085	2,708	77%
	2021/22	8,144	11,862	69%
DAERA EMF NIEA	Apr-Jun	910	1,203	76%
	Jul-Sep	743	1,115	67%
	Oct-Dec	631	1,065	59%
	Jan-Mar	526	1,057	50%
	2021/22	2,810	4,440	63%
NI Water	Apr-Jun	1,045	1,065	98%
	Jul-Sep	1,099	1,134	97%
	Oct-Dec	939	965	97%
	Jan-Mar	857	898	95%
	2021/22	3,940	4,062	97%
DfC /HED	Apr-Jun	708	979	72%
	Jul-Sep	480	959	50%
	Oct-Dec	536	794	68%
	Jan-Mar	550	768	72%
	2021/22	2,274	3,500	65%
DfI Rivers	Apr-Jun	224	775	29%
	Jul-Sep	217	753	29%
	Oct-Dec	237	650	36%
	Jan-Mar	459	660	70%
	2021/22	1,137	2,838	40%
HSENI	Apr-Jun	40	46	87%
	Jul-Sep	24	29	83%
	Oct-Dec	24	27	89%
	Jan-Mar	20	23	87%
	2021/22	108	125	86%
DfE / GSNI	Apr-Jun	27	29	93%
	Jul-Sep	27	27	100%
	Oct-Dec	17	19	89%
	Jan-Mar	14	15	93%
	2021/22	85	90	94%
NIHE	Apr-Jun	6	6	100%
	Jul-Sep	5	9	56%
	Oct-Dec	14	16	88%
	Jan-Mar	8	11	73%
	2021/22	33	42	79%
Belfast International Airport	Apr-Jun	48	48	100%
	Jul-Sep	40	42	95%
	Oct-Dec	28	28	100%
	Jan-Mar	22	22	100%
	2021/22	138	140	99%
Belfast City Airport	Apr-Jun	22	22	100%
	Jul-Sep	29	29	100%
	Oct-Dec	14	14	100%
	Jan-Mar	17	17	100%
	2021/22	82	82	100%
City of Derry Airport	Apr-Jun	2	2	100%
	Jul-Sep	0	0	-
	Oct-Dec	2	2	100%
	Jan-Mar	6	6	100%
	2021/22	10	10	100%
Overall Totals	**Apr-Jun**	**5,314**	**7,440**	**71%**
	Jul-Sep	**4,595**	**7,183**	**64%**
	Oct-Dec	**4,288**	**6,383**	**67%**
	Jan-Mar	**4,564**	**6,185**	**74%**
	2021/22	**18,761**	**27,191**	**69%**

[13] Includes those responded to within the 21-day target and the extended target, where applicable.

Table 10 below gives a quarterly breakdown by statutory consultee for 2020/21.

Table 10: ***Number of responses to statutory consultations received by statutory consultee, 2020-21 Q1-Q4***

Statutory Consultee	Year	On-time[14]	Total	% on-time
DfI Roads	Apr-Jun	1,680	1,954	**86%**
	Jul-Sep	2,485	2,966	**84%**
	Oct-Dec	2,056	2,946	**70%**
	Jan-Mar	2,221	3,041	**73%**
	2020/21	8,442	10,907	**77%**
DAERA EMF NIEA	Apr-Jun	414	740	**56%**
	Jul-Sep	580	1,004	**58%**
	Oct-Dec	728	992	**73%**
	Jan-Mar	841	1,059	**79%**
	2020/21	2,563	3,795	**68%**
NI Water	Apr-Jun	550	630	**87%**
	Jul-Sep	630	883	**71%**
	Oct-Dec	858	926	**93%**
	Jan-Mar	929	949	**98%**
	2020/21	2,967	3,388	**88%**
DfC /HED	Apr-Jun	407	521	**78%**
	Jul-Sep	606	807	**75%**
	Oct-Dec	550	763	**72%**
	Jan-Mar	660	834	**79%**
	2020/21	2,223	2,925	**76%**
DfI Rivers	Apr-Jun	327	425	**77%**
	Jul-Sep	402	592	**68%**
	Oct-Dec	365	578	**63%**
	Jan-Mar	366	698	**52%**
	2020/21	1,460	2,293	**64%**
HSENI	Apr-Jun	5	9	**56%**
	Jul-Sep	13	22	**59%**
	Oct-Dec	31	46	**67%**
	Jan-Mar	29	34	**85%**
	2020/21	78	111	**70%**
DfE / GSNI	Apr-Jun	13	14	**93%**
	Jul-Sep	21	22	**95%**
	Oct-Dec	15	18	**83%**
	Jan-Mar	22	27	**81%**
	2020/21	71	81	**88%**
NIHE	Apr-Jun	4	5	**80%**
	Jul-Sep	2	4	**50%**
	Oct-Dec	5	5	**100%**
	Jan-Mar	15	17	**88%**
	2020/21	26	31	**84%**
Belfast International Airport	Apr-Jun	4	12	**33%**
	Jul-Sep	19	22	**86%**
	Oct-Dec	25	25	**100%**
	Jan-Mar	33	43	**77%**
	2020/21	81	102	**79%**
Belfast City Airport	Apr-Jun	14	14	**100%**
	Jul-Sep	18	18	**100%**
	Oct-Dec	20	20	**100%**
	Jan-Mar	20	20	**100%**
	2020/21	72	72	**100%**
City of Derry Airport	Apr-Jun	0	1	**0%**
	Jul-Sep	2	2	**100%**
	Oct-Dec	6	6	**100%**
	Jan-Mar	7	7	**100%**
	2020/21	15	16	**94%**
Overall Totals	**Apr-Jun**	**3,418**	**4,325**	**79%**
	Jul-Sep	**4,778**	**6,342**	**75%**
	Oct-Dec	**4,659**	**6,325**	**74%**
	Jan-Mar	**5,143**	**6,729**	**76%**
	2020/21	**17,998**	**23,721**	**76%**

[14] Includes those responded to within the 21-day target and the extended target, where applicable.

User guidance

Data source

An extract of all consultations/advice queries raised from 1 April 2023 to 31 March 2024 were transferred on in May 2024 from the Planning Portals. The data were then validated. The relevant data is lifted at least one month after the end of the reference period to allow for the 21-day target response date, which applies to most statutory consultations, to have elapsed.

Reporting

This is the first annual report to be produced for statutory consultation since the introduction of the Planning Portals. It is important therefore to note that data for 2022/23 has been revised.

The Planning Portals were introduced in June (Mid Ulster) and December 2022 (all other planning authorities) and will have had some impact on the quality of the data for level of consultation and the management of consultation responses. This impact whilst considered to be minimal may cause some changes at lower levels of data disaggregation. This should be borne in mind when using data from 2022/23.

The figures contained in this report are extracted from the Planning Portals, are management information, and should not be treated as official statistics.

List of key statutory consultees

- Belfast City Airport
- Belfast International Airport
- City of Derry Airport
- Department of Agriculture, Environment and Rural Affairs (DAERA) Environment, Marine and Fisheries (EMF) and Northern Ireland Environment Agency (NIEA)
- Department for Communities (DfC) / Historic Environment Division (HED)
- Department for the Economy (DfE) / Geological Survey of Northern Ireland (GSNI)
- DfI Rivers
- DfI Roads
- Health and Safety Executive Northern Ireland (HSENI)
- Northern Ireland Housing Executive (NIHE)
- Northern Ireland Water.

ITEM 6

Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	01 October 2024
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	16 September 2024
File Reference	N/A
Legislation	The Planning (Northern Ireland) Act 2011 The Planning (General Development Procedure) Order (Northern Ireland) 2015 as amended
Section 75 Compliant	Yes ☒ No ☐ Other ☐ If other, please add comment below:
Subject	Update on the Statutory Consultations Annual Performance Report
Attachments	Item 6a -Statutory consultations Annual Performance Report

1. The purpose of this report is to inform members of the annual performance report prepared by the Department for Infrastructure (DfI) which sets out the performance of statutory consultees in the planning process. The report details a list of statutory consultees at the end on page 19.

2. Members should note that Council also on occasion consults with non-statutory consultees, for example Environmental Health, the Council's Tree Officer or Conservation Area Officer, which are not bound by any statutory response time.

3. Relevant legislation is set out in The Planning (General Development Procedure) Order (Northern Ireland) 2015 (as amended) ("the GDPO") which provides

instruction regarding statutory consultations on applications for planning permission. The structure/names of Departments were amended in 2016.

4. The requirement for DfI to provide an annual report is set out in Article 16 of the GDPO. Each statutory consultee is required, by legislation, to provide details to DfI of how it has purportedly met its statutory requirements (in respect of providing a substantive response within the timeframe or other timeframe as agreed between the council and the consultee). Such a report is required to relate to the period of 12 months commencing on 1st April in the preceding year.

5. The report details of the volume of statutory consultation that has taken place during 2023/34 with comparative information for earlier years. This is the first annual report to be produced for statutory consultation since introduction of both Planning Portals (that is for Mid Ulster, and that is for the remaining 11 planning authorities, which includes DFI).

6. Members should note that the figures contained in the report are extracted from each respective Planning Portal, reflect management information and should not be considered as official statistics and therefore should not be quoted as such.

7. Regionally significant applications are dealt with by DfI with Councils dealing with applications in the category of 'major' and 'local' development. Major developments are those developments which have the potential to be of significance and interest to communities and will be subject to processes such as Pre-Application Community Consultation (PACC), the submission of a Design and Access Statement (D&AS) and determination by Planning Committee. They are likely to be developments that have important economic, social and environmental implications for a council area.

8. For Ards and North Down the statutory consultee response rate for major applications was 37% within the statutory target, the lowest of any of the 11 Council areas, (Table 4e, page 11 of the report), with a figure of 72% for local applications (only DFI Planning had a lower response rate).

9. Tables 4c and 4f do not break down DFI Roads into Divisional Offices and members will be aware that it is acknowledged by DFI Roads that Southern Division, serving Ards and North Down and Newry Mourne and Down Council areas, has been and continues to experience resourcing issues, which is more borne out in Table 4e in respect of 'On Time' for AND at the aforementioned 37% for major applications.

10. In terms of consultations on applications in the local category of development, this Council fared slightly better in respect of 72% of its consultee responses being returned 'On Time'; however, there is no breakdown in respect of the different consultees by Council area in this regard, where we are aware that particular consultees are experiencing resource issues.

11. It is assumed that the reference to 'No response' relates to those consultation responses which were not received in that particular year, and would therefore appear as 'Late' in the following year.

Not Applicable

12. Members should note that although the Planning Act places a duty to respond to consultation within a period of 21 days beginning with the day on which the Council … "is satisfied that it has supplied the statutory consultee with the information it believes necessary for the consultee to make a substantive response", consultees are entitled to request a longer period of time to respond, which the Council can determine whether it agrees. It is an ongoing issue whereby some consultees do not engage this process.

13. It is also worth noting that while a consultee may have responded within the 21-day target date, the Council may deem the response insufficient and have to reconsult requesting additional consideration which inevitably will have an impact on response times. Conversely, a consultee may request additional information in order to be able to provide a 'substantive response' as detailed in legislation.

14. Members will also be aware that throughout the processing of an application there may be various amendments which materially change the proposal to the extent that further consultation is required by Council. Council also occasionally seeks consultees to comment on representations made which may seem to contradict consultee findings which is achieved via further formal consultation.

15. Members should note that with the proposed introduction of statutory validation checklists (as part of the Planning Improvement Programme), 'frontloading' of applications will seek to reduce the requirement for additional time to be afforded to consultees to comment as applicants will be required to submit a full suite of required studies relevant to their proposal at the outset of the processing period. This, however, will not address the ongoing resourcing issue in some departments.

RECOMMENDATION

It is recommended that Council notes the content of this report and attachment.

ITEM 7

Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	01 April 2025
Responsible Director	Director of Prosperity
Responsible Head of Service	
Date of Report	21 March 2025
File Reference	
Legislation	
Section 75 Compliant	Yes ☐ No ☐ Other ☒ If other, please add comment below: N/A
Subject	Court Judgments
Attachments	7a - Judicial Review Process 7b - Court of Appeal judgment re Glassdrumman Road case 7c - Previous judgment re Glassdrumman Road case 7d - Court of Appeal decision re Drumsurn case 7e - Previous judgment re Drumsurn case 7f - Judgment in Rural Integrity v LCCC case

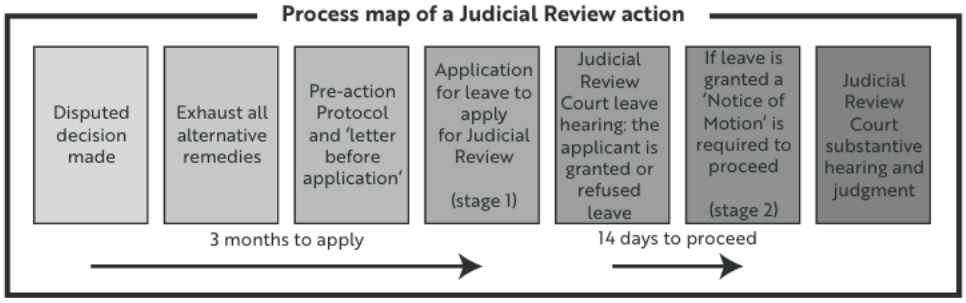
Purpose of Report

Whilst Members are provided with updates on planning appeal decisions on a monthly basis, it is considered appropriate to bring to the Committee's attention relevant Court judgments pertaining to planning.

Background

Members are aware that there is currently no third party right of appeal in Northern Ireland. Should someone be aggrieved by a planning decision, that decision can either be appealed to the Planning Appeals Commission by the applicant (against imposition of a planning condition or against refusal of planning permission), whereas a third party can only apply to the Court for leave to judicially review on a point of law.

A judicial review examines the legality of how a body arrived at its decision or action, not the merits of the actual decision or action itself. The legal process involves two stages, an application for leave to apply for judicial review (stage 1) and, upon being granted leave by the court, an application for judicial review (stage 2; the substantive hearing). They can range from issues specific to one individual to issues on a departmental policy or project that impact on the wider public.



Source: Based on the process map in *Judicial Review in Northern Ireland: A guide for non-governmental organisations*, The Public Interest Litigation Support Project, 2012.

The Council's regulatory planning framework defines its remit and duties as well as the limits of its powers, how it will make decisions and take actions. The Council also has a complaints framework setting out the process for the dissatisfied member of the public. Complainants, dissatisfied with the outcome of the complaints process, may wish to take their complaint further through an application to the NI Public Services Ombudsman or through a statutory right of appeal.

Where the complaint is about the legality of the process underpinning the Council's decision or action, the complainant can, as a remedy of last resort, apply to have it examined by the Judicial Review Court, a specialist court within the Northern Ireland High Court.

As a specialist type of litigation, judicial review is the subject of a Practice Direction (No. 3/2018) that sets out the practice and procedures of the Judicial Review Court and which complements the relevant provisions of the Rules of the Court of Judicature (NI) 1980 (the Rules of Judicature). All parties to a judicial review have a responsibility to be aware of, and comply with, these rules and procedures.

A judicial review is not an appeal of the merits of a decision or action, nor a means of appealing the decision of another Court. It is a legal challenge based on the grounds that the Council has acted improperly in coming to its decision or action. Acting improperly mainly refers to the following:

- Illegality – e.g. by making a mistake in applying the law or by not doing something required by law.

- Irrationality – e.g. the decision is so illogical that no reasonable person could have arrived at such a decision.

- Procedural unfairness – e.g. by failing to comply with established or agreed procedures.

The process of Judicial Review is set out at Item 7a.

Judgments Attached

Item 7b - Neutral Citation No: [2024] NICA 42 re Glassdrumman Road decision

The above Court of Appeal judgment reviewed a is in relation to a challenge brought against the grant of planning permission by Newry, Mourne and Down District Council for erection of two dwellings, considered under Policy CTY 8 (Ribbon Development) of PPS 21 – Sustainable Development in the Countryside.

The original judge only issued declaratory relief as opposed to quashing the permission ([2024] NIKB 31- see Item 7c)

The planning application was presented to and decided by the Council on the basis that it came within the infill 'small gap' housing exception within Policy CTY 8.

The appellant had asserted that the Council's decision was:

- contrary to planning policy in Northern Ireland (NI); and
- Policy CTY 8 considers ribbon development in rural areas to be damaging and unacceptable in principle, and that it requires planning applications which would cause or add to ribbon development to be rejected *unless* they come within the very limited exceptions described within the policies themselves.

When leave was granted there were three grounds of challenge to be addressed:

i. illegality;
ii. the leaving out of account of material considerations; and
iii. irrationality

At paragraph 6 therein, in referring to the original judgment (para 96), it was explained that

"*the primary focus of Policy CTY8 is on avoiding ribbon development, save where one of the two exceptions is engaged. Since Policy CTY8 is referred to in Policy CTY1 of PPS21 as being one of those policies pursuant to which development may in principle be acceptable in the countryside, there may be a temptation to view it primarily as a permissive policy." Also, "unlike the other policies, CTY8 does not begin by setting out that planning permission "will be granted" for a certain type of development. On the contrary, CTY8 begins by explaining that planning permission "will be refused" where it results in or adds to ribbon development. <u>This is an inherently restrictive policy such that, unless the exception is made out, planning permission must be refused</u>*." (emphasis added)

Paras 52 and 53 therein is useful for Members who have previously raised queries about how Policy CTY 8 should be interpreted, in the context of ascertaining 'a small gap site'.

[52] *We agree that the guidance in policy documents should not be used as a scientific formula designed to produce a firm result. However, the mathematical indicators provided in the guidance do have value because they seek to focus*

attention on the relative proportions of the visual elements within a rural landscape and to clarify how these proportions relate to each other to produce the visual impression that a landscape is continuously developed in a way that suits an urban place or is less developed as is appropriate for rural landscapes.

[53] *In short, the foundational planning policies and the supplementary guidance, complete with its numerical guidelines, should be viewed as a toolkit to help planners identify where pre-existing ribbon development is present and where it is absent. The guidance is intended to help them correctly identify the 'small gap' sites within the areas of pre-existing ribbon development which can be developed as infill sites without substantially adding to the visual damage that has already been done in such cases. They are also designed to help planners identify and preserve the undeveloped truly 'rural' landscapes which the policy strives to maintain, so that the acknowledged damaging effects of ribbon development do not spread to new and presently uncontaminated places*."

The Court of Appeal:

- Was critical of the Council's Planning officers not drawing the Committee's attention to particular policy regarding priority habitats (Policy NH5 of PPS 2 in relation to proposed removal of hedgerow);

- did not consider that the Committee had acted unlawfully in not carrying out a site visit;

- Policy CTY 8 is an inherently restrictive policy such that, unless the exception is made out, planning permission must be refused;

- The concept of "otherwise substantial and continuously built up frontage" should be interpreted and applied strictly, rather than generously.

And ordered the decision quashed.

Not Applicable

Item 7d - Neutral Citation No: [2025] NICA 8

The above is a Court of Appeal judgment in relation to a case brought by Gordon Duff against Causeway Coast and Glens Borough Council whereby it had granted planning permission for a dwelling on site between 51 and 53 East Road, Drumsurn, dated 26 August 2021. The previous judgment referred to is attached as Item 7e ([2024] NIKB 31.

The original case was brought against the Council for granting permission under Policy CTY 8 of PPS 21.

The Court of Appeal decision addresses the matter of 'standing' of Gordon Duff in bringing the application, amongst other matters.

Planning permission had previously been applied for twice before this particular case and had been recommended for REFUSAL by the planning officers.

This third application (subject to the judicial review) was also recommended for refusal; however, planning permission was granted contrary to the planning officer's recommendation.

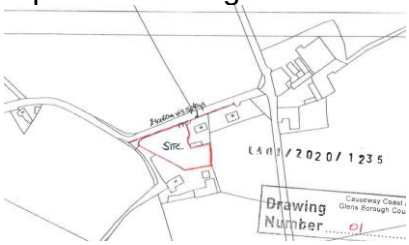
The Court of Appeal focuses on the basis of the findings of both the NI Audit Office and the Public Accounts Committee in relation to approval of dwellings in the countryside contrary to officer recommendation (see paragraph 18 therein).

The judgment found against the previous Judge's findings in relation to a number of matters – see paragraphs 31 and 32, particularly where it is found that:

(b) *The judge failed to properly consider the significant impact on good administration and proper application of the planning policies on rural development which would ensue if a planning decision, which was clearly unlawful, should nonetheless be allowed to proceed as a permissible windfall. This would set a dangerous precedent.*

(d) *Furthermore, the judge's conclusion is inconsistent with his analysis of systemic issues highlighted by previous judicial review cases and NIAO and PAC as regards rural development and the "cautionary words" he provided at the end of his judgment.*

Keegan LCJ and Treacy LJ concluded that this case "exposed many issues in relation to rural development not least the danger if elected representatives proceed against the recommendations of experienced planning officials and planning officer's reports without good reason."



Not Applicable

Item 7f - Neutral Citation No: [2017] NIQB 133

The above judgment, whilst older, addresses a case brought against Lisburn and Castlereagh City Council, whereby planning permission had been granted for removal of holiday occupancy condition holiday home development comprising 58 apartments (approved as part of a wider scheme for a hotel and golf course) in Hillsborough.

The application, to remove the occupancy condition, was recommended for refusal on the basis that, if allowed, would set an unwelcome precedent for the development of unfettered housing in the countryside and result in development that is contrary to the Local Development Plan. The Case Officer's Report also set out the supporting evidence submitted with the original application as to the fact that those proposed luxury holiday lodges were chosen for their proximity close to the proposed golf course, and furthermore that their compact nature would allow for efficient site management in terms of both maintenance and site management,

This decision was taken contrary to the recommendation of the Planning Department and after a pre-determination heard by the Department for Infrastructure.

In this case the then Chief Executive of the Council sought to judicially review the Council's own decision on the basis of breach of protocol whereby two members of the Planning Committee had not declared an interest, despite having submitted letters of support for the application (however, her application was made out of time).

This judgment was delivered in November 2017, and the application was withdrawn in October 2018.

RECOMMENDATION

It is recommended that the Council notes this report and attachments.

The Judicial Review Process

Pre-action Protocol

1. Having exhausted all alternative remedies, including Council's complaints process, and when considering making a judicial review application the potential applicant must, if there is time to do so, send a detailed letter to the body before taking any further action. This letter is known as a 'letter before application' (or Pre-action Protocol Letter/PAPL) and is part of the Pre-action Protocol for judicial review.

2. The Pre-action Protocol seeks an exchange of detailed correspondence between the applicant and the respondent (the public body) and is expected to be a genuine attempt to resolve matters and avoid court proceedings.

3. The letter should:

    - detail the matters being challenged and how it is alleged the Council has gone wrong;
    - detail the information and documents being sought e.g. this may include a request for fuller explanation of the decision being challenged; and
    - detail the action that the respondent should take, including the remedy that is being sought.

4. At this stage in the complaints process the Planning Service will usually have taken legal advice, and may have engaged counsel, to assist in preparing its response to the PAPL.

5. In many cases receipt of PAPLs do not progress to the initiation of judicial review proceedings, for a number of reasons:

    - the normal disputes or appeals process had not been fully pursued in the first instance;

- the Council's response may satisfy the complainant;
- the case may be conceded by the Planning Service and it agrees to reconsider the decision; or
- it might be because the applicant has no funds to pursue the case.

6. Those that remain unsatisfied with the response and wish to proceed further with their challenge through the courts may apply for judicial review.

Application to apply for Judicial Review

7. There are two key stages to the judicial review process, following conclusion of the Pre-action Protocol.

8. The applicant seeks the court's leave to apply for judicial review (stage 1) before being able to progress to a substantive hearing (stage 2).

Stage 1

9. The application for leave to apply for a judicial review (stage 1) should normally be made to the court within three months from the date of the decision under challenge. Documents in support of a stage 1 application must be lodged with the court for the judge to consider before deciding whether leave should be granted.

10. The judge may decide not to grant leave where the criteria for a judicial review have not been met, and reasons commonly include:

- The application was not lodged with the court within the judicial review time limit of three months
- The applicant did not have standing
- There was an alternate remedy which the applicant should have tried first
- No arguable case was presented to the court

Stage 2 - Application for judicial review – a substantive hearing

11. The applicant has 14 days, from leave being granted, to initiate the second stage of the judicial review process (a substantive hearing) by lodging a Notice of Motion with the Court. This notifies the opposing party that the applicant will be requesting a formal determination. The notice is delivered to the Court and also served on the opposing party. If the document is not lodged within 14 days, the leave will lapse.

12. Following lodgement of the Notice of Motion, the parties submit affidavits explaining their position. There may be several rounds of written evidence in response to these. Additionally, there may occasionally be requests for discovery (obtaining relevant documents from the other party); and interrogatories (where one party applies for the other party to provide written answers to questions).

13. The judicial review judge manages and sets a timetable for the process and the date for the hearing. Usually the substantive hearing relies on evidence by way of affidavit only, and oral evidence is not given at the hearing. It is for the applicant to prove that it is more probable than not that the decision was unlawful.

14. The judge's decision is usually given in writing at a later date.

Potential Remedies

15. Where the judicial review finds that the Council' decision or decision-making procedure was unlawful the Court can make orders by way of remedy. The following orders are the most common in relation to Planning:

- Quashing order (certiorari)– this is the most commonly requested remedy. This strikes down or sets aside the unlawful decision (e.g. planning permission) made by the Council. The Council must then re-take the decision, in a lawful manner.

- Mandatory order – (order of mandamus) this requires the Council to perform a particular action it has the duty to perform (e.g. make a decision).

- Declaration - the Court may simply declare what the law is or declare the respective rights of the parties without making any further order.

Appealing the judicial review decision

16. There are three stages in a judicial review when a party can appeal a decision of the Judicial Review Court:

- Appeal of the decision to refuse leave;
- Appeal of an interlocutory decision (an application for discovery or to permit cross-examination of a person who has sworn affidavit evidence);
- Appeal of the final decision (following the 'substantive hearing'). The applicant and respondent have a right of appeal against a refusal to grant leave and the final decision to the Northern Ireland Court of Appeal.

Neutral Citation No: [2025] NICA 8	*Ref:*	**KEE12705**
	ICOS No:	**21/78576/A02**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**06/02/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION (JUDICIAL REVIEW)

Between:

GORDON DUFF

Appellant

and

CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

Respondent

and

ALEX McDONALD

Notice Party

The appellant appeared as a litigant in person
Mr Kevin Morgan (instructed by Causeway Coast & Glens Borough Council Legal Services) for the Respondent
The Notice Party appeared in person

Before: Keegan LCJ and Treacy LJ

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an application by Mr Gordon Duff ("the appellant") to appeal orders made by Mr Justice Scoffield ("the judge"). The first order was made on 25 March 2024 pursuant to his application for leave to apply for judicial review of a decision of Causeway Coast and Glens Borough Council ("the Council"). The judge refused certiorari and granted declaratory relief only. By virtue of a subsequent order of 8 October 2024 the judge made no order as to costs between the parties.

[2] The impugned decision at issue was one granting planning permission in relation to a site between 51 and 53 East Road, Drumsurn made on 26 August 2021. The judge found the appellant did not have sufficient interest in the subject matter of the proceedings for leave to be granted. That decision was quashed by this court for reasons given in a judgment reported at [2023] NICA 22.

[3] Our rationale for finding that the appellant had standing has subsequently been approved by the Privy Council in *Eco-sud and others v Minister of Environment, Solid Waste and Climate Change and another* [2024] UKPC 19. Paras [78] and [79] refer as follows:

> "78. In *Duff v Causeway Coast and Glens Borough Council* [2023] NICA 22 the Court of Appeal in Northern Ireland applied *Walton v The Scottish Ministers* to the question of whether or not an applicant for judicial review had standing to challenge the grant of planning permission. At para 21 Keegan LCJ distilled the following principles from *Walton v The Scottish Ministers*:
>
> > '(i) A wide interpretation of whether an applicant is a 'person aggrieved' for the purpose of a challenge under the relevant Scottish statutory provision is appropriate, particularly in the context of statutory planning appeals (para 85).
> >
> > (ii) The meaning to be attributed to the phrase will vary according to the context in which it is found, and it is necessary to have regard to the particular legislation involved, and the nature of the grounds on which the applicant claims to be aggrieved (para 84).
> >
> > (iii) A review of the relevant authorities found that persons will ordinarily be regarded as aggrieved if they made objections or representations as part of the procedure which preceded the decision challenged, and their complaint is that the decision was not properly made (para 86).
> >
> > (iv) The authorities also demonstrate that there are circumstances in which a person who has not participated in the process may nonetheless be 'aggrieved': where for example

an inadequate description of the development in the application and advertisement could have misled him so that he did not object or take part in the inquiry (para 87).

(v) Whilst an interest in the matter for the purpose of standing in a common law challenge may be shown either by a personal interest or a legitimate or reasonable concern in the matter to which the application relates, what constitutes sufficient interest is also context specific, differing from case to case, depending upon the particular context, the grounds raised and consideration of, 'what will best serve the purposes of judicial review in that context.' (paras 92 and 93).

(vi) Para 94 also refers to the need for persons to demonstrate some particular interest to demonstrate that he is not a mere busybody. The court was clear that 'not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it.'

(vii) The interest of the particular applicant is not merely a threshold issue, which ceases to be material once the requirement of standing has been satisfied: it may also bear upon the court's exercise of its discretion as to the remedy, if any, which it should grant in the event that the challenge is well-founded (paras 95 and 103).

(viii) Lord Hope added at para 52 that there are environmental issues that can properly be raised by an individual which do not

> personally affect an applicant's private interests as the environment is of legitimate concern to everyone and someone must speak up on behalf of the animals that may be affected.
>
> (ix) Individuals who wish to do this on environmental grounds will have to demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and that they have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity (para 53).
>
> It will be for the court to judge in each case whether these requirements are satisfied.'
>
> 79. In *Mussington v Development Control Authority* Lord Boyd, giving the judgment of the Board, stated, at para 47, that Keegan LCJ's summary needs little addition. He added that '[i]t is however clear from Lord Reed's judgment [in *Walton v The Scottish Ministers*] that there is little, if any, difference between the concept of 'person aggrieved' in the Roads (Scotland) Act 1984 and standing for judicial review purposes.' Accordingly, he said that "the attributes that are ascribed to the 'person aggrieved' in sub-paras (i), (ii), (iii) and (iv) of Keegan LCJ's summary apply with equal force to standing in judicial review." He also added that "the reference to 'speaking for animals' in sub-para (viii) applies to all aspects of flora and fauna as well as other environmental factors, such as perhaps geological or archaeological features."

[4] We also point out that the appellant obtained standing and was successful in another judicial review in relation to a site at Glassdrumman Road, Ballynahinch, in a decision reported at [2024] NICA 42. In that case the court stated as follows:

> "[94] We are conscious that the appellant does not live in the affected area, nor does he have a direct interest in the site, although we do accept that he like other citizens is directly affected by issues such as biodiversity loss and environmental management. However, he did object to this planning application, and he has exposed significant matters in this case in relation to rural planning policy which exhausts the argument that he says arises in many

> other cases. Ultimately, his intervention also highlights the fact that planning permission was unlawfully granted. Therefore, the appellant as the only applicant is entitled in these circumstances to relief. We consider that the appropriate relief to remedy this unlawfulness is an order quashing the planning permission."

[5] The *Glassdrumman* case concerned a planning development application that was presented to and decided by the Council on the basis that it came within the infill 'small gap' housing exception within Policy CTY 8. However, the court concluded for the reasons set out at paras [28]-[48] that the Council's decision that this was a small gap site cannot stand.

[6] In doing so the court explained at para [96] that "the primary focus of Policy CTY8 is on avoiding ribbon development, save where one of the two exceptions is engaged. Since Policy CTY8 is referred to in Policy CTY1 of PPS21 as being one of those policies pursuant to which development may in principle be acceptable in the countryside, there may be a temptation to view it primarily as a permissive policy." Also, "unlike the other policies, CTY8 does *not* begin by setting out that planning permission "will be granted" for a certain type of development. On the contrary, CTY8 begins by explaining that planning permission "will be refused" where it results in or adds to ribbon development. This is an inherently restrictive policy such that, unless the exception is made out, planning permission must be refused."

This case

[7] This case also concerns rural infill development and the application of Policy CTY8. As far back as 4 November 2021 the judge indicated that he would quash the planning permission as no objection was raised by the Council. That order did not issue as the appellant flagged the fact that the notice party should be heard. The notice party was then heard and the judge ultimately decided that he should grant declaratory relief rather than quashing the order for the reasons given in his judgment reported at [2024] NIKB 31.

[8] Having found in favour of the appellant on standing in our previous judgment we remitted the matter back to the judge. Truth be told we rather thought that we might not see this case again. However, the judge's ruling is appealed in substance and in relation to costs by the appellant on the basis that the judge made an error of law in not granting certiorari having found illegality and that the judge should have made an order for costs in favour of the appellant.

[9] Replying to these appeal points before us, Mr Morgan, clearly and unequivocally stated that he had no objection to the court reversing this decision and making a quashing order although he objected to costs. Mr McDonald ("the notice party") represented that he wanted to maintain the declaratory relief and costs order made by the judge.

[10] At the hearing we announced our decision reversing the judge's order and said that we would provide reasons. These are the ensuing reasons of the court.

Factual background

[11] Given the protracted litigation and numerous judgments in relation to this subject matter, the background may be simply stated. The grant of planning permission was to the notice party for an 'infill' dwelling in a gap between numbers 51 and 53 East Road, Drumsurn, near Limavady. An infill dwelling is a dwelling which is considered permissible under Policy CTY8 of Planning Policy Statement 21 as filling a small gap in an otherwise substantial and continuously built-up frontage in the countryside.

[12] This planning application was the third in sequence by the notice party. None of the applications have had the support of the planning officer. None of the applications were objected to. The first application was refused in 2012. The second application was withdrawn by the notice party. The third application was brought 16 days after the withdrawal.

[13] The matter was considered by a planning committee of the Council. There was a site visit in advance of the decision that was made. Ultimately, in adjudicating on the application the planning committee voted by six votes to five with one abstention not to refuse the application. This meant that the planning approval was granted against the recommendation of the planning officer.

[14] The Council's reply to the pre-action correspondence bears repeating as it unequivocally accepted the appellant's standing to bring a judicial review. Further, and again in unequivocal terms, the Council stated that it would concede the case and invited the appellant to bring a judicial review to quash the planning decision. Para [5] of the reply encapsulates the Council's position as follows [with our emphasis]:

> "5. **Response to the Proposed Application**
>
> We have now had the opportunity to consider your letter, speak with the member of the Planning Committee and take legal advice in relation to the issue. It has been decided that given the specific facts and circumstances of this particular planning permission application that your application will be conceded in full to avoid the incurring of costs. On that basis the proposed respondent accepts your proposal expressed at paragraph 6 of your letter and will consent to your application that the subject planning permission is quashed.

> To effect this, we would invite you to issue your stated judicial review application to the court inviting it to quash the decision of 25 August 2021 granting planning permission for the subject site. The proposed respondent will consent to such application.
>
> Please provide your draft application on the proposed respondent prior to it being lodged with the court so that we may consider it in advance of provision of our written consent. We will consider same, and your application can then be progressed without further delay."
>
> "The *locus standi* issue should normally be decided at the leave stage: *Lancefort Ltd v An Bord."*

The above position of the Council frames this case.

Our analysis

[15] Scoffield J has produced a comprehensive judgment which we adopt in some respects. From the judgment we can see that the judge accepted the genuineness of the appellant's environmental concerns in particular his passion for the countryside and his frustration at the lack of other challengers taking on what he perceives to be an unduly relaxed and harmful approach to piecemeal development in the countryside. The judge also observed that the appellant does not have any personal substantive interest in the grant of the planning permission involved stating that "He does not live nearby. His amenity will not be affected. No property interest of his will be affected nor are any of his private law rights engaged."

[16] At paras [37]-[42] the judge discussed the appellant's request for a quashing order. These paragraphs bear close reading given the range of issues and the evidence relied on. It is fair to say that the judge agreed with the appellant on many of the points he raised.

[17] At para [37] the judge expressly stated that; " Although this is not a case of the Council itself applying to set aside its own decision … Mr Duff is right to identify that the usual course where a public authority admits such a flaw in its decision-making is that the court will grant an order of certiorari to quash the resultant decision."

[18] At paras [38]-[40] the judge referred to highly significant material from the Northern Ireland Audit Office (NIAO) and Public Accounts Committee (PAC) which plainly provided support to the appellant's case in the following respects:

> "[38] Mr Duff also made a number of interesting submissions based upon work carried out by the Northern Ireland Audit Office (NIAO) and the Public

Accounts Committee (PAC) of the Northern Ireland Assembly. The NIAO published a report by the Comptroller and Auditor General and the Local Government Auditor in February 2022 entitled, 'Planning in Northern Ireland.' Part Three of the report dealt with variance in decision-making processes. It expressed a number of concerns which resonate with the present case. These included a finding that the type of applications being considered by planning committees within councils, rather than simply being dealt with on a delegated basis by councils' professional planning officers, were not always appropriate. Elected members were calling in for consideration applications which were not always the most significant and complex; and, indeed, some council planning committees appeared to be "excessively involved in decisions around the development of new single homes in the countryside." The NIAO considered that the evidence highlighted a disproportionate use of committee time and focus on such applications.

[39] The NIAO report also considered the extent to which planning committees within local councils overturned the recommendations of their professional planning officers. Everyone accepts that this is an entirely proper and permissible outcome in certain cases, with the proviso that decisions to depart from officers' recommendations should be supported by clear planning reasons. Some planning committees have a higher rate of overturning their officers' recommendations than others, however, with the Council in this case being towards the top of the league table (see Figure 7 in Part Three of the NIAO report). The vast majority of cases (90%) where the officers' recommendations were overturned was where a planning committee granted planning permission against the officers' advice. Of even more direct relevance in the present case is that almost 40% of decisions made against officer advice related to single houses in the countryside. In all of these instances the recommendation to refuse planning permission was overturned and approved by the committee. It does not appear that a committee has disagreed with a recommendation to approve in such a case, thereby taking a stricter view of the planning issues than the professional officers. The NIAO expressed the following concerns as a result of this analysis: "In cases where the planning committee grants an application contrary to official advice, there is no third party right of

> appeal. The variance in overturn rate across councils, the scale of the overturn rate and the fact that 90 per cent of these overturns were approvals which are unlikely to be challenged, raises considerable risks for the system. These include regional planning policy not being adhered to, a risk of irregularity and possible fraudulent activity. We have concerns that this is an area which has limited transparency.
>
> [40] In the usual way, the NIAO report was considered by the PAC in the exercise of its scrutiny functions. It too issued a report, on 24 March 2022, entitled 'Planning in Northern Ireland' (NIA 202/17-22). The PAC expressed concern about how the planning system was operating for rural housing. In particular, based on the evidence presented to it, the Committee said that it was concerned that "there appears to be an increasingly fine line between planning committees interpreting planning policy and simply setting it aside." The PAC was also concerned about inconsistent application and interpretation of the relevant planning policies across Northern Ireland. It concluded that the operation of the planning system for rural housing "is at best inconsistent and at worst fundamentally broken", recommending that the Department ensure that policy was agreed and implemented equally and consistently."

[19] At para [41] the judge expressly said that these findings and conclusions by public bodies "chime with the view" he himself provided in a previous decision of *Glassdrumman* where he said:

> "… in this and a range of other cases … I consider that one can discern a somewhat relaxed and generous approach to the grant of planning permissions under the infill exception in Policy CTY8 which may be thought to have lost sight of the fundamental nature of that policy as a restrictive policy with a limited exception. In the words of the Department's Planning Advice Note of April 2021, there is a case that decisions have been taken which "are not in keeping with the original intention of the policy' which will then 'undermine the wider policy aims and objectives in respect of sustainable development in the countryside.'"

[20] Finally, at para [42] the judge records that no suggestion of fraud was made by the appellant. However, the judge records the very clear proposition put forward

by the appellant in terms of a concern that some councils were being lax about the requirements of Policy CTY8 and were granting planning permission, purporting to do so in the exercise of planning judgment, where it was plainly inappropriate to do so. The judge knew that the appellant counted this case as one of those because the judge records his position; thus:

> "As a result, he urged the court to put down a marker that, where a council unlawfully granted planning permission in this way, that permission would be quashed on a successful application for judicial review."

[21] At para [43] the judge also records the notice party's fourfold submission as follows:

> "[43] Mr McDonald opposes the grant of a quashing order essentially on four grounds. First, he contends that, since relief in judicial review is discretionary, the primary relief Mr Duff seeks should be refused to him because he is an undeserving applicant. This is a variation on a 'clean hands' argument, namely that an applicant seeking public law relief should not themselves have shown disregard for the law (in this case, planning law). Second, he contends that a quashing order should be refused in the exercise of the court's discretion because of the prejudice this will now cause to him. Third, and relatedly, he contends that it would be unfair for his planning permission to be quashed in light of the Council's role in all of this. Fourth, he maintains that, notwithstanding the Court of Appeal's ruling on standing, Mr Duff should nonetheless be viewed as a "busybody" and should not be considered to enjoy standing."

[22] Continuing, the judge commented at para [49] that the absence of a direct personal interest is not a determinative factor on its own, particularly given the wide access to the courts which is generally required in the field of environmental law. We agree.

[23] Then the judge referred at paras [50]-[51] to three factors which led him to refuse the primary relief sought namely certiorari. First, he found that there has been a complete failure on the part of the appellant to participate in the planning process which led to the decision which he now seeks to challenge. Second, he found in favour of the notice party's submission that the environmental harm at stake in this case was modest, given the limited nature of the development proposal and in addition that Mr Duff had a lead case challenging policy which militated against bringing myriad applications on the same point. Third he found that the

balance fell in favour of the planning applicant who had the benefit of planning permission.

[24] The judge then referred to the discretion he retained to refuse relief. *Walton v Scottish Ministers* [2012] UKSC 44, is correctly cited in this regard, para [95] which states:

> "95. At the same time, the interest of the particular applicant is not merely a threshold issue, which ceases to be material once the requirement of standing has been satisfied: it may also bear upon the court's exercise of its discretion as to the remedy."

[25] In addition, Lord Carnwath's concurring judgment at para [103] reiterates the fact that a reviewing court needs to maintain an overall balance between public and private law interests. In this case the balancing exercise needs to be conducted in the context of the case as a whole. We have set out the factors that are in play from the judgment at first instance above.

[26] Of course a striking feature of this case is that there was a clear concession of illegality on the part of the Council in relation to the impugned decision. The judge records this in his order of 25 March 2024 in two parts:

(a) The respondent erred as to a material fact, misinterpreted planning policy and/or reached a view that was irrational in concluding that there was a substantial and continuously built-up frontage in which the application site (which was the subject of the application for planning permission giving rise to the permission impugned in these proceedings) formed a gap site; and

(b) The respondent reached an irrational conclusion in determining that the presence of the laneway at the location ensued that "ribboning does not take place."

[27] The judge's ultimate conclusion is found as follows at para [57]:

> "Taking all of the above into account, I have concluded that a quashing order should be refused in this case on the basis of standing, taking into consideration the prejudice that would be caused to Mr McDonald if a quashing order was granted and Mr Duff's lack of direct interest in the proposal for which permission has been granted and non-participation in the planning process. Mr Duff had standing to bring the proceedings (as the Court of Appeal held) on the highly fact specific basis that the Council had invited him to do so. He has succeeded in establishing illegality on the respondent's part, which will be reflected

> in a declaration. However, as the Court of Appeal explained, his standing to bring this case – notwithstanding his non-participation in the original planning process and the fact that he has no direct interest in the proposal – was exceptional. In my view, it is not sufficient to entitle him to the primary relief which he seeks in all of the circumstances of this case."

[28] The appellant's appeal which is found at para [10] of his helpful speaking note is as follows:

> "The weighing exercise carried out by the court was therefore flawed because on one side of the balance was the prejudice to the notice party of quashing a decision notice which was unlawfully made both procedurally and on merit. On the other side of the balance there was not simply my weak standing to be granted relief through lack of personal interest; but other factors that the court did not sufficiently weigh or at all and these were:
>
> (a) My strong standing bestowed on me by the respondent inviting me to quash the impugned decision;
>
> (b) The administrative interests which require the quashing of an unlawful decision;
>
> (c) The administrative need identified by the NIAO and PAC to bring back good order to planning officer overturns in relation to single houses in the countryside by planning committees.
>
> (d) The need to address the procedural flaws of the respondent's standard practice and its standing orders.
>
> (e) The failure to weigh the cumulative impact on the environment of another unsustainable housing development in the countryside; and
>
> (f) The impact on rural character, the lack of integration and the unacceptable addition to ribbon development which would take place."

[29] We extract three key points from the above all of which have merit. The first is that the Council invited the appellant to proceed and obtain a quashing order at

every stage of this litigation. The second point is that it would offend public law and administrative interests if the quashing relief were not granted. The third point is that it would set a dangerous precedent in relation to rural development of single storey dwellings in the countryside if the admitted illegality were overlooked and not effectively addressed.

[30] The appellant also made the case that the costs should follow the event if a quashing order is made. Whilst there was some indication that he would not seek costs in an early stage after the Court of Appeal decision in his favour, the Order 53 statement was amended in that regard. The appellant has also applied for an extension of time although no issue was taken with this as it was accepted that the appellant was awaiting the costs decision before deciding whether to appeal the substantive decision and there was a delay in orders being issued.

Conclusion

[31] An appellate court is slow to interfere with a lower court's exercise of discretion. However, on proper consideration of the particular factual matrix of this case discussed herein the judge's exercise of discretion was wrong for the following core reasons:

(a) Whilst rightly identifying competing private and public interests, the judge failed to pay any real regard to the fact that the Council invited Mr Duff to apply to have the decision quashed.

(b) The judge failed to properly consider the significant impact on good administration and proper application of the planning policies on rural development which would ensue if a planning decision, which was clearly unlawful, should nonetheless be allowed to proceed as a permissible windfall. This would set a dangerous precedent.

(c) Also, the judge erroneously found that Mr Duff's lack of direct interest and non-participation in the planning process was a factor of any weight given our previous decision on standing which was based on the exceptional circumstances that the Council have asked him to quash the decision.

(d) Furthermore, the judge's conclusion is inconsistent with his analysis of systemic issues highlighted by previous judicial review cases and NIAO and PAC as regards rural development and the "cautionary words" he provided at the end of his judgment.

[32] This case exposes many issues in relation to rural development not least the danger if elected representatives proceed against the recommendations of experienced planning officials and planning officer's reports without good reason. The suggestion that a policy for a single house development in the countryside is considered in a more relaxed way, which was the judge's observation is a cause of

great concern to us. This judgment should reiterate the point that planning policy exists to protect the rural environment and should not be underestimated or considered in any relaxed way.

[33] We have previously said that the litigation conduct of the Council was poor in this case. The approach taken on appeal is further evidence of how this case was misjudged and protracted with consequent costs in what was a very simple matter. From the word go, the Council specifically stated that the decision should be quashed. If it had applied itself for this relief the decision would have been quashed at a much earlier stage. However, having invited the appellant to bring the application, the Council should not have remained neutral or tried to hedge its bets.

[34] It also appears to us that the notice party was not properly kept in the loop by the Council, as it was the appellant who put him on notice of this application. We have sympathy for the notice party but cannot condone an unlawful planning windfall in the circumstances of this case which we have already described as exceptional.

[35] In so far as it is necessary, the application for an extension of time to appeal is granted. The appeal is allowed on both grounds. We will quash the planning permission. We grant costs to the appellant based on the agreed protective costs order of £5,000 plus VAT. We will hear from the parties as whether the notice party should recover any costs against the Council in these proceedings.

Neutral Citation No: [2022] NIQB 11	*Ref:* **SCO11759**
	ICOS No: **21/078576/01**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **10/02/2022**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

IN THE MATTER OF AN APPLICATION BY GORDON DUFF FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

_____

The applicant, Mr Duff, appeared in person
Kevin Morgan (instructed by Causeway Coast and Glens Borough Council Legal Services) appeared for the proposed respondent
Richard Shields (instructed by Shean Dickson Merrick Solicitors) appeared for the interested party

_____

SCOFFIELD J

Introduction

[1] By this application the applicant, Mr Duff, seeks leave to apply for judicial review of a decision of Causeway Coast and Glens Borough Council ('the Council') to grant planning permission (reference LA01/2020/1235/O) in relation to a site between 51 and 53 East Road, Drumsurn.

[2] The Council conceded from an early stage that it would not oppose the application and, indeed, reached agreement with the applicant to this effect, on the basis that no order for costs would be made against the Council. To this end, the Council's response to the applicant's pre-action correspondence said that it had been decided that his claim "will be conceded in full to avoid the incurring of legal costs" and that it would consent to the court being invited to quash the permission. However, the planning applicant, Mr Alex McDonald, who was the beneficiary of the impugned permission, took a very different view. He opposes the quashing of his planning permission on a variety of bases; and has instructed both legal

representatives and a planning consultant to mount a case on his behalf against the grant of leave.

[3] In light of the interested party's opposition to the grant of leave or any relief, the matter was listed for a full leave hearing. Mr Duff appeared in person. The Council was represented by Mr Morgan, of counsel; and Mr McDonald was represented by Mr Shields, of counsel. I am grateful to all parties for their helpful submissions.

Factual Background

[4] This case concerns – as many of Mr Duff's challenges do – the grant of planning permission in the countryside for an 'infill' dwelling, that is to say, a dwelling which is considered permissible under Policy CTY8 of Planning Policy Statement (PPS) 21 as filling a small gap in an otherwise substantial and continuously built up frontage in the countryside. The policy provides (in the relevant part) that:

> "Planning permission will be refused for a building which creates or adds to a ribbon of development.
>
> 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 3 or more buildings along a road frontage without accompanying development to the rear."

[5] Mr McDonald has been granted permission for a dwelling in a gap between Nos 51 and 53 East Road, Drumsurn, near Limavady. This is a small roadside field, located in a rural area, of predominantly agricultural character, outside of any settlement as defined in the Northern Area Plan 2016. Mr McDonald contends that the Council was right to consider that his application complied with planning policy and, in particular, that it was entitled to consider that the proposal was for a small gap site within an otherwise substantial and continuously built up frontage comprising Nos 51, 53 and 55 East Road.

[6] A previous application (B/2012/0155/O) which was made before planning functions were transferred to district councils was refused by the Department of the Environment on the basis that the proposal would result in ribbon development along East Road and fail to integrate in the landscape, resulting in a suburban style

build-up when read with other existing development in the immediate vicinity. Mr McDonald did not appeal this decision to the Planning Appeals Commission (PAC), although he has averred that he was advised by his planning consultant that an appeal would have had good prospects of success. He contends that, in further discussion with Planning Service, his planning consultant was advised that his application had been "in the spirit of the policy and as such should have been approved".

[7] Mr McDonald made a further application for outline permission at the site (reference LA01/2020/0962/O) which was recommended for refusal and which was withdrawn prior to a decision being taken by the Council. Then, on 18 November 2020, he submitted a further application through his agent AQB Architectural Workshop Limited (AQB). This application was considered by the Planning Committee of the Council at its meeting on 25 August 2021. In advance of that, as is usual, the Council's professional planning officers prepared a report for the committee, highlighting a number of salient issues, assessing the proposal against applicable planning policy, and making a recommendation. Amongst other things, it notes that there were no objections to the proposal.

[8] Significantly, the planning officer's report included the following advice in the Executive Summary:

> "The principle of development is considered unacceptable in regard to the SPPS and PPS21 as there is no substantial and continuously built up frontage within the countryside at this location. The proposal would also have an adverse impact on rural character through the creation of ribbon development and would fail to satisfactorily integrate into the landscape.
>
> No overriding reasons have been forthcoming as to why the development is essential and cannot be facilitated within the development limit."

[9] The officer's report therefore again recommended refusal on the basis that the proposal was contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies CTY1, CTY8, CTY13 and CTY14 of PPS21. The discussion and conclusion indicated that there was no substantial and continuously built up frontage within the rural area at the location (and consequently no gap to infill) as there was not the required number of buildings to form a built up frontage. In particular, the dwelling at No 51 sat to the rear of the application site and its curtilage did not extend to East Road, terminating approximately 25 metres back from the road edge where it accessed onto the laneway. Since the curtilage of No 51 did not have a common frontage onto East Road, it could not be considered to form part of a substantial and continuously built up frontage with Nos 53 and 55. Additionally, since there was (in the officer's view) no gap site at the location, the

proposal would further add to the linear pattern of development along the roadside adding to ribbon development, which was detrimental to rural character and contrary to policy. There was no overriding reason why the development was essential at this location under Policy CTY1. The proposal would also fail to integrate into the landscape and would erode the rural character of the area, which was also contrary to policy. Accordingly, refusal was recommended on a variety of bases.

[10] A site visit occurred on 23 August, at which seven councillors and two council officers were present. The site visit report suggests that officers gave advice to those members of the Planning Committee who were present in the same vein as the officer's report – pointing out why (in the officers' view) the relevant planning policies were not complied with.

[11] However, at the committee meeting two days later, notwithstanding the recommendation to refuse from Senior Planning Officer McMath (who gave a presentation in relation to the application), the committee decided by majority vote to grant the application. This was after a presentation by the applicant's architect, Mr Boyle of AQB, in which he contended that the site complied with Policy CTY8 and that the three relevant dwellings (Nos 51, 53 and 55) all shared a roadside frontage. He also – seemingly as an alternative – submitted that the *spirit* of the policy was met. The Chair put the motion to a vote and six members voted to approve the application; five members voted to refuse the application; and there was one abstention. The Head of Planning sought reasons for voting for an approval, which are minuted as follows:

> "That the Committee approved for the following reasons:
>
> - The houses to the side are road frontage; as the frontage of no.51 goes to the road do not see a difference; if you take that as frontage, therefore infill applies and complies with policy;
>
> - A dwelling on the site will integrate with the buildings already there;
>
> - Is not ribboning, the laneway ensures ribboning does not take place."

[12] The minute also notes that Councillor Hunter (who seconded the motion to accept the officer's recommendation to refuse the application) stated her dissatisfaction with the lack of justification for the committee's decision; and that the Head of Planning "advised that she can only record what the Members have put forward for their reasoning".

The grounds of challenge

[13] Mr Duff has three broad grounds of challenge: first, that immaterial considerations have been taken into account; second, that material considerations have been left out of account; and, third, that there has been a breach of planning policy without the appropriate justification. The particulars provided in the grounds represent a number of consistent themes in Mr Duff's challenges in relation to infill development in the countryside.

[14] In particular, he contends that there is no substantial and continuously built up frontage at this location – largely because No 51 East Road should not be considered to form part of such a frontage (since it does not actually front onto East Road). He also contends that the proposed dwelling will not integrate; that it will allow suburban build-up; and that it will create or add to ribbon development in a manner which is precluded by, rather than permitted by, the relevant policy. He further contends that supplementary planning guidance in the form of Building on Tradition has not been taken into account (in breach of SPPS); and that the Planning Advice Note (PAN) issued by the Department for Infrastructure (DfI) in this subject area on 2 August 2021 was not taken into account. Save for these last two issues, it is immediately apparent that, in substance, the applicant's case is that the Council's professional planning officer got the assessment right and the elected councillors who voted in favour of the proposal got it wrong in a manner which is legally indefensible.

Submissions on the merits

[15] Mr Duff's affidavit is less full than in many of the other judicial review applications he has lodged. This is understandably so since, at the time when he lodged the application, the Council had already confirmed in pre-action correspondence that it did not intend to oppose the grant of relief. In his affidavit, Mr Duff contends that No 51 East Road is "up a lane with no frontage to East Road"; and he has provided photographic evidence which, he says, supports that contention. These averments support the central thrust of his case, which is that there was no relevant substantial and continuously built up frontage within the terms of Policy CTY8 to enable legitimate infill development to occur. In his oral submissions, Mr Duff suggested that leave should obviously be granted given the Council's concessions in the case.

[16] In Mr Morgan's submissions, at my request, he provided further details of the aspects of the Council's consideration which, on reflection and with the benefit of legal advice, it now accepted gave rise to a legal vulnerability in its decision warranting the grant of a quashing order so that the application would be reconsidered. There were two key aspects to this. First, the Council accepts that it is arguable that, as already outlined in the summary of the officer's report above, there is no relevant frontage to East Road at the dwelling at No 51 and that the committee's minuted reasoning that "the frontage of no.51 goes to the road" could

not be stood over. Relatedly, it was accepted to be arguable that the three dwellings said to form the continuous frontage were not visually linked given the extent to which No 51 was set back. Second, the Council also accepts that the further committee reasoning that "the laneway ensures ribboning does not take place" arguably cannot withstand scrutiny. Indeed, it is difficult to see that the mere presence of a laneway between two properties would have any significant impact on the issue of visual linkage which is relevant as part of the assessment of whether ribbon development has been created or added to. The Council accordingly did not oppose the grant of leave and, indeed, consented to the grant of relief even at this early stage.

[17] In his submissions, Mr Shields for Mr McDonald emphasised that in this case the Planning Committee had undertaken a site visit. This is something for which Mr Duff commended the committee (since in many cases he has brought part of his complaint is that the planning decision-makers could not make a proper assessment of the issue of compliance with policy without seeing the proposal site and its surroundings for themselves). Having done so, Mr Shields submitted, the majority of the committee were entitled to take their own view on the planning merits and also on (what he submitted to be) the question of fact as to whether or not the curtilage of No 51 extended down to the road. The mere fact, he contended, that a different composition of the Planning Committee – or even the same committee – has more recently changed its mind on these questions did not render the view taken by the committee which granted the application on 25 August unlawful. In addition, the interested party supported his case by providing a report from a newly instructed planning consultant, Gemma Jobling BSc Dip TP MRTPI of JPE Planning, which maintained the view that the relevant policies were complied with (including by virtue of the fact that the driveway access to No 51 East Road formed a frontage to the road).

[18] Manful though Mr Shields' submissions were, the leave threshold in this case is comfortably surmounted in my view, particularly in light of the concessions made on behalf of the Council. Although the application of Policy CTY8 calls for the exercise of planning judgment in places, there are limits to how far that may go for three reasons. First, as authority establishes, planning authorities do not live in the world of Humpty Dumpty where the words used in a policy can be applied so flexibly as to render them devoid of sensible meaning (see Lord Reed in *Tesco* [2012] UKSC 13, at paragraph [19]). Second, albeit judgment may require to be exercised in matters of evaluation, there are other matters (such as the ascertainment of physical features on the ground) which may require assessment as a matter of fact, rather than the exercise of judgment, where judicial review will lie more readily in the case of a clearly established error. And, third, even where judgment is concerned, although the court's role is then extremely limited, it retains a residual discretion to review for irrationality or *Wednesbury* unreasonableness. In my judgment, there is plainly an arguable case in these proceedings that the Council has acted unlawfully by granting planning permission on the basis set out at paragraph [11] above, set against the clear advice of the planning officer's report which is summarised at

paragraphs [8] and [9] above, particularly in light of the previous planning history of the site.

The issue of standing

[19] The more difficult and interesting question in relation to the application for leave in this case relates to the issue of whether the applicant has standing to bring the proceedings. Section 18(4) of the Judicature (Northern Ireland) Act 1978 provides that:

> "The court shall not grant any relief on an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

[20] Before one gets to the stage of the grant of relief however, the applicant must be granted leave to proceed under the Rules of the Court of Judicature (NI) 1980 ("RCJ") Order 53, rule 3(1). Order 53, rule 3(5) provides that:

> "The Court shall not, having regard to section 18(4) of the Act, grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

[21] This is an issue which should be considered at the leave stage, therefore; and is an issue which has been specifically raised by the interested party in opposition to the grant of leave in this case.

Mr Duff's contentions in relation to standing

[22] In his grounding affidavit, Mr Duff has averred the following:

> "I am bringing this application for leave for judicial review because I am passionate about protecting Northern Ireland's countryside and I believe that it is being systematically and cumulatively destroyed by huge numbers of infill houses which are being approved contrary to policy."

[23] This is also an issue which was addressed in Mr Duff's pre-action correspondence, which dealt also specifically with standing, in the following terms:

> "The Applicant has established in a number of judicial reviews that he is committed to protection of the environment and in particular the protection of the Northern Ireland countryside.

> The Applicant has brought 40 judicial reviews (most in the name of various Rural Integrity Companies) and has never been found to have been a mere busybody or vexatious in any case.
>
> All cases were challenging environmental harm and were brought on merit.
>
> The Court is consistently accepting that cases which are brought for environmental protection of the countryside are Aarhus Convention cases.
>
> I claim standing on the basis that the environment cannot protect itself and all people have a genuine interest in the environment and responsibility to protect the environment."

[24] Mr Duff then relied on two authorities – the opinion of the Advocate General in the *Protect Natur* case and the decision of the United Kingdom Supreme Court in *Walton v The Scottish Ministers* – both of which are discussed below.

The interested party's submission on leave

[25] For his part, the interested party argued strongly that the applicant did not enjoy standing to bring these proceedings on a range of bases. The applicant does not live in the locality of the development proposal: he lives many miles away in Belfast. He has no known connection to the locality of the development proposal; nor does he live in, or have any known connection with, the Council's district. Significantly, he did not participate in any way in the planning process of which he now complains. This last factor was emphasised by Mr Shields as being of especial significance given the approach taken by the court in *Re Doyle's Application* [2014] NIQB 82, which I consider below.

[26] For completeness, I should add that the Council's position was neutral on the question of whether or not the applicant had standing in these proceedings. Lack of standing was not a point it had taken against him; but nor did it positively assert that Mr Duff had standing. In Mr Morgan's submission, this was a matter for the court.

Relevant authorities on standing in this context

[27] Mr Duff founded himself on recent authorities which emphasise the broad approach to standing in environmental cases and that the environment cannot speak for itself but needs citizens to do so. In particular, he relied upon dicta of Lord Hope in *Walton v Scottish Ministers* [2012] UKSC 44. That was a case in which an

individual protester challenged a decision to permit construction of a road network around Aberdeen. The project required environmental impact assessment (EIA). When the case reached the Supreme Court, one of the issues addressed was the question of standing and whether the applicant was a "person aggrieved" for the purpose of a challenge under the relevant Scottish statutory provision. This was considered not to be a straightforward matter and one which depended on the particular legislation involved and the nature of the complaint made.

[28] However, the Supreme Court considered that a wide interpretation was appropriate, particularly in the context of statutory planning appeals, since the quality of the natural environment was of legitimate concern to everyone. A person would ordinarily be regarded as aggrieved if they made objections or representations as part of the procedure which preceded the decision challenged and if their complaint was then that the decision was not properly made. In that case, the appellant was considered to be a person aggrieved, taking into account that he had made representations to the ministers in accordance with the procedures laid down in the relevant Act; that he had taken part in the local inquiry; and that he lived in the vicinity of the road scheme (although his home would not be affected), and was an active member of various local environmental organisations.

[29] On the other hand, in the *Doyle* case (supra), relied upon by the interested party, Treacy J refused leave in a planning challenge on the basis that the applicant did not have standing because of her non-participation in the relevant planning process. At paragraphs [10]-[11] of his judgment, he said this:

> "[10] The clear legislative purpose underpinning Art 21 and Art 32(6) of the [Planning (Northern Ireland) Order 1991] is that following the prescribed public advertisement any member of the public with an interest in the application/appeal has been given a reasonable opportunity to become aware of it and make representations if they so wish.
>
> [11] I accept the submission of the PAC that where, as here, members of the public are provided with a reasonable opportunity to participate in a quasi-judicial process, a person who does not so participate cannot ordinarily be said to have a sufficient interest in the outcome of that process."

[30] Having considered the UKSC's decision in *Walton*, Treacy J observed that, although the position may be different where the challenger had failed to participate in the planning process because they had been actively misled in relation to the nature of the application, mere ignorance was not enough. It would undermine the statutory purpose of the advertising regime required for planning applications if

being unaware of an application was a sufficient basis to confer standing. The judge went on (at paragraph [12]):

> "Further, it would introduce uncertainty since a person not involved in the process could, as here, emerge late in the day to mount a challenge including seeking to rely on points not taken by any of the participants in the appeal and even though better placed challengers who actually participated in the process have not sought judicial review."

[31] Mr Shields made the point that the *Doyle* case post-dated the Aarhus Convention (on which the applicant relied) and also involved, in his submission, a much more environmentally significant development than the present case.

[32] Mr Shields also referred to a decision of the English Court of Appeal in which a similar approach had been taken: *Ashton v Secretary of State for Communities and Local Government* [2010] EWCA Civ 600. That case also considered the meaning of the term "person aggrieved" in the Town and Country Planning Act 1990; but concluded that an individual who had not made representations at a public inquiry (albeit he had been a member of a development group which had) did not have sufficient standing to later challenge the Secretary of State's decision to grant planning permission. At first instance, the judge had stated that the relevant question in relation to standing was whether the applicant had taken a "sufficiently active role in the planning process" (citing Buxton LJ in *Eco-Energy (GB) Ltd v First Secretary of State* [2005] 2 P&CR 5, at paragraph [7]); and had found that, although he did not doubt the genuineness of the applicant's interest in the outcome of the decision-making process, he had not played a sufficiently active role in the planning process properly to be described as aggrieved.

[33] After a detailed review of a range of authorities in this area, Pill LJ helpfully summarised the court's conclusions on standing at paragraph [53] in the following terms:

> "The following principles may be extracted from the authorities and applied when considering whether a person is aggrieved within the meaning of section 288 of the 1990 Act:
>
> 1. Wide access to the courts is required under section 288 (article 10a, *N'Jie*).
>
> 2. Normally, participation in the planning process which led to the decision sought to be challenged is required. What is sufficient participation will

depend on the opportunities available and the steps taken (*Eco-Energy*, *Lardner*).

3. There may be situations in which failure to participate is not a bar (*Cumming*, cited in *Lardner*).

4. A further factor to be considered is the nature and weight of the person's substantive interest and the extent to which it is prejudiced (*N'Jie* and *Lardner*). The sufficiency of the interest must be considered (article 10a).

5. This factor is to be assessed objectively. There is a difference between feeling aggrieved and being aggrieved (*Lardner*).

6. What might otherwise be a sufficient interest may not be sufficient if acquired for the purpose of establishing a status under section 288 (*Morbaine*).

7. The participation factor and the interest factor may be interrelated in that it may not be possible to assess the extent of the person's interest if he has not participated in the planning procedures (*Lardner*).

8. While recognising the need for wide access to the courts, weight may be given, when assessing the prior participation required, and the interests relied on, to the public interest in the implementation of projects and the delay involved in judicial proceedings (Advocate General Kokott in *Ireland*)."

[34] In the *Ashton* case the applicant was both a local resident whose property would be affected to some degree by the development *and* a longstanding member of a development group which had campaigned against the proposal, including by making submissions at the planning inquiry on behalf of a range of people (including the applicant). Notwithstanding these features, the court concluded, as had the judge below, that he did not have sufficient standing to mount his intended legal challenge.

[35] This decision obviously pre-dates, and is inferior in status to, the guidance given by the Supreme Court in *Walton*. However, the themes are common. *Walton* also holds that persons will ordinarily be regarded as aggrieved if they made objections or representations as part of the procedure which preceded the decision challenged, maintaining such participation as an important touchstone in this

context (see paragraphs [86]-[87] of the judgment of Lord Reed). Whilst an interest in the matter for the purposes of standing in a common law challenge may be shown either by a personal interest or a legitimate or reasonable concern in the matter to which the application relates (see paragraph [92] of Lord Reed's judgment), what constitutes sufficient interest is *also* context specific, differing from case to case, and requiring consideration of the issues raised and of "what will best serve the purposes of judicial review in that context" (see paragraphs [92]-[93] of Lord Reed's judgment). Lord Carnwath agreed with Lord Reed in relation to these issues, as did Lords Kerr and Dyson (see paragraphs [102] and [157]).

[36] Lord Hope wished to add a few words of his own on the question of standing in the context of environmental law, with which Lords Kerr and Dyson also agreed. He considered that the observations of the court below in relation to the appellant's lack of status as a person aggrieved was to take too narrow a view. At paragraph [152] of his judgment, he said that:

> "An individual may be personally affected in his private interests by the environmental issues to which an application for planning permission may give rise. Noise and disturbance to the visual amenity of his property are some obvious examples. But some environmental issues that can properly be raised by an individual are not of that character. Take, for example, the risk that a route used by an osprey as it moves to and from a favourite fishing loch will be impeded by the proposed erection across it of a cluster of wind turbines. Does the fact that this proposal cannot reasonably be said to affect any individual's property rights or interests mean that it is not open to an individual to challenge the proposed development on this ground? That would seem to be contrary to the purpose of environmental law, which proceeds on the basis that the quality of the natural environment is of legitimate concern to everyone. The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf."

[37] He continued, at paragraph [153]:

> "Of course, this must not be seen as an invitation to the busybody to question the validity of a scheme or order under the statute just because he objects to the scheme of the development. Individuals who wish to do this on environmental grounds will have to demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and that they have sufficient

> knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity. There is, after all, no shortage of well-informed bodies that are equipped to raise issues of this kind, such as the Scottish Wildlife Trust and Scottish Natural Heritage in their capacity as the Scottish Ministers' statutory advisers on nature conservation. It would normally be to bodies of that kind that one would look if there were good grounds for objection. But it is well-known they do not have the resources to object to every development that might have adverse consequences for the environment. So there has to be some room for individuals who are sufficiently concerned, and sufficiently well-informed, to do this too. It will be for the court to judge in each case whether these requirements are satisfied."

[38] A number of Lord Hope's comments are to similar effect to the opinion of Advocate General Sharpston in Case C-644/15, *Protect Natur-, Arten- und Landschaftsschutz Unweltorganisation v Bezirkshauptmannschaft Gmünd* on which Mr Duff also relied, at paragraph 77:

> "The natural environment belongs to us all and its protection is our collective responsibility. The Court has recognised that the rules of EU environmental law, for the most part, address the public interest and not merely the protection of the interests of individuals as such. Neither water nor the fish swimming in it can go to court. Trees likewise have no legal standing."

[39] However, that case concerned the standing of an environmental organisation and the above passage is taken from a discussion of the role of such organisations which, as the Advocate General observed, both act as a filter and contribute specialised knowledge, thereby putting the courts in a better position to decide the case. Also pertinent is her observation at paragraph 81 of her opinion that the authors of the Aarhus Convention (discussed further below) did not opt to introduce an actio popularis in environmental matters. They chose instead to strengthen the role of environmental organisations and, in so doing, steered a middle course between the maximalist approach (actio popularis) and the minimalist approach (a right of individual action available only to parties having a direct interest at stake) as a sensible and pragmatic compromise.

[40] These sentiments resonate with the approach of Lord Hope in the *Walton* case discussed above. Lord Hope – himself an avid birdwatcher – recognised the force in the points made by Mr Duff that someone must speak up for affected wildlife and that we all have a legitimate concern about protection of the environment. The

insistence in every case on a private interest on the part of the applicant would therefore be inappropriate. However, the ability to bring proceedings in a representative capacity was not, even in Lord Hope's estimation, untrammelled. In each case, this would be an issue for the court, taking into account, inter alia, the knowledge, ability and resources of the challenger. Normally, one would look to expert Non-Government Organisations (NGOs) to perform this function. There has to be "some room" for individuals to do so; but it is not unlimited.

The effect of the Aarhus Convention

[41] As I understand it, Mr Duff relies to some degree on the Aarhus Convention in support of his claim to have standing, on a generalised basis that it supports wide access to environmental justice. In terms of costs protection in environmental judicial reviews, the Convention has been given statutory force in domestic law (see paragraph [59] below). On the issue of standing, however, it remains unincorporated (save insofar as incorporated through European Union (EU) law which is still retained EU law).

[42] In addition, as explained in the Advocate General's opinion in the *Protect Natur* case, and indeed in the later decision of the CJEU itself in that case, where (as here) the case is not one to which Article 6 of the Aarhus Convention applies, the provisions on access to environmental justice (under Article 9(3), rather than Article 9(2)) are weaker. Article 9(3) provides as follows:

> "In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."
>
> [underlined emphasis added]

[43] In the *Ashton* case discussed above, the proposal required EIA. In those circumstances, the domestic requirements on standing had to conform with Article 10A of the Environmental Impact Assessment Directive (85/337/EEC), which reflects the requirements of Article 9(2) of the Aarhus Convention where Article 6 is engaged. In each case, the relevant provisions refer to members of the public having access to a review procedure before a court where they had "sufficient interest" (or maintaining impairment of a right, where the administrative procedural law of the relevant state requires this as a precondition). Article 10A of the EIA Directive (reflecting Article 9(2) of the Aarhus Convention) went on:

> "What constitutes a sufficient interest and impairment of a right shall be determined by the Member States,

> consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article."

[44] The Court of Appeal pointed out that NGOs promoting environmental protection and meeting any requirements under national law were deemed to have an interest under Article 10A. That obviously does not apply in this case, nor did it in the *Ashton* case, since the applicant is not an environmental NGO. The court also went on to refer to Case C-427/07, *Commission of the European Communities v Ireland* (16 July 2009). In that case, under Irish law the applicant was required to prove a peculiar and personal interest of significant weight which was affected by or connected with the development in question; yet the Court of Justice found Irish law to be compatible with the Directive on the issue of standing, although there were findings against Ireland on other grounds.

[45] When considering the issue of standing, Advocate General Kokott, in a passage quoted by the Court of Appeal in its judgment in *Ashton*, stated, at paragraph 69, as follows:

> "However, in order to determine what constitutes sufficient interest to bring an action, a balance must necessarily be struck. Effective enforcement of the law militates in favour of wide access to the courts. On the other hand, it is possible that many court actions are unnecessary because the law has not been infringed. Unnecessary actions not only burden the courts, but also in some cases adversely affect projects, whose implementation can be delayed. Factors such as an increasing amount of legislation or a growing litigiousness of citizens, but also a change in environmental conditions, can affect the outcome of that balancing exercise. Accordingly, it cannot be automatically inferred from more generous access to the courts than was previously available that a more restrictive approach would be incompatible with the objective of wide access."

[46] In short, the Aarhus Convention, even assuming it was applicable in the present circumstances, would not assist the applicant, other than in the most general way as being supportive of the principle of wide access to justice in environmental cases, which is already reflected in domestic case-law. The approach in EU law and

under the Convention – particularly in cases where expert NGOs are not involved – leaves scope for the striking of a balance.

Application in this case

[47] In this case, I have concluded that the applicant does not have appropriate standing to permit the grant of leave to him to pursue an application for judicial review.

[48] The applicant does not have any personal substantive interest in the grant of the planning permission involved. He does not live nearby. His amenity will not be affected. No property interest of his will be affected; nor are any of his private law rights engaged. Albeit the applicant may feel aggrieved at the grant of permission in this case, he is not objectively aggrieved by it (other than in the very general sense that he considers it harmful to the environment which we all share).

[49] The absence of a direct personal interest is, of course, not a determinative factor on its own, particularly given the wide access to the courts which is generally required in the field of environmental justice. However, there are three additional factors in this case which led me to conclude that the refusal of leave is appropriate on standing grounds.

[50] First, there has been a complete failure on the part of the applicant to participate in the planning process which led to the decision which he now seeks to challenge. The authorities discussed above suggest that, normally, participation in the planning process will be required before an applicant will be considered to have sufficient interest to challenge the resulting permission. Although a failure to participate is not an absolute bar, its combination in this case with the lack of any direct personal interest in the decision is an extremely important factor tending against sufficiency of interest.

[51] Second, I accept the interested party's submission that the environmental harm at stake in this case is modest, given the limited nature of the development proposal (and the extent for this to be further controlled at the reserved matters approval stage). Whilst I entirely recognise the force of Mr Duff's point that, if policies within PPS21 such as Policy CTY8 are routinely misapplied, there will be a significant cumulative impact caused by overdevelopment in the countryside made up of many small-scale developments, the best way to address this taking into account all of the interests involved is by more strategic litigation in a limited number of cases to authoritatively establish the correct approach to policy. Mr Duff already has a range of extant applications before the court raising the same or similar points, in respect of which a lead case has been identified and heard, and other related cases have been stayed. The lead case is one of those, like many others but unlike the present case, where Mr Duff did participate actively by way of objection in the planning process. Bringing myriad applications raising the same issue is not

required and may in fact be counterproductive, insofar as it delays determination of the key issues in a lead case or small number of test cases.

[52] Third, and importantly, I must also consider the public interest in assessing the sufficiency of the applicant's interest in these proceedings and whether that merits the grant of leave to proceed. In *Rural Integrity (Lisburn 01) Limited v Planning Appeals Commission* [2019] NIQB 40, at paragraph [35], McCloskey LJ referred to Mr Duff – at that time acting through a number of registered companies – engaging in "extensive litigation activities, which I have described as of unprecedented volume." There were some 40 or so cases which had been brought by Mr Duff at that stage, many of which touched upon or concerned the same points, or substantially the same points, as he is raising in these proceedings. The vast majority of these were struck out as an abuse of the court's process given non-compliance with the Court Rules in the manner in which they had been brought: see *Re Rural Integrity (Lisburn 01) and Related Limited Companies' Applications* [2020] NIQB 25. A small number of them have been permitted to proceed: see my judgment in *Re Portinode Environmental Ltd's Application* [2021] NIQB 31. Mr Duff has also issued a further 25 or so cases since then, many of which have been dealt with in another ruling given today: see *Re Duff's and Burns' Applications* [2022] NIQB 10. A number of his other cases remain stayed pending judgment in the lead case against Newry and Mourne District Council which was recently heard.

[53] There are a number of points arising from this. The court is entitled to take into account a variety of features of the public interest in assessing the adequacy of the applicant's interest in the proceedings he is bringing. A significant point in this respect, where Mr Duff brings proceedings in relation to a planning permission when he has had no prior involvement in the planning process, is that neither the planning authority nor planning applicant concerned will have had a proper opportunity to grapple with Mr Duff's objections. This deprives the planning applicant of the opportunity of making a reasoned and informed case against the objection; and deprives the planning authority of the opportunity of making a fully informed and reasoned decision dealing with the substance of Mr Duff's concerns. That is contrary to the requirements of good administration and will result in increased time and costs overall. A further result is that, as in this case, the planning applicant may be taken entirely by surprise, after the event, by a legal challenge to their planning permission. This may arise in circumstances where the beneficiary of the permission has acted to their detriment upon it, in good faith and with the reassurance that there had been no objection to the proposal during the course of the planning authority's consideration. The distress and inconvenience this may cause was apparent to the court in the representations received from affected parties both in this case and in many others which were the subject of the ruling in *Re Duff's and Burns' Applications*.

[54] The previous judgments and rulings referred to in the preceding paragraphs demonstrate the multiplicity of proceedings which have been commenced by Mr Duff in recent times. He is a prolific and seemingly indefatigable litigant. Dealing

with his cases has imposed a significant workload upon court office staff and continues to do so, in circumstances where the court's overriding objective to deal with cases justly (set out in RCJ Order 1, rule 1A) requires consideration, inter alia, of allotting an appropriate share of the court resources between cases and dealing with cases in ways which are proportionate to their importance.

[55] I accept the genuineness of Mr Duff's environmental concerns; of his passion for the countryside; and of his frustration at the lack of other challengers taking on what he perceives to be an unduly relaxed and harmful approach to piecemeal development in the countryside. His more recent cases, which are no longer being pursued through a limited company incorporated for the purpose, are taken at his own expense, without remuneration, and at personal costs risk. I would not therefore be inclined to label him as the classic 'busybody' against whom the standing rule archetypally guards. Nonetheless, I can see why the beneficiaries of planning permissions aggrieved at his challenges may view him in that way, particularly where his challenge materialises in the absence of any earlier planning objection. In addition, I must take into account that he is not an environmental representative in the sense that a specialist NGO would be; and that he acts as a litigant in person who therefore, notwithstanding his diligence and enthusiasm, is less likely to assist the court than a well-resourced organisation with access to environmental and legal expertise.

[56] Taking all of the above together, I am persuaded that the applicant should not be considered to have sufficient standing to pursue this case. In future, barring an exceptional circumstance, I would also be inclined to refuse leave to apply for judicial review in any case where Mr Duff has no direct personal interest in the planning permission under challenge and has failed to participate in the planning process resulting in the grant of that permission. I would not be inclined to refuse leave to apply for judicial review merely because the applicant does not live near the proposal site or in the proposed respondent's district, if he has earlier participated in the planning process out of legitimate environmental concern. In my judgement, this approach strikes an appropriate balance between the need to ensure wide access to justice in environmental cases but also the need to ensure that the standing test operates as a meaningful threshold in the public interest.

Conclusion

[57] By reason of the foregoing, I refuse the applicant's application for leave to apply for judicial review. I accept that a number of the grounds of challenge are arguable. However, I find that, in the context described above, the applicant does not enjoy sufficient interest in the subject matter of the proceedings for leave to be granted.

Costs

[58] In accordance with the court's normal (although not invariable) approach, I propose to make no order for costs between the parties given that the application has been dismissed at the leave stage, which is technically an ex parte application under the rules of court. Subject to any contrary view on the issue of standing which may be taken by the Court of Appeal if the refusal of leave in this case is appealed against, I would however observe that, in future, the bringing of a challenge where the applicant plainly does not enjoy standing for the reasons outlined above might well constitute an instance where departure from the normal approach to costs at the leave stage would be warranted.

[59] In case this ruling is appealed, I also record that the applicant sought a protective costs order (PCO) pursuant to the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013, as amended. The Order 53 statement stated that the application is an Aarhus Convention case within the meaning of that term in the 2013 Regulations and this was not objected to by either the Council or the interested party nor challenged under regulation 4. Had leave been granted therefore, or had costs been in issue at this stage, I would have granted a PCO in the standard terms under the 2013 Regulations to the effect that the costs recoverable from Mr Duff should not exceed £5,000 (excluding VAT).

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	ICOS No: **21/055065**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **03/04/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GORDON DUFF (RE GLASSDRUMMAN ROAD, BALLYNAHINCH) FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF NEWRY, MOURNE AND DOWN DISTRICT COUNCIL

The appellant, Mr Duff, appeared in person
Philip McAteer (instructed by Belfast City Council Legal Services Department) for the Respondent
William Orbinson KC and Fionnuala Connolly (instructed by O'Hare Solicitors) for the Notice Party, Mr Carlin
Stewart Beattie KC and Philip McEvoy (instructed by Cleaver Fulton Rankin, Solicitors) appeared and intervened (by written submissions only) for Lisburn and Castlereagh City Council

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Before: Keegan LCJ, Treacy LJ & Sir Paul Maguire

TREACY LJ *(delivering the judgment of the court)*

Introduction

[1] In these proceedings Mr Gordon Duff, a litigant in person ("the appellant"), appeals against the decision of Scoffield J dismissing his judicial review against a decision to grant outline planning permission for two detached 'infill' dwellings and garages at lands located between Nos 2 and 10 Glassdrumman Road, Ballynahinch. The impugned decision was made by Newry, Mourne and Down District Council, ("the Council") on 9 April 2021 under planning reference LA07/2020/1292.

The Main Issue

[2] The appellant's core complaint is that the decision to allow this development will have the effect of extending ribbon development and that this is contrary to planning policy in Northern Ireland (NI). He asserts that planning policy considers ribbon development in rural areas to be damaging and unacceptable in principle, and that it requires planning applications which would cause or add to ribbon development to be rejected *unless* they come within the very limited exceptions described within the policies themselves. He claims the Council's decision that this application did satisfy the conditions of the 'small gap' exception contained in Policy CTY8 is unsupported by the facts and wrong in law, and that therefore it should be quashed.

The relevant planning policies

Policy CTY8 within PPS21 - Ribbon development

[3] The key policy for present purposes is Policy CTY8 of PPS21. The crux of the policy is contained within the first sentence:

> "Planning permission *will be refused* for a building which creates or adds to a ribbon of development." [our emphasis]

[4] This is in materially similar terms to the guidance contained in Policy CTY14 on the same issue. It provides:

> "A new building [in the countryside] *will be unacceptable* where … it creates or adds to a ribbon of development (see Policy CTY8) …" [our emphasis]

[5] The reasons for this prohibition on ribbon development are explained in the justification text related to Policy CTY8 as follows:

> "Ribbon development is detrimental to the character, appearance and amenity of the countryside. It creates and reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. *Ribbon development has consistently been opposed and will continue to be unacceptable."* [our emphasis]

[6] Similarly, paragraph 5.80 of PPS21 states:

> "*It is considered that ribbon development is always detrimental to the rural character of an area* as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside." [our emphasis]

[7] The strong, unambiguous language used in the policies just quoted shows that the policy intention was that planning permission "will be refused" for any building which would create or add to a ribbon of development. This prohibition is subject only to the limited exceptions that are built into CTY8 itself.

[8] In this case the respondent accepts that the development in this planning application would constitute ribbon development, but it claims that it came within the 'small gap' exception in policy CTY8. It contends that it applied the governing policy to this application and decided that the development could be allowed under the exception. It does not contend that it consciously departed from the policy on any proper planning grounds, and it is notable that no such grounds were proposed or advanced by any of the parties.

[9] This is therefore a case which turns exclusively on the issue of whether the applicable policies were correctly understood and applied by the decision maker. This means that, unless the exception is shown to have been truly available to the Council on the facts of this case, then permission must be refused because ribbon development like this is unacceptable under the policy guidelines unless it falls within a permitted exception.

The 'small gap' exception

[10] Policy CTY8 contains limited exceptions to the prohibition against ribbon development including the so-called "small gap" exception which is the one relied upon in this case. It is expressed as follows:

> "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 3 or more buildings along a road frontage without accompanying development to the rear."

[11] Where it is established that such a gap exists, it may be filled by an appropriate housing development, provided the requirements in relation to matters such as scale and design are also met in full.

[12] An exception to the prohibition against ribbon development can only be established if *all* of the conditions underpinning the exception are made out. Absent fulfilment of any of these conditions, the very closely defined exception cannot be made out. In construing and applying the exception, the decision-maker must bear in mind the inherently restrictive nature of the policy, the principal aim of which is to prevent the spread of ribbon development in rural areas.

Other relevant policies.

The Strategic Planning Policy Statement

[13] The Strategic Planning Policy Statement for Northern Ireland (SPPS) at paragraph 6.73 states:

> **"Infill/ribbon development**: provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development; …"

There was some debate before Scoffield J about whether this paragraph altered the position set out in Policy CTY8 by referring to "provision" being made for the development of small gap sites, rather than referring to such sites as an "exception" to the general rule. In agreement with the trial judge, we do not discern any conflict between the SPPS and the more detailed policy set out in Policy CTY8 (and Policy CTY14). Nothing suggests that there was any intention in the SPPS to change policy and we do not consider that the SPPS was intended to herald any move away from the approach required by careful application of the clear terms of Policy CTY8 itself. On the contrary, the core guidance in CTY8 is reiterated in the last sentence of this paragraph confirming that the policy objective is the same in both documents.

Policy NH5 of PPS2

[14] The appellant also relied upon Policy NH5 of PPS2 on Natural Heritage. Policy NH5, entitled 'Habitats, Species or Features of Natural Heritage Importance', provides as follows:

> "Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:
>
> - **priority habitats;**
> - priority species;
> - active peatland;
> - ancient and long-established woodland;

- features of earth science conservation importance;
- features of the landscape which are of major importance for wild flora and fauna;
- rare or threatened native species;
- wetlands (includes river corridors); or
- other natural heritage features worthy of protection.

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features ***may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.***

In such cases, appropriate mitigation and/or compensatory measures will be required."

[15] This policy is relevant because hedgerows *are* a known priority habitat in NI and it was known that the grant of this application would necessarily trigger 'damage' to a significant stretch of hedgerow. The likely effects of the development proposal on the established hedgerows on this site was therefore a factor that the decision maker ought to have considered very carefully when deciding the application.

Factual and procedural background

[16] The planning application is for two detached infill dwellings and garages at lands located between Nos 2 and 10 Glassdrumman Road, Ballynahinch. According to the report provided to the Council's Planning Committee by its professional planning officers, ("the officers' report"), the application site is 0.47ha and comprises the front portion of a field which lies between the two properties mentioned. There is mature vegetation along the roadside boundary. The surrounding land is predominantly domestic and agricultural in use, with a number of dwellings along the immediate stretch of road. The site is located within the rural area, outside any designated settlement areas.

[17] The planning application was advertised in the local press on 30 September 2020 and the usual neighbour notification was carried out. Eighteen objections were received including three from elected members of the Council and one from the appellant in this case.

[18] The appellant first objected to the planning application by way of letter dated 30 September 2020 which was exhibited to his grounding affidavit. The Planning Committee of the Council 'called in' the application to be determined by it. It was dealt with at the Committee's meeting of 16 December 2020. As is usual, the officer's report on the application was presented to the Committee. The appellant was

granted speaking rights at the meeting, and he presented his arguments which were in similar terms to those set out in his letter of objection. He also argued that the Committee could not properly decide this application without having visited the site. The Committee put that suggestion to a vote and determined that it was not in favour of having a site visit. The Committee also voted on the substance of the planning application. It voted to approve the application by eight votes in favour and two votes against.

[19] The appellant sent pre-action correspondence to the Council the day after the Committee's decision, on 17 December 2020. The Council did not respond in substance to the pre-action correspondence but rescheduled the application for further consideration before the Planning Committee on 8 April 2021.

[20] Before this meeting occurred, the planning officer prepared and presented an addendum to his original report. This addendum did not mention Mr Duff's pre-action correspondence. It related to issues of flood risk and historic interests which had arisen separately.

[21] The application was considered again by the Committee on 8 April 2021. Before this meeting, on 26 March, the appellant submitted a short statement for the benefit of the Committee. At this meeting the Committee considered the matter again and heard from the planning applicant's agent (Mr Carlin) and from the appellant. The Committee once again voted to approve the application (with eight members voting in favour; none against; and one abstention). The planning permission was issued on 9 April 2021. The appellant thereafter sent further pre-action correspondence to the Council but also issued his application for leave to apply for judicial review on 8 July 2021 in order to comply with the time limit in RCJ Order 53, rule 4.

How were the relevant policies applied by the decision maker?

[22] As noted above, the key question in this case is whether or not the 'small gap' exception to policy CTY8 was made out in this case. At the meetings with the Planning Committee this issue was addressed by both the Council's planning officers and by the appellant.

The planning officer's report

[23] The officer's report correctly identified the relevant policies and supplementary guidance that had to be considered. The core elements of Policy CTY8 were summarised for the Committee.

[24] An assessment of the application against the policy guidelines was carried out by a case officer and approved by a senior planning officer, as well as the file being reviewed by the Council's Chief Planning Officer in advance of the relevant Committee meetings. The officer's assessment of whether the proposed site was a

small gap site within a substantial and continuously built-up frontage was as follows:

> "The proposed [development] site has a frontage of 111m onto the Glassdrumman Road. To the south east of the site lies No 2 which is a dwelling with detached garage, both with frontage onto the road. To the north west of the site is a dwelling at No 10 also with frontage to the road. Further along the road lies a *ménage* which is *in association with* No 12 Glassdrumman Road and two further dwellings beyond, with frontage to Glassdrumman Road. Officers are satisfied that the site comprises a small gap site within a substantial and continuously built up frontage."

[25] The trial judge summarised the appellant's points in opposition to the officer's report and we gratefully adopt that summary here. The appellant's main contentions were:

(1) the approved sites are not within a substantial and continuously built-up frontage;

(2) the gap which is to be infilled is not small;

(3) No 12 Glassdrumman Road does not have a frontage to that road;

(4) a number of policies prohibit creation of, or addition to, ribbon development, in which the approval of this planning application results, and he asserts that this is an absolute prohibition.

(5) the Planning Committee fell into error or acted unlawfully in failing to conduct a site visit in this case;

(6) there are issues about the removal of hedgerows which will be required by the implementation of the impugned permission, and these issues were not considered adequately or at all by the decision maker.

The appellant's grounds of judicial review

[26] When leave was granted, the pleaded grounds were significantly refined so that there were only three grounds of challenge to be addressed by Scoffield J, namely (i) illegality; (ii) the leaving out of account of material considerations; and (iii) irrationality. These challenges were framed as follows:

"Illegality

"... [T]he respondent erred in law in its interpretation of Policy CTY8 and/or CTY14 of PPS21 and/or of paragraph 6.73 of the SPPS [Strategic Planning Policy Statement] and thereby failed to apply them properly or at all."

Material considerations

"… [T]he impugned decision is vitiated because the respondent wrongly left out of account the following considerations:

- relevant supplementary planning guidance in 'Building on Tradition'; and

- the extent of hedgerow removal involved in the proposed development and/or Policy NH5 of PPS2 in relation to hedgerows."

Irrationality

"… [T]he respondent's view that Policy CTY8 was complied with was irrational in the *Wednesbury* sense in that the respondent wrongly:

- considered there to be a "substantial and continuously built-up frontage" at the site;

- considered the 'gap' to be infilled to be a "small" gap;

- considered that permitting the development would not amount to creating or adding to ribbon development; and

- reached its view on this issue without properly informing itself of material considerations by conducting a site visit to the application site."

[27] The respondent's case is based on two building blocks:

(i) that the proposed development site is a "*small* gap", and

(ii) that this small gap falls *within* a *substantial* and *continuously built up frontage.*

These two propositions are reflected in the planning officer's report.

Discussion

Is it a "small gap site" within a "continuously built-up frontage"?

[28] The central question in this case is whether the Council properly directed itself in relation to whether this planning proposal did or did not come within the terms of the small gap exception.

[29] The exception provides:

> "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 3 or more buildings along a road frontage without accompanying development to the rear."

The small gap exception under Policy CTY8 may be available where a small gap exists 'within an otherwise substantial and continuously built up frontage ('SCBUF'). The approach of the trial judge was to ask first whether there is SCBUF and then ask whether there is a small gap site within that frontage, and we adopt the same approach here.

[30] The definition of a SCBUF contained in CTY8 is as follows:

> "For the purpose of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear."

[31] Policy CTY8 refers to a small gap site within an *otherwise* substantial and continuously built up frontage, that is to say, a *road frontage* which is continuously built up *but for* the gap which is under consideration as a development site. In the court below, whether or not an SCBUF existed was treated as a question of planning judgment, however that judgment must be informed by the physical facts that exist in the relevant area of land. 'Planning judgment' cannot erase observable facts.

[32] To be a 'substantial built-up frontage' the area in question must consist of **a 'line of 3 or more buildings along a road frontage** …' The presence of a 'building' is therefore essential if a plot of land is to be considered 'built-up.'

[33] The physical features of the relevant part of the Glassdrumman Road were described as follows in the planning officer's report:

> "To the south-east of the site lies No.2 which is a dwelling with detached garage both with frontage onto the road."

[34] Next in the 'line' comes the proposed development site with 111m of road frontage and, obviously, no buildings. This is the physical and visual 'gap' which is the subject of the proceedings.

[35] Next in the line is 'a dwelling at No 10, also with frontage to the road.' So far, therefore, the pattern of development is 'building – gap - building'.

[36] After No. 10 the report says this:

> 'Further along the road lies a manège which is in association with No 12 Glassdrumman Road.'

[37] A 'manège/('manège') is a piece of ground used to train horses. It can be either indoor or outdoor. The manège at No. 12 is an outdoor one and is not contained in any building. Physically it is a piece of ground with a hard surface. Visually it is a gap **without a building.** It is a visual gap in the line of development and it breaks the continuity of the 'line' of development.

[38] It is also notable that the officer's report does not state that No. 12 has frontage to Glassdrumman Road. Rather it says:

> "No 12 has a plot width of 68m … While a large portion of this frontage width is occupied by a manège, this is viewed to be in association with the domestic property at No 12 rather than being considered undeveloped land given the fencing and hardstanding and therefore is counted as part of the frontage width."

[39] For his part, the appellant claims that No. 12 does not have frontage to Glassdrumman Road.

Requirements of the small gap exception

[40] The small gap exception is concerned with **lines** of development along a road frontage - in this case, along the Glassdrumman Road. To qualify for the benefit of

the exception the minimum requirement is a pre-existing **'line** of 3 or more **buildings** along a road frontage …'

[41] The development pattern along the relevant part of Glassdrumman Road does not appear on the facts to meet this requirement. The pattern is: No. 2 - gap - No. 10 - manège gap with no building – No. 12 on the other side of the second gap. In this case there are three buildings separated by two significantly sized visual gaps. Neither gap carries any building. In these circumstances the applicant seeking planning permission cannot show a pre-existing line of 'continuous' development. This 'line of development' is not 'continuous': it is punctuated by two gaps.

Was the proposed development site a 'small gap'?

[42] Whether or not the proposed development site is a 'small gap' for the purposes of the exception depends on the proportions of the gap in relation to the proportions of the built-up areas of the alleged SCBUF.

[43] The officer's report addressed plot size as follows:

> "With regard plot size, No. 2 Glassdrumman Road has a plot width of 46m, No. 10 has a plot width of 54m and No 12 has a plot width of 68m. While *a large portion of this frontage width is occupied by a ménage,* this is viewed to be in association with the domestic property at No 12 rather than being considered undeveloped land, given the fencing and hardstanding and therefore is counted as part of the frontage width. The average of these three plot sizes is 56m. The site subject of this application has a frontage width of 111m. As there would be two dwellings within this application site, they would both have a plot width of 55.5m.
>
> Officers are therefore satisfied that the proposed plot sizes would be in keeping with the development on either side. The proposal therefore respects the existing development pattern along this stretch of the Glassdrumman Road.
>
> While it is acknowledged that *building-to-building distance is greater than the average plot width, from a visual perspective on the ground* it is considered that the site frontage and the lands outlined in red are large enough to accommodate 2 dwellings which respect the existing development pattern.
>
> Officers are satisfied that the site comprises a small gap site within a substantial and continuously built up frontage."

[44] In our view there is a fundamental error in this approach to evaluating smallness. The report treats the manège gap as if it is an area of developed road frontage. To be treated in this way the definition of a SCBUF within the exception requires the land to be 'built-up.' The photograph at appendix 1 shows that there is no building on this significant part of the road frontage and that therefore for the purposes of the small gap exception the manège section is a clear visual gap.

[45] Despite the fact that no building exists on this gap, the officer's report includes the manège portion of the land as part of the road frontage measurement for No. 12 Glassdrumman Road. Approaching it in this way gives No. 12 a 'developed' frontage measurement of 68m - significantly wider than the frontages of the two other houses under consideration in this case. By including the manège gap with its lack of any building in the area of land treated as 'developed land', the report creates the impression that, proportionately, the application site is 'small' in relation to the total linear length of the developed section. This treatment of the manège gap is unsustainable and Wednesbury irrational.

[46] If our finding in relation to the absence of a SCBUF is wrong, the fact remains that the officer's report does not specify the width of the manège gap. It simply notes that a 'large proportion' of the frontage width attributed to No.12 'is occupied by a manège.' Had the planning officers provided the exact measurement of this piece of frontage in its report it would have been open to the decision maker to subtract that figure from the total measured length of the truly 'built-up' frontage, and this might well have impacted on the Council's assessment of the issue of relative 'smallness' of the application site.

[47] The answer to the question 'is this a small gap?' could have been very different if all the relevant information had been included in the officer's report. It was not, and this omission materially hampered the capacity of the decision maker to reach an independent judgment on the smallness or otherwise of this alleged 'small gap' site.

[48] For all these reasons we consider that the Council's decision that this was a small gap site cannot stand.

Other issues

[49] The appellant asserted that the grant of planning permission in this case failed to have regard to:

- the supplementary planning guidance in the 'Building on Tradition' document, and

- policy NH5 in relation to the removal of hedgerows.

[50] The trial judge rehearsed the rival arguments of the parties who placed reliance on the guidance in *Building on Tradition* and stated that:

> "*Both* parties in this case have made the mistake of using the guidance in *Building on Tradition* in a mechanistic or arithmetical way to seek to support their position, when this guidance was never intended to be used as a scientific formula to produce a firm result on what is ultimately a matter of judgment. Mr Duff argues that the gap is the gap between the relevant buildings (here, the domestic properties at Nos. 2 and 10 respectively) and that that gap is wider than two times the average plot width. That requires refusal, he suggests. The Council focuses on the plot width of the new houses and say that they are (just) less than the average plot width of the houses forming the rest of the ribbon, which therefore points to grant, it suggests. Both approaches are too rigid bearing in mind the nature of the exercise and the purpose and nature of the guidance in *Building on Tradition.*"

[51] We agree that the guidance in policy documents should not be used as a scientific formula designed to produce a firm result. However, the mathematical indicators provided in the guidance do have value because they seek to focus attention on the relative proportions of the visual elements within a rural landscape and to clarify how these proportions relate to each other to produce the visual impression that a landscape is continuously developed in a way that suits an urban place or is less developed as is appropriate for rural landscapes.

[52] While these indicators are not exact tools, nevertheless they can and should help inform planners and decision makers so they can avoid misconstruing a landscape. Conversely, they can help decision makers to identify what it is they should keep in order to preserve the existing visual balance within a rural landscape - such as undeveloped gaps. These guidelines should not be manipulated with a view to achieving a desired number that will facilitate or frustrate any given planning outcome.

[53] In short, the foundational planning policies and the supplementary guidance, complete with its numerical guidelines, should be viewed as a toolkit to help planners identify where pre-existing ribbon development is present and where it is absent. The guidance is intended to help them correctly identify the 'small gap' sites within the areas of pre-existing ribbon development which can be developed as infill sites without substantially adding to the visual damage that has already been done in such cases. They are also designed to help planners identify and preserve the undeveloped truly 'rural' landscapes which the policy strives to maintain, so that the

acknowledged damaging effects of ribbon development do not spread to new and presently uncontaminated places.

Importance of maintaining visual breaks

[54] Para 5.34 of PPS21 states that:

> "Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore *not* be permitted *except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage."*

[55] Paras 4.5.0 and 4.5.1 further state that:

> "There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an *important* visual break in the developed appearance of the local area.
>
> As a *general* rule of thumb, gap sites within a continuous built up frontage exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings."

[56] As these paragraphs suggest visual gaps in rural areas are the very thing that collectively maintain the rural character of the countryside and distinguish it from the uniformly developed character of urban streetscapes. Para 5.34 categorically states that "the infilling of these gaps … will not be permitted" unless they come within the exception. The gaps referred to in these policies are inherently valuable *because* they maintain the rural appearance of the countryside. They can only be infilled if the conditions underpinning the exception are clearly established.

[57] The principal purpose of the reference to visual breaks within the additional guidance documents is to put a further break on grants of permission to develop small gap sites. What the guidance intends to make clear is that, even if the qualifying conditions are found to exist such that it can be rationally said that a small gap in a SCBUF *is* present, even then it does not automatically follow that an exception to the general prohibition on new ribbon development will be allowed. Before it is granted the decision maker must further assess whether there is a good

planning reason for not granting permission, for example because the particular small gap site under consideration has a valuable characteristic which should be preserved such as framing a view or providing an important visual break.

[58] The thrust of the planning guidance in this area is to refuse infilling of gaps subject to the very limited cases where characteristic rural openness has already been destroyed because a pre-existing area of SCBUF has been identified. Even where the SCBUF is shown to be present, if the gap adds in some measure to the rural character of the area permission may be refused.

[59] The determination of whether a site offers a visual break of such significance is a matter of assessment for the decision-maker. This decision should be made with full understanding of the fundamentally prohibitive nature of the applicable policy and following due inquiry.

[60] As the judge noted, it is a matter of common sense that the larger the site, the more likely it is to offer an important visual break. In the present case by treating the manège gap as if it was a developed site with frontage the decision maker artificially extended the frontage measurement for No.12. On paper this had the effect of maximising the area of the road that could be treated as 'continuously built up.' However, this did not correspond with the visual impression of the area because visually the manège feature remained a gap. Treating it as part of a built-up frontage as the officer's report did, only served to obscure the actual pattern of development on the ground. Treating the undeveloped manège gap as part of a built up frontage of No. 12 is unsustainable in the context of the governing planning policy.

[61] The question arises whether the very strong policy steer against ribbon development has been properly displaced by a fully informed decision of the Council in this case. Given the misleading impression created by the planning officer's report and the fact that the councillors decided not to view the site themselves (even though this was not a legal error on their part) we are not satisfied that they were properly equipped to take the decision they took.

[62] The importance of the policies in play and the nature of the issues to be addressed must be to the forefront. The judgment required of decision-makers will almost certainly be vitiated if it is not exercised within the policy constraints and following due inquiry. Given the constraints inherent within the policy and the environmental importance of the rationale underpinning these restraints, fully informed scrutiny of any such proposal is essential.

Policy NH5 - the removal of the hedgerow

[63] The appellant also contended that the Council had not assessed whether development of the gap site in this case "meets other policy and environmental requirements" as required by Policy CTY8. In particular, he submitted that the environmental impact of removal of hedgerow was not investigated at all.

[64] The appellant is concerned that a significant portion of hawthorn hedge will be removed which would have an abundance of berries in the autumn which are eaten by both mammals and birds. Such removal would have an adverse impact on the food source available to wildlife. In addition to providing habitats for all kinds of wildflowers, bees, birds and small mammals, he has drawn attention to the fact that hedges are also critical wildlife corridors offering safe transit for wildlife (since open fields often offer no protection to animals moving from place to place).

[65] The judge noted that the appellant had provided photographs of the significant hedgerow along the front of the application site, some of which will be removed to provide access if the development proceeds. In advance of the judicial review hearing before the trial judge, the hedgerow was significantly cut back; but an established hedge nonetheless remains along the frontage to the Glassdrumman Road at the site.

[66] The appellant further contended that (i) the site plan and site layout plan are of insufficient quality to make it obvious how much hedgerow is to be removed when the permission is built out; (ii) the impact of creating necessary sightlines to facilitate access to the proposed dwellings will be to remove a very long section of hedgerow. The judge noted that in his second affidavit the appellant exhibited the Department for Infrastructure roads consultation response and, looking at the required visibility splays, estimates that around 50 metres of hedgerow will be required to be removed. The appellant contended that this loss was not adequately addressed by the Council's Planning Committee, and that it cannot now be addressed adequately at the reserved matters stage.

[67] The appellant relied on supplementary guidance issued by the Department of the Environment in April 2015 entitled, 'Hedgerows: Advice for Planning Officers and Applicants Seeking Planning Permission for Land Which May Impact on Hedgerows.' Updated guidance, in materially similar terms, was issued by the Department for Agriculture, the Environment and Rural Affairs (DAERA) in April 2017 ("the DAERA hedgerow guidance"). This guidance emphasises that *all hedgerows are a priority habitat* due to their significant biodiversity value, which relates not only to the specific plant species within the hedgerow but to their wider value for foraging, providing shelter, and corridors for movement of large numbers of species. It emphasises the value of hedgerows. It references Policy NH5 of PPS2 and notes that: "the degree of impact depends on the net loss involved, the proportion of connectivity lost and the species richness and structure of the hedges that are lost or fragmented. There may also be protected, and priority species impacts that also have to be considered."

[68] In response the respondent submitted that Policy CTY1 of PPS21 lists a range of types of development which are considered to be acceptable in principle in the countryside (including infill development in accordance with Policy CTY8). It is said that it is inevitable that there will be some loss of hedgerows as a result of such

development, and it asserts that this is not generally likely to result in an unacceptable adverse impact on known priority habitats. The respondent also pointed to the fact that the removal of hedgerows does not itself require the grant of planning permission, such that the hedgerows in question in this case could perfectly lawfully have been removed by the planning applicant in advance of submitting a planning application.

[69] A landowner is quite entitled, without having to seek planning permission, to cut down a hedge on their land. However, as the judge correctly noted, that is to miss the point: "there is no reason to suppose that the landowners in this case were likely to remove significant portions of hedgerow *unless* and until they were granted planning permission. It is the building of the dwellings permitted by the impugned permission which is likely to be the catalyst for significant hedgerow removal." As the judge further noted Policy NH5 and the DAERA hedgerow guidance proceed on the common sense basis that hedgerow removal should be taken into account in considering planning applications because – notwithstanding that it might be permissible to remove hedges without planning permission – the grant of planning permission, in the knowledge that the proposed development will require hedgerow removal, renders such removal much more likely.

[70] The respondent made the point that this issue was before the Committee and necessarily considered by them in the course of their consideration of the application. However, this begs the question 'what could the councillors consider when they did not have a report on the level of loss and its impact. The issue of hedgerow removal was expressly referenced in the officers' report in this case but only when summarising the objections received. It noted the objection that development "would block off a wildlife corridor" between Nos. 2 and 10 Glassdrumman Road and that the hedgerow to be removed for visibility splays "provides shelter for wildlife." In addition, the issue was raised by the appellant before the Planning Committee (referenced in the minutes of its meeting of 16 December 2020 specifically noting the issue of the existing hedgerow being a wildlife habitat as one of the issues raised) and in the notice party's written statement of 26 March 2021. It was also raised by the other objector, Mr Wilson, at that time.

[71] The judge said that the proposed site layout plan which formed part of the PowerPoint presentation to councillors did not provide a huge amount of detail but was sufficient to show an indicative sightline at the entrance to the new dwellings; further, it would have been obvious to the councillors involved that access from the road would be required; and they would be well aware that sightlines would be necessary (particularly in circumstances where some of the objectors raised road safety issues and an objection that the 'double entrance' to serve both proposed dwellings was too large). He observed that "it could not have been lost on them that hedgerow removal would be required to facilitate access to the site, which is why objectors were raising the issue. The Council accordingly granted permission in this case with its eyes open as to concerns in relation to hedgerow removal."

[72] Are 'open eyes' enough? Is it enough for councillors to know that there is an issue in play, or must they have the data to make a proper assessment of the environmental impact of that issue? Policy NH5 provides that planning permission will *only* be granted for a development proposal *which is not likely to result in unacceptable adverse impact on, or damage to known, priority habitats,* species or other features of natural heritage importance. That being so it seems to us that it is vital that the decision-makers have the necessary data to make the determination as to whether or not a particular proposal is likely to result in such unacceptable adverse impact.

[73] Indeed, even where a development proposal *is* likely to result in an unacceptable impact on such habitats, species or features, it may still be permitted in compliance with the policy if the decision-maker considers that the benefits of the proposed development outweigh the value of the habitat, species or feature (with appropriate mitigation and/or compensatory measures being required). In the present case no such assessment appears to have been made that any such potential benefits existed.

[74] The DAERA hedgerow guidance makes clear that *all hedgerows* meeting the definition in that advice *are a priority habitat*. Notwithstanding this guidance the judge held that it was open to the Council to conclude that the proposal in this case was *not likely* to result in unacceptable adverse impact on or damage to that habitat. The judge held that he had not been persuaded that the Council was 'insufficiently informed' of the likely net loss of hedgerows which would be involved in the proposal. Further, he said there was nothing in this case to indicate that an extended habitat survey was required. This was not a hedgerow with large trees; or where there was evidence of it being species rich; and it did not form a town boundary. Accordingly, he said that it was not a case where a survey of protected and priority species was necessary under the DAERA guidance. That guidance sets out a number of principles to be applied, which contain a significant degree of discretion (such as to "replace 'like for like' when replanting", "retain connectivity where possible", "integrate hedgerows into the development …", etc). He also pointed out that the respondent relied on the fact that planning permissions for development in the countryside will generally contain conditions relating to landscaping matters; and, in this case, conditions 3 and 6 of the impugned permission, *inter alia,* reserve details including the means of access and landscaping to be approved at the reserved matters stage and preclude development from commencing until a landscaping plan has been submitted, which might properly include mitigating measures.

[75] On this aspect of the case the judge held that the appellant had failed to make out his case that this issue was not properly addressed by the Council. The judge said that it was a matter for the Council as to how deeply it enquired into that matter, and he was not satisfied that the Council left this issue out of account; nor that its conclusion (that the loss of hedgerow which was necessarily involved in the grant of this outline application was acceptable) was irrational.

[76] However there must be a qualitative aspect to their enquiry. We consider that the councillors cannot properly reach a conclusion on a matter of such environmental significance without basic data on the level of loss involved and on the species upon which these losses fall. Without this data there can be no effective enquiry. It is not sufficient for the Council to be 'aware that an issue is in play'. Policy NH5 provides that planning permission will only be granted for a development proposal which is not likely to result in unacceptable adverse impact on, or damage to known, priority habitats, species or other features of natural heritage importance. Accordingly, this is a matter which has to be determined before the issue of permission is decided. To decide the issue the decision-maker must have the necessary data to make that decision. In our view, it is plain that they did not, and that the planning permission ought therefore not to have been granted.

[77] It is surprising that the planning officers did not draw to the councillors' attention Policy NH5 of PPS2. The judge did observe that it would have been helpful if the Council's planning officers had specifically directed councillors' attention to the Policy. He also noted that it would have been helpful for some further photographs of the hedgerow to have been provided.

[78] The judge noted that the appellant is concerned about the *cumulative* loss of hedgerow, as well as cumulative development in the countryside more generally. In his grounding affidavit he states that there are over 2,000 one-off houses approved for development in the countryside in Northern Ireland every year. He has drawn this from planning statistics released by the Department. He contends that a significant proportion of these permissions relate to 'infill' housing. This results in a huge amount of investment in building in the countryside, rather than focussing such investment on urban regeneration. Even if development of the average rural house resulted only in removal of 20m of hedgerow, 2,000 rural houses *per* year would result in the annual removal of some 40km of hedgerow. The judge acknowledged this is a well-made point agreeing that "although each application coming before a planning authority must be addressed on its own merits, planning policy in relation to countryside development is generally in restrictive terms because each new development, whilst of limited effect on its own, adds to the overall impact of development in the countryside. Policies which require decision-makers to carefully consider [environmental] issues such as hedgerow removal … should therefore be taken seriously." The judge concluded that the issue *was* considered in substance by the Council in this case, largely through the emphasis placed on the point by objectors; but planning authorities should be alive to this issue even where it is not raised by objectors.

[79] We consider that the matter could not have been considered appropriately as the relevant policy was not drawn to the attention of the councillors and they were not provided with the basic data needed to conduct the balancing exercise required by it. These environmental issues are of great significance and require anxious scrutiny by the decision-makers. It is clear to us that these decision makers did not have the necessary data to determine this question properly.

Absence of a site visit

[80] The appellant contended that many of the matters raised by him are issues that should be considered after having visited the site and looked carefully at the local context, the general area, and the proposed site in particular. He submitted that these matters cannot be assessed by way of desktop analysis.

[81] The judge noted that the appellant "describes himself as having pleaded for the Planning Committee to visit the site to gather the visual information necessary for an objective decision to be made." This suggestion was rejected by vote of the Committee. The appellant had also submitted a range of photographs but contended that these "still do not do the rural character and agricultural nature of this site justice"; and that this can only be properly appreciated by physical attendance at the site.

[82] It is an established feature of planning law that the decision-maker (i) must ask itself the right question and (ii) must also take reasonable steps to acquaint itself with the relevant information to enable it to answer the question correctly. This is often referred to as 'the *Tameside* principle') (see *De Smith's Judicial Review, 9th Ed*, at paragraphs 6-040-6-042 and *Dover District Council v CPRE Kent* [2017] UKSC 79 at para [30]).

[83] The judge noted the respondent's evidence that the councillors on the Planning Committee had viewed a presentation given by the planning officials, which included a PowerPoint presentation that contained various maps, plans and photographs. They also had presentations from the parties during the meeting and the opportunity to raise any questions or queries that they wished.

[84] The respondent's Planning Committee operating protocol, which deals with the issue of site visits, states:

> "[71] Site visits may be arranged subject to Committee agreement. They should *normally* only be arranged when the impact of the proposed development is difficult to visualise from the plans and other available material and the expected benefit outweighs the delay and additional costs that will be incurred."

[85] At the meeting on 16 December 2020, having heard representations, the chairman asked for a proposal and two councillors proposed that the Planning Committee should undertake a site visit. That proposal was put to the Committee and declared lost in a vote of eight votes to two. The appellant again raised the issue at the Planning Committee meeting of 8 April 2021. Notwithstanding the points made by him on that occasion, the Committee still voted against such a site visit.

[86] At para [43](g) of Girvan J's summary of the relevant principles in this area in *Re Bow Street Mall and Others' Application* (*supra*) he held:

> "If a planning decision-maker makes no inquiries its decision may in certain circumstances be illegal on the grounds of irrationality *if it is made in the absence of information without which no reasonable planning authority would have granted permission* (*per* Kerr LJ in *R v Westminster Council, ex parte Monahan* [1990] 1 QB 87 at 118b-d). *The question for the court is whether the decision-maker asked himself the right question and took reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly*." (*per* Lord Diplock in *Tameside*)

[87] Scoffield J recognises the "significant benefits" in contentious planning applications of councillors themselves visiting a site: that the application of Policy CTY8 does involve decision-makers engaging with a number of concepts which entail the exercise of planning judgment; that the policy is fundamentally concerned with rural character, which is likely "to be best assessed" by a visit to the locus and consideration of the site from critical viewpoints; that in terms of assessing whether infill development in a gap site will result in the loss of an important visual break, such that it goes beyond the impact on rural character 'priced into' the policy exception, a site visit may well of "considerable assistance." He also recognised that such visits take time and can result in delay and cost, which is why planning authorities have leeway in assessing whether they are necessary. He did not consider that the failure to conduct a site visit was a legal error.

[88] We endorse all that was said in the court below in relation to the value of site visits by the decision makers themselves, especially in difficult cases such as the present one. However, we cannot say that the decision maker, having considered the issue and voted upon it twice, can be found to have acted unlawfully in failing to visit the site.

Standing

[89] In granting leave to apply for judicial review, Scoffield J considered that the appellant *at least arguably* had sufficient interest in the matter to have standing for the purposes of section 18 of the Judicature (Northern Ireland) Act 1978 and RCJ Order 53, rule 3(5). Submissions on behalf of the interested party (Mr Carlin) accepted this to be the case in light of the fact that the appellant had been an objector in the course of the planning application process.

[90] However, the respondent continued to contend before Scoffield J that Mr Duff does not have a sufficient interest in the matter to which the application relates. Notwithstanding the appellant's participation in the process before the Council's

Planning Committee, the Council contends that he is not directly affected by the outcome of the decision. On that basis it is submitted that he has insufficient standing to be granted any intrusive relief. The respondent relied, in support of this submission, on *Walton v Scottish Ministers* [2012] UKSC 44.

[91] The judge noted that the appellant has described himself as an environmental campaigner or protector of the environment. In recent times he has become a regular and frequent litigant before the court in cases which seek to raise issues about the interpretation and application of planning policy, usually in relation to policies within PPS21. He has made the point that, in his view, the Department has abandoned its role in maintaining the integrity of the planning system and that he feels that, in those circumstances, he is filling a necessary void as the only person willing to do so.

[92] The judge stated that, in fairness to the appellant, he has enjoyed some success in at least some of the cases which he has brought or supported. He addressed his position, in relation to the question of standing, in detail in the case of *Re Duff's Application (East Road, Drumsurn)*. He held that, for the reasons identified in that case, he considered that the appellant does have standing to bring the present application:

> "Albeit he has no personal interest in the outcome (over and above his general concern for the environment), he was heavily involved in the planning process as an objector, including by way of written representation and appearance, having been granted speaking rights, at two meetings of the Council's Planning Committee."

[93] The judge went on to observe that the respondent's point was a more nuanced one, namely that a different or separate analysis of the appellant's interest was appropriate for the purposes of the grant of *relief*, even if he had sufficient interest to litigate the issues in these proceedings in the first instance. In light of the conclusions he had reached on the substance of the challenge, he held that this issue did not need to be addressed in his judgment.

[94] We are conscious that the appellant does not live in the affected area, nor does he have a direct interest in the site, although we do accept that he like other citizens is directly affected by issues such as biodiversity loss and environmental management. However, he did object to this planning application, and he has exposed significant matters in this case in relation to rural planning policy which exhausts the argument that he says arises in many other cases. Ultimately, his intervention also highlights the fact that planning permission was unlawfully granted. Therefore, the appellant as the only applicant is entitled in these circumstances to relief. We consider that the appropriate relief to remedy this unlawfulness is an order quashing the planning permission.

Conclusion

[95] This planning development application was presented to and decided by the Council on the basis that it came within the infill 'small gap' housing exception within Policy CTY 8. We have concluded for the reasons set out at paragraphs [28]-[48] that the Council's decision that this was a small gap site cannot stand.

[96] The primary focus of Policy CTY8 is on avoiding ribbon development, save where one of the two exceptions is engaged. Since Policy CTY8 is referred to in Policy CTY1 of PPS21 as being one of those policies pursuant to which development may in principle be acceptable in the countryside, there may be a temptation to view it primarily as a permissive policy. However, unlike the other policies, CTY8 does *not* begin by setting out that planning permission "will be granted" for a certain type of development. On the contrary, CTY8 begins by explaining that planning permission "will be refused" where it results in or adds to ribbon development. This is an inherently restrictive policy such that, unless the exception is made out, planning permission must be refused.

[97] The trial judge properly accepted that the exceptions should be narrowly construed bearing in mind the policy aim behind Policy CTY8 and PPS21 more generally. He further agreed that the exceptions provided for infill development are designed to allow for further development where the damage has already been done by the prior development of a 'substantial and continuously built up frontage.'

[98] The trial judge did not consider the Council's view that the houses on the Glassdrumman Road formed an "otherwise substantial and continuously built up frontage" to be *Wednesbury* irrational. He reached this conclusion with "some reticence" because of his acknowledgment that there was force in the appellant's argument that the Council's assessment has been 'skewed' to some degree by treating the ménage gap as part of the curtilage and frontage of No. 12. By doing so, the average plot size of the ribbon was "significantly increased." The result of this is that No. 12 is then viewed as having greater frontage onto Glassdrumman Road than would otherwise be the case and the continuity of the frontage is maintained rather than being broken by the manège gap.

[99] In fact, "a large portion of [the frontage width of No. 12] is occupied by a manège [gap]" [see planners report]. This large portion of undeveloped land was a gap. We consider that treating this substantial visual gap, as part of the frontage of No. 12, is not rational having regard to the facts on the ground and the strictures and objectives of the policy. As we said earlier, where the infill exception is being relied upon a key question is whether there is a substantial and <u>continuously</u> built up frontage. That question must be addressed in light of the purpose of the policy and its inherently restrictive nature, and, of course, with proper regard for the physical features of the area in question. This concept of "otherwise substantial and continuously built up frontage" should be interpreted and applied strictly, rather than generously.

Importance of maintaining visual breaks

[100] For the reasons given at paragraphs [54]-[62] we have concluded that given the misleading impression created by the planning officer's report and the fact that the councillors decided not to view the site themselves (even though this was not a legal error on their part) we are not satisfied that they were properly equipped to take the decision they took.

Priority habitats - Hedgerows

[102] We consider that the matter could not have been considered appropriately as the relevant policy was not drawn to the attention of the councillors and they were not provided with the basic data needed to conduct the balancing exercise required by it. These environmental issues are of great significance and require anxious scrutiny by the decision-makers. It is clear to us that these decision makers did not have the necessary data to determine this question properly (see paras [14]-[15] and [63]-[79])

Absence of site visit

[103] We endorse all that was said in the court below in relation to the value of site visits by the decision makers themselves, especially in difficult cases such as the present one. However, we cannot say that the decision maker, having considered the issue and voted upon it twice, can be found to have acted unlawfully in failing to visit the site (see [80]-[88]).

Standing

[104] For the reasons given at paragraphs [89]-[94] we agree that the appellant has standing in these proceedings.

Overall Conclusion

[105] In light of the foregoing we hold that the decision maker has not acted compliantly with its own policies which are designed to protect rural integrity and priority habitats and so the decision cannot stand.

[106] The decision will be quashed.

ANNEX 1

Neutral Citation No: [2024] NIKB 31	*Ref:* **SCO12472**
	ICOS No: **21/078576**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **25/03/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF APPLICATION BY GORDON DUFF FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

The applicant, Mr Duff, appeared in person
Kevin Morgan (instructed by Causeway Coast and Glens Borough Council Legal Services) for the respondent
The notice party, Mr McDonald, also appeared in person

SCOFFIELD J

Introduction

[1] The primary issue in this case is the relief which should be granted to the applicant in circumstances where the respondent, Causeway Coast and Glens Borough Council ("the Council"), accepts that it has acted unlawfully in the grant of planning permission to the notice party, Mr McDonald; but the notice party opposes the grant of an order quashing the impugned permission.

[2] The case has a somewhat unusual procedural history. When Mr Duff first complained about the grant of planning permission to Mr McDonald, by way of pre-action correspondence sent after that permission had been granted, the Council indicated that it would not oppose the grant of relief in proceedings to be brought by him, including the quashing of the planning permission. However, when those proceedings were lodged, Mr McDonald, the beneficiary of the planning permission, opposed the grant of leave to apply for judicial review and the grant of any relief. At that time, Mr McDonald was represented by solicitor and counsel. I was persuaded by the submissions made on Mr McDonald's behalf that Mr Duff lacked standing to bring the application for judicial review in light of the facts that the proposed

development could not conceivably directly impact the applicant and that Mr Duff had played no role at all in the planning process prior to the grant of the permission: see [2022] NIQB 11.

[3] Mr Duff appealed that ruling to the Court of Appeal, which allowed his appeal and granted leave to apply for judicial review: see [2023] NICA 22. In doing so, the Lady Chief Justice emphasised the specific circumstances of the case, which were described as "exceptional", because the Council had expressly invited Mr Duff to make an application for judicial review and had not opposed his standing to do so at first instance, conceding that it was appropriate for him to apply to the court "to correct a public law wrong." In light of these factors, the Court of Appeal considered that leave to apply for judicial review ought not to have been refused on standing grounds. The case was then remitted back to the High Court for hearing.

[4] When the case was listed for further directions it became clear, firstly, that the Council maintained its original stance of conceding that it had acted unlawfully and not opposing the grant of relief; and, secondly, that Mr McDonald wished to oppose the grant of relief both on the merits and as a matter of the court's discretion as to remedy. I summarise his position further below. By this time, Mr McDonald was acting as a litigant in person since, as a result of the costs of the earlier proceedings below and on appeal, he no longer considered that he could afford to instruct a legal team. I permitted him to be assisted by his architect, Mr Boyle, who acted as a McKenzie friend.

[5] I am grateful to both litigants in person and to Mr Morgan who appeared for the Council for their submissions.

Factual background

[6] I set out again the basic summary of the facts which appears in the initial leave ruling in the case. The proceedings concern the grant of planning permission in the countryside for an 'infill' dwelling, that is to say, a dwelling which is considered permissible under Policy CTY8 of Planning Policy Statement (PPS) 21 as filling a small gap in an otherwise substantial and continuously built up frontage in the countryside. In this case the Council granted such planning permission (reference LA01/2020/1235/O) in relation to a site between 51 and 53 East Road, Drumsurn, near Limavady.

[7] Policy CTY8 provides (in relevant part) as follows:

> "Planning permission will be refused for a building which creates or adds to a ribbon of development.
>
> 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 3 or more buildings along a road frontage without accompanying development to the rear."

[8] I analysed a number of features of this policy in another case brought by Mr Duff, which was treated as a lead case to determine a variety of issues he had raised in relation to the policy in several applications for judicial review, namely *Re Duff's Application (Glassdrumman Road, Ballynahinch)* [2022] NIQB 37 ("the *Glassdrumman Road* case").

[9] Mr McDonald has been granted permission for a dwelling on a site at the location identified above. The site is a small roadside field, located in a rural area, of predominantly agricultural character, outside of any settlement as defined in the Northern Area Plan 2016. Mr McDonald continues to maintain that the Council was right to consider that his application complied with planning policy and, in particular, that it was entitled to consider that the proposal was for a small gap site within an otherwise substantial and continuously built up frontage comprising Nos 51, 53 and 55 East Road.

[10] A previous application (reference B/2012/0155/O), which had been made before planning functions were transferred to district councils, was refused by the Department of the Environment on the basis that the proposal would result in ribbon development along East Road and fail to integrate in the landscape, resulting in a suburban style build-up when read with other existing development in the immediate vicinity. Mr McDonald did not appeal this decision to the Planning Appeals Commission (PAC), although he has averred that he was advised by his planning consultant that an appeal would have had good prospects of success. (He has provided a copy of a letter from a planning consultancy offering to act for him in the appeal, which provides no such indication, although it is possible that this advice was given orally.) He also contends that, in further discussion with Planning Service, his planning consultant was advised that his application had been "in the spirit of the policy and as such should have been approved."

[11] Mr McDonald made a further application for outline permission at the site (reference LA01/2020/0962/O) which was recommended for refusal, and which was withdrawn prior to a decision being taken by the Council. He has provided reasons why his agent did not have an opportunity to ask for this to be deferred for further consideration. Then, on 18 November 2020, he submitted a further application through his agent AQB Architectural Workshop Limited (AQB). This application was considered by the planning committee of the Council at its meeting on 25 August 2021. In advance of that, as is usual, the Council's professional planning

officers prepared a report for the committee, highlighting a number of salient issues, assessing the proposal against applicable planning policy, and making a recommendation. The planning officer's report noted that there were no objections to the proposal.

[12] Significantly, however, the planning officer's report included the following advice in the Executive Summary:

> "The principle of development is considered unacceptable in regard to the SPPS and PPS21 as there is no substantial and continuously built up frontage within the countryside at this location. The proposal would also have an adverse impact on rural character through the creation of ribbon development and would fail to satisfactorily integrate into the landscape. No overriding reasons have been forthcoming as to why the development is essential and cannot be facilitated within the development limit."

[13] This was clear advice that the relevant policies were not complied with. The officer's report therefore again recommended refusal on the basis that the proposal was contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies CTY1, CTY8, CTY13 and CTY14 of PPS21. The discussion and conclusion within the report indicated that there was no substantial and continuously built up frontage within the rural area at the location (and consequently no gap to infill) as there was not the required number of buildings to form a built up frontage.

[14] In particular, it was noted that the dwelling at No 51 East Road sat to the rear of the application site and its curtilage did not extend to East Road, terminating approximately 25 metres back from the road edge where it accessed onto the laneway. Since the curtilage of No 51 did not have a common frontage onto East Road, it could not be considered to form part of a substantial and continuously built up frontage with Nos 53 and 55. Additionally, since there was (in the officer's view) no gap site at the location, the proposal would further add to the linear pattern of development along the roadside adding to ribbon development, which was detrimental to rural character and contrary to policy. Put simply, the development would result in the planning harm Policy CTY8 was seeking to avoid; and did not fall within the narrow exception which that policy viewed as permissible. There was also no overriding reason why the development was essential at this location under Policy CTY1. The proposal would also fail to integrate into the landscape and would erode the rural character of the area, which was also contrary to policy. Accordingly, refusal was recommended on a variety of bases.

[15] A site visit occurred on 23 August 2021, at which seven councillors and two council officers were present. The site visit report suggests that officers gave advice to those members of the planning committee who were present in the same vein as

was contained in the officer's report – pointing out why (in the officers' view) the relevant planning policies were not complied with.

[16] Notwithstanding this, at the committee meeting two days later, and despite the recommendation to refuse from Senior Planning Officer McMath (who gave a presentation in relation to the application), the committee decided by majority vote to grant the application. This was after a presentation by the applicant's architect, Mr Boyle of AQB, in which he contended that the site complied with Policy CTY8 and that the three relevant dwellings (Nos 51, 53 and 55) all shared a roadside frontage. He also – seemingly as an alternative – submitted that the spirit of the policy was met. The Chair put the motion to a vote and six members voted to approve the application; five members voted to refuse the application; and there was one abstention.

[17] The Head of Planning sought reasons for voting for an approval. These are generally required where a decision is taken which is contrary to officers' recommendations. The minuted reasons are as follows:

> "That the Committee approved for the following reasons:
>
> - The houses to the side are road frontage; as the frontage of no.51 goes to the road do not see a difference; if you take that as frontage, therefore infill applies and complies with policy;
>
> - A dwelling on the site will integrate with the buildings already there;
>
> - Is not ribboning, the laneway ensures ribboning does not take place."

[18] It seems that these reasons were only articulated *after* the vote was taken. As appears below, the vote against accepting the officer's recommendation was treated as a vote to approve the planning application. Accordingly, the reasons why the majority of the committee were voting to approve do not appear to have been discussed in advance of the vote (contrary to model practice in this area, as endorsed by the UK Supreme Court in para [60] of its decision in *Dover District Council v CPRE Kent* [2017] UKSC 79).

[19] The minute also notes that Councillor Hunter (who seconded the motion to accept the officer's recommendation to refuse the application) stated her dissatisfaction with the lack of justification for the committee's decision; and that the Head of Planning "advised that she can only record what the Members have put forward for their reasoning."

The parties' submissions on the merits

[20] Mr Duff has three broad grounds of challenge: first, that immaterial considerations have been taken into account; second, that material considerations have been left out of account; and, third, that there has been a breach of planning policy without the appropriate justification. The particulars provided in the grounds represent a number of consistent themes in Mr Duff's challenges in relation to infill development in the countryside, most of which are dealt with in the judgment in the *Glassdrumman Road* case.

[21] In particular, the applicant contends that there is no substantial and continuously built up frontage at this location – largely because No 51 East Road should not be considered to form part of such a frontage (since it does not actually front onto East Road). He contends that No 51 is "up a lane with no frontage to East Road"; and he has provided photographic evidence which supports that contention. This is in support of the central thrust of his case, which is that there was no relevant substantial and continuously built up frontage within the terms of Policy CTY8 to enable legitimate infill development to occur. Accordingly, the Council's planning committee erred in considering that the proposal complied with relevant planning policy. He also contends that the proposed dwelling will not integrate; that it will allow suburban build-up; and that it will create or add to ribbon development in a manner which is precluded, rather than permitted, the relevant policy. In substance, his case is that the Council's professional planning officer got the assessment right and that the elected councillors who voted in favour of the proposal got it wrong in a manner which is legally indefensible.

[22] In large measure, the Council agrees with this analysis. In para [16] of my decision at the leave stage, I described the Council's position as follows:

> "First, the Council accepts that it is arguable that, as already outlined in the summary of the officer's report above, there is no relevant frontage to East Road at the dwelling at No 51 and that the committee's minuted reasoning that "the frontage of no.51 goes to the road" could not be stood over. Relatedly, it was accepted to be arguable that the three dwellings said to form the continuous frontage were not visually linked given the extent to which No 51 was set back. Second, the Council also accepts that the further committee reasoning that "the laneway ensures ribboning does not take place" arguably cannot withstand scrutiny. Indeed, it is difficult to see that the mere presence of a laneway between two properties would have any significant impact on the issue of visual linkage which is relevant as part of the assessment of whether ribbon development has been created or added to. The Council accordingly did not

> oppose the grant of leave and, indeed, consented to the grant of relief even at this early stage."

[23] In a position paper lodged after Mr McDonald's position became clear, the respondent accepted that the proposed development constituted ribbon development precluded by Policy CTY8; that it did not come within the 'infill' exception, as it is not within a continuous and substantially built up frontage (with No 51 'not counting'); that it was likely to result in suburban style build-up with a detrimental change to the rural character of the countryside at the location; that it did not visually integrate; and that there were no overriding reasons why the development was essential and could not be within a settlement. Whilst the Council did not accept *all* of Mr Duff's pleaded grounds, it accepted the thrust of them in relation to Policy CTY8, which it conceded had been misapplied, particularly in respect of its consideration of No 51 East Road.

[24] I was informed that the Council's planning committee had resolved at a meeting on 22 September 2021 that the proceedings would not be defended by the Council; and made a further resolution to similar effect at a meeting on 26 January 2022, after having considered the notice party's written submissions and further planning report which were submitted in the course of the initial leave application. In his oral submissions, Mr Morgan accepted on behalf of the Council that the planning committee had "misdirected itself in relation to a fundamental and grounding factual point" because No 51 did not have frontage onto East Road.

[25] For his part, Mr McDonald continued to contend that the grant of planning permission was defensible on the merits. He submits that he is the innocent party in the whole affair and simply wishes to protect his "legally granted" planning permission. He maintained the position that the planning committee, having undertaken a site visit in order to inform itself, was entitled to exercise its own planning and factual judgement in relation to the issues raised by Policy CTY8. In particular, they were entitled to take their own view on the question of fact as to whether or not the curtilage of No 51 extended down to the road. As noted in the leave decision, this case was supported by a report from a newly instructed planning consultant, Gemma Jobling BSc Dip TP MRTPI of JPE Planning, which maintained the view that the relevant policies were complied with (including by virtue of the fact that the driveway access to No 51 East Road formed a frontage to the road). Mr McDonald also notes that a case will only be called in from officers to the planning committee where the councillor requesting this has provided sound planning reasons for the committee considering the matter, which must have been accepted by the Council's Head of Planning at that point. The notice party has also suggested, as a fall-back position, that the site is "within the spirit" of the planning policy.

[26] Mr McDonald has also averred that the Council's position in failing to oppose Mr Duff's application, from the time of the pre-action correspondence onwards, has been solely on the basis of its potential costs' exposure in these proceedings. He has

averred (although without providing detailed particulars of this exchange) that the Council has "previously stated that there was no legal flaw in their decision making." In his skeleton argument he suggests that this was an exchange between his architect, Mr Boyle, and the Council's solicitor, Mr Linnegan. The respondent disputes this suggestion and says that, for the reasons given above, it is conceding the application because it recognises that the committee decision was unlawful and cannot withstand the legal challenge which has been mounted against it. Although I understand that Mr Linnegan no longer works for the Council, Mr Morgan indicated on instruction that he had denied making representations in the terms alleged by the notice party.

Conclusion on the merits

[27] As I observed at para [18] of the leave ruling in this case, even in relation to planning policies which involve judgment-laden concepts, the invocation of the exercise of planning judgment is not a magic shield which invariably wards off any prospect of successful challenge by way of judicial review:

> "Although the application of Policy CTY8 calls for the exercise of planning judgment in places, there are limits to how far that may go for three reasons. First, as authority establishes, planning authorities do not live in the world of Humpty Dumpty where the words used in a policy can be applied so flexibly as to render them devoid of sensible meaning (see Lord Reed in *Tesco* [2012] UKSC 13, at paragraph [19]). Second, albeit judgment may require to be exercised in matters of evaluation, there are other matters (such as the ascertainment of physical features on the ground) which may require assessment as a matter of fact, rather than the exercise of judgment, where judicial review will lie more readily in the case of a clearly established error. And, third, even where judgment is concerned, although the court's role is then extremely limited, it retains a residual discretion to review for irrationality or *Wednesbury* unreasonableness."

[28] In short, a planning authority is not entitled to stretch the language of a planning policy beyond breaking point; nor to maintain that black is white.

[29] In this case, at least two of the reasons given for departing from the officer's recommendation are legally unsustainable:

(a) First, it was contended that each of the relevant houses to either side of the site "are road frontage" because "the frontage of no.51 goes to the road." The officers were convinced that this was simply wrong as a matter of fact; and the Council collectively maintains this position. The fact that No 51 is

accessed by a laneway which opens out onto the road does not mean that the dwelling, which sits *to the rear* of the application site, has or forms part of a frontage along the road. The curtilage of the property ends some 25m *back* from the road edge (where it accesses onto the laneway). It is only the laneway which meets the road; and the access to No 51, beyond gates on the lane, is well back from the road on which the application site and other houses do have frontage. The officer was simply right, as a matter of fact and/or a matter of the application of the policy, to say that as the curtilage of No 51 does not have a common frontage onto East Road it cannot be taken to form part of a substantial and continuously built-up frontage along East Road. That is also consistent with the Planning Appeals Commission's decision in Appeal 2019/A0250, at para 6, which appears to have addressed a materially identical issue. Whether viewed as an error of material fact, a misinterpretation of the policy, or simply an irrational approach, this represents a legal flaw which renders the resulting decision liable to be set aside. (I also note in passing that the notice party's reliance on the committee members having conducted a site visit appears to me to have been misplaced when the vast majority of those voting to approve the application had *not* been present at the site visit.)

(b) Second, the committee noted that the proposal was "not ribboning" on the basis that "the laneway ensures ribboning does not take place." Having regard to the nature of ribbon development which Policy CTY8 is generally designed to avoid, it is impossible to see how the mere existence of a laneway adjacent to the application site could, of itself, ensure that there was no unacceptable ribbon development. I find this reason irrational. It simply does not stack up as a matter of logic. As a matter of planning analysis, it is little more than gibberish. (It is also the case that a proposed development must create or add to a ribbon of development in order for the infill exception, upon which the planning applicant relied, to potentially arise.)

(c) In light of my conclusions in relation to the above two issues, I need not consider in detail whether it was permissible for the majority of the planning committee, as an exercise of reasonable planning judgment, to conclude that the proposed dwelling "will integrate." That is a matter upon which, if the committee properly directed itself, it would be difficult to upset their decision unless clearly irrational. I do note, however, that the reason recorded in the minutes said that the dwelling would "integrate with the buildings already there" rather than, as policy requires, addressing the more exacting tests within Policies CTY13 and CTY14. I simply observe that the officer's report addressed the questions of integration and impact on the rural landscape in some detail in a manner which is not matched by the brief reason for departure on this issue which is recorded in the minutes.

[30] I should also say something about the case advanced on Mr McDonald's behalf by his architect before the planning committee. He relied on the fact that para

5.33 of the amplification text related to Policy CTY8 in PPS21 allows for an infill opportunity whenever buildings are set back or staggered. However, that is to misunderstand the distinction between ribbon development on the one hand (which is generally prohibited) which *can* take into account buildings which are set back from the road where they are visually linked to other buildings, and a continually built up frontage on the other (which is a necessary element for the exception with Policy CTY8 to apply) in respect of which no such concession applies. This was explained in the judgment in *Glassdrumman Road* case (see, for instance, paras [49], [52] and [91](iv) of that judgment). It follows from the text used but also the purpose of the policy: a wide interpretation is to be given to ribbon development, which is to be avoided in the countryside; and a narrow interpretation is to be given to the exception to this policy so that harm to rural character is avoided.

[31] In the report provided by the notice party from Ms Jobling, described as a preliminary planning opinion, she does not repeat this point. She accepts that No 51 is set back from the public road with a sweeping driveway and says that it is served by a driveway access which presents onto East Road forming a frontage to the west. It is her "view" that "this driveway access forms part of the planning unit comprising No. 51 and this extends to create a frontage along East Road." However – even assuming that Ms Jobling is right about the laneway forming part of the planning unit – in light of the evidence presented in these proceedings, including the photographic evidence of the site, and the Council's settled view on this issue (which is now in line with its officers' consistent approach to the issue), I cannot accept that this establishes a substantial and continuously built-up frontage either side of the application site, even arguably so.

[32] As noted above, the notice party also contended that his proposal was within "the spirit" of Policy CTY8. This echoes a representation made by Mr Boyle to the planning committee, which is set out in the minutes, that "the spirit of policy CTY8 is met." This usually means that the conditions in the relevant policy are *not* met but in a way which the applicant contends is minor. Such a submission to planning committee members can be an extremely dangerous one because it is apt to confuse the position between a situation where policy conditions are met (and the proposal is policy compliant) and a situation where policy conditions are *not* met in some material way (and the proposal is policy non-compliant). In order to properly direct themselves, planning decision-makers must correctly understand whether a planning policy authorising development is complied with; or whether they are proposing to grant planning permission notwithstanding that the relevant policy is not complied with. In the latter instance, the decision-maker must recognise that they are granting planning permission which is *contrary* to planning policy and have valid planning reasons for doing so. (A similar issue arose for consideration in *Re Portinode's Application* [2022] NIQB 36, at paras [18]-[25].)

[33] For the reasons set out at para [29] above, I consider that the applicant succeeds in his case (conceded by the Council) that the respondent acted unlawfully when granting the impugned planning permission in this case. The question, then,

is what relief should be granted on foot of this finding. In particular, should the planning permission be quashed, which is the usual order where such a permission has been granted in a way found to be unlawful by the Judicial Review Court?

Mr Duff's fresh argument about the vote

[34] Before addressing that issue, I note that Mr Duff introduced a further argument before the hearing which was grounded on the precise voting mechanism deployed at the key planning committee meeting of 25 August 2021. He argued that there was no decision to approve the planning application in this case at all. The officer's report recommended refusal of the application. A decision was taken to reject that recommendation; but the reasons for this were only given and recorded after the vote. In particular, however, Mr Duff argues that there was no valid vote to grant planning permission because there was no motion to approve the application. The vote taken against refusal did not amount to a vote to approve the application, he submits, since such a vote could equally lead to a range of other outcomes (such as deferral of a substantive visit pending a site visit, further representations, etc.).

[35] The Council's position, expressed in response to correspondence from Mr Duff on this issue, is that the vote to reject the planning officer's recommendation amounted to a vote to approve the application. The respondent was and is satisfied that a valid vote to approve the planning permission was taken. This is supported by the minutes of the meeting since, after the vote to reject the officer's recommendation was made, the minutes record that the Head of Planning "sought reasons for voting *for an approval*" [my emphasis] from the members who had so voted. A planning permission document (previously referred to as the 'green form') was formally issued on 26 August 2021 purporting to represent the grant of the relevant permission.

[36] Strictly speaking, I do not need to determine this issue, since it formed no part of the applicant's pleaded grounds; and there is no claim for a declaration that no valid planning permission was actually granted. Insofar as necessary, however, I would reject the argument on Mr Duff's behalf. Although it would plainly have been better and more transparent to hold two separate votes (one on accepting the officer's recommendation and, if that was rejected, a further vote on how to then proceed), the important thing is how the purpose and effect of the vote was understood at the time. I am satisfied from the evidence, and particularly the formal committee minutes, that those present at the meeting understood that the vote taken was intended to result in the grant of planning permission (contrary to the officer's recommendation) and that this was the will of the majority voting. After the Head of Planning had sought reasons, it was minuted that "the Committee *approved* for the reasons" which I have already described. The Chair then declared the application approved; and it was further agreed that the issues of conditions and informatives to be included within the permission were delegated to officers. Whether, as a matter of internal procedure, the voting was regular or not, I am satisfied that the committee intended to and did approve the grant of planning permission which was

subsequently given effect by the officers issuing the formal document to that effect. That permission enjoys the presumption of legality unless and until set aside.

Mr Duff's request for a quashing order

[37] Mr Duff indeed invites the court to set aside the notice party's planning permission so granted. He has relied, inter alia, upon my decision in *Re Burns' and Duff's Applications* [2022] NIQB 10, at para [30](a) in which I indicated that it would be unusual for a court to stand in the way of a public authority having its own decision quashed, on its own application, when it comes before the court and admits a public law flaw in its decision-making process which is substantiated by evidence provided on its behalf. Although this is not a case of the Council itself applying to set aside its own decision (as that case was), Mr Duff is right to identify that the *usual* course where a public authority admits such a flaw in its decision-making is that the court will grant an order of certiorari to quash the resultant decision.

[38] Mr Duff also made a number of interesting submissions based upon work carried out by the Northern Ireland Audit Office (NIAO) and the Public Accounts Committee (PAC) of the Northern Ireland Assembly. The NIAO published a report by the Comptroller and Auditor General and the Local Government Auditor in February 2022 entitled, 'Planning in Northern Ireland.' Part Three of the report dealt with variance in decision-making processes. It expressed a number of concerns which resonate with the present case. These included a finding that the type of applications being considered by planning committees within councils, rather than simply being dealt with on a delegated basis by councils' professional planning officers, were not always appropriate. Elected members were calling in for consideration applications which were not always the most significant and complex; and, indeed, some council planning committees appeared to be "excessively involved in decisions around the development of new single homes in the countryside." The NIAO considered that the evidence highlighted a disproportionate use of committee time and focus on such applications.

[39] The NIAO report also considered the extent to which planning committees within local councils overturned the recommendations of their professional planning officers. Everyone accepts that this is an entirely proper and permissible outcome in certain cases, with the proviso that decisions to depart from officers' recommendations should be supported by clear planning reasons. Some planning committees have a higher rate of overturning their officers' recommendations than others, however, with the Council in this case being towards the top of the league table (see Figure 7 in Part Three of the NIAO report). The vast majority of cases (90%) where the officers' recommendations were overturned was where a planning committee granted planning permission against the officers' advice. Of even more direct relevance in the present case is that almost 40% of decisions made against officer advice related to single houses in the countryside. In all of these instances the recommendation to refuse planning permission was overturned and approved by the committee. It does not appear that a committee has disagreed with a

recommendation to approve in such a case, thereby taking a stricter view of the planning issues than the professional officers. The NIAO expressed the following concerns as a result of this analysis:

> "In cases where the planning committee grants an application contrary to official advice, there is no third party right of appeal. The variance in overturn rate across councils, the scale of the overturn rate and the fact that 90 per cent of these overturns were approvals which are unlikely to be challenged, raises considerable risks for the system. These include regional planning policy not being adhered to, a risk of irregularity and possible fraudulent activity. We have concerns that this is an area which has limited transparency."

[40] In the usual way, the NIAO report was considered by the PAC in the exercise of its scrutiny functions. It too issued a report, on 24 March 2022, entitled 'Planning in Northern Ireland' (NIA 202/17-22). The PAC expressed concern about how the planning system was operating for rural housing. In particular, based on the evidence presented to it, the Committee said that it was concerned that "there appears to be an increasingly fine line between planning committees interpreting planning policy and simply setting it aside." The PAC was also concerned about inconsistent application and interpretation of the relevant planning policies across Northern Ireland. It concluded that the operation of the planning system for rural housing "is at best inconsistent and at worst fundamentally broken", recommending that the Department ensure that policy was agreed and implemented equally and consistently.

[41] For what it is worth, these findings and conclusions chime with the view I expressed in para [89] of the *Glassdrumman Road* decision, arising from my experience of dealing with a significant number of challenges brought by Mr Duff relating to councils' application of Policy CTY8 of PPS21. Although I consider there is more scope within the policy for the exercise of planning judgment than Mr Duff's submissions in that case would have allowed for, I nonetheless expressed the view that:

> "… in this and a range of other cases… I consider that one can discern a somewhat relaxed and generous approach to the grant of planning permissions under the infill exception in Policy CTY8 which may be thought to have lost sight of the fundamental nature of that policy as a restrictive policy with a limited exception. In the words of the Department's Planning Advice Note of April 2021, there is a case that decisions have been taken which "are not in keeping with the original intention of the policy' which will then 'undermine the wider policy aims and

> objectives in respect of sustainable development in the countryside.'"

[42] Mr Duff made it clear that he was not making any suggestion of fraud in this case, and I wish to emphasise that, since the mere mention of this issue in the present context was something to which Mr McDonald and Mr Boyle understandably took exception. Mr Duff did, however, have a concern that some councils were being lax about the requirements of Policy CTY8 and were granting planning permission, purporting to do so in the exercise of planning judgment, where it was plainly inappropriate to do so. He counted this case as one of those. As a result, he urged the court to put down a marker that, where a council unlawfully granted planning permission in this way, that permission would be quashed on a successful application for judicial review.

The notice party's grounds of opposition to the grant of a quashing order

[43] Mr McDonald opposes the grant of a quashing order essentially on four grounds. First, he contends that, since relief in judicial review is discretionary, the primary relief Mr Duff seeks should be refused to him because he is an undeserving applicant. This is a variation on a 'clean hands' argument, namely that an applicant seeking public law relief should not themselves have shown disregard for the law (in this case, planning law). Second, he contends that a quashing order should be refused in the exercise of the court's discretion because of the prejudice this will now cause to him. Third, and relatedly, he contends that it would be unfair for his planning permission to be quashed in light of the Council's role in all of this. Fourth, he maintains that, notwithstanding the Court of Appeal's ruling on standing, Mr Duff should nonetheless be viewed as a "busybody" and should not be considered to enjoy standing. I address each of these issues in turn below.

The 'clean hands' argument

[44] Mr McDonald has averred that he has researched the applicant's history with a number of councils in Northern Ireland where a number of planning applications which he submitted were rejected. He mentions, in particular, an application for self-catering apartments on a farm he owns in Donaghadee; and an application in the Belfast area which would include the cutting down of a number of trees protected under a tree protection order (TPO). He also alleges that Mr Duff has a car mechanic garage at his land in Donaghadee "which does not include basic environmental safeguards such as oil/petrol interceptors or welfare facilities." A short document was provided summarising in very brief terms (what was said to be) Mr Duff's planning history listing a range of planning applications in different council areas, some of which had been refused, including some for dwellings in the countryside. A number were said to represent applications made in response to enforcement action or for retrospective approval. On the basis of this history, Mr McDonald suggested that Mr Duff did not have a genuine desire to protect the

environment and/or that he was simply an aggrieved planning applicant with a "vendetta" against councils.

[45] I do not doubt that the Judicial Review Court can withhold a remedy in the exercise of its discretion in circumstances where the applicant's own conduct, outside their conduct of the proceedings themselves, is such as to render this appropriate (see, for example, Auburn, Moffett & Sharland, *Judicial Review: Principles and Procedure* (OUP, 2013) at paras 32.39 and 32.40). I have not been persuaded, however, that the present case falls within that category. I was provided very limited detail indeed in relation to the variety of planning applications which were said to provide a possible motivation for Mr Duff's litigation and/or to mark him out as an undeserving applicant. Mr Duff submitted that some of the applications relied upon by Mr McDonald had not been made by him but had, in fact, been made by his father before he died. There was insufficient information provided to satisfy me that Mr Duff was guilty of some wrongdoing or inconsistency in approach which, of itself, ought to lead to the refusal of a remedy in these proceedings. Both the Court of Appeal and I have previously accepted that Mr Duff has a genuine concern for the environment. The litany of judicial reviews he has pursued in this area could scarcely be explained otherwise. Where, as here, an applicant is seeking to enforce a planning policy designed for the protection of the environment, there would require to be strong material before the court would refuse relief purely on the grounds of the applicant's own behaviour. The notice party has not raised any matter which appears to me to warrant this unusual course.

Fairness, prejudice and standing revisited

[46] Mr McDonald also says that he has experienced hardship, financial burden and stress throughout the process of seeking to retain his planning permission. He says this has also affected his immediate family, his mother and his brothers. Mr McDonald owns the application site and the adjacent dwelling at No 53 East Road (which was the original family home). His evidence is that he wished to sell the application site with the benefit of planning permission in order to raise funds to develop a 'granny annex' at his own property for his mother, who is in failing health and requires new accommodation. Plans were prepared for this in 2020; but these have had to be put on hold. He was also seeking to improve the existing dwelling at 53 East Road. He further explained that, with the benefit of the impugned planning permission, there was another potential option open to him which, at the time of the hearing, was in fact the more likely of the two to be pursued. Instead of selling the application site with the benefit of permission, he could alternatively sell his existing house in Limavady, build the newly approved dwelling for his family and fully renovate No 53 for his mother, allowing her to live beside him and his family in the two houses. For the moment, neither option is possible because of the legal uncertainty hanging over the impugned permission.

[47] Mr McDonald relied upon the personal circumstances of his mother, who currently lives in rented accommodation in Limavady. She had to move there to be

closer to family, due to mobility issues, after his father died; but this accommodation is said to be unsuitable for her current needs. The delay and uncertainty in proceeding with the plans described above have also caused her significant stress. Mr McDonald also submits that he had been "financially crippled" trying to retain the planning permission granted.

[48] Mr McDonald further contends that, had the Council mounted an objection to Mr Duff's locus standi from the outset, and had it not therefore invited Mr Duff to apply for judicial review (which it would then concede in order to avoid costs), Mr Duff would not have been granted leave to apply for judicial review at all. He maintains that he was told that the Council were conceding the intended proceedings on the grounds of cost alone and not because it considered that it had done anything wrong. Viewed in this way, he feels significantly let down by the Council, which he considers wrongly caved in to an unmeritorious threat of proceedings from Mr Duff on purely financial grounds.

[49] Mr McDonald has averred that he has spent in excess of £15,000 fighting a battle which should not have arisen if the Council had responded appropriately. (By this, however, he obviously means the Council contesting Mr Duff's application for judicial review, including on the issue of standing, rather than by it not having granted his planning permission in the first place). For its part, the Council maintains that it has acted appropriately and on legal advice at all times.

[50] Against all this, Mr Duff has relied upon the fact that a previous application from Mr McDonald at the proposal site was refused in 2012 for similar reasons (it would result in ribbon development; it failed to integrate with the landscape; and it would result in suburban style build-up); and that a further application was withdrawn after it had been recommended for refusal, on essentially the same grounds upon which the officers had recommended refusal of *this* application. The application giving rise to the permission impugned in these proceedings was, Mr Duff submits, virtually identical to and on the exact same site as the withdrawn application; and was submitted only 16 days after the previous application was withdrawn. In his view, Mr McDonald and his advisers ought to have known at all relevant times that the application was not compliant with the relevant policy. In addition, he points to the fact that PPS21 does, exceptionally, allow for development in the countryside where there are compelling personal circumstances (see Policy CTY6); but that the circumstances of this case are unlikely to fall within that category, given its strict conditions and since Mr McDonald originally wished to use the grant of permission as a financial scheme simply to raise additional capital to help to rehome his mother. Whilst professing sympathy for Mrs McDonald's plight, Mr Duff also pointed out that she still owns her original home in Claudy, which is being rented out, which could provide another source of income.

[51] It is difficult to ascertain the most just outcome in all of these competing circumstances. For Mr Duff, Mr McDonald secured a planning permission to which

he was never entitled. For Mr McDonald, Mr Duff has challenged a planning permission after the event which is no concern of his.

[52] For the reasons I have given above, I consider that the Council was wrong to grant the planning permission in this case in the way in which it did. Particularly in light of the previous refusal decisions or recommendations, the grant of the permission represented something of a windfall to Mr McDonald. At the same time, as I highlighted in my decision on leave, Mr McDonald secured the permission in the absence of any third party objections. It was also granted before the court had provided the guidance on Policy CTY8 which is set out in the *Glassdrumman Road* case, which has been treated as a lead case on this issue. At that time, there was perhaps a more relaxed approach to the grant of permission under that policy which appears to have been influential in the thinking of Mr McDonald and his advisers. Mr McDonald was then taken by surprise by the intervention of Mr Duff, completely after the event, seeking to challenge the permission. If Mr Duff had objected during the planning process, the course of events may have been very different. In those circumstances the permission may not ever have been granted. At least, however, the issue with Mr Duff's standing would not have arisen; and Mr McDonald would have been aware from an early stage of the potential issues with his planning application.

[53] In my view, the Council was right to concede the substance of Mr Duff's challenge; but could have taken a firmer line on the standing issue from the outset. Had it done so, even on the Court of Appeal's analysis, Mr Duff would have lacked standing to bring the proceedings. On the other hand, the Council could also have made more clear, from a very early stage, why it was proposing to concede the grant of relief. Much of Mr McDonald's frustration (and then his expenditure in these proceedings) was because of his belief that the Council was conceding the case only on financial grounds without accepting that it had committed any legal error. I cannot resolve the question of what Mr McDonald was or was not told in this regard, nor do I need to; but it is certainly unhelpful that his understanding of the Council's position and that which has been advanced to the court on the Council's behalf are at such odds with each other. I accept that, rightly or wrongly, Mr McDonald genuinely believed that the Council was conceding only on the issue of cost. This situation arose, at least in part, because the Council only spelt out its position with any degree of clarity when pressed to do so in the course of the initial leave hearing.

[54] This brings me lack to the issue of standing. The suggestion that a different or separate analysis of an applicant's interest is appropriate for the purposes of the *grant of relief*, even if the applicant had sufficient interest to litigate the issues in these proceedings in the first place, was raised in the *Glassdrumman Road* case (see para [88]). It did not have to be determined in that case, since I did not consider the respondent's decision in that case to have been unlawfully taken. The issue does, however, need to be grappled with in this case.

[55] It is clear from authority not only that standing can be revisited at the remedy stage but also that an interest which is sufficient for the grant of leave may not be sufficient for the grant of relief or some particular form of relief. In *Walton v Scottish Ministers* [2012] UKSC 44 Lord Reed, at para [95], said that "… the interest of the particular applicant is not merely a threshold issue, which ceases to be material once the requirement of standing has been satisfied: it may also bear upon the court's exercise of its discretion as to the remedy, if any, which it should grant in the event that the challenge is well-founded." In that regard, he was agreeing with Lord Carnwath who, at para [103], considered that the issue of discretion "in practice may be closely linked with that of standing" and that the court's discretion may be important to some extent in acting as a necessary counterbalance to the widening of the rules of standing. In environmental cases, for instance, an individual may have sufficient interest to bring a case even though they themselves are not directly affected; but, where the court proceeds on that basis, it is important that those interests are not seen in isolation and that other interests – both public and private – are taken into account.

[56] Many years before that, in *R v Department of Transport, ex parte Presvac Engineering Ltd* (1992) 4 Admin LR 121, at 145-146, it had been said that, at the substantive stage, the court must review the question of sufficiency of interest and exercise its discretion accordingly. Whether this was properly to be viewed as an investigation of standing or simply the exercise of discretion in relation to remedy was "probably a semantic distinction without a difference." Before that still, in *R v Inland Revenue Commissioners, ex parte National Federataion of Self-Employed and Small Businesses Ltd* [1982] AC 617, at 656, it had been emphasised that the exercise of the court's discretion as to remedy in judicial review proceedings "and the determination of the sufficiency or otherwise of the applicants' interest" for this purpose would depend upon the due appraisal of many different factors revealed by the evidence in the course of the proceedings.

[57] Taking all of the above into account, I have concluded that a quashing order should be refused in this case on the basis of standing, taking into consideration the prejudice which would be caused to Mr McDonald if a quashing order was granted and Mr Duff's lack of direct interest in the proposal for which permission has been granted and non-participation in the planning process. Mr Duff had standing to bring the proceedings (as the Court of Appeal held) on the "highly fact specific" basis that the Council had invited him to do so. He has succeeded in establishing illegality on the respondent's part, which will be reflected in a declaration. However, as the Court of Appeal explained, his standing to bring this case – notwithstanding his non-participation in the original planning process and the fact that he has no direct interest in the proposal – was exceptional. In my view, it is not sufficient to entitle him to the primary relief which he seeks in all of the circumstances of this case.

Costs

[58] In reaching the conclusion set out above, I have also taken into account the appropriate disposal in relation to the costs of the proceedings. I propose to deal with costs in the manner set out below which, taken together with the approach to relief described above, represents a package which in my view meets the overall justice of the case:

(a) Mr Duff should bear his own costs. Although he has been successful on the merits, he has not achieved the primary relief which he sought. He also embarked upon the proceedings on the basis that he would not seek costs against the Council (although he did secure the costs of his successful appeal against the Council).

(b) Mr McDonald should also bear his own costs. Although he has successfully opposed the grant of a quashing order, he unsuccessfully contended that there was no legal flaw in the planning permission which had been granted, even in the teeth of the Council's concessions in this regard. His costs of these proceedings are, to some degree, a counter-balance to the windfall planning permission which he received.

(c) The Council should also bear its own costs. Although it could, and should, have been more transparent from the outset as to the basis upon which it was conceding the proceedings, the Court of Appeal has already condemned it in the costs of the applicant's leave appeal. Its position in the substantive hearing before me was appropriate and it should not be penalised in costs any further.

A cautionary word

[59] These proceedings provide an example, in my view, of the dangers of elected councillors rejecting the advice of professional planning officers without valid planning grounds for doing so. The analysis of the NIAO discussed above suggests that there may be more willingness on the part of council members to do so in relation to single houses in the countryside than in relation to some other types of development. Whilst it is entirely permissible for elected councillors (to whom planning powers have been given by statute) to exercise planning judgment in a different way to officers in many instances, or to give material considerations different weight than their officers might, they should be wary of stretching planning policy beyond its proper meaning or making decisions on grounds which are not legally defensible. Where they wish to depart from an officer's recommendation, it will often be better to discuss this in advance, including (at least in some cases) with the benefit of the officers' advice or legal advice as to whether there is legitimate scope for a different view to be taken. Where, as here, an unjustifiably generous approach is taken and a legal challenge ensues, this can result in delay and heartache for the planning applicant whom the councillors may have hoped to benefit; and in significant legal costs to the council concerned.

Conclusion and costs

[60] For the reasons set out above, I will declare (a) that the respondent erred as to a material fact, misinterpreted planning policy and/or reached a view which was irrational in concluding that there was a substantial and continuously built-up frontage in which the application site formed a gap site; and (b) that the respondent reached an irrational conclusion in determining that the presence of the laneway at the location ensured that "ribboning does not take place."

[61] I grant no other relief in these proceedings and, in particular, decline to quash the planning permission granted by the Council. Since the permission was for outline planning permission only, a reserved matters application will still be required before development can be lawfully commenced.

[62] There will be no order as to costs between the parties.

Neutral Citation No: [2017] NIQB 133 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **KEE10464** *Delivered:* **23/11/2017**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

_____

IN THE MATTER OF AN APPLICATION BY RURAL INTEGRITY (LISBURN 01) LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF AN APPLICATION BY DR THERESA DONALDSON FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY LISBURN AND CASTLEREAGH CITY COUNCIL TO ISSUE PLANNING PERMISSION REFERENCE S/2014/0908F

_____

KEEGAN J

Introduction

[1] This case comes before the Court by way of two applications for judicial review in relation to an impugned decision which was taken on 28 April 2017 by Lisburn and Castlereagh City Council whereby the Council granted full planning permission to Wilmar Leisure Limited for the removal of a planning condition (application under section 54 of the Planning Act (Northern Ireland) 2011 to remove holiday occupancy (Condition 2) of approval S/2008/0878/F for holiday home development comprising 58 apartments at land at Annacloy House, 14 Trench Road, Hillsborough).

[2] It is important to note that the first application in time is that of Rural Integrity Lisburn 01 Limited. That application is dated 7 June 2017. The second application is that of Dr Theresa Donaldson who is the Chief Executive of Lisburn and Castlereagh City Council and that application is dated 25 October 2017. I should say that the beneficiary of the impugned decision Wilmar Leisure Limited was a notice party to these proceedings.

[3] The case came before me for directions on 17 October 2017. On that date Mr Gordon Duff appeared on behalf of the applicant Rural Integrity Limited. In the

papers Mr Duff describes himself as a director of the company. It is also apparent from the papers that Mr Duff is a developer and he avers that he owns land which he hopes will produce 10 or more windfall housing sites in the Belfast area. The proposed respondent, Lisburn and Castlereagh City Council, was represented by Mr Beattie QC.

[4] At the directions hearing Mr Beattie raised an issue about the standing of Mr Duff to take proceedings in this case. As a result I directed skeleton arguments on the issue of standing and I adjourned the case for hearing of leave and the preliminary issue on 6 November 2017. As is apparent prior to that hearing the application was lodged by Dr Donaldson and I will come to the substance of that in due course. On 6 November 2017 Mr Beattie appeared on behalf of Dr Donaldson and on behalf of Lisburn and Castlereagh City Council. I pause to observe the unusual circumstances of that. Mr McBurney, solicitor, appeared on behalf of the notice party and Mr Duff appeared as litigant in person on behalf of the applicant Rural integrity Limited.

The challenge by Dr Donaldson

[5] It is important to note that the application brought by Dr Donaldson was on the basis that the impugned decision should now be quashed. She filed an affidavit setting out the grounds for this which she conceded were that the permission had breached the protocol for operation of the Lisburn and Castlereagh City Planning Committee as members of the Planning Committee failed to declare an interest in the planning application in breach of the protocol. In particular, paragraphs 6 and 7 of the affidavit state as follows:

> "6. …I have carried out my own review and assessment of the matter in light of the letters of complaint received. I am concerned with Council governance and regulation. The Council seeks to ensure adherence to its Protocol.
>
> 7. Two Members of the Planning Committee who attended the meeting on 9th January 2017, who participated in the discussion and voted to approve the planning application had previously submitted letters of support for the wider development comprising a hotel and golf course which is related to the planning application. These two Members failed to declare an interest at the 9th January 2017 planning committee meeting. They proceeded to take part in the discussion, and, thereafter to vote on the planning application."

[6] Mr McBurney, solicitor, indicated that the beneficiary of the decision had no objection to the decision being quashed. Mr Beattie considered that I should simply quash the decision on that basis and not hear any further from Mr Duff.

[7] I declined that application on Mr Duff's well-made point that in fact his judicial review was first in time and that this case raised some issues of public interest in relation to planning matters and adjudications. I therefore heard from Mr Duff in relation to the challenge that he put before the Court. I should say that Mr Beattie also accepted that he had to apply for leave to extend time in relation to Dr Donaldson's application but he argued that as she had identified a flaw in good public administration, the Court should extend time. I heard the case over one full day.

[8] After that hearing I convened a further short directions hearing as Mr Duff had applied to present further written argument. I allowed him to do that and Mr Beattie presented a written reply. I have considered all of these documents. Unfortunately, Mr Duff has continued to present documents in an unsolicited manner. I will give him the benefit of the doubt as he is a litigant in person however he has some experience of the Courts and he should know that this is not an appropriate way to conduct a case. I note that Mr Duff makes some complaints about counsel and other persons in his most recent document submitted to the Court. These are matters which I will not engage with. I consider that Mr Duff has also had ample time to present his case is writing and orally and he has capably made all of the points to me. I do not need to deal with Mr Duff's joinder application given the course I have decided to take.

The Challenge by Rural Integrity

[9] Mr Duff's challenge has taken various forms in that he has filed numerous amended Order 53 statements. The clearest statement of the applicant's case supported by his skeleton arguments is that the impugned decision is unlawful on the following broad grounds:

(a) Economic
(b) Environmental
(c) Traffic
(d) Contrary to development plans
(e) Breach of Code of Conduct
(f) Policy
(g) Legal.

[10] The application further points out that the respondent has conceded that it has breached the Code of Conduct for Councillors. In his oral argument Mr Duff took me in some detail through his prepared papers which included comprehensive documentation. He essentially made the case that he should be allowed to advance

his points about the grounds for the quashing of a decision on the various bases he set out. I have listened to those points and I have considered the case made on paper. Mr Duff accepted that the decision would inevitably be quashed given the consensus about that but he wanted the Court to hear the very important public issues that he had to raise about how this had all come about. I note that in his most recent material Mr Duff raises new points about an alleged NAMA connection and political issues. I pause at this point to state that the Court is dealing with a judicial review of a particular planning application and it will not become embroiled in some rolling challenge or consideration of satellite issues.

[11] Mr Duff also said that he had spent considerable time preparing the case. He said that if it were not for him the case would not be before the Court and the flawed decision would not be quashed. Mr Duff was on firmer ground in making these points to me. He argued that the actions of Dr Donaldson in bringing an application were designed to stymie him making his case and to try and draw a blanket over the flawed decision-making. He argued that Dr Donaldson's affidavit does not present a full picture for various reasons including his case that 3 councillors rather than 2 had a conflict of interest. Mr Duff also submitted that he should clearly be awarded his costs in any application.

[12] During his submissions Mr Beattie confirmed that the proposed respondent in the Rural Integrity case was no longer taking any point about Mr Duff's standing in the judicial review. He stated that was why a skeleton argument was not filed. In his argument Mr Beattie stated that the decision if quashed would have to be properly reconsidered in accordance with law and that the Council would have to take on board that the decision would have to be made lawfully and also that the decision would have to take into account the issues raised by Mr Duff, and in particular the issue of environmental screening. Mr Beattie was keen to stress that there was no actual concession as to the grounds relied on by Mr Duff save the issue of the breach of Code of Conduct. However, Mr Beattie quite clearly stated that any fresh decision-making process would have to be conducted in accordance with law and would have to take into account the issues raised by Mr Duff.

[13] I do not intend to recite the facts in any greater detail given the way the case developed. Suffice to say that this application falls within a wider context of a significant development in this area. This planning application is in relation to a discrete part of a 200 acre site. This is a multi-million development which includes a golf course, hotel and housing. It is an application to remove a holiday occupancy condition and it also resulted in a section 76 agreement. The impugned decision was taken against the recommendation of the Planning Officer after a pre determination consideration by the Department of Infrastructure.

Issues

[14] In light of the above there are a number of issues in this case which I define as follows:

(i) Which judicial review should be determined first?

(ii) Should I extend time for Dr Donaldson's judicial review?

(iii) Should I grant leave to Mr Duff?

(iv) As there is agreement that an order of certiorari should be made should the case be disposed of on that basis?

[15] In determining these issues I must bear in mind the overriding objective in any case as contained in Order 1A the Rules of the Court of Judicature (NI) 1980 to avoid unnecessary public expenditure. I also bear in mind that cases of this nature engage the public interest.

Consideration

[16] The shape of this case is extremely unusual. I have an application by an interested person to quash a planning decision and a subsequent application by the Chief Executive of the relevant Council to quash its own decision. I reach the following conclusions on the basis of all of the material I have had put before me and on the basis of a full and comprehensive argument over one day.

[17] I have considerable sympathy with Mr Duff's point that the application by Dr Donaldson is second in time and indeed out of time. It does not require a massive leap on my part to think that the timing of this application is more than coincidental. It is also in my view extremely significant that the concession as to non-declaration of interests only came to light on the basis of letters sent by Mr Duff between 13 to 16 September 2017. So it follows that were it not for Mr Duff's diligence this matter may very well not have come to light and as such a flawed administrative decision would not have been exposed. Dr Donaldson in her affidavit admits a breach of protocol. This is a highly significant and serious matter in terms of good public administration. It is something that the public is entitled to know about and that is the purpose of this written judgment.

[18] It is clear to me that Dr Donaldson did not act immediately upon receipt of the information but waited until after court on 17 October and I see no explanation as to that in the affidavit. This lends weight to Mr Duff's arguments that there was an element of damage limitation in the bringing of the second application. As such I decline to exercise my discretion to extend time pursuant to Order 53 Rule 4 of the Rules of the Court of Judicature - See *Re Zhanje's Application* [2007] NIQB 14. It is

clear to me that the Council had another choice which was to effectively concede the case being made by Mr Duff on the Code of Conduct ground. As such I am satisfied that Dr Donaldson's concern that a flawed administrative decision would remain in place can be dealt with on foot of Mr Duff's application.

[19] By virtue of the concession, Mr Duff has standing to bring his own judicial review and the application made by Dr Donaldson means that he clearly has an arguable case to make. There is no valid argument against leave being granted in these circumstances.

[20] The real issue of substance concerns the utility of having a further hearing to determine every part of the wide ranging case raised by Mr Duff. I explained this issue to Mr Duff during the hearing. I have to carefully consider the particular position in this case given that there is a consensus that the impugned decision should be quashed. The impugned decision would therefore have no force or effect. In other words the substantial relief sought by Mr Duff has been achieved and any new decision must now be reconsidered and taken in accordance with law. I note that there is a considerable factual dispute about some of the matters raised by Mr Duff even though he was clearly right about the breach of the Code of Conduct which is highly significant in itself. I am fortified in my view given the nature of the recent material he has lodged. In view of the concession made by Dr Donaldson, the substantive case is now conceded.

[21] In such circumstances the Court must consider whether any further hearing is necessary. I apply the principles set out in *R v Secretary of State for Home Department ex p Salem* [1999] 1AC 450 and the words of Lord Slynn:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example(but only by way of example)when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

[22] I dealt with this area of law in *Re Wright's Application* [2017] NIQB 29. The Court is bound to conduct an evaluative exercise on the facts of each case. In this case I take particular account of the following:

(i) Notwithstanding the fact that there is a consensus that the decision should be quashed there is a high degree of dispute on the facts about the other issues raised by Mr Duff.

(ii) I am guided by the overriding obligation and the need to correct unlawful decisions in a timely manner. This is particularly so in the sphere of planning where many interests are engaged and prejudice may be occasioned by delay.

(iii) Mr Beattie has confirmed that the decision will be reconsidered and he has given an undertaking that all relevant points will be considered.

(iv) Any further hearing which would undoubtedly be long and complex and costly.

(v) When the impugned decision is quashed by order of certiorari it has no force or effect.

(vi) Mr Duff may bring a further challenge if he considers that the decision taken after a re consideration is unlawful in some way.

(vii) It is open to Dr Donaldson or Mr Duff (and indeed it is a course which may commend itself) to refer any matters to the NI Public Services Ombudsman given the case made in relation to breaches of good public administration.

[23] Accordingly, I am prepared to grant relief at this stage in favour of Mr Duff and on foot of his application. I consider that this course satisfies the justice of this case and the public interest. In my view there is a strong imperative to quash an unlawful decision in a timely manner. It is highly significant that the Chief Executive of a Council has accepted that a planning decision such as this should be quashed on the basis of a breach of the Code of Conduct whereby Councillors did not declare an interest. I am quashing the decision on the basis of Mr Duff's intervention which highlighted this issue without any further conclusion on the merits of the additional grounds. That does not mean that the additional grounds are ignored because in exercising my supervisory function I will also direct that the decision is retaken and that it specifically takes into account all relevant matters raised by Mr Duff including the issue of environmental impact. It is highly important that decisions of this nature are taken in a lawful and transparent way. Mr Beattie was quite clear that this will be done but I restate the fact that the new decision must take into account all of the relevant matters raised by Mr Duff. Mr Duff may challenge any new decision if he considers that it is unlawful and so he is not prejudiced in any way.

Conclusion

[24] Accordingly, I quash the impugned decision and direct that the planning application be reconsidered in light of this judgment. I will hear the parties as to any other matters and the costs of this application.